

# AFFIDAVIT OF COMMON LAW NAME CHANGE

**M.C.A. 1-1-109 provides:**

The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

**Firman v. Firman, 610 P. 2d 178 - Mont: Supreme Court 1980 states:**

At common law, a person could adopt any surname he might choose so long as the change was not made for fraudulent purposes...Title 27, chapter 31, parts 1 and 2, MCA, provides a procedure for changing one's name. These statutes are in affirmance and aid of common law and do not abrogate it. Kay v. Kay (Ohio Com.Pl. 1953), 112 N.E.2d 562.

**United States v. McKay 2 F.2d 257 further states:**

Under the common law a man can change his name **at will**, provided it is not done with a fraudulent purpose; he may **sue and be sued by such adopted name, and will be bound by any contract into which he enters in his adopted name**. This is true in the absence of a restrictive statute, and is not abrogated by the fact that a procedure is provided by statute for the change of one's name. 20 Standard Ency. 250; In re McUlla (D. C.) 189 Fed. 250; Linton v. Bank (C. C.) 10 Fed. 894.

**Kreuter v. United States, 201 F. 2d 33 further states:**

In the absence of a statutory prohibition, a person, **without abandoning his real name**, may adopt or assume a name, and he *may use such assumed name to identify himself in the transaction of his business, the execution of contracts and the carrying on of his affairs.*

STATE OF Montana

ss.}

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, previously known as \_\_\_\_\_, affirms the following:

1. I am currently \_\_\_ years of age, I was born on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_
2. My birth records and other legal documents have the name(s) of:  
\_\_\_\_\_
3. I have since changed my name to \_\_\_\_\_ **at will** under the Common law.
4. I have not changed my name for any fraudulent purpose or to avoid criminal prosecution.
5. I am making this Affidavit in order to aid appropriate agencies in correcting or adjusting my records.

\_\_\_\_\_  
Current Signature in new name

\_\_\_\_\_  
Previous signature in old name

State of Montana

County of \_\_\_\_\_

This instrument was signed and sworn to before me on \_\_\_\_\_ by  
\_\_\_\_\_ (Name of signer)

\_\_\_\_\_  
(Notary Signature)  
[Affix seal/stamp to the left or below]