

TEXAS LAW OF ACKNOWLEDGMENTS
Into the 21st Century

Presented by

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STATE BAR OF TEXAS

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

Revised August 2001

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TEXAS LAW OF ACKNOWLEDGMENTS

I. INTRODUCTION.

A. 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.¹ 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.² Since 1840, notaries public have been clothed with authority to take proofs by acknowledgment.³

The purpose of an acknowledgment is to authenticate an instrument as the true act of the person executing it.⁴ The interposition of an impartial public officer is intended to prevent fraud or imposition in the execution of instruments.⁵ 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.⁶ 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 recordation 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.⁷

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 court⁸ (or deputy district clerk);⁹
- (2) a judge of a county court;¹⁰
- (3) a clerk of a county court¹¹ (or deputy county clerk);¹²
- (4) a notary public;¹³
- (5) certain other public officers for specific instruments; or¹⁴
- (6) a federal judge, justice, or magistrate.¹⁵

b. Acknowledgments Taken Outside of Texas But Inside 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;¹⁶
- (2) a commissioner of deeds duly appointed by the Governor of Texas;¹⁷
- (3) a notary public; or¹⁸
- (4) a federal judge, justice, or magistrate.¹⁹

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;²⁰
- (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;²¹ 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 reapplication 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.⁵⁰ 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.⁵¹

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.⁵² Cases turning upon the extent of the agent's authority have generally disqualified the agent if the agent had discretionary authority to negotiate the terms of the subject transaction for the principal.⁵³

c. When the Officer is a Director, Officer, or Stockholder of a Corporate Party to the Instrument. An officer⁵⁴ or director⁵⁵ 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.⁵⁶

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.⁵⁷ 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.⁵⁸

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.⁵⁹

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.⁶⁰ 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.⁶¹

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 purpose⁶² and may not be reformed or corrected.⁶³ 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.⁶⁴ 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.⁶⁵ 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.⁶⁶ Notice of the disqualifying interest of the notary may come by constructive notice from a prior recorded instrument revealing the interest.⁶⁷ In *Gulf Prod. Co. v. Continental Oil Co.*,⁶⁸ the notary taking the acknowledgment on an oil and gas lease was beneficially interested in the trust named as lessee.⁶⁹ 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.⁷⁰ 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.⁷¹ 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.⁷² In *Rhoton v. Texas Land Mortgage Co.*,⁷³ a mortgage company employed an agent on a commission basis to find borrower prospects.⁷⁴ The agent then, without the knowledge or permission of the mortgage company, employed a subagent on a split commission arrangement.⁷⁵ The subagent located some loan prospects and took their acknowledgment on a deed of trust.⁷⁶ Held the acknowledgment was valid notwithstanding the disqualifying interest of the notary when that interest was unknown and unauthorized by the lender.⁷⁷

B. Personal Appearance Before The Officer. An acknowledgment is invalid unless the signatory of the instrument personally appeared before the notary.⁷⁸ An

acknowledgment taken over the telephone⁷⁹ or one otherwise made without personal contact with the signatory⁸⁰ 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.⁸¹ There is a specific legislative purpose behind this requirement aimed at preventing evil-minded persons from impersonating others and committing forgery.⁸²

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.⁸³ 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.⁸⁴ The acquaintance may be one year or one hour.⁸⁵ However, mere introduction by another may be insufficient for the officer to certify that the person is "known" to him.⁸⁶ A mere telephone introduction is inadequate to make a person "known" to the notary.⁸⁷

In determining the identity of an acknowledger acting in a representative capacity, the officer is under no duty to inquire into the authority of the agent to act for the principal.⁸⁸

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.⁸⁹

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.⁹⁰

Howsoever communicated, a proper acknowledgment requires the signatory to admit and confess his execution of the instrument.⁹¹ The notary may not take a valid acknowledgment

by sitting in mute observance of the person signing the instrument.⁹²

The signatory's appearance before the officer must be for the specific purpose of authenticating the document.⁹³ A casual admission of execution does not give an officer the power to execute a certificate of acknowledgment.⁹⁴ In *Chester v. Breitling*,⁹⁵ an admission of execution made before a notary in the context of a deposition did not entitle that officer to acknowledge the deed.⁹⁶ In *Yaseen v. Green*,⁹⁷ 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.⁹⁸ The certificate of acknowledgment was invalid for failure of the grantor to personally appear before the notary.⁹⁹ The later casual admission of execution did not vitalize a void certificate.¹⁰⁰

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.¹⁰¹

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.¹⁰²

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.¹⁰³

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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ The notary must identify the witness in the same manner as an

acknowledging party.¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹

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);¹¹⁰
- (2) Individual Acknowledgment (short form);¹¹¹
- (3) Individual Acknowledgment Acting Through Attorney-in-Fact (short form);¹¹²
- (4) Partnership Acknowledgment (short form);¹¹³
- (5) Corporate Acknowledgment (short form);¹¹⁴ and
- (6) Public Officer, Trustee, Executor, Administrator, Guardian, or Other Representative Acknowledgment (short form).¹¹⁵

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.¹¹⁶ The long form acknowledgment may be used in any state.¹¹⁷

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.¹¹⁸ 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.¹¹⁹ This does not mean that a notary's official acts are mere innocent formalities which may be smiled out of law.¹²⁰ However, the security of land titles will not be jeopardized by a hypertechnical criticism of the actual words used in the certificate.¹²¹ 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.¹²²

The words used in a certificate are to be liberally construed¹²³ and are sufficient if the spirit of the law is satisfied.¹²⁴ 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.¹²⁵ Generally, a certificate will be sufficient if the legal requirements are present from a fair and reasonable construction of the whole instrument.¹²⁶

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.¹²⁷ Though the law requires several elements for a valid certificate, each need not be separately presented.¹²⁸ 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.¹²⁹

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.¹³⁰ 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.¹³¹ 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.¹³² In *Clark v. Groce*,¹³³ 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*.¹³⁴ In *Watkins*

v. Hall,¹³⁵ a certificate stated the signatory was known without expressly stating that he was known to the notary.¹³⁶ The certificate substantially complied with the statute.¹³⁷ In *Ferguson v. Ricketts*,¹³⁸ an instrument was executed and acknowledged by an attorney-in-fact of the principal.¹³⁹ The acknowledgment stated that "he" had acknowledged the instrument without stating specifically whether this pronoun referred to the principal or the attorney-in-fact.¹⁴⁰ Held that it was reasonably clear from the whole instrument that the acknowledgment had been made by the agent.¹⁴¹ In *Montgomery v. Hornberger*,¹⁴² an acknowledgment stated that the required acknowledgment had been made by the grantor but did not specifically state it was made in reference to the instrument.¹⁴³ This omission was unimportant when the acknowledgment could have logically referred to nothing else.¹⁴⁴

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*,¹⁴⁵ the officer indicated he was a "special" deputy clerk rather than simply a deputy clerk.¹⁴⁶ This surplusage did not invalidate the certificate.¹⁴⁷ In *Lindley v. Lindley*,¹⁴⁸ the certificate indicated that the signatory was known to the officer "by introduction by C.W. Deems".¹⁴⁹ The signatory must be known to the officer and there is some question whether an acquaintance developed by mere introduction is sufficient.¹⁵⁰ The *Lindley* court upheld the certificate by determining that "by introduction by C.W. Deems" was mere surplusage.¹⁵¹ This language could be stricken from the certificate without affecting its meaning and validity.¹⁵² The additional language did not show that the introduction was the only means by which the officer knew the signatory.¹⁵³

In *Gray v. Kauffman*,¹⁵⁴ 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..."¹⁵⁵ The "J.C." and "Caskey" language on either side of "for" was surplusage amounting to a clerical error.¹⁵⁶ Held the certificate substantially complied with the statute.¹⁵⁷

In *Adams v. Pardue*¹⁵⁸ and *Farrell v. Palestine Loan Ass'n*,¹⁵⁹ 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 _____]".¹⁶⁰ In *Farrell*, the blank for the name of the subscribing witness was lined out.¹⁶¹ In *Adams*, the parenthetical was unaltered.¹⁶² In both cases the additional language was harmless surplusage.¹⁶³ It was evident from a fair examination of the whole certificate that the officer simply neglected to strike out the additional language.¹⁶⁴

4. Synonymous Terms. Use of words having the same meaning as those prescribed by statute will be sufficient to sustain an acknowledgment.¹⁶⁵ In *Coombes v. Thomas*,¹⁶⁶ 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.¹⁶⁷ Same result in *Clark v. Groce*,¹⁶⁸ when the acknowledgment simply used "apart".¹⁶⁹

In *Norton v. Davis*,¹⁷⁰ another privy acknowledgment sufficiently indicated the signatory did not wish to retract the instrument by stating that she "voluntarily assents thereto".¹⁷¹ Assent was simply a positive way to say that there was no desire to retract the instrument.¹⁷² In *Belcher v. Weaver*,¹⁷³ the use of "signed" instead of "executed" was sufficiently synonymous to uphold the acknowledgment.¹⁷⁴

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.¹⁷⁵ In *Belcher v. Weaver*,¹⁷⁶ a privy acknowledgment mistakenly indicated the wife did not wish to "contract" the instrument when "retract" was obviously intended.¹⁷⁷ This certificate substantially complied with the statute.¹⁷⁸ In *Johnson v. Thompson*,¹⁷⁹ a certificate indicated that the deed was signed "with" constraint rather than "without" constraint.¹⁸⁰ A fair construction of the whole of the certificate showed that this was an unintentional mistake not affecting the validity of the acknowledgment.¹⁸¹ In *Broussard v. Dull*,¹⁸² the word "assigned" was used instead of "signed".¹⁸³ The error was harmless.¹⁸⁴

6. Grammatical and Spelling Errors. Grammatical errors or misspelled words generally will not invalidate a certificate of acknowledgment.¹⁸⁵

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.¹⁸⁶

8. **Jurat A Substitute For an Acknowledgment?** Generally, a jurat, even if properly completed, is not substantial compliance for an instrument requiring an acknowledgment.¹⁸⁷ A jurat shows only that the signatory swore or affirmed the instrument.¹⁸⁸ It is missing the essential element of an acknowledgment declaring that the instrument is the act and deed of the person making it.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.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,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.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.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.¹⁹⁴ This presumption will prevail unless there is something in the certificate of acknowledgment to overcome it.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.¹⁹⁶

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.¹⁹⁷

F. Certificate Must Recite Competency of the Officer. An acknowledgment must be made before an officer qualified to receive the proof.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.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.²⁰⁰ Designation of the official capacity of the officer does not require a designation of the territory within which he has jurisdiction to act.²⁰¹ The law indulges a presumption that the officer acted within the territory of his jurisdiction.²⁰²

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

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

In *Coffey v. Hendricks*,²¹³ an acknowledgment was taken before a notary but did not reflect his official capacity.²¹⁴ Testimony from the notary of his lawful appointment was not allowed to uphold the acknowledgment.²¹⁵ In *Gulf C. & S. F. Ry v. Carter*,²¹⁶ an acknowledgment was taken by a deputy county clerk whose official capacity was not given in the certificate.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.²¹⁸ Held the recording stamp and other instruments, as extrinsic evidence, were inadmissible to show the official capacity of the clerk.²¹⁹

