TEXAS LAW OF ACKNOWLEDGMENTS

Into the 21st Century

Presented by

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12th Annual Advanced Drafting: Estate Planning and Probate
November 1-2, 2001
Hyatt Regency
Dallas, Texas

Revised August 2001
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I. HISTORY AND PURPOSE OF ACKNOWLEDGMENTS

Originating with the Roman Empire there was an appointed official known as a notarius whose function it was to be a draftsman and shorthand writer. Under English law this functionary became a notary public with responsibility to administer oaths, to attest, to certify, and to perform other official acts in commercial matters.

As an outgrowth of the practice of recording instruments begun under Henry VIII in 1535, the need arose to authenticate the signatures of parties. This originally required attestation by witnesses. This practice eventually gave way to proof by acknowledgment before a magistrate. In December 1836, the Congress of the Republic of Texas first provided for deeds and conveyances to be proved by acknowledgment before a county clerk or county judge. Since 1840, notaries public have been clothed with authority to take proofs by acknowledgment.

The purpose of an acknowledgment is to authenticate an instrument as the true act of the person executing it. The interposition of an impartial public officer is intended to prevent fraud or imposition in the execution of instruments. This adds an element of stability and reliability to our most important commercial relations.

B. DISTINGUISHING THE ACKNOWLEDGMENT FROM THE CERTIFICATE OF ACKNOWLEDGMENT

Though used interchangeably by practitioners, an acknowledgment and a certificate of acknowledgment refer to two different concepts. An acknowledgment refers to the statutory ceremony whereby a person who has executed an instrument appears before a competent officer and declares the instrument to be his act and deed. A certificate of acknowledgment is the written record of that proceeding made by the presiding officer and appended to the instrument. The requirements of the ceremony of acknowledgment are different than the requirements of a certificate of acknowledgment. Certain unwanted errors in either may prevent the valid recoradation of an instrument or cause it to fail as constructive notice. Therefore, any acknowledgment should be separately examined for the requirements of both a valid ceremony of acknowledgment and a valid certificate of acknowledgment.

II. REQUIREMENTS OF A VALID CEREMONY OF ACKNOWLEDGMENT

A. COMPETENT OFFICER TO TAKE ACKNOWLEDGMENT

An acknowledgment, being a creature of statute, may only be taken by those officers authorized by law to do so. An acknowledgment not taken by an authorized officer is a nullity.

1. OFFICERS AUTHORIZED TO TAKE ACKNOWLEDGMENTS, GENERALLY

a. Acknowledgments Taken Within the State of Texas. Acknowledgments taken within Texas may be made before:

(1) a clerk of a district court (or deputy district clerk);
(2) a judge of a county court;
(3) a clerk of a county court (or deputy county clerk);
(4) a notary public;
(5) certain other public officers for specific instruments; or
(6) a federal judge, justice, or magistrate.

b. Acknowledgments Taken Outside the United States or Its Territories. Acknowledgments taken outside Texas but inside the United States or its territories may be taken by:

(1) a clerk of a court of record having a seal;
(2) a commissioner of deeds duly appointed by the Governor of Texas;
(3) a notary public; or
(4) a federal judge, justice, or magistrate.

c. Acknowledgments Taken Outside the United States or Its Territories. Acknowledgments taken outside the United States or its territories may be made before:

(1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
(2) a consul-general, consul, vice-consul, commercial agent, vice-
commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or

(3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.22

d. Acknowledgments Taken of Military Personnel and Their Spouses. A commissioned officer of the United States Armed Forces or a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse.23

2. Official Appointment of the Officer. The authority of an officer to take proof of an instrument is of course entirely dependent upon the officer being duly appointed to his office. Challenges to the effectiveness of an acknowledgment may include an examination of whether, at the time the acknowledgment was taken, the officer held his office in accordance with law. To this end, those seeking to uphold an acknowledgment are aided by the presumption that a person acting in a public office is duly appointed until contrary evidence appears.24

3. Territorial Limitations on Officer's Authority. Texas notaries may take acknowledgments statewide.25 The breadth of geographic authority of other authorized intrastate officers is not specifically answered. A Texas notary may not take a valid acknowledgment outside of the state even if just over the border.26 This rule is strictly enforced. Thus, even if the notary is honestly mistaken as to the location of a border and wrongly believes that he acted within the territorial limits of his authority, the acknowledgment is nonetheless void.27

4. Time Limitations on Officer's Authority. The term of a notary's appointment is four years,28 but reappointment may be made for successive terms.29 The authority of other intrastate officers is limited to the terms of their offices.

An acknowledgment is a nullity if taken before an officer not then authorized to act. To assist in determining the term of a notary's authority, the expiration date of the notary's commission must now appear as part of the notary's seal.30

5. Interested Officer Disqualified to Take Acknowledgment. There is a vital public interest in the truth of acknowledgments.31 Consequently, it is of utmost importance that the officer taking the acknowledgment be disinterested and act impartially toward the parties.32 To avoid all temptation, the rule has developed that an otherwise competent officer is disqualified to take an acknowledgment if financially or beneficially interested in the transaction.33

On the other hand, the stability of land titles requires that proofs of instruments not be lightly overturned. The interest of the officer must be more than an indirect or tentative one before disqualification will occur.34 There is no hard and fast global rule determining the amount of beneficial or financial interest that will disqualify an officer.35 The facts and circumstances of the individual case largely determine this.36 However, a good rule of thumb is to look at whether the beneficial or financial interest of the officer is the same whether the instrument is upheld or not.37

a. When the Officer is a Party to the Instrument. A party to an instrument may not take the acknowledgment of himself or any other party.38 Some cases limit the application of this rule to those placing their name upon an instrument as an active and essential party thereto.39 However, the better rule is to construe "party" in its broadest context to disqualify those having any beneficial interest in the transaction. In Gulf Production Co. v. Continental Oil Co.,40 and Hill v. McIntyre Drilling Co.,41 beneficiaries of trusts were disqualified from taking acknowledgments of instruments to which the trust was a party.42 In Haile v. Holtzclaw,43 an acknowledgment was questioned in a deed to an estate when made before a distributee of the estate.44 In Silcock v. Baker,45 an acknowledgment to a deed was void when made before the spouse of the grantee.46 In a deed of trust, the trustee is a party sufficiently interested in the transaction to be disqualified from taking proof of the instrument.47

b. When the Officer is an Agent of a Party to the Instrument. Generally, an agent of a party to an instrument is disqualified to take an acknowledgment if that agency appears on the face of the instrument.48 The mere fact of the agency raises a presumption of pecuniary interest.49 This presumption may be rebutted,
however, by proof that the agent's beneficial or pecuniary interest did not turn upon upholding the instrument. Agents paid on a commission basis for the completed transaction are more likely to be deemed disqualified from taking an acknowledgment than those paid on a flat fee basis not dependent upon the validity of the instrument for which proof is made. The mere fact that a notary is paid a fee for his notarial services does not make him an agent of the remitting party nor affect his qualifications to act.

To be disqualified to take an acknowledgment, the agent must also be clothed with discretionary authority to act on behalf of principal. A mere salaried employee of a party is not an agent disqualified from taking a proof of an instrument. Cases turning upon the extent of the agents authority have generally disqualified the agent if the agent had discretionary authority to negotiate the terms of the subject transaction for the principal.

c. When the Officer is a Director, Officer, or Stockholder of a Corporate Party to the Instrument. An officer or director of a corporation may not acknowledge an instrument in which the corporation is a party. A shareholder of a corporation is likewise disqualified if: (1) the corporation has 1,000 or fewer stockholders and (2) the officer owns more than one-tenth of one percent of the issued and outstanding stock.

d. When the Officer is an Attorney for a Party to the Instrument. Generally, an attorney drafting papers and representing one of the parties to a transaction is not disqualified from taking an acknowledgment. This result could be different, however, if the attorney inserted his name on the face of an instrument indicating he was acting as attorney for a party.

e. When the Officer is the Surveyor for a Party to the Instrument. A surveyor, even if employed by one of the parties, is not so interested in the transaction as to be disqualified to take an acknowledgment.

f. When the Officer is an Arbitrator Named in the Instrument. An arbitrator named in an instrument is not disqualified from taking an acknowledgment on that instrument. The fact that the arbitrator might be called upon to arbitrate a dispute between the parties and collect a fee for his services does not mean that the arbitrator has a direct interest in upholding the instrument.

g. Disqualification of Interested Officer Must be Known or Appear on the Face of the Instrument. Generally, an acknowledgment taken by an interested (and thereby disqualified) notary is null, void, and ineffective for any purpose and may not be reformed or corrected. However effect will be given to such an acknowledgment to protect an innocent purchaser relying on the instrument as constructive notice and having no knowledge of the disqualifying interest of the officer. Thus acknowledgments, even taken by an interested officer, are completely effective to allow the recordation of the instrument and to constitute constructive notice of its contents if the disqualifying interest of the officer is undisclosed. To render an acknowledgment ineffective by reason of a disqualifying interest of the notary, that financial or beneficial interest must (1) appear on the face of the instrument or (2) be otherwise known to the party relying on the instrument. Notice of the disqualifying interest of the notary may come by constructive notice from a prior recorded instrument revealing the interest. In Gulf Prod. Co. v. Continental Oil Co., the notary taking the acknowledgment on an oil and gas lease was beneficially interested in the trust named as lessee. While this interest was not disclosed by the lease itself, the notary's beneficial interest in the trust was revealed by prior recorded conveyances naming the notary as an interested party. Normally, these prior conveyances would have been sufficient to put all parties on notice of the interest of the notary in the trust. However, these prior conveyances were executed by the notary both as a party and as a notary causing them to fail as constructive notice for all purposes. Held the acknowledgment of the oil and gas lease was effective because the beneficial interest of the notary was not revealed on its face nor constructively known to the lessor.

In Rhoton v. Texas Land Mortgage Co., a mortgage company employed an agent on a commission basis to find borrower prospects. The agent then, without the knowledge or permission of the mortgage company, employed a subagent on a split commission arrangement. The subagent located some loan prospects and took their acknowledgment on a deed of trust. Held the acknowledgment was valid notwithstanding the disqualifying interest of the notary when that interest was unknown and unauthorized by the lender.

B. Personal Appearance Before The Officer. An acknowledgment is invalid unless the signatory of the instrument personally appeared before the notary. An
acknowledgment taken over the telephone or one otherwise made without personal contact with the signatory fails to satisfy the statutory requirements of an acknowledgment ceremony.

C. Signatory Must Be Identified by the Officer. An officer may not take an acknowledgment of a written instrument unless the officer (1) knows the acknowledging person, (2) has satisfactory evidence on oath of a credible witness known to the officer of the identity of the acknowledging person, or (3) has satisfactory evidence of the identity of the acknowledging person by a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person. There is a specific legislative purpose behind this requirement aimed at preventing evil-minded persons from impersonating others and committing forgery.

The law has not prescribed the extent of acquaintance which is necessary to justify the officer certifying that the person who presents himself is "known" to the officer. That question is and necessarily must be left to the decision of the officer taking the acknowledgment under the facts as they exist at the time. The acquaintance may be one year or one hour. However, mere introduction by another may be insufficient for the officer to certify that the person is "known" to him. A mere telephone introduction is inadequate to make a person "known" to the notary.

In determining the identity of an acknowledging person by a representative capacity, the officer is under no duty to inquire into the authority of the agent to act for the principal.

D. Signatory Must Acknowledge Signature. To effect a valid acknowledgment, the signatory must state to the officer that he executed the instrument for the purposes and consideration expressed in it.

It is possible for this to be communicated to the officer by nonverbal means. A party may so conduct himself as to authorize the conclusion that he means to acknowledge the instrument thereby authorizing the officer to complete a certificate of acknowledgment.

Howsoever communicated, a proper acknowledgment requires the signatory to admit and confess his execution of the instrument. The notary may not take a valid acknowledgment by sitting in mute observance of the person signing the instrument.

The signatory's appearance before the officer must be for the specific purpose of authenticating the document. A casual admission of execution does not give an officer the power to execute a certificate of acknowledgment. In Chester v. Breitling, an admission of execution made before a notary in the context of a deposition did not entitle that officer to acknowledge the deed. In Yaseen v. Green, a notary who had already made a certificate of acknowledgment at the time that the deed was executed without requiring the presence of the grantor, later engaged the grantor in conversation and secured from her an admission that she had signed the deed. The certificate of acknowledgment was invalid for failure of the grantor to personally appear before the notary. The later casual admission of execution did not vitalize a void certificate.

1. Acknowledgment by Attorney-in-Fact. An attorney-in-fact must acknowledge that he executed the instrument as the act of the principal for the purposes and consideration expressed in it.

2. Acknowledgment by Partner. A partner must acknowledge that he executed the instrument as the act of the partnership for the purposes and consideration expressed in it.

3. Acknowledgment by Corporate Officer. A corporate officer must acknowledge that he executed the instrument in the capacity stated as the act of the corporation for the purposes and consideration expressed in it.

4. Acknowledgment by Public Officer, Trustee, Executor, Administrator, Guardian, or Other Representative. A public officer, trustee, executor, administrator, guardian, or other representative must acknowledge that he executed the instrument by proper authority in the capacity stated for the purposes and consideration expressed in it.

