

ENROLLED ACT NO. 17, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

AN ACT relating to notaries and notarial acts; adopting the uniform law on notarial acts; amending conflicting statutes; repealing the Wyoming Acknowledgment Act; repealing superseded statutes; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 34-26-101 through 34-26-109 are created to read:

CHAPTER 26
NOTARIAL ACTS

ARTICLE 1
WYOMING UNIFORM NOTARIAL ACT

34-26-101. Short title; definitions.

(a) This act shall be known and may be cited as the "Wyoming Uniform Law on Notarial Acts".

(b) As used in this act:

(i) "Acknowledgment" means a declaration by a person that the person has freely and voluntarily executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein and that the person acknowledges that the instrument was executed and acknowledged freely and voluntarily;

(ii) In a "representative capacity" means:

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(A) For and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;

(B) As a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;

(C) As an attorney in fact for a principal;
or

(D) In any other capacity as an authorized representative of another.

(iii) "Notarial act" means any act that a notarial officer of this state is authorized to perform, and includes taking an acknowledgement, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;

(iv) "Notarial officer" means a notary public or other officer authorized to perform notarial acts;

(v) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation;

(vi) "This act" means W.S. 34-26-101 through 34-26-109.

34-26-102. Notarial acts.

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(a) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied.

(e) In certifying an instrument executed by a business entity the notarial officer shall determine that the person who signed the instrument on behalf of the business entity appeared before and was personally known to the notarial officer making the certification, and was by him duly sworn and upon oath represented that he was the president or other officer or agent of the business entity, that the instrument was signed on behalf of the entity pursuant to his authority to do so, and that the person who executed the instrument on behalf of the business entity acknowledged the instrument to be the free act and deed of the business entity. For purposes of this subsection

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"business entity" means corporation, limited liability company, partnership or other entity, whether for profit or not for profit, authorized to be formed under title 17 of the Wyoming statutes or the laws of another state that are the functional equivalent.

(f) In certifying an instrument executed by a trustee of a testamentary trust or of an express trust created by a written trust instrument, the notarial officer shall determine that the trustee who signed the instrument on behalf of the trust appeared before and was personally known to the notarial officer making the certification, and was by him duly sworn and upon oath represented that he was the trustee of the trust, that the instrument was signed and sealed on behalf of the trust, the trustee had the authority under the terms of the written trust instrument to execute the instrument on behalf of the trust, and that the trustee acknowledged the instrument to be the free act and deed of the trust.

(g) In making or noting a protest of a negotiable instrument the notarial officer shall determine the matters set forth in W.S. 34.1-3-505.

(h) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(i) Is personally known to the notarial officer;

(ii) Is identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(iii) Is identified on the basis of identification documents.

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34-26-103. Notarial acts in Wyoming.

(a) A notarial act may be performed within this state by the following persons:

- (i) A notary public of this state;
- (ii) A judge of any court of this state;
- (iii) A clerk or deputy clerk of a county;
- (iv) A clerk or deputy clerk of any court of this state;
- (v) A district court commissioner;
- (vi) A full-time magistrate as authorized by W.S. 5-9-208;
- (vii) A part-time magistrate as authorized by W.S. 5-9-212;
- (viii) Any other officer authorized under the laws of this state to take acknowledgments.

(b) Notarial acts performed within this state under federal authority as provided in W.S. 34-26-105, have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

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34-26-104. Notarial acts in other jurisdictions of the United States.

(a) A notarial act, including the acknowledgment of any deed, mortgage or conveyance, has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(i) A notary public of that jurisdiction;

(ii) A judge, clerk or deputy clerk of a court of that jurisdiction; or

(iii) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in W.S. 34-26-105 have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in paragraph (a)(i) or (ii) of this section conclusively establish the authority of a holder of that title to perform a notarial act.

34-26-105. Notarial acts under federal authority.

(a) A notarial act, including the acknowledgment of any deed, mortgage or conveyance, has the same effect under

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the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

- (i) A judge, clerk or deputy clerk of a court;
- (ii) A commissioned officer on active duty in the military service of the United States;
- (iii) An officer of the foreign service or consular officer of the United States; or
- (iv) Any other person authorized by federal law to perform notarial acts.