2. 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.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 certificate²²¹ or the official seal of the officer.²²²

G. Certificate Must Recite Personal Appearance Before the Officer. A valid acknowledgment may be taken only if the signatory personally appeared before the officer.²²³ Additionally, the certificate of acknowledgment must reflect that a personal appearance was made.²²⁴ The statutory forms for certificates of acknowledgment accomplish this by stating that the acknowledgment was made "before me"²²⁵ In *Belbaze v. Ratto*,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".²²⁷

H. Certificate Must Recite Signatory Was Identified by the Officer. A certificate of acknowledgment must state that (1) that 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.²²⁸ A failure to state how the officer identified the person giving the acknowledgment is a fatal defect in the certificate.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.²³⁰ These do not require any reference to the manner by which the signatory is identified.²³¹

1. 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.²³² It will be presumed that the officer took sufficient steps to identify the party appearing before him.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.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.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.²³⁶

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

1. 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".²³⁹ Each statutory certificate of acknowledgment includes this same phrase.²⁴⁰ Notwithstanding, if the phrase is missing from the certificate of acknowledgment, it will not invalidate it.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.²⁴² As a practical matter, many instruments are executed for consideration other than that recited in the instrument.²⁴³ The main object of an acknowledgment is proof of the execution of the instrument, not its purpose or consideration.²⁴⁴

2. 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.²⁴⁵ Notwithstanding, the failure to include this language may not render the certificate invalid.²⁴⁶

3. Acknowledgment by Partner. A certificate of acknowledgment by a partner should state that the partner acknowledged the instrument "on behalf of" the partnership.²⁴⁷ However, the failure to include this phrase may not invalidate the certificate.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.²⁴⁹ 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.²⁵⁰

A valid ceremony of acknowledgment of a corporate officer requires that the officer further acknowledge that he executed the instrument "in the capacity stated".²⁵¹ However there is no equivalent requirement that this appear in the certificate of acknowledgment.²⁵²

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.²⁵³

A valid ceremony of acknowledgment by such a representative requires that the representative declare that he acted "by proper authority in the capacity stated".²⁵⁴ There is no corresponding requirement that this language appear in the certificate of acknowledgment.²⁵⁵

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 acknowledgment should reflect that the signatory acknowledged his execution of the instrument in each such capacity. However failure to do this is not fatal to the acknowledgment.²⁵⁶ In *Kane v. Sholars*,²⁵⁷ S.W. Sholars signed a deed both individually and as survivor of the community.²⁵⁸ The certificate of acknowledgment referred to him individually without reference to his capacity as survivor of the community.²⁵⁹ Held the certificate was nonetheless valid.²⁶⁰ It was a useless and unnecessary act for Sholars to go through the formality of acknowledging the deed twice.²⁶¹

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.²⁶² 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."²⁶³

8. Joint Certificate of Acknowledgment. There is no statutory prohibition against the acknowledgment of several people being recorded in a single certificate of acknowledgment.²⁶⁴ Therefore, joint acknowledgments are perfectly valid.²⁶⁵

J. Certificate Must Identify the Signatory. The certificate must show that the person acknowledging the instrument is the same person that signed the instrument.²⁶⁶ 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.²⁶⁷ In *Deace v. Stribling*²⁶⁸ and *Smith v. Victory*,²⁶⁹ the name of the signatory was filled in in one place in the certificate of acknowledgment but not in another.²⁷⁰ This omission was not a material defect when the certificate as a whole clearly indicated who gave the acknowledgment.²⁷¹ In *Noel v. Clark*,²⁷² the given name of the wife was left blank in the certificate of acknowledgment on a deed signed by a couple.²⁷³ The certificate did identify her as the wife of the fully named party.²⁷⁴ This was a sufficient identification to uphold the certificate.²⁷⁵ In *Sheldon v. Farinacci*²⁷⁶ and *McMurrey v. Lampkins*,²⁷⁷ the identity of the signatory was left completely blank in the certificate.²⁷⁸ Held the certificates were sufficient.²⁷⁹ Reading the certificates together with the deeds, it was obvious who gave the acknowledgments.²⁸⁰

2. Wrong Name in Certificate. In most instances where the name in the certificate of acknowledgment is inconsistent with the name in the signature block, the certificate is fatally defective.²⁸¹ Thus in *Minor v. Powers*,²⁸² a deed signed by *Robert Gaines* but acknowledged by *Robert Lewis* was invalid.²⁸³ Similarly in *Stephens v. Motl*,²⁸⁴ a deed signed by *Jonas Butler* but acknowledged by *James Butler* was insufficient.²⁸⁵ Likewise in *Carleton v. Lombardi*,²⁸⁶ a deed signed by *F.W. Chandler* but acknowledged by *T.W. Chandler* was improperly acknowledged.²⁸⁷ A presumption could not be indulged that these two were the same person.²⁸⁸

However, there are authorities upholding proofs with similar discrepancies. In *Page v. Arnim*,²⁸⁹ a certificate was upheld where the middle initial of the signatory was different from the signature block.²⁹⁰ In *Capps v. Terry*,²⁹¹ secondary evidence was allowed to uphold a certificate by *E.M. Trimble* as proving execution of a deed by *M.E. Trimble*.²⁹² In *Deace v. Stribling*,²⁹³ 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.²⁹⁴ The mistake was obvious from the whole instrument.²⁹⁵ Also, the repetition of the name was surplusage.²⁹⁶ If the repeated name was stricken the certificate would have nonetheless been sufficient.²⁹⁷ In *Williams v. Cruse*,²⁹⁸ a deed was signed by *Nancy A.E. Risinger* but acknowledged by *Nancy A.E. Swearingen*.²⁹⁹ Extrinsic proof showed that *Nancy A.E. Risinger* was formerly known as *Nancy A.E. Swearingen*.³⁰⁰ Taking the instrument as a whole, the name used in the certificate of acknowledgment was a simple error by the notary.³⁰¹ Notwithstanding the error, the certificate adequately showed that the same person who signed the deed also acknowledged it.³⁰²

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.³⁰³ In *Cheek v. Herndon*,³⁰⁴ a deed was signed by *J.M. Williamson* and acknowledged by *James M. Williamson*.³⁰⁵ 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.³⁰⁶ In *Copelin v. Shuler*,³⁰⁷ a power of attorney was signed by *R.M. Hopkins* but acknowledged by *Richard M. Hopkins*.³⁰⁸ This name sufficiently identified the acknowledging party as the same person who signed the power of attorney.³⁰⁹ In *McDonald v. Morgan*,³¹⁰ a deed was signed by a witness, *John S. Preston*.³¹¹ The subscribing affidavit referred only to *John Preston*. The proof was sufficient.³¹² The addition of the middle initial was wholly immaterial.³¹³ In *Kane v. Sholars*,³¹⁴ a deed signed by *S.W. Sholars* was acknowledged by *S.W. Sholars, Sr.*³¹⁵ Even with a *S.W. Sholars, Jr.* as one of the grantees, the certificate adequately identified the person acknowledging the deed.³¹⁶

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*³¹⁷ with the correct spelling.³¹⁸ Thus in the following cases the misspelling did not render the certificate defective:

<u>Correct Name</u>	<u>Misspelled Name</u>
McFarlin	McFarland ³¹⁹
Ester	Easter ³²⁰
Lutitia	Lutica ³²¹
Arnall	Arnold ³²²

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*,³²³ *McKinzie* was misspelled as *McKezie*.³²⁴ Held the certificate was insufficient to admit the instrument for registration.³²⁵

5. Pronouns, Generally. Pronouns are often employed in certificates of acknowledgment as a substitute for the name of the acknowledger given elsewhere in the certificate. 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.³²⁶ In *Huff v. Webb*,³²⁷ 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 acknowledger was the one who signed the deed.³²⁸ 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.³²⁹ In *Gray v. Kauffman*,³³⁰ 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.³³¹ 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.³³² To this same effect is *Johnson v. Thompson*³³³ where the certificate stated that *Susan F. Thompson* "having had said deed explained to her declared that executed same freely..."³³⁴ The missing "she" before executed could be supplied from a fair reading of the whole sentence.³³⁵ Also the certificate stated in another place that *Mrs. Thompson* had signed the deed.³³⁶

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. Bickerstaff*,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.³⁷⁷

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 parties³⁸⁸ 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 judgment³⁹³ 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.⁴⁰² This includes notice of any facts disclosed by the certificate of acknowledgment on the instrument.⁴⁰³

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*,⁴⁰⁴ a deed duly acknowledged was recorded.⁴⁰⁵ However, in recording the deed, the clerk omitted record of the acknowledgment, placing of record only the body of the deed.⁴⁰⁶ 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.⁴⁰⁷

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.⁴⁰⁸ Notwithstanding, instruments will get recorded which have no acknowledgment or a defective acknowledgment. The recording of such an instrument is illegal and a nullity.⁴⁰⁹ Though the instrument is recorded, it is not constructive notice of its contents.⁴¹⁰ 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.⁴¹¹

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.⁴¹² 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.⁴¹³

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.⁴¹⁴ 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.⁴¹⁵

In *Hart v. Wilson*,⁴¹⁶ a conveyance was recorded after being acknowledged by the grantee but not the grantor.⁴¹⁷ The instrument did not constitute constructive notice of the transaction.⁴¹⁸ The registration statutes attach no importance to an acknowledgment by the grantee.⁴¹⁹ To effectively constitute notice, the grantor's signature must be acknowledged.⁴²⁰

Some result in *Sanchez v. Telles*,⁴²¹ where a contract of sale was acknowledged by the buyer but not the grantor.⁴²² The recordation of this instrument was not constructive notice to subsequent purchasers.⁴²³

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.⁴²⁴ This "privy acknowledgment" was an essential part of the instrument itself.⁴²⁵ Without such an acknowledgment, the instrument was ineffective to pass the wife's interest in the property.⁴²⁶

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.⁴²⁷ 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.⁴²⁸ Simple proof of a different signature did not eliminate the possibility that a third party signed the acknowledger's name with permission or signed without permission but that

the signature was subsequently adopted as the acknowledger's own.⁴²⁹

The harshness of this rule spawned some notable exceptions.⁴³⁰ The conclusory affect of an acknowledgment is not applicable in cases involving:

- (1) fraud;⁴³¹
- (2) undue influence, coercion, or overreaching;⁴³²
- (3) forgery;⁴³³
- (4) the failure of the acknowledger to actually appear before the officer;⁴³⁴
- (5) instruments executed by minors;⁴³⁵
- (6) the failure of the party relying upon the certificate to pay consideration or alter their position; and⁴³⁶
- (7) actual or constructive knowledge by the party relying on the certificate that it failed to reflect the true facts.⁴³⁷

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.⁴³⁸ 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.⁴³⁹ 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.⁴⁴⁰