5. Acknowledgment by a Disabled Person. A notary public may sign an instrument at the direction of a person who has a physical impairment that impedes that person's ability to sign or make his mark on a document. The notary must sign the instrument for the disabled person in the presence of a witness with no legal or equitable interest in the real property that is the subject of the document. The notary must identify the witness in the same manner as an
acknowledging party. Presumably the disabled party must also acknowledge the signature as done by his authority.

### III. REQUIREMENTS OF A VALID CERTIFICATE OF ACKNOWLEDGMENT.

#### A. Governing Law.

1. **Conflict of Laws.** The requirements of a valid certificate of acknowledgment for an instrument affecting Texas real property are governed by Texas law.

2. **Law in Effect When Acknowledgment Taken Governs.** The statutes specifying the requirements of a valid certificate of acknowledgment have been evolving over the 150+ years of Texas' existence. In examining the adequacy of a certificate of acknowledgment, the statutes should be applied which were in force when the acknowledgment was taken.

#### B. Statutory Forms for Certificates of Acknowledgment. The legislature has provided "safe harbor" forms for certain certificates of acknowledgment as follows:

1. Individual Acknowledgment (long form);
2. Individual Acknowledgment (short form);
3. Individual Acknowledgment Acting Through Attorney-in-Fact (short form);
4. Partnership Acknowledgment (short form);
5. Corporate Acknowledgment (short form);
6. Public Officer, Trustee, Executor, Administrator, Guardian, or Other Representative Acknowledgment (short form).

Correctly filled out, these statutory forms are adequate as a matter of law. Short form acknowledgments may be intended only for acknowledgments taken within the State of Texas. The long form acknowledgment may be used in any state.

#### C. Substantial Compliance With Statutory Forms Is Sufficient. It is not necessary to a valid certificate of acknowledgment that the exact words of the statutory forms be used. Substantial compliance with the statutory forms is all that is required.

Literal compliance is not essential so long as, on balance, the certificate shows that substantially all things required by law to be done have been done. This does not mean that a notary's official acts are mere innocent formalities which may be smiled out of law. However, the security of land titles will not be jeopardized by a hypertechnical criticism of the actual words used in the certificate. The examination of a certificate of acknowledgment is one of substance not form. Therefore, however inartfully phrased, the certificate will nonetheless be effective if the words and expressions actually employed show the required elements.

The words used in a certificate are to be liberally construed and are sufficient if the spirit of the law is satisfied. Some leniency should be extended in examining the words used by the officer taking the proof as that officer may often be unversed in legal phraseology.

Generally, a certificate will be sufficient if the legal requirements are present from a fair and reasonable construction of the whole instrument.

1. **Words Blended or Out of Order.** A certificate of acknowledgment with all required elements will be sufficient even if its parts are blended or confusedly intermixed. Though the law requires several elements for a valid certificate, each need not be separately presented. The whole instrument may be examined to supply the elements of the certificate. A certificate will be sufficient even when found in the body of the instrument.

2. **Omitted Words.** The omission of words from a certificate of acknowledgment will not cause it to be ineffective if the omission is immaterial or can be supplied from a fair construction of the whole instrument. Omitted words have been supplied by implication most frequently when a certificate fails to state specifically who performed what acts to whom when the context of the acknowledgment makes this obvious. A certificate will be construed in such a case to recite acts that transpired between the signatory and the notary rather a strained interpretation which would invalidate the certificate. Thus, a certificate clearly indicating that the signatory acknowledged the instrument's execution but failing only to state that the acknowledgment was made to the officer is sufficient. In Clark v. Groce, a certificate was valid which stated that the required statutory acts had been made but failed to state that these had been performed by the officer. In Watkins...


3. Surplusage. The gratuitous insertion of surplusage words into a certificate will not invalidate it if the additional words are not inconsistent with a proper acknowledgment. In Chicago T. M. C. Ry. v. Titterington, an officer indicated he was a "special" deputy clerk rather than simply a deputy clerk. This surplusage did not invalidate the certificate. In Lindley v. Lindley, the certificate indicated that the signatory was known to the officer "by introduction by C.W. Deems". The signatory must be known to the officer and there is some question whether an acquaintance developed by mere introduction is sufficient. The Lindley court upheld the certificate by determining that "by introduction by C.W. Deems" was mere surplusage. This language could be stricken from the certificate without affecting its meaning and validity. The additional language did not show that the introduction was the only means by which the officer knew the signatory.

In Gray v. Kauffman, a deed from William C. Shaw to J.C. Caskey provided in the certificate of acknowledgment that Shaw "acknowledged that he executed the same J.C. for Caskey all the uses, purposes, and consideration therein set forth..." The "J.C." and "Caskey" language on either side of "for" was surplusage amounting to a clerical error. Held the certificate substantially complied with the statute.

In Adams v. Pardue and Farrell v. Palestine Loan Ass'n, the certificates of acknowledgment indicated that the signatory was known to the officer but also included additional language in parentheses/brackets for alternate proof by subscribing witness: "[proved to me on oath of ________]". In Farrell, the blank for the name of the subscribing witness was lined out. In Adams, the parenthetical was unaltered. In both cases the additional language was harmless surplusage. It was evident from a fair examination of the whole certificate that the officer simply neglected to strike out the additional language.

4. Synonymous Terms. Use of words having the same meaning as those prescribed by statute will be sufficient to sustain an acknowledgment. In Coombes v. Thomas, an old privy acknowledgment was sufficient to show the wife as "privily" examined by stating that she was examined "separate and apart" from her husband. Same result in Clark v. Groce when the acknowledgment simply used "apart".

In Norton v. Davis, another privy acknowledgment sufficiently indicated the signatory did not wish to retract the instrument by stating that she "voluntarily assents thereto". Assent was simply a positive way to say that there was no desire to retract the instrument. In Belcher v. Weaver, the use of "signed" instead of "executed" was sufficiently synonymous to uphold the acknowledgment.

5. Unintentional Use of One Word for Another. In some cases the acknowledgment may simply use the wrong word when another was intended. This will not invalidate the certificate when the mistake is obviously unintentional from an examination of the whole certificate. In Belcher v. Weaver, a privy acknowledgment mistakenly indicated the wife did not wish to "contract" the instrument when "retract" was obviously intended. This certificate substantially complied with the statute. In Johnson v. Thompson, a certificate indicated that the deed was signed "with" constraint rather than "without" constraint. A fair construction of the whole of the certificate showed that this was an unintentional mistake not affecting the validity of the acknowledgment. In Broussard v. Dull, the word "assigned" was used instead of "signed". The error was harmless.

6. Grammatical and Spelling Errors. Grammatical errors or misspelled words generally will not invalidate a certificate of acknowledgment.

7. Alternative Statements. If by statute an acknowledgment has a required
element that may be accomplished by one of several methods, the certificate of acknowledgment must state definitely which of the several methods were used. An alternative statement that the element was satisfied either one way or the other renders the acknowledgment fatally defective.\textsuperscript{186} This rule recognizes the fact that the certificate may be prepared in advance with no idea where the acknowledgment may actually be taken. The common sense solution is to uphold the proof even if the officer fails to change the caption of the certificate at the time that the certificate is completed.\textsuperscript{197}

8. Jurat A Substitute For an Acknowledgment? Generally, a jurat, even if properly completed, is not substantial compliance for an instrument requiring an acknowledgment.\textsuperscript{187} A jurat shows only that the signatory swore or affirmed the instrument.\textsuperscript{188} It is missing the essential element of an acknowledgment declaring that the instrument is the act and deed of the person making it.\textsuperscript{189}

In 1989, the Property Code was amended to allow instruments relating to real or personal property to be recorded if acknowledged or sworn to with proper jurat.\textsuperscript{190} The effect of this statutory change is to make a jurat as good as an acknowledgement to qualify the instrument for recordation. However, for an instrument specifically requiring an acknowledgment for the instrument's validity,\textsuperscript{191} a jurat could not substitute for the required acknowledgment.

D. English Language. To be eligible for recordation, the acknowledgment and remainder of the instrument must be in the English language.\textsuperscript{192}

For those illiterate in English no special form of acknowledgment is specified. However, prudence may dictate that an affidavit of interpreter be executed and attached to the instrument.\textsuperscript{193}

E. Caption. The certificate of acknowledgment should bear a caption or other indication where the acknowledgment was taken as would allow the recording official to determine that the officer taking the proof acted within the scope of his geographic authority. The jurisdiction shown in the caption should be the jurisdiction where the acknowledgment was taken.

1. Missing or Wrong Caption. A strong presumption prevails that a notary acted within the scope of the notary's geographic authority.\textsuperscript{194} This presumption will prevail unless there is something in the certificate of acknowledgment to overcome it.\textsuperscript{195} The presumption is not overcome even if the caption of the certificate shows a jurisdiction other than that in which the officer is authorized to act.\textsuperscript{196}

F. Certificate Must Recite Competency of the Officer. An acknowledgment must be made before an officer qualified to receive the proof.\textsuperscript{198} In addition to this requirement, the certificate itself must show the official capacity of the officer expressed in terms clear enough to allow the recorder to know that the officer was qualified to take the acknowledgment.\textsuperscript{199} Even if the ceremony of acknowledgment is performed before a competent officer, it is a nullity unless accompanied by a certificate stating the officer's official qualifications.\textsuperscript{200} Designation of the official capacity of the officer does not require a designation of the territory within which he has jurisdiction to act.\textsuperscript{201} The law indulges a presumption that the officer acted within the territory of his jurisdiction.\textsuperscript{202}

Abbreviations, even cryptic ones, may be used to show the officer's official capacity.\textsuperscript{203} In \textit{Best v. Kirkendall},\textsuperscript{204} the abbreviation "C.C.T.C." followed the officer's signature.\textsuperscript{205} Held this was sufficient to show that the officer was the County Clerk of Tyler County.\textsuperscript{206} In \textit{Glenn v. Ashcroft},\textsuperscript{207} the designation "N.P." after the notary's name sufficiently indicated he was a notary public.\textsuperscript{208} Likewise in \textit{Daugherty v. Yates},\textsuperscript{209} the designation "J.P." was sufficient to show that the officer was a justice of the peace.\textsuperscript{210}

1. Extrinsic Evidence May Not Be Used. The competency of the officer to take the acknowledgment must appear from the instrument itself.\textsuperscript{211} There must be enough information such that the recorder may know, without resort to any extrinsic evidence, that the officer is qualified.\textsuperscript{212}

In \textit{Coffey v. Hendricks},\textsuperscript{213} an acknowledgment was taken before a notary but did not reflect his official capacity.\textsuperscript{214} Testimony from the notary of his lawful appointment was not allowed to uphold the acknowledgment.\textsuperscript{215} In \textit{Gulf C. & S. F. Ry v. Carter},\textsuperscript{216} an acknowledgment was taken by a deputy county clerk whose official capacity was not given in the certificate.\textsuperscript{217} Extrinsic evidence was offered showing that the official capacity of this clerk appeared on the file stamp by which the instrument was recorded and on other
instruments filed about the same time.\textsuperscript{218} Held the recording stamp and other instruments, as extrinsic evidence, were inadmissible to show the official capacity of the clerk.\textsuperscript{219}

2. \textbf{Court May Look to Whole Instrument For Official Capacity of the Officer.} To supply the official capacity of the officer, the court will look at the entire instrument as it appeared when presented for recordation.\textsuperscript{220} If the capacity of the officer does not appear next to the officer's signature, as is customary, the certificate may nonetheless be upheld if the official capacity is supplied elsewhere in the document; such as in the body of the certificate\textsuperscript{221} or the official seal of the officer.\textsuperscript{222}

\textbf{G. Certificate Must Recite Personal Appearance Before the Officer.} A valid acknowledgment may be taken only if the signatory personally appeared before the officer.\textsuperscript{223} Additionally, the certificate of acknowledgment must reflect that a personal appearance was made.\textsuperscript{224} The statutory forms for certificates of acknowledgment accomplish this by stating that the acknowledgment was made "before me".\textsuperscript{225} In \textit{Belbaze v. Ratto},\textsuperscript{226} a certificate of acknowledgment not containing the phrase "before me" was nevertheless upheld when another part of the certificate indicated that the signatory has "personally appeared".\textsuperscript{227}

\textbf{H. Certificate Must Recite Signatory Was Identified by the Officer.} A certificate of acknowledgment must state that (1) the signatory was personally known to the officer or (2) that the person was identified to the officer by oath of a credible witness personally known to the officer, or (3) that the person was identified to the officer by a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging party.\textsuperscript{228} A failure to state how the officer identified the person giving the acknowledgment is a fatal defect in the certificate.\textsuperscript{229}

An exception to the requirement that the certificate state the manner by which the signatory was identified is provided for when one of the statutory short forms of acknowledgment is used.\textsuperscript{230} These do not require any reference to the manner by which the signatory is identified.\textsuperscript{231}

1. \textbf{When the Certificate Represents the Person is "Known" to the Officer.} The certificate may simply state that the signatory is "known" to the officer without further elaboration. There is no requirement that there be any statement regarding how the person is known.\textsuperscript{232} It will be presumed that the officer took sufficient steps to identify the party appearing before him.\textsuperscript{233} The officer's statement in the certificate that the person was "known" to him must be accepted as sufficient unless the face of the certificate shows that this is not true.\textsuperscript{234}

The statutory long form acknowledgment recites not only that the signatory is known to the officer but that he is known to be the person that signed the document.\textsuperscript{235} Even so, if the certificate fails to recite that the person is known to be the one signing the document, this is not a fatal defect.\textsuperscript{236}

\textbf{I. Certificate Must Recite Signatory Acknowledged the Instrument.} A certificate of acknowledgment must state that the signatory acknowledged execution of the instrument.\textsuperscript{237} A failure to state this essential fact renders the certificate fatally defective.\textsuperscript{238}

1. \textbf{Purposes and Consideration.} A valid ceremony of acknowledgment cannot occur unless the person acknowledges execution of the instrument "for the purposes and consideration expressed in it".\textsuperscript{239} Each statutory certificate of acknowledgment includes this same phrase.\textsuperscript{240} Notwithstanding, if the phrase is missing from the certificate of acknowledgment, it will not invalidate it.\textsuperscript{241} This phrase is considered a formal part of the certificate, which, for the sake of regularity, ought to be inserted, but its omission will not invalidate the certificate.\textsuperscript{242} As a practical matter, many instruments are executed for consideration other than that recited in the instrument.\textsuperscript{243} The main object of an acknowledgment is proof of the execution of the instrument, not its purpose or consideration.\textsuperscript{244}

2. \textbf{Acknowledgment by Attorney-in-Fact.} A certificate of acknowledgment by an attorney-in-fact should state that the agent acknowledged the instrument "on behalf of" the principal.\textsuperscript{245} Notwithstanding, the failure to include this language may not render the certificate invalid.\textsuperscript{246}

3. \textbf{Acknowledgment by Partner.} A certificate of acknowledgment by a partner should state that the partner acknowledged the instrument "on behalf of" the partnership.\textsuperscript{247} However, the failure to include this phrase may not invalidate the certificate.\textsuperscript{248}
4. Acknowledgment by Corporate Officer. A certificate of acknowledgment by a corporate officer should state that the officer acknowledged the instrument "on behalf of" the corporation. However, the failure of the certificate to provide that the act of the officer was the act of the corporation is not fatal to the certificate.

