

MONTANA CODE ANNOTATED

TITLE 1. GENERAL LAWS AND DEFINITIONS CHAPTER 5. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC PART 1. GENERAL PROVISIONS -- PROOF AND ACKNOWLEDGMENT (REPEALED. SEC. 22, CH. 192, L. 1993)

1-5-101. Repealed. Sec. 22, Ch. 192, L. 1993.

History: (1)En. Sec. 1600, Civ. C. 1895; re-en. Sec. 4654, Rev. C. 1907; re-en. Sec. 6905, R.C.M. 1921; Cal. Civ. C. Sec. 1180; Based on Field Civ. C. Sec. 516; re-en. Sec. 6905, R.C.M. 1935; Sec. 39-101, R.C.M. 1947; (2)En. Sec. 1601, Civ. C. 1895; re-en. Sec. 4655, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1913; re-en. Sec. 6906, R.C.M. 1921; Cal. Civ. C. Sec. 1181; Based on Field Civ. C. Sec. 517; re-en. Sec. 6906, R.C.M. 1935; Sec. 39-102, R.C.M. 1947; R.C.M. 1947, 39-101, 39-102; amd. Sec. 1, Ch. 242, L. 1989.

1-5-102. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1602, Civ. C. 1895; re-en. Sec. 4656, Rev. C. 1907; re-en. Sec. 6907, R.C.M. 1921; Cal. Civ. C. Sec. 1182; Based on Field Civ. C. Sec. 518; re-en. Sec. 6907, R.C.M. 1935; R.C.M. 1947, 39-103; amd. Sec. 3, Ch. 119, L. 1979; amd. Sec. 2, Ch. 242, L. 1989.

1-5-103. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1603, Civ. C. 1895; re-en. Sec. 4657, Rev. C. 1907; re-en. Sec. 6908, R.C.M. 1921; Cal. Civ. C. Sec. 1183; re-en. Sec. 6908, R.C.M. 1935; R.C.M. 1947, 39-104.

1-5-104. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1603, Civ. C. 1895; re-en. Sec. 4657, Rev. C. 1907; re-en. Sec. 6908, R.C.M. 1921; Cal. Civ. C. Sec. 1183; re-en. Sec. 6908, R.C.M. 1935; R.C.M. 1947, 39-104.

1-5-105. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1, Ch. 117, L. 1945; R.C.M. 1947, 39-106; amd. Sec. 4, Ch. 119, L. 1979.

1-5-106. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1613, Civ. C. 1895; re-en. Sec. 4667, Rev. C. 1907; re-en. Sec. 6918, R.C.M. 1921; Cal. Civ. C. Sec. 1193; re-en. Sec. 6918, R.C.M. 1935; R.C.M. 1947, 39-115.

1-5-107. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1614, Civ. C. 1895; re-en. Sec. 4668, Rev. C. 1907; re-en. Sec. 6919, R.C.M. 1921; Cal. Civ. C. Sec. 1194; re-en. Sec. 6919, R.C.M. 1935; R.C.M. 1947, 39-116.

1-5-108. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1622, Civ. C. 1895; re-en. Sec. 4676, Rev. C. 1907; re-en. Sec. 6927, R.C.M. 1921; Cal. Civ. C. Sec. 1202; re-en. Sec. 6927, R.C.M. 1935; R.C.M. 1947, 39-124.

1-5-109. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1623, Civ. C. 1895; re-en. Sec. 4677, Rev. C. 1907; re-en. Sec. 6928, R.C.M. 1921; Cal. Civ. C. Sec. 1203; re-en. Sec. 6928, R.C.M. 1935; R.C.M. 1947, 39-125.

1-5-110. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1624, Civ. C. 1895; re-en. Sec. 4678, Rev. C. 1907; re-en. Sec. 6929, R.C.M. 1921; Cal. Civ. C. Sec. 1204; re-en. Sec. 6929, R.C.M. 1935; R.C.M. 1947, 39-126.

PART 2. ACKNOWLEDGMENT (REPEALED) **(REPEALED. SEC. 22, CH. 192, L. 1993.)**

1-5-201. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R.C.M. 1921; Cal. Civ. C. Sec. 1185; re-en. Sec. 6910, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974; R.C.M. 1947, 39-107.

1-5-202. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1608, Civ. C. 1895; re-en. Sec. 4662, Rev. C. 1907; re-en. Sec. 6913, R.C.M. 1921; Cal. Civ. C. Sec. 1188; re-en. Sec. 6913, R.C.M. 1935; R.C.M. 1947, 39-110.

1-5-203. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1609, Civ. C. 1895; re-en. Sec. 4663, Rev. C. 1907; re-en. Sec. 6914, R.C.M. 1921; Cal. Civ. C. Sec. 1189; re-en. Sec. 6914, R.C.M. 1935; R.C.M. 1947, 39-111.

1-5-204. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4664, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1913; re-en. Sec. 6915, R.C.M. 1921; Cal. Civ. C. Sec. 1190; re-en. Sec. 6915, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1937; R.C.M. 1947, 39-112.

1-5-205. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4666, Rev. C. 1907; re-en. Sec. 6917, R.C.M. 1921; Cal. Civ. C. Sec. 1192; re-en. Sec. 6917, R.C.M. 1935; R.C.M. 1947, 39-114.

1-5-206. Repealed. Sec. 22, Ch. 192, L. 1993.

History: (1)En. Sec. 1606, Civ. C. 1895; re-en. Sec. 4660, Rev. C. 1907; re-en. Sec. 6911, R.C.M. 1921; Cal. Civ. C. Sec. 1186; re-en. Sec. 6911, R.C.M. 1935; amd. Sec. 16, Ch. 535, L. 1975; Sec. 39-108, R.C.M. 1947; (2)En. Sec. 1607, Civ. C. 1895; re-en. Sec. 4661, Rev. C. 1907; re-en. S

1-5-207. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1611, Civ. C. 1895; re-en. Sec. 4665, Rev. C. 1907; re-en. Sec. 6916, R.C.M. 1921; Cal. Civ. C. Sec. 1191; re-en. Sec. 6916, R.C.M. 1935; amd. Sec. 18, Ch. 535, L. 1975; R.C.M. 1947, 39-113.

1-5-208. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1, Ch. 81, L. 1953; R.C.M. 1947, 39-103.1.

PART 3. PROOF OF EXECUTION

1-5-301. Who may prove execution of instrument.

Proof of the execution of an instrument which has not been acknowledged may be made by:

- (1) all of the parties who executed it or any one of them;
- (2) a subscribing witness; or
- (3) other witnesses in cases mentioned in 1-5-302.

History: En. Sec. 1615, Civ. C. 1895; re-en. Sec. 4669, Rev. C. 1907; re-en. Sec. 6920, R.C.M. 1921; Cal. Civ. C. Sec. 1195; re-en. Sec. 6920, R.C.M. 1935; R.C.M. 1947, 39-117; amd. Sec. 5, Ch. 119, L. 1979.

1-5-302. When execution may be proved by handwriting.

The execution of an instrument may be established by proof of the handwriting of the

party and of a subscribing witness, if there is one, in the following cases:

- (1) when the parties and all the subscribing witnesses are dead;
- (2) when the parties and all the subscribing witnesses are nonresidents of the state;
- (3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
- (4) when the subscribing witness hides or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or
- (5) in case of the continued failure or refusal of the witness to testify for the period of 1 hour after the witness's appearance.

