

CHAPTER 212

PROFESSIONS AND OCCUPATIONS

SENATE BILL 98-076

BY SENATORS Weddig, J. Johnson, Pascoe, and Tebedo;
also REPRESENTATIVES Lawrence, Dean, Paschall, and Sullivant.

AN ACT

CONCERNING THE ACKNOWLEDGMENT OF INSTRUMENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-55-102 (1), Colorado Revised Statutes, is amended, and the said 12-55-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-55-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) ~~"Notarial acts" means those acts which the laws and regulations of this state authorize notaries public to perform including, but not limited to, administering oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.~~ "ATTESTED" MEANS SUBSCRIBED, SIGNED, ACKNOWLEDGED, SWORN TO, AFFIRMED, CERTIFIED, VERIFIED, OR ATTESTED TO AND INCLUDES OTHER WORDS AND PHRASES THAT HAVE A SUBSTANTIALLY SIMILAR MEANING.

(1.5) "NOTARIAL ACTS" MEANS THOSE ACTS THAT A NOTARY PUBLIC IS EMPOWERED TO PERFORM PURSUANT TO SECTION 12-55-110 (1).

SECTION 2. 12-55-110 (1), Colorado Revised Statutes, is amended, and the said 12-55-110 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-55-110. Powers and limitations. (1) Every notary public is empowered to:

(a) Take acknowledgments AND OTHER UNSWORN STATEMENTS, PROOF OF EXECUTION, AND ATTEST DOCUMENTS;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) Administer oaths and affirmations;

(c) ~~Certify that a copy of a document is a true copy of another document;~~ GIVE CERTIFICATES OR OTHER STATEMENTS AS TO A NOTARIAL ACT PERFORMED BY SUCH NOTARY. SUCH ACTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE GIVING OF CERTIFICATES AS TO, OR CERTIFIED COPIES OF, ANY RECORD OR OTHER DOCUMENT RELATING TO A NOTARIAL ACT PERFORMED BY SUCH NOTARY AND CERTIFYING THAT A COPY OF A DOCUMENT IS A TRUE COPY OF ANOTHER DOCUMENT OR THAT A FACSIMILE IS A TRUE FACSIMILE OF ANOTHER DOCUMENT IN ACCORDANCE WITH SECTION 12-55-120.

(d) Take depositions, AFFIDAVITS, VERIFICATIONS, AND OTHER SWORN TESTIMONY OR STATEMENTS; ~~and~~

(d.5) PERFORM ANY OTHER ACT THAT IS RECOGNIZED OR OTHERWISE GIVEN EFFECT UNDER THE LAW, RULES, OR REGULATIONS OF ANOTHER JURISDICTION, INCLUDING THE UNITED STATES, PROVIDED SUCH OTHER LAW, RULE, OR REGULATION AUTHORIZES A NOTARY IN THIS STATE TO PERFORM SUCH ACT. HOWEVER, NO NOTARY IS EMPOWERED TO PERFORM AN ACT UNDER THIS PARAGRAPH (d.5) IF SUCH PERFORMANCE IS PROHIBITED BY THE LAW, RULES, OR REGULATIONS OF THIS STATE.

(e) ~~Perform any other act permitted by law.~~ PERFORM ANY OTHER ACT AUTHORIZED BY LAW, RULES, OR REGULATIONS;

(f) PRESENT AND GIVE NOTICE OF DISHONOR AND PROTEST NOTES AND OTHER NEGOTIABLE INSTRUMENTS AS PROVIDED IN PART 5 OF ARTICLE 3 OF TITLE 4, C.R.S., OR THE CORRESPONDING LAWS OF ANOTHER JURISDICTION;

(4) NO NOTARY SHALL SIGN A CERTIFICATE OR OTHER STATEMENTS AS TO A NOTARIAL ACT TO THE EFFECT THAT A DOCUMENT OR ANY PART THEREOF WAS ATTESTED BY AN INDIVIDUAL, UNLESS:

(a) SUCH INDIVIDUAL HAS ATTESTED SUCH DOCUMENT OR PART THEREOF WHILE IN THE PHYSICAL PRESENCE OF SUCH NOTARY; AND

(b) SUCH INDIVIDUAL IS PERSONALLY KNOWN TO SUCH NOTARY AS THE PERSON NAMED IN THE CERTIFICATE, STATEMENT, DOCUMENT, OR PART THEREOF, OR SUCH NOTARY RECEIVES SATISFACTORY EVIDENCE THAT SUCH INDIVIDUAL IS THE PERSON SO NAMED. FOR PURPOSES OF THIS PARAGRAPH (b), "SATISFACTORY EVIDENCE" INCLUDES BUT IS NOT LIMITED TO THE SWORN STATEMENT OF A CREDIBLE WITNESS WHO PERSONALLY KNOWS SUCH NOTARY AND THE INDIVIDUAL SO NAMED, OR A CURRENT IDENTIFICATION CARD OR DOCUMENT ISSUED BY A FEDERAL OR STATE GOVERNMENTAL ENTITY CONTAINING A PHOTOGRAPH AND SIGNATURE OF THE INDIVIDUAL WHO IS SO NAMED.

SECTION 3. Part 1 of article 55 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-55-110.5. Accommodation of physical limitations. (1) A NOTARY PUBLIC MAY CERTIFY AS TO THE SUBSCRIPTION OR SIGNATURE OF AN INDIVIDUAL WHEN IT

APPEARS THAT SUCH INDIVIDUAL HAS A PHYSICAL LIMITATION THAT RESTRICTS SUCH INDIVIDUAL'S ABILITY TO SIGN BY WRITING OR MAKING A MARK, PURSUANT TO THE FOLLOWING:

(a) THE NAME OF AN INDIVIDUAL MAY BE SIGNED BY ANOTHER INDIVIDUAL OTHER THAN THE NOTARY PUBLIC AT THE DIRECTION AND IN THE PRESENCE OF THE INDIVIDUAL WHOSE NAME IS TO BE SIGNED AND IN THE PRESENCE OF THE NOTARY PUBLIC.

(b) THE WORDS "SIGNATURE WRITTEN BY (NAME OF INDIVIDUAL DIRECTED TO SIGN) AT THE DIRECTION AND IN THE PRESENCE OF (NAME AS SIGNED) ON WHOSE BEHALF THE SIGNATURE WAS WRITTEN" OR WORDS OF SUBSTANTIALLY SIMILAR EFFECT SHALL APPEAR UNDER OR NEAR THE SIGNATURE.

(2) A NOTARY PUBLIC MAY USE SIGNALS OR ELECTRONIC OR MECHANICAL MEANS TO TAKE AN ACKNOWLEDGMENT FROM, ADMINISTER AN OATH OR AFFIRMATION TO, OR OTHERWISE COMMUNICATE WITH ANY INDIVIDUAL IN THE PRESENCE OF SUCH NOTARY PUBLIC WHEN IT APPEARS THAT SUCH INDIVIDUAL IS UNABLE TO COMMUNICATE VERBALLY OR IN WRITING.

SECTION 4. 12-55-111, Colorado Revised Statutes, is amended to read:

12-55-111. Journal. (1) Every notary public shall keep a journal of every acknowledgment taken by ~~him~~ SUCH NOTARY to an instrument affecting the title to real property and, if required, give a certified copy of or a certificate as to any such journal or any of ~~his~~ SUCH NOTARY'S acts, upon payment of ~~his~~ SUCH NOTARY'S fee. ~~therefor.~~

(2) FOR EACH NOTARIAL ACT, A NOTARY'S JOURNAL MAY CONTAIN THE FOLLOWING INFORMATION:

(a) THE TYPE AND DATE OF THE NOTARIAL ACT;

