

**MCA 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:
- identify the individual seeking the notarial officer's services; and
  - visually review the identity credential and its data; and
  - 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:
- to execute or adopt a tangible symbol; or
  - 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 physical device capable of affixing to or embossing on a tangible record an official stamp; or
  - 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.

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## Definitions Provided in Glossary Section, Montana Secretary of State's Notary Public Handbook 2019

View the Handbook Online: <https://sosmt.gov/wp-content/uploads/sos-notary-handbook-2019-sml.pdf>

**Acknowledgment.** A notarial act which requires the person who has already signed a document to personally appear before the notary and state (acknowledge) that he/she knowingly and willingly signed the document for the purposes for which it was intended. The notary does not have to actually see the person sign the document, but does have to actually witness the person acknowledge the signature. See page 15 for more information.

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

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

**Apostille.** A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial block is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. See page 21 for more information.

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

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

**Authentication.** A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial certificate is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. See page 21 for more information.

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

**Certified Copy.** An exact, complete and unaltered copy of a document attested as a true copy of the original.

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

**Communication technology.** Real-time, two-way audio-visual electronic device or process that allows a notarial officer located in this state and a remotely located individual to communicate with each other simultaneously by sight and sound or facilitates communication with a remotely located individual with a vision, hearing, or speech impairment when necessary under and consistent with applicable law.

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

**Credential analysis.** A process or service operating according to criteria through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

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

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

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

**Dynamic knowledge-based authentication assessment.** 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.

**Electronic Notarization / eNotarization.** The process by which a digital document is notarized using electronic signatures of both the signer and the notary public and includes the attachment of an electronic notarial seal. See page 22 for more information.

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

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

**Identification credential.** A government-issued record evidencing an individual's identity.

**Identity proofing.** 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 review of personal information from public or proprietary data sources or biometric data including but not limited to facial recognition, voice analysis, or fingerprint analysis.

**Intent.** The purpose for which something is done.

**Jurat.** The notarial act that certifies the notary as having witnessed the signing of a document and administered an oath or affirmation, in which the signer declares the document to be truthful and accurate. See page 18 for more information.

**Jurisdiction.** The geographic area over which authority extends. See page 3 for more information about a Montana notary's jurisdiction.

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

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

**Notarial Acts.** The official actions of a notarial officer: The complete list of notarial acts authorized in Title 1, Chapter 5, part 6 is discussed in more detail in Chapter 4 of this handbook.

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

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

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

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

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

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

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

**Public key certificate.** 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.

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

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

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

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

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

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

**Signature Guarantee.** See Medallion Signature Guarantee above.

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

**Subscribe.** To sign.

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

**Swear.** To take an oath.

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

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

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