

**It's All  
an Act!**

Montana's Statutory  
Notarial Acts and  
Requirements for  
Performing Them



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AMERICAN SOCIETY OF NOTARIES**



# Let's Set the Stage...



## “Notarization”

- **Common term** used to refer to a Notary’s performance of authorized duties.
- Montana law authorizes **10 distinct notarial acts**.

## “Read the Script”

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

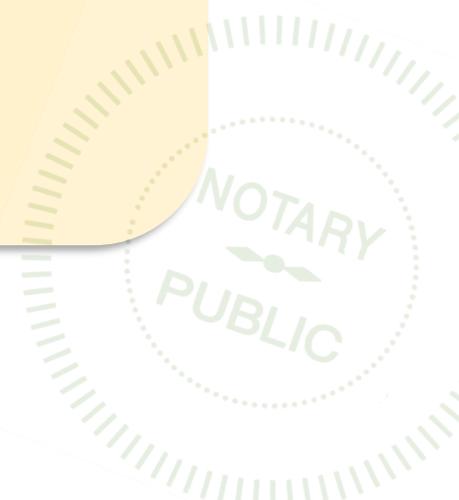
# Montana's Statutorily Authorized Notarial Acts

- ✓ **Acknowledgment** [1-5-603(1), Montana Code Annotated (MCA)]
- ✓ **Signature Witnessing** [1-5-603(3), MCA]
- ✓ **Verification on Oath or Affirmation (Jurat)** [1-5-603(2), MCA]
- ✓ **Administering Oaths or Affirmation** [1-5-603(7), MCA]
- ✓ **Certification of Copies** [1-5-603(5), MCA]
- ✓ **Certification of Fact, Life, or Photograph** [1-5-603(11), 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 additional training*

# Authorized Notarial Acts: Two Categories

Notarial acts  
involving  
signatures on  
a record

Notarial acts  
involving a  
certification



# Notarial Acts Involving Signatures on a Record

## ACKNOWLEDGMENTS

- In an individual capacity
- In a representative capacity

## SIGNATURE WITNESSING

- In an individual capacity
- In a representative capacity

## VERIFICATION ON OATH OR AFFIRMATION

Individual  
capacity only.

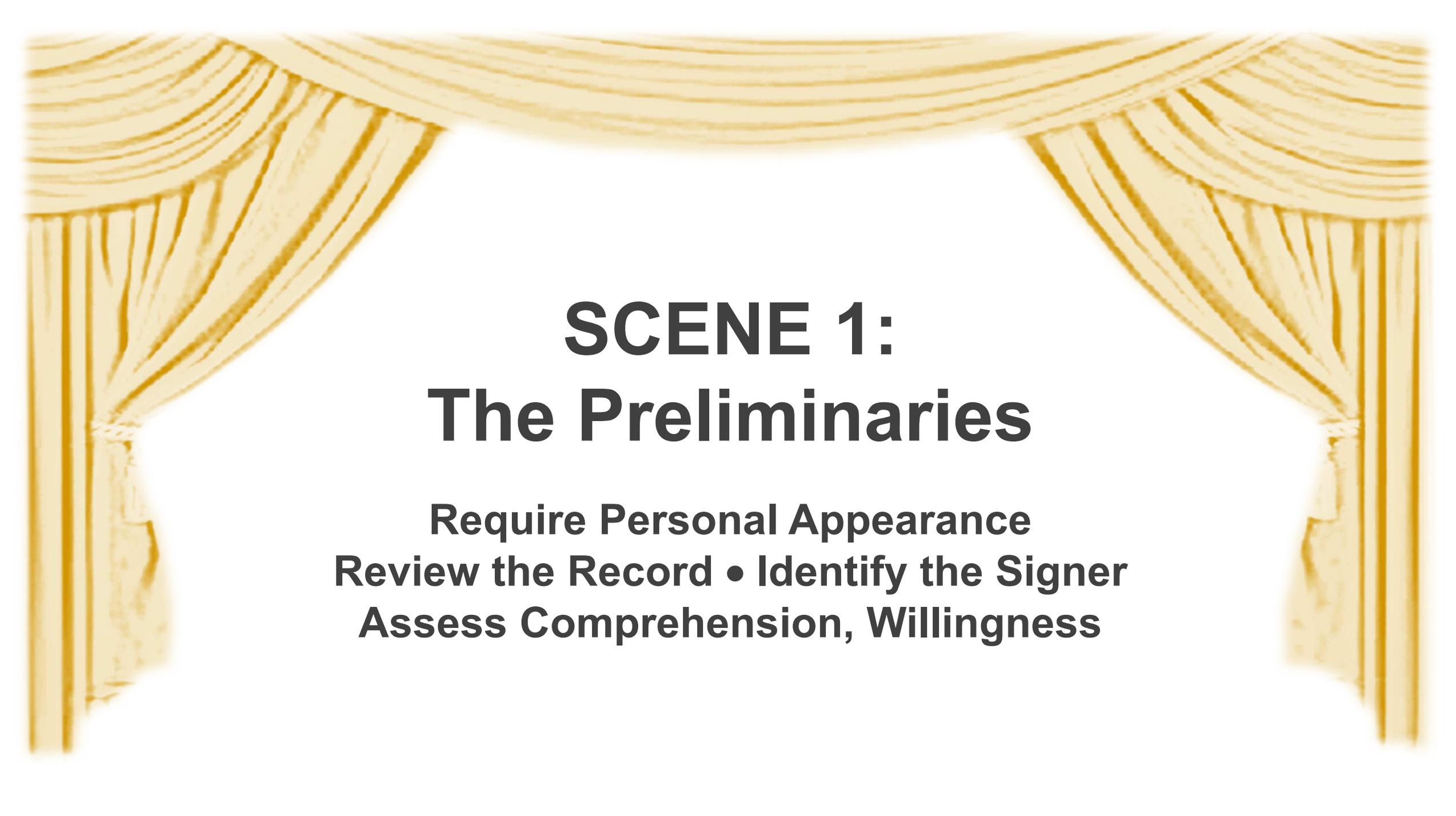
# Notarial Acts Involving a Certification

