NOTARY PUBLIC HANDBOOK

Spring 2016 - Special Edition

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MONTANA NOTARY PUBLIC HANDBOOK

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You can now have the Montana Notary Public Handbook on your smartphone!

Scan this QR code and have this important resource at your fingertips anywhere, anytime!

Information in this edition reflects statutory changes made by the 2015 Legislature.

This handbook was designed to provide information to current and prospective notaries public in the State of Montana in order to increase understanding of the powers and duties of the office. Please contact us at sosnotary@mt.gov with your suggestions and comments on how the handbook can be improved.

Any statements by the office of the Secretary of State regarding notaries or notarial acts are not intended as legal advice and should not be construed as such. If you have specific legal questions regarding your acts or conduct as a notary, the Secretary of State's office urges you to seek professional legal advice.

Alternate accessible formats of this handbook will be provided upon request. For further information call (406) 444-5379 or for TDD (406) 444-9068.

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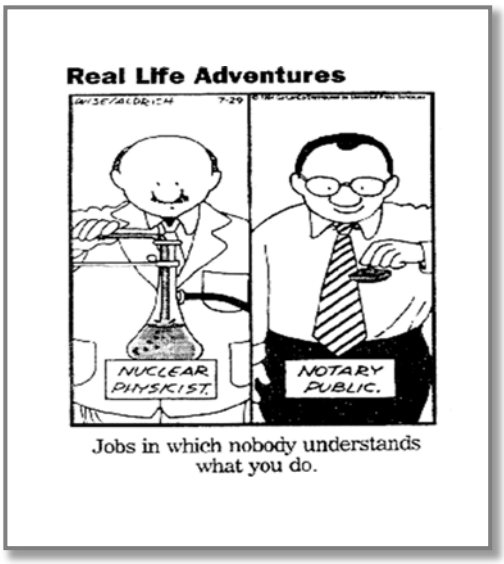
CHAPTER 1 – GENERAL INFORMATION

OVERVIEW



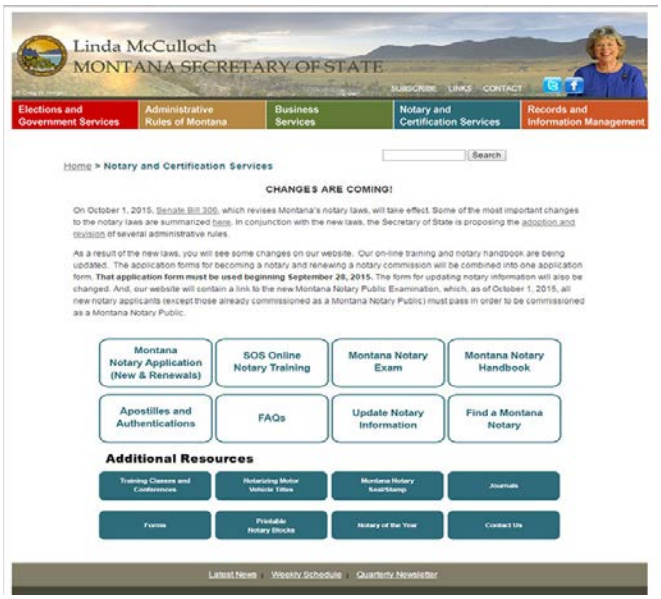
Everybody knows what a notary public does, right? Actually, there is much misunderstanding and confusion about what the proper role and duty of a notary is. A notary public does not "legalize" documents, or verify the accuracy or truthfulness of the content or statements made in a document, and yet the role that a notary plays in ascertaining the identity of the person who signs a document, placing that person under oath, if required, and determining the signer's intent and willingness to consent to the transaction is vital in modern society.

A notary public is a public official commissioned by the Secretary of State to administer oaths and affirmations, take acknowledgments, witness signatures, and perform other duties as permitted by state law. A notary has a legal obligation to know Montana notary laws and to follow the standards of reasonable care for performing a notarial act.

As a public official, a notary is not acting on behalf of him/herself or his/her employer when performing a notarial act, but rather, on behalf of the state of Montana.

RESOURCES

This handbook provides information to familiarize notaries with their responsibilities in performing notarial acts and is designed to be a primary resource for Montana notaries public. We encourage you to familiarize yourself with the contents and keep it readily available so that you can utilize it when questions arise. You can download it to your desktop or personal device or print out a copy for easy access any time. We've also included an index in this edition to help you find the information you're looking for quickly and easily.



The other primary source of information for Montana notaries are the web pages of the Certification & Notary Services section of the Secretary of State's website: www.sos.mt.gov/Notary. Save this link to your favorites so it's handy whenever the need arises. The website contains the most current information for notaries. You can download any of our current forms, link directly to the free online notary training course (which is available to anyone, anytime), or register for one of our webinars or live training classes, among other things. The website is always available and is very user friendly.

We urge you to take a few minutes to familiarize yourself with the information and format of the handbook and the website so that you can find the answers to your questions quickly and easily.

You are also welcome to contact the staff of the Notary and Certifications Division by phone at (406) 444-5379 or (406) 444-1877 or email: sosnotary@mt.gov. You should never attempt to complete a request for notarial services until you fully understand what you are doing. The job of a notary public is much more complex than most people realize. It is your responsibility to know what you can and cannot do, what you are supposed to do, and how to do your job correctly. These resources are designed to help you – take advantage of them!

THE NOTARY'S FUNCTION

A notary acts as an official, unbiased witness to the identity, the comprehension, the intent, and the signature of the person who comes before the notary for a specific purpose. The person may be taking an oath, giving oral or written testimony, or signing or acknowledging a signature on a legal document. In each instance the notary attests that certain formalities have been observed. Montana law defines certain "Notarial Powers" that a notary may perform. Notaries must constantly be aware that every notarial act affects the legal rights of others. Carelessness or negligence by the notary may injure these rights. Upon conviction of a violation of these rights, the notary may be punished as provided by law.

Integrity and skill are required of notaries in the discharge of their duties, for the mere mechanical performance of their office does not ensure the added degree of authenticity that is the hallmark of the notarial act. **Simply affixing your seal and signing your name does not constitute a proper notarization in the state of Montana – EVER!!!** As you go through this handbook, pay very close attention to the exact requirements for various notarial acts. A notary may be held personally responsible for improper, negligent, or fraudulent actions.

THE NOTARY'S RESPONSIBILITY

If the notary's primary function is to be a witness to the identity, the comprehension, and the intent of a person who is signing a document, taking an oath, or acknowledging a signature, it automatically follows that one of the notary's greatest responsibilities is to be able to truthfully testify that the notary did in fact witness the act he or she claimed to have notarized. In other words, the person whose signature, oath, or acknowledgment is being notarized MUST personally appear to the notary at the time the act takes place.

There are no exceptions to this requirement. It is impossible to be a witness to an event if it does not take place in your presence. "Notarizing" without the personal appearance of the signer at the time of the notarial act is *de facto negligence and can be just cause for revocation of your notarial commission.*

RULE # 1

The person whose signature, oath, or acknowledgment is being notarized MUST personally appear to the notary at the time the notarial act takes place.

INTEGRITY AND IMPARTIALITY

A notary public is expected to be a person of proven integrity appointed by the Secretary of State to act as the state's "official witness" in any matter requiring the notary's services. Because the primary purpose of the notary is to deter fraud, the notary's integrity must be unquestionable.

Every notarial act performed by a notary public is done under the notary's oath of office and the statement made on every notarial certificate completed by a notary public is done under that oath. If the notarial certificate states that the document was "signed before" the notary, that's exactly what the notary's official testimony is claiming: The document was signed in the notary's presence. If the notary certificate contains the words "Subscribed and sworn to before me", that, too, means the document was signed in the notary's presence *and* the notary administered an oath to the signer, who swore under penalty of perjury that the statements and information contained in the document were true and correct to the best of his or her knowledge.

The words contained in the notarial certificate are not mere formalities; they are the notary's "witness statement" telling what happened, where it happened, when it happened, and who was involved. The accuracy and completeness of every notarial certificate is a fundamental expectation of the office.

FEES

Montana notaries may charge for performing certain notarial acts. The maximum fee allowed for taking acknowledgements, witnessing signatures, performing jurats, certifying copies of documents or certifying a transcript is $10. Notaries may also charge a travel fee if (1) the notary explains to the person requesting the notarial act that the travel fee is in addition to the statutory maximum fee for the notarial act and is an amount not

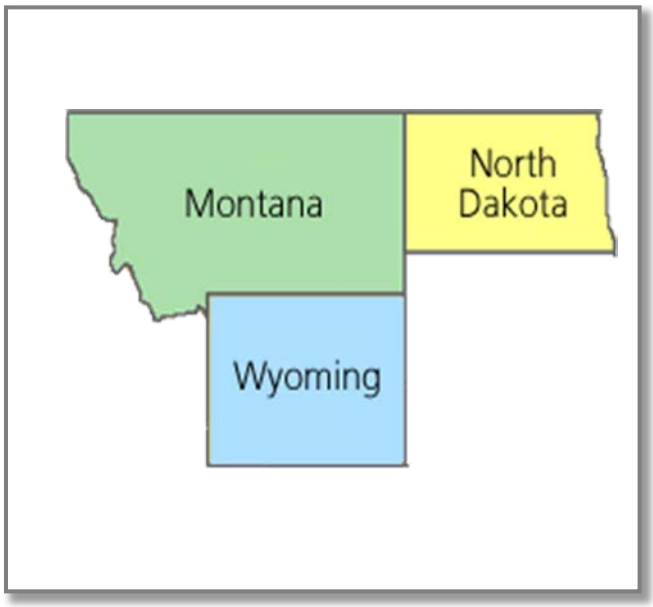
determined by law and the person requesting the notarial act agrees in advance to the amount of the travel fee; or (2) the fee charged is equal to or less than the standard mileage rate allowed by the Internal Revenue Service. Notaries who charge must publish their fee schedules in English. Fees charged by notaries who work in the private sector may be collected by the notary's employer if the notary agrees to that. The fees collected for notarial services by notaries who work in a public office belong to that office.

NOTARY LIABILITY

Montana case law holds the notary personally responsible for any damages resulting from the notary's official misconduct. Notaries are required to file a $10,000 surety bond when they apply for a new or subsequent commission. Many notaries think that the bond is insurance that protects them; **that is not the case**. The bond is posted to cover damages incurred by the victim of the notary's negligence or malfeasance. If a successful claim is made against the notary's bond, **the notary will have to pay the bonding company back and cover any losses in excess of $10,000 as well**. Montana does not require notaries to obtain liability insurance; however, it is wise to discuss the need for such coverage with an insurance professional.

A properly kept notary journal is the very best insurance that a notary can have. It provides *prima facie* evidence that the notarial information on a document is true and correct and that the signer had personally appeared to the notary when the notarization took place.

JURISDICTION



Montana notaries have jurisdiction to perform their official duties in every county in Montana, not just the county in which they live or work. In some cases, a Montana notary public may perform a notarial act in either of two adjoining states – North Dakota and Wyoming. **Even when performing a notarization in either North Dakota or Wyoming, a Montana notary must always follow the laws and rules of Montana.** The statutes that allow this practice are dependent on both Montana and the reciprocal state. Questions about any restrictions or special requirements must be discussed with the appropriate Secretary of State's office.

The jurisdiction for performing *remote notarizations* is limited strictly to within the borders of Montana. At this time neither North Dakota nor Wyoming permit remote notarizations; therefore the reciprocity laws do not allow Montana notaries to perform these notarizations outside of Montana.

There is often some confusion about whether a Montana notary can notarize a document that came from or is going to another state or country. The basic rule is if the signer is in the notary's presence, and the notary is physically located within their geographic jurisdiction, the notarization may be performed. So if a person has a document that was created in Florida, but is currently in Montana and requests that his signature be notarized, a Montana notary may provide the service (as long as all other conditions are met, of course). There is nothing that inherently prevents a Montana notary from notarizing documents from outside of Montana. Remember, however, that the notary must be careful to correctly identify the venue (the state and county where the notarization was performed) on the document. Many times this information will be entered on the pre-printed certificate (i.e., "State of Florida, County of Broward") and the Montana notary will have to cross out the incorrect venue and enter the correct information (i.e., "State of Montana, County of _____").

CHAPTER 2 – BECOMING A NOTARY PUBLIC

There are certain procedures that must be observed in order to obtain a notary commission from the state of Montana. Applying for a Montana notary commission is a multi-step process and in order to complete the process successfully you will have to follow the directions carefully. The first step, obviously, is to determine if you meet the qualifications for the office. When you have met all of the requirements for holding the office, you can begin the application process. After submitting the required documents to the Secretary of State's office, you will be **notified by email** when the Secretary of State has issued your Certificate of Commission. You will need to print out your Certificate as proof that your commission has been issued, so that you may purchase your official notary stamp and journal and be ready to assume your notarial duties. Below are more specific details about the process of becoming a notary public or renewing a commission.

QUALIFICATIONS

To become a notary public, one must:

- Be a citizen or permanent legal resident of the United States
- Be at least 18 years of age
- Be a resident of, or have a place of employment or practice in, Montana
- Can read and write English
- Not be disqualified to receive a commission pursuant to Montana Code Annotated §1-5-618
- Have passed the Secretary of State's on-line examination (this applies to first-time applicants or to renewing notaries whose previous commission expired more than thirty days earlier).

TERM OF OFFICE

The term of office for a notary public is four years. A notary may be appointed or reappointed by submitting the required documentation to the Secretary of State's office as required by law. Term limits don't apply to notaries – you may serve for as long as you wish. Upon completion of the application process, the Secretary of State's office will email the notary a Certificate of Commission, showing the notary's official name, city of residence, and the term of the commission. The Certificate of Commission is the official proof that the person is a notary public for the state of Montana. If the notary moves out of state, and/or ceases to maintain a place of business or practice in Montana his/her commission is automatically terminated. **A change of employment during a notary's term of office *does not* terminate the commission**, but must be reported to the Secretary of State's office. Even if your employer pays for your bond, stamp, and journal, the commission is issued to the notary personally, and the employer has no rights to cancel the bond or unilaterally terminate the commission.

OBTAINING A COMMISSION

It is the objective of the Notary and Certifications Division of the Secretary of State's office to make the process of applying for a new or renewal commission as easy as possible; however, there are specific statutory requirements that must be met. On this page and the following page, you will find detailed information on how to become a notary, how to renew your commission, how to change your name on your commission, and when and how to notify the office of other changes that the law requires. You will also find links to the online fillable forms that should accompany your requests and notifications. The information in this chapter is current as of the date of this edition of the handbook; however you should check the website www.sos.mt.gov/Notary for the most accurate and up-to-date information and requirements.

The basic process for obtaining a commission involves these five steps:

1. Successfully pass the required examination (if required).
2. Obtain a notary surety bond from a licensed bonding agent (usually an insurance agent)
3. Complete the online application, print it out, and have it notarized

4. Obtain a check, money order, or interunit journal (state employees only) for $25 for the filing fee.
5. Send the application, the original bond, the exam certificate (if applicable) and the filing fee to the Secretary of State's office

WARNING: "The devil is in the details!" Carefully read and follow the full instructions to assure that the process will go smoothly. There are statutory time constraints and other mandates that apply depending on the circumstances. Failure to follow the directions correctly will result in delays, frustration, and additional expense.