(b) The signature and title of the person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in paragraph (a)(i), (ii) or (iii) of this section conclusively establish the authority of a holder of that title to perform a notarial act.

34-26-106. Foreign notarial acts.

(a) A notarial act, including the acknowledgment of any deed, mortgage or conveyance, has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under the authority of a foreign nation or its constituent units or a multi-national or international organization by any of the following persons:

- (i) A notary public or notary;

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(ii) A judge, clerk or deputy clerk of a court of record; or

(iii) Any person authorized by the law of the jurisdiction to perform notarial acts.

(b) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in paragraph (a)(i) or (ii) of this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

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34-26-107. Certificate of notarial acts.

(a) A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of the office. If the officer is a notary public, the certificate shall also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it shall also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) of this section and it:

(i) Is in the short form set forth in W.S. 34-26-108;

(ii) Is in a form otherwise prescribed by the law of this state;

(iii) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(iv) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

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other instruments affecting title to real estate and all other instruments to be acknowledged in a representative capacity:

State of _____

County of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

[My commission expires: _____]

(iii) For a verification upon oath or affirmation:

State of _____

County of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

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[My commission expires:_____]

(iv) For witnessing or attesting a signature:

State of _____

County of _____

Signed or attested before me on (date) by (name(s)
of person(s)) .

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

[My commission expires:_____]

(v) For attestation of a copy of a document:

State of _____

County of _____

I certify that this is a true and correct copy of a
document in the possession of _____ .

Dated _____

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

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[My commission expires:_____]

34-26-109. Notarial acts affected by this act.

(a) This act applies to notarial acts performed on or after its effective date.

(b) Any instrument which was acknowledged within this state prior to the effective date of this act and in accordance with the laws in effect in this state as of the date of the acknowledgment of the instrument shall continue to be a valid instrument. All instruments deemed to be properly acknowledged under W.S. 34-2-118, prior to its repeal by this enactment, shall continue to be deemed and regarded to be properly acknowledged after the effective date of this act.

Section 2. W.S. 1-2-102 by creating a new subsection (b), 5-9-140, 8-1-102(a) by creating a new paragraph (xiii), 11-17-102(a) (intro), 15-6-406(b) (intro), 22-5-214, 29-1-301(a), 29-2-106(c), 29-3-111(a), 29-5-103(a) (intro), 31-2-104(a), 31-2-504(a), 34-1-113, 34-1-118, 35-22-403(b), 36-9-106, 39-13-107(b) (iii) (H) and (J), 40-2-104(a) (iv) and 41-3-310(c) (intro) are amended to read:

1-2-102. Officers authorized to administer.

(b) Officers listed in this section are authorized to administer oaths, but are not authorized to perform other notarial acts as defined in W.S. 34-26-101(a) (iii), unless specified otherwise in W.S. 32-1-105(c) or 34-26-103(a).

5-9-140. Appointment of special reporters; certification of transcript.

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If the record is to be made by a stenographic reporter, the judge shall appoint a special stenographic reporter to report the testimony and proceedings. If the record is made by means of electronic recording, the judge shall appoint a special reporter to make the electronic recording, and in those cases in which it is required, the judge shall appoint an official stenographer to furnish with reasonable diligence a typewritten transcript of the testimony and proceedings. The report of the official stenographer, when typewritten and certified by him as a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The signature of the stenographer on the certification of the transcript shall be duly acknowledged by him before a ~~notary public or judicial~~ notarial officer of this state.

8-1-102. Definitions.

(a) As used in the statutes unless the legislature clearly specifies a different meaning or interpretation or the context clearly requires a different meaning:

(xiii) "Notarial officer" means a notary public or other officer authorized to perform notarial acts as defined in W.S. 34-26-101(b)(iii).

11-17-102. Registration with department of agriculture; contents of certificate to be filed; certain ingredients to be listed; samples and affidavit required; fee.