History: En. Sec. 1618, Civ. C. 1895; re-en. Sec. 4672, Rev. C. 1907; re-en. Sec. 6923, R.C.M. 1921; Cal. Civ. Sec. 1198; re-en. Sec. 6923, R.C.M. 1935; R.C.M. 1947, 39-120; amd. Sec. 25, Ch. 61, L. 2007.

1-5-303. Facts which must be shown when offering proof of handwriting.

The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

- (1) the existence of one or more of the conditions mentioned in 1-5-302;
- (2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with that person's signature;
- (3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with that person's signature;
- (4) that the signature or signatures in question are genuine; and
- (5) the place of residence of the witness.

History: En. Sec. 1619, Civ. C. 1895; re-en. Sec. 4673, Rev. C. 1907; re-en. Sec. 6924, R.C.M. 1921; Cal. Civ. C. Sec. 1199; re-en. Sec. 6924, R.C.M. 1935; R.C.M. 1947, 39-121; amd. Sec. 6, Ch. 119, L. 1979; amd. Sec. 26, Ch. 61, L. 2007.

1-5-304. Powers of officer taking proof of execution.

Officers authorized to take the proof of instruments are authorized in such proceedings to:

- (1) administer oaths or affirmations as prescribed by law;
- (2) employ and swear interpreters; and
- (3) issue subpoenas as prescribed by law.

History: En. Sec. 1621, Civ. C. 1895; re-en. Sec. 4675, Rev. C. 1907; re-en. Sec. 6926, R.C.M. 1921; Cal. Civ. C. Sec. 1201; re-en. Sec. 6926, R.C.M. 1935; R.C.M. 1947, 39-123; amd. Sec. 7, Ch. 119, L. 1979.

1-5-305. Contents of certificate of proof.

An officer taking proof of the execution of any instrument shall, in the certificate endorsed upon or attached to the instrument, set forth all the matters required by law to be done or known by the officer or proved before the officer on the proceeding, together with the names of all the witnesses examined before the officer, their places of residence, and the substance of their testimony.

History: En. Sec. 1620, Civ. C. 1895; re-en. Sec. 4674, Rev. C. 1907; re-en. Sec. 6925, R.C.M. 1921; Cal. Civ. C. Sec. 1200; Based on Field Civ. C. Sec. 526; re-en. Sec. 6925, R.C.M. 1935; R.C.M. 1947, 39-122; amd. Sec. 27, Ch. 61, L. 2007.

PART 4. NOTARIES PUBLIC (REPEALED. SEC. 26, CH. 391, L. 2015)

1-5-401. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; R.C.M. 1947, 56-101(part); amd. Sec. 12, Ch. 192, L. 1993; amd. Sec. 1, Ch. 319, L. 2009.

1-5-402. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 911, Pol. C. 1895; re-en. Sec. 318, Rev. C. 1907; amd. Sec. 2, Ch. 103, L. 1909; re-en. Sec. 386, R.C.M. 1921; Cal. Pol. C. Sec. 792; re-en. Sec. 386, R.C.M. 1935; R.C.M. 1947, 56-102; amd. Sec. 13, Ch. 192, L. 1993; amd. Sec. 1, Ch. 161, L. 2001; amd. Sec. 2 Ch. 319, L. 2009.

1-5-403. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 912, Pol. C. 1895; re-en. Sec. 319, Rev. C. 1907; re-en. Sec. 387, R.C.M. 1921; Cal. Pol. C. Sec. 793; re-en. Sec. 387, R.C.M. 1935; R.C.M. 1947, 56-103; amd. Sec. 14, Ch. 192, L. 1993; amd. Sec. 2, Ch. 161, L. 2001.

1-5-404. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 922, Pol. C. 1895; re-en. Sec. 329, Rev. C. 1907; re-en. Sec. 398, R.C.M. 1921; re-en. Sec. 398, R.C.M. 1935; R.C.M. 1947, 56-114; amd. Sec. 15, Ch. 192, L. 1993; amd. Sec. 3, Ch. 161, L. 2001.

1-5-405. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Secs. 324-325, Rev. C. 1907; amd. Sec. 5, Ch. 103, L. 1909; amd. Sec. 1, Ch. 7, L. 1921; re-en. Sec. 394, R.C.M. 1921; Cal. Pol. C. Sec. 799; re-en. Sec. 394, R.C.M. 1935; R.C.M. 1947, 56-110; amd. Sec. 1, Ch. 80, L. 1983; amd. Sec. 16, Ch. 192, L. 1993; amd. Sec. 4, Ch. 161, L. 2001; amd. Sec. 1, Ch. 12, L. 2003.

1-5-406. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 919, Pol. C. 1895; re-en. Sec. 326, Rev. C. 1907; re-en. Sec. 395, R.C.M. 1921; Cal. Pol. C. Sec. 801; re-en. Sec. 395, R.C.M. 1935; R.C.M. 1947, 56-111.

1-5-407. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 2, p. 101, L. 1885; re-en. Sec. 1569, 5th Div. Comp. Stat. 1887; re-en. Sec. 920, Pol. C. 1895; re-en. Sec. 327, Rev. C. 1907; amd. Sec. 6, Ch. 103, L. 1909; re-en. Sec. 396, R.C.M. 1921; re-en. Sec. 396, R.C.M. 1935; R.C.M. 1947, 56-112.

1-5-408. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 3, p. 101, L. 1885; re-en. Sec. 1570, 5th Div. Comp. Stat. 1887; re-en. Sec. 921, Pol. C. 1895; re-en. Sec. 328, Rev. C. 1907; amd. Sec. 7, Ch. 103, L. 1909; re-en. Sec. 397, R.C.M. 1921; re-en. Sec. 397, R.C.M. 1935; amd. Sec. 12, Ch. 117, L. 1961; R.C.M. 1947, 56-113; amd. Sec. 1, Ch. 14, L. 1985; amd. Sec. 17, Ch. 192, L. 1993; amd. Sec. 5, Ch. 161, L. 2001; amd. Sec. 2, Ch. 396, L. 2001.

1-5-409. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 1, Ch. 70, L. 1989; amd. Sec. 6, Ch. 161, L. 2001.

1-5-410 through 1-5-414 reserved.

1-5-415. Repealed. Sec. 26, Ch. 391, L. 2015.

History: Ap. p. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; Sec. 56-101, R.C.M. 1947; Ap. p. Sec. 4, Ch. 103, L. 1909; re-en. Sec. 389, R.C.M. 1921; re-en. Sec. 389, R.C.M. 1935; Sec. 56-105, R.C.M. 1947; R.C.M. 1947, 56-101(part), 56-105(part); amd. Sec. 18, Ch. 192, L. 1993.

1-5-416. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 913, Pol. C. 1895; re-en. Sec. 320, Rev. C. 1907; amd. Sec. 3, Ch. 103, L. 1909; re-en. Sec. 388, R.C.M. 1921; Cal. Pol. C. Sec. 794; re-en. Sec. 388, R.C.M. 1935; R.C.M. 1947, 56-104; amd. Sec. 8, Ch. 119, L. 1979; amd. Sec. 1, Ch. 225, L. 1981; amd. Sec. 1, Ch. 64, L. 1997; amd. Sec. 7, Ch. 161, L. 2001; amd. Sec. 2, Ch. 12, L. 2003; amd. Sec. 1, Ch. 123, L. 2005; amd. Sec. 3, Ch. 319, L. 2009.

1-5-417. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 1, Ch. 77, L. 1909; re-en. Sec. 390, R.C.M. 1921; re-en. Sec. 390, R.C.M. 1935; R.C.M. 1947, 56-106; amd. Sec. 19, Ch. 192, L. 1993; amd. Sec. 8, Ch. 161, L. 2001.