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,⁴⁴¹ with any attempt to impeach it generally viewed with suspicion and distrust.⁴⁴² The regularity of the certificate amounts to *prima facie* evidence of the facts recited therein.⁴⁴³ So strong is the presumption, that evidence impeaching the certificate must be clear, convincing, and beyond a reasonable controversy.⁴⁴⁴ 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.⁴⁴⁵

Generally, uncorroborated testimony of an interested person fails as a matter of law to meet the clear, convincing, and beyond reasonable controversy standard.⁴⁴⁶ Slight corroboration is also insufficient.⁴⁴⁷ However, no corroboration is required to get to a jury if evidence shows (1) the signatory never appeared before the notary,⁴⁴⁸ or (2) the notary was an interested party.⁴⁴⁹

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.⁴⁵⁰ 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.⁴⁵¹ 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.⁴⁵²

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,⁴⁵³ but not proof of when the instrument was executed.⁴⁵⁴

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.⁴⁵⁵

An instrument is presumed to be delivered on the date of its execution and acknowledgment.⁴⁵⁶ 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.⁴⁵⁷

4. Admissibility of Acknowledged Instrument. An instrument bearing an acknowledgment is self-proving and may be introduced into evidence without further authentication.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.⁴⁵⁹ In *McKellar v. Peck*,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.⁴⁶¹ In *Lake v. Earnest*,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.⁴⁶³

B. Reacknowledgment. A defective certificate of acknowledgment may be cured by the simple expediency of having the signatory reacknowledge the instrument.⁴⁶⁴ This has the same effect as a new execution of the document.⁴⁶⁵ The reacknowledgment relates back to the time the instrument was originally executed except in the case of intervening rights of third parties.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.⁴⁶⁷ The curative instrument must be one executed for that purpose and one that purports to correct the error.⁴⁶⁸ In *Starnes v. Beitel*,⁴⁶⁹ a defectively acknowledged deed of trust was sought to be cured by a subsequent instrument renewing and extending the debt.⁴⁷⁰ The renewal and extension had as its purpose the renewal of the debt and did not discuss the defective prior acknowledgment.⁴⁷¹ Held this instrument failed to cure the defective acknowledgment.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.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.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.⁴⁷⁵ In *Downs v. Peterson*,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.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.⁴⁷⁸ Such recordation, however, does not relate back to validate the previous void registration but dates from the time the judgment is recorded.⁴⁷⁹ The judgment also makes the instrument as admissible into evidence as if it bore a valid certificate of acknowledgment.⁴⁸⁰

A suit for correcting a certificate of acknowledgment must be brought within four years of the making of the instrument.⁴⁸¹

E. Curative Statutes.

1. Technical Defects in Certificate of Acknowledgment (TEX. CIV. PRAC. & REM. CODE ANN. § 16.033). One attempt to cure by statute technical problems in acknowledgments is TEX. CIV. PRAC. & REM. CODE ANN. § 16.033 which requires one bringing an action to recover real property based *inter alia* on certain technical defects in a certificate to bring such suit within four years of the date the instrument was recorded.⁴⁸² Technical defects covered by this curative statute include:

- (1) acknowledgment of the instrument in an individual, rather than a representative or official capacity;⁴⁸³ and
- (2) failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law.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.⁴⁸⁵ The adoption of the Texas Rules of Civil Evidence effectively eliminated all such provisos and advance filing requirements.⁴⁸⁶

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)
- (3) TEX. REV. CIV. STAT. ANN. arts. 6659, 6660 (certain instruments recorded prior to 1860)⁴⁸⁷
- (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.⁴⁸⁸

4. Construction of Curative Statutes. The curative statutes are to be liberally construed to accomplish their intended object.⁴⁸⁹ 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.⁴⁹⁰

Curative statutes 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.⁴⁹¹ The result could be different for those special instruments for which an acknowledgment is essential to the validity of the document.⁴⁹²

VI. ALTERNATIVE METHODS OF AUTHENTICATING INSTRUMENTS. The recordation 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.⁴⁹³ A jurat is a certificate by a competent officer that the writing was sworn to by the person who signed it.⁴⁹⁴

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;⁴⁹⁵ (2) a justice of the peace or a clerk of a justice court;⁴⁹⁶ (3) a notary public;⁴⁹⁷ (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;⁴⁹⁸ (5) a person employed by the Texas Ethics Commission in certain Election Code matters;⁴⁹⁹ (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;⁵⁰⁰ (7) a peace officer when done in the performance of his duties;⁵⁰¹ (8) the secretary of state;⁵⁰² (9) the lieutenant governor;⁵⁰³ (10) the speaker of the house of representatives;⁵⁰⁴ (11) the governor;⁵⁰⁵ and (12) federal judge, justice, or magistrate.⁵⁰⁶

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;⁵⁰⁷ (2) a commissioner of deeds;⁵⁰⁸ (3) a notary public;⁵⁰⁹ or (4) a federal judge, justice, or magistrate.⁵¹⁰

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;⁵¹¹ (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;⁵¹² or (3) a notary public.⁵¹³

An affidavit of a member of the United States armed forces or armed forces auxiliary or their spouse may be taken by a commissioned officer of the United States armed forces or armed forces auxiliary.⁵¹⁴

As with acknowledgments, an otherwise competent officer is disqualified from taking an affidavit if financially or beneficially interested in the transaction.⁵¹⁵

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.⁵¹⁶ 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.⁵¹⁷ Generally, to be disqualified, the agent must be clothed with discretionary authority to act on behalf of the principal.⁵¹⁸ A mere salaried employee of a party to a transaction is not disqualified from taking a jurat in that transaction.⁵¹⁹

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.⁵²⁰ A valid affidavit cannot be taken over the telephone.⁵²¹

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.⁵²² 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.⁵²³

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.⁵²⁴ 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.⁵²⁵

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.⁵²⁶ This procedure should be followed on each separate occasion that an affidavit is taken. It is not acceptable for an affiant 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.⁵²⁷

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.⁵²⁸ 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.⁵²⁹

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.⁵³⁰

d. Jurat Must Recite Personal Appearance Before the Officer. A jurat must recite that the affiant appeared in person before the officer.⁵³¹ This requirement is satisfied as the jurat states that the affiant "personally appeared".⁵³²

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.⁵³³

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.⁵³⁴

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.⁵³⁵

h. Jurat Must Contain The Signature of the Officer. A jurat must contain the signature of the officer administering the oath.⁵³⁶

i. Jurat Must Contain Official Seal of Officer. The jurat, to be effective, must also bear the official seal of the officer.⁵³⁷

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.⁵³⁸ 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;⁵³⁹ and
- (2) the witness signed the instrument as witness at the request of the signatory.⁵⁴⁰

Similar to standard acknowledgments, the officer taking the acknowledgment by witness must adequately identify the subscribing witness.⁵⁴¹ 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.⁵⁴²

For the recalcitrant witness, the officer is empowered with subpoena authority when the instrument cannot otherwise be proven.⁵⁴³

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.⁵⁴⁴ The certificate must be in substantial compliance with the statutory form for the certificate of proof by subscribing witness.⁵⁴⁵

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.⁵⁴⁶

b. **Certificate Must Recite a Personal Appearance Before the Officer.** The certificate of the officer must reflect a personal appearance by the subscribing witness.⁵⁴⁷ 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.⁵⁴⁸ If evidence is used to identify the witness, the officer must note the use of evidence in the certificate.⁵⁴⁹

Because alternate methods of identifying the witness may be used, the certificate must definitely state that one or the other was used.⁵⁵⁰

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."⁵⁵¹ However, it is not a fatal defect if this language is omitted from the certificate.⁵⁵²

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.⁵⁵³ One method or the other must be stated but not both alternatively. In *Harvey v. Cummings*,⁵⁵⁴ the certificate of subscribing witness provided the witness either saw the instrument signed or had it acknowledged to him by the grantor.⁵⁵⁵ Held this alternative statement was insufficient for leaving in doubt which of the two methods were employed.⁵⁵⁶

In *Johnson v. Franklin*,⁵⁵⁷ 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...*".⁵⁵⁸ The certificate was inadequate because it did not state the witness saw McDowell sign the instrument.⁵⁵⁹ 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.⁵⁶⁰

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.⁵⁶¹ However, failure to state that the instrument was witnessed "at the request" of the grantor is not a fatal omission.⁵⁶²

3. **Effect of Acknowledgment by Witness.** An instrument duly acknowledged by witness is entitled to recordation the same as one bearing a standard acknowledgment.⁵⁶³

C. Acknowledgment by Handwriting. In certain limited instances an instrument may be established for recordation by proof of the handwriting of the persons who signed the instrument.⁵⁶⁴

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.⁵⁶⁵

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.⁵⁶⁶ If the execution by the grantor is by making his mark, the handwriting of at least two witnesses must be proven.⁵⁶⁷

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.⁵⁶⁸

The proof must be taken before an officer authorized to take proofs.⁵⁶⁹

4. Certificate of Acknowledgment by Handwriting. The officer taking the proof must certify the witness' testimony.⁵⁷⁰ No statutory form for the certificate is prescribed. The certificate must be signed by the officer and officially sealed.⁵⁷¹ The certificate, along with the proving affidavits or depositions, are attached to the instrument.⁵⁷²

D. Proof by Suit. A person interested in an instrument may bring an action

in district court for a judgment proving the instrument.⁵⁷³ 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.⁵⁷⁴

This statute cannot cure those special instruments which require an acknowledgment for their validity.⁵⁷⁵ 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.⁵⁷⁶ Any failure by the notary to abide by the duties prescribed by statute is negligence per se.⁵⁷⁷ In *Britain v. Monsur*,⁵⁷⁸ a notary failed to properly identify a signatory allowing an imposter to execute the instrument.⁵⁷⁹ The failure to follow the statutory procedures for identifying the signatory amounted to negligence.⁵⁸⁰

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.⁵⁸¹

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 record⁵⁸² or forgery.⁵⁸³ Acting as a notary without due appointment constitutes the offense of impersonating a public servant.⁵⁸⁴ Acting as a notary with a good faith belief that the notary was duly appointed may not violate this provision.⁵⁸⁵

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.⁵⁸⁶

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 _____ 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, (name of officer), a notary public, on this day personally appeared (name of disabled acknowledger), a person having a physical impairment that impedes (his/her) ability to sign this instrument and first being 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 disabled acknowledger) directed me to affix (his/her) signature to the foregoing instrument in the presence of (name of disinterested witness), 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 (name of federal or state government issuing identity card) that contained the photograph and signature of (name of disinterested witness), and (name of disabled acknowledger) acknowledged to me that (he/she) directed me to execute the instrument on (his/her) 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 (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), (rank, branch, and serial number of acknowledger), 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 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)⁵⁹⁰

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 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 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)⁵⁹²

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 (name and character of the officer), on this day personally appeared (name of person giving proof), to me well known, who, being first duly sworn, deposes and says:

