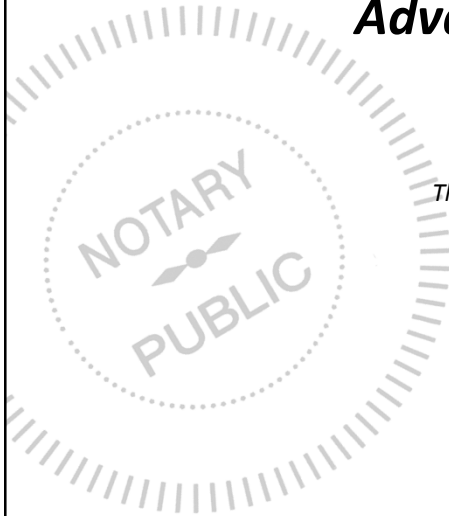


# Montana Notary 201: *Advanced Situations and Practices*



*Approved for Continuing Education Credits:  
The Montana Office of Public Instruction and  
The Montana Society of CPAs*



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Executive Director  
American Society of Notaries*

## **“Advanced” Notary:**

**Educated – Trained, knowledgeable.**

**Compliant –Performs within the law.**

**Experienced - Routinely notarizes, including challenging situations.**

**Confident –Acts as own best advocate for proper procedure.**

**Every notarial act anchored by fundamentals.**

## **Fundamentals: Requirements for Lawful Notarization**

### **SIGNER:**

- **PERSONAL APPEARANCE**
- **PERSONALLY KNOWN or SATISFACTORY ID**
- **COMPREHENSION, INTENT AND FREE WILL**

### **RECORD (document):**

- Notarial language for authorized duty -- or signer must choose the act
- Appropriately signed
- Appropriate document date
- Complete... all pages, not just the signature page

### **YOU:**

- **No conflict of interest**
- **Proper NOTARIAL BLOCK**
- **Thorough JOURNAL ENTRY**
- **Recording of the notarization session if performed remotely**

## **Fundamentals: Consistent Notarization Procedure**

### **#1 – Require personal appearance of the signer...**

NO EXCEPTIONS, EVER (Defined as physical presence or live, two-way audio-visual communication)

### **#2 – Review the record... can you safely proceed?**

### **#3 – Identify the signer**

### **#4 – Discuss notary fees, if any**

### **#5 – Complete the journal entry *(Why here?)***

### **#6 – Perform the verbal ceremony (acknowledgment or verification on oath/affirmation)**

### **#7 – Fill-in the notarial block**

### **#8 – Sign/seal the notarial block**

## 2015 Law – Updated Terms, Concepts

Core terms and concepts:

| Before   | Now  |
|--|--|
| Official stamp or seal ( <i>what appears on the notarial certificate</i> ) | Official stamp   |
| Ink-stamp seal ( <i>the tool</i> )   | Stamping device  |
| Document   | Record ( <i>paper or electronic</i> )  |
| Signature – wet-ink only   | Signature – wet-ink or an electronic signature ( <i>an electronic symbol, sound or process</i> ) |

## Notarial Block: Required Elements


- 1: Venue    2: Statement of particulars  
 3: Notary’s official signature    4: Official stamp

State of Montana  
 County of Lewis and Clark ①

② This instrument was acknowledged before me on April 5, 2014, by  
Sam Signer (only).

③ Nellie Notary  
 Notary Signature

④



YOUR NAME HERE  
 NOTARY PUBLIC for the  
 State of Montana  
 Residing at East Helena, MT  
 My Commission Expires  
 September 31, 2014

## Today: Common, Yet Challenging Issues

### Signer:

*No satisfactory ID document*  
*Multiple signers, not all are present*  
*Comprehension and intent*  
*Representative-capacity signer*  
*Signature by mark*  
*Physically unable signer*

### You:

*Recognizing conflict of interest*  
*The notary as witness*  
*Handling coercion*

### Record:

*Notarial block issues*  
*Working with loose notarial certificates*  
*Ineligible record presented for certified copy*  
*Does it really require notarization?*

### SIGNER ISSUES

## Credible Witness as Signer's ID

### REQUIREMENTS

- Signer - NO acceptable form of ID
- One credible witness – **personally knows** the signer; **is personally known** by you OR **has satisfactory ID**; is an **impartial third party** to the transaction
- **NOT for the signer's "convenience"**
- Signer, witness and notary are together, simultaneously

### STEPS

- Place the witness under oath
- Complete the journal entry; signer and the credible witness sign the journal. Add printed name/address of the credible witness.
- Proceed with notarization for the signer (signer signs the record if not already signed; perform verbal ceremony).
- Complete the notarial block

SIGNER ISSUES

# Multiple Signers, Not All Present

## Present Signer(s)

Notarize just for the present signer(s)  
 ↓  
 Which named signers in the record is/are physically present?  
 ↓  
 Follow all procedures for notarization  
 ↓  
 Notarial block and journal entry indicate ONLY the signer(s) present before you

## Other Signer(s) Not Present

Separate notarial act  
 Different notary  $\begin{matrix} O \\ R \end{matrix}$  You at a different time  
 Follow all procedures for notarization  
 ↓  
 No "adding" to your notarial block; separate notarial block is required  
 ↓  
 A separate journal entry is required

↓  
 No "adding" to your previous notarial block; separate notarial block is required  
 ↓  
 A separate journal entry is required; comment on new and previous entry

SIGNER ISSUES

# Comprehension and Intent

Signers might **not understand** a record's purpose; might be **under improper pressure** to sign; might be **impaired**

## *Use "reasonable care"*

### *How To Proceed:*

- Simple questions
- If in doubt, decline to notarize
- Offer to see the signer again, later.
- Note declinations in journal

SIGNER ISSUES

## Representative-Capacity Signer

Signer is signing on behalf of another person (or entity).