A valid ceremony of acknowledgment of a corporate officer requires that the officer further acknowledge that he executed the instrument "in the capacity stated". However there is no equivalent requirement that this appear in the certificate of acknowledgment.

5. Acknowledgment by Public Officer, Trustee, Executor, Administrator, Guardian, or Other Representative. A certificate of acknowledgment by a public officer, trustee, executor, administrator, guardian, or other representative should state that the representative acknowledged the instrument "as [title of representative] of" the principal.

A valid ceremony of acknowledgment by such a representative requires that the representative declare that he acted "by proper authority in the capacity stated". There is no corresponding requirement that this language appear in the certificate of acknowledgment.

6. Acknowledgment by Person Acting in Dual Capacity. In many instances a person may sign an instrument in more than one capacity. In such a case the certificate may state that the signatory acknowledged his execution of the instrument in each such capacity. However failure to do this is not fatal to the acknowledgment. In Kane v. Sholars, S.W. Sholars signed a deed both individually and as survivor of the community. The certificate of acknowledgment referred to him individually without reference to his capacity as survivor of the community. Held the certificate was nonetheless valid. It was a useless and unnecessary act for Sholars to go through the formality of acknowledging the deed twice.

7. Acknowledgment for a Disabled Person. There is no prescribed statutory form for a certificate of acknowledgment taken of a person who has a physical impairment that impedes the ability of that person to sign or make a mark on the document. The Property Code authorizes a notary public to sign the instrument on behalf of the disabled person in the presence of a disinterested witness. The signature block for the disabled person should contain the following or a substantially similar sentence: "Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code." Therefore, joint acknowledgments are perfectly valid.

8. Joint Certificate of Acknowledgment. There is no statutory prohibition against the acknowledgment of several people being recorded in a single certificate of acknowledgment. Therefore, joint acknowledgments are perfectly valid.

J. Certificate Must Identify the Signatory. The certificate must show that the person acknowledging the instrument is the same person that signed the instrument. A variance between the name of the person shown to have signed and the name of the person shown to have acknowledged will in some cases invalidate the certificate.

1. No Name in Certificate. In cases where the name of the signatory is simply not included in the acknowledgment, the acknowledgment is generally upheld as sufficient. In Deace v. Stribling and Smith v. Victory, the name of the signatory was filled in in one place in the certificate of acknowledgment but not in another. This omission was not a material defect when the certificate as a whole clearly indicated who gave the acknowledgment. In Noel v. Clark, the given name of the wife was left blank in the certificate of acknowledgment on a deed signed by a couple. The certificate did identify her as the wife of the fully named party. This was a sufficient identification to uphold the certificate. In Sheldon v. Farinacci and McMurray v. Lampkins, the identity of the signatory was left completely blank in the certificate. Held the certificates were sufficient. Reading the certificates together with the deeds, it was obvious who gave the acknowledgment.

2. Wrong Name in Certificate. In most instances where the name of the signatory is included in the certificate of acknowledgment is inconsistent with the name in the signature block, the certificate is fatally defective. Thus in Minor v. Powers, a deed signed by Robert Gaines but acknowledged by Robert Lewis was invalid. Similarly in Stephens v. Molt, a deed signed by Jonas Butler but acknowledged by James Butler was insufficient. Likewise in Carleton v. Lombardi, a deed signed by F.W. Chandler but acknowledged by T.W. Chandler was improperly acknowledged. A presumption could not be indulged that these two were the same person.
However, there are authorities upholding proofs with similar discrepancies. In Page v. Arnim, a certificate was upheld where the middle initial of the signatory was different from the signature block. In Caps v. Terry, secondary evidence was allowed to uphold a certificate by E.M. Trimble as proving execution of a deed by M.E. Trimble. In Deace v. Stribling, a certificate was upheld which used the correct name of the signatory in one place in the certificate but used a different name at another. The mistake was obvious from the whole instrument. Also, the repetition of the name was surplusage. If the repeated name was stricken the certificate would have nonetheless been sufficient. In Williams v. Cruse, a deed was signed by Nancy A.E. Risinger but acknowledged by Nancy A.E. Swearingen. Extrinsic proof showed that Nancy A.E. Risinger was formerly known as Nancy A.E. Swearingen. Taking the instrument as a whole, the name used in the certificate of acknowledgment was a simple error by the notary. Notwithstanding the error, the certificate adequately showed that the same person who signed the deed also acknowledged it.

3. Different Form of Name in Certificate. If the certificate names the same person as signed the instrument but uses a different form of that name, the certificate is generally upheld as sufficient. In Cheek v. Herndon, a deed was signed by J.M. Williamson and acknowledged by James M. Williamson. When the grantor's use of both names was clearly established, the difference amounted to no more than a clerical error not affecting the acknowledgment. In Copelin v. Shuler, a power of attorney was signed by R.M. Hopkins but acknowledged by Richard M. Hopkins. This name sufficiently identified the acknowledging party as the same person who signed the power of attorney. In McDonald v. Morgan, a deed was signed by a witness, John S. Preston. The subscribing affidavit referred only to John Preston. The proof was sufficient. The addition of the middle initial was wholly immaterial. In Kane v. Slalors, a deed signed by S.W. Slalors was acknowledged by S.W. Slalors, Sr. Even with a S.W. Slalors, Jr. as one of the grantees, the certificate adequately identified the person acknowledging the deed.

4. Misspelled Name in Certificate. A misspelled name in the certificate of acknowledgment will not render the certificate defective so long as the name, as misspelled, is idem sonans with the correct spelling. Thus in the following cases the misspelling did not render the certificate defective:

<table>
<thead>
<tr>
<th>Correct Name</th>
<th>Misspelled Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>McFarlin</td>
<td>McFarland</td>
</tr>
<tr>
<td>Ester</td>
<td>Easter</td>
</tr>
<tr>
<td>Lutitia</td>
<td>Lutica</td>
</tr>
<tr>
<td>Arnall</td>
<td>Arnold</td>
</tr>
</tbody>
</table>

However, at some point, the spelling error will become so egregious as to be a different name entirely rendering the certificate fatally defective. In McKinzie v. Stafford, McKinzie was misspelled as McKezie. Held the certificate was insufficient to admit the instrument for registration.

5. Pronouns, Generally. Pronouns are often employed in certificates of acknowledgment as a substitute for the name of the acknowledging party as the same person who signed the deed. As with the names for which they substitute, some errors in the use of pronouns may have the affect of invalidating the certificate.

a. Missing Pronouns. If an essential pronoun is missing, the certificate of acknowledgment is fatally defective. In Huff v. Webb, the certificate provided that G.I. Goodwin personally appeared before the notary "and acknowledged that ___ had signed, sealed, and delivered the same for the purposes and consideration therein stated." Held the acknowledgment was fatally defective for failure to show the acknowledging party as the same person who signed the deed. It could not be inferred from the fact that Goodwin appeared before the notary and acknowledged that some unnamed person signed the deed, that that person was actually Goodwin. In Gray v. Kauffman, a certificate provided "the said Adaline Caskey acknowledged said instrument to be ____ act and deed and that she willingly signed the same...". This acknowledgment was upheld as substantially complying with the statute. While no pronoun indicated whose act and deed the instrument was, the conjunctive "and" before "that she willingly signed the same..." necessarily meant the same person performed both acts. To this same effect is Johnson v. Thompson where the certificate stated that Susan F. Thompson "having had said deed explained to her declared that executed same freely...". The missing "she" before executed could be supplied from a fair reading of the whole sentence. Also the certificate stated in another place that Mrs. Thompson had signed the deed.
b. **Wrong Pronoun.** Occasionally the wrong pronoun is used in a certificate of acknowledgment. These are cases where the pronoun does not agree with the antecedent proper name in the gender or number of the maker(s). Such an error usually renders the certificate fatally defective, much as if a wrong name had been used. In *Threadgill v. Bickersstaff* 337 a joint acknowledgment by three grantors stated that "he" acknowledged execution of the deed. 338 Held the acknowledgment was fatally defective. 339 It could not be inferred that the three grantors actually acknowledged the deed with the certificate uncertain on this point. 340

However, in *Hughes v. Wright & Vaughn*, 341 the Supreme Court upheld a similar joint acknowledgment declaring that the two grantors "acknowledged to me that he executed the same..." 342 To save the certificate, the court implied that the word "each" should be inserted before "acknowledged" thereby causing the pronoun "he" to agree with the remainder of the certificate. 343

c. **Misspelled Pronoun.** A misspelled pronoun will not invalidate a certificate if the error is apparent from the whole instrument. 344 In *Durst v. Daugherty*, 345 an acknowledgment by a single male grantor indicated that "the" acknowledged its execution. 346 The acknowledgment was upheld. 347 The misspelled pronoun was a clerical error. 348 Similarly, in *Montgomery v. Hornberger*, 349 a joint acknowledgment of two grantors indicating "the" acknowledged it was not fatally defective. 350 When read together, the certificate showed that the named grantors were the same persons who acknowledged the deed. 351

**K. Date of Acknowledgment.** All statutory forms for certificates of acknowledgment provide for the certificate to be dated. 352 Notwithstanding, the failure to date an acknowledgment may not affect the validity of the certificate. 353

**L. Signature of the Officer.** A certificate of acknowledgment not containing the signature of the notary is fatally defective. 354

**M. Official Seal of the Officer.**

1. **Necessity of Seal.** An officer acknowledging an instrument must place thereon his official seal of office. 355 An acknowledgment without a seal is fatally defective. 356 If the officer affixes the wrong seal this is equivalent to no seal. In *McKellar v. Peck*, 357 a notary taking an acknowledgment mistakenly impressed the certificate with the seal of the County Court instead of his notarial seal. 358 Held the certificate had no validity. 359

The failure of a notary public to attach an official seal to an acknowledgment taken outside Texas but inside the United States or its territories is invalid for failure to include the notary's seal only if the jurisdiction in which the acknowledgment was taken requires a notary public to attach a seal. 360

2. **Affixing the Seal.** The officer must seal his certificate of acknowledgment with his seal of office. 361 For a notary, the seal may be affixed by seal press or stamp that embosses or prints a legible seal under photographic methods. 362 An indelible ink pad must be used by the notary for affixing by a stamp the impression of the seal on an instrument. 363 A seal must be affixed to the certificate at the same time that the certificate is made. 364 Sealing the instrument does not require a strict application of the seal directly to the document. It is acceptable for the certificate and seal to be impressed on a separate piece of paper which is attached to the instrument. 365

3. **Form of Seal.** A notarial seal must (1) contain the words "Notary Public, State of Texas" around a star of five points; (2) have the notary's name; (3) give the date the notary's commission expires; (4) be 2" in diameter (if circular) or 1" by 2½" (if rectangular); and (5) have a serrated or milled edge border. 366

4. **"Given Under My Hand and Seal of Office."** The statutory long form acknowledgment includes language above the signature of the officer that the certificate is "given under my hand and seal of office". 367 However, the presence or absence of these words does not affect the validity of the certificate. 368 The phrase has been eliminated from the statutory short form acknowledgments. 369

**N. Officer's Well-Bound Book (The "Other" Record of an Acknowledgment).**

1. **Necessity of Entry in Well-Bound Book.** Each officer authorized to take acknowledgments or proofs of instruments must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof taken. 370
2. Contents of Entry. An entry recording an acknowledgment must contain:

(i) the date that the acknowledgment was taken;[371]
(ii) the date of the instrument;[372]
(iii) the name(s) of the parties;[373]
(iv) the residence or alleged residence of the parties;[374]
(v) whether the acknowledger is personally known to the officer, or if unknown, how identified;[375]
(vi) name of original grantee and county where land is located if land is conveyed or charged by the instrument;[376] and
(vii) a brief description of the instrument.

