

# Notarology 101: "Lights, Camera... Notarize!"

Montana's
Notarial Acts and
Requirements





### Let's Set the Stage...

#### "Notarization"

**Common term** describing a Notary's performance of authorized duties.

Montana law authorizes 10 distinct notarial acts.

### Read the Script!

**Before** performing any notarization, **determine which notarial act** you are being asked to perform.



### Montana's Authorized Notarial Acts

- **Acknowledgment** [1-5-603(1), Montana Code Annotated (MCA)]
- Verification on Oath or Affirmation (Jurat) [1-5-603(2), MCA]
- Signature Witnessing [1-5-603(3), MCA]
- Administering Oaths or Affirmation [1-5-603(7), MCA]
- Certify/Attest Copies [1-5-603(5), MCA]
- Certification of Fact, Life, or Photograph [1-5-603(11)(a)(b)(c), MCA]
- Certification of Transcript of Deposition [1-5-603(8), MCA]—
- for Court Reporters only
- Protest of Instrument [1-5-603(6), MCA... for limited financial transactions, requires specialized training]

### Today's Notarial Acts: Two Categories

Notarial acts involving a signature on a record

Notarial acts involving a certification

### Notarial Acts – A Signature on a Record

#### **ACKNOWLEDGMENTS**

- In an <u>individual capacity</u>
- In a <u>representative</u> <u>capacity</u>

VERIFICATION
ON OATH OR
AFFIRMATION
Individual
capacity only.

#### SIGNATURE WITNESSING

- In an <u>individual capacity</u>
- In a <u>representative</u> <u>capacity</u>

### **Notarial Acts - Certifications**

# CERTIFYING, ATTESTING COPIES

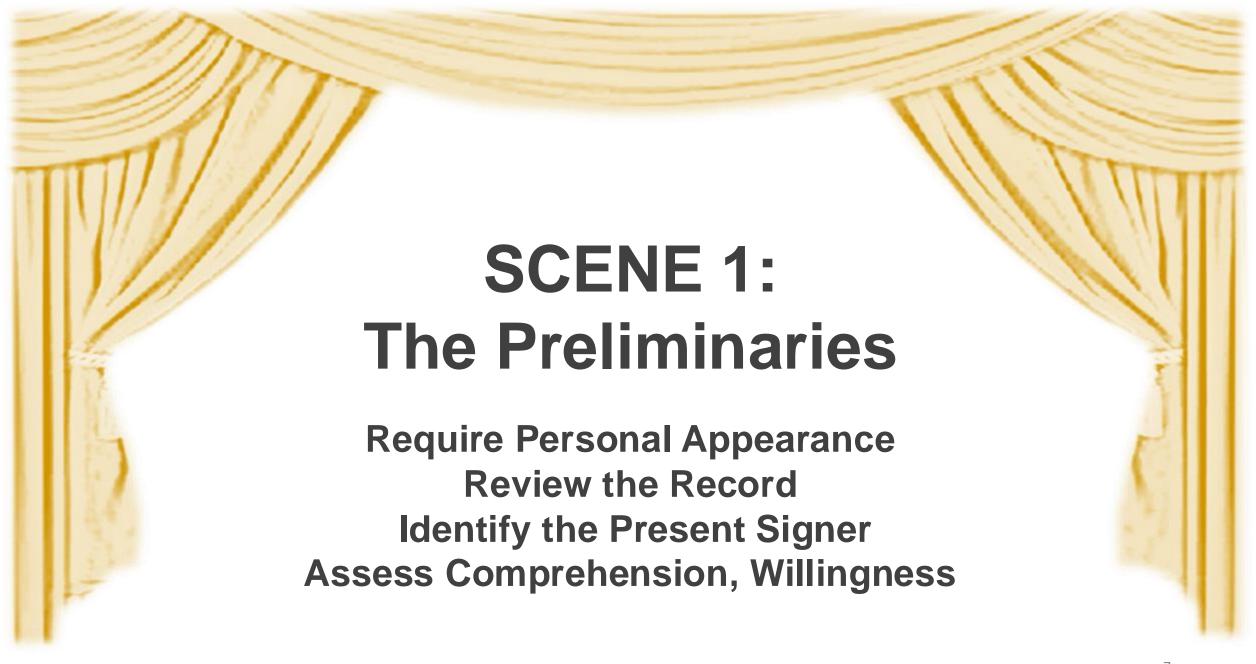
- Tangible (paper) records
- Electronic records

Limited circumstances, specialized training required.