Acknowledgments and signature witnessing only.

All “normal” basics apply, but person who is not the named signer appears before you. Additional determinations:

- Satisfactorily identify the person who is signing in a representative capacity
- Determine the capacity claimed (*such as attorney in fact*)
- Determine the signer’s authority to act in the claimed capacity (*for example, signer presents a POA*); this is reasonable evidence (*reasonable care standard*)
- Review or witness the signature on the record

SIGNER ISSUES

## Representative Capacity Signer – cont.

Ensure the notarial block reflects a representative-capacity acknowledgment

Journal entry’s “Signer” is the representative-capacity signer. Also note this person’s capacity, how you determined authority, and the named signer for whom this person signed.

### Hot Tip:

New MT law requires entry of the time of notarization and the issue or expiration date of the ID.

SIGNER ISSUES

## Signature by Mark

**Montana law** - a person's mark may be his/her signature; "tangible symbol" or an "electronic signature"

### Same rules of notarization apply:

- If mark made prior to notarization (acknowledgment only), the signer may simply acknowledge his/her mark.
- Personally witness the signing for a verification on oath/affirmation, a signature witnessing or for an unsigned acknowledgment.
- Use the standard notarial block for the notarial act.
- Signer will sign your journal entry with his/her mark.
- Journal entry – note how the signer signed.

### Hot Tips:

- Mark might not match signed identification document.
- The mark must be made **UNASSISTED**.

SIGNER ISSUES

## Physically Unable Signer

**Montana law:** *authorizes signature by third party*

*Allows physically unable signer to direct another person to sign (MCA 1-5-623)*

### Specific rules apply:

- Person directed to sign CANNOT be the notary.
- Physically unable signer and person directed to sign must be present before the notary.
- Third party should be unbiased and independent; no beneficial gain
- Identify both the physically unable signer and person directed to sign
- Modify the certificate's statement of particulars to include, "Signature affixed before me by [name of person directed to sign] at the direction of [physically unable signer]..."
- Record names of the physically unable signer and the person directed to sign in your journal. Person directed to sign will sign the journal entry. In Comments, note the circumstances of the signing.


# Notarial Block Issues

- 1: Venue    2: Statement of particulars
- 3: Notary's official signature    4: Official stamp

State of Montana  
 County of Lewis and Clark ①

② This instrument was acknowledged before me on April 5, 2014, by  
Sam Signer (only).

③ Nellie Notary  
 Notary Signature

④  YOUR NAME HERE  
 NOTARY PUBLIC for the  
 State of Montana  
 Residing at East Helena, MT  
 My Commission Expires  
 September 31, 2014

# Notarial Block Issues

## WHAT DOES THE BLOCK "TELL" YOU?

|   |  |   |
|---|--|---|
| <p><b>ACKNOWLEDGMENT</b></p> <p>This instrument was <b>acknowledged</b> before me on [date] by [name of signer(s)].</p> | <p><b>VERIFICATION on OATH / AFFIRMATION</b><br/>       ["Jurat"]</p> <p>This instrument was <b>signed and sworn to / affirmed</b> before me on [date] by [name of signer(s)].</p> | <p><b>SIGNATURE WITNESSING</b></p> <p>This instrument was <b>signed before me</b> on [date] by [name of signer(s)].</p> |
|---|--|---|



RECORD (DOCUMENT) ISSUES

## Notarial Block Issues

Is the **notarial block wording** acceptable per Montana law?

|  |  |  |
|--|--|--|
| <p><b>ACKNOWLEDGMENT</b></p> <p><i>[Venue]</i><br/>This instrument was <b>acknowledged</b> before me on [date] by [name of signer(s)].<br/><i>[Notary signature block]</i></p> | <p><b>ACKNOWLEDGMENT</b></p> <p><i>[Venue]</i><br/>On this day of [date] before me, a Notary Public for the State of [state], personally appeared [signer], known or proven to me to be the person named in the foregoing, and acknowledged to me that [he/she] executed the same as [his/her] free act and deed, for the purposes stated therein.<br/><i>[Notary signature block]</i></p> | <p><b>"ACKNOWLEDGMENT"</b> ✗</p> <p>Sworn and <b>acknowledged</b> on [date] by [name of signer(s)], personally known to me, who so sayeth that the facts stated herein are true and complete.<br/><i>[Affix seal here]</i></p> |
|--|--|--|

