

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, amendment of)	PROPOSED ADOPTION,
ARM 44.15.101, and repeal of ARM)	AMENDMENT, AND REPEAL
44.15.104, pertaining to notaries)	
public)	

TO: All Concerned Persons

1. On October 1, 2015, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 17, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I NOTIFICATION TO SECRETARY OF STATE OF CHANGE IN INFORMATION (1) A notary public shall notify the Secretary of State within 30 calendar days of any change in the information on file with the Secretary of State, using the form prescribed by the Secretary of State, including the notary public's:

- (a) name;
- (b) physical/residential address;
- (c) mailing address;
- (d) personal e-mail address;
- (e) personal telephone number;
- (f) employer's name, address, or telephone number; and
- (g) use of electronic notarization technology.

(2) When a notary public changes the notary name on file with the Secretary of State, the notary public shall file with the Secretary of State:

- (a) a rider or other document issued by the notary's surety company showing the change of name; and
- (b) a written example of the notary's new official signature using the form prescribed by the Secretary of State.

(3) A notary public shall notify the Secretary of State within 14 calendar days of:

- (a) being convicted of a felony or crime involving fraud, dishonesty, or deceit;

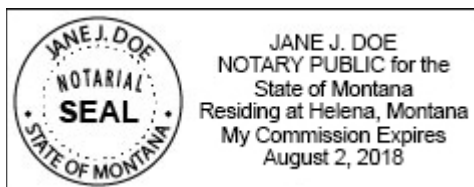
- (b) being found in any legal proceeding or disciplinary action to have acted fraudulently, dishonestly, or deceitfully; or
- (c) having a notary commission denied, revoked, or restricted in a state other than Montana.

AUTH: Ch. 391, Sec. 25, L. 2015

IMP: Ch. 391, Sec. 16, L. 2015

REASON: Section (1) is reasonably necessary to ensure a notary public may be readily contacted if a question or issue arises about a notarial act performed by the notary public and to ensure the information provided in the Secretary of State's online "Find a Montana Notary" is accurate. Subsection (2)(a) is reasonably necessary to ensure the requisite bond is in place and (2)(b) is reasonably necessary to help detect and prevent fraud in the performance of notarial acts. Section (3) is reasonably necessary to ensure all commissioned notaries public possess the honesty, integrity, and reliability to act as a notary public.

- NEW RULE II OFFICIAL STAMP** (1) The official stamp of a notary public, whether the impression is on a tangible or electronic record, shall:
- (a) be rectangular in shape and approximately 1" by 2½" in size;
 - (b) be in blue or black ink;
 - (c) have a circular seal to the left that includes the words "notarial seal," the words "State of Montana," and the notary public's name as it appears on the notary public's certificate of commission;
 - (d) have a block of text to the right of the seal that includes:
 - (i) the notary public's printed name as it appears on the notary public's certificate of commission;
 - (ii) the words "Notary Public for the State of Montana";
 - (iii) the words "Residing at" immediately followed by the name of the city or town and state where the notary public lives; and
 - (iv) the words "My Commission Expires" immediately followed by the notary public's commission expiration date, expressed in terms of the month (spelled out), day, and four-digit year;
 - (e) have a plain rectangular border enclosing the text and seal; and
 - (f) be in the general format illustrated below:



AUTH: Ch. 391, Sec. 25, L. 2015

IMP: Ch. 391, Sec. 13, L. 2015

REASON: This rule is reasonably necessary to ensure conformity of the notary public stamp, which will help detect and deter fraudulent notarizations.

NEW RULE III REAL-TIME, TWO-WAY AUDIO-VIDEO NOTARIZATIONS
(REMOTE NOTARIZATIONS)

(1) Real-time, two-way audio-video notarizations (remote notarizations) shall only be performed using technology that allows the individuals communicating to simultaneously see and speak to one another.

(2) When performing remote notarizations, the signal transmission shall be live, real time.

(3) All remote notarizations shall be recorded electronically.

(4) Prior to performing any remote notarization, the notary public shall inform all individuals participating in the notarization that the notarization will be electronically recorded.

(5) All recordings of remote notarizations shall include a recitation by the notary public that includes the following:

(a) the notary public's name;

(b) a declaration that all individuals participating in the remote notarization have been informed by the notary public that the notarization will be electronically recorded;

(c) the date and time the notarial act is being performed;

(d) the state and county in which the notarial act is being performed;

(e) the type of notarial act that is being performed;

(f) the type or title of record that is being notarized;

(g) whether the notarial act is being performed on a tangible or electronic record;

(h) whether the individual for whom the notarial act is being performed is being identified by personal knowledge or credible witness; and

(i) if a record is being executed, an acknowledgement that the person for whom the notarial act is being performed has the competency or capacity to execute the record.