### CERTIFYING (a lot!)

- A fact
- Life
- A photograph
- Transcripts of depositions
- Protests

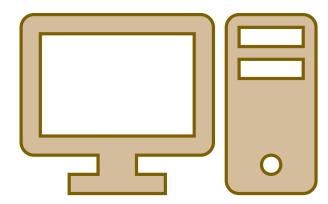
Court reporters ONLY.



### Require Personal Appearance



Physically present



Present by means of communication technology

# Review the Record

# Identify the Signer

### Assess Comprehension, Willingness

- Assess document completeness
- Observe the named document signer(s) and required notarial act
- Check for barriers to notarization

Identify the named document signer(s) by means of personal knowledge or satisfactory evidence of identification, per Montana law.

Assess the present signer's apparent comprehension and willingness to voluntarily execute the record.

(Not "once and done," remain alert.)

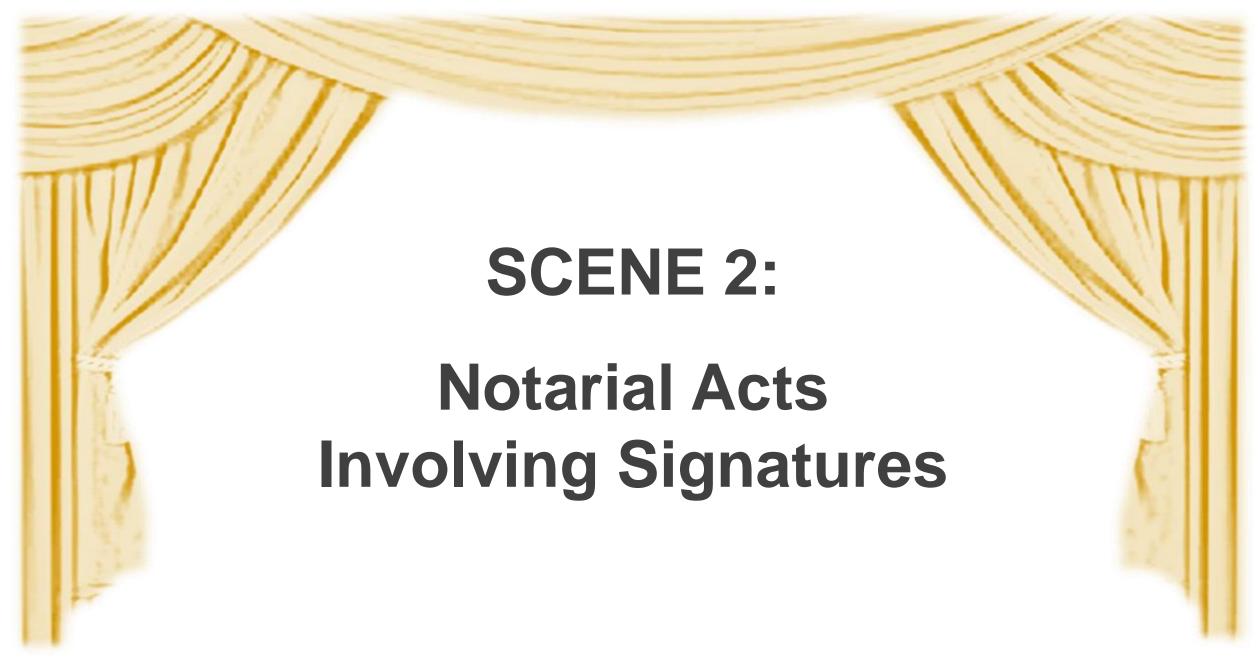
### Know When to Say "No"

### You MUST refuse to notarize when:

The present signer cannot be identified; does not appear to be competent; cannot prove authorized capacity to sign the record; is not signing knowingly or voluntarily. ■ The service requested is not an authorized notarial act. ■ Notarizing would cause you to commit an offense. ■ You are unsure how to properly perform the notarial act. ■ You are expected to use unfamiliar or inadequate electronic/remote notarization technology.

