



RON - Michigan Statutory Notary Laws
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Overview of the Michigan Law on Notarial Acts

General Notary laws and Remote Electronic Notarization

Michigan Notary Laws

Governed by the Michigan law on notarial acts (“MLNA”)
MCL 55.261 et seq.

Appointed and regulated by the Michigan Secretary of
State (or designee)

Michigan Notary Laws

55.283 Obtaining and reading state statutes.

Before a notary public performs any notarial act, the notary public shall obtain and read a copy of all the current statutes of this state that regulate notarial acts.

Michigan Notary Laws

What can a notary do?

Perform a “notarial act”

An act, whether performed with respect to a tangible or electronic record, that a notary public is authorized to perform, including but not limited to:

- Taking an acknowledgement
- Administering an oath or affirmation/taking a verification upon oath or affirmation
- Witnessing or attesting a signature performed in compliance with the MLNA

Michigan Notary Laws - Acknowledgment

What is an “acknowledgment”?

A declaration by an individual in the presence of a notary public that s/he has signed a record for the purposes stated in the record and, if signed in a representative capacity, they signed with proper authority and signed as the act of the person identified in the record.

Michigan Notary Laws - Verification Upon Oath or Affirmation

What is a “verification upon oath or affirmation”?

A declaration, made by an individual on oath or affirmation before a notary public, that a statement in a record is true.

Examples:

- A deposition
- An affidavit

Why is it important?

- Self-proving under rules of evidence
- False statement is punishable as perjury

A notary and their surety is not responsible for the truth, form, or correctness of the contents of a record upon which the notary performs the notarial act.

Michigan Notary Laws - Witnessing or attesting a signature

What is an “witnessing or attesting a signature”?

The document was signed by an individual in the presence of the notary

Michigan Notary Laws

“Notarial Acts” - Comparison

- Taking an acknowledgement
 - *The individual acknowledge they previously signed the document*
- Administering an oath or affirmation/taking a verification upon oath or affirmation
 - *The individual took an oath and is swearing to the truthfulness of the contents of the document*
- Witnessing or attesting a signature performed in compliance with the MLNA
 - *The individual signed in the presence of the notary*

Michigan Notary Laws - Jurat

What is a “jurat”?

A certification by a notary public that a signer, who is a) personally known to the notary public or b) proven on the basis of satisfactory evidence, has made in the presence of the notary public a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed record.

Since it goes to the truthfulness of the document, jurats are used with oath/affirmations.

Michigan Notary Laws - Establishing Identity

How do we know the individual signing is who they say they are?

In taking an acknowledgment the notary public shall determine, either from personal knowledge or from “satisfactory evidence” that the individual in the presence of the notary public and making the acknowledgement whose signature is on the record.

Michigan Notary Laws - Establishing Identity

How do we know the individual signing is who they say they are?

In taking a verification upon oath or affirmation, the notary public shall determine, either from personal knowledge or from “satisfactory evidence” that the individual in the presence of the notary public and making the verification is the individual whose signature is on the record being verified.

Michigan Notary Laws - Establishing Identity

How do we know the individual signing is who they say they are?

In witnessing or attesting to a signature, the notary public shall determine, either from personal knowledge or from “satisfactory evidence” that the signature is that of the individual in the presence of the notary public and is the individual named in the record.

Michigan Notary Laws - “Satisfactory Evidence”

The statutes require the notary public have “satisfactory evidence” of the identity of the individual signing

A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if:

- Personally known to the notary public
- Identified upon the oath or affirmation of a credible witness personally known by the notary public and who personally knows the individual
- Identified on the basis of a current license, ID card, or record issued by a federal or state government that contains the individual’s photograph and signature

Michigan Notary Laws - Signing in the presence

In all matters where the notary public takes a verification upon oath or affirmation, or witnesses or attests to a signature, the notary public shall require that the individual sign the record being verified, witnessed, or attested in the presence of the notary public.

Note that there is no requirement where the notary is taking an acknowledgment the individual sign in the presence of the notary.

Michigan Notary Laws - Variations

But it's now a brave new notarial world:

Electronic Notarizations:

In-person electronic notarization (IPEN): *The principal is in the Notary's physical presence, and signatures are electronic. The Notary may use an electronic seal.*

Remote online notarization (RON/REN): *The principal appears before the Notary remotely using audio-video communication technology that includes multi-factor authentication, such as third-party credential analysis and dynamic knowledge-based authentication. Signatures and seals are electronic.*

Michigan Notary Laws - Variations

Wet signed/Wet Notarized:

Remote ink-signed notarization (RIN): *The principal appears before the Notary remotely using video conference technology like Skype or Zoom. The Notary watches the principal sign the document and a declaration under penalty of perjury in ink. The signer sends the document and declaration to the Notary, who signs and stamps the notarial certificate in ink before returning the document to the signer.*

Paper remote online notarization (PRON): *The principal appears before the Notary remotely using audio-video communication technology that includes multi-factor authentication, such as third-party credential analysis and dynamic knowledge-based authentication. The Notary watches the principal sign the document and a declaration under penalty of perjury in ink. The signer sends the document and declaration to the Notary, who signs and stamps the notarial certificate in ink before returning the document to the signer.*

Michigan Notary Laws - RON

Michigan RON is primarily addressed in MCL 55.286b

May only use a RON platform approved by the SOS and the Department of Technology, Management, and Budget, which considers:

- Tamper evident records
- Integrity in creation, transmittal, storage, or authentication of RONs, recordings, or signatures
- Prevention of fraud or mistake in RONs
- Ability to adequately investigate and authenticate a remote notarial act
- The most recent standards promulgated by national bodies (MISMO)
- Standards and practices in other jurisdictions

Michigan Notary Laws - RON Notification

A notary public may select 1 or more tamper-evident electronic notarization systems to perform notarial acts electronically. A person may not require a notary public to perform a notarial act electronically with an electronic notarization system that the notary public has not selected.