Some important things to note about the notary application process:

- You do not have to use your full legal name for the commission – we can accept an application that uses *at least* one initial and your surname, or your nickname and surname, as long as you can prove your identity to the notary who notarizes your application, statement and oath of office. We recommend that you use the name that you ordinarily use in the course of your normal course of business. **The important thing is that you be consistent: The name on the bond, on the application, and the signatures on those documents must be exactly the same**. This becomes your "official notary name and signature" and must be used consistently on every notarial act you perform.
- There are statutory time guidelines that must be followed:
  - All requests for commissions (new and renewal) must be filed within 30 days of the effective date of the bond if one is shown on the bond. (Some bonding companies leave the effective date blank, so there is usually no time limit on those bonds.)
  - Requests for reappointment cannot be made more than 30 days before the expiration date of the current commission. If you send your renewal paperwork in too early, it will be returned. If you attempt to send it in too late, it will be rejected and you will be required to complete the requirements for a new commission, including successfully passing the mandatory examination, before you can resubmit the documents for processing.
- You must send the required documentation and the filing fee together. (State employees whose filing fee is paid for by their department must arrange for an interunit journal (IUJ) to be issued before submitting the documents to the Secretary of State's office.) Incomplete submissions will be rejected.
- **The notary is solely responsible for submitting the required documents** for requesting a commission or for updating contact information during the term of office. It is your responsibility to understand the process and coordinate the activities necessary to assure that your application is completed accurately, notarized correctly, and the necessary attachments – the bond, the filing fee, and the certificate of examination (for new appointments) – are included with the submission within the allowable timeframe.
- The filing fee is non-refundable.

If you have any questions about any of these processes, feel free to contact the Notary and Certifications Division of the Secretary of State's office.

UPDATING YOUR INFORMATION

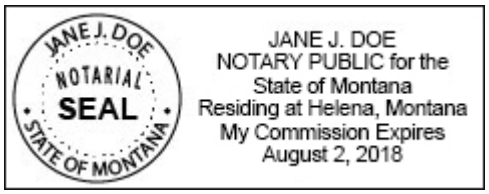
Notaries are required by law to provide certain information as part of the application process, including their name, physical residence address, mailing address, personal telephone number, employment information, and whether eNotarization services are offered. This information must be updated as necessary during the term of office. You must notify the Secretary of State's office within 30 days of any changes. An amended Certificate of Commission will be issued when your name or city of residence changes and you will have to obtain a new stamp showing the updated information. The Contact Information Update form is a fillable form on the website.

NOTARY SEAL/STAMP

Traditional Ink Seal/Stamps. It is the responsibility of the notary to obtain and keep an official seal upon receiving a new or subsequent commission. A new stamp must be purchased for each term of office and whenever the information shown in the stamp (such as the city of residence or the notary's name) changes. **The State does not provide the seal/stamp**. They may be purchased from most stationery, stamp, or office supply stores. It is the notary's responsibility to assure that the stamp is correct and complies with the requirements described below. Do not expect that the retailer or manufacturer knows the requirements. Provide this page to the vendor if there are any questions.

All Montana notaries are required to have an ink stamp that creates a rectangular impression approximately 1" by 2 ½" in size, that contains, within a plain, narrow border, a seal (as described below) and the additional statutorily mandated information: the notary's printed name; the title, "Notary Public for the State of Montana"; the words, "Residing at" with the name of the city or town **and state** where the notary ***lives***; and the notary's commission expiration date, shown as Month/Day/Four Digit Year. The stamp may be either **blue or black ink only**.

The following is an illustration of the combination seal/stamp unit that is mandated for Montana notaries:



- **All information as shown above must be included. The commission expiration date must be complete. <u>It is not acceptable to "fill in" the year</u>.**
- **If any of the information contained in the seal/stamp changes during the notary's term of office, the stamp must be replaced. Handwritten corrections to the impression are not allowed.**
- **The outside rectangular border is a REQUIRED part of the stamp.**
- **Notaries will have to purchase a new stamp for each term of office.**
- **When you use this seal/stamp, you do not have to enter the information contained in the stamp again by hand on a notarial certificate.**

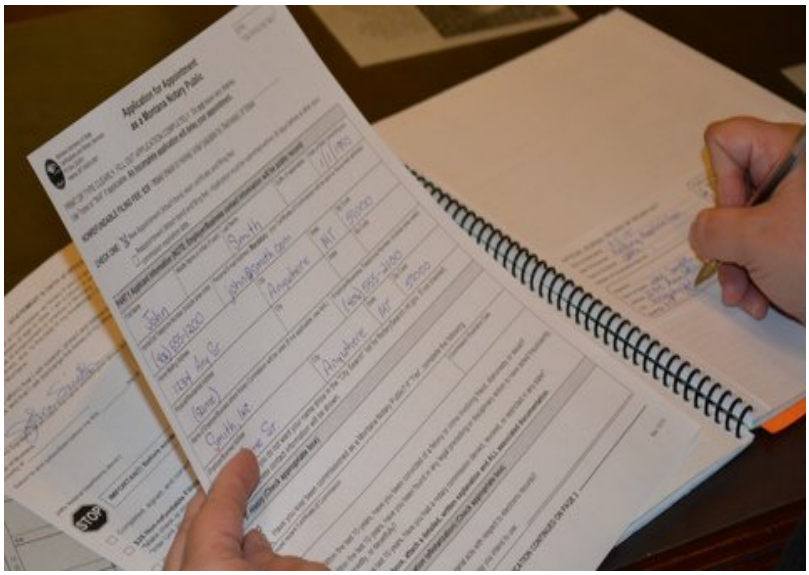
See the list of **Recommended Vendors** for contact information about stamp suppliers who have agreed to produce only compliant stamps for Montana notaries at: **http://sos.mt.gov/Notary/Seals.**

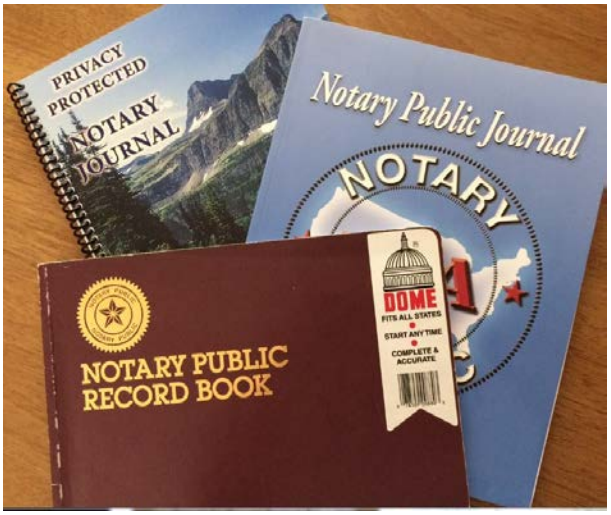
Electronic Seal/Stamp. The design and content of an electronic seal/stamp must be the same as the ink stamp.

Do not order your stamp until you have received your Notice of Appointment and Certificate of Commission.

NOTARY JOURNAL

All Montana notaries are required by law to maintain one or more journals in which all notarial acts are recorded. The journals may be either a permanent, bound paper journal designed to deter fraud or a permanent, tamper-evident electronic journal. Each journal entry must include the **date and time of the notarization; the type of notarial act**, **a description of the document** (usually the document date and type); **the type of identification used**; **the signature, printed name, and address of the person for whom the notarial act was performed** (except for certified deposition transcripts or certified copies); and **the fee (if any) charged for the notarization.**





Paper journals may be obtained from a local office supply store or other retailer, or they are available online from many sources. There are different formats available; you may choose whichever you prefer as long as the records are chronologically numbered and the book is designed in such a way as to deter any deletion, alteration, or modification of the pages. You may not use a loose-leaf notebook.

Electronic journals must be commercially produced and create chronological, sequential, and non-modifiable records that can be accessed upon demand and turned over in digital format to the Secretary of State's office in accordance with §1-5-615, MCA.

Some notaries may wish to keep one journal at work and another for personal use. Others may want to use both an electronic and a paper journal. A notary will be expected to produce any and all journal records as appropriate upon request of an authorized party.

It is the notary's personal responsibility to maintain possession of all journals created during the entire time the notary holds an active commission. A notary does not have to turn his/her journal in when the commission is renewed; one journal may, in fact, contain the records for several years if the notary does only a few notarizations.

Upon termination or resignation of the notary's commission, the notary may choose to keep the journals or send them to the Secretary of State's office. The law requires that journals be retained for 10 years after the last entry, regardless of where they are stored.

It is the notary's responsibility to advise the Secretary of State's office where any records may be found.

More information on creating journal entries can be found starting on pages 10 - 12.

The information that Montana notaries are required to keep in a journal should not violate the privacy rights of the signers. Specific information unique to the identity of the signer, such as license numbers, social security numbers, or birthdates ***should never be entered*** *into the notary journal.*

CHAPTER 3 - NOTARIZING DOCUMENTS

THE NOTARIAL PROCESS

When we talk about "notarizing a document" most of the time we really mean notarizing, or authenticating, a signature in some way. So let's break down the steps that you'll take whenever you are asked to perform a notarization involving a signature:

- ✓ ***Require personal appearance***
- ✓ ***Review the document***
- ✓ ***Identify the signer(s)***
- ✓ ***Determine competency and willingness***
- ✓ ***Create the journal record***
- ✓ ***Complete the notarial certificate***

The processes for administering an oath as a separate notarial act and certifying a copy of a document are slightly different and we discuss them in the next chapter. These are the steps you always complete when taking an acknowledgement, witnessing a signature, or performing a jurat.

1. REQUIRE PERSONAL APPEARANCE

We've said it before and we'll say it again: "RULE # 1 – When taking an acknowledgement, witnessing a signature or performing a verification on oath or affirmation (jurat), the signer must **personally appear** to the notary at the time the notarization takes place." Montana law defines personal appearance as either physical presence, or in some specific situations, by means of real-time, two-way video and audio communication (remote notarization). In order to lawfully complete a notarial certificate, you are always attesting that the notarial act occurred "before you" and that you witnessed some particular action.

2. REVIEW THE DOCUMENT

Notaries are not verifying or validating the contents of the document being notarized and there is no reason for the notary to read the document. However, before the notary can move on to the other steps, he/she should glance through the document in order to determine three important things:

- To verify what kind of document it is. You'll need that for your journal entry and to determine if the signer understands what they are signing.
- To determine the type of notarial act required.
- To determine who is supposed to sign the document. Not only will this step tell you the name of the signer and how the person is to be identified and sign, but this is how you will learn if the document will be signed by the person acting in a representative capacity.

3. IDENTIFY THE SIGNER

In the state of Montana there are only two ways that you may identify a person who requests a notarization:

- **Personal Knowledge –** A person whom you have known for a considerable period of time and would recognize anywhere, anytime can be identified on the basis of "personal knowledge." This is a subjective standard, but a notary should be guided by the understanding that, in the event of a legal challenge to the signer's identity, the notary would have to positively identify the person in court, often many years after the notarization took place. ***Personal knowledge is generally considered the best form of identification, and thus requires no further proof of identity.*** In Montana, it is generally acceptable for a notary public to notarize the signature of a spouse or other relative as long as the notary is not personally named in the document being signed or would be a direct beneficiary of the transaction contemplated by the document. The Secretary of State's office cautions that notaries should seriously consider the potential conflicts that

may arise over documents which transfer property or rights (titles, deeds, wills, powers of attorney, etc.) among family members. "Just because you can, doesn't mean you should" are good words to apply in these situations.

- **Satisfactory Evidence –** There are two types of "satisfactory evidence" – *Documentary Proof* and *Credible Witnesses*.
  - **Documentary Proof** - The most frequently utilized type of satisfactory evidence to positively identify a person who is otherwise unknown, or only slightly known, to you is by means of examining some kind of identification document. The notary should request **signed and/or pictured, government-issued ID** before performing a notarization for someone they do not know well. Acceptable forms of identification include a passport, driver's license or state ID that is current or expired less than three years, a military or student ID, or other government issued ID. Many times it will be necessary to use more than one piece of identification to conclusively identify a person. Notaries are cautioned that some forms of ID, such as bank cards, credit cards, and non-pictured government-issued cards (social security or Medicare cards) are not acceptable as primary identifiers, although they may *in certain circumstances* be used in conjunction with another ID to establish a person's identity. Notaries are not expected to be authorities on all types of identification, but they are urged to use common sense and reasonable care when presented with identification that appears to have been altered or tampered with in some way, or when the picture or description of the person on the card does not match the person standing in front of the notary. If there is any doubt as to the person's identity, the only safe practice is to refuse to take an acknowledgement, witness a signature, or perform a jurat.
  - **Credible Witness –** The other means of identifying a person for notarial purposes is the most misunderstood, the most complicated, and the least likely to be available at the time the situation arises without having made prior arrangements. The credible witness must be:
    - Personally known to the signer
    - Either personally known to the notary, or identified on the basis of documentary proof as defined above.
    - Physically in the notary's presence at the time of the notarization.
    - An **unbiased third party** who has no interest in, or benefit from, the transaction.

    Steps to a proper notarization using a credible witness:

    1. Properly identify the credible witness.
    2. Place the credible witness under oath: "Do you swear under penalty of perjury that this is _____?"
    3. Create journal record for the oath of the credible witness and have him/her sign the journal.
    4. The signer signs the document (if not already signed).
    5. Create journal record for the signature, acknowledgment, or jurat and have the signer sign the journal.
    6. Complete the notarial certificate on the document.

    When a credible witness is used for identification of a document signer:

    - **Three people are involved – the notary, the signer, and the credible witness.**
    - **All three people must personally appear to the notary when the notarization takes place.**
    - **A credible witness may not appear to the notary by means of real time two-way audio/visual communication.**
    - **Both the credible witness and the signer must sign the notary's journal.**

4. DETERMINE THE SIGNER'S COMPENTENCY AND WILLINGNESS

A notary's duty is not limited to determining the identity of the signer. Determining that the signer is competent and willing to sign the document is also required. The standard that a notary is held to for these determinations is one of "reasonable care." If the signer appears to be lucid and understand what is happening while the notarization is being performed, the standard of reasonable care for competency has likely been met.

> Failure to establish the identity, comprehension, and intent of the person requesting a notarization to the degree of reasonable care places the notary at risk of being sued for negligence

Generally speaking, willingness can be inferred simply from the fact that the signer has requested that the notarization be performed. There are, however, situations where additional care must be taken by the notary; for example, when the signer appears to be under pressure or duress or under the influence of alcohol or other substances.

In situations where there is a question of pressure being put on the signer, the notary should ask any others in the room to leave and then engage the signer in conversation about the transaction. There is a difference between a person being unwilling or pressured to sign a document and being unhappy about the circumstances that have made it necessary for him or her to sign that document. When in doubt, the notary can get an opinion from an attorney or medical professional familiar with the signer.

If there is a question about the signer's competency or willingness, the notary may refuse to perform the notarization or suggest that it should be done at a later time as circumstances warrant.