## CERTIFICATION OF COPIES

- a) Tangible (paper) records
- b) Electronic records

## CERTIFICATION OF:

- a) Facts
- b) Life
- c) Photographs
- d) *Transcripts of depositions*
- e) *Protests*



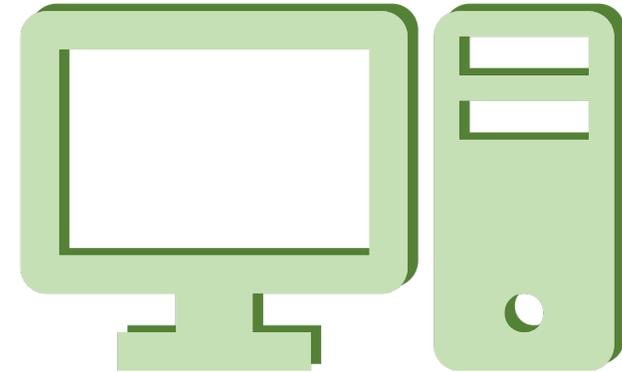
# **SCENE 1: The Preliminaries**

**Require Personal Appearance  
Review the Record • Identify the Signer  
Assess Comprehension, Willingness**

# Demand Personal Appearance as Required



Physically  
present



Present by means  
of communication  
technology

# Review the Record

Assess document completeness; observe **the named document signer(s)**; the required notarial act; and check for barriers to notarization.

# Identify the Signer

Identify the named document signer(s) by means of personal knowledge or satisfactory evidence of identification as provided in MT law.