1-5-418. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R.C.M. 1921; re-en. Sec. 4914, R.C.M. 1935; R.C.M. 1947, 25-112; amd. Sec. 2, Ch. 225, L. 1981; amd. Sec. 9, Ch. 161, L. 2001.

1-5-419. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 915, Pol. C. 1895; re-en. Sec. 322, Rev. C. 1907; re-en. Sec. 392, R.C.M. 1921; Cal. Pol. C. Sec. 796; re-en. Sec. 392, R.C.M. 1935; R.C.M. 1947, 56-108, amd. Sec. 4, Ch. 319, L. 2009; amd. Sec. 1, Ch. 76, L. 2013.

1-5-420. Repealed. Sec. 26, Ch. 391, L. 2015.

History: En. Sec. 916, Pol. C. 1895; re-en. Sec. 323, Rev. C. 1907; re-en. Sec. 393, R.C.M. 1921; Cal. Pol. C. Sec. 797; re-en. Sec. 393, R.C.M. 1935; R.C.M. 1947, 56-109.

**PART 5. COMMISSIONERS OF DEEDS
(REPEALED. SEC. 14, CH. 119, L. 1979)**

1-5-501. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 940, Pol. C. 1895; re-en. Sec. 333, Rev. C. 1907; re-en. Sec. 402, R.C.M. 1921; Cal. Pol. C. Secs. 811-817; re-en. Sec. 402, R.C.M. 1935; R.C.M. 1947, 56-201.

1-5-502. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 945, Pol. C. 1895; re-en. Sec. 338, Rev. C. 1907; re-en. Sec. 407, R.C.M. 1921; re-en. Sec. 407, R.C.M. 1935; R.C.M. 1947, 56-206.

1-5-503. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 946, Pol. C. 1895; re-en. Sec. 339, Rev. C. 1907; re-en. Sec. 408, R.C.M. 1921; re-en. Sec. 408, R.C.M. 1935; R.C.M. 1947, 56-207.

1-5-504. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 943, Pol. C. 1895; re-en. Sec. 336, Rev. C. 1907; re-en. Sec. 405, R.C.M. 1921; re-en. Sec. 405, R.C.M. 1935; R.C.M. 1947, 56-204.

1-5-505. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 941, Pol. C. 1895; re-en. Sec. 334, Rev. C. 1907; re-en. Sec. 403, R.C.M. 1921; re-en. Sec. 403, R.C.M. 1935; R.C.M. 1947, 56-202.

1-5-506. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 942, Pol. C. 1895; re-en. Sec. 335, Rev. C. 1907; re-en. Sec. 404, R.C.M. 1921; re-en. Sec. 404, R.C.M. 1935; R.C.M. 1947, 56-203.

1-5-507. Repealed. Sec. 14, Ch. 119, L. 1979.

History: En. Sec. 944, Pol. C. 1895; re-en. Sec. 337, Rev. C. 1907; re-en. Sec. 406, R.C.M. 1921; re-en. Sec. 406, R.C.M. 1935; R.C.M. 1947, 56-205.

PART 6. NOTARIAL ACTS

1-5-601. Short title.

This part may be cited as the “Revised Uniform Law on Notarial Acts”.

History: En. Sec. 1, Ch. 192, L. 1993; amd. Sec. 1, Ch. 391, L. 2015.

1-5-602. Definitions. As used in this part, the following definitions apply:

(1) “Acknowledgment” means a declaration by an individual appearing 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) “Appearing before” means:

- (a) being in the same physical location as another person and close enough to see, hear, communicate with, and exchange identification credentials with that individual; or
- (b) interacting with another individual by means of communication technology in compliance with this part.

(3) “Certification of fact” means a notarial act in which a notary reviews public or vital records or other legally accessible data to ascertain or confirm any of the following facts:

- (a) date of birth, death, marriage, or divorce, or that an individual is alive;
- (b) name of parent, marital partner, offspring, or sibling;
- (c) that an event has occurred; or
- (d) any matter authorized by law or rule of this state for certification by a notary public.

(4) “Communication technology” means a real-time, two-way audiovisual electronic device or process that:

- (a) allows a notarial officer located in this state and a remotely located individual to communicate with each other simultaneously by sight and sound;
- (b) facilitates communication with a remotely located individual with a vision, hearing, or speech impairment when necessary under and consistent with applicable law; and
- (c) complies with this part and implementing rules.

(5) “Credential analysis” means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(6) “Dynamic knowledge-based authentication assessment” means an identity assessment that is based on a set of questions formulated from public or private data sources that does not contain a question for which the principal provided a prior answer to the entity doing the assessment.

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) “Electronic notarization system” means a set of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations that renders every electronic notarial act tamper-evident through the use of a security procedure and that meets the requirements of this part and implementing rules.

(9) “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.

(10) “Identification credential” means a government-issued record evidencing an individual’s identity.

(11) “Identity proofing” means a process or service by which a third person provides a notarial officer with a means to verify the identity of a principal by:

- (a) a review of personal information from public or proprietary data sources; or
- (b) biometric data including but not limited to facial recognition, voice analysis, or fingerprint analysis.

(12) “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.

(13) “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 but is not limited to 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.

(14) “Notarial officer” means a notary public or other individual authorized to perform notarial acts.

(15) “Notary public” or “notary” means an individual commissioned to perform a notarial act by the secretary of state.

(16) “Oath or affirmation” means a solemn verbal promise by which a person knowingly and willingly attests to the truthfulness of a statement and that is administered by a notarial officer.

(17) (a) “Official record” means a record or copy of a record attested by the officer or the officer’s deputy with legal custody of the record that is accompanied by a certificate that the officer has custody of the record.

(b) The certificate must have been made under seal by:

- (i) a clerk of a court of record in the district or political subdivision where the record is kept; or
- (ii) a public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(18) “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.

(19) “Outside the United States” means a location outside of the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory, insular possession, or other location subject to the jurisdiction of the United States.

(20) “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.

(21) “Principal” means:

- (a) an individual whose signature is notarized; or
- (b) an individual taking an oath or affirmation from the notary public but not in the capacity of a credible or other witness for the notarial act.

(22) “Public key certificate” means an electronic credential that is used to identify an individual who signed an electronic record with the credential and is issued and managed by a third-party provider utilizing public key infrastructure technology.

(23) “Public key infrastructure technology” means a method of enabling a user of an unsecured public network, including the internet, to securely and privately exchange data and money through a public and private cryptographic key pair that is obtained and shared through a trusted certificate authority that provides for:

- (a) a digital certificate that is able to identify an individual or organization; and
- (b) a directory service that is able to store and, if necessary, revoke a digital certificate.

(24) “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.

(25) “Remote notarization” means a notarial act performed by means of communication technology on a tangible record that meets the standards adopted under this part.

(26) “Remote online notarization” means a notarial act or notarization performed by means of communication technology and an electronic notarization system on an electronic record that meets the standards adopted under this part.

(27) “Remote presentation” means transmission to the notarial officer through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the notarial officer to:

- (a) identify the individual seeking the notarial officer’s services; and
- (b) visually review the identity credential and its data; and
- (c) perform credential analysis.

(28) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(29) “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.

(30) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(31) “Signature witnessing” means the notarial act in which a notarial officer witnesses a principal execute a record knowingly and willingly for the purposes intended while appearing before the notarial officer.