- (1) That (his/her) residence is (address);
- (2) That (he/she) (is/was) well acquainted with (name of signatory) the grantor named in the foregoing deed and with (name of witness) and (name of witness), the subscribing witnesses to such instrument;
- (3) That (state facts entitling instrument to be proved by handwriting);⁵⁹⁵
- (4) That (he/she) is well acquainted with the signatures of (name of grantor), (name of witness), and (name of witness) from having frequently seen them write and sign their names;
- (5) That (he/she) recognizes the signatures of (name of grantor), (name of witness), and (name of witness) on the instrument as genuine; and
- (6) That (he/she) 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 OFFICER⁵⁹⁶

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.
4. *Butler v. Brown*, 77 Tex. 342, 344, 14 S.W. 136, 136 (1890); *Monroe v. Arledge*, 23 Tex. 478, 480 (1859); *Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, writ denied); *Onwuteaka v. Cohen*, 846 S.W.2d 889, 894 (Tex. App. - Houston [1st Dist.] 1993, writ denied); *Shelton v. Swift Motors, Inc.*, 674 S.W.2d 337, 342 (Tex. App. - San Antonio 1984, writ ref'd n.r.e.).
5. *Hughes v. Sloan*, 62 S.W. 194, 196 (Tex. Civ. App. - Texarkana 1933, writ ref'd).
6. *Punchard v. Masterson*, 100 Tex. 479, 481, 101 S.W. 204, 205 (1907).
7. *See Hill v. Taylor*, 77 Tex. 295, 299, 14 S.W. 366, 367 (1890).
8. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(1) (Vernon 1997).
9. *Thompson v. Johnson*, 84 Tex. 548, 553, 19 S.W. 784, 785 (1892); *Herndon v. Reed*, 82 Tex. 647, 650, 18 S.W. 665, 666 (1891); *Kirby Lumber Co. v. Long*, 224 S.W. 906, 909 (Tex. Civ. App. - Beaumont 1916, no writ).
10. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(2) (Vernon 1997).
11. *Id.*
12. *Chicago, T. & M. C. Ry. Co. v. Titterington*, 84 Tex 218, 224-25, 19 S.W. 472, 474 (1892); *Ansaldia v. Schwing*, 16 S.W. 989, 990 (Tex. 1891); *Cook v. Knott*, 28 Tex. 85, 90 (1866); *Rose v. Newman*, 26 Tex. 131, 135 (1862). Acknowledgments may also be taken by a county clerk *pro tem*. *Hendricks v. Huffmeyer*, 27 S.W. 777, 779 (Tex. Civ. App. 1894, no writ).
13. TEX. CIV. PRAC. & REM. CODE ANN. § 121.001(a)(3) (Vernon 1997). *See also* TEX. GOV'T CODE ANN. § 406.016(a)(1) (Vernon 1998). Presumably this would include a justice of the peace who is by law an *ex officio* notary public of the county where elected. TEX. GOV'T CODE ANN. § 27.002 (Vernon 1988).
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).
15. 28 U.S.C. §§ 459, 636.
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).
19. 28 U.S.C. §§ 459, 636.
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).
24. *Stark v. Harris* 106 S.W. 887, 889 (Tex. Civ. App. 1908), *rev'd on other grounds*, 110 S.W. 737 (Tex. 1908).
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).
25. TEX. GOV'T CODE ANN. § 406.003 (Vernon 1998).
26. *See Garza v. Serrato*, 699 S.W.2d 275, 278-79 (Tex. App. - San Antonio 1985, writ ref'd n.r.e.).
27. *Loden v. Carothers*, 85 S.W.2d 291, 293 (Tex. Civ. App. - Texarkana 1935, no writ).
28. TEX. GOV'T CODE ANN. § 406.002 (Vernon 1998).
29. *Id.* at § 406.011.
30. *Id.* at § 406.013.
31. *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgm't adopted); *Ross v. Fort Worth Nat'l Bank*, 30 S.W.2d 518, 521 (Tex. Civ. App. - Fort Worth 1930, writ ref'd).
32. *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgm't adopted); *Ross v. Fort Worth Nat'l Bank*, 30 S.W.2d 518, 521 (Tex. Civ. App. - Fort Worth 1930, writ ref'd).
33. *Phillips v. Brazosport Sav. & Loan Ass'n*, 366 S.W.2d 929, 931-32 (Tex. 1963); *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. - 1919, judgm't adopted); *Dyson Descendant Corp. v. Sonat Exploration Co.*, 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); *Gulf Prod. Co. v. Continental Oil Co.*, 61 S.W.2d 185, 187 (Tex. Civ. App. - Texarkana 1933, writ dism'd); *Creosoted Wood Block Paving Co. v. McKay*, 241 S.W. 549, 550 (Tex. Civ. App. -Dallas 1922, writ ref'd).
34. *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgm't adopted); *Ross v. Fort Worth Nat'l Bank*, 30 S.W.2d 518, 521 (Tex. Civ. App. - Fort Worth 1930, writ ref'd); *Creosoted Wood Block Paving Co. v. McKay*, 211 S.W. 822, 824 (Tex. Civ. App. - Dallas 1919, no writ).
35. *Willborg v. Gentry*, 93 S.W.2d 1204, 1207 (Tex. Civ. App. - Galveston 1933, no writ).
36. *Id.*

37. *United Sav. Bank of Detroit v. Frazier*, 116 S.W.2d 933, 936 (Tex. Civ. App. - Dallas 1938, writ dismissed); *Creosoted Wood Block Paving Co. v. McKay*, 241 S.W. 549, 550-51 (Tex. Civ. App. - Dallas 1922, no writ).
38. *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgment adopted); *Diamond v. Borenstein*, 410 S.W.2d 457, 458 (Tex. Civ. App. - El Paso 1966), writ refused per curiam, 414 S.W.2d 454 (Tex. 1967) (beneficiary of deed of trust); *McGee v. Stark*, 127 S.W.2d 589, 590 (Tex. Civ. App. - Beaumont 1939, writ dismissed judgment corrected) (grantor of deed); *Hill v. McIntyre Drilling Co.*, 59 S.W.2d 193, 194-95 (Tex. Civ. App. - Texarkana 1933, writ refused) (beneficial grantee of deed); *Kinnear v. Tolbert*, 262 S.W. 900, 900-01 (Tex. Civ. App. - Texarkana 1924, writ dismissed) (grantee of deed).
39. *McGee v. Stark*, 127 S.W.2d 589, 591 (Tex. Civ. App. - Beaumont 1939, writ dismissed judgment corrected); *Clements v. Texas Co.*, 273 S.W. 993, 1004 (Tex. Civ. App. - Galveston 1925, writ refused).
40. 132 S.W.2d 553 (Tex. 1939).
41. 59 S.W.2d 193 (Tex. Civ. App. - Texarkana 1933, writ refused).
42. *Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 566 (Tex. 1939); *Hill v. McIntyre Drilling Co.*, 59 S.W.2d 193, 194 (Tex. Civ. App. - Texarkana 1933, writ refused).
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.
47. *Rothschild v. Dougher*, 85 Tex. 332, 335, 20 S.W. 142, 143 (1892); *Brown v. Moore*, 38 Tex. 646, 648 (1873); *Greenwood v. Fontaine*, 34 S.W. 826, 828 (Tex. Civ. App. 1896, no writ). *But see Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ).
48. *Kutch v. Holley*, 77 Tex. 220, 222, 14 S.W. 32, 34 (1890); *Titus v. Johnson*, 50 Tex. 224, 239 (1878); *Sample v. Irwin*, 45 Tex. 567, 573 (1876); *W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgment adopted); *Uvalde Rock Asphalt Co. v. Warren*, 59 S.W.2d 272, 274 (Tex. Civ. App. - Galveston 1933), *aff'd*, 91 S.W.2d 321 (Tex. Comm'n App. 1936, opinion adopted).
49. *Kutch v. Holley*, 77 Tex. 220, 222, 14 S.W. 32, 34 (1890); *Sample v. Irwin*, 45 Tex. 567, 573 (1876); *Ross v. Fort Worth Nat'l Bank*, 30 S.W.2d 518, 520 (Tex. Civ. App. - Fort Worth 1930, writ refused); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 240 (Tex. Civ. App. - Beaumont 1924, writ dismissed); *Creosoted Wood Block Paving Co. v. McKay*, 211 S.W. 822, 825 (Tex. Civ. App. - Dallas 1919, no writ).
50. *Compare W.C. Belcher Land Mortgage Co. v. Taylor*, 212 S.W. 647, 650 (Tex. Comm'n App. 1919, judgment adopted); *Miles v. Kelley*, 40 S.W. 599, 602 (Tex. Civ. App. 1897, no writ); *Roane v. Murphy*, 96 S.W. 782, 787 (Tex. Civ. App. 1906, no writ).
51. *Creosoted Wood Block Paving Co. v. McKay*, 211 S.W. 822, 825 (Tex. Civ. App. - Dallas 1919, no writ).

