



# NOTARY HANDBOOK

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## Purpose of the Notary Handbook

As a notary public, you hold an important position; therefore, it is vital that you understand the notary duties and responsibilities with which you have been charged. The purpose of this handbook is to help familiarize you with Colorado Notary Law so that you can perform your duties correctly.

Notaries public are authorized to perform certain official duties that are critical to those who need them. By notarizing documents, you help to prevent fraud and forgery. Because the work of notaries public is so important, please make sure you take the time to review this guide carefully. It is critical for you to understand the obligations of being a notary public and for you to perform those duties in a manner that merits the trust, confidence, and respect appropriate to the office.

Please note that this handbook is merely a guide to best practices, but the Revised Uniform Law on Notarial Acts (RULONA) is the law on which the handbook is based. Accordingly, **all incongruities between the handbook and the statute will be decided in favor of the statute (C.R.S. 24-21-501 et seq.)** Notaries are responsible for keeping themselves apprised of changes in the law that may affect the manner in which they perform notarizations.

The Colorado notary law and other resources for notaries are available on the Notary Home page of the Secretary of State's website: <http://www.sos.state.co.us/pubs/notary/home.html>

## What is a Notary?

“Notary” or “Notary Public” means an individual appointed and commissioned to perform a notarial act by the Secretary of State (C.R.S. 24-21-502(8)). A “Notarial Officer” means a notary public or other individual authorized to perform a notarial act (C.R.S. 24-21-502(7)). Because the definition in the Colorado Revised Statutes is so brief, the following information has been included to further describe a Notary.

Various definitions/synonyms for “notary public” can be drawn from other states’ statutes. The following list is representative rather than all-inclusive.

A notary is a:

- Verifier
- Authenticator
- Person of integrity appointed to the office
- Person commissioned to stamp documents
- Impartial agent for the state
- Public recorder of acts
- Public servant

The notary acts as an unbiased/disinterested/official WITNESS, to the identity of the person who signs a document.

In this context, *while notarizing*, a notary is responsible not to a customer or a supervisor, but to the people of the State of Colorado through the Secretary of State, the elected representative of those people.

## What are a Notary's Powers?

Notary powers are equivalent to duties.

Under RULONA, Colorado notaries have four common powers. RULONA (C.R.S. 24-21-505) lists the notary powers/duties under five subsections. The four main powers that the notary will be exercising are **(1) acknowledgments, (2) the administration of oaths and affirmations, (3) copy certifications, and (4) witness or attest to signatures.**

Under RULONA, there is a fifth power referred to as **making or noting a protest of a negotiable instrument**, but it is only bestowed upon notaries who are employed by a financial institution, and who are acting in the course and scope of that employment. Nevertheless, a discussion of this power is included below.

## A notary is the first defense to fraud

Regardless of which notarial act, or duty, a notary is performing, the notary has a duty to check that his/her client has basic comprehension of the document being signed.

If a client is, for example, obviously drunk or drugged or otherwise disoriented, or too ill to communicate or know what is happening, or too young to understand the transaction at all, a notary should not perform the notarization. Such a client cannot meaningfully acknowledge a document or execute it as his/her own act and deed. Please note, while it is the ethical duty of the notary to make sure the client is capable of understanding what s/he is signing, it is not a duty that is codified in law.

This assessment can be made in the course of a brief discussion of the transaction, by asking the client about the transaction, or just by asking if the client understands what the document is and whether s/he agrees with it.

**Unless the notary is an attorney, it is never the place of the notary to counsel or advise the client about the transaction, or attempt to convey the legal implications of a document presented for notarization, or explain a transaction or its effects on a client.** A notary who attempts to do so exceeds his/her lawful powers and takes on liabilities s/he should not and need not have by engaging in the unauthorized practice of law.

## Oaths and Affirmations

These notarizations all require the exercise of the notary's **power to administer oaths**. (C.R.S. 24-21-505).

"Oaths," as used herein, is intended to include affirmations. There is a minor difference, however. An oath is defined as a vow, promise, pledge or solemn declaration that refers to a supreme being—e.g., "This is the truth, the whole truth, and nothing but the truth, so help me God" or "I swear to God." Whereas an affirmation does not include the word "swear" nor invoke a deity—e.g., "I solemnly affirm" or "I affirm under penalty of perjury."

The power to administer oaths is the one most used by the majority of notaries. It is the power required to be exercised every time a notary completes the common "Subscribed and sworn to" notarization.

It's important for notaries to learn what "subscribed and sworn to" means for several reasons:

- In order to comply with the law (C.R.S. 24-21-505) and avoid violations,
- Because businesses, individuals, and governments depend on the notary's knowledge and proper performance,

- For protection of both notary and client, primarily by placing responsibility for the truth of the document on the client, where it belongs.

RULONA distinguished between an oral oath, or affirmation, and one made in written record. In a written record, it is called a “verification on oath or affirmation,” or “verification of a statement on oath or affirmation.” The requirements for performing them are the same as an oral oath, or affirmation. All oaths and affirmations, even those that are only given orally, must be recorded in the notary’s journal.

To perform the oath/affirmation process, the notary must:

1. Hear the client affirm or swear to the document, to his/her identity as the document signer (and rarely, to other facts about himself or herself that a document may require. The affirmation in the Notary Application (C.R.S. 24-21-521(5)) is an example of such “other facts” that may have to be sworn/affirmed—the applicant must state “under penalty of perjury” that he has read the notary law and will act in accord with it.)
2. See the client sign the document; and
3. Complete the notarial certificate or “notarization.”

**REMEMBER: the signer must be in your physical presence for all three of the above steps.**

Many notaries miss important steps within the process. They watch the signing and fill out the notarial certificate, but omit the most important part of a jurat, the administration of the oath or affirmation. In that case, a client may sign a document without even being aware that s/he is supposedly swearing to it. The client may not even have read the document thoroughly, much less have been prepared to affirm to it under penalty of perjury.

Such a client may complain about the notary’s improper performance later and the Secretary of State will be forced to investigate the matter. After all, the notary is a public officer who has “carefully read the notary law of this state” and has solemnly undertaken to perform all notarizations in conformance with that law (C.R.S. 24-21-521(5)).

Read the bottom of the document and see if the notarial certificate states “subscribed and sworn to” or “affirmed before me” or “attested this day” or any similar words, as this would indicate an oath or affirmation is required. If an oath or affirmation is required, do not simply watch the client sign and then fill

in the notarial certificate; put the client under oath and have him/her swear to, or affirm, both the document and his/her identity.

How do you do this? The notary law gives notaries the power to administer oaths and affirmations (C.R.S. 24-21-505(2)), but it does not give notaries any specific instructions or wording for this purpose. For this reason, a notary should adopt wording for jurats that is understandable to both the notary and the client, and should use it consistently. Some samples of wording are listed below.

## Sample Oaths and Affirmations

*For an oath, substitute the word “swear” for the word “affirm” and add “so help you God” to the end of the statement.*

- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that what you are about to say is true (so help you God)?
- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that you have read and understand     (document name)     and that to the best of your knowledge and belief it is true (so help you God)?
- Do you affirm (swear) under penalty of perjury that you are (Name of individual swearing or affirming) and that you have executed this     (insert type of document executed)     and that it is your free act and deed (so help you God)?

Notice that in each example above, it is the signer that is attesting to the truthfulness of his/her statements, to the fact that s/he is signing of his/her own accord, and that s/he has the legal capacity to make such statements.

**It is NEVER the job of the notary to make these statements in his/her notarial certificate, or to come to these conclusions on his/her own. The notary is just there to witness these statements and to take the statements under oath or affirmation. A notary who makes statements like, “In my opinion the person before me is signing under his own free will,” or “the person before me has the proper legal capacity to sign this document,” is engaging in the unauthorized practice of law.**

The unauthorized practice of law is illegal and may carry criminal penalties like jail time and civil penalties like owing money. (Please review C.R.S. 24-21-524 for a list of prohibited acts and the consequences if a notary performs them.)



## Checklist under RULONA

You may use the below checklist to help you remember all the requirements of administering an oath or affirmation.

**Oath and Affirmation Checklist**

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- Administer oath
- See the client sign the document (in your physical presence)
- Complete the notarial certificate

## Acknowledgments

A notary also has the power to witness and certify certain *unsworn* statements and declarations. These notarizations require the exercise of the notary's **power to take acknowledgments**. (C.R.S. 24-21-505).