5. CREATE THE JOURNAL RECORD

Your notary journal is the official record of the notarial transaction. Combined with the notarial certificate on the document itself, the journal entry is evidence that you fulfilled your obligations as a notary public for that transaction. The information required to be entered into the journal is the same for both paper and electronic journals – only the method of recording is different. The following must be included in every journal entry:

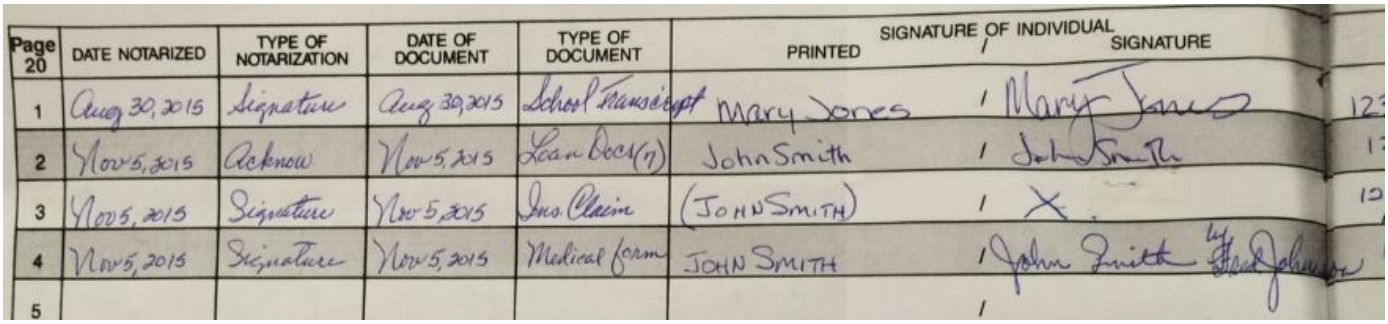
- **Date and Time Notarized:** This is the date and the time when you actually performed the notarization; it may or may not be the same as the date of document, which may be earlier but not later than the date of notarization.
- **Type of Notarization:** There are seven types of notarial acts: an ACKNOWLEDGMENT, a SIGNATURE, a JURAT, an OATH, a CERTIFIED COPY, a CERIFIED TRANSCRIPT, and a PROTEST OF INSTRUMENT. See Chapter 4 for more information about the types of notarial acts and how you determine which act a particular document demands.
- **Description of the Document:** Typically, this is the date of the document and the type of the document such as "contract," "deed," "power of attorney," "affidavit," etc. If more than one document is being notarized, each document should be described. The date may be the date the document was issued or the date it was signed and is usually printed on the document before it is signed. If no date appears on the document, you may consider the date of notarization as the date of the document. If you are unable to determine the type of document, the signer should be able to tell you what type of is being signed.
- **Type of ID:** Again, your possible entries are limited. If you know the signer well, enter PERSONAL KNOWLEDGE. If you are relying on DOCUMENTARY PROOF, you should enter the issuing entity, the type of document (ex: "Montana DL"), and the date the ID was issued or expires. If you rely on a CREDIBLE WITNESS, your journal should reflect that you performed two separate notarial acts, including the oath of the credible witness and the acknowledgment, signature, or jurat of the signer.

- **The Printed Name, Signature, and Address of the Signer:** This is **absolutely the most important entry in the journal**. This proves that the signer personally appeared to you at the time the notarization was performed. Whenever possible, the printed name and address should be entered by the signer; the signature, of course, must always be entered by the signer. The signer should be advised to enter his or her name the same way it appears on the document being notarized. It does not matter whether the signer uses a business or home address.
- **The Fee.** You do not have to charge for notarial services, but if you do, you must enter the amount you charged in the journal record. Montana notaries may charge a maximum of $10 for performing an acknowledgment, witnessing a signature, verifying on oath or affirmation (jurat), certifying a transcript or certifying a copy.
- **Other Information:** Use this space to include any information that may be pertinent to the situation. It is especially helpful to note anything unusual or additional that occurred or was a part of the transaction. Many journal entries will not require any additional information. Electronic journals often capture GPS data and allow you to take a picture of the signer, to provide additional proof of where the notarization took place and who signed the document.

Because notary journals could be subject to public review, notaries should be particularly careful not to enter in the journal any private information, such as birthdates, social security numbers, credit card numbers, or ID card numbers that could be used to steal someone's identity.

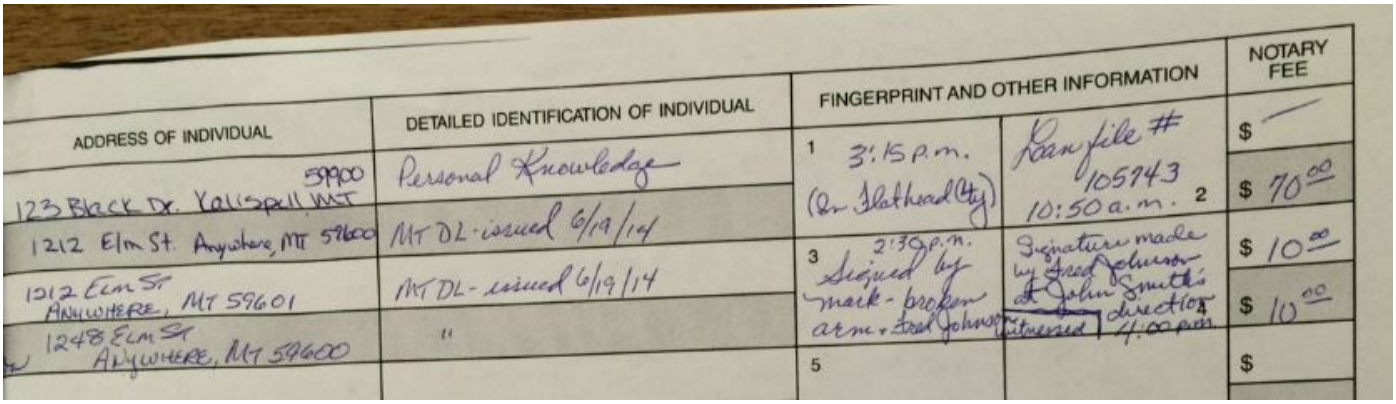
Below are pictures of a "Line-style" paper journal. The pages face each other and the information is written across the gutter. Since the information is contained on two separate pages, and entries are made on both sides of a page, this type of journal is very tamper-resistant. It is often chosen by notaries who routinely notarize a high volume of documents. The use of ditto marks is acceptable for everything but the signature. If multiple documents for the same signer are recorded at the same time and more than one line is used, a diagonal line may be drawn across the signature spaces and the signer may place his signature there rather than signing twice. If the notarizations were done at different times (even on the same day), however, a separate signature must be made each time as shown on this example.

Left Side of Journal Page



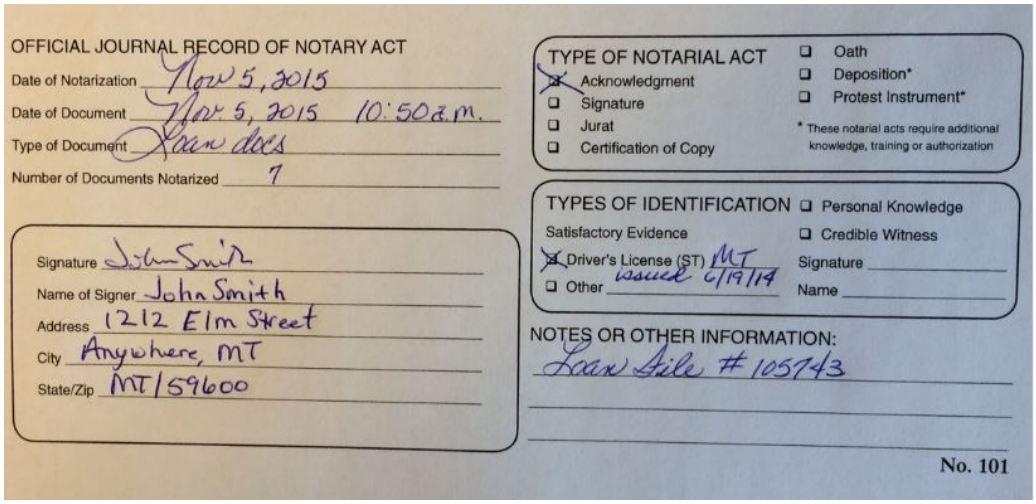
Page 20	DATE NOTARIZED	TYPE OF NOTARIZATION	DATE OF DOCUMENT	TYPE OF DOCUMENT	SIGNATURE OF INDIVIDUAL: PRINTED	SIGNATURE OF INDIVIDUAL: SIGNATURE
1	Aug 30, 2015	Signature	Aug 30, 2015	School Transcript	Mary Jones	Mary Jones
2	Nov 5, 2015	Acknow	Nov 5, 2015	Loan Docs (7)	John Smith	John Smith
3	Nov 5, 2015	Signature	Nov 5, 2015	Ins. Claim	(JOHN SMITH)	X
4	Nov 5, 2015	Signature	Nov 5, 2015	Medical form	JOHN SMITH	John Smith by Fred Johnson
5						

Right Side of Journal Page



ADDRESS OF INDIVIDUAL	DETAILED IDENTIFICATION OF INDIVIDUAL	FINGERPRINT AND OTHER INFORMATION		NOTARY FEE
123 Black Dr. Yellowspell MT 59900	Personal Knowledge	1 3:15 p.m. (In Flathead City)	Loan file # 105743 10:50 a.m. 2	$ —
1212 Elm St. Anywhere, MT 59600	MT DL - issued 6/19/14			$ 70.00
1212 Elm St Anywhere, MT 59601	MT DL - issued 6/19/14	3 2:30 p.m. Signed by mark - broken arm + Fred Johnson witnessed	Signature made by Fred Johnson at John Smith's direction 4 4:00 pm	$ 10.00
1248 Elm St Anywhere, MT 59600	"			$ 10.00
		5		$

Next is an example of a "Block-style" journal entry. These journals have a single block for every notarial act, although in some situations, more than one document signed by the same person may be grouped in one entry. In the illustration below, there were a group of related documents (for a loan closing) signed by the same person. These can be grouped into a single record in the notary's journal.



OFFICIAL JOURNAL RECORD OF NOTARY ACT

Date of Notarization Nov 5, 2015

Date of Document Nov 5, 2015 10:50 a.m.

Type of Document Loan docs

Number of Documents Notarized 7

Signature John Smith

Name of Signer John Smith

Address 1212 Elm Street

City Anywhere, MT

State/Zip MT/59600

TYPE OF NOTARIAL ACT

- [x] Acknowledgment
- [ ] Signature
- [ ] Jurat
- [ ] Certification of Copy
- [ ] Oath
- [ ] Deposition*
- [ ] Protest Instrument*

* These notarial acts require additional knowledge, training or authorization

TYPES OF IDENTIFICATION

Satisfactory Evidence

- [x] Driver's License (ST) MT issued 6/19/14
- [ ] Other

- [ ] Personal Knowledge
- [ ] Credible Witness

Signature

Name

NOTES OR OTHER INFORMATION:

Loan File # 105743

No. 101

Many journals will have spaces for fingerprints or thumbprints. Montana law does not require thumbprints, but there is no prohibition against notaries including a finger or thumbprint as further proof of the signer's presence and identity.

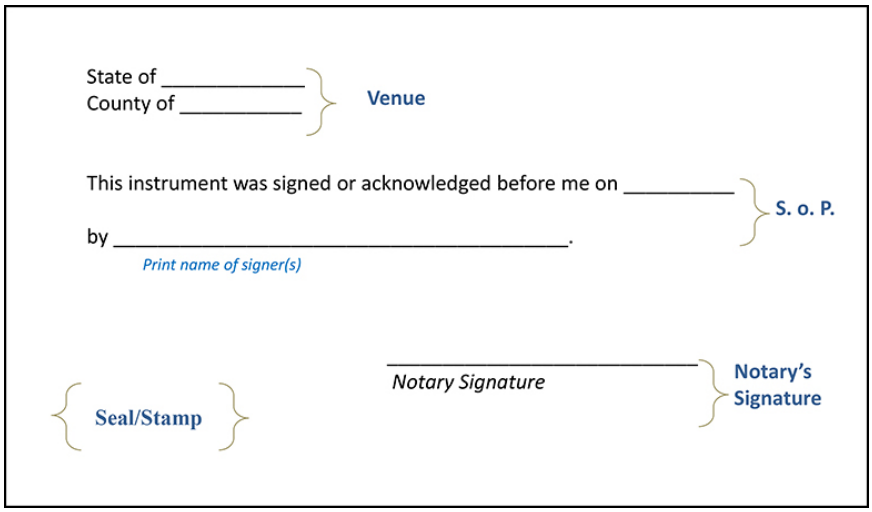
As noted in Chapter 2, Montana law also allows notaries to use electronic journals that create chronological, sequential, non-modifiable records that can be stored securely and accessed if needed. Because this is a relatively new technology, there are many developers and vendors introducing new products. Before investing in a particular product, it is the notary's responsibility to determine that the electronic journal meets the minimum criteria established. There are, and will likely continue to be, many "apps" that claim to be electronic journals but do not offer the security and tamper-evident qualities that are mandated.

6. COMPLETE THE NOTARIAL CERTIFICATE

The final step in the notarization process is the one most people think is the whole thing – completing the notarial certificate/block. The certificate must be executed contemporaneously with the performance of the notarial act and include:

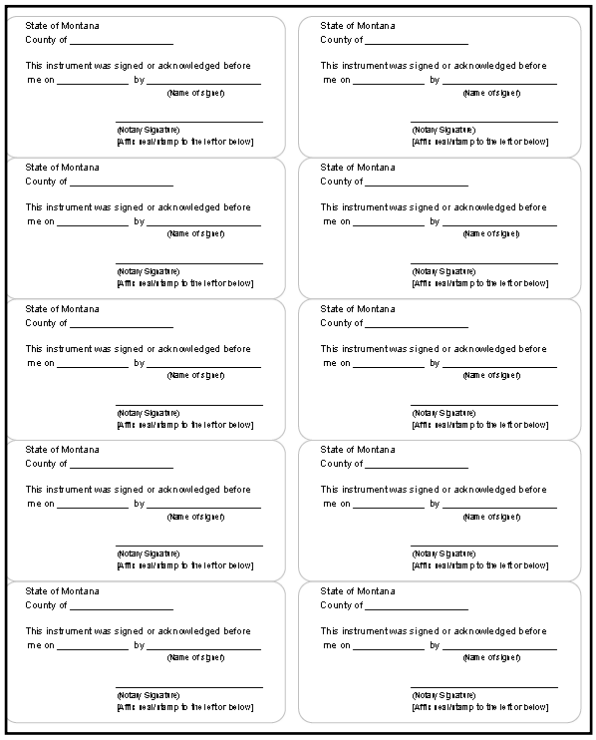
1. The **venue** - This is the **state and county where the notarization is performed**. *This is not always the state and county in which the notary resides or works. See "Jurisdiction" on page 3.*
2. The **statement of particulars** - This is a declaration describing the type of the notarial act performed, the date on which it was performed and the person for whom it was performed. The notary may need to refer to 1-5-610, MCA or Chapter 4 of this handbook, to help with the wording and format.
3. The **notary's official signature** - The notary's wet signature or official electronic signature must be affixed to every notarial certificate. *The official name on the Notarial Seal and the notary's official signature must correspond with the notary's commissioned name on file with the Office of the Secretary of State.*
4. The **notary's official seal/stamp** - The requirements for the seal/stamp are explained on page 6.

A diagram of a notarial certificate/block, showing the four required components is below.