(32) “Sole control” means at all times being in the direct physical custody of the notarial officer or safeguarded by the notarial officer with a password or other secure means of authentication or access.

(33) “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 record in court.

(34) “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.

(35) “Tamper-evident” means that any change to a record must provide evidence of the change.

(36) “Verification on oath or affirmation” or “jurat” means a declaration, made by a principal on oath or affirmation before a notarial officer, that a statement in a record is true and that the record has been executed knowingly and willingly before the notarial officer for the purposes intended.

History: En. Sec. 2, Ch. 192, L. 1993; amd. Sec. 2, Ch. 391, L. 2015; amd. Sec. 1, Ch. 123, L. 2019.

1-5-603. Requirements for certain notarial acts -- personal and remote 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 and was made knowingly and willingly for the purposes intended.

(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, signing the record, and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual and was made knowingly and willingly for the purposes intended.

(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 and has executed the record knowingly and willingly for the purposes intended.

(4) (a) A notarial officer who takes an acknowledgment or witnesses a signature of an individual who signs a record in a representative capacity shall determine:

(i) from personal knowledge or satisfactory evidence of the identity of the individual that the individual appearing before the notarial officer has the identity claimed; and

(ii) from the record, personal knowledge, or presentment of an official record that the individual holds the title or capacity claimed and has knowingly and willingly signed the record in that capacity for the purposes intended.

(b) The notarial officer may refuse to perform the notarial act if the notarial officer is not satisfied that the official record or the presented record evidences the individual’s capacity to act as the principal’s representative on the record presented for notarization.

(5) 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 original or official record or the item. A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record. A county clerk shall accept for recording a tangible copy of an electronic record containing an original notarial certificate as satisfying any requirement that a record be an original.

(6) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 30-3-510(2).

(7) A notarial officer who administers an oath or affirmation shall determine from

personal knowledge or satisfactory evidence of the identity of the individual that the person appearing before the notarial officer and taking the oath or affirmation has the identity claimed and is knowingly and willingly making the statement with the intent to be bound by the statement.

(8) 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.

(9) (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 communication technology as authorized in 1-5-615 and rules adopted pursuant to 1-5-628.

(b) Except as provided in subsection (9)(c), subsection (9)(a) modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

(c) Subsection (9)(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).

(10) (a) Subject to subsection (10)(b), a notarial officer may perform a remote notarization or remote online notarization for a principal who is located:

- (i) in this state;
- (ii) outside of this state but within the United States; or
- (iii) outside the United States if:

(A) the act is not known by the notarial officer to be prohibited in the jurisdiction in which the principal is physically located at the time of the act; and

(B) the record is part of or pertains to:

- (I) a matter that is to be filed with or is before a public official or court, governmental entity, or other entity located in the territorial jurisdiction of the United States;
- (ii) property located in the territorial jurisdiction of the United States; or
- (iii) a transaction substantially connected with the United States.

(b) A notarial officer may perform a remote notarization or remote online notarization only if the notarial officer:

- (i) is physically located in this state at the time the notarial act is performed;
- (ii) identifies the principal through personal knowledge or satisfactory evidence;
- (iii) executes the notarial act in a single recorded session that complies with this part;
- (iv) is satisfied that any record that is signed, acknowledged, or otherwise presented for notarization by the principal is the same record remotely notarized by the notarial officer;
- (v) is satisfied that the quality of the communication technology is sufficient to make the determinations required for the notarial act under this part and any other applicable law of this state;

(vi) identifies the venue as described in 1-5-629; and

(vii) is capable of meeting the requirements of 1-5-618.

(c) A notarial officer who performs a remote notarization or remote online notarization shall take reasonable steps to ensure that:

(i) the notarial officer, the principal, and any required witness are accessing the communication technology or the electronic notarization system, or both, through an authentication procedure that is reasonably secure from unauthorized access;

(ii) the principal and any required witness are viewing the same record; and

(iii) all signatures, changes, and attachments to the record are made in real time.

(d) A notarial act performed by means of communication technology is considered to have been performed in Montana and is governed by Montana law regardless of the physical location of the principal at the time of the notarization.

(11) (a) A notarial officer who certifies a fact may review a public or private record to ascertain or verify that specific data is contained or shown on the record or memorialized in a publication that the notary believes to be reliable.

(b) A notarial officer who certifies that an individual is alive shall verify from personal knowledge or satisfactory evidence that the individual appearing before the notarial officer is alive at the time of certification.

(c) A notarial officer who certifies a photograph shall verify from personal knowledge or satisfactory evidence that the photograph is an accurate representation of the individual or item represented.

(12) (a) 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.

(b) 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:

(i) by means of:

(A) a passport, driver's license, or government-issued nondriver identification credential, 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

(B) another form of government identification issued to an individual, which:

(I) may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;

(II) must contain the signature or a photograph of the individual; and

(III) must be satisfactory to the notarial officer; or

(ii) by oath or affirmation of a credible witness:

(A) physically present 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 record, which is current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or

(B) appearing by means of communication technology and identified by the notarial officer as provided in subsection (12)(c).

(c) If a principal or witness is appearing by means of communication technology, a notarial officer has satisfactory evidence of the identity of the individual if the notarial officer can identify the individual by two or more different types of technologies, processes, or services approved by the secretary of state, such as dynamic knowledge-based authentication assessment, valid public key certificate, identity proofing, remote presentation and credential analysis, or any other means prescribed in rule by the secretary of state.

(13) A notarial officer may use one or more approved identification technologies described in subsection (12)(c) for an individual who is physically in the presence of the notarial officer as satisfactory evidence of identity.

(14) 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.

History: En. Sec. 3, Ch. 192, L. 1993; amd. Sec. 10, Ch. 161, L. 2001; amd. Sec. 3, Ch. 391, L. 2015; amd. Sec. 1, Ch. 275, L. 2017; amd. Sec. 2, Ch. 123, L. 2019.

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.

History: En. Sec. 4, Ch. 192, L. 1993; amd. Sec. 4, Ch. 391, L. 2015.

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.

History: En. Sec. 5, Ch. 192, L. 1993; amd. Sec. 5, Ch. 391, L. 2015.

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.

History: En. Sec. 6, Ch. 192, L. 1993; amd. Sec. 6, Ch. 391, L. 2015.

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.

History: En. Sec. 7, Ch. 192, L. 1993; amd. Sec. 7, Ch. 391, L. 2015.

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.

History: En. Sec. 8, Ch. 192, L. 1993; amd. Sec. 8, Ch. 391, L. 2015.

1-5-609. Certificate of notarial acts. (1) (a) A notarial act must be evidenced by a

certificate completed by a notarial officer.

(b) The certificate must:

(i) be executed contemporaneously with the performance of the notarial act;

(ii) specify the notarial act performed;

(iii) identify the venue as described in 1-5-629;

(iv) identify the name of the principal, the type of record and issuing entity that is copied, or the information the notarial officer has certified under 1-5-603(11);

(v) be signed and dated by the notarial officer. If the notarial officer is a notary public, a clerk of court, a deputy clerk of court, a clerk and recorder, a deputy clerk and recorder, the state registrar, or the authorized agent of the state registrar, the certificate must be signed in the same manner as on file with the secretary of state.

(vi) contain the title of the office of the notarial officer; and

(vii) contain the impression or electronic image of the notary public's official stamp or the notarial officer's seal.

(2) (a) The certificate for a notarial act on a tangible record must be part of or securely affixed to the record.

(b) The certificate for a notarial act on an electronic record must be attached to or logically associated with the record.