### You MAY refuse to notarize:

At any time, for any reason, unless another law specifically prohibits the reason for refusal.



### Acknowledgments

#### **Defined in Statutes**

"...a declaration, by an individual appearing before a notarial officer, that the individual has knowingly and willingly signed a record for the purposes stated in the record..."

### Individual or Representative Capacity

Acknowledgments may be made by an individual, or on behalf of an individual with proper authority. Examples: power of attorney, officer for a corporation.

### **Acknowledgments** —Typical Documents

Most any document stating terms to which each signing party agrees... lease agreements, contracts, terms of engagement, etc.

### Acknowledgments - "Declaration"

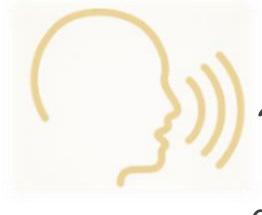
By definition, an acknowledgment requires a verbal declaration by the signer or authorized representative.

The present signer responds to the Notary's verbal question: "Do you declare that you are signing this document knowingly and willingly, for its intended purposes?"

This individual's signature\*
may be made BEFORE or
DURING the notarial act.

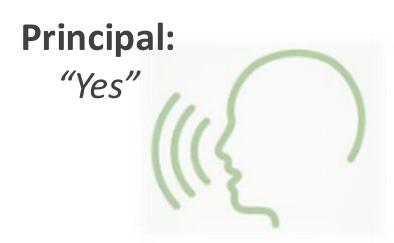
\* An authorized representative signs and acknowledges his/her/their OWN SIGNATURE.

### Acknowledgments Require a Verbal Exchange



### **Notary:**

"Do you declare that you are signing this document knowingly and willingly, for its intended purposes?"



If the principal replies "no," the notarization stops here.

### **Acknowledgments – The Signature**

A document requiring acknowledgment may be signed BEFORE notarization, or DURING notarization.

The notary must feel that the signature is indeed that of the present signer.

Compare to ID credential; ask for a sample signature.



### **Acknowledgment Procedural Steps**

- 1 Require personal appearance.
- 2 Assess comprehension, willingness (during the entire act).
- 3 Review the record (named signer or representative, etc.)
- 4 Identify the present individual (personal knowledge, satisfactory evidence).
- 5 Review or witness the signature; perform verbal ceremony.
- 6 Complete the journal entry.
- 7 Complete the notarial certificate; substantially as in statute.

Secretary
of State's
website
provides
certificate
forms for
print or
download!

### Signature Witnessing



### **Defined in Statutes**

"Signature witnessing means the notarial act in which a notarial officer witnesses a principal execute a record knowingly and willingly for the purposes intended..."

### **Individual or Representative Capacity**

Signature may be made by an individual, or made on behalf of an individual or entity with proper authority. (Same as with acknowledgments.)

# Signature Witnessing Key Words: "Signed," "Subscribed," "Executed"

#### Rule 1

The Notary MUST
actually witness
(watch) the present
signer place their
signature on the record
during the notarial act.

### Rule 2

If the document is already signed, the Notary MUST require it to be signed again in the Notary's presence.

### Signature Witnessing Procedural Steps

1 Require personal appearance.

- Signature witnessing does not require a verbal ceremony.
- 2 Assess comprehension, willingness (the entire act).
- 3 Review the record (named signer or representative, etc.)
- 4 Identify the present individual.
- 5 Require the present signer to sign the record, no exceptions!
- 6 Complete the journal entry.
- 7 Complete the notarial certificate; substantially as in statute.

### **Authorized Representative Signer**

(Acknowledgments and Signature Witnessings)

The record will be signed by someone other than the person or entity named in the record.

### Representative Capacity

A business or corporate officer 

a person given Power of Attorney

■ a guardian, trustee or other agent ■ a personal representative, administrator or executor for a deceased person's estate.

### Notary's Additional Responsibilities

Must determine, from personal knowledge or satisfactory evidence, that the present individual has both the identity and representative authority (capacity) being claimed.