# Assess Comprehension, Willingness

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

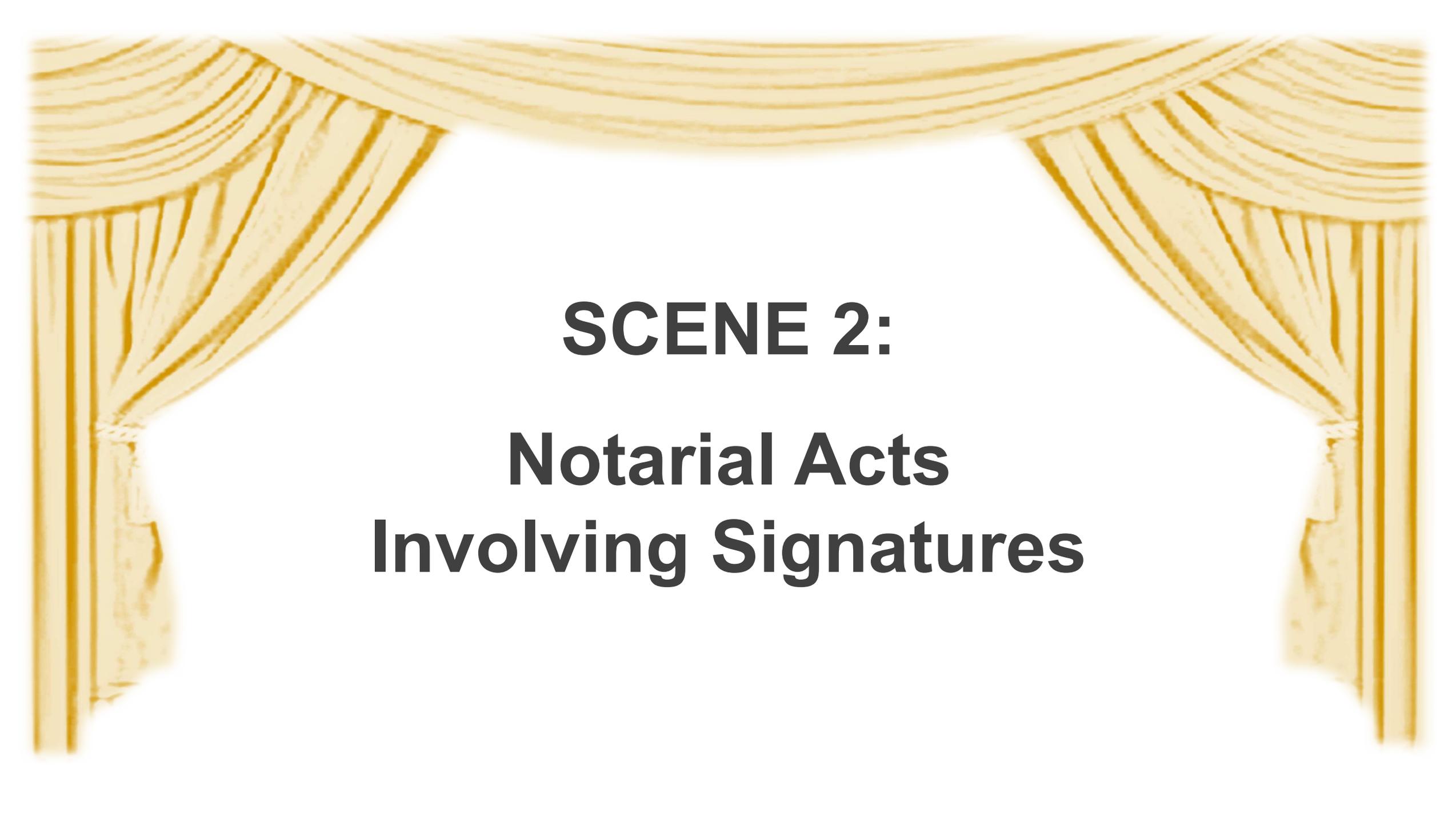
# When Necessary, Refuse to Notarize

## Examples - When a Notary Must Refuse

The present signer cannot be identified by the Notary; 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 the Notary to commit an offense. ■ The Notary is unsure how to properly perform the notarial act.

## When a Notary May Refuse

At any time, for any reason, unless another law specifically prohibits the Notary from refusing.



**SCENE 2:**

**Notarial Acts  
Involving Signatures**

# Acknowledgments

## Defined in Statutes

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“...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

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An acknowledgment may be made by an individual, or made on behalf of that 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.



# Key Word: “Declaration”

As defined, 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 willingly, for its intended purposes?”*

The present, acknowledging individual’s signature\* may be made BEFORE or DURING the notarial act.

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

# Acknowledgment Procedural Steps

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

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

# Signature Witnessing

## Defined in Statutes

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

## Individual or Representative Capacity

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

# Signature Witnessing Key Words: “Signed,” “Subscribed,” “Executed”

## Rule 1

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The Notary **MUST actually witness (watch)** the present signer place his/her/their signature on the record during performance of the notarial act.

## Rule 2

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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.
- 2 Assess comprehension, willingness.
- 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.