(3) A certificate of a remote notarization or remote online notarization must include the information specified in subsection (1)(b), indicate that the notarial act was performed using communication technology, and include any other information required by rule.

(4) A certificate of a notarial act is sufficient if the certificate meets the requirements of subsections (1) through (3) 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.

(5) (a) A notary public may subsequently correct any information included on or omitted from a certificate executed by that notary if the change or correction can be evidenced by the information contained in the notary's journal record of the transaction.

(b) A notary public may not change or correct an impression or electronic image of an official stamp but may affix a subsequent impression on a tangible record or attach or logically associate with an electronic record an electronic image of a missing, illegible, or incorrect official stamp.

(c) Any changes or corrections must be dated and initialed by the notary public and a corresponding notation of the changes must be made in the journal record. Only the notary public who performed the notarization may make or authorize a change or correction to a previously completed certificate. If a notary public authorizes a third party to change or correct the information included or omitted on a previously completed certificate, the authorization must be granted in writing and a copy of the message authorizing the change and a copy of the changed certificate must be attached to the notary public's journal record for that transaction.

History: En. Sec. 9, Ch. 192, L. 1993; amd. Sec. 11, Ch. 161, L. 2001; amd. Sec. 9, Ch. 391, L. 2015; amd. Sec. 3, Ch. 123, L. 2019.

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) through (4):

(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)

.....

Printed name and 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 (title or capacity) of or for (name of party on behalf of whom the record was executed).

.....
(Signature of notarial officer)

(Official stamp)

.....

Printed name and title of officer (if not shown in stamp)

(3) For a verification on oath or affirmation (jurat):

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)

.....

Printed name and 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)

.....

Printed name and title of officer (if not shown in stamp)

(5) For a signature witnessing in a representative capacity:

State of.....

County of.....

This record was signed before me on (date) by (name(s) of individual(s)) as (title or capacity) of or for (name of party on behalf of whom the record was executed).

.....

(Signature of notarial officer)

(Official Stamp)

.....

Printed name and title of officer (if not shown in stamp)

(6) For certifying a copy of a tangible record:

State of.....

County of.....

I certify that this is a true and correct copy of (identification of record), an original record in the possession of, or issued by, (custodian or issuer) and made by me on (date)

.....

(Signature of notarial officer)

(Official stamp)

.....

Printed name and title of officer (if not shown in stamp)

(7) For certifying a copy of an electronic record:

State of.....

County of.....

I certify that the foregoing and annexed record entitled (title of record), dated _____, and consisting of _____ (pages or size of file) is a true and correct copy of an electronic record printed directly from the electronic file by me on (date)

.....

(Signature of notarial officer)

(Official stamp)

.....

Printed name and title of officer (if not shown in stamp)

(8) 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).

(9) For a remote notarization or remote online notarization on a tangible or electronic

record for a principal located outside the United States:

State of.....

County of.....

This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are) located in (place where principal(s) was/were physically located at the time of notarial act) and that this record is part of or pertains to a matter that is to be filed with or is before a court, governmental entity, or other entity located in the United States or involves property located in, or a transaction substantially connected with, the United States.

.....
(Signature of notarial officer)
(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(10) For a remote notarization or remote online notarization on a tangible or electronic record for a principal located in or outside this state but within the United States:

State of.....

County of.....

This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are) located in (place within the United States where principal(s) was/were physically located at the time of notarial act).

.....
(Signature of notarial officer)
(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(11) For a certification of fact or event:

State of.....

County of.....

I certify that I have confirmed that (information that is being verified) is true and correct based on a review of (the source of the information) made by me on (date).

.....
(Signature of notarial officer)
(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(12) For certification of life:

State of.....

County of.....

I certify that (name of individual) is alive and appeared physically before me at (location where individual appeared) on (date) at (time a.m. or p.m.).

.....
(Signature of notarial officer)
(Official stamp)

Printed name and title of officer (if not shown in stamp)

(13) For certification of photograph:

State of.....

County of.....

I certify that the attached photograph is an accurate representation of (name of individual or item) based on (how subject was confirmed) on (date).

.....

(Signature of notarial officer)

(Official stamp)

.....

Printed name and title of officer (if not shown in stamp)”

History: En. Sec. 10, Ch. 192, L. 1993; amd. Sec. 12, Ch. 161, L. 2001; amd. Sec. 3, Ch. 12, L. 2003; amd. Sec. 5, Ch. 319, L. 2009; amd. Sec. 10, Ch. 391, L. 2015; amd. Sec. 4, Ch. 123, L. 2019.

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.

History: En. Sec. 11, Ch. 192, L. 1993; amd. Sec. 11, Ch. 391, L. 2015.

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

1-5-615. Notarial act regarding electronic record -- selection of system -- notification -- training. (1) (a) A notarial officer may select one or more electronic notarization systems to perform notarial acts with respect to electronic records.

(b) A person may not require a notarial officer to perform a notarial act with respect to an electronic record with an electronic notarization system that the notarial officer has not selected.

(2) An electronic notarization system provider shall take reasonable steps to ensure that a notary public opting to use the provider’s system has the knowledge to use it to perform electronic notarial acts in compliance with this part.

(3) Before a notary public performs the notary public’s initial notarial act using an electronic notarization system or a communication technology, a notary public shall:

(a) notify the secretary of state that the notary public will be performing notarial acts using the electronic notarization system or the communication technology;

(b) identify the electronic notarization system or communication technology, or both, that the notary public intends to use. If the secretary of state has established by rule the standards for the system or technology, the system or technology must comply with the standards. If the system or technology complies with the standards, the secretary of state shall approve the use of the system or technology.

(c) complete a course of instruction approved by the secretary of state and pass an examination based on the course. The course must cover notarial rules, procedures, and ethical obligations pertaining to remote or electronic notarization under this part or pursuant to any other law or official guideline of this state. The course may be completed in conjunction with any course required by the secretary of state for a notary public commission. A notary shall submit proof to the secretary of state that the notary has successfully completed the course and examination.

History: En. Sec. 12, Ch. 391, L. 2015; amd. Sec. 5, Ch. 123, L. 2019.

1-5-616. Official signature and stamp. (1) The official signature of a notary public must:

- (a) be filed with the secretary of state on a form prescribed by the secretary of state;
- (b) be reasonably similar to the official signature on file with the secretary of state;
- (c) if executed on a tangible record, be in blue or black ink;
- (d) if executed on an electronic record, be an electronic image of the official signature submitted to the secretary of state; and
- (e) be affixed to all tangible and electronic records.

(2) The official stamp of a notary public must:

- (a) include the notary public's name, title, city of residence, commission expiration date, or other information required by the secretary of state;
- (b) if a physical image, be in blue or black ink in a format prescribed by the secretary of state; or
- (c) 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.

History: En. Sec. 13, Ch. 391, L. 2015; amd. Sec. 6, Ch. 123, L. 2019.

1-5-617. Stamping device. (1) A notary public is the sole owner of the notary public's stamping device and 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 or for any other reason.

(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 notary public's stamping device is lost, stolen, or otherwise inaccessible to the notary public.

History: En. Sec. 14, Ch. 391, L. 2015; amd. Sec. 7, Ch. 123, L. 2019.

1-5-618. Audio-video recordings -- notary public journal -- security and retention.

(1)(a) If a notarial act is performed using communication technology, the notarial officer shall make an audio-visual recording of the entire communication.

(b) Except as provided in subsection (1)(d)(ii), a notarial officer must keep sole possession of an audio-visual recording.