Before a notary public performs the notary public's initial notarial act electronically, the notary public shall notify the secretary that the notary public will be performing notarial acts electronically and identify the electronic notarization system the notary public intends to use for electronic notarizations. If the secretary and the department of technology, management, and budget have approved the use of 1 or more electronic notarization systems under section 26a, the notary public must select the system he or she intends to use from the approved electronic notarization systems. The secretary may disallow the use of an electronic notarization system if the electronic notarization system does not satisfy the criteria described in section 26a.

Michigan Notary Laws - “Satisfactory Evidence” of Identity for RON

In addition to the methods for in-person notarization, a notary public has satisfactory evidence that an individual is the individual whose signature is on a record if:

- With regard to a notarial act performed under section 26b, identified and verified through an identity proofing process or service that is part of a remote electronic notarization platform approved under section 26b(1), and the person presents an identity document described in subdivision (c) that is verified through a credential analysis process or service that is part of a remote electronic notarization platform approved under section 26b(1).

Michigan Notary Laws - When can you use a RON Platform?

Can use a RON platform if either of the following is true:

- Notary makes all applicable determinations under Section 25 (basic notary requirements) according to personal knowledge or satisfactory evidence, the notarial act complies under Section 27 (certification requirements), and the notary does not violate Section 31 (prohibited notary conduct).
- The notary through use of the RON platform, personal knowledge, or satisfactory evidence is able to identify the record before the notary is the same record presented by the individual for notarization.

Michigan Notary Laws - Other RON Requirements

Can't record the transaction without disclosure and consent. If the person objects to the recording, do not have to go forward with the notarization.

Must keep a journal and retain it for 10 years.

- Journal entry must be made contemporaneously with the notarial act
- Date, time, and nature of the notarial act
- Description of the record
- Full name and address of each individual for whom the notarial act was performed
- Whether identity was based on personal knowledge, and if not, a brief description of the method of identification
- The fee charged
- Reference audio/visual recording
- Must retain the audio/visual recording for 10 years after the performance of the notarial act
 - Can designate a custodian to make journal entry and retain the audio/visual recording

Michigan Notary Laws - Other RON Requirements

Under MCL 55.287, the notary must disclose whether the notarial act was performed using an electronic notarization system.

Michigan Notary Laws - Temporary Provisions

MCL 55.286c and 55.286d- Use of 2-way real time AV technology

Temporary COVID provision

Applicable on or after April 30, 2020 and before July 1, 2021

Michigan Notary Laws - Prohibited Conduct

Notary shall not

- Certify or notarize that a record is an original
- Certify or notarize that a record is a true copy of another record
- Perform a notarial act upon their own executed document
- Notarize their own signature
- Take their own deposition or affidavit
- Claim to have powers, qualifications, rights, or privileges the office of notary does not provide, including counseling on immigration matters
- Translate into any other language a term that implies the notary is an attorney

Michigan Notary Laws - Prohibited Conduct

Notary shall not

- Advertise in any language other than English without prominently displaying in the same language “I am not an attorney and have no authority to give advice on immigration or other legal matters.”
- Use the term “notario publico” or any equivalent non-English term

Michigan Notary Laws - Prohibited Conduct

Notary shall not

- Perform a notarial act in connection with a transaction if the notary has a conflict of interest
 - Direct financial or beneficial interest
 - Name individually as grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, lessee, or party to a transaction
- Perform notarial act for a spouse, lineal ancestor, lineal descendant, or sibling including in-laws, steps, or half-relatives
- Take an acknowledgement of a record by or to a bank or other corporation of which they are a stockholder, director, officer, or employee where the notary is named as a party to the record, either individually or as a representative of the bank/corporation

Michigan Notary Laws - Violations

Notary and their surety are liable in a civil action for damages sustained by the person injured by official misconduct.

The employer of a notary is also liable if

- The notary was acting in the actual or apparent scope of employment
- The employer had knowledge of and consented to or permitted the misconduct

Michigan Notary Laws - Violations

The SOS may investigate or cause to be investigated by local authorities and shall report violation of the notary public laws and rules to the AG or prosecuting attorney or both for prosecution.

Notary is subject suspension/revocation, denial of an application for reappointment, and a civil fine paid to the department in an amount not to exceed \$1,000.00.

Michigan Notary Laws - Violations

If a notary is imprisoned, convicted of a felony or 2 or more specified misdemeanors in 12 months or 3 or more specified misdemeanors in a 5 year period, the SOS shall automatically revoke the notary's commission.

- Violation of the notary act
- Violation of the public trust
- An act of official misconduct, dishonesty, fraud, or deceit
- An act substantially related to the duties/responsibilities of a notary

Michigan Notary Laws - Key Takeaways

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Thanks for attending!