52. TEX. PRAC. & REM. CODE ANN. § 121.002(a) (Vernon 1997). *See also Director, Dallas County Child Welfare v. Thompson*, 667 S.W.2d 282, 282 (Tex. App. - Dallas 1984, no writ); *Anderson v. Pioneer Bldg. & Loan Ass'n*, 163 S.W.2d 421, 425 (Tex. Civ. App. - Waco 1942, writ ref'd w.o.m.); *United Sav. Bank of Detroit v. Frazier*, 116 S.W.2d 933, 936 (Tex. Civ. App. - Dallas 1938, writ dism'd); *Red River Nat'l Bank v. Latimer*, 110 S.W.2d 232, 238-39 (Tex. Civ. App. - Texarkana 1937, no writ); *Tilley v. Kangerga*, 83 S.W.2d 787, 792 (Tex. Civ. App. - Waco 1935, writ ref'd).
53. *See Willborg v. Gentry*, 93 S.W.2d 1204, 1207 (Tex. Civ. App. - Galveston 1933, no writ). *See also Director, Dallas County Child Welfare v. Thompson*, 667 S.W.2d 282, 283 (Tex. App. - Dallas 1984, no writ); *Creosoted Wood Block Paving Co. v. McKay*, 241 S.W. 549, 550 (Tex. Civ. App. - Dallas 1922, no writ).
54. *Montgomery v. Heath*, 283 S.W. 324, 327 (Tex. Civ. App. - Amarillo 1926), *modified*, 291 S.W. 855 (Tex. Comm'n App. 1927, holding approved); *Creosoted Wood Block Paving Co. v. McKay*, 241 S.W. 549, 550 (Tex. Civ. App. - Dallas 1922, no writ). *But see* TEX. FIN. CODE ANN. § 89.002 (Vernon 1998) (officers of savings and loan association); TEX. UTIL. CODE ANN. § 162.081 (Vernon 1998) (officers of telephone cooperatives).
55. *Southwest Mfg. Co. v. Hughes*, 60 S.W. 684, 687 (Tex. Civ. App. 1900, writ ref'd); *Workman's Mut. Aid Ass'n v. Monroe*, 53 S.W. 1029, 1029 (Tex. Civ. App. 1899, writ ref'd). *But see* TEX. UTIL. CODE ANN. § 162.081 (Vernon 1998) (directors of telephone cooperatives).
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).
57. *Kutch v. Holley*, 77 Tex. 220, 222-23, 14 S.W. 32, 34 (1890); *Martin v. Mooney*, 695 S.W.2d 211, 213 (Tex. App. - Austin 1985, no writ); *Turner v. Atlanta Nat'l Bank*, 83 S.W.2d 454, 456 (Tex. Civ. App. - Texarkana 1935), *modified*, 109 S.W.2d 1042 (Tex. Comm'n App. 1951, opinion adopted); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 239-40 (Tex. Civ. App. - Beaumont 1924, writ dism'd). *See also In the Interest of Baby Girl T.*, 904 S.W.2d 206, 208 (Tex. App. - Fort Worth 1995, no writ). *But see Southwestern Mfg. Co. v. Hughes*, 60 S.W. 684, 686-87 (Tex. Civ. App. - 1900, writ ref'd).
58. *See Kutch v. Holley*, 77 Tex. 220, 222-23, 14 S.W. 32, 34 (1890); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 240 (Tex. Civ. App. - Beaumont 1924, writ dism'd).
59. *Stoker v. Fugitt*, 102 S.W. 743, 743-44 (Tex. Civ. App. 1907, no writ).
60. *Ross v. Fort Worth Nat'l Bank*, 30 S.W.2d 518, 521-22 (Tex. Civ. App. - Fort Worth 1930, writ ref'd).
61. *Id.* at 521.
62. *Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 568 (Tex. 1939).
63. *Bexar Bldg & Loan Ass'n v. Heady*, 50 S.W. 1079, 1081 (Tex. Civ. App. 1899, writ ref'd).
64. *Dyson Descendant Corp. v. Sonat Exploration Co.*, 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); *Southwestern Mfg. Co. v. Hughes*, 60 S.W. 684, 687 (Tex. Civ. App. 1900, writ ref'd).
65. *Gulf Prod. Co. v. Continental Oil Co.*, 164 S.W.2d 488, 493 (Tex. 1942); *Farmers' Nat'l Bank v. Dublin Nat'l Bank*, 55 S.W.2d 567, 570 (Tex. Civ. App. - Eastland 1932), *writ dism'd*, 90

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

66. *Gulf Prod. Co. v. Continental Oil Co.*, 164 S.W.2d 488, 493-94 (Tex. 1942); *Dyson Descendant Corp. v. Sonat Exploration Co.*, 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); *Turner v. Atlanta Nat'l Bank*, 83 S.W.2d 454, 456 (Tex. Civ. App. - Texarkana 1935), *modified*, 109 S.W.2d 1042 (Tex. Comm'n App. 1937, opinion adopted); *Farmers' Nat'l Bank v. Dublin Nat'l Bank*, 55 S.W.2d 567, 570 (Tex. Civ. App. - Eastland 1932), *writ disp'd*, 90 S.W.2d 824 (Tex. Comm'n App. 1936, opinion adopted); *Hill v. Provine*, 260 S.W. 681, 684 (Tex. Civ. App. - El Paso 1924, writ disp'd).

67. *See Gulf Prod. Co. v. Continental Oil Co.* 164 S.W.2d 488, 493-94 (Tex. 1942).

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.

78. TEX. CIV. PRAC. & REM. CODE ANN. § 121.004(a) (Vernon 1997). *See also Sullivan v. Barrett*, 471 S.W.2d 39, 41 (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 (Tex. Comm'n App. 1929, judgm't adopted); *Spoor v. Gulf Bitulithic Co.*, 172 S.W.2d 377, 379 (Tex. Civ. App. - Galveston 1943, writ ref'd w.o.m.); *Marinick v. Continental Southland Sav. & Loan Ass'n*, 97 S.W.2d 480, 483 (Tex. Civ. App. - Dallas 1936, no writ).

79. *Charlton v. Richard Gill Co.*, 285 S.W.2d 801, 802 (Tex. Civ. App. - San Antonio 1955, no writ); *Timmins v. Independent Lumber Co.*, 7 S.W.2d 130, 131 (Tex. Civ. App. - Austin 1928, no writ). *See also Humble Oil & Ref. Co. v. Davis*, 282 S.W. 930, 931-33 (Tex. Civ. App. - Austin 1926), *modified*, 296 S.W. 285 (Tex. Comm'n App. 1927, judgm't adopted).

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 (Tex. 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).

81. TEX. CIV. PRAC. & REM. CODE ANN. § 121.005(a) (Vernon Supp. 2000). *See also 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); *Schramm v. Gentry*, 63 Tex. 583, 584 (1885); *Kenley v. Robb*, 245 S.W. 68, 70 (Tex. Comm'n App. 1922, judgm't adopted); *Brittain v. Monsur*, 195 S.W. 911, 914 (Tex. Civ. App. - Beaumont 1917, writ disp'd).

82. *Schramm v. Gentry*, 63 Tex. 583, 585 (1885); *Beitel v. Wagner*, 32 S.W. 366, 367 (Tex. Civ. App. 1895, writ ref'd).
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).
85. *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).
86. *See 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). *But see* TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(b)(3) (Vernon 1986); TEX. GOV'T CODE ANN. § 406.014(a)(5) (Vernon Supp. 2000).
87. *Charlton v. Richard Gill Co.*, 285 S.W.2d 801, 803 (Tex. Civ. App. - San Antonio 1955, no writ).
88. *Shelton v. Swift Motors, Inc.*, 674 S.W.2d 337, 342 (Tex. App. - San Antonio 1984, writ ref'd n.r.e.).
89. TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.004(a), 121.006(b)(1) (Vernon 1997).
90. *Heintz v. O'Donnell*, 42 S.W. 797, 798 (Tex. Civ. App. 1893, no writ).
91. *Punchard v. Masterson*, 100 Tex. 479, 481-82, 101 S.W. 204, 205 (1907).
92. *Id.*, 101 S.W. at 205.
93. *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).
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.
97. 140 S.W. 824 (Tex. Civ. App. - San Antonio 1911, writ ref'd).
98. *Id.* at 826.
99. *Id.*
100. *Id.*
101. TEX. CIV. PRAC. & REM. CODE ANN. § 121.006(b)(2) (Vernon 1997).
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.*
108. *See Sartor v. Bolinger*, 59 Tex. 411, 412 (1883); *Birdseye v. Rogers*, 26 S.W. 841, 843 (Tex. Civ. App. 1894, no writ).
109. *See Harlowe v. Hudgins*, 84 Tex. 107, 110-11, 19 S.W. 364, 365 (1892); *Durst v. Daugherty*, 81 Tex. 650, 653, 17 S.W. 388, 388 (1891); *Thorn's Heirs v. Frazer's Heirs*, 60 Tex. 259, 261 (1883); *Davis v. Roosevelt*, 53 Tex. 305, 314 (1880); *Cook v. Cook*, 23 S.W. 927, 928 (Tex. Civ. App. 1893, no writ).
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).
120. *Charlton v. Richard Gill Co.*, 285 S.W.2d 801, 803 (Tex. Civ. App. - San Antonio 1955, no writ).
121. *Deen v. Wills*, 21 Tex. 641, 646 (1858).
122. *Belcher v. Weaver*, 46 Tex. 296, 296 (1876); *Lewis v. Houston Oil Co.*, 198 S.W. 607, 611 (Tex. Civ. App. - Beaumont 1917, writ ref'd).

123. *Spivy v. March*, 104 Tex. 473, 477, 151 S.W. 1037, 1039 (1912); *Deen v. Wills*, 21 Tex. 641, 646-47 (1858).
124. *Brownson v. Scanlan*, 59 Tex. 222, 229 (1883).
125. *Belcher v. Weaver*, 46 Tex. 293, 299 (1876).
126. *Id.* at 298.
127. *Belcher v. Weaver*, 59 Tex. 293, 296 (1876); *Lewis v. Houston Oil Co.*, 198 S.W. 607, 611 (Tex. Civ. App. - Beaumont 1917, writ ref'd); *Clark v. Groce*, 41 S.W. 668, 670 (Tex. Civ. App. 1897, no writ).
128. *Belcher v. Weaver*, 59 Tex. 293, 296 (1876).
129. *Snowden v. Rush*, 69 Tex. 593, 597, 7 S.W. 767, 771 (1888); *Brownson v. Scanlan*, 59 Tex. 222, 229 (1883).
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).
131. *See Delay v. Truitt*, 182 S.W. 732, 734 (Tex. Civ. App. - Amarillo 1916, writ ref'd); *Ferguson v. Ricketts*, 55 S.W. 975, 976 (Tex. Civ. App. - 1900), *rev'd on other grounds*, 57 S.W. 19 (Tex. 1900); *Johnson v. Thompson*, 50 S.W. 1055, 1057 (Tex. Civ. App. 1898), *rev'd on other grounds*, 51 S.W. 23 (Tex. 1898); *Hays v. Tilson*, 45 S.W. 479, 481 (Tex. Civ. App. 1898, writ ref'd); *Clark v. Groce*, 41 S.W. 668, 670 (Tex. Civ. App. 1897), *rev'd on other grounds*, 51 S.W. 23 (Tex. 1898).
132. *Delay v. Truitt*, 182 S.W. 734 (Tex. Civ. App. - Amarillo 1916, writ ref'd); *Best v. Kirkendall*, 107 S.W. 932, 933 (Tex. Civ. App. 1908, no writ); *Johnson v. Thompson*, 50 S.W. 1055, 1057 (Tex. Civ. App. 1898), *rev'd on other grounds*, 51 S.W. 23 (Tex. 1898); *Hays v. Tilson*, 45 S.W. 479, 481 (Tex. Civ. App. 1898, writ ref'd). The "short form" certificates of acknowledgment now adopted by statute do not include language indicating the acknowledgment was made *to the officer*. TEX. CIV. PRAC. & REM. CODE ANN. § 121.008 (Vernon 1997).
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.*
138. 55 S.W. 975 (Tex. Civ. App. 1900), *rev'd on other grounds*, 40 S.W. 19 (Tex. 1900).
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. *Id.* at 629.
144. *Id.*
145. 84 Tex. 218, 19 S.W. 472 (1892).
146. *Id.* at 224-25, 19 S.W. at 974.
147. *Id.*, 19 S.W. at 474.
148. 92 Tex. 446, 49 S.W. 573 (1899).
149. *Id.* at 448, 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.
158. 36 S.W. 1015 (Tex. Civ. App. 1896, writ ref'd).
159. 30 S.W. 814 (Tex. Civ. App. 1895, no writ).
160. *Adams v. Pardue*, 36 S.W. 1015, 1017 (Tex. Civ. App. 1896, writ ref'd); *Farrell v. Palestine Loan Ass'n*, 30 S.W. 814, 815 (Tex. Civ. App. 1895, no writ).
161. *Farrell v. Palestine Loan Ass'n*, 30 S.W. 814, 815 (Tex. Civ. App. 1895, no writ).
162. *Adams v. Pardue*, 36 S.W. 1015, 1017 (Tex. Civ. App. 1896, writ ref'd).
163. *Adams v. Pardue*, 36 S.W. 1015, 1017 (Tex. Civ. App. 1896, writ ref'd); *Farrell v. Palestine Loan Ass'n*, 30 S.W. 814, 815 (Tex. Civ. App. 1895, no writ).
164. *Adams v. Pardue*, 36 S.W. 1015, 1017 (Tex. Civ. App. 1896, writ ref'd).
165. *Norton v. Davis*, 83 Tex. 32, 36, 18 S.W. 430, 431 (1892); *Coombes v. Thomas*, 57 Tex. 321, 322-23 (1882); *Belcher v. Weaver*, 46 Tex. 293, 299 (1876); *Clark v. Groce*, 41 S.W. 668, 670 (Tex. Civ. App. 1897, no writ).
166. 57 Tex. 321 (1882).
167. *Id.* at 322-23.

168. 41 S.W. 668 (Tex. Civ. App. 1897, no writ).
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.
179. 50 S.W. 1055 (Tex. Civ. App. 1898), *rev'd on other grounds*, 51 S.W. 23 (Tex. 1898).
180. *Id.* at 1057.
181. *Id.*
182. 21 S.W. 937 (Tex. Civ. App. 1893, no writ).
183. *Id.* at 940.
184. *Id.*
185. *Belcher v. Weaver*, 46 Tex. 293, 297 (1876); *Lewis v. Houston Oil Co.*, 198 S.W. 607, 611 (Tex. Civ. App. - Beaumont 1917, writ ref'd n.r.e.). *See also Broussard v. Dull*, 21 S.W. 937, 940 (Tex. Civ. App. 1893, no writ).
186. *See Harvey v. Cummings*, 68 Tex. 599, 604, 5 S.W. 513, 514-15 (1887); *Riley v. Pool*, 24 S.W. 85, 86 (Tex. Civ. App. 1893, no writ) (alternative statements in affidavits of subscribing witnesses rendered the proofs invalid).
187. *See Walles v. Hemness*, 600 S.W.2d 407, 408 (Tex. Civ. App. - Fort Worth 1980, no writ); *Crockett v. Sampson*, 439 S.W.2d 355, 359 (Tex. Civ. App. - Austin 1939, no writ); *Wilde v. Buchanan*, 303 S.W.2d 518, 519 (Tex. Civ. App. - Austin 1957), *aff'd*, 305 S.W.2d 778 (Tex. 1957).
188. *Wilde v. Buchanan*, 303 S.W.2d 518, 519 (Tex. Civ. App. - Austin 1957), *aff'd*, 305 S.W.2d 778 (Tex. 1957).
189. *Id.*
190. TEX. PROP. CODE ANN. § 12.001(a), (b) (Vernon Supp. 2000).

191. *Refer to notes 386-394 and accompanying text.*
192. TEX. PROP. CODE ANN. § 11.002 (Vernon Supp. 2000).
193. *Refer to Appendix T.*
194. *Alexander v. Houghton*, 86 Tex. 702, 704, 26 S.W. 937, 938 (1894); *Stephens v. Motl*, 81 Tex. 115, 120, 16 S.W. 731, 732 (1891); *Mills v. Snyder*, 387 S.W.2d 954, 956 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *First Nat'l Bank of Nacogdoches v. Hicks*, 59 S.W. 842, 844 (Tex. Civ. App. 1900, no writ).
195. *Alexander v. Houghton*, 86 Tex. 702, 704, 26 S.W. 937, 938 (1894).
196. *Alexander v. Houghton*, 86 Tex. 702, 704, 26 S.W. 937, 938 (1894); *Blythe v. Houston*, 46 Tex. 65, 79 (1876); *Mills v. Snyder*, 387 S.W.2d 954, 955-56 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *First Nat'l Bank of Nacogdoches v. Hicks*, 59 S.W. 842, 844 (Tex. Civ. App. 1900, no writ).
197. *Alexander v. Houghton*, 86 Tex. 702, 705, 26 S.W. 937, 938 (1894); *Mills v. Snyder*, 387 S.W.2d 954, 956 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.).
198. *Refer to Notes 7-77 and accompanying text.*
199. *Coffey v. Hendricks*, 66 Tex. 676, 678-79, 2 S.W. 47, 48 (1886); *Whitehead v. Foley*, 28 Tex. 268, 289 (1866); *Best v. Kirkendall*, 107 S.W. 932, 933 (Tex. Civ. App. 1908, no writ); *Williams v. Cessna*, 95 S.W. 1106, 1109 (Tex. Civ. App. 1906, writ ref'd); *Caudle v. Williams*, 51 S.W. 560, 562 (Tex. Civ. App. 1899, no writ).
200. *See e.g., Gulf C. & S. F. Ry. v. Carter*, 24 S.W. 1083, 1084 (Tex. Civ. App. 1893, no writ).
201. *See Chamberlain v. Pybas*, 81 Tex. 511, 514, 17 S.W. 50, 51 (1891).
202. *Chamberlain v. Pybas*, 81 Tex. 511, 514, 17 S.W. 50, 51 (1891); *Mills v. Snyder*, 387 S.W.2d 954, 956 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *First Nat'l Bank of Nacogdoches v. Hicks*, 59 S.W. 842, 844 (Tex. Civ. App. 1900, no writ). *See also Blythe v. Houston*, 46 Tex. 65, 79 (1876).
203. *See Best v. Kirkendall*, 107 S.W. 932, 933 (Tex. Civ. App. 1908, no writ); *Williams v. Cessna*, 95 S.W. 1106, 1109 (Tex. Civ. App. 1906, writ ref'd).
204. 107 S.W. 932 (Tex. Civ. App. 1908, no writ).
205. *Id.* at 933.
206. *Id.* *See also Williams v. Cessna*, 95 S.W. 1106, 1109 (Tex. Civ. App. 1906, writ ref'd); *Riviere v. Wilkens*, 72 S.W. 608, 610 (Tex. Civ. App. 1903, no writ).
207. 2 Posey Unrep. Cas. 447 (1883).
208. *Id.*
209. 35 S.W. 937 (Tex. Civ. App. 1896, no writ).
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.
216. 24 S.W. 1083 (Tex. Civ. App. 1893, no writ).
217. *Id.* at 1084.
218. *Id.*
219. *Id.*
220. *Stephens v. Motl*, 81 Tex. 115, 120, 16 S.W. 731, 732 (1891); *Kerby v. Ogletree*, 313 S.W.2d 325, 330 (Tex. Civ. App. - Beaumont 1958, writ ref'd n.r.e.); *Tate v. Johnson*, 140 S.W.2d 288, 292 (Tex. Civ. App. - Fort Worth 1940, writ dismiss'd judgment corrected.); *Lake v. Earnest*, 116 S.W. 865, 867 (Tex. Civ. App. 1909, writ ref'd); *Kane v. Sholars*, 90 S.W. 937, 939 (Tex. Civ. App. 1905, no writ).
221. *See Kerby v. Ogletree*, 313 S.W.2d 325, 330 (Tex. Civ. App. - Beaumont 1958, writ ref'd n.r.e.); *Frugia v. Trueheart*, 106 S.W. 736, 740 (Tex. Civ. App. 1907, no writ); *Kane v. Sholars*, 90 S.W. 937, 939 (Tex. Civ. App. 1905, no writ); *Riviere v. Wilkens*, 72 S.W. 608, 610 (Tex. Civ. App. 1903, no writ).
222. *Stephens v. Motl*, 81 Tex. 115, 120, 16 S.W. 731, 732 (1891); *Blythe v. Houston*, 46 Tex. 65, 79 (1876); *Tate v. Johnson*, 140 S.W.2d 288, 292 (Tex. Civ. App. - Fort Worth 1940, writ dismiss'd judgment corrected.); *Lake v. Earnest*, 116 S.W. 865, 867 (Tex. Civ. App. 1909, writ ref'd); *Broussard v. Dull*, 21 S.W. 937, 940 (Tex. Civ. App. 1893, no writ).
223. Refer to Notes 78-80 and accompanying text.
224. *Christy v. Romero*, 140 S.W. 516, 517-18 (Tex. Civ. App. - El Paso 1911, writ ref'd).
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).
229. *Frost v. Erath Cattle Co.*, 81 Tex. 505, 510, 17 S.W. 52, 55 (1891); *Beitel v. Wagner*, 32 S.W. 366, 367 (Tex. Civ. App. 1895, writ ref'd).
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).

232. See *Sowers v. Peterson*, 59 Tex. 216, 218 (1883); *Kenley v. Robb*, 245 S.W. 68, 70 (Tex. Comm'n App. 1922, judgm't adopted).

233. *Sowers v. Peterson*, 59 Tex. 216, 218 (1883).

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).

235. TEX. CIV. PRAC. & REM. CODE ANN. § 121.007 (Vernon Supp. 2000). See also *Hayden v. Moffatt*, 74 Tex. 647, 649, 12 S.W. 820, 821 (1889); *Hines v. Lumpkin*, 47 S.W. 818, 819 (Tex. Civ. App. 1898, no writ).

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).

237. TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008 (Vernon Supp. 2000). See also *Punchard v. Masterson*, 100 Tex. 479, 482, 101 S.W. 204, 205 (1907); *Heintz v. O'Donnell*, 42 S.W. 797, 798 (Tex. Civ. App. 1897, no writ).

238. *Heintz v. O'Donnell*, 42 S.W. 797, 798 (Tex. Civ. App. 1897, no writ).

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

240. *Id.* at §§ 121.007, 121.008.

241. *Stephens v. Motl*, 81 Tex. 115, 119, 16 S.W. 731, 731 (1891); *Butler v. Brown*, 77 Tex. 342, 344, 14 S.W. 136, 136 (1890); *Monroe v. Arledge*, 23 Tex. 478, 480 (1859); *Baker v. Smith*, 407 S.W.2d 4, 6 (Tex. Civ. App. - Fort Worth 1966, writ ref'd n.r.e.); *Ariola v. Newman*, 113 S.W. 157, 157 (Tex. Civ. App. 1908, writ ref'd). But see *Hayden v. Moffatt*, 74 Tex. 647, 649, 12 S.W. 820, 821 (1889); *Hurst v. Finley*, 55 S.W. 388, 389 (Tex. Civ. App. 1900, no writ).

242. *Butler v. Brown*, 77 Tex. 342, 344-45, 14 S.W. 136, 136 (1890); *Monroe v. Arledge*, 23 Tex. 478, 480 (1859).

243. *Butler v. Brown*, 77 Tex. 342, 344, 14 S.W. 136, 136 (1890); *Monroe v. Arledge*, 23 Tex. 478, 480 (1859).

244. *Butler v. Brown*, 77 Tex. 342, 344, 14 S.W. 136, 136 (1890); *Monroe v. Arledge*, 23 Tex. 478, 480 (1859).