(c)(i) A notarial officer shall allow a person to inspect or obtain a copy of an audio-visual recording if:

(A) the requester specifies the month, year, type of record, and name of the principal for the notarial act, in a signed tangible or electronic request;

(B) the notarial officer does not surrender possession or control of the original recording;

(C) the requester is shown or given a copy of only the recording specified; and
(D) the notarial officer is satisfied that the requester has reasonable purpose directly relating to the notarization.

(ii) A recording may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the secretary of state.

(d)(i) Except as provided in subsection (1)(d)(ii), a notarial officer shall retain an audio-visual recording for 10 years from the date of the recording.

(ii) A current or former notarial officer may transmit the audio-visual recording to a repository approved by the secretary of state.

(2)(a) A notary public shall maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs.

(b) 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, including the date of the record if indicated, and the type of notarial act;

(c) the full name and address of each principal;

(d) the signature of each principal, except

(i) transcripts of depositions and certified copies do not require the signature of the individual for whom the notarial act is performed; and

(ii) if the notarial act is performed using communication technology, the journal record must reference the storage location of the audio-video recording in lieu of the signature of the principal;

(e) if the identity of the principal is based on personal knowledge, a statement to that effect;

(f) if the identity of the principal 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;

(g) if the notarial act is performed using an electronic notarization system or communication technology, or both, a notation identifying the system or technology, or both; and

(h) the fee, if any, charged by the notary public.

(4) A notary public may not record in the journal a social security number, passport number, driver's license number, birth date, or any other information prohibited by the secretary of state. A notary public may include other information descriptive of the record, including the number of pages in a document, whether the document was written in a foreign language, or other information pertaining to the record that is not otherwise prohibited by law or rule.

(5)(a) Except as provided in subsection (9)(b), a notary public shall keep sole control of the journal and all other notarial records and surrender or destroy them only as

authorized by law or rule, by court order, or at the direction of the secretary of state.

(b) A notary public may not allow the notary's journal to be used by any other notary and may not surrender the journal to an employer upon termination of employment without the approval of the secretary of state. An employer may retain a copy of the journal of an employee who is a notary after the notary's employment ceases if the journal contains records of notarial acts performed within the scope of the notary's employment.

(6)(a) Any person may inspect or obtain a copy of an entry in a notary public's journal if:

- (i) the person specifies in a signed tangible or electronic request the month, year, type of record, and name of the principal;
- (ii) the notary public does not surrender possession or control of the journal;
- (iii) the person is shown or given a copy of only the entry specified; and
- (iv) the notary is satisfied that a person requesting the inspection or copy does not have a criminal or other illegal purpose for inspecting the entry or obtaining the copy.

(b) A journal may be examined and copied without restriction:

- (i) by a law enforcement officer in the course of an official investigation;
- (ii) if subpoenaed by court order; or
- (iii) at the direction of the secretary of state.

(7) A notary public shall promptly notify the secretary of state on discovering that the notary public's journal is lost or stolen.

(8) 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.

(9)(a) Except as provided in subsection (9)(b), a notary public shall retain a journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A former notary public may transmit the journal to a repository approved by the secretary of state.

(10) 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 audio-visual recordings shall transmit all journals and recordings to a repository approved by the secretary of state.

(11) Upon revocation of a notary public's commission, the notary shall transmit the notary's journal and audio-visual recordings to a repository approved by the secretary of state.

(12) If Montana supreme court rules governing conduct by members of the bar, including the rules of professional conduct and ethics opinions, prohibit compliance by an attorney licensed by the supreme court with any provision of this section, that provision does not apply to the attorney.

History: En. Sec. 15, Ch. 391, L. 2015; amd. Sec. 8, Ch. 123, L. 2019.

1-5-619. Notary public qualifications -- commission -- renewals. (1) To hold a commission as a notary public, an individual must:

- (a) be at least 18 years old;
- (b) be a citizen or permanent legal resident of the United States;
- (c)(i) be a resident of Montana;
- (ii) be the spouse or legal dependent of military personnel assigned to active duty in

this state;

(iii) maintain a place of business in the state of Montana that is registered pursuant to Title 35 and meet any applicable business licensing requirements of the local government where the business is located;

(iv) be regularly employed at an office, business, or facility located within the state of Montana by an employer registered and licensed to do business in this state; or

(v) hold a current professional license to practice the profession in Montana issued by an appropriate Montana authority; and

(d) be able to read and write English;

(2) To be eligible for a new or renewed commission, an applicant shall pass an examination and meet the education requirements 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 new or renewed commission as a notary public.

(4) An applicant for a new or renewed 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 \$25,000. 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) provide certification that the applicant has passed the examination and completed the education requirements in 1-5-620; and

(f) submit the application, bond, certification, 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.

History: En. Sec. 16, Ch. 391, L. 2015; amd. Sec. 9, Ch. 123, L. 2019.

1-5-620. Examination and education of notary public -- fee. (1) An applicant for a new or renewed commission as a notary public 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 for a new or renewed commission. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.

(3) On and after July 1, 2020, in addition to passing the examination:

(a) for a new commission, the applicant must have completed within the previous 12 months at least 4 hours of notary public education approved by the secretary of state or by the commission of continuing legal education;

(b) to renew a commission, an applicant must have completed:

(i) within the previous 12 months, at least 4 hours of notary public continuing education approved by the secretary of state or by the commission of continuing legal education; or

(ii) in each of the previous 3 years, at least 2 hours of notary public continuing education approved by the secretary of state or by the commission of continuing legal education.

(4) The secretary of state shall collect fees commensurate with the cost incurred by the secretary of state's office for providing notary public education and examination.

History: En. Sec. 17, Ch. 391, L. 2015; amd. Sec. 10, Ch. 123, L. 2019.

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) The secretary of state may require a notary public who has violated a provision of this part or a rule of the secretary of state implementing a provision of this part to complete a notary public education class approved by the secretary.

(3) A notary who is convicted of or pleads guilty or no contest to a felony crime involving fraud, dishonesty, or deceit shall notify the secretary of state within 30 days of

the conviction or plea.

(4) 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 contest the action in accordance with the Montana Administrative Procedure Act.

(5) 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.

History: En. Sec. 18, Ch. 391, L. 2015; amd. Sec. 11, Ch. 123, L. 2019.

1-5-622. Authority and requirements to refuse to perform notarial act. (1) A notarial officer shall 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.

(3) A notary public shall refuse a request that would require the notary to:

(a) use an electronic notarization system or a communication technology that the notary does not know how to operate; or

(b) use an electronic notarization system or communication technology that does not meet the requirements of this part or standards adopted by rule.

History: En. Sec. 19, Ch. 391, L. 2015; amd. Sec. 12, Ch. 123, L. 2019.

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

(2) A notary public shall record in the notary's journal the name and address of the individual who signs the record as well as the name and address of the principal unable to sign.

History: En. Sec. 20, Ch. 391, L. 2015; amd. Sec. 13, Ch. 123, L. 2019.

1-5-624. Validity of notarial acts. Failure by a notarial officer to perform a duty or meet a requirement specified in this part, except failure to comply with the provisions of 1-5-603(12) or 1-5-625(1)(a) through (1)(d) and (2), 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.

History: En. Sec. 21, Ch. 391, L. 2015; amd. Sec. 14, Ch. 123, L. 2019.

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 an official 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) affix the notary public's official signature or stamp to any record that does not contain the notary public's completed notarial certificate, unless otherwise directed by statute or rule;

(e) engage in false or deceptive advertising;

(f) 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)(f), advertising must include the statement provided in subsection (4).