Over the course of your career as a notary public, you may encounter many different notarial certificates. Some may be very short and concise, like the example above, and some may be long, wordy, and almost incomprehensible. All should contain the four basic elements. Recognizing the components of the certificates will help you in determining what type of notarial act is called for, as well as assuring that all the required elements are included.

Many times notaries are presented with documents that either do not have a notarial certificate, or the pre-printed notarial certificate was completed for another signer. When that situation presents itself, the notary must complete a proper notarial certificate by writing, typing, stamping or attaching one to the document as close to the signer's signature as possible.



We have created a series of notarial certificates that may be downloaded from our website and printed on 2" x 4" shipping labels and then affixed directly to the document. The appropriate certificate may then be filled-in with the correct information, then signed and stamped by the notary. This is preferable to a "loose certificate," which is simply a notarial certificate on a separate piece of paper. Because loose certificates are just stapled to the document, they can easily be detached, lost, or deliberately removed, and should not be used unless a certificate cannot be permanently affixed on the document.

If an error is made while completing the notarial certificate, any incorrect or omitted information may subsequently be corrected by the notary. Remember though, a change or correction may not be made to the impression of the notarial seal/stamp.

In the next chapter we will explain the types of notarial acts and how you complete typical certificates for each type of notarization.

CHAPTER 4 - TYPES OF NOTARIAL ACTS

There are seven legally authorized notarial acts in Montana:

- Taking acknowledgments.
- Witnessing signatures.
- Verification upon oath or affirmation (Jurat).
- Administering oaths.
- Certifying copies.
- Certifying transcripts of depositions or affidavits.
- Making protests of negotiable instruments.

Every Montana notary public is empowered to perform the first five notarial acts listed above. On the following pages, we will explain the particulars of each act and provide you with illustrations of some types of notarial certificates that you will likely encounter. Understand that you will most likely see variations in the pre-printed notarial certificates, but you should be able to figure out what type of notarial act is being anticipated and how to fill in any blanks. Some pre-printed notarial certificates, instead of providing blank spaces for you to enter information, will indicate multiple choices for certain details; you should either circle the appropriate information or cross through the other options.

If you are unable to determine the type of notarial act or if you do not understand what information is to be entered in a particular space, then you should request assistance before attempting to complete the notarization. It is the requestor's responsibility to tell the notary what type of notarial act is needed. As ministerial officials, notaries do not have the authority to decide on the appropriate type of notarization to perform. If the document does not have a pre-printed notarial certificate on it and the signer cannot indicate to you what is needed, then you may not proceed with the notarization.

Notaries should refuse to perform a requested notarization if the person requesting it cannot be satisfactorily identified. The notary may refuse to perform a notarization if the notary determines that (1) the person does not appear to be competent or have the capacity to execute the record, or (2) the person is not signing the document knowingly or voluntarily. Notably, the law allows notaries to refuse to perform any notarization unless there is another law specifically prohibiting the notary from refusing.

Information about how to perform each of seven notarial acts is provided below with examples of corresponding certificates, showing how they should be completed.

TAKING ACKNOWLEDGMENTS

The notarial act of taking an acknowledgement requires the signer to personally appear before the notary, but it does **not** require the notary to witness the act of signing. Often the party has previously signed the record before bringing it to the notary. In those cases, the requirements are met when the signer verbally acknowledges to the notary that he/she signed the document, and the notary has: (1) determined the signer was competent to sign the document and did so voluntarily; (2) properly identified the signer; and (3) verified the signature to be that of the signer (usually by comparing the signature on the document to the signature on the ID and the one made by the signer in the notary's journal.)

In taking an acknowledgment, the notary must do the following:

- Require the personal appearance of the signer
- Review the document to determine the type of document and type of notarial act required
- Identify the signer as the person who is supposed to sign the document

- Verify that the signature on the document is the signer's, either by watching them sign the document, or if it has already been signed, by comparing the signature on the document to one on the signer's ID and the signature made by the signer in the notary's journal
- Have the signer ***verbally acknowledge*** that the signature is his or hers and that it was made competently and voluntarily
- Complete the journal entry and the notarial certificate

Examples of typical notary certificates for ACKNOWLEDGMENTS

1. This a simple, basic form from 1-5-610(1), MCA:

State of Montana

County of _____

This record was acknowledged before me on _____ by _____.
Print name of signer(s)

_____

Affix seal/stamp as close to signature as possible.

Notary Signature

2. This is a longer form; the only difference is it contains a longer written statement:

State of Montana
County of _____

On this _____ day of _____, 20_____, before me, a Notary Public for the State of _____, Personally appeared _____, known to me to be the person named in the foregoing, and acknowledged to me that _____executed the same as _____ free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in the certificate first above written.

_____
Notary Signature
[Montana notaries must complete the following if not part of stamp.]

_____
Printed Name
Notary Public for the state of _____
Residing at_____
My Commission expires:_____, 20_____

Affix seal/stamp as close to signature as possible.

Here's how the previous sample acknowledgments would be completed:

1. The basic form as should be completed like this:

State of Montana

County of Yellowstone

This record was acknowledged before me on Nov. 5, 2015 by John Smith (only).

Print name of signer(s)

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Jane J Doe

Notary Signature

Affix seal/stamp as close to signature as possible.

2. This is how to complete a more elaborate notarial certificate:

State of Montana
County of Yellowstone

On this 5th day of November, 2015, before me, a Notary Public for the State of Montana, personally appeared John and Mary Smith (only), known to me to be the persons named in the foregoing, and acknowledged to me that they executed the same as their free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Jane J Doe

Notary Signature

[Montana notaries must complete the following if not part of stamp.]

_____

Printed Name
Notary Public for the state of_____
Residing at_____
My Commission expires:_____, 20_____.

Affix seal/stamp as close to signature as possible.

Notes:

- The key word to look for to determine if you are doing an acknowledgment is "acknowledged" in the written statement.
- There are many variations on the wording of acknowledgments; these are only two of the most common versions.
- In preprinted notarial certificates with several blank spaces in them, try inserting the name of the signer and/or pronouns referring to the signer.
- It is a good habit to enter the word "only" in parentheses after entering the name(s) of the signer(s), so that additional names cannot be entered later in an attempt to indicate that other signatures were notarized.
- Because the combination seal/stamp includes the necessary information, you do not have to enter the information below your signature. You should line through that part of the certificate to indicate that you did not "just forget" to complete it.

An acknowledgment can also be made by an individual acting (signing) on behalf of another person or entity. This is called an **acknowledgment in a representative capacity** and the person who is appearing before the notary will be signing on behalf of a business or corporation, a trust, with a Power of Attorney or with some other authorization that allows them to sign for another person or legal entity. See pages 19 - 20 for more information and examples of proper acknowledgments by persons signing in a representative capacity.

WITNESSING SIGNATURES

Witnessing a signature is exactly that: you watch the signer sign the document. Occasionally someone will bring a document to you that has already been signed, although the preprinted form calls for you to witness the person sign the document. In situations like that, you must have the person sign the document again in your presence. It is not necessary for the signer to cross out the first signature; he or she should just sign again as close to the original signature as possible. When witnessing a signature, the notary will do the following:

- Require the personal appearance of the signer
- Review the document to determine the type of document and type of notarial act required
- Identify the signer as the person who is supposed to sign the document
- Determine that the signer is signing the document competently and voluntarily
- Have the signer ***sign the document*** as you watch
- Complete the journal entry and the notarial certificate

Examples of typical notary certificates for WITNESSING SIGNATURES

1. This is a version of the basic form as described in 1-5-610(4), MCA:

State of Montana

County of _____

This record was signed before me on _____ by _____.

Print name of signer(s)

_____

Notary Signature

Affix seal/stamp as close to signature as possible.

2. This is another style of notarial certificate that you may see:

In the County of _____, State of _____, On this _____ day of _____, _____, before me, the undersigned Notary Public personally appeared _____, personally known to me, proved to me through documentary evidence, or identified by a credible witness to be the person named in the foregoing, and executed the same.

_____

Notary Signature

_____

Printed Name

Commission Number _____

My Commission expires:_____, 20_____

Affix seal/stamp as close to signature as possible.

Here's how the previous signature certificates should be completed:

1. The basic signature certificate should be completed like this:

State of Montana

County of Yellowstone

This record was signed before me on Nov. 5, 2015 by John Smith (only).

Print name of signer(s)

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Jane J Doe

Notary Signature

Affix seal/stamp as close to signature as possible.

2. This is how to complete a more elaborate notarial certificate:

In the County of Yellowstone, State of Montana, on this 5th day of November, 2012, before me, the undersigned Notary Public personally appeared John Smith (only), who was ~~personally known to me~~, proved to me through documentary evidence, ~~or identified by a credible witness~~ to be the person named in the foregoing, and executed the same.

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Affix seal/stamp as close to signature as possible.

Jane J Doe
Notary Signature

Printed Name
Commission Number_____
My Commission expires:_____, 20_____

Notes:

- The format of the notarial certificate may vary, as seen in the above examples; as long as all information required by law is included, the style of the notarial certificate is not important.
- The key words to look for to determine if you are to witness the signature are "signed," "subscribed," or "executed."
- It is a good habit to enter the word "only" in parentheses after entering the name(s) of the signer(s), so that additional names cannot be entered later in an attempt to indicate that other signatures were notarized.
- Be sure to line through the "multiple choice" options provided in the pre-printed certificate.
- Because the combination seal/stamp includes the necessary information you do not have to enter the information below your signature.
- If a pre-printed certificate requests information that is contained in the stamp or that is not required by Montana law, such as a commission number, a simple line through that part of the form will indicate that the information has not been forgotten or ignored.

REPRESENTATIVE CAPACITY SIGNERS

As mentioned above there are occasions when the person who requests a notarization will be signing the document on behalf of another person or another entity. This is called "signing in a representative capacity," and usually happens when someone is signing on behalf of a corporation, a trust, as a personal representative, or with a power of attorney.

When notarizing a document that is being signed by someone other than the person or entity designated as the signer, the notary should determine (1) the **identity** of the person who is actually signing the document, (2) the **capacity** of the person to sign on behalf of the person or entity, and (3) the **authority** to sign for that person or entity in this particular transaction.

Montana Code Annotated §1-5-610(2) specifies that such notarial certificates must be completed with the name of the person who signed the document, the capacity in which it was signed, and the name of the party or entity on whose behalf it was signed.

Here is an example of how to complete such a notarial certificate. (This is how you would complete the information if the signer is using a power of attorney as the basis for signing the document.) Note that you will most likely have

to add the information about the capacity of the signer and the person or entity who was expected to sign the document:

State of Montana
County of Yellowstone

This record was signed before me on Nov. 5, 2015 by John Smith (only), as Attorney-in-fact for Mary Smith.

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Jane J Doe
Notary Signature

Affix seal/stamp as close to signature as possible.

NOTES:

- When notarizing a document that is being signed by someone other than the person or entity designated as the signer, the notary should determine:
    1. the **identity** of the person who is actually signing the document,
    2. the **capacity** of the person to sign on behalf of the person or entity, and
    3. the **authority** to sign for that person or entity in this particular transaction.
- The above information may be determined using the same methods that are used to determine identity:
    - Personal knowledge
    - Satisfactory evidence
        - Documentary proof
        - Credible witness
- Most documents' notarial certificates do not anticipate that the document will be signed by someone other than the person or entity whose name appears on the document, so the notary will have to adjust the preprinted notarial certificate accordingly. You may wish to substitute a correct notarial block by lining through the pre-printed block and attaching a correct form with the signer's permission.
- If the signer is signing under the authority of a power of attorney, the notary should remember to verify that the principal is still living. A power of attorney automatically terminates upon the death of the principal and can never be used for a deceased person.

VERIFICATION UPON OATH OR AFFIRMATION/SIGNED AND SWORN ("JURAT")

The most demanding process is taking a verification upon oath or affirmation, also commonly known as performing a jurat. For some legal uses, the document would be inadmissible or useless if the jurat is not properly completed. Performing a jurat requires a notary to do two things: (1) Witness the person signing the document – just like the signature witnessing above, and (2) Administer an oath, placing the person under penalty of perjury if the statements made in the document are proven false. A notary is not responsible for the truthfulness or accuracy of

the document, and the person who takes the oath may, in fact, not be telling the truth. As long as you have administered an oath, you have done your job.

<u>Suggested oath to be administered when performing a jurat notarization</u>: *"Do you swear that the information contained in this document is true and complete to the best of your knowledge and ability?"*

When called upon to perform a jurat notarization, the notary will do the following:

- Require the personal appearance of the signer
- Review the document to determine the type of document and type of notarial act required
- Identify the signer as the person who is supposed to sign the document
- Determine that the signer is signing the document competently and voluntarily
- Have the signer ***sign the document*** as you watch
- Administer the above (or similar) oath
- Complete the journal entry and the notarial certificate

Examples of typical notary certificates for JURATS

1. The first one is from 1-5-610(3), MCA:

State of Montana

County of _____

This record was signed and sworn to before me on _____ by _____.
Print name of signer(s)

_____
Notary Signature

Affix seal/stamp as close to signature as possible.

2. Another type of jurat certificate:

State of Colorado
County of _____

On this _____ day of _____, 20___, _____ personally appeared before me and having been duly sworn did herein execute the above record for the purposes stated.

_____
Notary Signature

Affix seal/stamp as close to signature as possible.

Here's how the previous jurat certificates should be completed:

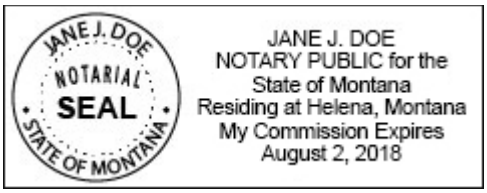
1. The basic jurat certificate should be completed like this:

State of Montana

County of Yellowstone

This record was signed and sworn to before me on Nov. 5, 2015 by John Smith (only).

Print name of signer(s)



Jane J Doe

Notary Signature

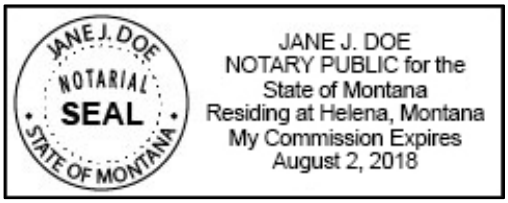
Affix seal/stamp as close to signature as possible.

2. The second type of jurat certificate should be completed like this:

State of ~~Colorado~~ Montana

County of Yellowstone

On this 5th day of November, 20 15, John and Mary Smith (only) personally appeared before me and having been duly sworn, did execute the above record for the purposes stated herein.



Jane J Doe

Notary Signature

Affix seal/stamp as close to signature as possible

Notes:

- The format of the notarial certificate may vary, as seen in the above examples. As long as all information required by law is included, the style and exact wording of the notarial certificate is not important.
- When determining whether to perform a jurat, remember you are looking for instructions to do two things: Witness a signature ***and*** administer an oath. Key words are "signed and sworn," "subscribed and attested," or "affirmed and executed" (any combination of those six verbs indicating that an oath was administered and the document was signed in the notary's presence).
- It is a good habit to enter the word "only" in parentheses after entering the name(s) of the signer(s), so that additional names cannot be entered later in an attempt to indicate that other signatures were notarized.

- Did you notice that the pre-printed form in the second sample included the state in the venue? You have to correct that by lining through the incorrect information and writing in the state and county where you actually performed the notarization.