3. Entry a Public Record. The well-bound book of a notary is public information.[378] Any person requesting copies of such entries is entitled upon payment of any fees.[379]

4. Effect of Failure to Make Entry. No specific penalty is prescribed for the failure of an officer to maintain a well-bound book or to make entries of acknowledgments taken.[380] The failure to make the entry does not affect the validity of the instrument or prove that the acknowledgment was not taken.[381]

5. Evidentiary Value of Entry. In the case of a lost instrument or dispute over an acknowledgment, certified copies of the officer's records are admissible to show the acknowledgment was taken.[382] The officer's records are deemed to be evidence of momentous weight in proving the fact of an acknowledgment.[383]

O. Defect of Certificate Must Be Pled. The invalidity of a certificate of acknowledgment must be affirmatively pled to be raised.[384] The defect must be pled specifically rather than a general claim of invalidity.[385]

IV. EFFECT OF ACKNOWLEDGMENT.

A. Effect of Acknowledgment on the Enforceability of the Instrument Between the Immediate Parties. Generally, an acknowledgment is not necessary to make an instrument enforceable between the immediate parties thereto.[386] Even with real estate conveyancing instruments, the acknowledgment is not an essential part of the deed.[387] The absence of an acknowledgment will not affect the validity of a deed or mortgage between the parties[388] or the force and effect of the instrument as a conveyance.[389]

There are, however, certain specific instruments which are required by statute to include an acknowledgment.[390] Those most noteworthy to the real estate practitioner include conveyances of any ditch, canal, reservoir, or other irrigation work or interest,[391] subdivision plats,[392] releases of abstracts of judgment,[393] durable powers of attorney,[394] and extensions of real estate lien debt.[395] These specific instruments incorporate a valid acknowledgment as an essential part of the instrument itself. Therefore any failure of the acknowledgment likely renders these instruments a complete nullity between the parties.

B. Effect of Acknowledgment on the Recordation of Instruments. Before an instrument may be spread upon the real estate records of a county, its execution must be proven by an acknowledgment.[396] Under the recording statutes, county clerks may not accept for recordation any instrument not "acknowledged" (or otherwise proven).[397]

"Acknowledged", as used in the recording statutes, refers to an instrument (1) for which a valid ceremony of acknowledgment has occurred and (2) bearing all elements of a valid certificate of acknowledgment. A material defect in either destroys the eligibility of the instrument for recordation.

1. Government Grants Require No Acknowledgment. A grant from Texas or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgment or proof.[398]

2. Duly Recorded Instrument Constitutes Constructive Notice of Its Contents. While an unrecorded instrument is notice to the immediate parties, their heirs, a subsequent purchaser who does not pay value, and a party with actual notice of the instrument,[399] a duly acknowledged and recorded instrument imparts constructive notice of its contents.[400] By constructive notice, all persons attempting to acquire rights in the affected property are deemed to have notice of the recorded instrument.[401]

This constructive notice extends to all facts shown or exhibited by the instrument.
including all of its conditions, recitals, terms, and stipulations. This includes notice of any facts disclosed by the certificate of acknowledgment on the instrument.

3. Acknowledgment Must Appear of Record For the Instrument to be Constructive Notice. In order for an instrument to constitute constructive notice, the acknowledgment itself must also appear of record. In Dean v. Gibson, a deed duly acknowledged was recorded. However, in recording the deed, the clerk omitted record of the acknowledgment, placing of record only the body of the deed. Held the recording of the body of the deed without the certificate of acknowledgment did not constitute constructive notice of the contents of the deed.

4. Effect of Recording Instrument Without Valid Certificate of Acknowledgment. The county clerk is directed by law to accept for recording only instruments duly acknowledged. Notwithstanding, instruments will get recorded which have no acknowledgment or a defective acknowledgment. The recording of such an instrument is illegal and a nullity. Though the instrument is recorded, it is not constructive notice of its contents. The effect is the same as if the instrument had never been recorded. Though the instrument fails as constructive notice, it is still notice to the parties to the instrument, their heirs, and any subsequent purchaser who does not pay valuable consideration or who has actual notice of the instrument.

An exception to the general rule that only acknowledged instruments impart constructive notice occurs when an instrument is adopted by reference by a second instrument duly acknowledged. In such a case the adopted instrument becomes part of the second instrument for all purposes irrespective of the validity of the acknowledgment on the adopted instrument.

5. Effect of Recording Instrument Where Some But Not All of the Certificates of Acknowledgment are Valid. If the instrument contains the acknowledgments of more than one party and some of the certificates of acknowledgments are sufficient and some are missing or invalid, the instrument may be recorded. However, the recordation of that instrument will only be constructive notice as to interests of the parties who executed the instrument with valid acknowledgments and will fail as constructive notice as to the interests of parties who executed the instrument but for whom no valid certificate of acknowledgment appears.

In Hart v. Wilson, a conveyance was recorded after being acknowledged by the grantee but not the grantor. The instrument did not constitute constructive notice of the transaction. The registration statutes attach no importance to an acknowledgment by the grantee. To effectively constitute notice, the grantor's signature must be acknowledged.

Some result in Sanchez v. Telles, where a contract of sale was acknowledged by the buyer but not the grantor. The recordation of this instrument was not constructive notice to subsequent purchasers.

C. Evidentiary Effect of Acknowledgment.

1. Impeachment of Certificate of Acknowledgment.

a. Impeachment of Certificate of Privy Acknowledgment. Between 1841 and 1968 certain instruments executed by a married woman were required to be acknowledged on examination by the officer separate and apart from her husband. This "privy acknowledgment" was an essential part of the instrument itself. Without such an acknowledgment, the instrument was ineffective to pass the wife's interest in the property.

Because the effectiveness of certain conveyances depended on the effectiveness of the privy examination of the wife, much litigation ensued where parties sought to look behind the certificate of privy acknowledgment to show that the officer failed to properly explain the instrument or examine the wife. In order to provide stability to land titles, the rule developed that a certificate of privy acknowledgment in due form was conclusive on the wife of the elements of the ceremony of acknowledgment stated therein. The rule in effect barred all collateral proof that the ceremony of acknowledgment was improperly conducted.

So stringently was this rule applied, that even proof that the signature on the instrument was not that of the person purporting to sign it did not overcome the conclusive affect of the certificate. Simple proof of a different signature did not eliminate the possibility that a third party signed the acknowledge's name with permission or signed without permission but that
the signature was subsequently adopted as the acknowledger's own. The harshness of this rule spawned some notable exceptions. The conclusory affect of an acknowledgment is not applicable in cases involving:

(1) fraud;
(2) undue influence, coercion, or overreaching;
(3) forgery;
(4) the failure of the acknowledger to actually appear before the officer;
(5) instruments executed by minors;
(6) the failure of the party relying upon the certificate to pay consideration or alter their position; and
(7) actual or constructive knowledge by the party relying on the certificate that it failed to reflect the true facts.

b. Impeachment of Certificates of Acknowledgment, Generally. The rule that a valid certificate of acknowledgment is conclusive proof (subject to the above exceptions) of the facts stated therein was originally applied only against a married woman in reference to a privy acknowledgment. Had this been consistently applied, it might be positively stated that the conclusive evidentiary affect of a certificate of acknowledgment went out with the privy acknowledgment in 1968. However, over the years the bar against evidence impeaching a certificate of acknowledgment has crept into application with reference to acknowledgments generally. The reason given for its general application is to prevent the insecurity of titles and the ruinous consequences that would ensue from the doubt and uncertainty with which titles would be clouded. Therefore, though far from positively settled by the authorities, it appears that the same rules on the conclusive affect of certificates of acknowledgment now apply to acknowledgments generally that formerly applied only to privy acknowledgments.

c. Burden of Proof in Impeaching Certificate of Acknowledgment. If the impeachment of a certificate of acknowledgment is not conclusively barred by the above rule, the burden is clearly upon the party attacking the certificate of acknowledgment to present proof that it is false.

The burden of the party attacking the acknowledgment is daunting given that a certificate of acknowledgment regular in form is presumed to be true and correct, with any attempt to impeach it generally viewed with suspicion and distrust. The regularity of the certificate amounts to prima facie evidence of the facts recited therein. So strong is the presumption, that evidence impeaching the certificate must be clear, convincing, and beyond a reasonable controversy. The reliability of the disinterested officer's certificate, it is reasoned, is far greater than the memory of some interested party months or years afterwards.

Generally, uncorroborated testimony of an interested person fails as a matter of law to meet the clear, convincing, and beyond reasonable controversy standard. Slight corroboration is also insufficient. However, no corroboration is required to get to a jury if evidence shows (1) the signatory never appeared before the notary, or (2) the notary was an interested party.

d. Counterdefenses to Impeachment of Certificate of Acknowledgment. In addition to a formidable burden of proof, certain counterdefenses may prevent the impeachment of a certificate of acknowledgment. Fraud or facts giving rise to estoppel will prevent the signatory from denying the conclusive effect of the certificate. Simply signing an instrument and leaving it with a blank acknowledgment that is later filled in without the knowledge or participation of the signatory does not give rise to estoppel. However, if the signatory allows the registration of a deed known to contain a false acknowledgment or represents a false certificate as genuine, estoppel and fraud may apply.

2. Certificate of Acknowledgment as Proof of Execution of the Instrument. A certificate of acknowledgment is prima facie proof that the signatory executed the instrument, but not proof of when the instrument was executed.

3. Certificate of Acknowledgment as Proof of Delivery of the Instrument. In the absence of evidence to the contrary, an acknowledgment will support a finding that an instrument was delivered.

An instrument is presumed to be delivered on the date of its execution and acknowledgment. If the date of execution and the date of acknowledgment are different, it is
presumed, in the absence of other evidence, that the instrument was delivered on the date of the instrument not on the date of the acknowledgment.\textsuperscript{[457]}

4. Admissibility of Acknowledged Instrument. An instrument bearing an acknowledgment is self-proving and may be introduced into evidence without further authentication.\textsuperscript{[458]}

V. CURING DEFECTIVE ACKNOWLEDGMENT

A. Correction of Certificate by Officer. If the officer taking the acknowledgment is available, that officer has the authority to correct the certificate of acknowledgment at a later date to cure a defect in the certificate.\textsuperscript{[459]} In McKellar v. Peck,\textsuperscript{[460]} the Supreme Court recognized that a notary having mistakenly impressed a certificate of acknowledgment with the wrong seal could later correct that error by using the correct seal.\textsuperscript{[461]} In Lake v. Earnest,\textsuperscript{[462]} an acknowledgment was upheld which, though originally failing to state the officer's official capacity, was later corrected by the officer to include this.\textsuperscript{[463]}

B. Reacknowledgment. A defective certificate of acknowledgment may be cured by the simple expediency of having the signatory reacknowledge the instrument.\textsuperscript{[464]} This has the same effect as a new execution of the document.\textsuperscript{[465]} The reacknowledgment relates back to the time the instrument was originally executed except in the case of intervening rights of third parties.\textsuperscript{[466]}

C. Ratification By Execution and Recordation of Subsequent Instrument. A defective certificate of acknowledgment on an instrument may be corrected by the subsequent execution of another instrument that recognizes the validity of the prior conveyance.\textsuperscript{[467]} The curative instrument must be one executed for that purpose and one that purports to correct the error.\textsuperscript{[468]} In Starnes v. Beitel,\textsuperscript{[469]} a defectively acknowledged deed of trust was sought to be cured by a subsequent instrument renewing and extending the debt.\textsuperscript{[470]} The renewal and extension had as its purpose the renewal of the debt and did not discuss the defective prior acknowledgment.\textsuperscript{[471]} Held this instrument failed to cure the defective acknowledgment.\textsuperscript{[472]}

As with a reacknowledgment, the ratification of a prior instrument relates back to the time of the original instrument between the parties but will not relate back to cut off the rights of intervening third parties.\textsuperscript{[473]}

D. Suit to Cure Defective Acknowledgment. A defective certificate of acknowledgment may be corrected by action brought in district court to reform the certificate.\textsuperscript{[474]} The effect of such a suit can only be to conform the certificate of acknowledgment to the facts. The suit cannot save an instrument for which no valid ceremony of acknowledgment occurred.\textsuperscript{[475]} In Downs v. Peterson,\textsuperscript{[476]} evidence was insufficient to correct a certificate of acknowledgment when the notary testified only that he was usually careful in taking an acknowledgment, believed he complied with the law, but had no definite recollection regarding taking the acknowledgment at issue.\textsuperscript{[477]}

The recording of a certified copy of the judgment conforming the certificate of acknowledgment to the law has the same effect as recording the instrument with a valid acknowledgment.\textsuperscript{[478]} Such recordation, however, does not relate back to validate the previous void registration but dates from the time the judgment is recorded.\textsuperscript{[479]} The judgment also makes the instrument as admissible into evidence as if it bore a valid certificate of acknowledgment.\textsuperscript{[480]}

A suit for correcting a certificate of acknowledgment must be brought within four years of the making of the instrument.\textsuperscript{[481]}

E. Curative Statutes

1. Technical Defects in Certificate of Acknowledgment (\textsc{Tex. Civ. Prac. \\& Rem. Code Ann. § 16.033}). One attempt to cure by statute technical problems in acknowledgments is \textsc{Tex. Civ. Prac. \\& Rem. Code Ann. § 16.033} which requires one bringing an action to recover real property based \textit{inter alia} on certain technical defects in a certificate to bring such suit within four years of the date the instrument was recorded.\textsuperscript{[482]} Technical defects covered by this curative statute include:

   (1) acknowledgment of the instrument in an individual, rather than a representative or official capacity;\textsuperscript{[483]}
   (2) failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law.\textsuperscript{[484]}

2. Admissibility of Defectively Acknowledged Instruments. Formerly defectively acknowledged documents were
admissible into evidence only if they had been of record at least ten years without any adverse or inconsistent claim having been asserted and only after advanced filing and notice. The adoption of the Texas Rules of Civil Evidence effectively eliminated all such provisos and advance filing requirements.