(a) Before any manufacturer, importer, jobber or person sells, offers for sale or distributes in Wyoming any livestock remedy, he shall file with the state department of agriculture a statement that he desires to offer the

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livestock remedy for sale in this state, and a certificate in duplicate, sworn to before a ~~notary public or other proper official~~ notarial officer, stating:

15-6-406. Lien created; priority; filing.

(b) In order to have a valid, enforceable lien under this section, a lien statement sworn to before a ~~notary public~~ notarial officer, shall be filed by the claimant with the county clerk of the county in which the assessment district is located. The county clerk shall file the statement and index by date, name of claimant and property owner, and by legal description. The lien statement shall contain the following:

22-5-214. Change in party affiliation.

An elector may change his party affiliation by completing an application signed before a ~~notary~~ notarial officer or election official, and filing it with the county clerk not later than thirty (30) days before the primary election or at the polls on the day of the primary or general election, or when requesting an absentee ballot.

29-1-301. Lien statement to be filed; contents; notice; fee.

(a) In order to have a perfected lien pursuant to this title, a lien claimant shall file with the county clerk a lien statement sworn to before a ~~notary public~~ notarial officer. The county clerk shall file the statement and index by date, name of claimant and property owner, and legal description.

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29-2-106. When statement lien to be filed; rights of subcontractor not abridged by contract between owner and contractor; agreement to extend filing period.

(c) Any party to a contract for which a lien may be filed may agree to an extension of the time within which the lien may be filed. The time agreed upon may not exceed twice the time within which the lien would have to be filed in accordance with subsection (a) of this section. The agreement shall be acknowledged before a ~~notary public~~ notarial officer, and signed by the owner, the contractor and any other parties to the contract before it is valid. The agreement shall be filed with and recorded by the county clerk in the manner provided by W.S. 29-1-301 for a lien statement. The lien rights of persons not signing the agreement are not affected by it.

29-3-111. Claim against contractor submitted to owner; reduction of subsequent payments to contractor by owner; duty of owner to notify contractor and of contractor to dispute or adjust claim.

(a) Every person performing any work or furnishing any material, as specified in this chapter, under contract whose demand to be reimbursed for the work done or material furnished has not been paid shall serve the owner by certified mail return receipt requested, with an account signed before a ~~notary public~~ notarial officer of the amount and value of the work performed or the material furnished remaining unpaid. Thereafter the owner or his agent shall retain out of any subsequent payments to the contractors the value of the work performed or material furnished for the person making the claim.

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29-5-103. Lien statement to be filed; contents; mistake in description not fatal; notice to purchaser or owner.

(a) Every person proceeding under this chapter shall file a lien statement sworn before a ~~notary public~~ notarial officer setting forth the amount claimed to be due him with the county clerk of the county in which the crops were grown, within thirty (30) days after:

31-2-104. Transfer of ownership.

(a) Except as otherwise provided in this section, the owner of a vehicle who sells or transfers his interest in a vehicle for which a certificate of title has been issued shall endorse an assignment and warranty of title upon the certificate for the vehicle with a statement of all liens and encumbrances thereon, which assignment, warranty and statement shall be subscribed by the owner before a ~~notary public~~ notarial officer and acknowledged thereby in the manner provided by law, to be dated and delivered to the transferee at the time of delivering the vehicle. Except as provided in subsection (b) of this section, the transferee shall present the certificate to a county clerk and apply for a new certificate of title within the same time periods as required by W.S. 31-2-201(a)(ii).

31-2-504. Transfer of ownership.

(a) Except as otherwise provided in this section, the owner of a mobile home who sells or transfers his interest in a mobile home for which a certificate of title has been issued shall endorse an assignment and warranty of title upon the certificate for the mobile home with a statement of all liens and encumbrances thereon and that all taxes due thereon have been paid, which assignment, warranty and

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statement shall be subscribed by the owner before a ~~notary public~~ notarial officer and acknowledged thereby in the manner provided by law, to be dated and delivered to the transferee at the time of delivering the mobile home.

34-1-113. Acknowledgment of conveyances; generally.