ADMINISTERING OATHS

Although notaries are fully authorized to administer oaths as a separate notarial act, most of the time they are done in conjunction with a signature – a jurat. There is no standardized language mandated for various situations requiring an oath. In most cases the accompanying document will include or indicate the proper language for the specific oath that is to be administered.

CERTIFYING COPIES OF DOCUMENTS

A Montana Notary Public may be asked to certify or attest that **a copy of a document or other record** is a full, true, and accurate transcription or reproduction of that which was copied. Because you are not verifying a signature, there is no need for you to require the presence of any particular individual, nor are you required to identify anyone in conjunction with the notarial act of certifying a copy. There are two ways to fulfill a request for a certified copy of a document:

CERTIFICATION OF COPY - When asked to certify a copy, the notary should:

- Examine the document to determine that it is an unaltered original.
- Verify that the document may be lawfully copied and certified (see below for prohibitions on certifying certain documents)
- Personally photocopy the document
- Complete the journal entry and a proper notarial certificate on the copy of the document

Note that the requester does not sign the copy at all – only the notary's signature appears on the copy of the document. Also note that the requester's signature, printed name, and address is not required in the journal entry, but it is certainly acceptable to include it.

CERTIFICATION BY DOCUMENT CUSTODIAN – A customer may bring you a copy of a document and request that it be certified. In this situation, the notary should:

- Require the customer to certify that the copy is a true and accurate copy of the original and sign the statement of certification
- Place the customer under oath and perform a jurat notarization of the customer's signature
- Complete the journal entry and the notarial certificate

"Certification by a document custodian" should not be used to certify copies of those public records that cannot be certified by a notary public. The notary's journal entry for this type of notarization would reflect that a jurat notarization was performed on a certification by document custodian as the type of notarial act. See the second example below.

Montana notaries are ***prohibited from making and certifying copies of public documents*** which are considered official records that are issued by state or other government officials, unless the notary is employed by the entity issuing or holding the original record. If you are unsure whether you may properly certify a copy of a particular record or document, contact the Secretary of State's office.

Some documents will contain a warning that they are not to be copied. Such documents cannot be copy certified. Note: If you make a copy of a document and language appears indicating that the copy is void, you may not certify that copy.

Below are charts showing some of the types of documents that notaries are often asked to copy certify. This is not a comprehensive list, but includes most of the frequently requested documents.

Typical "Public" Documents
DO NOT COPY & CERTIFY
Birth Certificates
Death Certificates
Marriage Licenses
Divorce Decrees
Court Orders
Adoption Records
School Transcripts
FBI Fingerprint Cards
Motor Vehicle Titles
Any Recorded Document

Typical "Private" Documents
MAY COPY & CERTIFY
Driver's Licenses
Student ID Cards
Employee ID Cards
Passports
Diplomas
Certificates or Awards
Professional Licenses
Personal Documents
Bills or Invoices
Photographs

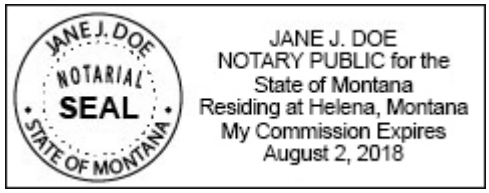
The simplest and easiest way to make a certified copy is to make a copy of the original document and then add a preprinted notarial certificate on the front or back of the copy. Printable notarial certificate forms are available on our website: http://sos.mt.gov/Notary/assets/blocks/Copy_Certification.pdf. You can download these forms on mailing labels or regular paper.

Here are examples of properly completed notarial certificates for copy certifications:

1. Direct certification:

State of Montana
County of Yellowstone

I certify this to be a true and correct copy of the diploma from Montanan State University issued to John Smith made by me on Nov, 5 2015.



Affix seal/stamp as close to signature as possible.

Jane J Doe
Notary Signature

2. Certification by document custodian:

First, have the customer write the certification statement on the document:

I certify that this is a true and correct copy of *my diploma from Montana State University* in my possession and made by me on *Nov. 5, 2015* .

Signed *John Smith*

When that is completed attach the jurat form: http://sos.mt.gov/Notary/assets/blocks/Jurat.

State of Montana
County of *Yellowstone*

This record was signed and sworn to before me on *Nov. 5, 2015* by *John Smith (only)*.
Print name of signer(s)

JANE J. DOE NOTARIAL SEAL STATE OF MONTANA

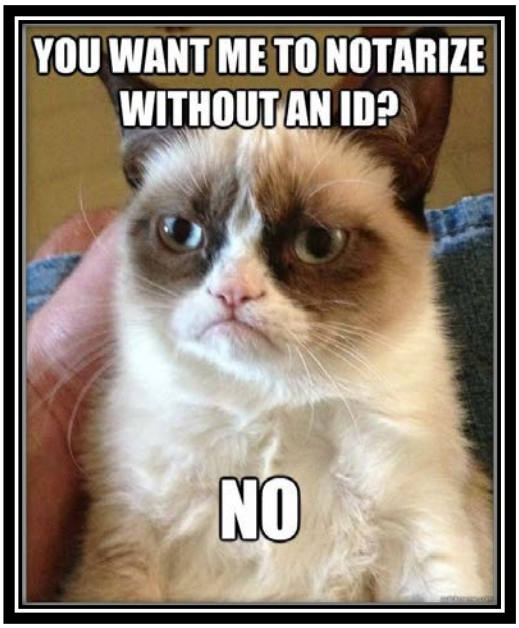
JANE J. DOE
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
August 2, 2018

Jane J Doe
Notary Signature

Affix seal/stamp as close to signature as possible.

CERTIFYING TRANSCRIPTS of AFFIDAVITS OR DEPOSITIONS AND MAKING PROTESTS OF NEGOTAIBLE INSTRUMENTS

The notarial acts of certifying or attesting a transcript of an affidavit or deposition and making a protest of a negotiable instrument may be performed only by notaries who are knowledgeable of the applicable associated legal requirements.



CHAPTER 5 – SPECIALIZED INFORMATION

NOTARIZING MONTANA MOTOR VEHICLES TITLES

Montana requires that the seller(s) signature(s) on a Montana Motor Vehicle Title be notarized. Once notarized, the title becomes a "negotiable instrument" and ownership is readily transferred to the person holding the title. For this reason, Montana notaries are urged to be particularly conscientious when asked to notarize a title.

- The preprinted notary certificates on most, if not all, of the older Montana titles do not accurately contain all the information required in a proper notarial certificate. You are responsible for ensuring the notarial certificate is complete. **NOTE:** The "venue" is missing on most (though not all) older title forms. You must include the location where the notarization was performed: "State of Montana, County of _____."
- If there are two or more owners listed on a title, they ***do not*** have to have their signatures notarized ***at the same time or by the same notary***, but ***all sellers' signatures must be notarized***. The sellers sign and print their names on the lines provided on the title; the first notary should use the "preprinted certificate" and be sure to specify whose signature was notarized ("Signed and sworn before me by John Smith (only)"). The subsequent notary completes a full notarial certificate either on the title (in the lien holder's section, if there is enough room) or on a separate designated notarial certificate for Montana Motor Vehicle Title (see page 28).
- The Montana Motor Vehicle Division will not accept a title with information that has been in any way corrected or crossed out. If an error is made by the signers or the notary, a **Statement of Fact** will have to be completed and filed with the Title. A copy of this form is available online at: www.doj.mt.gov/driving/forms/mv100.pdf.
- Notaries may place their seals in the lien holder section, just to the left of the signature in the notarial certificate on the older title forms. The new version has a space specifically designed for the new seal/stamp units that will be easier to use.
- Not every state requires that its titles be notarized. When asked to notarize an out-of-state title, be sure to check to see: (1) if it needs to be notarized; and (2) whose signatures, if any, must be notarized.
- Notaries may notarize "**open titles**," per the message below.

SEE NEXT PAGE FOR ILLUSTRATION OF PROPERLY NOTARIZED MONTANA MOTOR VEHICLE TITLES

10/27/2010

AN IMPORTANT MESSAGE FROM THE MOTOR VEHICLE DIVISION:

"Open title" refers to a situation where a vehicle owner signs the transfer or assignment section of a title but doesn't write in the name of the person to whom the vehicle is being sold (and usually odometer information is left blank as well). The open title can then passed to a buyer (or through a series of buyers) without the statutorily mandated title and registration transactions being performed, the odometer disclosure statement being executed by the original seller or acknowledged by the original buyer, or any official record of the transfers being made. The risk of fraud and tax avoidance greatly increases when open titles are circulated. Additionally, open titles facilitate unlicensed "dealing" of motor vehicles, which then places legitimate dealers at a disadvantage.

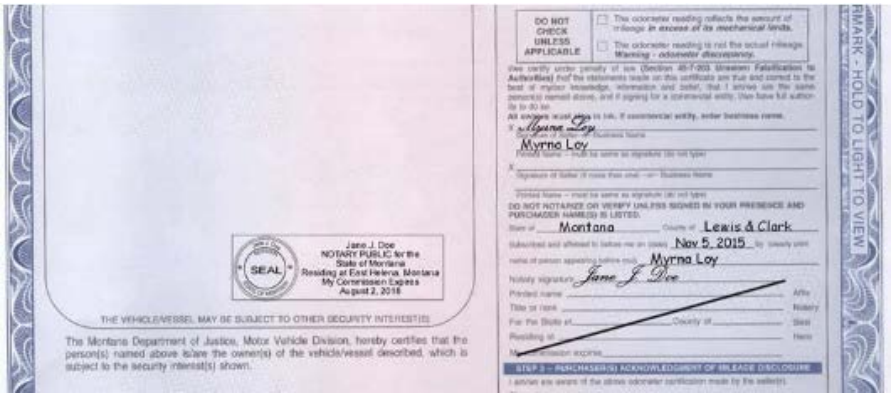
A notary may disregard the open title admonition on the title (versions 2006 to 2010) and proceed with notarization of the vehicle owner's (seller's) signature – even though the purchaser's name and address is not entered in section 1 of the title - if the notary has properly identified the signatory in accordance with the requirements of their commission. The notary is not required to interpret and/or enforce Montana title laws when acknowledging signatures on a Montana title document.

Likewise, a county treasurer, a deputy county treasurer, or a clerk who has been authorized by the treasurer to use the county seal under the authority of MCA § 61-3-220(2) ("an employee or authorized agent of the department") may acknowledge the signature of a vehicle owner (seller), even though the owner has not entered the purchaser's name and address in section 1 of the title.

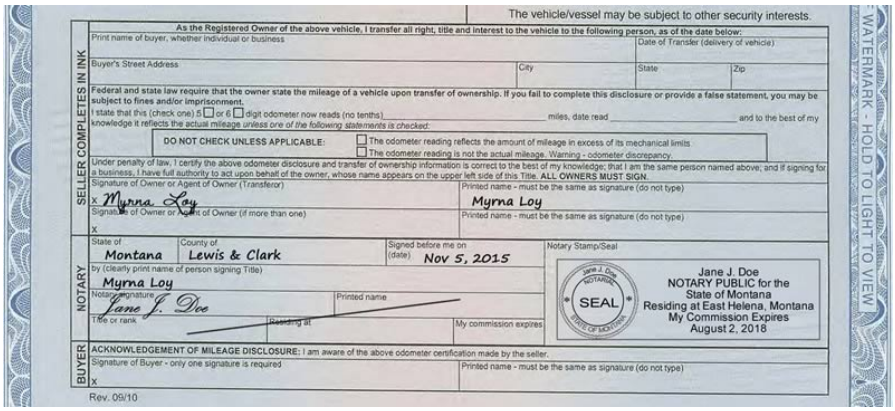
It is the seller's responsibility to execute a transfer (i.e., enter the purchaser's name and address information) on the Montana title. Additionally, the seller has the duty to ensure that the odometer disclosure is complete and inherent in that process is naming a purchaser (transferee) who then by law must acknowledge the disclosure. MVD or county officials may inform a vehicle owner of state law requirements for transferring a vehicle to another person.

SAMPLES of PROPERLY NOTARIZED MONTANA MOTOR VEHICLE TITLES

Old style titles (issued before September 2010):



New style titles (issued after September 2010):



If a second notarial certificate is needed for subsequent signers, the notary may either **handwrite a complete notarial certificate on the title** if there is room or complete and **attach a loose certificate** as found on the next page or on the website at http://sos.mt.gov/Notary/Forms. **Do not use the pre-printed labels that stick on the document – they will be rejected by the Montana Motor Vehicle Division.**

FIVE TIPS FOR NOTARIZING A MONTANA TITLE PERFECTLY – EVERY TIME:

1. Have the signer print and sign his/her name in the spaces provided. **It is imperative that every appearance of the seller's name be exactly as shown at the top of the title.**

2. [For "old style" titles only] After *witnessing the seller sign his/her name, place the seller under oath, swearing that the information entered on the title is true and correct*.

3. Complete the notarial certificate. Be sure you print the name of the person(s) for whom you are performing the notarization. ***NOTE**: Many of the older versions of the title do not have spaces for the **venue** – you must enter it wherever you can fit it in.*

4. Affix your seal/stamp in the space provided on new titles or in the lien holder section as shown in the top image on the older versions.

5. Montana notaries need not re-enter the identifying information that is contained in the seal/stamp. You should line through the spaces as shown.

IMPORTANT!

When notarizing a title that has been issued to a business, or for an individual who is signing on behalf of another person, you and the signer **MUST** enter: **1.** The name of the person or entity shown on the title; **2.** The name of the person who is actually signing the title in your presence; and **3.** The capacity in which they are signing. For example:

"Fred's Plumbing, Inc. by Fred Smith, President"

"Agatha Smith by Walter Smith as Personal Representative"

See page 19 of this handbook for more information

APPROVED LOOSE NOTARIAL CERTIFICATE FOR MONTANA MOTOR VEHICLE TITLES

The Title and Registration Bureau of the Motor Vehicle Division has determined that titles which require a separate notarial certificate for a ***subsequent signer*** may be handled in one of two ways:

1. The notary may **handwrite** a complete notarial certificate on the face of the title (usually in the lienholder section) if room is available. The notarial language (i.e., "Signed before me…" or "Subscribed and affirmed before me…" etc.) should be exactly as shown on the preprinted certificate on that title.

2. A separate "notarial certificate" as shown below may be completed and attached to the original title.

   This form is to be filled out completely and attached to the title if needed. A note should be added to the title indicating a loose certificate is attached, such as: "Notarial Certificate for _____(name of signer)_____ attached." A similar note should be entered in your journal.

Notarial Certificate

For a Montana Motor Vehicle Title

State of Montana

County of _____

The attached motor vehicle title, #_____, _____ for a

(Title Number) (VIN #)

_____ was signed before me on _____

(Year, Make & Model) (Date)

by _____

(Printed Name of Signer)

_____

(Notary's Signature)

Affix Seal/Stamp Above

NOTARIZING DOCUMENTS WRITTEN IN A FOREIGN LANGUAGE

The Secretary of State's Office is frequently asked if Montana notaries may notarize a document that is written in a foreign language. And the answer is generally "Maybe." The language that a document is written in is not the most important factor in determining whether or not you can perform the requested notarial act.