*TIP: Signature witnessing does not require a verbal ceremony.*

# Authorized Representative Signer (Acknowledgments and Signature Witnessing)

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

## Examples of 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 being claimed.**

# Assessing a Representative Signer's Capacity (Authority)

## The Notary's Personal Knowledge

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

## Documentary Evidence

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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

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

## Satisfactory Evidence

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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)

<b>MONTANA NOTARIAL CERTIFICATE</b> <b>ACKNOWLEDGEMENT in a REPRESENTATIVE CAPACITY</b>	
State of Montana County of _____	
The attached record, _____, consisting of _____ pages was	
acknowledged before	
as _____	
(title or capacity)	
[Affix stamp here]	
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.	

<b>MONTANA NOTARIAL CERTIFICATE</b> <b>SIGNATURE WITNESSING in a REPRESENTATIVE CAPACITY</b>	
State of Montana County of _____	
The attached record, _____, consisting of _____ pages was	
(Description of record)	
<b>signed</b> before me on _____ by _____,	
(Name of signer)	
as _____	_____
(Title or capacity)	(Named person or entity)
	_____ (Notary'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 Tip:** Access printable Notary Certificates, including those for signings in a representative capacity, at [www.sosmt.gov/notary/blocks/](http://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

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“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

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Unlike acknowledgments and signature witnessings, verifications are made **ONLY** by the named signer of the record.

# Verifications (Jurats), Key Words:

**“Sworn” or “Affirmed” –AND–  
“Signed,” “Subscribed,” “Executed”**

## Rule 1

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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.