(g) 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

(h) 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."

History: En. Sec. 22, Ch. 391, L. 2015; amd. Sec. 15, Ch. 123, L. 2019.

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) executing a verification on oath or affirmation (jurat);
- (d) certifying a transcript;
- (e) certifying a copy.
- (f) performing a certification of fact; or
- (g) performing another notarial act authorized by law, unless charging a fee for the act is expressly prohibited by that law.

(2)(a) Subject to subsections (2)(b) through (2)(d), a notary public may charge an additional fee, as provided by rule, to:

- (i) perform a notarial act using an electronic notarization system or communication technology; or

- (ii) travel to perform a notarial act.

(b) notary public shall explain to the person requesting the notarial act that:

- (i) the fee is in addition to a fee specified in subsection (1); and

- (ii) the fee is an amount not determined by law.

- (c) The person requesting the notarial act must agree in advance on the amount of the additional fee.

- (d) A fee charged for travel must be equal to or less than the standard mileage rates allowed by the internal revenue service.

(3) A notary public may also charge a fee to recover the actual cost of providing a copy of a journal entry or audio-visual recording of a notarial act performed using communication technology.

(4) 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.

(5) 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.

(6) 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.

History: En. Sec. 23, Ch. 391, L. 2015; amd. Sec. 16, Ch. 123, L. 2019.

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;

- (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; and

- (3) that describes any active or pending administrative or disciplinary action against the notary public.

History: En. Sec. 24, Ch. 391, L. 2015; amd. Sec. 17, Ch. 123, L. 2019.

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, electronic notarization systems, or communication technology may not require or accord legal status or effect to the implementation or application of a specific system,

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.

History: En. Sec. 25, Ch. 391, L. 2015; amd. Sec. 18, Ch. 123, L. 2019.

1-5-629. Authority and venue for notarial acts. (1) A notary public may perform a notarial act within the jurisdiction authorized in the notary's commission from the secretary of state.

(2) The venue for a notarial act is the state and the county where the notarial officer is physically located at the time the notarial act is performed.

History: En. Sec. 19, Ch. 123, L. 2019.

1-5-630. Solemnization of marriage authorized. As provided in 40-1-301 and subject to rules adopted by the secretary of state, a notary public may solemnize a marriage.

History: En. Sec. 20, Ch. 123, L. 2019.

1-5-631. Evidence of authenticity of notarial act for record sent to foreign country.

(1) The authenticity of the official seal and signature of a Montana notarial officer may be evidenced by a certificate of authority from the secretary of state confirming the authority of a Montana notarial officer to perform a notarial act on a record that will be sent to a foreign country. The certificate must be in a form prescribed by the Hague Convention of October 5, 1961, or in a form approved by the United States department of state.

(2) A certificate of authority may not be issued for a record that is intended for use within the United States, including its territories, or by a federally recognized tribe.

(3) The secretary of state may refuse to issue a certificate of authority if the secretary of state has reason to believe that the record may be used within the United States, including its territories, or by a federally recognized tribe, or for any unlawful,

fraudulent, or improper purpose.
History: En. Sec. 21, Ch. 123, L. 2019.

1-5-632. Unlawful acts -- penalties. (1) It is unlawful to:

- (a) intentionally withhold from a notary public the notary public's official stamp, journal, or certificate of commission of a notary public;
- (b) attach, photocopy, alter, or otherwise reproduce a notary public's signature, stamp, or completed notarial certificate for use on a record other than the original record for which it was intended;
- (c) knowingly destroy, deface, or conceal a notarial record;
- (d) change, modify, correct, or in any other way amend a notarial certificate, except as provided in 1-5-609(5).

(2) A person convicted of an offense under this section is subject to a fine not to exceed \$2,500, incarceration for a period not to exceed 1 year, or both, for each offense.
History: En. Sec. 22, Ch. 123, L. 2019.

CHAPTER 6. OATHS

PART 1. GENERAL PROVISIONS

1-6-101. Officers who may administer oaths.

Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

History: En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered by the person who swears or affirms expressing that person's assent when addressed with "You do solemnly swear (or affirm, as the case may be) that the evidence you will give in this issue (or matter), pending between and, is the truth, the whole truth, and nothing but the truth, so help you God".

History: En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2; amd. Sec. 32, Ch. 61, L. 2007.

1-6-103. Variation of oath to suit witness's belief.

The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

History: En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; R.C.M. 1947, 93-2401-3; amd. Sec. 9, Ch. 119, L. 1979.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may instead of taking an oath make a solemn affirmation or declaration by assenting when addressed with "You do solemnly affirm (or declare), etc.", as provided in 1-6-102.

History: En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en. Sec. 695, 1st

Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5; amd. Sec. 33, Ch. 61, L. 2007.

1-6-105. Unsworn declarations -- penalty of perjury. (1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

"I declare under penalty of perjury that the foregoing is true and correct.

.....

Date and place Signature"

(b) If executed in any place outside the state:

"I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

.....

Date and place Signature"

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

History: En. Sec. 2, Ch. 238, L. 2011.

TITLE 30. TRADE AND COMMERCE

CHAPTER 18. ELECTRONIC TRANSACTIONS

PART I. UNIFORM ELECTRONIC TRANSACTIONS ACT

30-18-110. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History: En. Sec. 10, Ch. 52, L. 2001.

ADMINISTRATIVE RULES OF MONTANA

TITLE 44. SECRETARY OF STATE

CHAPTER 2. OVERALL OFFICE RULES

SUB-CHAPTER 2. ACCESS TO DOCUMENTS AND FEES FOR COPIES

44.2.205 RETURNED CHECK SERVICE FEES

(1) The following fees will be charged for insufficient funds checks, checks returned from the bank unpaid, and returned e-checks:

- (a) first returned check \$15.00
- (b) each subsequent returned check by the same payer 25.00

(2) The returned check service fees apply to checks returned because of insufficient funds, closed accounts, stop payments, incorrect date, inconsistency in amounts, incorrect signature, and/or lack of signature.

(3) The following exceptions apply:

(a) the payer of the check presents the secretary of state with written confirmation by the payer's financial institution that the check was returned to the secretary of state by the financial institution due to an error on the part of the financial institution; or

(b) the check is a returned e-check from the secretary of state's online payment processor that states the customer entered an invalid routing/account number.

AUTH: 2-15-405, MCA

IMP: 2-15-405, 27-1-717, MCA

CHAPTER 15. NOTARIES PUBLICS

SUB-CHAPTER 1. COMMISSIONING

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 by submitting one or more of the requisite forms prescribed by the Secretary of State that includes the following information:

- (a) applicant's name, which must consist of at least one initial and the notary's surname;
- (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) applicant's work email address;
- (i) if the applicant is unemployed or self-employed, the applicant must submit an alternate contact person and the alternate contact's phone number or email address;
- (h) the date the applicant's current notary commission expires (if applicable);
- (i) the name under which the applicant's previous commission was issued (if applicable);
- (j) whether or not the applicant intends to provide remote and/or electronic notarization services, and, if so, the identification of the communication technology and/or the electronic notarization system(s) the applicant intends to use and a copy of the certificate showing the notary has successfully completed an approved course of instruction and examination; and
- (k) an exemplar of the applicant's official signature which must match the applicant's name as entered on the application and the surety bond and which must be used on all tangibly and electronically notarized records.