It is absolutely critical that you, first and foremost, READ the notarial certificate and clearly understand what you are being asked to do before you agree to the notarization. If the notarial certificate is not in English, you must have it translated before going forward. Once you can read the notarial certificate, you simply go through the normal "checklist":

- **Require the personal appearance of the signer.**
- **Review the document to determine the type of document and type of notarial act required.** You can take an acknowledgement, witness a signature, perform a jurat, or make a certified copy of some documents, but that's where your authority ends. Notaries in many other countries have broader authority than American/Montana notaries, and sometimes the documents call for the notary to verify facts or conditions beyond what is allowed by our laws. One example is a form calling for the notary to certify that the signer is alive. As much as that seems like a reasonable certification to make – after all, you cannot take an acknowledgement, witness a signature, or complete a jurat unless the signer is personally appearing to you and able to communicate with you – Montana notaries cannot attest that the person is alive. So, if that's what the certificate calls for, you will have to refuse the request.
- **Identify the signer as the person who is supposed to sign the document.** You are required to apply the same criteria for determining identity for foreign language documents as for any other – personal knowledge or satisfactory evidence (documentary proof or credible witness). The difference is that often the signer may not have a driver's license or other ID from Montana or the United States. That's okay! As long as you are able to read the information on the ID and use it to identify the person in front of you as being the person who is supposed to sign the document, you can use a foreign ID, such as the passport. You also have the right to ask for more than one piece of identification. Many non-citizens will have a "green card", which is certainly an acceptable ID. If the signer presents you with an ID you cannot read, such as a card written in Russian, Chinese, or Arabic, for instance, you may either request additional identification or you should refuse the request.
- **Determine that the signer is signing the document competently and voluntarily.**
- **Complete the journal entry and the notarial certificate.**

Regardless of the language the document is written in, the notarial certificate must be in English in order for you, as a Montana notary public, to complete it. Even if you are fluent in another language, you must use English for all notarial acts. You should remember to enter any pertinent information about the document and the transaction in your journal.

You may certify copies of certain foreign language documents using the same process and criteria as you would for any other document. See for more information on certifying copies.

NOTARIZING/CERTIFYING RECORDS TO BE SENT TO A FOREIGN COUNTRY (APOSTILLES AND AUTHENTICATIONS)

The Montana Secretary of State's office provides state certification for notarized or certified documents that are to be sent to, or used in, a foreign country. Both types of certification – *apostille* and *authentication* – verify that the notary public, clerk of court, clerk and recorder, or vital records administrator is authorized to provide the notarization or certification and that he/she has done so in accordance with Montana laws. Whether the document requires an apostille or authentication depends completely on which country will be receiving the document. The Montana Secretary of State's office has adopted a single, universal form that meets the requirements of the Hague Convention for apostilles and **has been approved by the U. S. Department of State for**

authentications. We can only provide certifications of Montana notaries public or Montana notarial officers as listed above.

If you are asked to notarize something that will be submitted for either type of certification, there is nothing special that you are being asked to do – except do the notarial certificate 100% correctly! As long as you follow the appropriate instructions as provided in this handbook and complete a full notarial certificate, the requested state certification can be provided.

Based on the experience of the Secretary of State's office, there are some common errors that cause the documents to be returned. Be aware of the following:

- If you are asked to certify a copy of a document, refer to the information on pages 23 - 25 of this handbook before complying with the request. Be sure you are authorized to certify the document and then be sure to do so properly.
- Printable notarial certificates for certifying a copy of a document can be downloaded from our website at http://sos.mt.gov/Notary/assets/blocks/Copy_Certification.
- In most cases you will be notarizing someone's signature. All the notary rules apply in those cases:
    - Make sure there is a signature to notarize.
    - Make sure you witnessed the signing or the acknowledgment of the signature. The person who signed the document must have personally appeared to you.
    - Complete a full notarial certificate – even if the preprinted form does not require certain information.
    - If there is no preprinted notarial certificate, ask the customer what kind of notarization is required (*see Chapter 4 of this handbook*). If the customer does not know, advise him or her to find out from the entity requesting the document or the author of the document.

SPECIAL NOTE: Notarizing and/or Certifying Official School Records for Foreign Use – (See example on next page.)

State-certified copies of school transcripts or diplomas are frequently requested for foreign exchange students. These require an additional step before the apostille or authentication can be issued.

1. An authorized school official (Principal, Registrar, etc.) must certify the document:
    - **Sample wording for school official certifying an *original* school document:**

      On ___(date)___, I the undersigned, do hereby certify that this is a true and original _(specify the type of document)__ issued by __(name of school)___.

      [Signature of school official]

      [Printed name and official title]

    - **Sample wording for school official certifying *a copy* of a school document:**

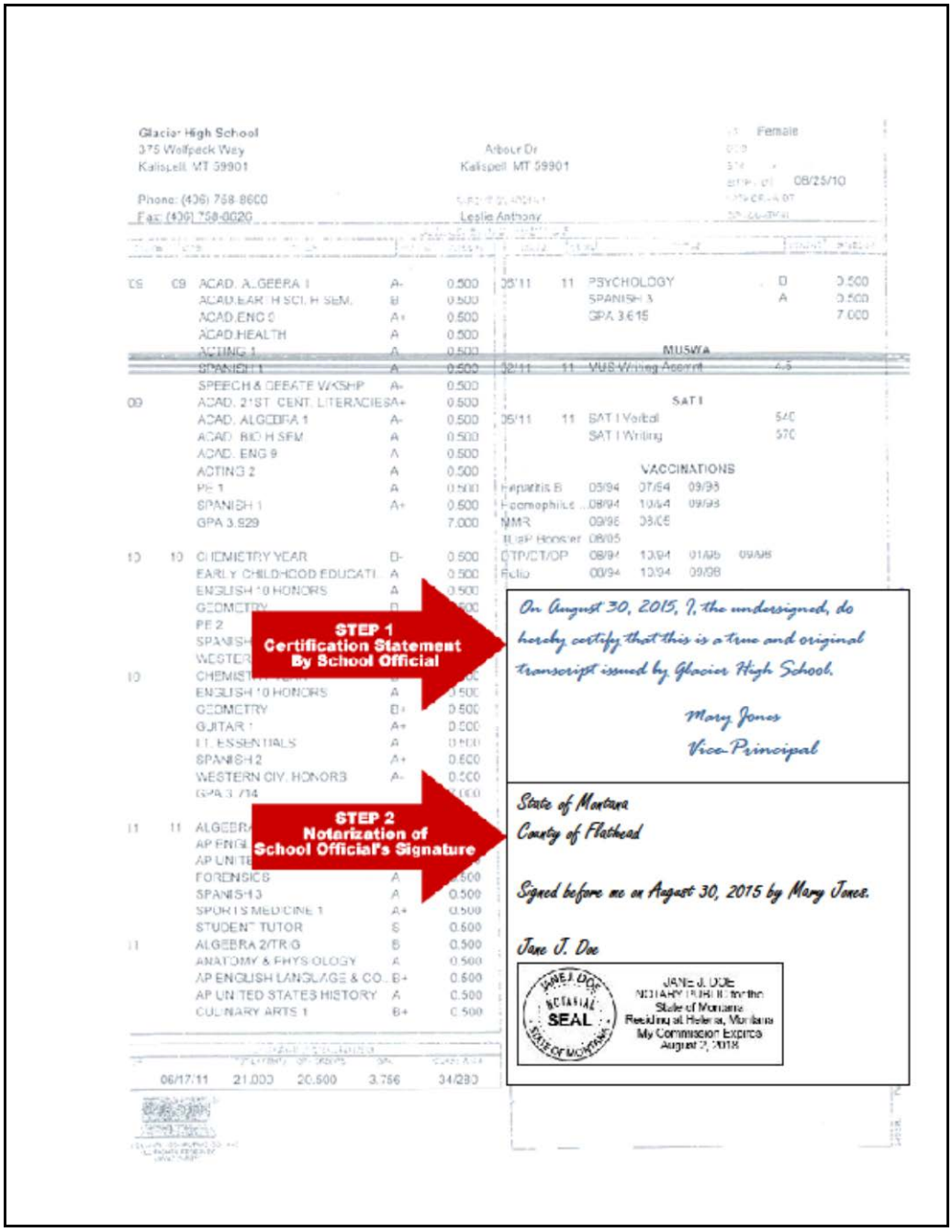
      On ___(date)___, I the undersigned, do hereby certify that this is a true and unaltered copy of the original _(specify the type of document)__ issued by __(name of school)___.

      [Signature of school official]

      [Printed name and official title]

2. A notary public must then notarize the school official's signature using a certificate for a signature witness.

Here is an illustration of how a typical school transcript should be notarized for an exchange student:

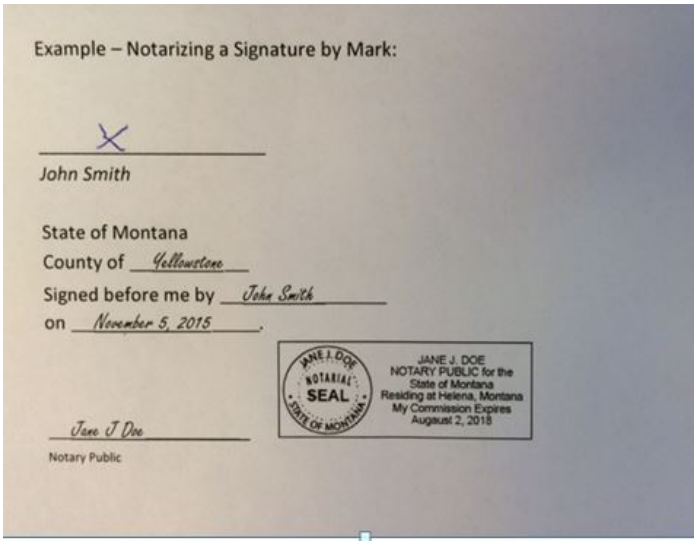


The same format should be used for report cards. If you have any questions, please call our office. Because these documents almost always require state certification (Apostille or Authentication), an incorrect notarization will delay the transmittal of the document to the student's home country and may delay the student's further education.

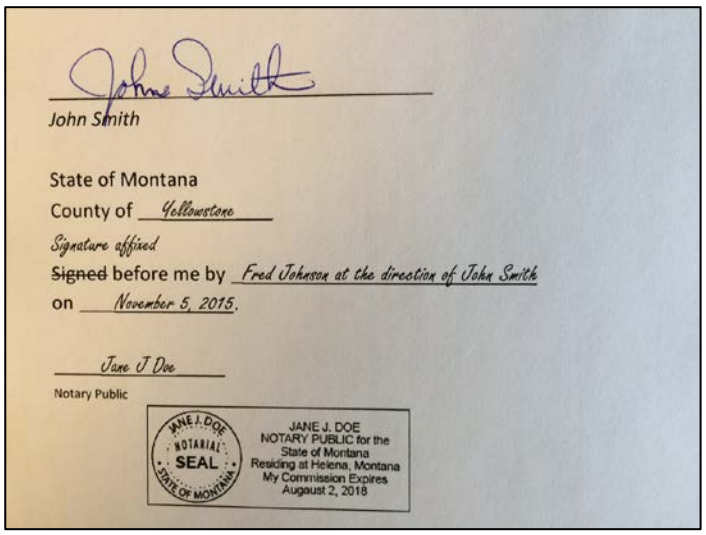
NOTARIZING FOR SIGNERS WITH DISABILITIES OR SPECIAL SIGNATURES

There may be a circumstance when a person is physically unable to sign his or her name on a document but needs a notarization. Several options exist in such cases: signature by mark, signature by stamp, signature by electronic means, and signature by third party.

Signature by Mark, Stamp, or Device. "Signature" is defined in Montana law as "a tangible symbol or an electronic signature that evidences the signing of a record." What this means to a notary is that a person who uses a mark, stamp, or an electronic signing device to sign a document can have that signature notarized just as if it was signed with pen and ink. The same rules apply: If the document calls for the person to sign in front of you (signature witness or jurat), then you must see the signature be affixed to the document; if the document calls for an acknowledgement, you have to verify the person's signature by comparing it to another example – such as the one that must be made in your journal – as well as take the signer's verbal acknowledgement. You need not indicate how the signature was made when completing the notarial certificate, but you should indicate that detail in your journal entry as "other information."



Signature by Third Party. If an individual is physically unable to sign a document, Montana law allows the individual to direct another person, other than the notary, to sign the individual's name for him or her. Obviously, both the signer and the person whom he/she directs to sign their name must be physically present during the notarization. The notary then has to modify the notarial certificate to include the phrase, "Signature affixed by (name of other individual) at the direction of (name of individual named in the document)" or words to that effect. This is an example of how such a signature and notarization would look.



The "signer's signature" in your journal should also be made by the third party, and you should include an notation indicating the signature of the named party was made by the third party at the direction of the named party.

Remember, in all situations requiring another person's assistance, that person must be an unbiased, independent third party who is not in any way a beneficiary to the transaction.

CHAPTER 6 – MONTANA NOTARY LAWS and RULES

Notary Laws – Title 1, Chapter 5, Part 6

1-5-601. Short title. This part may be cited as the "Revised Uniform Law on Notarial Acts".

1-5-602. Definitions. As used in this part, the following definitions apply:
(1) "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has willingly signed a record for the purposes stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed the record as the act of the individual or entity identified in the record.
(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
(3) "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.
(4) "In a representative capacity" means acting as:
(a) an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;
(b) a public officer, personal representative, guardian, or other representative, in the capacity stated in a record;
(c) an agent or attorney in fact for a principal; or
(d) an authorized representative of another in any other capacity.
(5) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying or attesting a transcript of an affidavit or deposition, and noting a protest of a negotiable instrument.
(6) "Notarial officer" means a notary public or other individual authorized to perform notarial acts.
(7) "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.
(9) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(11) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic symbol, sound, or process.
(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
(13) "Stamping device" means:
(a) a physical device capable of affixing to or embossing on a tangible record an official stamp; or
(b) an electronic device or process capable of attaching to or logically associating an official stamp with an electronic record. The notarial official stamp, whether applied to the record physically or electronically, is considered to be a seal for the purposes of admitting a document in court.
(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(15) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

1-5-603. Requirements for certain notarial acts -- personal appearance -- identification methods. (1) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.
(2) A notarial officer who takes a verification on oath or affirmation of a statement shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.
(3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and signing the record has the identity claimed.
(4) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or the item.
(5) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 30-3-510(1)(b).
(6) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court of jurisdiction.
(7) (a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear physically before the notarial officer or by real-time, two-way video and audio communication technology as authorized in 1-5-615 and 1-5-628.
(b) Except as provided in subsection (7)(c), subsection (7)(a) modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.
(c) Subsection (7)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).
(8) A notarial officer has personal knowledge of the identity of an individual appearing before the notarial officer if the individual is personally known to the notarial officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.
(9) A notarial officer has satisfactory evidence of the identity of an individual appearing before the notarial officer if the notarial officer can identify the individual:
(a) by means of:
(i) a passport, driver's license, or government-issued nondriver identification card, which may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or
(ii) another form of government identification issued to an individual, which:
(A) may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;
(B) must contain the signature or a photograph of the individual; and
(C) must be satisfactory to the notarial officer; or
(b) by verification on oath or affirmation of a credible witness personally appearing before the notarial officer and known to the notarial officer or
whom the notarial officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card, which is current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act.
(10) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual.