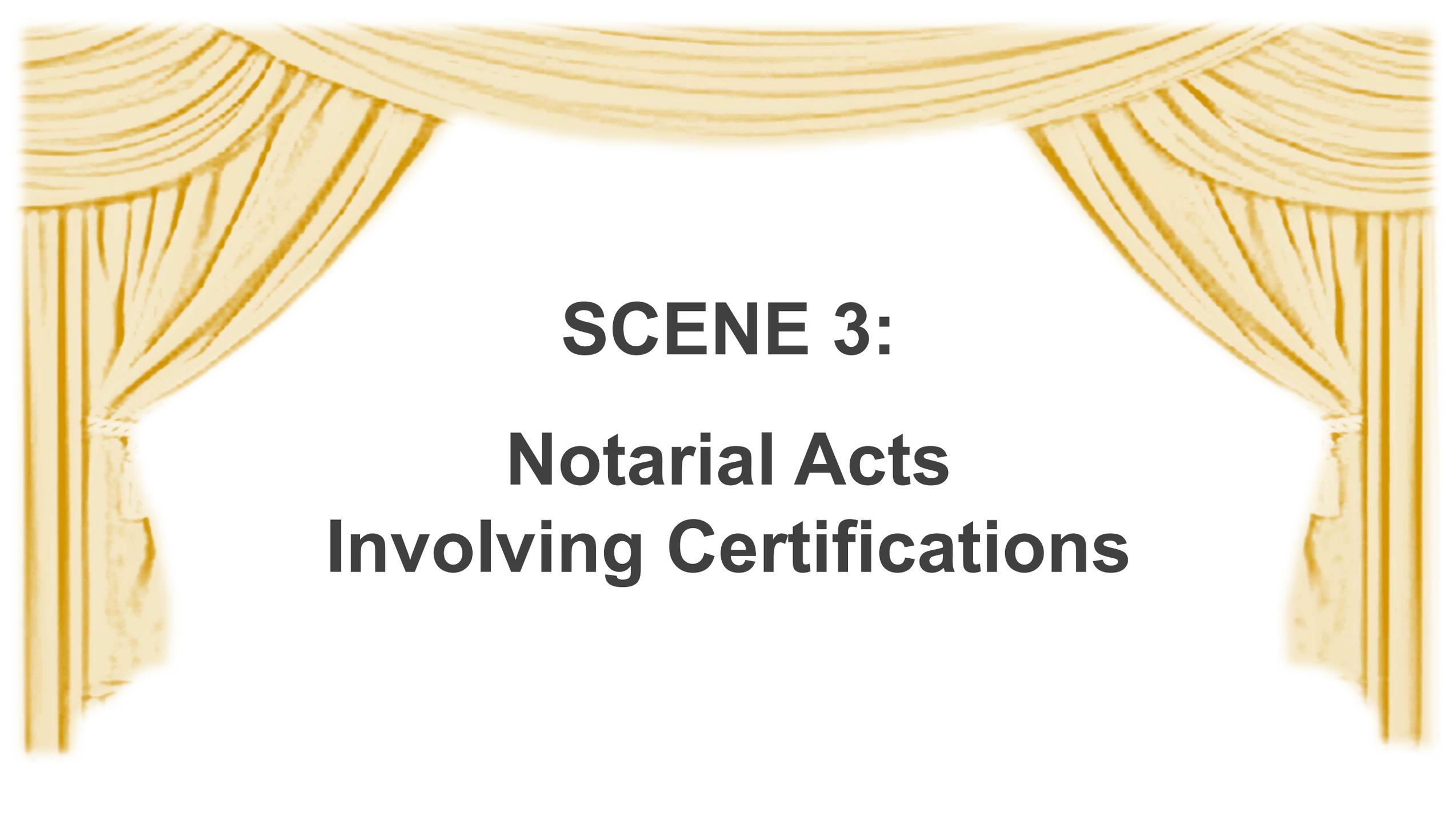
## Rule 2

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

# Verification (Jurat) Procedural Steps

- 1 Require personal appearance.
- 2 Assess comprehension, willingness.
- 3 Review the record (named signer, required act, etc.)
- 4 Identify the present individual.
- 5 Require the named 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.



**SCENE 3:**  
**Notarial Acts  
Involving Certifications**

# 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  
Marriages 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.**

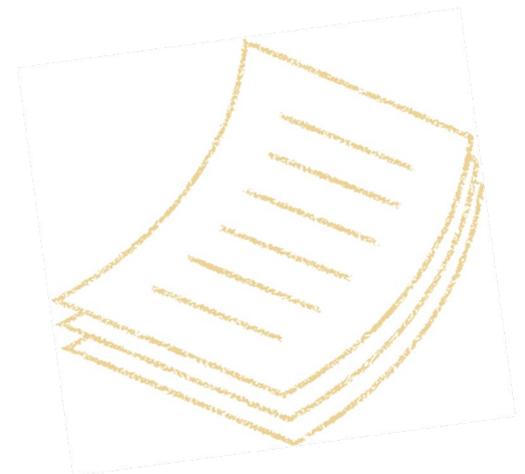
Also off-limits: any document that indicates it cannot be copied.

# Requirements, Copy Certification of a Tangible Record

## The Notary Must:

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- ✓ 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.



# Certification, 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 use:

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

- No vital or public records, **EVER**; no certified copies of vital or public records, **EVER**.
- **Otherwise, the Notary is NOT assessing whether the record is “original,” as with a tangible record.**

**Personally** download and 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):

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.

## Photograph:

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

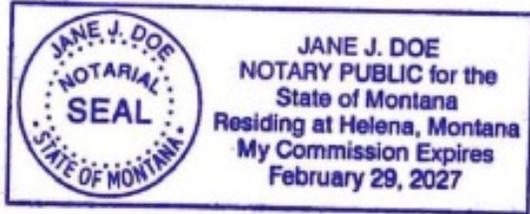
NOTE: Personal appearance of the requestor or principal may or may not be necessary.

# Certification of Fact(s); Notarial Certificate

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

State of Montana  
County of Yellowstone

I certify I have confirmed that Mary Elizabeth Jones, is President of the Montana Tropical Flower Association for the 2019 – 2020 term from a review of the Minutes of that same organization dated January 18, 2019, made by me on September 5, 2019.

 JANE J. DOE  
NOTARY PUBLIC for the  
State of Montana  
Residing at Helena, Montana  
My Commission Expires  
February 29, 2027

  
(Notary Signature)

Affix seal/stamp as close to  
signature as possible.

**Hot Tip:** Access printable Notary Certificates, including those for certification of fact(s) or a photograph, at [www.sosmt.gov/notary/blocks/](http://www.sosmt.gov/notary/blocks/)

# Certification of a Photo; Notarial Certificate

**MONTANA NOTARIAL CERTIFICATE**  
**CERTIFICATION OF PHOTOGRAPH**

State of Montana  
County of \_\_\_\_\_

I certify that the attached photograph is an accurate representation of \_\_\_\_\_  
(Description of subject of photo)

\_\_\_\_\_ based on \_\_\_\_\_ on \_\_\_\_\_  
(How subject was confirmed) (Date)

\_\_\_\_\_  
(Notary'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.