(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; and
- (c) whether the applicant:

- (i) is a resident of Montana;
 - (ii) has a place of employment or practice in Montana; or
 - (iii) is the spouse or legal dependent of military personnel assigned to active duty in Montana;
 - (d) can read and write English;
 - (e) has pled guilty, pled no contest, or 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 and that the applicant will support and defend the Constitutions of the United States and the State of Montana and uphold the duties of the office of notary public.
- (4) An applicant shall submit with the application a certification proving the applicant has completed the required education and passed a notary public examination approved by the Secretary of State.
- (a) New and renewing applicants must take and pass the examination no more than six months before submitting the application.
- (i) A grade of 80% is considered passing.
 - (ii) If the applicant fails to achieve a passing score after three attempts, the applicant must wait three months before attempting to take the exam again.

(History: Sec. 2-4-201, MCA; IMP, Sec. 1-5-405, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2008 MAR p. 66, Eff. 1/18/08; AMD, 2015 MAR p. 1913, Eff. 10/29/15, 2019 MAR p. 1530, Eff. 9/7/19.)

44.15.102 APPLICATION FEE

- (1) The applicant shall submit a \$25 non-refundable application fee.

(History: Sec. 1-5-408, MCA; IMP, Sec. 1-5-408, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2001 MAR p. 2162, Eff. 10/26/01; AMD, 2008 MAR p. 66, Eff. 1/18/08.)

44.15.103 NOTARY BOND

- (1) The applicant shall submit with the application and fee, a bond on the form prescribed by the Secretary of State from an approved bonding company in the amount of \$25,000 for the full four-year term of the notary commission. The bonding company shall notify the secretary of state's office within 30 business days if a claim is made against the bond or if the bond is canceled or otherwise not honored.

(History: Sec. 2-4-201, MCA; IMP, Sec. 1-5-405, MCA; NEW, 1993 MAR p. 2250, Eff. 10/1/93; AMD, 2001 MAR p. 2162, Eff. 10/26/01, 2019 MAR p. 1530, Eff. 9/7/19.)

44.15.104 REPEALED

(History: Sec. 2-4-201, MCA; IMP, Sec. 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; REPEALED 2015 MAR p. 1913, Eff. 10/29/15)

44.15.105 REQUEST FOR CERTIFICATE OF AUTHORITY

- (1) A person requesting certificate of authority of a record for a foreign country shall submit a \$10 non-refundable fee for each certification, together with a form as prescribed by the Secretary of State.

(History: Sec. 1-5-408, MCA; IMP, Sec. 1-5-607 and 1-5-608, MCA; NEW, 2001 MAR p. 2162, Eff. 10/26/01, 2019 MAR p. 1530, Eff. 9/7/19.)

44.15.106 NOTIFICATION TO SECRETARY OF STATE OF CHANGE IN INFORMATION OR STATUS

(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 or work e-mail address;
- (e) personal telephone number;
- (f) alternate phone number or contact person;
- (g) employer's name, address, or telephone number; and
- (h) 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 exemplar 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 30 calendar days of:

- (a) being convicted of or entering a plea of guilty or no contest to 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.

(4) A notary public shall notify the Secretary of State within 30 calendar days on a form provided by the Secretary of State:

- (a) if the notary public resigns an active commission prior to the expiration date;
- (b) if the notary public moves out of state and no longer meets the residency requirements to hold a commission; or
- (c) if the notary does not intend to renew the commission and include the following information:
 - (i) the date on which the resignation is effective;
 - (ii) the location where the notary's journals are to be stored; and
 - (iii) the notary's future contact information if different from the information on file with the Secretary of State.

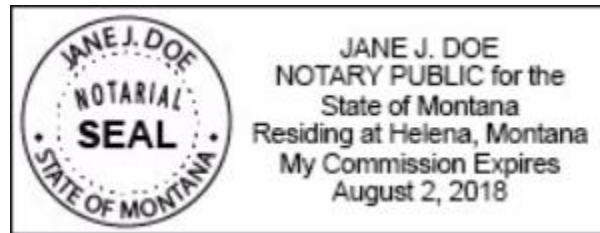
(History: AUTH: Sec. 1-5-628, MCA IMP: Sec. 1-5-619, MCA; NEW, 2015 MAR p. 1913, Eff. 10/29/15, 2019 MAR p. 1530, Eff. 9/7/19.)

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: AUTH: Sec. 1-5-628, MCA; IMP Sec. 1-5-616, MCA; NEW, 2015 MAR p. 1913, Eff. 10/29/15.)

44.15.108 REMOTE AND REMOTE ONLINE NOTARIZATIONS

- (1) Remote notarizations and remote online 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 and remote online notarizations shall be recorded electronically.
- (4) Prior to performing any remote and remote online notarization, the notary public shall inform all individuals participating in the notarization that the notarization will be electronically recorded.
- (5) All recordings of remote and remote online 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) how the individual for whom the notarial act has been identified; 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) where 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;
 - (e) a declaration that the signature made on the record being notarized was made by the individual knowingly or voluntarily; and
 - (f) if the individual is located outside of the United States at the time of the remote notarization, a declaration that the individual is unaware of any legal conflicts that prohibit the individual's participation in a remote notarization.
- (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, the recording of the remote notarization shall include:
- (a) a statement by the notary public as to how the credible witness was identified;
 - (b) 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; and
 - (c) a sworn statement by the credible witness identifying the principal.
- (9) If the individual for whom the notarial act is being performed was identified by means of identification technologies, the notary shall state the two or more types of technologies used.

(History: AUTH: Sec. 1-5-628, MCA; IMP Sec. 1-5-615, MCA; NEW 2015 MAR p. 1913, Eff. 10/29/15, 2019 MAR p. 1530, Eff. 9/7/19.)

44.15.109 FEES FOR NOTARIAL ACTS

(1) A notary public may charge an additional fee in accordance with 1-5-626(2), MCA;

- (a) for traveling to perform a notarial act;
- (b) for performing a notarial act using an electronic notarization system or communications technology; or
- (c) to recover the cost of providing a journal entry or audiovisual recording.

(History: AUTH: Sec. 1-5-628, MCA; IMP Sec. 1-5-626, MCA; NEW 2015 MAR p. 1913, Eff. 10/29/15, 2019 MAR p. 1530, Eff. 9/7/19.)

44.15.110 NOTARY PUBLIC JOURNAL RETENTION

(1) A notary public must retain the notary's journal(s) at all times while holding an active commission unless the notary has satisfied the requirements set forth by (a).

(a) A notary who transmits control of the notary's journal(s) to the notary's employer shall complete the form prescribed by the Secretary of State and signed by the notary and the notary's employer indicating:

- (i) the physical location where the journal(s) will be kept;
- (ii) the name, phone number, and email of the employer or the custodian of the records; and
- (iii) the notary's authorization for the designated custodian to release the records in

accordance with 1-5-618(6), MCA, and the custodian's agreement to accept the responsibility and conditions.

(2) When a notary voluntarily resigns or chooses not to renew a commission, the notary may choose to transmit the notary's journal(s) to an approved repository by submitting the form prescribed by the Secretary of State and signed by the notary indicating:

- (a) the physical location where the journal(s) will be kept;
- (b) the name, phone number, and email of the proposed custodian of the records; and
- (c) the notary's authorization for the designated custodian to release the records in accordance with 1-5-618(6), MCA, and the custodian's agreement to accept the responsibility and conditions.

(History: 1-5-628, MCA; IMP, 1-5-618, MCA; NEW, 2019 MAR p. 1530, Eff. 9/7/19.)