(b) THE TITLE OR TYPE OF DOCUMENT OR PROCEEDING THAT WAS NOTARIZED AND THE DATE OF SUCH DOCUMENT OR PROCEEDING, IF DIFFERENT THAN THE DATE OF THE NOTARIZATION;

(c) THE NAME OF EACH PERSON WHOSE OATH, AFFIRMATION, ACKNOWLEDGMENT, AFFIDAVIT, DECLARATION, DEPOSITION, PROTEST, VERIFICATION, OR OTHER STATEMENT IS TAKEN;

(d) THE SIGNATURE AND ADDRESS OF EACH PERSON WHOSE OATH, AFFIRMATION, ACKNOWLEDGMENT, AFFIDAVIT, DECLARATION, DEPOSITION, PROTEST, VERIFICATION, OR OTHER STATEMENT IS TAKEN;

(e) THE SIGNATURE, PRINTED NAME, AND ADDRESS OF EACH WITNESS TO THE NOTARIZATION;

(f) ANY OTHER INFORMATION THE NOTARY CONSIDERS APPROPRIATE TO RECORD THAT CONCERNS THE NOTARIAL ACT.

(3) (a) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO ANY DOCUMENT WHERE THE ORIGINAL OR A COPY OF SUCH DOCUMENT CONTAINS THE INFORMATION OTHERWISE REQUIRED TO BE ENTERED IN THE NOTARY'S JOURNAL AND SUCH ORIGINAL OR COPY IS RETAINED BY THE NOTARY'S FIRM OR EMPLOYER IN THE REGULAR COURSE OF BUSINESS.

(b) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (3) TO THE CONTRARY, NO FIRM, EMPLOYER, OR PROFESSIONALLY LICENSED PERSON SHALL PROHIBIT AN EMPLOYEE WHO IS A NOTARY FROM MAINTAINING A JOURNAL OF HIS OR HER NOTARIAL ACTS IN THE REGULAR COURSE OF BUSINESS OF SUCH FIRM, EMPLOYER, OR PROFESSIONALLY LICENSED PERSON.

(c) FOR PURPOSES OF THIS SUBSECTION (3), "FIRM" INCLUDES BUT IS NOT LIMITED TO AN OFFICE WHERE THE BUSINESS OF A REAL ESTATE BROKER, LAWYER, TITLE INSURANCE COMPANY, TITLE INSURANCE AGENT, OR OTHER LICENSED PROFESSIONAL IS REGULARLY CARRIED ON AND THE RECORDS OF SUCH BUSINESS ARE REGULARLY MAINTAINED.

SECTION 5. 12-55-112, Colorado Revised Statutes, is amended to read:

12-55-112. Official signature - rubber stamp seal - seal embosser. (1) At the time of notarization, a notary public shall sign ~~his~~ SUCH NOTARY'S official signature on every notary ~~acknowledgment~~ CERTIFICATE.

(2) Under or near ~~his~~ SUCH NOTARY'S official signature on every notary ~~acknowledgment~~ CERTIFICATE, a notary public shall rubber stamp or emboss clearly and legibly ~~his~~ SUCH NOTARY'S official seal. The official notary seal shall contain only the outline of the seal, the name of the notary, exactly as ~~he~~ SUCH NOTARY writes his OR HER official signature, the words "STATE OF COLORADO", and the words "NOTARY PUBLIC".

(3) Under or near ~~his~~ SUCH NOTARY'S official signature on every notary ~~acknowledgment~~ CERTIFICATE, a notary public shall write or stamp "my commission expires (commission expiration date)".

(4) Every notary public may provide, keep, and use a seal embosser engraved to show ~~his~~ SUCH NOTARY'S name and the words "NOTARY PUBLIC" and "STATE OF COLORADO". The indentations made by the seal embosser shall not be applied ~~on the notary acknowledgment or document to be notarized~~ ON THE DOCUMENT WHERE THE NOTARY CERTIFICATE APPEARS in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.

(5) The illegibility of any of the information required by this section does not affect the validity of a DOCUMENT OR transaction.