The power to take acknowledgments is less used by notaries who have a general practice, but is virtually the only power used by those who specialize in closings and other real estate transactions. If you have ever been involved in buying or selling a house, it is likely that you are already familiar with the concept of acknowledgments.

Acknowledgments do not involve any oath or affirmation. They do not say "subscribed and sworn to" or "affirmed" or make any other reference to an oath. Instead, they say "acknowledged before me" or at least contain the word "acknowledged" somewhere in the notarization.

Upon seeing that word, a notary should know that s/he will *not* be administering an oath, but will be carrying out another duty instead, before signing and stamping the document. There are three steps to complete an acknowledgment.

The notary must:

**First:** Identify the client as the document signer. The client will not be taking an oath as to his/her identity, so this is *entirely* the notary's responsibility to verify the identity. A wise notary identifies all signers carefully, no matter what notarial duty is performed, but acknowledgments call for special attention in this respect.

RULONA, (C.R.S. 24-21-507), expands and clarifies the types of identification that provide satisfactory evidence, and creates different categories:

1. These documents are always satisfactory evidence: a passport, driver's license, or government issued non-driver identification card that is current or expired not more than one year. This list also includes foreign passports and foreign driver's licenses.
2. Other forms of government-issued IDs that are current or expired not more than one year may be acceptable if:
  - a. They contain the signature OR photograph of the individual; AND
  - b. They are satisfactory to the notary. This provision gives the notary some discretion to accept forms of identification such as jail IDs issued by counties and other types of ID issued by foreign governments, but only if the notary is satisfied that the ID is legitimate and properly identifies the individual.
3. A notary may identify an individual through the sworn statement of a credible witness. The witness must provide a verification on oath or affirmation as to the person's identity. In addition, the witness can be identified by the notary either through personal knowledge OR on the basis of a passport, driver's license, or government-issued non-driver identification card that is current or expired not more than one year. For a guide, please see Appendix B.
4. A notary may use his/her personal knowledge to identify an individual. A notary has "personal knowledge" of an individual's identity if "the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed." In other words, the notary may know the individual because they are neighbors, coworkers, or have done business together in the past.

For some acknowledgments, client identification may have a second part. A signer may be acknowledging in a representative capacity. In such cases, the notary should identify the individual AND his or her capacity. **The signer should attest to his capacity/or legal authority. It is not up to the notary to research their authority, make an ultimate determination, or to draw any legal conclusions. To do so is considered the unauthorized practice of law.**

**Second:** Assess the client's basic competence and understanding of the document. Again, a wise notary does not do any type of notarization for a client who is obviously not competent. However, a notary has a little more responsibility for this assessment on acknowledgments than on other types of notarizations.

**Third:** Be satisfied that the client is not under duress or being coerced to make the acknowledgment. Acknowledgments must be voluntary. They must be the "free will acts and deeds" of the client. For this reason, a notary who sees evidence of duress or coercion used to extract an acknowledgment from a client should not proceed with the notarization until and unless the duress issues are resolved to the notary's satisfaction.

Every notary should be prepared to handle such a situation. Duress questions are never easy, but they are very difficult indeed when they come as a complete surprise to the notary.

If a duress issue arises, how should a notary handle it?

First, a notary should evaluate the situation. A notary should be sure s/he is dealing with a genuine duress question. Not everything that looks like coercion at first glance is an interference with a client's "free will act and deed."

**Example:** Client is before the notary to sign over his share in the family home to his soon-to-be-ex-wife. He complains bitterly that he does not wish to do so, but has been forced to by an "unjust court system that always sides with the woman." In this example, the client is not under duress. Being forced to sign a document under court order is not considered duress.

**Here is a more difficult example:** A notary is notarizing for a real estate transaction. The clients are spouses who are getting a second mortgage on their house. The wife appears a little before the time for the closing and the notary assembles the documents, sits down with the wife, and asks her about the transaction. The wife appears to understand the transaction perfectly well, but volunteers the information that she doesn't want to engage in it. It is all her husband's idea. She is reluctant to argue with him, however, because—although he is the perfect husband 99% of the time—once in a while he gets drunk and turns violent. At those times, he is likely to recall any resistance she has shown him and literally beat her up for it. She tells the notary that it is safer and easier for her just to go through with the transaction. When the notary seems hesitant, the wife tells the notary to forget she said anything about her husband's violent tendencies, and asks the notary not to mention their conversation to the husband when he shows up.

Is it proper for the notary to take the wife's acknowledgment? This would be up to the notary's discretion. **The individual notary's professional judgment governs in every specific case, and the notary has the right**

to “refuse to perform a notarial act if the 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’s signature is knowingly and voluntarily made.” (C.R.S. 24-21-508).

A notary may ask for help in difficult situations, but, in the end, the notary’s decision governs as to whether a client is adequately identified and sufficiently competent and willing to make an acknowledgment. A notary is expected to be a disinterested witness, not an intruder into the transaction. S/he is to be a neutral observer, exercising only the judgment of an “ordinary and prudent person.” A notary is *not* a doctor, advisor, law enforcement officer, etc. **However, if a notary suspects potential fraud or abuse, especially elder abuse or elder financial exploitation, the notary should report the abuse to local law enforcement.**

Once the notary has completed the tasks above, all that is left is to perform the acknowledgment.

## Checklist under RULONA

You may use the below checklist to help you remember all the requirements of taking an acknowledgment.

| <b>Acknowledgment Checklist (when document is already signed)</b>   |
|---|
| <input type="checkbox"/> Record the transaction in your journal   |
| <input type="checkbox"/> Identify the client using "Satisfactory Evidence"<br>I.D. verification very important because document is already signed |
| <input type="checkbox"/> Signer acknowledges in your physical presence that document was signed by him  |
| <input type="checkbox"/> Complete the notarial certificate  |
| <b>Best practice:</b> Verify the signature on the previously signed document matches the signature on the ID and the signature in your journal.   |

## Signature Witnessing

RULONA distinguishes between taking an acknowledgment – where a person has already signed the record and is acknowledging their signature to the notary- and witnessing a signature.

The functional requirements to identify the signer, ensure that they are the person named in the record, and verify the signature is theirs, remain the same. However, RULONA provides a separate short-form certificate for signature witnessing.

## Checklist under RULONA

You may use the below checklist to help you remember all the requirements of witnessing a signature.

**Acknowledgment Checklist (witnessing a signature)**

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- Signer signs document in your physical presence
- Complete the notarial certificate (use the "witnessing or attesting signature short form")

**Best practice:** Verify the signature on the signed document matches the signature on the ID and the signature in your journal.

## Oaths and Affirmations vs. Acknowledgments and Witnessing a Signature

Administering oaths and affirmations, taking acknowledgments, and witnessing signatures are most notaries' main duties. Many people lump them together, but there are differences between them. The most obvious is the oath itself.

In a **jurat (for an oath or affirmation)**, you, the notary, are guaranteeing to anyone who sees the document that you administered an oath or affirmation to the signer, and the signer swore to certain facts about the document—e.g., that it was true and complete—and about himself or herself—e.g., that s/he is the individual named in the document as the signer. You also guarantee that you witnessed the signing of the document.

In an **acknowledgment, or by witnessing a signature**, you are guaranteeing that, while the signer was in your presence, you identified him or her, and that s/he appeared to you to be

willing and able to execute the document. You may also guarantee that you witnessed the “execution” of the document, which is its completion by signing.

These are not major differences, and there is a lot of overlap between these duties. A notary should know which one s/he is doing, however, especially when the notary must notarize documents that do not have pre-printed notarial certificates on them. In those cases, it is not possible to tell, just by glancing at the bottom of the document, whether you should administer an oath or take an acknowledgment.

A notary does not decide which notarial act to perform for a particular document. A smart notary asks the client which notarial act is being requested. The client, may not know either, but *should* know who wanted the document notarized in the first place, or who the intended recipient is. From that person or entity, the client can find out which notarial act is required.

Why shouldn't the notary make this determination?

1. This is not a responsibility assigned to the notary by law. Remember that the notary's function is that of a disinterested witness.
2. This is not a responsibility the notary wants. It creates liabilities a notary should not assume. There are situations in which the wrong notarization could render the document useless for its intended purpose. The notary should not be the one whose wrong decision delayed a client's transaction or forced a client to re-execute a document.
3. This is a decision that may have legal implications—notaries who are not lawyers should not feel free to adopt “lawyer-like” responsibilities. To do so would be the unauthorized practice of law.