1-5-604. Notarial acts in this state -- authority to perform notarial act. (1) A notarial act may be performed in this state by:
(a) a notary public of this state;
(b) a judge, clerk, or deputy clerk of any court of this state; or
(c) any other individual authorized to perform the specific act by the law of this state.
(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
(3) A notarial officer may perform a notarial act authorized by this part or by a law of this state other than this part.
(4) The notarial acts of certifying or attesting a transcript of an affidavit or deposition and noting a protest of a negotiable instrument may be performed only by notarial officers who are knowledgeable of the applicable legal requirements.
(5) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the notarial officer to perform the notarial act.

1-5-605. Notarial act in another state -- reciprocity -- notary public authority. (1) A notarial act performed in another state has the same effect under the law of this state as if the notarial act were performed by a notarial officer of this state if the notarial act performed in the other state is performed by:
(a) a notary public of that state;
(b) a judge, clerk, or deputy clerk of a court of that state; or
(c) any other individual authorized by the law of that state to perform the notarial act.
(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the officer to perform the notarial act.
(4) A commission to act as a notary public authorizes the notary public, as provided in 1-5-619, to perform notarial acts in any county in the state or in any bordering state if the border state recognizes the notary's authority within that state. The commission does not provide the notary public any immunity or benefit conferred by the laws of this state on public officials or employees.

1-5-606. Notarial acts under authority of federally recognized Indian tribes. (1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state if the notarial act performed in the jurisdiction of the tribe is performed by:
(a) a notary public of the tribe;
(b) a judge, clerk, or deputy clerk of a court of the tribe; or
(c) any other individual authorized by the law of the tribe to perform notarial acts.
(2) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.
(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the notarial officer to perform a notarial act.

1-5-607. Notarial acts under federal authority. (1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state if the notarial act performed under federal law is performed by:
(a) a judge, clerk, or deputy clerk of a court;
(b) an individual in the military service of the United States or performing duties under the authority of the military service if authorized to perform notarial acts under federal law;

(c) an individual designated as a notarizing officer by the United States department of state for performing notarial acts overseas; or
(d) any other individual authorized by federal law to perform notarial acts.
(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
(3) The signature and indicated title of an officer described in subsection (1) conclusively establish the authority of the officer to perform a notarial act.

1-5-608. Foreign notarial acts. (1) A notarial act performed under the authority of and in the jurisdiction of a foreign state or a constituent unit of the foreign state or under the authority of a multinational or international governmental organization has the same effect under the law of this state as if performed by a notarial officer of this state.
(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state that is a party to the Hague Convention conclusively establishes that the signature of the notarial officer is genuine and that the notarial officer holds the indicated office.
(3) A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the notarial officer holds the indicated office.
(4) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
(5) The signature and official stamp of an individual holding an office described in subsection (4) are prima facie evidence that the signature is genuine and the individual holds the designated title.
(6) For the purposes of this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

1-5-609. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must:
(a) be executed contemporaneously with the performance of the notarial act;
(b) be signed and dated by the notarial officer. If the notarial officer is a notary public, the certificate must be signed in the same manner as on file with the secretary of state.
(c) identify the jurisdiction in which the notarial act is performed;
(d) contain the title of the office of the notarial officer; and
(e) if the notarial officer is a notary public, indicate the date of expiration, if any, of the notarial officer's commission.
(2) (a) If a notarial act regarding a tangible record is performed by:
(i) a notary public, the notary public shall affix an official stamp to or emboss on the certificate. The certificate must be part of or securely affixed to the record.
(ii) a notarial officer other than a notary public and the certificate contains the information specified in subsections (1)(b) through (1)(d), the notarial officer may affix to or emboss an official stamp on the certificate.
(b) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsections (1)(b) through (1)(d), the certificate and official stamp must be attached to or logically associated with the record.
(3) A certificate of a notarial act is sufficient if the certificate meets the requirements of subsections (1) and (2) and this subsection and:
(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise permitted by the law of this state;
(c) is in a form permitted by the laws applicable in the jurisdiction in which the notarial act was performed; or
(d) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in 1-5-610, 1-5-616, and this section or of the laws of this state other than specified in this part.
(4) A notarial officer may subsequently correct any information included on or omitted from a certificate executed by that notarial officer. A change or correction may not be made to the impression of a notarial seal or the notarial stamp.

1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-609(1) and (2):
(1) For an acknowledgment in an individual capacity:
State of_____
County of_____

This record was acknowledged before me on (date) by (name(s) of individual(s))_____.

_____
(Signature of notarial officer)

(Official Stamp)

_____
Title of officer (if not shown in stamp)

(2) For an acknowledgment in a representative capacity:
State of_____
County of_____

This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority) of or for (name of party on behalf of whom the record was executed) _____.

_____
(Signature of notarial officer)

(Official stamp)

_____
Title of officer (if not shown in stamp)

(3) For a verification on oath or affirmation:
State of_____
County of_____
This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s)) _____.

_____
(Signature of notarial officer)

(Official stamp)

_____
(Name - typed, stamped, or printed)

_____
Title of officer (if not shown in stamp)

(4) For witnessing or attesting a signature:
State of_____
County of_____
The record was signed before me on (date) by (name(s) of individual(s)) _____.

_____
(Signature of notarial officer)

(Official stamp)

_____
Title of officer (if not shown in stamp)

(5) For certifying a copy of a record:
State of_____
County of_____
I certify that this is a true and correct copy of (identification of record) in the possession of, or issued by, (custodian or issuer) and made by me on (date)

_____
(Signature of notarial officer)

(Official stamp)

_____
Title of officer (if not shown in stamp)

(6) For certifying a transcript or a deposition or affidavit:
State of_____
County of_____
I hereby certify and state the following:
that I have sworn in the deponent;
that the deposition was taken before me and this is a true and accurate transcription of the testimony;
that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the parties;
that I am not an interested party to the matter.
A review of this transcript (was / was not) requested.
Dated this _____ day of _____, 20____

_____
(Signature of notarial officer)

(Official stamp)

_____
Title of officer (if not shown in stamp).

1-5-611. Uniformity of application and construction. Consideration must be given in applying and construing this part to the need to promote the uniformity of the law with respect to the subject of this part among other enacting states.

1-5-612 through 1-5-614 reserved.

1-5-615. Notification regarding performance of notarial act on electronic record -- selection of technology. (1) (a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records.
(b) A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall:
(a) notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records; and
(b) identify the technology the notary public intends to use. If the secretary of state has established by rule the standards for the technology used by the notary public, the technology must comply with the standards. If the technology complies with the standards, the secretary of state shall approve the use of the technology.
(3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by means of a real-time, two-way audio-video communication, according to the rules and standards established by the secretary of state, if:
(a) the signer is personally known to the notary or identified by a credible witness and, except for a transaction described in subsection (3)(b)(iv), is a legal resident of this state; and
(b) the transaction:
(i) involves real property located in this state;
(ii) involves personal property titled in this state;
(iii) is under the jurisdiction of any court in this state; or
(iv) is pursuant to a proxy marriage under 40-1-213 or 40-1-301.

1-5-616. Official stamp. The official stamp of a notary public must:
(1) include the notary public's name, title, city of residence, commission expiration date, or other information required by the secretary of state;
(2) if a physical image, be in blue or black ink in a format prescribed by the secretary of state; or
(3) be capable of being copied together with the record to which the official stamp is affixed or attached or with which the official stamp is logically associated.

1-5-617. Stamping device. (1) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the stamping device to perform a notarial act.
(2) (a) On resignation from or the revocation or expiration of the notary public's commission or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.
(b) On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render the stamping device unusable by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.
(3) The notary public or the notary public's personal representative or guardian shall promptly notify the secretary of state's office on discovering that the stamping device is lost or stolen.

1-5-618. Notary public journal -- retention. (1) A notary public shall maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs. Unless the provisions of subsection (7) apply, the notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.
(2) A journal may be created on a tangible medium or in an electronic format to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. The format of a journal maintained on a tangible medium must be a permanent, bound register designed to deter fraud. A journal maintained in an electronic format must be in a permanent, tamper-evident electronic format that complies with the rules adopted by the secretary of state.

(3) An entry in a journal must be made contemporaneously with performance of the notarial act and contain:
(a) the date and time of the notarial act;
(b) a description of the record, if any, and the type of notarial act;
(c) the full name and address of each individual for whom the notarial act is performed;
(d) the signature of each individual for whom the notarial act is performed, except that transcripts of depositions and certified copies do not require the signature of the individual for whom the notarial act is performed;
(e) if the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect;
(f) if the identity of the individual for whom the notarial act is performed is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance or expiration of any identification credential; and
(g) the fee, if any, charged by the notary public.
(4) If in performing the notarial act the notary public uses audio-video communication technology, as provided in 1-5-615 and by rule, the notary public shall keep a copy of the recording of the entire communication and a notation of the identification used for a period of 10 years from the date of the notarization. The provisions of subsection (7) apply to this subsection.
(5) A notary public shall promptly notify the secretary of state on discovering that the notary public's journal is lost or stolen.
(6) A notary public shall retain the notary public's journal as provided in subsection (1) or (7) and notify the secretary of state of the journal's location upon resignation of a commission or if the notary public's commission has been revoked or suspended.
(7) A current or former notary public may, instead of retaining a journal as provided in subsection (1), (4), or (6), transmit the journal to the repository approved by the secretary of state.
(8) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the notary public's journal or journals shall transmit all journals to the secretary of state.

1-5-619. Notary public qualifications -- commission -- renewals. (1) An applicant for a commission as a notary public must:
(a) be at least 18 years old;
(b) be a citizen or permanent legal resident of the United States;
(c) be a resident of or have a place of employment or practice in this state;
(d) be able to read and write English; and
(e) be eligible to receive a commission as provided in subsection (2).
(2) To be eligible for a commission, an applicant shall pass an examination as provided in 1-5-620 and may not have been disqualified as provided in 1-5-621.
(3) An individual qualified under subsections (1) and (2) may apply to the secretary of state for a commission as a notary public.
(4) An applicant for a commission, including an applicant to renew an existing commission, shall:
(a) complete an application and provide information required by rule by the secretary of state;
(b) pay a filing fee set by rule;
(c) execute an oath of office and comply with requirements adopted by rule by the secretary of state;
(d) obtain an assurance in the form of a surety bond or its functional equivalent in the amount of $10,000. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. The surety or issuing entity is liable under the assurance if a notary public violates a law with respect to notaries public in this state. The surety or issuing entity shall give 30 days' notice to

the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than 30 days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.
(e) submit the application, bond, and nonrefundable filing fee to the secretary of state within 30 days before or after the effective date of the surety bond or the expiration of the previous commission.
(5) The secretary of state shall issue a commission for a 4-year term as a notary public to an applicant for a new or a renewed commission who has complied with this section.
(6) An individual may not have more than one Montana notary public commission in effect at the same time.

1-5-620. Examination of notary public. (1) An applicant for a commission as a notary public who does not hold a commission in this state shall pass an examination administered by the secretary of state or by an entity approved by the secretary of state. The examination must be based on the course of study described in subsection (2).
(2) The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.

1-5-621. Grounds to deny -- terms for refusing to renew, revoking, suspending, or conditioning notary public commissions. (1) The secretary of state may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:
(a) failure to comply with the provisions of this part;
(b) a fraudulent, dishonest, or deceitful misstatement or omission in the application submitted to the secretary of state for a commission as a notary public;
(c) pending release from supervision, a conviction of the applicant or notary public of any felony or crime involving fraud, dishonesty, or deceit, although conviction of a criminal offense is not a complete bar to receiving a commission if the individual's full rights have been restored;
(d) admission by the applicant or notary public or a finding in any legal proceeding or disciplinary action of the applicant's or notary public's fraud, dishonesty, or deceit;
(e) failure by the notary public to discharge any duty required of a notary public, whether the provisions of this part, rules of the secretary of state, or any state or federal law;
(f) use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary does not have;
(g) violation by the notary public of a rule of the secretary of state regarding a notary public;
(h) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; and
(i) failure of the notary public to maintain an assurance, as provided in 1-5-619.
(2) If the secretary of state denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with the Montana Administrative Procedure Act.
(3) The authority of the secretary of state to deny, refuse to renew, revoke, suspend, or impose conditions on a commission as a notary public does not prevent an individual from seeking and obtaining other criminal or civil remedies provided by law.

1-5-622. Authority to refuse to perform notarial act. (1) A notarial officer may refuse to perform a notarial act if the notarial officer is not satisfied that:
(a) the individual executing the record is competent or has the capacity to execute the record; or
(b) the individual executing the record is [not] signing knowingly or voluntarily.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than as provided in this part.

1-5-623. Signature if individual unable to sign. If an individual intending to execute a record is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of the other individual) at the direction of (name of individual intending to execute the record)" or words with similar intent.

1-5-624. Validity of notarial acts. Except as otherwise provided in 1-5-604(4), the failure of a notarial officer to perform a duty or meet a requirement specified in this part does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this part does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this state, other than this part, or the laws of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

1-5-625. Prohibited acts -- advertising requirements. (1) A notary public may not:
(a) notarize the notary's own signature;
(b) notarize a record in which the notary is individually named or from which the notary will directly benefit by a transaction involving the record, including as provided in subsection (2);
(c) certify a copy of a record issued by a public entity, such as a birth, death, or marriage certificate, a court record, or a school transcript unless the notary is employed by the entity issuing or holding the original version of the record;
(d) engage in false or deceptive advertising;
(e) advertise or represent that the notary public, unless also licensed as an attorney in this state, is able to assist persons in drafting legal records, give legal advice, or otherwise practice law. To meet the requirements of this subsection (1)(e), advertising must include the statement provided in subsection (4).
(f) except as otherwise allowed by law, withhold access to or retain possession of an original record provided by a person that seeks performance of a notarial act by the notary public; or
(g) unless the notary public is an attorney licensed to practice law in this state, use the term "notario" or "notario publico".
(2) A notary public who is a partner, stockholder, director, officer, or employee of a partnership or corporation and is individually named in the record or who signs a record as a representative of that partnership or corporation may not notarize the signature of any individual on that record.
(3) A commission as a notary public does not authorize an individual to:
(a) assist persons in drafting legal records, give legal advice, or otherwise practice law;
(b) act as an immigration consultant or an expert on immigration matters;
(c) represent a person in a judicial or administrative proceeding relating to immigration to the United States or United States citizenship or related matters; or
(d) receive compensation for performing any of the activities listed in this subsection (3).
(4) (a) A notary public who is not an attorney licensed to practice law in this state shall provide in advertising or other representations regarding an offering of notarial services, whether oral or written, used in broadcast media, print media, or on the internet a statement as provided in subsection (4)(b) or an alternate statement authorized or required by the secretary of state. The statement must be prominently displayed and in each language used in the advertisement or representation. If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection because of its size, the statement must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(b) To meet the requirements of subsection (4)(a), a notary public who is not an attorney licensed to practice law in this state shall use either an alternate statement authorized or required by the secretary of state or the following statement:
"I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

1-5-626. Fees for notarial acts -- collection of fees. (1) A notary public may charge a fee not to exceed $10 for each notarial act:
(a) performing an acknowledgment;
(b) witnessing a signature;
(c) verifying on oath or affirmation;
(d) certifying a transcript; or
(e) certifying a copy.
(2) A notary public may charge an additional fee, as provided by rule, to travel to perform a notarial act if:
(a) the notary public explains to the person requesting the notarial act that:
(i) the fee is in addition to a fee specified in subsection (1);
(ii) the fee is an amount not determined by law; and
(iii) the person requesting the notarial act agrees in advance on the amount of the additional fee; or
(b) the fee charged is equal to or less than the standard mileage rates allowed by the internal revenue service.
(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display in English a list of the fees the notary public will charge.
(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.
(5) A public official may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

1-5-627. Database of notaries public. The secretary of state shall maintain an electronic database of notaries public:
(1) through which a person may verify the authority of a notary public to perform notarial acts; and
(2) that indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

1-5-628. Rulemaking. (1) The secretary of state may adopt rules to implement this part.
(2) Rules adopted regarding the performance of notarial acts with respect to electronic records or two-way audio-video communications may not require or accord legal status or effect to the implementation or application of a specific technology or technical specification.
(3) The rules may:
(a) prescribe the manner of performing notarial acts regarding tangible and electronic records;
(b) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
(c) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;
(d) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and ensuring the trustworthiness of an individual holding a commission as notary public;
(e) include provisions to prevent fraud or mistake in the performance of notarial acts;
(f) establish the process for approving and accepting surety bonds and other forms of assurance under 1-5-619; and
(g) provide for the administration of the examination under 1-5-620(1) and the course of study under 1-5-620(2).