3. Miscellaneous Curative Statutes
For other curative statutes refer to:

(1) 2 H. Gammel, Laws of Texas 632 (certain instruments recorded prior to 1841)
(2) 2 H. Gammel, Laws of Texas 1460, 1471, 1543, 1694 (certain instruments recorded prior to 1846)
(4) 8 H. Gammel, Laws of Texas 154, 198 (certain instruments recorded prior to 1874)

Persistent research may reveal special curative statutes for certain counties or pertaining to acknowledgments taken by certain persons.

4. Construction of Curative Statutes
The curative statutes are to be liberally construed to accomplish their intended object. Notwithstanding, the statutes as a general rule cure only an error in the certificate of acknowledgment. If the ceremony of acknowledgment was improperly conducted the curative statutes will not render an acknowledgment valid.

Curative statues have withstood constitutional challenges that their application has the effect of taking away vested property rights. The statutes are considered only to afford an alternative manner of proving a deed not as creating title from an otherwise defective instrument. The result could be different for those special instruments for which an acknowledgment is essential to the validity of the document.

VI. ALTERNATIVE METHODS OF AUTHENTICATING INSTRUMENTS
The recording of an instrument is not entirely dependent on it containing a valid certificate of acknowledgment. Alternative methods are available to make proof of a document.

A. Proof by Jurat
An instrument concerning real or personal property may be recorded without acknowledgment if it has been sworn to with proper jurat. A jurat is a certificate by a competent officer that the writing was sworn to by the person who signed it.

1. Requirements of Valid Affidavit Ceremony
a. Officers Authorized to Take Affidavit
An affidavit taken within the State of Texas may be made before (1) a judge, clerk, or commissioner of a court of record; (2) a justice of the peace or a clerk of a justice court; (3) a notary public; (4) a member of a board or commission created by law of Texas in a matter pertaining to the duty of the board or commission; (5) a person employed by the Texas Ethics Commission in certain Election Code matters; (6) a county tax assessor-collector or employee of county tax assessor-collector if relating to a document to be filed with the tax assessor-collector; (7) a peace officer when done in the performance of his duties; (8) the secretary of state; (9) the lieutenant governor; (10) the speaker of the house of representatives; (11) the governor; and (12) federal judge, justice, or magistrate.

An affidavit taken within the United States but outside of Texas may be taken (1) a clerk of a court of record having a seal; (2) a commissioner of deeds; (3) a notary public; or (4) a federal judge, justice, or magistrate.

An affidavit may be taken outside of the United States by (1) a minister, commissioner, or charge d'affaires of the United States who resides in and is accredited to the country where the affidavit is made; (2) a consul-general, consul, vice-consul, commercial agent, or vice-commercial agent of the United States who resides in the country where the affidavit is taken; or (3) a notary public.

An affidavit of a member of the United States armed forces or armed forces auxiliary or their spouse make be taken by a commissioned officer of the United States armed forces or armed forces auxiliary.

As with acknowledgments, an otherwise competent officer is disqualified from taking an affidavit if financially or beneficially interested in the transaction.

An agent of a party is disqualified to take a jurat if the officer signs a written instrument as an agent for one of the parties. The mere fact of the agency may raise a presumption of the
interest of the agent. This presumption may be rebutted; however, by proof that the agents beneficial or pecuniary interest did not turn upon upholding the instrument.  

Generally, to be disqualified, the agent must be clothed with discretionary authority to act on behalf of the principal. A mere salaried employee of a party to a transaction is not disqualified from taking a jurat in that transaction.

b. Personal Appearance Before the Officer. For a valid affidavit to be taken, the affiant must make a personal appearance before the officer that administers the oath. A valid affidavit cannot be taken over the telephone.

c. Identification of the Affiant. An affidavit ceremony does not require that the affiant be identified or personally known to the officer as in the case of acknowledgments. It is enough that the affiant personally appeared before the officer so that he can be identified as the person taking the oath if perjury should apply.

d. Affiant Must Swear That The Facts Are True. An officer may not take a valid affidavit by sitting in mute observation of the person signing the instrument. An oath must be administered to the affiant or the affiant must make a conscious and unequivocal act in the presence of the officer that cause the affiant to assume the obligations of an oath.

Prudent practice would seem to require that on each occasion that an affidavit is taken the affiant (1) be required to raise the affiant's right hand; (2) be administered on oath; and (3) be asked to verify the contents of the affidavit. This procedure should be followed on each separate occasion that an affidavit is taken. It is not acceptable for an affidavit in the practice of executing multiple affidavits over a period to be placed on a "standing oath" applicable to any time the affiant signs an affidavit.

e. Affiant Must Sign Instrument In the Presence of the Officer. The affiant must also subscribe the affidavit in the presence of the officer administering the oath. The location of the signature on the instrument is not critical. The signature may appear above the body of the affidavit or even below the jurat.

2. Requirements of a Valid Jurat.

a. No Statutory Form. Unlike acknowledgments, there is no general statutory form for a jurat.

b. Caption. A jurat should bear a caption where the jurat was taken as would allow the recording official to determine that the officer taking the proof acted within the scope of his geographic authority. The jurisdiction shown by the jurat should be the jurisdiction where the affidavit was taken.

c. Jurat Must Recite The Competency of the Officer. A jurat must recite the official capacity of the officer taking the oath or it is fatally defective.

d. Jurat Must Recite Personal Appearance Before the Officer. A jurat must recite that the affiant appeared in person before the officer. This requirement is satisfied as the jurat states that the affiant "personally appeared".

e. Jurat Must Recite That The Affiant Sworn. A jurat to be effective must recite that the affiant was sworn upon oath by the officer.

f. Jurat Must Recite The Instrument Signed Before the Officer. At least one case has held that a jurat reciting that the statement is sworn to need not further state that the instrument was subscribed by the affiant in the presence of the notary.

g. Jurat Must Contain Date of Affidavit. Generally each jurat should contain the date that the officer administered the oath. However, the absence of a date in the jurat is not fatally defective.

h. Jurat Must Contain The Signature of the Officer. A jurat must contain the signature of the officer administering the oath.

i. Jurat Must Contain Official Seal of Officer. The jurat, to be effective, must also bear the official seal of the officer.

B. Acknowledgment by Witness (Proof by Subscribing Witness).

1. Ceremony of Acknowledgment by Witness. An instrument may be proved if witnessed in writing by two or more credible witnesses who saw either the grantor sign or saw him acknowledge the instrument. At least one
of the witnesses who signed the instrument must personally appear before an officer authorized to take acknowledgments and sign an affidavit that:

1. either the witness saw the signatory sign the instrument or the signatory acknowledged in the presence of the witness that the signatory signed the instrument for the purposes and consideration therein stated; and
2. the witness signed the instrument as witness at the request of the signatory.

Similar to standard acknowledgments, the officer taking the acknowledgment by witness must adequately identify the subscribing witness. The officer may take the witness' affidavit only if he "personally knows" the witness or has satisfactory proof on oath of a credible witness that the person testifying is the person who signed it as a witness.

For the recalcitrant witness, the officer is empowered with subpoena authority when the instrument cannot otherwise be proven.

2. Certificate of Acknowledgment by Witness. If an instrument is authenticated by acknowledgment by witness, the officer must make a certificate of the testimony of the witness. The certificate must be in substantial compliance with the statutory form for the certificate of proof by subscribing witness.

a. Certificate Must Recite the Competency of the Officer. The official capacity of the officer taking the proof of the subscribing witness must appear in the certificate.

b. Certificate Must Recite a Personal Appearance Before the Officer. The certificate of the officer must reflect a personal appearance by the subscribing witness. There is no need for the maker of the instrument to appear before the officer.

c. Certificate Must Recite That the Witness Was Identified by the Officer. The certificate must reflect by which approved method the witness was identified by the officer. If evidence is used to identify the witness, the officer must note the use of evidence in the certificate.

Because alternate methods of identifying the witness may be used, the certificate must definitely state that one or the other was used.

The statutory form for a certificate by subscribing witness requires that the witness be identified "to be the person whose name is subscribed as a witness." However, it is not a fatal defect if this language is omitted from the certificate.

d. Certificate Must Recite That the Signature of the Grantor Was Witnessed or Acknowledged. The certificate must provide that the witness provided sworn testimony that the witness saw the person sign the instrument or the person acknowledged that he signed it in the presence of the witness for the purposes and consideration therein expressed. One method or the other must be stated but not both alternatively. In Harvey v. Cummings, the certificate of subscribing witness provided the witness either saw the instrument signed or had it acknowledged to him by the grantor. Held this alternative statement was insufficient for leaving in doubt which of the two methods were employed.

In Johnson v. Franklin, the certificate indicated the witness swore "that he saw S.W.A. McDowell, the Grantor or the person who executed the foregoing instrument of writing acknowledged in his presence that he had executed same..." The certificate was inadequate because it did not state the witness saw McDowell sign the instrument. There was also inadequate proof of an acknowledgment because the certificate did not state that the grantor acknowledged the instrument in the presence of the witness.

e. Certificate Must Recite That the Witness Signed the Instrument at the Request of the Grantor. In the statutory form for an acknowledgment by witness, the witness must state that he signed the instrument at the request of the grantor. However, failure to state that the instrument was witnessed "at the request" of the grantor is not a fatal omission.

3. Effect of Acknowledgment by Handwriting. In certain limited instances an instrument may be established for recordation the same as one bearing a standard acknowledgment.

C. Acknowledgment by Handwriting. In certain limited instances an instrument may be established for recordation the same as one bearing a standard acknowledgment.
1. **When Acknowledgment by Handwriting Available.** Acknowledgment by handwriting is available only if:

   (i) the grantor to the instrument and all witnesses are dead;
   (ii) the grantor and all witnesses are not residents of Texas;
   (iii) the residences of the grantor and witnesses are unknown and cannot be ascertained;
   (iv) the witnesses have become legally incompetent to testify; or
   (v) the grantor refuses to acknowledge the instrument and all witnesses are dead, not residents of Texas, legally incompetent, or their places of residence are unknown.

2. **Parties Whose Handwriting Must Be Proven.** The handwriting of the grantor (or person who signed the instrument) and at least one witness must be proven. If the execution by the grantor is by making his mark, the handwriting of at least two witnesses must be proven.

3. **Manner of Proving Handwriting.** Handwriting may be proven by deposition or affidavit by two or more disinterested witnesses stating:

   (i) facts entitling the instrument to be acknowledged by handwriting;
   (ii) the residence of the testifying witness;
   (iii) that the person whose handwriting is to be proved was known to the testifying witness;
   (iv) that the testifying witness was well-acquainted with the handwriting in question; and
   (v) that the handwriting is genuine.

   The proof must be taken before an officer authorized to take proofs.

4. **Certificate of Acknowledgment by Handwriting.** The officer taking the proof must certify the witness’ testimony. No statutory form for the certificate is prescribed. The certificate must be signed by the officer and officially sealed. The certificate, along with the proving affidavits or depositions, are attached to the instrument.

   **D. Proof by Suit.** A person interested in an instrument may bring an action in district court for a judgment proving the instrument. If a certified copy of a judgment obtained in that action is attached to the instrument, it may be recorded the same as if it bore a valid certificate of acknowledgment.

   This statute cannot cure those special instruments which require an acknowledgment for their validity. The statute only provides an alternate method of proving up an instrument for recordation.

**VII. NOTARIAL LIABILITY.**

A. **Civil Liability.** A person injured by the failure, refusal, or neglect of an officer to comply with the law in the taking of an acknowledgment has a cause of action against the officer and his sureties to recover damages resulting from such failure, refusal, or neglect. Any failure by the notary to abide by the duties prescribed by statute is negligence per se. In *Britain v. Monsur*, a notary failed to properly identify a signatory allowing an imposter to execute the instrument. The failure to follow the statutory procedures for identifying the signatory amounted to negligence.

In certain situations, a notary advertising his services in a language other than English may violate the Texas Deceptive Trade Practices Act for failure to disclose that the notary is not an attorney and cannot give legal advice.

B. **Criminal Liability.**

1. **State Law.** A notary altering or making a false acknowledgment is subject to potential state criminal liability for tampering with a government record or forgery. Acting as a notary without due appointment constitutes the offense of impersonating a public servant. Acting as a notary with a good faith belief that the notary was duly appointed may not violate this provision.