## Copy Certifications

A notary is also empowered in some cases, and in accord with the requirements of RULONA, to make certified copies of certain original documents (C.R.S. 24-21-505). A notary, like some other public officials—county clerks, courts, registrars of vital statistics, the Secretary of State, etc.—has the **power to certify copies**.

For many uses, a copy properly certified by a notary is as acceptable as the original of a document, and some of these uses require multiple certified copies. The Secretary of State's office most frequently sees examples of notarized copies in the following areas:

- Employment matters—e.g., diplomas, awards and honors, ratings;
- Business affairs—e.g., licenses and permits, powers of attorney, contracts and agreements;
- Adoptions—e.g., home studies, financial statements, health assessments;
- International travel—e.g., passports, drivers' licenses, other documents for backup of originals.

Under RULONA, (C.R.S. 24-21-505) a written request for a copy certification is not required. RULONA also specifies types of documents that cannot be copy certified, including records obtained from any of the following offices:

- A clerk and recorder of public documents;
- The Secretary of State;
- The state archives; or
- An office of vital records.

For example, a notary may not certify a copy of a birth certificate that was issued in Colorado. Only the Colorado Department of Health may certify these copies. (C.R.S. 25-2-117(1)). A notary may certify a copy of a birth certificate from another state.

A notary is also prohibited from providing copy certifications for documents that state on their face that it is illegal to make copies of them.

Copy certifications must be recorded in the notary's journal.

## Checklist under RULONA

You may use the below checklist to help you remember all the requirements of a copy certification.

**Copy Certifications Checklist**

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- See the original document
- Verify it is permissible to certify
  - Cannot certify documents from the following offices in this state:
    - o Clerk and Recorder of Public Documents
    - o Secretary of State
    - o State Archives
    - o Office of Vital Records
  - Cannot certify documents that state on their face that it is illegal to copy the record
- Verify that the copies are exact
- Certify the client's copy

**Best practice:** Make two copies

## Notices of Dishonor/Protests of Negotiable Instruments

Requests for notices of dishonor and protests are very rare. These “notices of dishonor” are tied to fraudulent UCC filings or attempts to be relieved of responsibility for a debt, such as a mortgage. Lawful requests, made in accord with both the notary law and the UCC, are even rarer. They may, in fact, be nonexistent at this point. The world of commerce has now grown past any real need for a notary to be involved in this function.

RULONA refers to this duty as Protest of Negotiable Instruments. (C.R.S. 24-21-505). These documents are governed by the Uniform Commercial Code (UCC). (C.R.S. 12-55-110(1)(f); also, parts 1 (Negotiable Instruments) and 5 (Dishonor) of article 3 of title 4 of the Colorado Revised Statutes. (C.R.S. 4-3-101/ C.R.S. 4-3-501)).

A notary who makes or notes a protest must determine the matters set forth in the UCC.



Only a notary who is employed by a financial institution, and who is acting in the course and scope of that employment, can make or note a protest.

(See C.R.S. 4-3-503 and 504, permitting notices of dishonor to be given by any person and by any commercially reasonable means, and waiving the need for such notices altogether in many cases.)

## Notarial Certificate or Notarization

Notarial certificates, often called notarizations, are official public records of a notary's acts. They are the notary's testimony about what s/he has done and witnessed in his/her official capacity. As such, they must all contain certain basic elements, regardless of the specific notarial act performed. (C.R.S. 24-21-515 and 24-21-516).

RULONA provides short form certificates for all notarial acts related to a record. Samples of these forms are included in Appendix A.

RULONA requires that a notarial certificate on a paper record must be incorporated into the record or "securely attached" to the record. This means that loose certificates are no longer allowed. It is best to staple a loose certificate to the notarized document.

A commissioned Colorado notary only has those powers set forth in RULONA. Colorado has commissioned a notary solely to perform "notarial acts" (as defined by 24-21-502(6), C.R.S.). These acts require both a notarial certificate and a stamp. Aside from the legal reasons, the use of a stamp without a certificate and the notary public's official signature sets up a scenario for fraud; anyone could insert content to accompany that stamp. Therefore, a notary stamp should never appear without a complete notarial certificate.

## Requirements of a Notarial Certificate

Under RULONA (C.R.S. 24-21-515 and 24-21-516) the certificate must:

- ✓ Be signed by the notary
  - The notary's signature must match the official signature on file with the Secretary of State
  - Be signed at the same time that the performance of the notarial act takes place

- ✓ Be dated by the notary
  - A notary should never pre or post-date a notarization
- ✓ Identify the county in which the notarial act is performed
- ✓ Identify the state in which the notarial act is performed
- ✓ Contain the title of the office of the notary
- ✓ Indicate the date of expiration of the notary's commission
- ✓ Be stamped by the notary

A notarial certificate should also indicate that the notary certifies that s/he complied with the law and made the determinations required by the law for the type of notarial act s/he is completing.

In other words, the notary should indicate whether s/he is completing an oath, affirmation, acknowledgment, signature witness, or copy certification. This can be a very brief description—for example, "Subscribed and sworn to before me," or a more detailed one—for example, the copy certification form, or one of the longer acknowledgments.

## Official Stamp

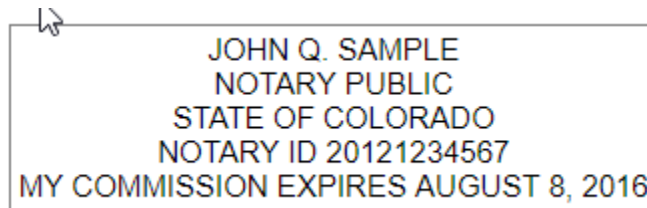
Each certificate must also contain the notary's seal, rubber-stamped, *not embossed*. RULONA refers to the notary's seal as the Official Stamp. A notary should not use any official stamp until s/he has personally checked it against both the commission certificate and the RULONA requirements (C.R.S. 24-21-517 and 24-21-518).

### The official stamp must:

- Be rectangular and retain the outline of the stamp
- Contain the following information:
  - Notary's name;
    - The name must be exactly as it appears on the notary's certificate of commission

- Notary's identification number;
- Notary's commission expiration date;
- The words "STATE OF COLORADO;"
- The words "NOTARY PUBLIC."

Here is an example:



Colorado law requires notary stamps to be a rectangular shape, but does not have any size or color-of-ink restrictions. However, please consider your clients and the public at large before deciding on a size too small to read, a unique color, or any other unusual variant.

Please be advised that it is illegal for a notary to provide, keep, or use a seal embosser.

Official stamps are manufactured and sold by private companies, not by the state. The manufacturer may not be familiar with Colorado's stamp requirements, and may not have seen the notary's commission certificate. A notary's name or some other word/data may be misspelled/misprinted, or there may be unauthorized additions to the seal. **It is the notary's responsibility to have any mistakes corrected *before* using the stamp.**

The stamp may be placed anywhere "under or near" the notary's signature. The law is not specific about placement, nor does it require that a stamp be right side up. The stamp should not obscure the text of the document itself, or be placed over the notary's signature in such a way as to make the signature unreadable.

## Commission Expiration Date

As mentioned above, the official stamp must contain the notary's commission expiration date, which should be the exact month, day, and year of expiration of the term shown on the notary's current commission certificate.

Notaries use incorrect or incomplete commission expiration dates with some frequency. Sometimes the notary does not recall the date correctly, or remembers only the month and year and hopes that will suffice. Please ensure all new stamps reflect the correct date.

(Note: that pre-printed notarial certificates may include a space for the commission expiration date. Under RULONA, this section must be filled in, even though the date also appears on the official stamp.)

The Secretary of State cannot authenticate a notarization that shows a wrong or incomplete expiration date. Rejection by the Secretary of State upsets the client who was seeking the authentication, and occasionally leads to the filing of a complaint against the notary.

Worse yet are the cases of former notaries who manufacture their own commission expiration dates by adding four years to the dates on their previous commissions. Such notaries are usually under the impression that they have renewed their commissions when they have not. The result is that these individuals continue to “notarize” when they are actually not notaries at all. This is a violation of Colorado law.

The moral of the story for notaries: Check the expiration date on your commission certificate, or your notary account, and on the notary stamp you use. It is not safe to assume or to guess.