(6) FOR PURPOSES OF THIS SECTION, "NOTARY CERTIFICATE" MEANS A CERTIFICATE OR OTHER STATEMENT OF A NOTARY RELATING TO A NOTARIAL ACT PERFORMED BY SUCH NOTARY.

SECTION 6. 12-55-121, Colorado Revised Statutes, is amended to read:

12-55-121. Fees. (1) The fees of notaries public may be, but shall not exceed, ~~two~~ FIVE dollars for each ~~acknowledgment~~ DOCUMENT ATTESTED BY A PERSON BEFORE A NOTARY, except as otherwise provided by law. THE FEE FOR EACH SUCH DOCUMENT SHALL INCLUDE THE FOLLOWING INCIDENTAL SERVICES OF SUCH NOTARY:

(a) RECEIVING EVIDENCE OF SUCH PERSON'S IDENTITY AS ENUMERATED IN SECTION 12-55-110 (4);

(b) ADMINISTERING AN OATH OR AFFIRMATION TO SUCH PERSON; AND

(c) SIGNING AND SEALING A CERTIFICATE OR STATEMENT OF SUCH NOTARY THAT IS INCLUDED IN OR ATTACHED TO SUCH DOCUMENT AND EVIDENCES THAT THE DOCUMENT WAS ATTESTED BEFORE SUCH NOTARY.

SECTION 7. 38-30-127, Colorado Revised Statutes, is amended to read:

38-30-127. Acknowledgments taken pursuant to other laws. (1) In addition to the acknowledgment of instruments as provided by articles 30 to 44 of this title, instruments may be acknowledged by:

(a) Members of the armed forces of the United States and certain other persons, as provided by section 24-12-104, C.R.S.;

(b) ANY PERSON WITHIN OR OUTSIDE OF THIS STATE, PURSUANT TO PART 2 OF ARTICLE 55 OF TITLE 12, C.R.S.

(2) ANY PERSON OTHERWISE AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS IN THIS STATE MAY TAKE AND CERTIFY ACKNOWLEDGMENTS EITHER IN ACCORDANCE WITH ARTICLES 30 TO 44 OF THIS TITLE OR IN THE SAME MANNER AND ON THE SAME EVIDENCE AS PROVIDED IN PART 2 OF ARTICLE 55 OF TITLE 12, C.R.S. ANY CERTIFICATE OF ACKNOWLEDGMENT THAT IS TAKEN PURSUANT TO SUCH PART 2 SHALL BE VALID AND HAVE THE BENEFITS SET FORTH IN SUBSECTION (3) OF THIS SECTION, WHETHER SUCH CERTIFICATE IS GIVEN BEFORE OR AFTER THE EFFECTIVE DATE OF THIS ACT.

(3) A CERTIFICATE OF ACKNOWLEDGMENT TAKEN PURSUANT TO PART 2 OF ARTICLE 55 OF TITLE 12, C.R.S., OR TAKEN PURSUANT TO SUCH PART 2 AND SUBSECTION (2) OF THIS SECTION SHALL:

(a) CONSTITUTE PRIMA FACIE EVIDENCE OF PROPER EXECUTION OF THE INSTRUMENT ACKNOWLEDGED;

(b) CARRY WITH IT THE PRESUMPTIONS PROVIDED BY SECTION 38-35-101; AND

(c) BE ACCORDED THE SAME FORCE AND EFFECT AS ANY ACKNOWLEDGMENT TAKEN AND CERTIFIED IN ACCORDANCE WITH ARTICLES 30 TO 44 OF THIS TITLE.

SECTION 8. Effective date - applicability. (1) This act shall take effect on January 1, 1999, unless a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall take effect on the later of January 1, 1999, or the date of the official declaration of the vote thereon by proclamation of the governor, only if approved by the people.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act, except as otherwise provided in section 38-30-127 (2), Colorado Revised Statutes.

Approved: May 22, 1998