2. **Federal Law.** It is a federal crime for an officer to make a false acknowledgment in connection with any proposal, contract, bond, undertaking, or other matter involving the United States or any federal department or agency.
APPENDIX A

INDIVIDUAL ACKNOWLEDGMENT (LONG FORM)\(^{587}\)

State of _________________
County of _______________

Before me _ (name and character of the officer) _ on this day personally appeared _ (name of acknowledger) _, proved to me by identification card issued by _ (name of federal or state government issuing identity card) _ federal government or any state government that contained the photograph and signature of _ (name of acknowledger) _ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _ (he/she) _ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _______ day of ______________, A.D., _________________.

(Seal)

APPENDIX B

INDIVIDUAL ACKNOWLEDGMENT (SHORT FORM)\(^{588}\)

State of Texas
County of _______________

This instrument was acknowledged before me on _ (date) _ by _ (name of acknowledger) _ .

(Signature of Officer)

(Title of Officer)
My commission expires: ________________

(Seal)
APPENDIX C

INDIVIDUAL ACKNOWLEDGMENT
(OUTSIDE U.S. BEFORE U.S. CONSULAR OFFICER)

[Caption of Jurisdiction]

__________________________________________

Before me   (name of officer)  ,  (title of consular official)  , of the United States, and a resident of this country duly commissioned, accredited, and qualified on this day personally appeared   (name of acknowledger)  proved to me by identification card issued by   (name of federal or state government issuing identity card)  that contained the photograph and signature of   (name of acknowledger)  to be the person(s) whose name(s)   (is/are)  subscribed to the foregoing instrument and acknowledged that   (he/she/they)  executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __ _______ day of ______________, A.D., ____________.

(Seal)

APPENDIX D

INDIVIDUAL ACKNOWLEDGMENT
(ACKNOWLEDGER SIGNING WITH HIS MARK)

State of Texas

County of ________________

Before me,   (name and character of officer)  on this day personally appeared   (name of acknowledger)  , or proved to me by identification card issued by   (name of federal or state government issuing identity card)  that contained the photograph and signature of   (name of acknowledger)  to be the person whose mark is made on the foregoing instrument and acknowledged to me that   (he/she)  executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __ _______ day of ______________, A.D., ____________.

(Seal)
APPENDIX E

INDIVIDUAL ACKNOWLEDGMENT
(ACKNOWLEDGER DISABLED AND UNABLE TO SIGN OR ASSISTED TO SIGN)

State of _________________
County of _________________

Before me, ________________, a notary public, on this day personally appeared ________________, a person having a physical impairment that impedes ________________’s ability to sign this instrument and first being proved to me by identification card issued by ________________ that contained the photograph and signature of ________________, directed me to affix ________________’s signature to the foregoing instrument in the presence of ________________, a person having no legal or equitable interest in any real or personal property that is the subject of or is affected by this instrument and a person also proved to me by identification card issued by ________________ that contained the photograph and signature of ________________, and ________________ acknowledged to me that ________________ directed me to execute the instrument on ________________’s behalf for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of ______________, A.D., ________________.

(Seal)

APPENDIX F

INDIVIDUAL ACKNOWLEDGMENT
(MEMBER OF ARMED FORCES OR ARMED FORCES AUXILIARY)

In the Armed Forces of the United States of America
(give the location insofar as security regulations permit)

Before me, ________________, ________________, a duly commissioned officer in the Armed Forces (or specify auxiliary to Armed Forces) of the United States personally appeared ________________, ________________, a member of the Armed Forces (or specify auxiliary to Armed Forces) of the United States proved to me by identification card issued by ________________ that contained the photograph and signature of ________________ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that ________________ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of ______________, A.D., ________________.

(Seal)
APPENDIX G

INDIVIDUAL ACKNOWLEDGMENT
(SPOUSE OF MEMBER OF ARMED FORCES OR ARMED FORCES AUXILIARY)

In the Armed Forces of
the United States of America

(give the location insofar as
security regulations permit)

Before me   (name of officer),   (rank, branch, and serial number of officer), a duly commissioned officer in the Armed Forces (or specify auxiliary to Armed Forces) of the United States personally appeared   (name of acknowledger), the spouse of   (name of member of Armed Forces),   (rank, branch, and serial number of member of Armed Forces), a member of the Armed Forces (or specify auxiliary to Armed Forces) of the United States proved to me by identification card issued by   (name of federal or state government issuing identity card) that contained the photograph and signature of   (name of acknowledger) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that   (he/she) executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of ______________, A.D., __________.

(Seal)

APPENDIX H

ACKNOWLEDGMENT BY ATTORNEY-IN-FACT (LONG FORM)

State of ________________

County of ________________

Before me   (name and character of officer) on this day personally appeared   (name of
acknowledger) proved to me by identification card issued by   (name of federal or state government issuing identity card) that contained the photograph and signature of   (name of acknowledger) to be the person whose name is subscribed to the foregoing instrument as the attorney-in-fact of   (name of principal) and acknowledged to me that   (he/she) subscribed the name of   (name of principal) to such instrument on behalf of   (name of principal) and as the act of   (name of principal) and   (his/her) own name as attorney-in-fact and executed the same for the purposes and consideration expressed and in the capacity set forth in the instrument.

Given under my hand and seal of office this __________ day of ______________, A.D., __________.

(Seal)
APPENDIX I

ACKNOWLEDGMENT BY ATTORNEY-IN-FACT (SHORT FORM)\(^\text{90}\)

State of Texas

County of _______________

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

________________________________________
(Signature of Officer)

________________________________________
(Title of Officer)
My commission expires:_______________

(Seal)

APPENDIX J

ACKNOWLEDGMENT BY PARTNER (LONG FORM)

State of _______________

County of _______________

Before me, (name and character of officer), on this day personally appeared (name of acknowledge), proved to me by identification card issued by (name of federal or state government issuing identity card) that contained the photograph and signature of (name of acknowledge) to be one of the partners of the partnership whose name is subscribed to the foregoing instrument and acknowledged to me that (he/she) executed the instrument as the act of the partnership on behalf of the partnership for the purposes and consideration expressed in it.

Given under my hand and seal of office this _________ day of ____________, A.D., ________________.

(Seal)
APPENDIX K

ACKNOWLEDGMENT BY PARTNER (SHORT FORM)\(^{591}\)

State of Texas

County of _______________

This instrument was acknowledged before me on __________ (date) by __________ (name of acknowledging partner or partners), as partner(s) on behalf of __________ (name of partnership), a partnership.

________________________________________
(Signature of Officer)

________________________________________
(Title of Officer)

My commission expires: ______________

(Seal)

APPENDIX L

ACKNOWLEDGMENT BY CORPORATE OFFICER (LONG FORM)

State of _______________

County of _______________

Before me __________ (name and character of officer), on this day personally appeared __________ (name of acknowledger), proved to me by identification card issued by __________ (name of federal or state government issuing identity card) that contained the photograph and signature of __________ (name of acknowledger) to be the person and corporate officer whose name is subscribed to the foregoing instrument and acknowledged to me that the instrument was the act of __________ (name of corporation), a corporation, and that __________ (he/she) executed the instrument as the act of the corporation on behalf of the corporation for the purposes and consideration expressed therein, and in the capacity stated in the instrument.

Given under my hand and seal of office this __________ day of ______________, A.D., ______________.

(Seal)
APPENDIX M

ACKNOWLEDGMENT BY CORPORATE OFFICER (SHORT FORM)\textsuperscript{992}

State of Texas

County of _______________

This instrument was acknowledged before me on ______ (date)____ by ______ (name of officer)____ of ______ (name of corporation acknowledging)____, a ______ (state of incorporation)____ corporation, on behalf of said corporation.

________________________________________
(Signature of Officer)

________________________________________
(Title of Officer)

My commission expires: __________________

(Seal)

APPENDIX N

ACKNOWLEDGMENT BY PUBLIC OFFICER, TRUSTEE, EXECUTOR,
ADMINISTRATOR, GUARDIAN, OR OTHER REPRESENTATIVE (LONG FORM)

State of ________________

County of ________________

Before me ______ (name and character of officer)____, on this day personally appeared ______ (name of acknowledger)____, proved to me by identification card issued by ______ (name of federal or state government issuing identity card)____ that contained the photograph and signature of ______ (name of acknowledger)____ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that ______ (he/she)____ executed the instrument as ______ (capacity of acknowledger)____, of ______ (name of principal, if any)____, by proper authority, for the purposes and consideration expressed therein and in the capacity stated in the instrument.

Given under my hand and seal of office this _______ day of ______________, A.D.,

__________________.

(Seal)
APPENDIX O

ACKNOWLEDGMENT BY PUBLIC OFFICER, TRUSTEE, EXECUTOR, ADMINISTRATOR, GUARDIAN, OR OTHER REPRESENTATIVE (SHORT FORM) \(^{593}\)

State of Texas

County of _____________

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

________________________________________
(Signature of Officer)

________________________________________
(Title of Officer)

My commission expires: ________________

APPENDIX P

CERTIFICATE OF PROOF OF INSTRUMENT (BY SUBSCRIBING WITNESS) \(^{594}\)

State of _____________

County of _____________

Before me (here insert the name and character of the officer), on this day personally appeared (name of witness), known to me (or proved to me on the oath of _____________), to be the person whose name is subscribed as a witness to the foregoing instrument, and, after being by me duly sworn, stated on oath that he/she saw ___________________, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he/she had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same).

Given under my hand and seal of office this ________ day of ______________, A.D., ____________.

(Seal)
APPENDIX Q

CERTIFICATE OF PROOF OF INSTRUMENT FOR RECORD
(BY PROOF OF HANDWRITING)

State of Texas

County of _______________

Before me ________________, on this day personally appeared ________________, to me well known, who, being first duly sworn, deposes and says:

1. That ________________, residence is ________________;

2. That ________________, well acquainted with ________________, the grantor named in the foregoing deed and with ________________ and ________________, the subscribing witnesses to such instrument;

3. That ________________, state facts entitling instrument to be proved by handwriting;595

4. That ________________, well acquainted with the signatures of ________________, ________________, and ________________, from having frequently seen them write and sign their names;

5. That ________________, recognizes the signatures of ________________, ________________, and ________________ on the instrument as genuine; and

6. That ________________, is not interested in any way in this instrument.

________________________________________
(signature of person giving proof)

Subscribed and sworn to before me this __________ day of ______________, A.D., ______________, certifying the above testimony by my hand and official seal.

(Seal)  
(Signature of Officer)

(Title of Officer)
APPENDIX R

CERTIFICATE OF AUTHORITY OF FOREIGN OFFICER

I (name and title of United States consular official) duly commissioned and qualified and a resident of (country where acknowledgment taken) do hereby certify that (name of foreign notary) whose name is subscribed to the acknowledgment on the foregoing instrument, was, on the date thereof, a notary public (or other office held by officer) practicing in the city of (city where acknowledgment taken) in (country where acknowledgment taken) commissioned, sworn, and duly authorized by the laws of (country where acknowledgment taken) to administer oaths for general purposes and to authenticate documents and to take acknowledgments of deeds, and that said instrument was duly executed and acknowledged according to the laws of (country where acknowledgment taken).

In testimony whereof, I have hereby set my hand and affixed my seal of office this _________ day of ____________, A.D., ____________.

________________________________________
(signature of United States consular official)

APPENDIX S

CERTIFICATE OF OUT-OF-STATE OFFICER'S AUTHORITY

State of _________________
County of _______________

I (here insert name and character of officer giving certificate, e.g. "district clerk of __________, a court of record") certify that the officer taking the foregoing acknowledgment was authorized by law at the time the acknowledgment was taken, to take the acknowledgment; that the signature of the officer on such certificate is genuine; and that the acknowledgment was taken in accordance with the laws of (state where acknowledgment taken).

Dated _________________.

________________________________________
(signature of officer)
________________________________________
(title)
APPENDIX T

AFFIDAVIT OF INTERPRETER

State of _________________

County of _______________

Before me, the undersigned authority, this day personally appeared (name of interpreter) who being by me first duly sworn deposed and stated that:

"My name is (name of interpreter). I am fully competent to execute this Affidavit. I have first hand knowledge of the facts herein and they are all true and correct.

I have no conflict of interest with (name of signatory). I am well versed and competent to read and write the (language of signatory) and English languages.

At the request of (name of signatory), I have made a true and complete interpretation to (him/her/them) of all of the contents of the foregoing instrument in a language that (he/she/they) understand, using my best skill and judgment. (Name of signatory) indicated to me that (he/she/they) understood the contents of said instrument.

________________________________________
(signature of interpreter)

SWORN TO AND SUBSCRIBED before me, this _________ day of ______________, A.D., _________.

(Seal)  _______________________________________
(Signature of Officer)

(Title of Officer)
ENDNOTES

1. *Milligan v. Dickson*, 17 F.Cas. 376, 378 (C.C.D.Pa. 1817 (No. 9603)).

2. 1st Cong. sec. 35, p. 148; P.D. 4973.

3. 5th Cong. secs. 5, 6, p. 153; P.D. 4975.


8. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(1) (Vernon 1997).


10. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(2) (Vernon 1997).