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

246. See *Little v. Weatherford*, 63 Tex. 638, 640 (1885); *Moses v. Dibrell*, 21 S.W. 414, 416 (Tex. Civ. App. 1893, no writ).

247. TEX. CIV. PRAC. & REM. CODE ANN. § 121.008(a)(3) (Vernon 1997).

248. See *McCulloch County Land & Cattle Co. v. Whitefort*, 50 S.W. 1042, 1044 (Tex. Civ. App. 1899, writ ref'd); *Leon & H. Blum Land Co. v. Dunlap*, 23 S.W. 473, 473-74 (Tex. Civ. App. 1893, no writ).

249. TEX. CIV. PRAC. & REM. CODE ANN. § 121.008(b)(4) (Vernon 1997).

250. *Ballard v. Carmichael*, 83 Tex. 355, 368, 18 S.W. 734, 739 (1892); *Muller v. Boone*, 63 Tex. 91, 93 (1885); *Toot'n Totum Food Stores, Inc. v. Williams*, 561 S.W.2d 937, 940 (Tex. Civ. App. - Amarillo 1978, no writ).
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).
256. *Kane v. Sholars*, 90 S.W. 937, 939 (Tex. Civ. App. 1905, no writ).
257. 90 S.W. 937 (Tex. Civ. App. 1905, no writ).
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).
264. *See W.D. Cleveland & Sons v. Smith*, 156 S.W. 247, 250 (Tex. Civ. App. - Galveston 1913, writ ref'd).
265. *Refer to Appendix B.*
266. *See TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008* (Vernon Supp. 2000).
267. *See Sheldon v. Farinacci*, 535 S.W.2d 938, 942 (Tex. Civ. App. - San Antonio 1976, no writ); *Abraham v. Crow*, 382 S.W.2d 756, 758 (Tex. Civ. App. - Amarillo 1964, no writ); *Deace v. Stribling*, 142 S.W.2d 564, 565 (Tex. Civ. App. - Austin 1940, no writ); *Smith v. Victory*, 69 S.W.2d 433, 434 (Tex. Civ. App. - Texarkana 1934, writ ref'd); *McMurrey v. Lampkins*, 47 S.W.2d 851, 854 (Tex. Civ. App. - Beaumont 1932, no writ). *But see Rule v. Richards*, 149 S.W. 1073, 1076 (Tex. Civ. App. - Amarillo 1912, no writ).
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).
270. *Deace v. Stribling*, 142 S.W.2d 564, 565 (Tex. Civ. App. - Austin 1940, no writ); *Smith v. Victory*, 69 S.W.2d 433, 434 (Tex. Civ. App. - Texarkana 1934, writ ref'd).
271. *Deace v. Stribling*, 142 S.W.2d 564, 565 (Tex. Civ. App. - Austin 1940, no writ); *Smith v. Victory*, 69 S.W.2d 433, 434 (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.*
276. 535 S.W.2d 938 (Tex. Civ. App. - San Antonio 1976, no writ).
277. 47 S.W.2d 851 (Tex. Civ. App. - Beaumont 1932, no writ).
278. *Sheldon v. Farinacci*, 535 S.W.2d 938, 940 (Tex. Civ. App. - San Antonio 1976, no writ); *McMurrey v. Lampkins*, 47 S.W.2d 851, 853 (Tex. Civ. App. - Beaumont 1932, no writ).
279. *Sheldon v. Farinacci*, 535 S.W.2d 938, 942 (Tex. Civ. App. - San Antonio 1976, no writ); *McMurrey v. Lampkins*, 47 S.W.2d 851, 854 (Tex. Civ. App. - Beaumont 1932, no writ).
280. *Sheldon v. Farinacci*, 535 S.W.2d 938, 942 (Tex. Civ. App. - San Antonio 1976, no writ).
281. *See Carleton v. Lombardi*, 81 Tex. 355, 358, 16 S.W. 1081, 1081 (1891); *Stephens v. Motl*, 81 Tex. 115, 119, 16 S.W. 731, 731 (1891); *Minor v. Powers*, 38 S.W. 400, 400-01 (Tex. Civ. App. 1896, no writ). *See also Cavit v. Archer*, 52 Tex. 166, 170 (1879).
282. 38 S.W. 400 (Tex. Civ. App. 1896, no writ).
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.*
298. 130 S.W.2d 908 (Tex. Civ. App. - Beaumont 1939, writ ref'd).

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.*
314. 90 S.W. 937 (Tex. Civ. App. 1905, no writ).
315. *Id.* at 939.
316. *Id.*
317. The attentive ear would find difficulty in distinguishing the sound of the two.
318. *See Smith v. Victory*, 69 S.W.2d 433, 434 (Tex. Civ. App. - Texarkana 1934, writ ref'd); *Haney v. Gartin*, 113 S.W. 166, 168 (Tex. Civ. App. 1908, writ ref'd); *Taylor v. Silliman*, 108 S.W. 1011, 1012 (Tex. Civ. App. 1908, writ ref'd); *Arnall v. Newcom*, 69 S.W. 92, 93-94 (Tex. Civ. App. 1902, writ ref'd).
319. *Smith v. Victory*, 69 S.W.2d 433, 434 (Tex. Civ. App. - Texarkana 1934, writ ref'd).
320. *Haney v. Gartin*, 113 S.W. 166, 168 (Tex. Civ. App. 1908, writ ref'd).
321. *Taylor v. Silliman*, 108 S.W. 1011, 1012 (Tex. Civ. App. 1908, writ ref'd).
322. *Arnall v. Newcom*, 69 S.W. 92, 93-94 (Tex. Civ. App. 1902, writ ref'd).
323. 27 S.W. 790 (Tex. Civ. App. 1894, no writ).

324. *Id.* at 790.
325. *Id.*
326. *See Huff v. Webb*, 64 Tex. 284, 287 (1885); *Rork v. Shields*, 42 S.W. 1032, 1033 (Tex. Civ. App. 1897, no writ).
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.
333. 50 S.W. 1055 (Tex. Civ. App. 1898), *modified*, 92 Tex. 358, 51 S.W. 23 (1898).
334. *Id.* at 1057.
335. *Id.*
336. *Id.*
337. 26 S.W. 739 (Tex. Civ. App. 1894), *aff'd*, 87 Tex. 520, 29 S.W. 757 (1895).
338. *Id.* at 742-43.
339. *Id.* at 743.
340. *Id.* *See also Kane v. Sholars*, 90 S.W. 937, 939 (Tex. Civ. App. 1905, no writ).
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.
344. *See Durst v. Daugherty*, 81 Tex. 650, 652-53, 17 S.W. 388, 388 (1891); *Montgomery v. Hornberger*, 40 S.W. 628, 629 (Tex. Civ. App. 1897, writ ref'd).
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.
349. 40 S.W. 628 (Tex. Civ. App. 1897, writ ref'd).
350. *Id.* at 629.

351. *Id.*
352. TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.007, 121.008 (Vernon Supp. 2000).
353. *See Webb v. Huff*, 61 Tex. 677, 679 (1884).
354. TEX. CIV. PRAC. & REM. CODE ANN. § 121.004(b)(2) (Vernon 1997). *See also Andrews v. Marshall*, 26 Tex. 212, 216-17 (1862); *Mills v. Snyder*, 387 S.W.2d 954, 955 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *Guinn v. Musick*, 41 S.W. 723, 725 (Tex. Civ. App. 1897, writ ref'd).
355. TEX. CIV. PRAC. & REM. CODE ANN. § 121.004(b)(3) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.013(a) (Vernon 1998). *See also Texas Land Co. v. Williams*, 51 Tex. 51, 59 (1879); *McKellar v. Peck*, 39 Tex. 381, 387 (1873); *Mills v. Snyder*, 387 S.W.2d 954, 955 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *McDonald v. Stanfield*, 197 S.W. 892 (Tex. Civ. App. - Beaumont 1917, writ ref'd).
- For special rules applying to affixing seals to out-of-state and military acknowledgments, refer to TEX. CIV. PRAC. & REM. CODE ANN. §§ 121.001(d), 121.004(c) (Vernon 1997).
356. *King v. Russell*, 40 Tex. 124, 130 (1874); *Ballard v. Perry*, 28 Tex. 348, 364-65 (1866); *Daugherty v. Yates*, 35 S.W. 937, 939-40 (Tex. Civ. App. 1896, no writ).
357. 39 Tex. 381 (1873).
358. *Id.* at 386.
359. *Id.* at 387.
360. TEX. PROP. CODE ANN. § 12.001(d) (Vernon Supp. 2000).
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.*
364. *Stooksberry v. Swann*, 34 S.W. 369, 370 (Tex. Civ. App. 1895, writ ref'd).
365. *Schramm v. Gentry*, 63 Tex. 583, 584-85 (1885).
366. TEX. GOV'T CODE ANN. § 406.013(a), (b) (Vernon 1998).
367. TEX. CIV. PRAC. & REM. CODE ANN. § 121.007 (Vernon Supp. 2000).
368. *Webb v. Huff*, 61 Tex. 677, 679 (1884).
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).
372. TEX. CIV. PRAC. & REM. CODE ANN. § 121.012(a) (Vernon 1997); TEX. GOV'T CODE ANN. § 406.014(a)(1) (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).

377. TEX. GOV'T CODE ANN. § 406.014(a)(9) (Vernon Supp. 2000).

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).

380. *Hunter v. Struggs*, 353 S.W.2d 289, 290 (Tex. Civ. App. - Houston 1961, writ ref'd n.r.e.).

381. *Martin v. Bane*, 450 S.W.2d 142, 144 (Tex. Civ. App. - Dallas 1969, no writ); *Hunter v. Struggs*, 352 S.W.2d 289, 290 (Tex. Civ. App. - Houston 1961, writ ref'd n.r.e.).

382. *Mission Bldg. & Loan Ass'n v. Stoltz*, 282 S.W. 317, 318 (Tex. Civ. App. - San Antonio 1926, no writ); *Mayfield v. Robinson*, 35 S.W. 399, 401 (Tex. Civ. App. 1900, writ ref'd).

383. *Mission Bldg. & Loan Ass'n v. Stoltz*, 282 S.W. 317, 318 (Tex. Civ. App. - San Antonio 1926, no writ).

384. *Fox v. Lewis*, 344 S.W.2d 731, 735 (Tex. Civ. App. - Austin 1961, writ ref'd n.r.e.); *Leon & H. Blum Land Co. v. Dunlap*, 23 S.W. 473, 474 (Tex. Civ. App. 1893, no writ). *See also Kane v. Sholars*, 90 S.W. 937, 939 (Tex. Civ. App. 1905, no writ).

385. *Leon & H. Blum Land Co. v. Dunlap*, 23 S.W. 473, 474 (Tex. Civ. App. 1893, no writ).

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).

387. *Palmer v. Texas Tram & Lumber Co.*, 23 S.W. 38, 39 (Tex. Civ. App. 1893, no writ).