(6) All recordings of remote notarizations shall include a recitation by the individual for whom the notarial act is being performed that includes the following:

(a) the individual's name;

(b) the state in which the individual legally resides;

(c) a declaration that the signature made on the record being notarized is that of the individual;

(d) the date the individual signed the record being notarized; and

(e) a declaration that the signature made on the record being notarized was made by the individual knowingly or voluntarily.

(7) If the individual for whom the notarial act is being performed is being identified by personal knowledge, the recording of the remote notarization shall include an explanation by the notary public as to how the notary public has come to know the individual for whom the notarial act is being performed and the length of time the notary public has known the individual.

(8) If the individual for whom the notarial act is being performed is being identified by credible witness:

(a) the credible witness shall be in the physical presence of the notary public; and

(b) the recording of the remote notarization shall include:

- (i) a statement by the notary public as to whether the notary public identified the credible witness by personal knowledge or satisfactory evidence; and
- (ii) an explanation by the credible witness as to how the credible witness has come to know the individual for whom the notarial act is being performed and the length of time the credible witness has known the individual.

AUTH: Ch. 391, Sec. 25, L. 2015

IMP: Ch. 391, Sec. 12, L. 2015

REASON: This rule is reasonably necessary to ensure a record of each remote notarization is created that can be used to help verify that the notarial act performed was authorized by, and completed in accordance with, Montana statutory law.

NEW RULE IV FEES FOR NOTARIAL ACTS (1) A notary public may charge a fee in accordance with Ch. 391, Sec. 23, L. of 2015 for traveling to perform a notarial act.

AUTH: Ch. 391, Sec. 25, L. 2015

IMP: Ch. 391, Sec. 23, L. 2015

REASON: This rule is reasonably necessary to clarify that notaries public may charge a fee for traveling to perform notarial acts, so long as that fee is in accordance with statutory mandates/limitations.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

44.15.101 APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC

- (1) A person seeking a commission as a notary public shall make an application on a form prescribed by the Secretary of State ~~which contains that~~ includes the following information:
- (a) applicant's name of the applicant;
 - (b) applicant's date of birth;
 - ~~(b)(c)~~ applicant's physical/residential address, e-mail address, and phone number and mailing address;
 - (d) applicant's personal e-mail address;
 - (e) applicant's personal telephone number;
 - ~~(e)(f)~~ applicant's name of employer's name, address, and telephone number;
 - ~~(d)~~ employer's address, e-mail address, and phone number;
 - ~~(e)~~ date of birth;
 - ~~(f)(g)~~ the date of expiration of the applicant's current notary commission expires (if applicable); and
 - ~~(g)(h)~~ the name under which the applicant's previous commission was issued if different than the name used on the application (if applicable); and
 - (i) whether or not the applicant intends to provide electronic notarization services, and, if so, the identification of the tamper-proof technology the applicant intends to use.

- (2) The application ~~must~~ shall indicate if the applicant:
- (a) ~~has been a resident of the state of Montana for over one year~~ is at least 18 years old;
 - (b) ~~is at least 18 years old~~ is a citizen or permanent legal resident of the United States;
 - (c) is a resident of or has a place of employment or practice in Montana;
 - (d) can read and write English;
 - ~~(e)~~(e) has been convicted of a felony or crime involving fraud, dishonesty, or deceit within the last 10 years; and
 - (f) has been found in any legal proceeding or disciplinary action within the last 10 years to have acted fraudulently, dishonestly, or deceitfully; and
 - ~~(d)~~(g) has had a notary commission or bond denied, revoked, or restricted in any state within the last 10 years.
- (3) remains the same.
- (4) An applicant who is not currently commissioned as a notary public shall submit with the application a certificate proving the applicant has passed a notary public examination approved by the Secretary of State.

AUTH: ~~2-4-201, MCA Ch. 391, Sec. 25, L. 2015~~
IMP: ~~1-5-405, MCA Ch. 391, Sec. 16, L. 2015~~

REASON: These amendments are reasonably necessary to implement the requirements of Senate Bill 306 which was passed by the 2015 Montana Legislature and is effective October 1, 2015. That bill updated and revised the existing notarial laws.

5. The Secretary of State proposes to repeal the following rule:

44.15.104 CANCELLATION OF COMMISSION

AUTH: 2-4-201, MCA
IMP: 1-5-104, 1-5-405, 2-4-604, MCA

REASON: This rule contains language that is inconsistent with Senate Bill 306 which was passed by the 2015 Montana Legislature. Repealing this rule will eliminate those inconsistencies.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 9, 2015.

7. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 17, 2015.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 31st day of August, 2015.