11. Id.


14. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(4) (Vernon 1997) (a county tax assessor or collector or an employee of a county tax assessor for instruments filed with the county tax assessor); TEX. HUM. RES. CODE ANN. § 21.013 (Vernon 1990) (local representatives of the Texas Department of Human Services for matters relating to the administration of the department); TEX. AGRIC. CODE ANN. § 146.058 (Vernon 1982) (inspector of hides and animals for bills of sale on cattle).


16. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(b)(1) (Vernon 1997). According to the Governor's Office, no appointment of a Commissioner of Deeds has been made since Dolph Briscoe's gubernatorial administration. This office is largely a forgotten legacy of early Texas statehood. However, in theory, a duly-appointed Commissioner of Deeds can still take an out-of-state acknowledgment.

17. Id. at § 121.001(b)(2). See also TEX. GOV'T CODE ANN. § 406.055 (Vernon 1998).
18. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(b)(3) (Vernon 1997).
20. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(c)(1) (Vernon 1997).
21. Id. at § 121.001(c)(2).
22. Id. at § 121.001(c)(3).
23. Id. at § 121.001(d).
   For special rules pertaining to the presumed authority of military officers to take acknowledgments refer to TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(d) (Vernon 1997).
29. Id. at § 406.011.
30. Id. at § 406.013.
36. Id.


40. 132 S.W.2d 553 (Tex. 1939).

41. 59 S.W.2d 193 (Tex. Civ. App. - Texarkana 1933, writ ref'd).


43. 414 S.W.2d 916 (Tex. 1967).

44. Id. at 928.

45. 61 S.W. 939 (Tex. Civ. App. 1901, no writ).

46. Id. at 940.


56.  *TEX. CIV. PRAC. & REM. CODE ANN.* § 121.002(b) (Vernon 1986).  But see *TEX. FIN. CODE ANN.* § 89.002 (Vernon 1998) (shareholders of savings and loan associations);  *TEX. UTIL. CODE ANN.* § 162.081 (Vernon 1998) (members of telephone cooperatives).


61.  *Id.* at 521.


S.W.2d 824 (Tex. Comm'n App. 1936, opinion adopted).


68. 164 S.W.2d 488 (Tex. 1942).

69. Id. at 493.

70. Id.

71. Id. at 493-94.

72. Id.

73. 56 S.W.2d 678 (Tex. Civ. App. - Amarillo 1933, no writ).

74. Id. at 679.

75. Id.

76. Id.

77. Id. at 679-80.


80. Sullivan v. Barrett, 471 S.W.2d 39, 44 (Tex. 1971); Humble Oil & Ref. Co. v. Downey, 143 Tex. 171, 177, 183 S.W.2d 426, 428 (1944); Robertson v. Vernon, 12 S.W.2d 991, 992-93 (Tex. Comm'n App. 1929, judgm't adopted); Capitol Bldg. & Loan Ass'n v. Sosa, 72 S.W.2d 936, 938 (Tex. Civ. App. - San Antonio 1934, no writ).


83. Lindley v. Lindley, 92 Tex. 446, 448, 49 S.W. 573, 574 (1899); Kenley v. Robb, 245 S.W. 68, 70 (Tex. Comm'n App. 1922, judgm't adopted).

84. Lindley v. Lindley, 92 Tex. 446, 448, 49 S.W. 573, 574 (1899); Kenley v. Robb, 245 S.W. 68, 70 (Tex. Comm'n App. 1922, judgm't adopted).


88. TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.004(a), 121.006(b)(1) (Vernon 1997).


90. Punchard v. Masterson, 100 Tex. 479, 481-82, 101 S.W. 204, 205 (1907).

91. Id., 101 S.W. at 205.

92. Humble Oil & Ref. Co. v. Downey, 143 Tex. 171, 177, 183 S.W.2d 426, 428 (1944); Wheelock v. Cavitt, 91 Tex. 679, 683, 45 S.W. 796, 797 (1898); Chester v. Breitling, 88 Tex. 586, 589-90, 32 S.W. 527, 528 (1895).

93. Id., 101 S.W. at 205.

94. Humble Oil & Ref. Co. v. Downey, 143 Tex. 171, 177, 183 S.W.2d 426, 428 (1944); Wheelock v. Cavitt, 91 Tex. 679, 683, 45 S.W. 797-98 (1898); Chester v. Breitling, 88 Tex. 586, 589, 32 S.W. 527, 528 (1895); Daugherty v. McCalmont, 41 S.W.2d 139, 143 (Tex. Civ. App. - Fort Worth 1931, no writ); Yaseen v. Green, 140 S.W. 824, 826 (Tex. Civ. App. - San Antonio 1911, writ ref'd).

95. 88 Tex. 586, 32 S.W. 527 (1895).

96. Id. at 590, 32 S.W. at 528.


98. Id. at 826.

99. Id.

100. Id.


102. Id. at § 121.006(b)(3).
103.  *Id.* at § 121.006(b)(4).

104.  *Id.* at § 121.006(b)(5).

105.  **TEX. GOV'T CODE ANN.** § 406.0165(a), (d) (Vernon 1998).

106.  *Id.* at § 406.0165(a).

107.  *Id.*


110.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.007 (Vernon Supp. 2000). *Refer to Appendix A.*

111.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008(b)(1) (Vernon 1997). *Refer to Appendix B.*

112.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008(b)(2) (Vernon 1997). *Refer to Appendix I.*

113.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008(b)(3) (Vernon 1997). *Refer to Appendix K.*

114.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008(b)(4) (Vernon 1997). *Refer to Appendix M.*

115.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008(b)(5) (Vernon 1997). *Refer to Appendix O.*

116.  The statutory captions for all short form acknowledgments provide that they are to be taken in the "State of Texas".  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008 (Vernon 1997).

117.  The caption for the long form acknowledgment does not specify a jurisdiction.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.007 (Vernon Supp. 2000).

118.  **TEX. CIV. PRAC. & REM. CODE ANN.** § 121.008 (Vernon 1997). *See also Hill v. Foster,* 143 Tex. 482, 486, 186 S.W.2d 343, 345 (1945); *Hughes v. Wright & Vaughn,* 100 Tex. 511, 513, 101 S.W. 789, 790 (1907); *Schleicher v. Gatlin,* 85 Tex. 270, 273, 20 S.W. 120, 122 (1892); *Gray v. Kauffman,* 82 Tex. 65, 68, 17 S.W. 513, 512 (1891); *Wilson v. Simpson,* 80 Tex. 279, 288-89, 16 S.W. 40, 43 (1891).

119.  *Hill v. Foster,* 143 Tex. 482, 486, 186 S.W.2d 343, 345 (1945); *Spivy v. March,* 104 Tex. 473, 477, 151 S.W. 1037, 1039 (1912); *Langton v. Marshall,* 59 Tex. 296, 298 (1883); *Belcher v. Weaver,* 46 Tex. 293, 296 (1876); *Monroe v. Arledge,* 23 Tex. 478, 480 (1859).


121.  *Deen v. Wills,* 21 Tex. 641, 646 (1858).


126. *Id.* at 298.


130. *Spivy v. March*, 104 Tex. 473, 477, 151 S.W. 1037, 1039 (1912); *Hughes v. Wright & Vaughn*, 100 Tex. 511, 513, 101 S.W. 789, 790 (1907); *Belcher v. Weaver*, 59 Tex. 293, 298 (1876). *But see* *Heintz v. O'Donnell*, 42 S.W. 797, 799 (Tex. Civ. App. 1897, no writ) (There is no room to presume a missing element of a certificate of acknowledgment).


133. 41 S.W. 668 (Tex. Civ. App. 1897, no writ)

134. *Id.* at 670.

135. 57 Tex. 1 (1882).

136. *Id.* at 3.

137. *Id.*


139. *Id.* at 926.

140. *Id.*

141. *Id. See also* *Moses v. Dibrell*, 21 S.W. 414, 416 (Tex. Civ. App. 1893, no writ).
142. 40 S.W. 628 (Tex. Civ. App. 1897, writ ref'd).
143. It. at 629.
144. 84 Tex. 218, 19 S.W. 472 (1892).
145. It. at 224-25, 19 S.W. at 974.
146. Id., 19 S.W. at 474.
147. 92 Tex. 446, 49 S.W. 573 (1899).
148. It. at 448, 49 S.W. at 574.
149. Id., 49 S.W. at 574.
150. Id., 49 S.W. at 574.
151. Id., 49 S.W. at 574.
152. Id., 49 S.W. at 574.
153. Id., 49 S.W. at 574.
154. 82 Tex. 65, 17 S.W. 513 (1891).
155. Id. at 68, 17 S.W. at 514.
156. Id., 17 S.W. at 514-15.
157. Id., 17 S.W. at 515.
166. 57 Tex. 321 (1882).
167. Id. at 322-23.

169. *Id.* at 670.

170. 83 Tex. 32, 18 S.W. 430 (1892).

171. *Id.* at 36, 18 S.W. at 431.

172. *Id.*, 18 S.W. at 431.

173. 46 Tex. 293 (1876).

174. *Id.* at 299. *See also Harlowe v. Hudgins*, 84 Tex. 107, 110-11, 19 S.W. 364, 365 (1892) (when certificate provided that the deed had been "signed over" this was equivalent to acknowledging the execution of the document).

175. *See Belcher v. Weaver*, 46 Tex. 293 (1876).

176. 46 Tex. 293 (1876).

177. *Id.* at 297-98.

178. *Id.* at 298.


180. *Id.* at 1057.

181. *Id.*


183. *Id.* at 940.

184. *Id.*


189. *Id.*

190. TEX. PROP. CODE ANN. § 12.001(a), (b) (Vernon Supp. 2000).
191. Refer to notes 386-394 and accompanying text.


193. Refer to Appendix T.


198. Refer to Notes 7-77 and accompanying text.


205. Id. at 933.


207. 2 Posey Unrep. Cas. 447 (1883).

208. Id.


210. Id. at 939.

211. Id.
212.  Id.
213.  66 Tex. 676, 2 S.W. 47 (1886).
214.  Id. at 679, 2 S.W. at 48-49.
215.  Id., 2 S.W. at 48.
217.  Id. at 1084.
218.  Id.
219.  Id.
223.  Refer to Notes 78-80 and accompanying text.
225.  TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008 (Vernon Supp. 2000).
226.  69 Tex. 636, 7 S.W. 501 (1888).
227.  Id. at 639-41, 7 S.W. at 503.
228.  TEX. CIV. PRAC. & REM. CODE ANN. § 121.005(b) (Vernon Supp. 2000). See also Davidson v. Wallingford, 88 Tex. 619, 623, 32 S.W. 1030, 1032 (1895); Salmon v. Huff, 80 Tex. 133, 136, 15 S.W. 1047, 1047 (1891); McKie v. Anderson, 78 Tex. 207, 210, 14 S.W. 576, 577 (1890); Hayden v. Moffatt, 74 Tex. 647, 649, 12 S.W. 820, 821 (1889); McAnulty v. Ellison, 71 S.W. 670, 672 (Tex. Civ. App. 1903, no writ).
230.  Statutory short form acknowledgments are set out at TEX. CIV. PRAC. & REM. CODE ANN. § 121.008 (Vernon 1986).
231.  TEX. CIV. PRAC. & REM. CODE ANN. § 121.005(b) (Vernon Supp. 2000).


234. Lindley v. Lindley, 92 Tex. 446, 448, 49 S.W. 573, 574 (1899); Kenley v. Robb, 245 S.W. 68, 70 (Tex. Comm'n App. 1922, judgm't adopted).


236. Schramm v. Gentry, 63 Tex. 583, 584-85 (1885) (certificate reciting that signatory was known to officer and that he declared that he executed the document was in substantial compliance with law).


240. Id. at §§ 121.007, 121.008.


251. **TEX. CIV. PRAC. & REM. CODE ANN. § 121.006(b)(4) (Vernon 1997).**

252. *See Id.* at § 121.008(b)(4).

253. *Id.* at § 121.008(b)(5).

254. *Id.* at § 121.006(b)(5).

255. *See Id.* at § 121.008(b)(5).


258. *Id.* at 939.

259. *Id.*

260. *Id.*

261. *Id.*

262. **TEX. GOV’T CODE ANN. § 406.0165(a) (Vernon 1998).**

263. *Id.* at § 406.0165(b).


265. *Refer to Appendix B.*

266. *See TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008 (Vernon Supp. 2000).*


268. 142 S.W.2d 564 (Tex. Civ. App. - Austin 1940, no writ).

269. 69 S.W.2d 433 (Tex. Civ. App. - Texarkana 1934, writ ref’d).


272. 60 S.W. 356 (Tex. Civ. App. 1901, writ ref’d).
273.  *Id.* at 360.

274.  *Id.*

275.  *Id.*


283.  *Id.* at 401.

284.  81 Tex. 115, 16 S.W. 731 (1891).

285.  *Id.* at 119, 16 S.W. at 731.

286.  81 Tex. 355, 16 S.W. 1081 (1891).

287.  *Id.* at 358, 16 S.W. at 1081-82.

288.  *Id.* at 358, 16 S.W. at 1081.

289.  29 Tex. 53 (1867).

290.  *Id.* at 74.

291.  75 Tex. 391, 13 S.W. 52 (1889).

292.  *Id.* at 400-01, 13 S.W. at 54-55.

293.  142 S.W.2d 564 (Tex. Civ. App. - Austin 1940, no writ).

294.  *Id.* at 565.

295.  *Id.*

296.  *Id.*

297.  *Id.*

299.  *Id.* at 909.