If a notary discovers an error in his/her name on the commission certificate, s/he should file a name change by logging into his/her account and clicking “Change my name” under the “Actions” section. Once the name change request is approved, the commission certificate will automatically update and the notary can print the correct certificate online. A notary need not refrain from notarizing while the certificate correction is being processed, as long as the official stamp is correct.

Under RULONA, the notary has a duty to keep his/her seal secure and may not allow another individual to use the device to perform a notarial act.

Under RULONA, the notary must deface or disable the stamp so it can no longer be used. The notary is no longer required to send the stamp to the Secretary of State for disposal.

## Official Signature

The notary’s official signature, must be exactly as it appears on the notary’s affirmation.

Notaries are officially identified and authenticated by their signatures, as well as their commission dates. Even a small change from the signature on file with the Secretary of State makes it impossible to authenticate a notary. It may even make it impossible to find him or her in the notary records.

About 80,000 notary commissions are current at any one time. As would be expected with these numbers, there are multiple instances of two or more notaries with the same name, or with very similar names. A notary's signature is therefore a very important distinguisher.

If a notary changes his or her name, s/he is required by law to notify the Secretary of State, as discussed below. If a notary's signature changes – for example, with an arm injury or arthritis—s/he is required to notify the Secretary of State by filing a change of signature so that his/her notarizations can be authenticated without problems or delays.

A notary is responsible for ensuring that all of the foregoing information is included in every notarization s/he performs. If a document does not have a preprinted notarial certificate, the notary must add one. Handwritten certificates are acceptable.

The notary is also responsible for the accuracy of the information in the certificate. If a preprinted notarization was prepared in another county or state, for example, and shows the wrong venue, the notary must either correct it or refrain from performing the notarization.

## Notary Journal

A notary journal is a “day-to-day” chronological record of a notary's official acts. The journal is maintained by the notary and kept in his/her possession.

Why do notaries keep journals? Primarily for the following reasons:

1. To protect themselves;
2. To protect and assist clients and the general public; and
3. Because the law requires it.

Notaries are required to maintain a journal of ALL notarial acts.

RULONA requires journal entries even for acts that do not involve a signature on a record, including copy certifications, oral oaths and affirmations, and depositions. However, there is an exception to this rule. If the notary's firm or employer, in the regular course of business, keeps the documents s/he notarizes, or copies of them, and the copies include all of the same information that would be required in a journal, the notary is not required to make a journal entry.

**The Secretary of State contends that it is not in the best interest of the notary to rely on this exception.**

The notary may not, and most probably does not, have access to those notarized documents over any period of time. This may be due to job changes, loss of records, employers going out of business, or the notary being dismissed. If the notary cannot produce a copy of the originally notarized document, and has failed to maintain a personal journal, the notary may be personally liable for the loss of that information. Further, absent a signature of the client in the notary's journal, the notary has no way of proving that the client signed in the notary's presence.

The Secretary of State strongly encourages notaries to keep records of *all* official acts.

## Journal Requirements

RULONA, C.R.S. 24-21-519, requires that a Journal include the following:

- (a) The date and time of the notarial act;
- (b) A description of the record, if any, and type of notarial act;
- (c) The full name and address of each individual for whom the notarial act is performed;
- (d) The signature or electronic signature of each individual for whom the notarial act is performed;
- (e) If identity of the individual is based on personal knowledge, a statement to that effect;
- (f) If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the type of identification credential presented, if any; and
- (g) The fee, if any, charged by the notary public.

Remember that a journal is for the notary's protection. The more complete the journal, the better the protection.

## Duties of Journal Keeping

RULONA imposes a duty on the notary to keep the journal secure, requiring the notary to keep the journal in a safe area under the exclusive control of the notary. It also requires a notary to not allow any other notary to use the journal.

Under RULONA, a notary must provide a certified copy of a journal entry to an individual if the following requirements are met:

- ✓ A written request is provided;
- ✓ The request must include the name of the parties to the document, the type of document, and the month and year in which it was notarized.
- ✓ After receiving a compliant request, the notary may make the certified copy and charge the regular notarial fee for it.
- ✓ The transaction must be recorded in the notary's journal.

RULONA requires a notary to provide their journal to the Secretary of State's office for inspection or auditing upon request. It also allows a law enforcement officer acting in the course of an official investigation to inspect a notary's journal without restriction.

## Journal Retention

Under RULONA, when a notary resigns or lets his/her commission expire, s/he must either:

1. Retain the journal for ten (10) years and provide notice to the Secretary of State as to where the journal is being kept; or
2. Leave the journal with the notary's employer and advise the Secretary of State of the employer's contact information; or
3. Send the journal to state archives and advise the Secretary of State that the notary has done so.

The Secretary of State recommends choosing option one (1) or three (3), as leaving the notary's journal with his/her former employer may be risky. If the notary is hailed into court, or any of his/her notarizations are called into question, it is in the best interest of the notary to have direct access to the journal because at the end of the day it is the notary who will be held liable.

Leaving a journal with a former employer may make it difficult to access the journal if the employer dissolves, moves, dies, loses the journal, or has a contentious relationship with the notary. **Regardless of where the notary decides to leave the journal, it is the notary's responsibility to testify in court or provide information regarding all prior notarizations.**

## What records must a notary maintain with the Secretary of State?

RULONA requires every notary to keep his/her record with the Secretary of State's office **accurate and up-to-date** at all times during his or her commission term (C.R.S. 24-21-530). **A notary must notify the Secretary of State within thirty (30) days of the following:**

1. Changes to the information in the notary's official file, including name, business address, and home address changes, phone number and e-mail address changes;
2. Loss of the notary's official stamp or journal, or loss of control of his or her electronic journal or signature; and
3. An event that ends the notary's term before the assigned commission expiration date, such as a move out of state, or a resignation of the commission.

These notifications, can be filed electronically with the Secretary of State using a notary's secure online access. Name changes must include a sample of the notary's new official signature, therefore online access will provide a signature page to print, scan, and file online with the Secretary of State with a copy of an ID in the new name.

Notaries may register online at <http://www.sos.state.co.us/pubs/notary/home.html> for online access to their personal profile.

Notices are to be filed within thirty days of the event that necessitates the notice. If a notary has overlooked this requirement, however, and it has been longer than thirty days s/he must file the notice as soon as possible. The notification itself does not require any statement about how long it has been since the change took place.



The only notification that is to be filed by someone other than the notary is for the death of a notary during his/her commission term. All other required notice filings are the notary's personal and individual responsibility.

To resign for any reason, a notary may login to his/her online account. The online system will then guide the notary through the resignation process.

The notary need not mail his/her journal to the Secretary of State. Instead, the notary may destroy his/her stamp (see above) and choose one of the methods of retention for his/her journal (see above). (C.R.S. 24-21-519). The notary's commission ceases to be in effect upon a filing of the resignation, and the former notary will no longer have the powers and privileges nor the obligations and liabilities of the notary commission.

Contrary to what notaries often believe, "resignation does not mean resignation from an employment position for which the notary originally obtained the commission. A notary is not required to resign his/her commission when quitting a particular job, even if his/her employer paid for the notary seal, journal, and commission fee. Further, a former employer may not resign the commission on behalf of the notary. Should the notary wish to keep his/her commission after leaving a job, s/he must file a change of business address. However, if the notary lives outside of Colorado and does not have a business address within Colorado, s/he must tender his/her resignation. (C.R.S. 24-21-521(3)(c)).

## What Does the Notary Law Prohibit?

RULONA sets forth the affirmative powers and duties of a Colorado notary, including the basics every notary should know. The statutes also contain the notary prohibitions, with which notaries should be equally well acquainted.

A notary may not:

1. **Misstate or omit facts on a commission application.** (C.R.S. 24-21-523(1)(b)). For example, a notary may not omit the fact that s/he has been convicted of a felony.
2. **Be convicted of a felony ever, or of a misdemeanor in the last five years involving dishonesty.** (C.R.S. 24-21-523(1)(c)).