### Assessing a Representative Signer's Authorized Capacity

### The Notary's Personal Knowledge

The Notary personally knows that the present individual has the claimed capacity/authorization to sign the record.

### **Documentary Evidence**

The Notary can be satisfied by reviewing the record presented for notarization, or other documents/records (for example a power of attorney or website employee list, etc.)

### Identifying an Authorized Representative Signer

### The Notary's Personal Knowledge

The Notary personally knows that the present individual has the identity claimed.

### Satisfactory Evidence

If the individual is not personally known, the Notary may rely on statutory forms of satisfactory evidence of identification (ID credentials; credible witness, etc.)

# Notarial Certificate, Authorized Representative Signer

### The notarial certificate MUST include:

- The name of the person (representative) who actually signed the record;
- The capacity in which they signed; and
- The name of the intended signer (person being represented)

	MONTANA NOTARIAL CERTIFICATE
AC	CKNOWLEDGEMENT in a REPRESENTATIVE CAPACITY
State of Montana	
County of	
The attached record,	, consisting of pages was
acknowledged befor	MONTANA NOTARIAL CERTIFICATE
	SIGNATURE WITNESSING in a REPRESENTATIVE CAPACITY
	State of Montana
	County of
as(title or capac	The attached record,, consisting ofpages_was
	(Description of record)
	(Description of record)
	signed before me on by
	(Name of signer)
[Affix stamp a	as of or for
This certificate is to	(Title or capacity) (Named person or entity)
detached or remove	
	(Notary's Signature)
	(Notaly's Signature)
	[Affix stamp above]
	This certificate is to be attached to the record described above. Any evidence that it has been detached or removed may render the notarization invalid or unacceptable.

Hot

See printable notary certificates, including these for representative capacity signings, at www.sosmt.gov/notary/blocks/

### **Authorized Representative Signer**

(Acknowledgments and Signature Witnessing)

#### Remember:

A Montana Notary has broad authority to refuse a notarization... if you are not satisfied that an individual has authority to sign in a representative capacity, you may refuse to notarize.

#### **Recommendation:**

Document a refusal to notarize in your Notary journal!



### Verification on Oath or Affirmation (Jurat)

#### **Defined in Statutes**



"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..."

### **Individual Capacity Only**



Unlike acknowledgments and signature witnessings, verifications are made ONLY by the named signer of the record (no representative capacity).

### Verifications (Jurats), Key Words:

"Signed and sworn," "subscribed and attested," "affirmed and executed"

### Rule 1

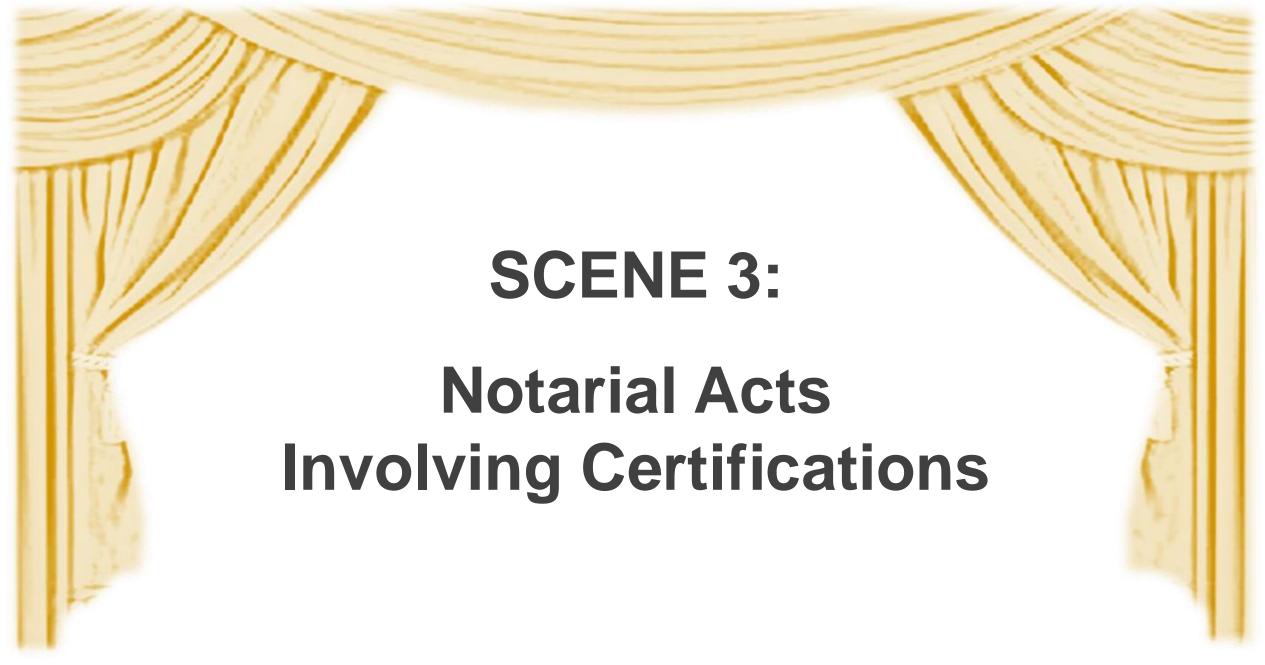
The Notary must have the named signer swear under oath or solemnly affirm, under penalty of perjury, that the contents of the document being signed are true and the signer is signing it willingly.

### Rule 2

The Notary MUST personally witness (watch) the document being signed...
NO EXCEPTIONS.

### Verification (Jurat) Procedural Steps

- 1) Require personal appearance.
- 2 Assess comprehension, willingness (during the entire act)
- 3 Review the record (named signer, required act, etc.)
- 4 Identify the present individual.
- 5 Require the <u>named</u> signer to sign the record, no exceptions!
- 6 Administer the oath or affirmation verbal ceremony.
- 7 Complete the journal entry.
- 8) Complete the notarial certificate; substantially as in statute.



### Copy Certification, Tangible Record

### What:

The Notary certifies or attests that: a copy of a record or an item that was copied is a full, true, and accurate transcription or reproduction of the original or official record or item.

### Caution:

A Notary Public may not certify a copy of an official record issued by a public entity.... unless the Notary is employed by the entity issuing or holding the original version of the record.

Examples: birth, death, or marriage certificates; court records; school transcripts.

### Items a Notary May Copy-Certify

**Drivers Licenses** Student ID Cards **Employee ID Cards Passports Diplomas** Certificates or Awards Personal Documents Bills or Invoices **Bank Statements** 

What they have in common... most are privately produced and personally held.

### Items a Notary May NOT Copy-Certify

Birth or Death Certificates Marriage Licenses **Divorce Decrees Court Orders** Adoption Records Any Recorded Document **School Transcripts** FBI Fingerprint Cards Motor Vehicle Titles

These are "official records"

What most have in common... they are held by an official records custodian.

Also off-limits: any document that indicates it cannot be copied.

# Requirements, Copy Certification of a Tangible Record

### The Notary Must:

- ✓ Be presented with an original, tangible record;
- Personally photocopy or print out the copy;
- ✓ Complete the journal record of the transaction;
- ✓ Complete the appropriate notarial certificate;
- ✓ Affix the certificate to the copy.

### Certifying a Tangible Copy of an Electronic Record



"A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record." [1-5-603(5), MCA]

#### Common purpose:

A record was electronically signed and notarized, but a tangible copy is required for recording or other purposes.

- NO for vital or public records; NO certified copies of vital or public records, EVER.
- Otherwise, the Notary does NOT assess whether the record is "original" (as with a tangible record).

Personally download, print the tangible copy of the electronic record directly from the digital file.

complete the statutory certificate for a tangible copy of an electronic record; attach it to the tangible copy.

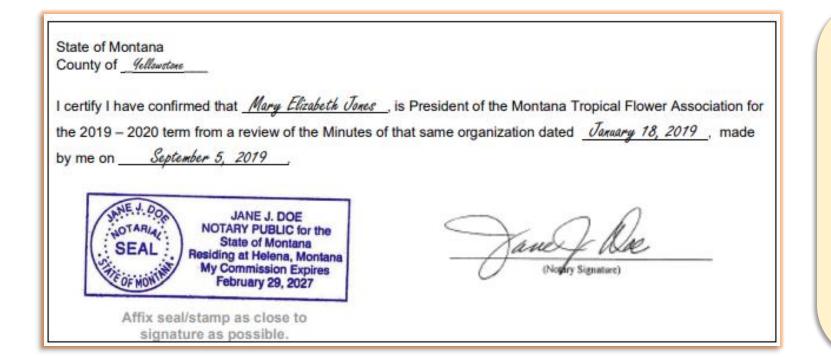
# Certification of Fact(s) or Photograph Fact(s): Photograph:

A Montana Notary may review public or private records to ascertain or verify that certain facts are true; the Notary must deem such records or information source to be reliably accurate.