Execution of deeds, mortgages or other conveyances of lands, or any interest in lands, shall be acknowledged by the party or parties executing same, before any ~~judge or clerk of a court of record, or before any United States magistrate appointed under and by authority of the laws of the United States, or any county clerk, district court commissioner, notary public, or other officer authorized under the laws of the state of Wyoming to take such acknowledgments, and~~ notarial officer. The notarial officer taking such acknowledgment shall ~~endorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand and seal of office, if there be one~~ comply with the requirements of W.S. 34-26-107.

34-1-118. Where conveyance to be recorded.

A certificate of the acknowledgment of any deed, mortgage or conveyance, or proof of the execution thereof, before a ~~court of record or a justice of the peace, signed by the clerk of such court, (or by the justice) before whom the same was taken, as provided in this act, and in the cases where the same is necessary, the certificate required by W.S. 34-1-115~~ notarial officer, shall entitle such deed, mortgage or conveyance, certificate or certificates aforesaid, to be recorded in the office of the county clerk in the county where the land lies.

35-22-403. Advance health care directives.

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(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power must be in writing and signed by the principal or by another person in the principal's presence and at the principal's expressed direction. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential or community care facility at which the principal is receiving care. The durable power of attorney must be acknowledged before a ~~notary public~~ notarial officer or must be signed by at least two (2) witnesses, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgement of the signature or of the instrument, each witness making the following declaration in substance:

I declare under penalty of perjury under the laws of Wyoming that the person who signed or acknowledged this document is known to me to be the principal, and the principal signed or acknowledged this document in my presence.

36-9-106. Place of sale; execution of leases.

All sales of state lands shall be held at a location to be determined by the board within the county in which the land is located and leases for state lands may be executed in the presence of a ~~notary public~~ notarial officer or other officer authorized to administer oaths.

39-13-107. Compliance; collection procedures.

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(b) The following provisions shall apply to the payment of taxes, distraint of property and deferral:

(iii) The following shall apply to the deferral of tax collection:

(H) If any residence is under mortgage, deed of trust or purchase contract whereby the explicit terms of the mortgage, deed or contract requires the accumulation of reserves out of which the holder of the mortgage, deed or contract is required to pay real property taxes, the holder or his authorized agent shall cosign the affidavit to defer either before a ~~notary public~~ notarial officer or the county assessor or deputy in the county in which the real property is located;

(J) If any residence is under rental and the terms of the rental contract require the payment of taxes by the renter, the renter may apply for the deferral provided the property owner or authorized agent also cosigns the affidavit to defer either before a ~~notary public~~ notarial officer or the county assessor or deputy in the county in which the real property is located;

40-2-104. Application for registration.

(a) Subject to the limitations set forth in this act and upon payment of one hundred dollars (\$100.00), any person who adopts a trade name for use in this state may file an application for registration of the trade name in duplicate in the office of the secretary of state on forms furnished by the secretary of state setting forth, but not limited to, the following information:

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(iv) The signature of the applicant acknowledged before a ~~notary public~~ notarial officer.

41-3-310. Alterations or repairs of dams or diversion systems; inspections by state engineer or assistant engineer; cost.

(c) If the assistant engineer is not a regular employee of the state of Wyoming, inspections shall be made at the expense of the owner. The owner shall be furnished with an estimate of the cost prior to performance of any inspections, but the state engineer is not precluded from collecting any or all additional costs which result from performance of the inspections. Costs to be paid by the owner shall include, but are not limited to, all work or tests as are necessary to fully provide any information and data required by the state engineer or his appointed representative. If the owner refuses or neglects to turn over the funds within thirty (30) days, after the presentation of the bill of costs, the costs shall constitute a lien upon the works or other properties of the owner or owners and may be collected by appropriate action in any court of competent jurisdiction. In order to have a valid, enforceable lien under this section, a lien statement sworn to before a ~~notary public~~ notarial officer shall be filed by the claimant with the county clerk of the county in which the property is located. The county clerk shall file the statement and index by date, name of claimant and property owner, and by legal description. The lien statement shall contain the following:

Section 3. W.S. 34-1-114 through 34-1-117, 34-1-126 and 34-2-114 through 34-2-120 are repealed.

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Section 4. This act is effective July 1, 2008.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk