


The Power Is Yours

A glowing blue lightning bolt strikes a horizontal wire. The wire has blue insulation on the left and red insulation on the right. The lightning bolt is bright and jagged, with smaller sparks branching off it.

In several key places, Montana law gives Notaries like you broad authority to act without telling you what to do. At these times, the power is yours, but you must learn to exercise discretion. Stick around and you'll learn what discretion is, when you must use it, and how to apply it.

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Today You'll Learn

- What discretion is
- Where Montana law requires Notaries to use discretion
- How to exercise discretion



Discretion Defined

WARNING

The following contains depictions of violence and self harm that some viewers may find disturbing and may not be suitable for younger audiences. Viewer discretion is advised.



Discretion

- Individual **choice** or **judgment**.
- The **power** of free decision or latitude of choice within certain legal bounds.
- The ability to make **responsible** decisions.

– *Merriam Webster*

How Much Discretion Does a Notary Have?

More Than You May Think



Verifying Identity

“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.”

MCA 1-5-603(12)(a)



Verifying Identity

"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 ... by means of ... another form of government identification issued to an individual, 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; ... must contain the signature or a photograph of the individual; and ... must be **satisfactory to the notarial officer**..."

MCA 1-5-603(12)(b)(i)(B)(III)

Verifying Identity

“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.”

MCA 1-5-603(14)





Refusal to Notarize

"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 signing knowingly or voluntarily."

MCA 1-5-622(1)

Refusal to Notarize

"A 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."

MCA 1-5-603(4)(b)



Certification of Fact

"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.**"

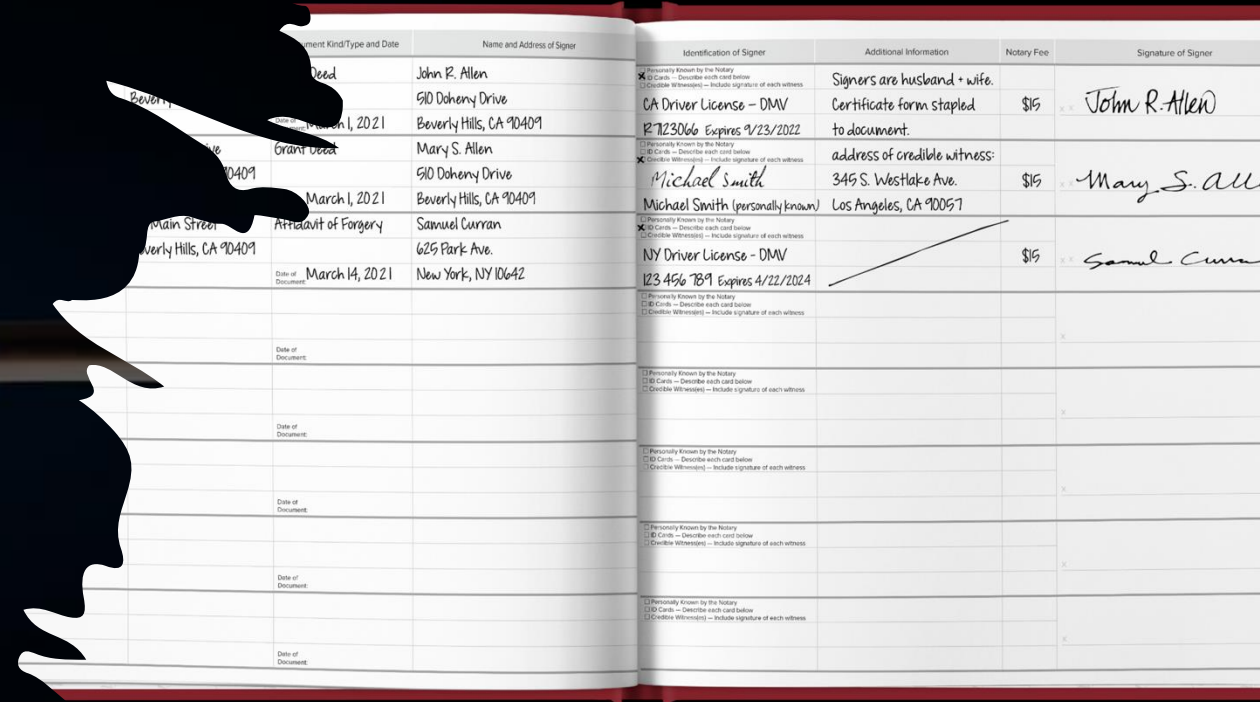
MCA 1-5-603(11)(a)



Notarial Records

“Any person may inspect or obtain a copy of an entry in a notary public’s journal if ... **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.

MCA 1-5-618(6)(a)(iv)



Notarial Records

"A notarial officer shall allow a person to inspect or obtain a copy of an audio-visual recording if ... **the notarial officer is satisfied** that the requester has [a] **reasonable purpose** directly relating to the notarization."

MCA 1-5-618(1)(c)(i)(D)

Remote Acts

"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."

MCA 1-5-603(10)(c)



Same Record

“A notarial officer may perform a remote notarization or remote online notarization only if **the notarial officer ... 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.”

MCA 1-5-603(10)(b)(iv)



Remote Presentation

“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.”


MCA 1-5-602(27)



Communication Technology

"A notarial officer may perform a remote notarization or remote online notarization only if **the notarial officer ... 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."

MCA 1-5-603(10)(b)(v)



How to Exercise Discretion



A woman with curly hair, wearing a light blue shirt, is smiling and looking towards an older man with grey hair who is seen from the back. They appear to be in a professional or office environment. The background is softly blurred, showing office lights and windows.

“Who are you? Who, who, who, who?”

The Who (1978)



Personal Knowledge Standard

“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.”

MCA 1-5-603(12)(a)

Personal Knowledge

Four Key Words

- The dealings must provide sufficient information to verify the person's identity without having to ask them for ID.
- If you feel you must ask the person for identification, you don't personally know them.





Can a Notary and remote signer know they are viewing and signing the same document?

We take this for granted in the paper world.





"A notarial officer who performs a remote notarization or remote online notarization **shall take reasonable steps** to ensure that ... the principal and any required witness are viewing the same record; and ... all signatures, changes, and attachments to the record are made in real time."

MCA 1-5-603(10)(c)(ii), (iii)
(compare MCA 1-5-603(10)(b)(iv))



How do you do this in the remote notarization world?

Notaries must take steps to ensure the record is properly presented by using **reasonable care.**





Remote Online Notarization Systems

- Use only an electronic notarization system approved by the Secretary of State.

- Use only an electronic notarization system that presents the record in real time.

- Ask the provider for a demo of their system and to try it out before you use it.



Remote Online Notarization Session

•
Confirm the remotely located person is viewing the same electronic record as you.

••
Confirm you saw the remotely located person sign the electronic record on your screen.

•••
Confirm the remotely located person saw you notarize the electronic record on their screen.



Remote Notarizations

●
Perform only
acknowledgments
using remote
notarization.

●●
Confirm on camera
the remote signer
signed the record
you are holding.

●●●
Compare the signature
on the record with the
remote signer's gov't
ID shown on camera.

The Power Is Yours



Thank You!



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