3. **Have a finding against or admission of liability in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit.** (C.R.S. 24-21-23(1)(d)).
4. **Fail to follow the Notary Law.** (C.R.S. 24-21-23(1)(e)).
5. **Fail to adhere to any Notary Rules prescribed by the Secretary of State.** (C.R.S. 24-21-23(1)(g)).
6. **Have one's notary commission denied, refused, revoked, or suspended in another state.** (C.R.S. 24-21-23(1)(h)).
7. **Perform a notarial act if not currently commissioned by the Secretary of State.** (C.R.S. 24-21-23(1)(k)).
8. **Engage in or be convicted of the unauthorized practice of law.** (C.R.S. 24-21-23(1)(i), 24-21-525(1)). Unless s/he is also an attorney, a notary should not advise a client about the transaction for which notarization is requested, even if the client asks and even if the notary has some expertise in the area of the transaction. The notary should not assist in drafting legal records, filling out legal forms, or give legal advice. It is possible for a notary to get into trouble just by being too helpful.
9. **Use false or misleading advertising.** Advertising that represents a level of authority or claims any power, duty, right, or privilege that is not granted to a notary by law is prohibited. This includes advertising legal services or the ability to perform legal services when the notary is not a lawyer. (C.R.S. 24-21-523(1)(f) 24-21-525(2), 24-21-525(4), 24-21-525(5)).
10. **Withhold access to or possession of an original record.** A notary public shall not withhold access to or possession of an original record provided by a person that seeks performances of a notarial act by the notary. (C.R.S. 24-21-525(6)).
11. **Perform any notarial act in connection with a transaction in which the notary has a disqualifying interest.** A notary is prohibited from performing any notarial act in a transaction where they have a disqualifying interest. A notary now has a disqualifying interest if:
  1. The notary or the notary's spouse, partner in a civil union, ancestor, descendent, or sibling is a party to or is named in the record to be notarized; or

2. The notary or the notary's spouse or partner in a civil union may receive directly, and as a proximate result of the notarization, any advantage, right, title, or benefit in excess of the notary's fee. (C.R.S. 24-21-504).
  
12. **Notarize any blank document.** (C.R.S. 24-21-525(7)). This means any document with a blank in it that might be filled in after the time of the client's oath to, or acknowledgment of, that document. This provision does *not* require blanks to be filled in with specific information. A client may put "Not Applicable," or "X," or a line, scribble, or other material in such spaces. A notary may then notarize the document, as long as the blanks no longer remain.
  
13. **Sign a certificate to the effect that a document was signed, acknowledged, sworn to, or otherwise attested by any individual *unless* that individual signed, acknowledged, swore to, or otherwise attested the document while in the physical presence of the notary.** (C.R.S. 24-21-506). (Note: This is an important prohibition. Most major notary cases arise from an allegation that an alleged signer/attester of a document was not in the notary's presence for the notarization.)
  
14. **Sign such a certificate as is described in the preceding paragraph *unless* the attesting individual is personally known by the notary, or satisfactorily identified to the notary, as the person named in the document.** C.R.S. 24-21-507, gives several examples of "satisfactory evidence" of identity.
  
15. **Represent himself or herself as an immigration consultant** or expert, unless s/he is a Colorado licensed attorney. (C.R.S. 24-21-525(1)(b)).
  
16. **Solicit or accept compensation to prepare documents for a judicial or administrative proceeding,** including an immigration or citizenship proceeding. (C.R.S. 24-21-525(1)(c)).
  
17. **Solicit or accept compensation to represent the interest of another in a judicial or administrative proceeding,** or to obtain relief on behalf of another from any state or federal officer, agency, or employee. (C.R.S. 24-21-25(1)(d)).
  
18. Use the phrase "**notario**" or "**notario publico**" to advertise notary services. (The Mexican or South American "Notario" is a lawyer with substantially greater powers and duties than the American notary. The notary who advertises as a "Notario" just because s/he can speak Spanish sends an incorrect message to the Spanish speaking users of the notarial services.) (C.R.S. 24-21-525(3)).
  
19. **Provide, keep or use a seal embosser.** (C.R.S. 24-21-517(2)).

20. **Use an electronic signature without a document authentication number.** (C.R.S. 24-21-520(3)).
21. **Perform a remote notarization without being approved as a remote notary or without using an approved remote notary provider.** (C.R.S. 24-21-514.5(3)).
22. **Willfully violate the duties imposed by the Act,** or unlawfully use a notary journal, official stamp, electronic signature, or other papers or records relating to notarial acts. (C.R.S. 24-21-531). This is a crime called official misconduct and notaries could be found guilty of a petty offense punishable by jail, fine, or both. The willful impersonation of a notary is also a crime (C.R.S. 24-21-532), though it does not, of course, apply to a commissioned notary.
23. **Charge more than \$15 (or \$25 for an electronic signature or remote signature) per notarization.** A notary may not charge more than \$15.00 per document. The fee must include all duties and functions required to complete the notarial act (C.R.S. 24-21-529).

## Consequences of Violating the Notary Law

A notary may incur three general types of consequences or penalties for violations of the notary law. These can be classed, for the sake of brevity, as follows:

1. **Administrative** (C.R.S. 24-21-23) in the form of a letter of admonition, suspension, revocation or denial of a commission by the Secretary of State;
2. **Civil** in the form of penalties or damages assessed as a result of a civil lawsuit against the notary where the notary's misconduct is the proximate cause of the plaintiff's loss; and
3. **Criminal** in the form of fines or imprisonment imposed as a result of a criminal proceeding against the notary.

A notary cannot lose his/her commission, or be assessed damages or penalties, for that matter, without a chance to defend him or herself. If the Secretary of State receives a complaint against a notary, the notary is contacted and informed of the complaint and given a chance to respond to it. After that, if there are still questions about the alleged violation(s), further investigation is done. If the matter is still not resolved, notice is given and a public hearing is held to give the notary the opportunity to defend against the allegations.

In order to reduce the number of complaints and create a more professional cadre of Colorado notaries public, the General Assembly gave the Secretary of State the authority to promulgate rules to require notaries to complete a notary training program and pass an examination. RULONA also requires an examination. (C.R.S. 24-21-522).

## Electronic Notarization

**Remember that electronic notarization does not mean remote notarization.**

### e-Notarization Basics

Every notary and prospective notary, whether or not s/he wishes to be certified to notarize electronically at this time, should be aware of some e-notarization basics.

- Most importantly: electronic notarization does not change a notary's basic duties, functions, and responsibilities. The requirements of law discussed above are not waived or altered when a notary uses an electronic signature. A notary must still be in a client's presence, identify the client, and administer an oath to, or take an acknowledgment from, that client.
- A notary must be certified to notarize electronically before doing any such notarization.
- A notary must be familiar with the law and rules regulating electronic notarization before being certified.
- Notaries performing electronic notarizations must select a tamper-evident technology and notify the Secretary of State as to which technology they are using.

## Electronic Signatures

There are two types of electronic signatures that Colorado provides for:

1. The document authentication numbers issued by the Secretary of State and used as the electronic signature,

2. An electronic signature purchased from private sector vendors when used in conjunction with the document authentication numbers issued by the Secretary of State. This may also be a sound, symbol, or process.

The notary's electronic signature must include the notary's name as it appears on his/her commission and the notary's ID number.

These signatures are only used on electronic documents; i.e., there is no paper, the document just resides on the computer, and both the signer and the notary are signing electronically. There is absolutely no reason for a notary to use an electronic signature if paper is involved. See Appendix C for a sample eNotarization.

## Use of a Journal

The journal must be used for every notarial act whenever an electronic signature has been used.

The journal should include all of the information required by the statute and should include the handwritten signature of the signer who uses an electronic signature as well as the document authentication number(s) applied to the particular document(s) that were notarized electronically. Notaries may also use a tamper-evident electronic journal.

## Remote Notarization

Remote notarization is the use of audio-video technology to perform a notarization for a person who is not in the same room as the notary.

Only a currently commissioned Colorado notary public with a status of Active in the Secretary of State's online database may register to perform remote notarizations. In order to register as a remote notary, you must first take the remote notary training and exam. You must also be familiar with the remote notary laws and rules.

The notary must use a remote notary provider that is approved by the Secretary of State when providing remote notary services and for storing the recordings of the remote notary transactions.

Before performing a remote notarization, it is the notary's responsibility to verify that the provider technology used allows the audio-video recording and storage of the remote notarization and otherwise complies with existing remote notarization requirements. Some providers will charge for services.

A notary must be located in the State of Colorado when remotely notarizing a document. However, the remotely located individual may be in a different state or country.

## Electronic Notarization vs. Remote Notarization

You may be wondering what the differences between electronic notarizations and remote notarizations are.

An electronic notarization:

- Involves notarization of an electronic record, like a document file.
- Requires that the Colorado notary public and the person for whom the notarial act is being performed be in the same room.
- Requires the document to be signed electronically, in most cases looking at a computer or other viewing screen.
- Does not use audio-video communication.
- Requires the notary to include a special Document Authentication Number (DAN) received from the Secretary of State's office on each electronic notarization.