300.  *Id.*

301.  *Id.*

302.  *Id.*

303.  *See* Cheek v. Herndon, 82 Tex. 146, 17 S.W. 763 (1891); Copelin v. Shuler, 6 S.W. 668 (1887); McDonald v. Morgan, 27 Tex. 503 (1864); Kane v. Sholars, 90 S.W. 937 (Tex. Civ. App. 1905, no writ).

304.  82 Tex. 146, 17 S.W. 763 (1891).

305.  *Id.* at 149, 17 S.W. at 764.

306.  *Id.* at 149, 17 S.W. at 764.

307.  6 S.W. 668 (1887).

308.  *Id.* at 670.

309.  *Id.*

310.  27 Tex. 503 (1864).

311.  *Id.* at 504.

312.  *Id.* at 505.

313.  *Id.*


315.  *Id.* at 939.

316.  *Id.*

317.  The attentive ear would find difficulty in distinguishing the sound of the two.


324. *Id.* at 790.
325. *Id.*
327. 64 Tex. 284 (1885).
328. *Id.* at 287.
329. *Id.*
330. 82 Tex. 69, 17 S.W. 513 (1891).
331. *Id.* at 69, 17 S.W. at 515.
332. *Id.* at 69, 17 S.W. at 515.
334. *Id.* at 1057.
335. *Id.*
336. *Id.*
338. *Id.* at 742-43.
339. *Id.* at 743.
341. 100 Tex. 511, 101 S.W. 789 (1907).
342. *Id.* at 512-13, 101 S.W. at 790.
343. *Id.* at 514, 101 S.W. at 790.
345. 81 Tex. 650, 17 S.W. 388 (1891).
346. *Id.* at 652, 17 S.W. at 388.
347. *Id.* at 652-53, 17 S.W. at 388.
348. *Id.*, 17 S.W. at 388.
350. *Id.* at 629.
351. *Id.*

352. TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008 (Vernon Supp. 2000).


357. 39 Tex. 381 (1873).

358. *Id.* at 386.

359. *Id.* at 387.


361. TEX. CIV. PRAC. & REM. CODE ANN. § 121.004(b)(3) (Vernon 1997).

362. TEX. GOV'T CODE ANN. § 406.013(c) (Vernon 1998).

363. *Id.*


365. Schramm v. Gentry, 63 Tex. 583, 584-85 (1885).

366. TEX. GOV'T CODE ANN. § 406.013(a), (b) (Vernon 1998).


369. TEX. CIV. PRAC. & REM. CODE ANN. § 121.008 (Vernon 1997).

370. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(a) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a) (Vernon 1998).

371. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(a) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(2) (Vernon Supp. 2000).

373. This is to include any signer, grantor, grantee, or maker. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(a) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(3),(7) (Vernon Supp. 2000).

374. This includes the residence of any signer, grantor, grantee, or maker. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(b)(1) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(4),(7) (Vernon Supp. 2000).

375. If the acknowledger is identified to the officer, the entry should show if by introduction, by identity card issued by government agency, or by passport issued by the United States. If identity is by introduction, the entry should show the name and residence of the person introducing the acknowledger. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(b)(3) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(5) (Vernon Supp. 2000).

376. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(d) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(8) (Vernon 1998).


378. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(e) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(b) (Vernon Supp. 2000).

379. TEX. GOV'T CODE ANN. § 406.014(c) (Vernon Supp. 2000).


386. TEX. PROP. CODE ANN. § 13.001(b) (Vernon 1984). See also Loeffler v. King, 236 S.W.2d 772, 775 (Tex. 1951); Gulf Prod. Co. v. Continental Oil Co., 132 S.W.2d 553, 567 (Tex. 1939); Clapp v. Engledow, 82 Tex. 290, 296, 18 S.W. 146, 148 (1891); Kimmarle v. Houston & T. C. Ry., 76 Tex. 686, 692, 12 S.W. 698, 700 (1890); Denson v. First Bank & Trust of Cleveland, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ).


390.  See e.g., TEX. WATER CODE ANN. §§ 49.312, 55.051 (Vernon Supp. 2000) (certain documents relating to water districts); TEX. AGRIC. CODE ANN. § 146.058 (Vernon 1982) (certain bills of sale for animals); TEX. FIN. CODE ANN. § 32.002 (Vernon 1998) (articles of association for state banks); TEX. FAM. CODE ANN. § 2.102 (Vernon 1998) (certain consents to underage marriage); TEX. BUS. & COM. CODE ANN. § 36.10, 36.11, 36.14 (Vernon Supp. 2000) (certain documents pertaining to assumed names); TEX. UTIL. CODE ANN. §§§ 162.054, 162.202, 162.301 (Vernon 1998) (certain documents pertaining to telephone cooperatives); TEX. BUS. & COM. CODE ANN. § 23.08 (Vernon 1987) (assignment for benefit of creditors); TEX. INS. CODE ANN. arts. 3.02, 3.05, 16.04, 17.04, 17.19, 22.01, 22.03 § 4(b), 22.04 (Vernon Supp. 2000) (certain documents pertaining to insurance companies); TEX. FAM. CODE ANN. § 3.004 (Vernon 1998) (recorded schedules of separate property of spouses).  TEX. CODE CRIM. PROC. ANN. art. 35.27 § 5 (Vernon 1989) (certain claims for compensation of witnesses); TEX. AGRIC. CODE ANN. § 52.033 (Vernon 1995) (articles of incorporation of agricultural marketing associations); TEX. PROP. CODE ANN. § 181.052 (Vernon 1995) (release of power of appointment); TEX. CONST. art III § 28 (Vernon 1997) (certain documents pertaining to legislative redistricting).


392.  TEX. LOCAL GOV'T CODE ANN § 212.004(c) (Vernon Supp. 1999).

393.  TEX. PROP. CODE ANN. § 52.005(2) (Vernon 1995).


399.  Id. at § 13.001(b) (Vernon Supp. 2000).


405. \textit{Id.} at 57.

406. \textit{Id.}

407. \textit{Id.} at 58.

408. \textsc{TEX. PROP. CODE ANN.} § 11.004(a)(1) (Vernon Supp. 2000).


413. \textit{Id.}


417. \textit{Id.} at 341.

418. \textit{Id.} at 341-42.

419. \textit{Id.} at 341.


422. \textit{Id.} at 767.

423. \textit{Id.}


430.  *Robertson v. Vernon*, 3 S.W.2d 573, 575 (Tex. Civ. App. - Waco 1928), aff'd, 12 S.W.2d 991 (Tex. Comm'n App. 1929, judgm't adopted) (It would be a dangerous holding on the part of the courts to arbitrarily say that a notary's certificate is under all conditions and circumstances indisputable...).


To apply the exception, it is not necessary to show that the notary participated in the fraud.  *Oar v. Davis*, 135 S. W. 710, 713 (Tex. Civ. App. 1911), aff'd, 151 S. W. 794 (1912).


Notwithstanding the failure to pay consideration, this exception may be inapplicable if the party relying on the acknowledgment in good faith makes valuable improvements to the property. *Stewart v. Miller*, 271 S.W. 311, 319 (Tex. Civ. App. - Waco 1925, writ ref'd).


A party is deemed to have constructive notice that an acknowledgment was improperly taken if (1) that party is in possession of facts that would put a reasonable person on inquiry as to the manner in which the acknowledgment was taken, *Cockerell v. Callaham*, 257 S.W. 316, 321 (Tex. Civ. App. - Galveston 1923, no writ); (2) the party's agent was aware of defects in the acknowledgment, *Gary v. McKinney*, 237 S.W. 283, 285 (Tex. Civ. App. - El Paso 1922, no writ); or (3) the party was present when the acknowledgment was taken, *Stewart v. Miller*, 271 S.W. 311, 318 (Tex. Civ. App. - Waco 1925, writ ref'd). Knowledge by a prior party in interest is not chargeable to a successor in title. *Cox v. Sinclair Gulf Oil Co.*, 26 S.W. 196, 202 (Tex. Civ. App. - Austin 1924, writ ref'd).

For this exception to apply, the party relying on the acknowledgment must have had notice of the true facts before paying valuable consideration. *Stewart v. Miller*, 271 S.W. 311, 317 (Tex. Civ. App. - Waco 1925, writ ref'd).


455. Foster v. Cumbie, 315 S.W.2d 151, 158 (Tex. Civ. App. - Dallas 1958, writ ref'd n.r.e.).


457. Id.


460. 39 Tex. 381 (1873).

461. Id. at 388.


463. Id. at 867.


judgm't adopted); See also Starnes v. Beitel, 50 S.W. 202, 203 (Tex. Civ. App. 1899, writ ref'd).


470. *Id.* at 203.

471. *Id.*

472. *Id.*


477. *Id.* at 753.


484. *Id.* at § 16.033(a)(8).


487. Though now repealed these articles are still in effect. See TEX. PROP. CODE ANN. § 11.006 (Revisor's Note) (Vernon 1984).

488. 1 TEX. JUR. 3d Acknowledgments § 79 (1993).


492. For example, refer to Notes 383-387, supra and accompanying text.

493. TEX. PROP. CODE ANN. § 12.001(a), (b) (Vernon Supp. 2000).


496. Id. at § 602.002(2). Deputy county clerks may administer oaths. TEX. LOCAL GOV'T CODE ANN. § 82.005(a) (Vernon 1999). The same is true for deputy district clerks. TEX. GOV'T CODE ANN. § 51.309(a) (Vernon 1998).


498. Id. at § 602.002(4).

499. Id. at § 602.002(5).

500. Id. at § 602.002(6).

501. Id. at § 602.002(7).

502. Id. at § 602.002(8).

503. Id. at § 602.002(9).

504. Id. at § 602.002(10).

505. Id. at § 602.002(11).


508. Id. at § 602.003(2). Refer to note 16, supra.

509. Id. at § 602.003(3).
510. 28 USC §§ 459, 636.

511. TEX. GOV'T CODE ANN. § 602.004(1) (Vernon 1994).

512. Id. at § 602.004(2).

513. Id. at § 602.004(3).

514. Id. at § 602.005(a).


516. In the Interest of Bruno, 974 S.W.2d 401, 401 (Tex. App. - San Antonio 1998, no writ). (Jurat not invalid when taken by adoption agency employee not identified in any document as agent for adoption agency).

517. See Id. (Jurat not invalid when taken by salaried adoption agency employee whose salary was not based on number of affidavits taken and not paid extra fees for notary services).

518. See Id. (Jurat not invalid although taken by an "associate director" of the agency when the responsibility of this position involved only the implementation of policies set by the Board of Directors of the agency).

519. Id.


521. Id.

522. Id.

523. Id.


526. See e.g., In the Interest of Bruno, 974 S.W.2d 401, 404 (Tex. App. - San Antonio 1998, no writ) (upholding affidavit after affiant was asked to raise her right hand, was placed under oath, and asked to verify the contents of the affidavit).


532. Id.


539. TEX. CIV. PRAC. & REM. CODE ANN. § 121.009(a)(1) (Vernon 1997).

540. Id. at § 121.009(a)(2).

541. Id. at § 121.009(c).

542. Id.

543. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.003, 121.013 (Vernon 1997).

544. Id. at § 121.009(b).

545. See Id. at § 121.010.

546. Id.

547. Id.

548. Id.

549. Id. at §§ 121.009, 121.010.


551. TEX. CIV. PRAC. & REM. CODE ANN. § 121.010 (Vernon 1997).

553. TEX. CIV. PRAC. & REM. CODE ANN. § 121.010 (Vernon 1997).

554. 68 Tex. 599, 5 S.W. 513 (1887).

555. *Id.* at 604, 5 S.W. at 514-15.


558. *Id.* at 612.

559. *Id.*

560. *Id.*

561. TEX. CIV. PRAC. & REM. CODE ANN. § 121.010 (Vernon 1997).


564. TEX. CIV. PRAC. & REM. CODE ANN. § 121.011(a) (Vernon 1997).

565. *Id.*

566. *Id.* at § 121.011(b).

567. *Id.*

568. *Id.* at § 121.011(c),(d).

569. *Id.* at § 121.011(d).

570. *Id.*

571. *Id.*

572. *Id.*

573. TEX. PROP. CODE ANN. § 11.005(a) (Vernon 1984).

574. *Id.* at § 11.005(c).


579. *Id.* at 915-16.

580. *Id.* at 916.


582. TEX. PEN. CODE ANN. § 37.10 (Vernon Supp. 2000).


584. TEX. PEN. CODE ANN. § 37.11 (Vernon 1994).


587. TEX. CIV. PRAC. & REM. CODE ANN. § 121.007 (Vernon Supp. 2000).

588. *Id.* at § 121.008(b)(1).

589. The instrument should also contain the following or a substantially similar sentence beneath the acknowledger's signature line: "Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code." *See* TEX. GOV'T CODE ANN. § 406.0165(b) (Vernon 1998).

590. TEX. CIV. PRAC. & REM. CODE ANN. § 121.008(a)(2) (Vernon 1997).

591. *Id.* at § 121.008(a)(3).

592. *Id.* § 121.008(a)(4).

593. *Id.* at § 121.008(a)(5).

594. *Id.* at § 121.009.

595. *Id.* at § 121.011.

596. Though not necessary to the validity of the acknowledgment, these certificates may be used to determine the authority of the officer taking the acknowledgment.