(4) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, consistent with this part:
(a) the most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;
(b) the standards, practices, and customs of other jurisdictions that substantially implement the provisions of this part; and
(c) the views of governmental officials and entities as well as other interested persons.

Administrative Rules

SECRETARY OF STATE
CHAPTER 15
NOTARIES PUBLIC
Subchapter 1

Commissioning

Rule 44.15.101 Application for a Commission as a Notary Public
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44.15.101 APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC

(1) A person seeking a commission as a notary public shall make an application on a form prescribed by the Secretary of State that includes the following information:

(a) applicant's name;
(b) applicant's date of birth;
(c) applicant's physical/residential address and mailing address;
(d) applicant's personal e-mail address;
(e) applicant's personal telephone number;
(f) applicant's employer's name, address, and telephone number;
(g) the date the applicant's current notary commission expires (if applicable);
(h) the name under which the applicant's previous commission was issued (if applicable); and
(i) whether or not the applicant intends to provide electronic notarization services, and, if so, the identification of the tamper-proof technology the applicant intends to use.

(2) The application shall indicate if the applicant:

(a) is at least 18 years old;
(b) is a citizen or permanent legal resident of the United States;
(c) is a resident of or has a place of employment or practice in Montana;
(d) can read and write English;
(e) has been convicted of a felony or crime involving fraud, dishonesty, or deceit within the last 10 years;
(f) has been found in any legal proceeding or disciplinary action within the last 10 years to have acted fraudulently, dishonestly, or deceitfully; and
(g) has had a notary commission denied, revoked, or restricted in any state within the last 10 years.

(3) The applicant must affirm under oath that the information on the application is true

and correct.
(4) An applicant who is not currently commissioned as a notary public shall submit with the application a certificate proving the applicant has passed a notary public examination approved by the Secretary of State.

(History: 1-5-628, MCA; IMP, 1-5-619, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2008 MAR p. 66, Eff. 1/18/08; AMD, 2015 MAR p. 2096, Eff. 10/30/15.)

44.15.102 APPLICATION FEE
(1) The applicant shall submit a $25 nonrefundable application fee.

(History: 1-5-408, MCA; IMP, 1-5-408, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2001 MAR p. 2162, Eff. 10/26/01.)

44.15.103 NOTARY BOND
(1) The applicant shall submit with the application and fee, a bond from an approved bonding company in the amount of $10,000 for the duration of the period of the notary commission. The bonding company shall notify the Secretary of State's office if the bond is canceled or otherwise not honored.

(History: 2-4-201, MCA; IMP, 1-5-405, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2001 MAR p. 2162, Eff. 10/26/01.)

44.15.104 CANCELLATION OF COMMISSION (REPEALED)

(History: 2-4-201, MCA; IMP, 1-5-404, 1-5-405, 2-4-604, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2008 MAR p. 66, Eff. 1/18/08; REP, 2015 MAR p. 1913, Eff. 10/30/15.)

44.15.105 FOREIGN NOTARY, APOSTILLE FEES, AND FEDERAL AUTHORITY
(1) The applicant shall submit a $10 nonrefundable application fee.

(History: 1-5-408, MCA; IMP, 1-5-607, 1-5-608, MCA; NEW, 2001 MAR p. 2162, Eff. 10/26/01.)

44.15.106 NOTIFICATION TO SECRETARY OF STATE OF CHANGE IN INFORMATION
(1) A notary public shall notify the Secretary of State within 30 calendar days of any change in the information on file with the Secretary of State, using the form prescribed by the Secretary of State, including the notary public's:

(a) name;
(b) physical/residential address;
(c) mailing address;
(d) personal e-mail address;
(e) personal telephone number;
(f) employer's name, address, or telephone number; and
(g) use of electronic notarization technology.

(2) When a notary public changes the notary name on file with the Secretary of State, the notary public shall file with the Secretary of State:

(a) a rider or other document issued by the notary's surety company showing the change of name; and
(b) an example of the notary's new official signature using the form prescribed by the Secretary of State.

(3) A notary public shall notify the Secretary of State within 14 calendar days of:

(a) being convicted of a felony or crime involving fraud, dishonesty, or deceit;
(b) being found in any legal proceeding or disciplinary action to have acted fraudulently, dishonestly, or deceitfully; or
(c) having a notary commission denied, revoked, or restricted in a state other than Montana.

(History: 1-5-628, MCA; IMP, 1-5-619, MCA; NEW, 2015 MAR p. 1913, Eff. 10/30/15.)

44.15.107 OFFICIAL STAMP

(1) The official stamp of a notary public, whether the impression is on a tangible or electronic record, shall:

(a) be rectangular in shape and approximately 1" by 2½" in size;

(b) be in blue or black ink;

(c) have a circular seal to the left that includes the words "notarial seal," the words "State of Montana," and the notary public's name as it appears on the notary public's certificate of commission;

(d) have a block of text to the right of the seal that includes:

(i) the notary public's printed name as it appears on the notary public's certificate of commission;

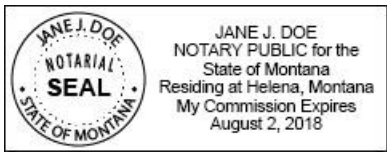
(ii) the words "Notary Public for the State of Montana";

(iii) the words "Residing at" immediately followed by the name of the city or town and state where the notary public lives; and

(iv) the words "My Commission Expires" immediately followed by the notary public's commission expiration date, expressed in terms of the month (spelled out), day, and four-digit year;

(e) have a plain rectangular border enclosing the text and seal; and

(f) be in the general format illustrated below:



(History: 1-5-628, MCA; IMP, 1-5-616, MCA; NEW, 2015 MAR p. 1913, Eff. 10/30/15.)

44.15.108 REAL-TIME, TWO-WAY AUDIO-VIDEO NOTARIZATIONS (REMOTE NOTARIZATIONS)

(1) Real-time, two-way audio-video notarizations (remote notarizations) shall only be performed using technology that allows the individuals communicating to simultaneously see and speak to one another.

(2) When performing remote notarizations, the signal transmission shall be live, real time.

(3) All remote notarizations shall be recorded electronically.

(4) Prior to performing any remote notarization, the notary public shall inform all individuals participating in the notarization that the notarization will be electronically recorded.

(5) All recordings of remote notarizations shall include a recitation by the notary public that includes the following:

(a) the notary public's name;

(b) the notary public's commission expiration date;

(c) a declaration that all individuals participating in the remote notarization have been informed by the notary public that the notarization will be electronically recorded;

(d) the date and time the notarial act is being performed;

(e) the state and county in which the notary public is located when the notarial act is being performed;

(f) the type of notarial act that is being performed;

(g) the type or title of record that is being notarized;

(h) whether the notarial act is being performed on a tangible or electronic record;

(i) whether the individual for whom the notarial act is being performed is being identified by personal knowledge or credible witness; and

(j) if a record is being executed, an acknowledgement that the person for whom the notarial act is being performed has the competency or capacity to execute the record.

(6) All recordings of remote notarizations shall include a recitation by the individual for whom the notarial act is being performed that includes the following:

(a) the individual's name;

(b) the state in which the individual legally resides;

(c) a declaration that the signature made on the record being notarized is that of the individual;

(d) the date the individual signed the record being notarized; and

(e) a declaration that the signature made on the record being notarized was made by the individual knowingly or voluntarily.

(7) If the individual for whom the notarial act is being performed is being identified by personal knowledge, the recording of the remote notarization shall include an explanation by the notary public as to how the notary public has come to know the individual for whom the notarial act is being performed and the length of time the notary public has known the individual.

(8) If the individual for whom the notarial act is being performed is being identified by credible witness:

(a) the credible witness shall be in the physical presence of the notary public; and

(b) the recording of the remote notarization shall include:

(i) a statement by the notary public as to whether the notary public identified the credible witness by personal knowledge or satisfactory evidence; and

(ii) an explanation by the credible witness as to how the credible witness has come to know the individual for whom the notarial act is being performed and the length of time the credible witness has known the individual.

(History: 1-5-628, MCA; IMP, 1-5-615, MCA; NEW, 2015 MAR p. 1913, Eff. 10/30/15.)

44.15.109 FEES FOR NOTARIAL ACTS

(1) A notary public may charge a fee in accordance with 1-5-626, MCA, for traveling to perform a notarial act.

(History: 1-5-628, MCA; IMP, 1-5-626, MCA; NEW, 2015 MAR p. 1913, Eff. 10/30/15.)

GLOSSARY

Acknowledgment. A notarial act which requires the person who has already signed a document to *personally appear* before the notary and state (acknowledge) that he/she willingly signed the document for the purposes for which it was intended. The notary does not have to actually see the person sign the document, but does have to *actually witness* the person acknowledge the signature. See pages 14 - 17 for more information.

Affirmation. An oral promise on one's personal honor that the information given is true and accurate to the best of the signer's knowledge. Also known as an oath.

Affidavit. A written statement in which the person attests under penalty of perjury that a statement is true.

Apostille. A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial block is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. See pages 29- 31 for more information.

Attorney-in-fact. A person (not necessarily a lawyer) who is given written authority to sign and/or act on behalf of another individual (the principal), normally through a document called a power of attorney.

Attest. To confirm (usually in writing) that a document is genuine or that statements made in a document are true.

Authentication. A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial certificate is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. See pages 29 - 31 for more information.

Certificate of Commission. The official document issued by the Montana Secretary of State granting a notary commission. It shows the notary's official name, the notary's city of residence, and the beginning and ending dates of the commission.

Certified Copy. An exact, complete and unaltered copy of a document attested as a true copy of the original. See pages 23 - 25 for more information.

Coercion. Forced or compelled into doing something through fear, intimidation, and/or threats.

Comprehension. The ability to understand something. A notary is responsible for determining that all parties understand what they are signing or affirming.

Credible Witness. Someone who is either personally known or satisfactorily identified to the notary who can swear to the identity of a person requesting a notarization.

Commission Number / Notary Number. A unique identifier associated with a particular notary public. Montana notaries do not have commission numbers and should indicate "N/A" when such information is requested on a notarial certificate or other document.

Deposition. A written statement used in legal matters that is transcribed from oral testimony given under oath or affirmation.

Electronic Notarization / eNotarization. The process by which a digital document is notarized using electronic signatures of both the signer and the notary public and includes the attachment of an electronic notarial seal. *For more information, see the SOS webpages on this topic.*

Electronic Signature. An electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign a record.

Forgery. False signature, written document, or other creation, made to imitate the true signature, document, or creation, with the intent to defraud.

Intent. The purpose for which something is done.

Jurat. The notarial act that certifies the notary as having witnessed the signing of a document and administered an oath or affirmation, in which the signer declares the document to be truthful and accurate. See pages 20 - 23 for more information.

Jurisdiction. The geographic area over which authority extends. A Montana notary public has the authority to perform notarizations anywhere in the state of Montana, and may notarize tangible documents in North Dakota or Wyoming. A Montana notary's jurisdiction does not extend to any other states or foreign countries.

Medallion Signature Guarantee. A verification/guarantee of signatures on stocks and bond transactions that can *only* be done by a security broker or dealer participating in a medallion program.

Negligence. Failure to use reasonable care that would be expected of any other person in a similar situation.

Notarial Acts. The official actions of a notarial officer: To take acknowledgements; to administer oaths; to witness or attest signatures; to perform jurats; to certify or attest copies; to transcribe and certify depositions; and to note a protest of a negotiable instrument. See Chapter 4 for more information.

Notarial Officer. A notary public or other individual, such as a judge, clerk of court, or active duty military officer, authorized to perform notarial acts.

Notary Public. An individual commissioned to perform a notarial act by the Secretary of State.

Notarial Seal / Notary Stamp. The official seal of the notary.

Oath. A statement of truth, either written or verbal, given under penalty of perjury.

Perjury. Making a false statement under oath; generally punishable by fine and/or imprisonment.

Personal Appearance. The notarial requirement that the person who signs a record must be in the notary's physical presence or appear by live two-way audio/visual communication at the time of the notarization. *See page 8 for more information.*

Power of Attorney. A written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter.

Reasonable Care. The use of ordinary prudence and intelligence exercised in similar circumstances.

Record. A document; information that is inscribed on a tangible or electronic medium which is retrievable in a perceivable form.

Remote Notarization. Utilization of live two-way audio/visual technology to perform a notarial act.

Representative Capacity. Acting on behalf of another person or entity, particularly when signing a document in place of the named person or entity, such as an officer, agent, partner, trustee, guardian, attorney-in-fact.

Sign. To intentionally execute a record by means of a written, typed, stamped, or electronic affixed signature.

Signature. A tangible symbol or an electronic signature that evidences a the signing of a record..

Signature Guarantee. See *Medallion Signature Guarantee* above.

Statement of Particulars. The required declaration in a notarial certificate that describes the details of the notarial transaction. *See pages 12 - 13 for more information.*

Subscribe. To sign.

Surety Bond. A three-party agreement that legally binds together a principal who needs the bond, an obligee who requires the bond (such as a notary), and a surety company that sells the bond.

Swear. To take an oath.

Testify. To make a declaration to substantiate a fact; bear witness or give evidence, especially under oath in court.

Venue. The location (state and county) where a notarization is performed.

Witness. A person called upon to observe an event, a transaction, signing, etc., in order to testify concerning it if it is later held in question or challenged.

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IMPORTANT DOs & DON'Ts
for
MONTANA NOTARIES PUBLIC

DO make sure the person whose signature, acknowledgment, or oath is being notarized personally appears to you when the notarization takes place. ALWAYS. EVERYTIME. NO EXCEPTIONS – EVER.

DO make sure you understand what notarial act is required before notarizing a document.

DO maintain one or more journals in which you chronicle all notarial acts you perform.

DO NOT notarize your own signature.

DO NOT notarize anyone's signature on a document in which you are named or from which you will directly benefit.

DO NOT sign as a representative of an entity and then notarize any signature on that same document.

DO NOT certify a document issued by a public entity unless you are employed by the entity where the original is maintained.

DO NOT engage in the unauthorized practice of law.

DO NOT place your seal/stamp in such a way it obstructs any other part of the notarial block.

DO call (406) 444-5379 or (406) 444-1877 if you have a question or are unsure how to notarize a document or complete a journal entry.

For More Information, visit our website at www.sos.mt.gov/Notary