In contrast, in a remote notarization:

- The initial document must be in an electronic form when it is signed or acknowledged.

While the notary public must still be in Colorado, the notary public is not in the same location as the individual for whom the notarial act is performed.

- The use of a remote notarization provider’s system is required so that the notary can simultaneously witness in real time what is taking place, i.e., the signing or acknowledging a document.

## What types of documents may be remotely notarized?

A notary providing a remote notarization service for a remotely located individual within the United States may remotely notarize any electronic documents that are normally allowed under Colorado’s RULONA notary law.

However, if the remotely located individual is outside the United States, then both the following conditions must be satisfied:

- ✓ You (the notary public) must not have actual knowledge that the notarial act is prohibited in the jurisdiction where the remotely located individual is physically located at the time of the act, and
- ✓ The electronic documents must relate to at least one of the following:
  - A matter that will be filed with or is currently before a court, governmental entity, or other entity in the United States
  - Property located in the United States
  - A transaction substantially connected to the United States

A notary may not remotely notarize any record relating to the electoral process; this includes circulator’s affidavits and candidate petitions.

A notary may not notarize a will or codicil or any acknowledgment required under sections 15-11-502 or 15-11-504, C.R.S., except as specifically provided in the Colorado Uniform Electronic Wills Act (HB 21-1004, effective January 21, 2021), codified at sections 15-12-1501 to 15-12-1511, C.R.S.

## Real-Time Audio-Video

A notary cannot notarize a document after watching a previously recorded or taped audio-video of a person signing or acknowledging a document. The notary must witness the act in “real-time.” In other words, you and the remotely located individual must be able to “see and hear each other substantially simultaneously and without interruption or disconnection.”



## Remote Notarization Recording

A notary must record and store each remote notary transaction. The audio-video recording must be securely stored for 10 years.

A notary cannot perform a remote notarization if the remotely located individual does not want or agree to be recorded.

Before actually recording the notarization, the notary public must first:

- Tell the remotely located individual that the notarization will be recorded and the details of its storage including where and for how long it will be stored; and
- Obtain the remotely located individual's express consent (agreement) to both the recording and storage of the recording.

Once the notary discloses the necessary information and obtains consent, the notary must make sure that the audio-video recording contains the following:

The notary must state:

- ✓ The notary's name
- ✓ The date and time of the notarial act
- ✓ A description of the document(s) being notarized (examples: affidavit, financial record, etc.)
- ✓ The remotely located individual's name who will be signing or acknowledging the document(s)

✓ The method(s) of identification used to identify the remotely located individual/witness(es)

- **Personal knowledge:** If the notary uses personal knowledge of the remotely located individual, the notary must state how the notary public knows the remotely located individual and for how long.
  
- **Credible witness:** If the notary uses a credible witness to identify a remotely located individual, then the notary and the credible witness must make statements as follows:
  - The name of any required credible witness
  - The notary must explain how the notary public knows the credible witness and for how long and
  - The credible witness must explain how the credible witness knows the remotely located individual.
  
- Remote presentation and credential analysis of a government-issued ID, and the data contained on the credential, that contains the signature AND a photograph of the remotely located individual, and at least one of the following:
  - A dynamic, knowledge-based authentication assessment by a trusted third party, like a remote notary provider.
  
  - A valid public key certificate that complies with the Colorado Notary Rules
  
  - Any other method that complies with the Colorado Notary Rules

✓ The remotely located individual must state that his or her actions before the notary are knowingly and voluntarily made.

- ✓ Confirm the notary and the remotely located individual(s) are viewing the same record
  - All signatures, changes, and attachments to the record must be made in real time

## Journal

The notary must record each remote notarization in the notary's tamper-evident electronic journal, unless the notary meets all of the statutory exception requirements in section 24-21-519(10)(c), C.R.S.

In addition to the journal information required by section 24-21-519(3), C.R.S., the remote notary public must record the name of the remote notarization system provider used for each remote notarization.

The electronic journal must remain under the notary's sole control and be securely backed up.

## Notarial Certificate

In performing a remote notarization, the notary public must only use the notarial certificates authorized by RULONA, sections 24-21-515 and -516, C.R.S.

The county and state written on the notarial certificate should be the location of the notary at the time of the remote notarial act.

The certificate must also indicate that the notary performed the notarial act using audio-video technology.

Here is an example notarial certificate:

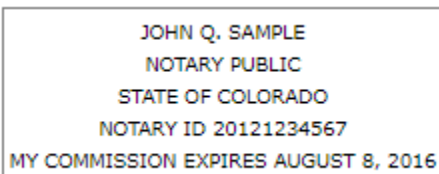
|  |  |
|--|--|
| Subscribed and affirmed before me <b>using audio-video technology</b> , in the county of _____,<br>State of Colorado, this _____ day of _____, 20__. |  |
| _____<br>(Notary's official signature)   | JOHN Q SAMPLE<br>NOTARY PUBLIC<br>STATE OF COLORADO<br>NOTARY ID 20121234567<br>MY COMMISSION EXPIRES AUGUST 8, 2016 |
| _____<br>(Commission Expiration)   |  |

## Notary Seal

A remote notary public must affix to an electronic record a seal that in both appearance and content matches the manually applied official stamp required by section 24-21-517, C.R.S.

The seal must be retained under the remote notary public's sole control and only accessed using proper authentication.

Here is a sample notary seal:



## Notary Signature

The signature used by the remote notary public for remote notarizations must match the signature that the remote notary public submitted to the Secretary of State and is on file as the notary's most recent underlying commission as a Colorado notary public. This is the signature identified as the notary public's "official signature" on the notary's most recent affirmation form or on the notary's most recent signature change form, whichever was filed later. A remote notary public may not use the remote notarization application or any update form to change the notary's official signature.

Like the seal, the notary's electronic signature must be retained under the remote notary public's sole control and only accessed using proper authentication.

## Fees

The fees charged depends on the notary's signature and type of remote notarization system used. RULONA provides that "the fees of a notary public may be, but must not exceed, fifteen dollars for each document attested by a person before a notary." [section 24-21-529(1), C.R.S]. If the notary is providing an "electronic signature", i.e., not a manual "wet" signature, the notary may charge up to twenty-five dollars. [section 24-21-529(2), C.R.S]. For remote notarizations, a notary will be applying an electronic signature. Accordingly, the notary may charge up to ten dollars. [section 24-21-529(2), C.R.S].

## General Information

Please be advised that most documents related to your commission may be filed online (e.g., application, renewal application, change of name, change of address, etc.) once you login to your notary account at: <https://www.sos.state.co.us/pubs/notary/home.html?menuheaders=7> .

Please make sure your contact information is up-to-date at all times on your electronic notary account. Also, we recommend you use a personal email address, rather than a work email address, to ensure you receive important notifications and can access your profile even if you change positions.

# Appendices

# Appendix A

## Sample Notarial Certificates

RULONA establishes notarization short forms in section 24-21-516. It is highly recommended that the Notary make use of these short forms.

### Verification on oath or affirmation [\[1\]](#)

|  |
|--|
| State of Colorado<br>County of _____   |
| Signed and sworn to [or affirmed] before me on<br>_____, 20____  |
| by _____ (name(s) of individual(s)<br>making statement).   |
| _____<br>(Notary's official signature)   |
| _____<br>(Title of office)   |
| _____<br>(Commission Expiration)   |
| JOHN Q. SAMPLE<br>NOTARY PUBLIC<br>STATE OF COLORADO<br>NOTARY ID 20121234567<br>MY COMMISSION EXPIRES AUGUST<br>8, 2016 |

### Certification of a document photocopy (certified copies) [\[2\]](#)

|  |
|--|
| State of Colorado<br>County of _____   |
| I certify that this is a true and correct copy of a record in the possession of<br>_____.                                |
| Dated _____  |
| _____<br>(Notary's official signature)   |
| _____<br>(Title of office)   |
| _____<br>(Commission Expiration)   |
| JOHN Q. SAMPLE<br>NOTARY PUBLIC<br>STATE OF COLORADO<br>NOTARY ID 20121234567<br>MY COMMISSION EXPIRES AUGUST 8,<br>2016 |