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

**Hot Tip:** Access printable Notary Certificates, including those for certification of fact(s) or a photograph, at [www.sosmt.gov/notary/blocks/](http://www.sosmt.gov/notary/blocks/)

# Certification of Life



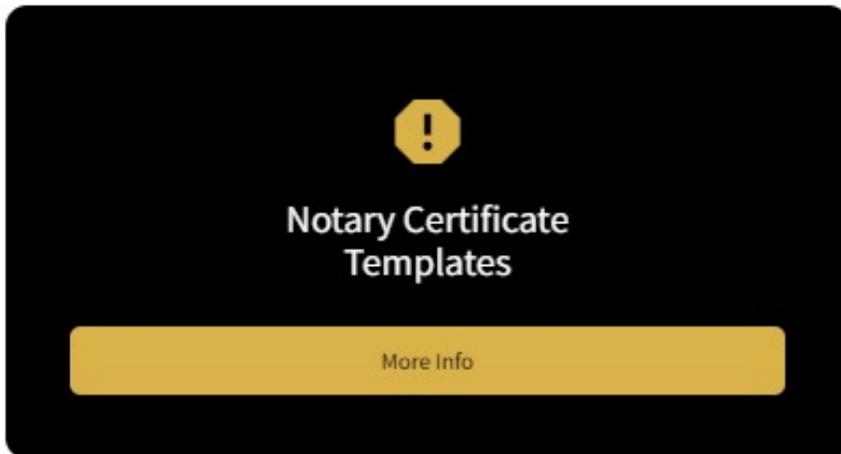
## Description:

“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]

## Requirements:

- **Require personal appearance.**
- Verify identity carefully (see SOS' Notary Handbook)
- 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.

**Don't forget:** Loose certificates for notarial acts a Montana Notary may perform are available on the Montana Secretary of State's website, [www.sosmt.gov/notary/](http://www.sosmt.gov/notary/). Scroll down to select the "Notary 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 Life
  - Certification of Photograph

**Hot Tip:** The 2022 Conference presentation, **“Mastering Notary Certificates”** focuses on recognizing and completing proper certificates

*And finally...*

# Administering Verbal Oaths or Affirmations

## Purpose

To compel truthfulness from the individual making the oath or affirmation in a matter requiring the individual's verbal pledge, testimony, information or recollection.

## Examples

An individual who provided information in a record; a witness in a deposition; a public official taking an oath office; an individual subject to interview or interrogation in a law enforcement matter; etc.

Notary identifies the individual; and determines that he/she/they are knowingly and willingly making the statement(s) with the intent to be bound by the statement(s).

[1-5-603(7), MCA]

# What's the Difference?

## Oath:

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A solemn verbal promise *made to a deity or higher power*, attesting to the truthfulness of a statement.



“Do you **swear** that the information contained in this document is true and complete to the best of your knowledge and you are signing it willingly, **so help you God?**”

## Affirmation:

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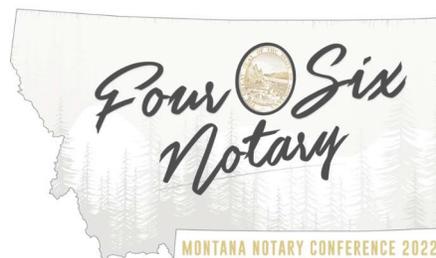
A solemn verbal promise *made on one's own conscience*, attesting to the truthfulness of a statement.



“Do you **affirm** that the information contained in this document is true and complete **to the best of your knowledge and belief** and you are signing it willingly?”

# Notes

- When administering a “verbal-only” oath or affirmation the individual taking the oath is not signing a document. If the oath or affirmation is for a document signing, then you are performing a “verification” – a jurat.
- “Verbal-only” oaths are usually performed for depositions, testimony in court, or when using 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 an oath or affirmation.



# *Thank you!*

“It’s All an Act!”

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

Contact [kathleen@asnotary.org](mailto:kathleen@asnotary.org). Visit [www.asnotary.org](http://www.asnotary.org).