A Montana Notary may, by personal knowledge or satisfactory evidence, certify that a photograph is an accurate representation of the individual or item represented.

NOTE: Personal appearance of the requestor or principal may or may not be necessary. 35

### Certification of Fact(s); Notarial Certificate



A certification of fact(s) will always require the Notary to prepare a notarial certificate.

# Certification of a Photo; Notarial Certificate

MONTANA NOTARIAL CERTIFICAT	E
CERTIFICATION OF PHOTOGRAPH	ı
State of Montana	
County of	
I certify that the attached photograph is an accurate representation	n of
	(Description of subject of photo
based on	onon
(How subject was confirmed)	(Date)
	(Notary's Signature)
[Affix stamp above]	
This certificate is to be attached to the record described above. Ar	ny evidence that it has been
detached or removed may render the notarization invalid or unacc	ceptable.

A certification of a photograph will always require the Notary to prepare a notarial certificate.



### Certification of Life Requirements:

"A notarial officer who certifies that an individual is alive shall verify from personal knowledge or satisfactory evidence that the person appearing before the notarial officer is alive at the time of certification." [1-5-603(11)(b), MCA]

**Description:** 

- Require PHYSICAL appearance.
- Verify identity carefully (see SOS' Notary Handbook, pg. 23)
- If given a form to complete, review it for any certifications you are not authorized to make.
- In lieu of such a document, complete and attach the loose certificate provided by the MT SOS.

### **Certification of Life – Notarial Certificate**



**Don't forget:** Certificate forms for Montana's authorized notarial acts are available at www.sosmt.gov/notary/. Select the "Certificate Templates" option.



• Loose Certificates - Half Page, Single - File contains one each of the following:

Acknowledgment
Acknowledgment in a Representative Capacity
Signature Witnessing
Signature Witnessing in a Representative Capacity
Verification on Oath or Affirmation – Jurat
Certified Copy of Tangible Record
Certified Copy of Electronic Record
Remote or Remote Online Notarization (Universal)
Certification of Fact or Event
Certification of Photograph

And finally...

### Administering Verbal Oaths or Affirmations

### **Purpose**

To compel truthfulness from an individual, when the individual is providing information or testimony, making a pledge, recounting a memory, or similar.

### **Examples**

An individual who:

- provided information in a record;
- witnessed an event;
- is taking public oath of office;
- is subject to interview or interrogation in a law enforcement matter; etc.

### What's the Difference?

### Oath:

A solemn verbal promise *made* to a deity or higher power.



"Do you solemnly swear that the information you will provide shall be true and complete to the best of your knowledge, so help you God?"

### **Affirmation:**

A solemn verbal promise *made* on one's own conscience.

"Do you affirm that the information you will provide shall be true and complete to the best of your knowledge and belief?

### Verbal-Only Oath (No Document)

- With a "verbal-only" oath or affirmation, the individual taking the oath is *not* signing a document (that would be a "verification" a jurat).
- Generally used for depositions, court testimony, oaths of office, or when relying on a credible witness to identify a signer who has no other form of ID.
- You will not complete a notarial certificate but you must complete a full journal entry when you administer a "verbal only" oath or affirmation.



You have great sources at <a href="www.sosmt.gov/notary">www.sosmt.gov/notary</a>
Review your laws and rules often!
If unsure how to proceed... never guess, ASK!
Refuse the notarization when necessary or you are unsure.

ALWAYS create a journal entry!

"Notarology 101: Lights, Camera... Notarize!"

Presented by Kathleen Butler, Executive Director, American Society of Notaries.

Contact kathleen@asnnotary.org Visit www.asnnotary.org