RECORD (DOCUMENT) ISSUES

## Notarial Block Issues

*ASSESS THE NOTARIAL BLOCK*

|   |  |   |
|---|--|---|
| <p><b>What notarial act</b> does the block "tell" you to perform? Is that act an authorized duty?</p> | <p>Is the <b>wording of the notarial block</b> acceptable under Montana law?</p> | <p>Does the notarial block include <b>certifications you are not authorized to perform</b>?</p> |
|---|--|---|

|  |   |   |
|--|---|---|
| <p>✓ <b>ACKNOWLEDGMENT</b></p> <p><i>[Venue]</i><br/>This instrument was <b>acknowledged</b> before me on [date] by [name of signer(s)].<br/><i>[Notary signature block]</i></p> | <p><b>"ACKNOWLEDGMENT"</b> ✗</p> <p><i>[Venue]</i><br/>On this day of [date] before me, a Notary Public for the State of [state], personally appeared [signer], <b>proven to me to be rightfully residing in Montana</b>, and acknowledged to me that [signer] executed the same as [his/her] free act and deed, for the purposes stated therein.<br/><i>[Notary signature block]</i></p> | <p><b>"ACKNOWLEDGMENT"</b> ✗</p> <p>Sworn and acknowledged on [date] by [name of signer(s)], <b>who proved by the presentation of documentary evidence that the facts stated herein are true and did occur.</b><br/><i>[Notary signature block]</i></p> |
|--|---|---|



# Loose Notarial Certificates

When there is insufficient room on the record to add notarial language, or the current language is too error-filled to correct

Must **ATTACH** to the record:

- **Physical attachment** – Tamper-evident (staple). No paper clips.
- **Contextual attachment** – describe the notarized document so the certificate cannot be detached and used on a different document
- **Evidence of attachment** – journal entry should note use of loose certificate

**Where to attach** - behind the signature page

**Best practice:** loose notarial certificate page should be same size as the document's pages (for recording purposes)



# Certified Copies – Is the Document Eligible?

- Notary - must have an **original document**
- No vital or public records, **EVER**. No certified copies of vital or public records, **EVER**.
- If certified by the issuing agency or official custodian (*birth certificate, marriage/divorce record, official school transcript, etc.*) - **NOT ELIGIBLE**
- **Some document COPIES** are eligible for certification of copy by the document custodian - **NOT** for documents that should be certified by the issuing agency or official custodian (*vital, public records, etc.*)

## RECORD (DOCUMENT) ISSUES

## “Notarization” Requested; Not a Notarial Duty

Requester does not understand notary’s duties; has expectations the notary cannot lawfully meet.

### Example: USCIS Form I-9

- Does **NOT** require notarization – NEVER sign/seal this in your capacity as a notary!
- **ACTING PURELY AS A PRIVATE CITIZEN**, you may perform the duties of the **Authorized Representative**
- Your “title” is **AUTHORIZED REPRESENTATIVE**, not “Notary Public”
- **DO NOT** give in to the employee’s insistence that you affix your notary stamp on the form
- **BEWARE of additional employer forms** directed to the notary; you might be notarizing your own signature

## ISSUES CONCERNING YOU

## Recognize Conflicts of Interest

*Montana Code Annotated Sec. 1-5-625(1)(a), (b); (2)*

### OBVIOUS conflict:

- You are a **SIGNING PARTY** to the record
- You are an **INDIVIDUALLY NAMED PARTY** to the record –specifically named in the record as a relying party or affected by the record.
- If you will **DIRECTLY BENEFIT** by a transaction involving the record.
- If you are **TIED TO A PARTNERSHIP OR CORPORATION** as a partner, stockholder, director, officer or employee and you are individually named or sign as a representative.

### More subtle, still a conflict:

You are not directly named, but you will gain a financial or material benefit (beyond your regular employee salary)

ISSUES CONCERNING YOU

## The Notary as Signing (*Subscribing*) Witness

**NO, even if the witness' signature  
does not require notarization!**

**If your name appears in the record  
(above the notarial block) FOR ANY  
REASON, you cannot act as the notary.**

ISSUES CONCERNING YOU

## When You are Coerced

- **Someone in authority** pressures you
- **Someone "in a jam"** pleads with you to notarize improperly
- **NEVER** give in to the pressure for **ANY REASON**

**No matter the circumstances, you will be held accountable  
for your improper acts. You will be held liable for harm  
resulting from your improper acts.**

**Know your Montana notary statutes WELL, so you can use  
them to inform others.**

## Recap: “Advanced Notary”

### Attributes:

***Educated Compliant  
Experienced Confident***

- You always remember every notarial act = fundamentals
- Does **NOT** mean you are skilled at “creatively” solving notarization problems

***You ARE skilled at relying on your knowledge of notary law and fundamental practices to determine the proper steps for completing—or declining—the notarization.***

“Montana Notary 201 – Advanced Situations and Practices” was presented by Kathleen Butler, Executive Director, American Society of Notaries.

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Visit [www.asnotary.org](http://www.asnotary.org).

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