**Witnessing or attesting a signature [3]**

|   |   |
|---|---|
| State of Colorado<br>County of _____  |   |
| Signed before me on _____, 20____<br>by _____ (name(s) of individual(s)<br>making statement). |   |
| _____   | <div style="border: 1px solid black; padding: 5px; text-align: center;">JOHN Q. SAMPLE<br/>NOTARY PUBLIC<br/>STATE OF COLORADO<br/>NOTARY ID 20121234567<br/>MY COMMISSION EXPIRES AUGUST<br/>8, 2016</div> |
| (Notary's official signature)   |   |
| _____   |   |
| (Title of office)   |   |
| _____   |   |
| (Commission Expiration)   |   |

**Acknowledgments [4]**

**Individual acting in his/her own right (individual capacity)**

|  |   |
|--|---|
| State of Colorado<br>County of _____   |   |
| This record was acknowledged before me<br>on _____, 20____<br>by _____ (name(s) of individual(s)). |   |
| _____  | <div style="border: 1px solid black; padding: 5px; text-align: center;">JOHN Q. SAMPLE<br/>NOTARY PUBLIC<br/>STATE OF COLORADO<br/>NOTARY ID 20121234567<br/>MY COMMISSION EXPIRES AUGUST<br/>8, 2016</div> |
| (Notary's official signature)  |   |
| _____  |   |
| (Title of office)  |   |
| _____  |   |
| (Commission Expiration)  |   |



**Individual acting in a representative capacity**

State of Colorado  
County of \_\_\_\_\_

This record was acknowledged before me  
on \_\_\_\_\_, 20 \_\_\_\_\_  
by \_\_\_\_\_ as (type of authority, such as officer or trustee) of  
(name of party/entity on behalf of whom record was executed).

(name of officer or agent, title of officer or agent) of (name of corporation acknowledging)  
a (state or place of incorporation) corporation, on behalf of the corporation.

\_\_\_\_\_  
(Notary's official signature)

\_\_\_\_\_  
(Title of office)

\_\_\_\_\_  
(Commission Expiration)

JOHN Q. SAMPLE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20121234567  
MY COMMISSION EXPIRES AUGUST  
8, 2016

- [1] 24-21-516(1)(c), C.R.S.
- [2] 24-21-516(1)(e), C.R.S.
- [3] 24-21-516(1)(d) C.R.S.
- [4] 24-21-516(1)(a) and (b), C.R.S.

# Appendix B

## Credible Witness Guide

### Note:

- We are talking about **3 separate individuals**: Notary, Client, and Credible Witness.
    - I capitalized the 3 individuals' positions for ease of identification.
    - They do not normally need to be capitalized.
  - We are talking about **2 documents** requiring notarization: the Credible Witness's sworn written statement and the Client's document, whatever that may be.
  - The credible witness requirements are different for remote notarizations. Please refer to the remote notary section above.
- 

### When does RULONA allow use of a Credible Witness?

- a. In some cases, a Notary's primary client ("Client") who needs to sign or acknowledge a document lacks sufficient identification that satisfies RULONA's "satisfactory evidence" standard.<sup>1</sup>
- b. In these cases, RULONA authorizes a Notary to rely on a 3<sup>rd</sup> individual – a Credible Witness -- to identify the Client.

### What requirements must the Notary using a Credible Witness satisfy?

- c. RULONA states that the Credible Witness provides satisfactory evidence of identity "[b]y a verification on oath or affirmation."<sup>2</sup>
- d. This means that the Credible Witness must provide a written statement (which can be a declaration or affidavit) that the Credible Witness swears to and has notarized by the same notary who is notarizing the Client's separate document.
- e. As with all notarial acts, the Credible Witness must personally appear in front of the Notary.

### Who must know who?

- f. The Credible Witness must personally know the Client.
  - i. With reference to "personally knows," RULONA provides: "[T]he individual is personally known . . . [if known] through dealings sufficient to provide reasonable

certainty that the individual has the identity claimed.”<sup>3</sup>

g. The Credible Witness must also either:

i. personally know the Notary; OR\*

ii. be identified by the Notary using sufficient identification.

1. These will be the same types of identification that anyone must present to a Notary.

**What does the Credible Witness swear to/affirm in the written statement?**

h. The Credible Witness should swear or affirm that the Credible Witness personally knows the Client; and

i. The Credible Witness should swear or affirm that the Client is the same person whose name appears in the document in question (i.e., the document that the Client will be signing or acknowledging and that requires notarization).

j. We have a sample Credible Witness Statement for reference.

**What happens to the Credible Witness’s sworn statement post-notarization?**

k. After notarizing the Credible Witness’s signed sworn statement, the Notary may opt to keep a copy but is not required to do so. The Client may wish to keep it and/or attach the statement to the primary notarized document.

l. As with all notarial acts, the Notary must fully record the notarization in their journal and that specific journal entry is sufficient without retaining a copy of the statement.

<sup>1</sup>Section 24-21-507(2)(a), C.R.S

<sup>2</sup>Section 24-21-507(2)(b), C.R.S. The Official Comments to Section 2 of the model RULONA clarify that

<sup>3</sup>Section 24-21-507(1), C.R.S.

\*For a remote notarization, the credible witness must personally know the notary AND the remotely located individual.

# Sample Credible Witness Statement

I, Robert Q. Witness, do hereby swear [or affirm] that the person appearing  
Printed Name of Credible Witness

before the notary is personally known to me as Nancy R. NoID and is  
Printed Name of Person Lacking Sufficient ID

the same person named in the document titled: Quitclaim Deed requiring  
Title of Document

notarization.

Date: July 1, 2018 Credible Witness' Signature: *Robert Q. Witness*

\*\*\*\*\*

STATE OF COLORADO  
COUNTY OF DENVER

Signed and sworn [or affirmed] before me on July 1, 2018 by Robert Q. Witness.  
Printed Name of Credible Witness

*John Q. Sample*

NOTARY PUBLIC  
My commission expires: August 8, 2020

|   |
|---|
| JOHN Q. SAMPLE<br>NOTARY PUBLIC<br>STATE OF COLORADO<br>NOTARY ID 20121234567<br>MY COMMISSION EXPIRES AUGUST 8, 2020 |
|---|

Appendix C  
Sample eNotarization

**POWER OF ATTORNEY**

[Electronic Record Document]

I, John Doe [Principal's name] being of sound mind and legal capacity, do hereby appoint Robert Smith as my true and lawful attorney in fact, to act for me in my name, place, and stead, and to manage my financial affairs on my behalf.

In witness whereof, I have signed this Power of Attorney of my own free will.

John Doe  
Principal's signature

July 1, 2018  
Date

\*\*\*\*\*

STATE OF COLORADO  
COUNTY OF DENVER

Signed and affirmed before me on July 1, 2018 by John Doe.  
Signature: Mary Q. Notary

NOTARY PUBLIC  
STATE OF COLORADO  
Notary ID: 20171234567  
My commission expires July 1, 2021  
DAN #20171234567-1234

# Appendix D

## Sample Remote Notarization Notarial Certificate

Subscribed and affirmed before me using audio-video technology, in the county of \_\_\_\_\_,  
State of Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary's official signature)

\_\_\_\_\_  
(Commission Expiration)

|  |
|--|
| JOHN Q SAMPLE<br>NOTARY PUBLIC<br>STATE OF COLORADO<br>NOTARY ID 20121234567<br>MY COMMISSION EXPIRES AUGUST 8, 2016 |
|--|

## Appendix E

### Additional Resources

#### Revised Uniform Law on Notarial Acts (RULONA)

[https://www.sos.state.co.us/pubs/info\\_center/laws/Title24/Title24Article21Part5.html](https://www.sos.state.co.us/pubs/info_center/laws/Title24/Title24Article21Part5.html)

#### Colorado Notary Rules

<https://www.sos.state.co.us/CCR/DisplayRule.do?action=ruleinfo&ruleId=2904&deptID=20&agencyID=104&deptName=1505%20Department%20of%20State&agencyName=1505%20Secretary%20of%20State&seriesNum=8%20CCR%201505-11>

#### Sample Notary Journal

[https://www.sos.state.co.us/pubs/notary/files/notary\\_sample\\_journal.pdf](https://www.sos.state.co.us/pubs/notary/files/notary_sample_journal.pdf)

#### Tutorials

[Tutorials & Training \(coloradosos.gov\)](#)

#### Training Classes

<https://www.sos.state.co.us/pubs/notary/notaryTraining.html>

#### Exam

[Cornerstone OnDemand \(csod.com\)](#)

#### Notary Homepage

<https://www.sos.state.co.us/pubs/notary/home.html?menuheaders=7>

- FAQs
- Application and Renewal
- Login
- Updates

## Appendix F Checklists

### Oath and Affirmations Checklist

#### **Oath and Affirmation Checklist**

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- Administer oath
- See the client sign the document (in your physical presence)
- Complete the notarial certificate

### Acknowledgment Checklist

#### **Acknowledgment Checklist (when document is already signed)**

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"  
I.D. verification very important because document is already signed
- Signer acknowledges in your physical presence that document was signed by him
- Complete the notarial certificate

**Best practice:** Verify the signature on the previously signed document matches the signature on the ID and the signature in your journal.



## Signature Witness Checklist

### Acknowledgment Checklist (witnessing a signature)

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- Signer signs document in your physical presence
- Complete the notarial certificate (use the "witnessing or attesting signature short form")

**Best practice:** Verify the signature on the signed document matches the signature on the ID and the signature in your journal.

## Copy Certification Checklist

### Copy Certifications Checklist

- Record the transaction in your journal
- Identify the client using "Satisfactory Evidence"
- See the original document
- Verify it is permissible to certify
  - Cannot certify documents from the following offices in this state:
    - o Clerk and Recorder of Public Documents
    - o Secretary of State
    - o State Archives
    - o Office of Vital Records
  - Cannot certify documents that state on their face that it is illegal to copy the record
- Verify that the copies are exact
- Certify the client's copy

**Best practice:** Make two copies

## Remote Notarization Checklists

### Checklist Prior to Recording

- The notary must disclose that the transaction is being recorded and the details of the recording's storage
- The remotely located individual must explicitly agree to both the recording and the storage of the recording

### Checklist After Recording Begins

- The notary's name
- The date and time of the notarial act
- A description of the document(s) being notarized (examples: affidavit, financial record, etc.)
- The remotely located individual's name who will be signing or acknowledging the document(s)
- The method(s) of identification used to identify the remotely located individual/witness(es)
  - **Personal knowledge:** If the notary uses personal knowledge of the remotely located individual, the notary must state how the notary public knows the remotely located individual and for how long.
  - **Credible witness:** If the notary uses a credible witness to identify a remotely located individual, then the notary and the credible witness must make statements as follows:
    - The name of any required credible witness
    - The notary must explain how the notary public knows the credible witness and for how long and
    - The credible witness must explain how the credible witness knows the remotely located individual.

- **Remote presentation and credential analysis of a government-issued ID**, and the data contained on the credential, that contains the signature AND a photograph of the remotely located individual, and at least one of the following:
  - A dynamic, knowledge-based authentication assessment by a trusted third party, like a remote notary provider.
  - A valid public key certificate that complies with the Colorado Notary Rules
  - Any other method that complies with the Colorado Notary Rules
- The remotely located individual must state that his or her actions before the notary are knowingly and voluntarily made.
- Confirm the notary and the remotely located individual(s) are viewing the same record
  - All signatures, changes, and attachments to the record must be made in real time
- Perform the remote notarization
  - Have the remotely located individual sign the notary's tamper evident-electronic journal
  - Perform the requested notarial act
  - Complete the notarial certificate and apply the seal
    - The notarial certificate should state that the notarization was performed using "audio-video technology"
- Save the audio-video recording of the remote notarization and retain it for 10 years

# Appendix G

## Secretary of State Contact Information

### **Notary Program**

Colorado Secretary of State, Business and Licensing Division

1700 Broadway Suite 550

Denver CO 80290

### **Notary Help Line**

303-894-2200 & press 4

### **Notary e-mail**

[notary@coloradosos.gov](mailto:notary@coloradosos.gov)

# Glossary

NOTE: Also see RULONA, C.R.S. 24-21-502, Definitions and the Colorado Notary Rules.

**Acknowledgment:** An individual states that s/he is the person who signed the document, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

**Affiant:** The person who subscribes his signature to an affidavit. The person to whom an oath or affirmation is administered.

**Affidavit:** A written declaration made under oath or affirmation before a notary public or other authorized officer, in which the signer swears or affirms that the statements or declarations in the document are true.

**Affirmation:** A solemn declaration that the information contained in the document is true and accurate, made by persons who decline taking an oath for religious or conscientious reasons. An affirmation is equivalent to an oath and is just as binding.

**Apostille:** *Apostille* (pronounced ah-po-stee) is a French word which means *certification*. In notarial usage, it refers to a certificate used to authenticate the signature of a notary public and other public officers, placed on documents that are to be sent overseas. The Apostille certifies that the notary's commission is current and the notary is in good standing. It is signed by the Secretary of State. This type of authentication is accepted for legal use in all the nations that are members of the Hague Convention of October 5, 1961.

**Audio-Video Communication:** Communication by which an individual is able to see, hear, and communicate with a remotely located individual in real time using electronic means.

**Authentication:** Refers to either an Apostille or authentication. The Office of the Secretary of State has authority to issue authentications and uses one form for both. The Secretary of State must refuse to authenticate a notarization if the notarization does not comply with the requirements of Colorado law or the document concerns allegiance to a government or jurisdiction; relates to the relinquishment of citizenship, sovereignty, *in itinere* status or world

service authority; or sets forth or implies a claim of immunity from the law of the state or federal law.

**Certified Copy:** A document that is signed by a public official as a true copy of the original document that is held in the office of the public official, or a copy of the original which is certified to be a true copy by a notary public. Certified copies of some documents can only be obtained from the office of the public official in which the original is held. Examples include birth certificates, death certificates, and marriage certificates. Colorado notaries cannot certify copies of these documents if they were issued in the State of Colorado.

**Credible Witness:** A person who is personally known to the notary or the signer and who swears or affirms to the identity of another person, unknown to the notary, who is signing and attesting to a document.

**Competence:** The mental ability to distinguish right from wrong and to manage one's own affairs. A notary should be certain that all parties understand what they are signing and swearing or affirming to.

**DAN:** The unique document authentication number issued by the Secretary of State for electronic notarizations.

**Execute:** To make a document valid by signing one's name to it.

**In Representative Capacity:** 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.

**Instrument:** A legal document, such as a contract, deed, will, or mortgage, which is to be signed.

**Journal:** An official record of notarial acts performed by the notary public. A notarial journal entry is required for all notarial acts.

**Jurat:** A jurat is a signed statement by the notary stating that the signer (1) personally appeared before the notary, (2) signed the document in the presence of the notary, and (3) took an oath or affirmation administered by the notary, e.g. "Do you swear that the statements in this document are true, so help you God?" or "Do you affirm that the statements in this document are true?" This act must be stated clearly on every notarial certificate (notarization).

**Oath:** A solemn, formal declaration or promise to tell the truth, made before a notary public, under penalty of perjury. Traditionally, the oath invokes reference to a deity ("under God") as witness.

**Notarial Certificate:** The required statement that appears at the end of a document that is completed and signed by the notary public. This statement includes the jurat, the venue or location where the notarization occurred, the date of the notarization, and the notary public's signature, seal, and commission expiration date. This is sometimes also called simply the "notarization".

**Notarial Seal:** See "Official Stamp"

**Official Stamp:** RULONA refers to the Notarial Seal as the "Official Stamp, the requirements of which are outlined in C.R.S. 24-21-502(4).

**Perjury:** A false statement made under oath. Perjury is subject to punishment by fine and/or imprisonment.

**Provider:** Refers collectively to both remote notarization system providers and remote notarization storage providers.

**Real-time:** With respect to an interaction between individuals by means of audio-video communication, the situation that the individuals can see and hear each other substantially simultaneously and without interruption or disconnection.

**Remotely Located Individual:** An individual who is not in the physical presence of the notary public who performs a notarial act.

**Remote notarization:** An electronic notarial act performed with respect only to an electronic record by means or real-time audio-video communication.

**SS.:** An abbreviation of the Latin word *silicet*, (to wit) meaning “in particular” or “namely”. Commonly referred to as “jurisdiction”. Traditionally included to the right of the venue in a notarial certificate.

**Subscribe:** To sign.

**Tamper-evident:** The use of a set of applications, programs, hardware, software, or other technologies that will display evidence of any changes made to an electronic record.

**Venue:** The location in which the notarization was performed. This must include the state and county. Examples are: “State of Colorado, County of Adams” or “State of Colorado, City and County of Denver”.



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