388. *Dyson Descendant Corp. v. Sonat Exploration Co.*, 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); *Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ); *Drake v. McGalin*, 626 S.W.2d 786, 788 (Tex. App. 1981, no writ); *Haile v. Holtzclaw*, 400 S.W.2d 603, 614 (Tex. Civ. App. - Amarillo 1966), *rev'd on other grounds*, 414 S.W.2d 916 (Tex. 1967); *Hill v. McIntyre Drilling Co.*, 59 S.W.2d 193, 195 (Tex. Civ. App. - Texarkana 1933, writ dism'd).

389. *Diamond v. Borenstein*, 414 S.W.2d 454, 458 (Tex. 1967); *Kimmarle v. Houston & T. C. Ry.*, 76 Tex. 686, 692-93, 12 S.W. 698, 700 (1889); *Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ); *Drake v. McGalin*, 626 S.W.2d 786, 788 (Tex. App. 1981, no writ); *Hunter v. Struggs*, 352 S.W.2d 289, 290 (Tex. Civ. App. - Houston 1961, writ ref'd n.r.e.).

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).

391. TEX. WATER CODE ANN. § 11.043 (Vernon 1988).

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

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

394. TEX. PROB. CODE ANN. § 482(4) (Vernon Supp. 2000).

395. TEX. CIV. PRAC. & REM. CODE ANN. § 16.036 (Vernon Supp. 2000).

396. *Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, writ denied); *Kalamazoo Nat'l Bank v. Johnson*, 29 S.W. 350, 352 (Tex. Civ. App. 1893, no writ).

397. TEX. PROP. CODE ANN. §§ 11.004(a)(1), 12.001 (Vernon Supp. 2000). *See also Clapp v. Engledow*, 82 Tex. 290, 296, 18 S.W. 146, 148 (1891); *Coffey v. Hendricks*, 66 Tex. 676, 679, 2 S.W. 47, 48 (1886); *Holliday v. Cromwell*, 26 Tex. 189, 194 (1862); *Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, writ denied); *Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ).

398. TEX. PROP. CODE ANN. § 12.006 (Vernon 1984).

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

400. *See Grossman v. Jones*, 157 S.W.2d 448, 451 (Tex. Civ. App. - San Antonio 1941, writ ref'd w.o.m.); *First State Bank in Caldwell v. Stubbs*, 48 S.W.2d 446, 451 (Tex. Civ. App. - Galveston 1932, no writ); *Delay v. Truitt*, 152 S.W. 732, 734 (Tex. Civ. App. - Amarillo 1916, writ ref'd).

401. TEX. PROP. CODE ANN. § 13.002 (Vernon 1984). *See also Copelin v. Shuler*, 6 S.W. 668, 671 (Tex. 1887).

402. *See Taylor v. Harrison*, 47 Tex. 454, 457 (1877).

403. *Gulf Prod. Co. v. Continental Oil Co.*, 139 Tex. 183, 225, 132 S.W.2d 553, 572 (1939); *Green v. Hugo*, 81 Tex. 452, 457, 17 S.W. 79, 80 (1891).
404. 48 S.W. 57 (Tex. Civ. App. 1898, writ ref'd).
405. *Id.* at 57.
406. *Id.*
407. *Id.* at 58.
408. TEX. PROP. CODE ANN. § 11.004(a)(1) (Vernon Supp. 2000).
409. *Hayden v. Moffatt*, 74 Tex. 647, 650, 12 S.W. 820, 821 (1889); *Hughes v. Wright & Vaughn*, 97 S.W. 525, 526 (Tex. Civ. App. 1906), *rev'd on other grounds*, 100 Tex. 511, 101 S.W. 789 (1907).
410. *Gulf Prod Co. v. Continental Oil Co.*, 139 Tex. 183, 195, 164 S.W.2d 488, 494 (1942); *Hill v. Taylor*, 77 Tex. 295, 299, 14 S.W. 366, 367 (1890); *Peters v. Clements*, 46 Tex. 114, 122 (1876); *Dyson Descendant Corp. v. Sonat Exploration Co.*, 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); *Tandy v. Dickinson*, 371 S.W.2d 81, 83 (Tex. Civ. App. - Amarillo 1963, no writ).
411. TEX. PROP. CODE ANN. § 13.001(b) (Vernon Supp. 2000). *See also Denson v. First State Bank & Trust of Cleveland*, 728 S.W.2d 876, 877 (Tex. App. - Beaumont 1987, no writ).
412. *See Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 572 (Tex. 1939).
413. *Id.*
414. *Rork v. Shields*, 42 S.W. 1032, 1033 (Tex. Civ. App. 1897, no writ).
415. *See Chamberlain v. Pybas*, 81 Tex. 511, 514, 17 S.W. 50, 51 (1891); *Rork v. Shields*, 42 S.W. 1032, 1033 (Tex. Civ. App. 1897, no writ). *See also Edens v. Simpson*, 17 S.W. 788, 789 (Tex. 1891); *Minor v. Powers*, 38 S.W. 400, 401 (Tex. Civ. App. 1896, no writ).
416. 281 S.W. 339 (Tex. Civ. App. - Amarillo 1926), *rev'd on other grounds*, 288 S.W.2d 133 (Tex. Comm'n App. 1926, judgm't adopted).
417. *Id.* at 341.
418. *Id.* at 341-42.
419. *Id.* at 341.
420. *Id.* at 341-42. *See also Sweeney v. Vasquez*, 229 S.W.2d 96, 97 (Tex. Civ. App. - San Antonio 1950, writ ref'd).
421. 960 S.W.2d 762 (Tex. App. - El Paso 1997, writ denied).
422. *Id.* at 767.
423. *Id.*
424. 1 TEX. JUR. 3d *Acknowledgments* § 5 (1993).

425. *Waltee v. Weaver*, 57 Tex. 569, 571 (1882).

426. *Id.* See also *Fernandez v. Cano*, 108 S.W.2d 310, 313 (Tex. Civ. App. - San Antonio 1937, writ dism'd).

427. *Humble Oil & Ref. Co. v. Downey*, 143 Tex. 171, 176, 183 S.W.2d 426, 428 (1944); *Oar v. Davis*, 105 Tex. 479, 487, 151 S.W. 794, 798 (1912); *Wheelock v. Cavitt*, 91 Tex. 679, 682, 45 S.W. 796, 797 (1898); *Hartley v. Frosh*, 6 Tex. 208, 216 (1851); *Gomez v. Riddle*, 334 S.W.2d 197, 199 (Tex. Civ. App. - San Antonio 1960, no writ). But see *Palmer v. Texas Tram & Lumber Co.*, 23 S.W. 38, 39-40 (Tex. Civ. App. 1893, no writ) (facts recited regarding consideration are not conclusive).

428. *Salinas v. Brownsville Sav. & Loan Ass'n*, 393 S.W.2d 371, 372 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *Pate v. Ponca Wholesale Mercantile Co.*, 386 S.W.2d 827, 830 (Tex. Civ. App. - Amarillo 1965, writ ref'd n.r.e.); *Vierson v. Bucher*, 342 S.W.2d 203, 208 (Tex. Civ. App. - Amarillo 1960, no writ); *Stout v. Oliveira*, 153 S.W.2d 590, 596 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.); *Mondragon v. Mondragon*, 239 S.W. 650, 653 (Tex. Civ. App. - San Antonio 1922), modified, 257 S.W. 215 (Tex. 1923).

429. *Vierson v. Bucher*, 342 S.W.2d 203, 208 (Tex. Civ. App. - Amarillo 1960, no writ); *Stout v. Oliveira*, 153 S.W.2d 590, 596 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.); *Mondragon v. Mondragon*, 239 S.W. 650, 653 (Tex. Civ. App. - San Antonio 1922), modified, 257 S.W. 215 (Tex. 1923).

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...).

431. *Oar v. Davis*, 105 Tex. 479, 487, 151 S.W. 794, 798 (1912); *Wiley & Co. v. Prince*, 6 Tex. 637, 640 (1858); *Hartley v. Frosh*, 6 Tex. 208, 216 (1851); *Ward v. Weaver*, 34 S.W.2d 1093, 1095 (Tex. Comm'n App. 1931, judgm't adopted); *Gomez v. Riddle*, 334 S.W.2d 197, 199 (Tex. Civ. App. - San Antonio 1960, no writ).

This rule obtains because allegations of fraud are not considered to impeach the contents of the certificate of acknowledgment. *Allen v. Boatwright*, 618 S.W.2d 856, 863 (Tex. Civ. App. - Waco 1981, no writ); *Continental Gin Co. v. Tatum*, 78 S.W.2d 698, 700 (Tex. Civ. App. - El Paso 1935, no writ).

This exception to the conclusive effect of a certificate of acknowledgment will apply only if the party relying on the acknowledgment participated in or had knowledge of the fraud. *Texas Osage Co-Operative Royalty Pool v. James*, 129 S.W.2d 327, 329 (Tex. Civ. App. - Austin 1939, no writ); *Wilson v. Martinez*, 74 S.W.2d 308, 311 (Tex. Civ. App. - El Paso 1934, no writ); *Texas Pac. Coal & Oil Co. v. Belcher*, 265 S.W. 1081, 1083 (Tex. Civ. App. - Amarillo 1924, no writ); *Crabb v. Bell*, 220 S.W. 623, 624 (Tex. Civ. App. - El Paso 1920), *rev'd on other grounds*, 244 S.W. 371 (Tex. Comm'n App. 1922, judgm't adopted); *Clafin v. Harrington*, 56 S.W. 370, 371 (Tex. Civ. App. 1900, no writ). Mere possession of the property by the party seeking to apply the exception is not notice of any fraud. *Summers v. Sheem*, 37 S.W. 246, 247 (Tex. Civ. App. 1896, no writ).

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).

432. *Oar v. Davis*, 105 Tex. 479, 487-88, 151 S.W. 794, 798 (1912); *Hartley v. Frosh*, 6 Tex. 208, 216 (1851); *Gomez v. Riddle*, 334 S.W.2d 197, 199 (Tex. Civ. App. - San Antonio 1960, no writ); *Humble Oil & Ref. Co. v. Downey*, 282 S.W. 930, 933 (Tex. Civ. App. - Austin 1926), *rev'd on other grounds*, 296 S.W. 285 (Tex. Comm'n App. 1927, judgm't adopted); *Cox v. Sinclair Gulf Oil Co.*, 265 S.W. 196, 198 (Tex. Civ. App. - Austin 1924, writ ref'd).

433. *1st Coppell Bank v. Smith*, 742 S.W.2d 454, 461 (Tex. App. - Dallas 1987, no writ).

434. *Wheelock v. Cavitt*, 91 Tex. 679, 682-83, 45 S.W. 796, 797 (1898); *Ward v. Weaver*, 34 S.W.2d 1093, 1095 (Tex. Comm'n App. 1931, judgm't adopted); *Robertson v. Vernon*, 12 S.W.2d 991, 993 (Tex. Comm'n App. 1929, judgm't adopted); *Leyva v. Pacheco*, 352 S.W.2d 898, 901 (Tex. Civ. App. - El Paso 1961), *rev'd on other grounds*, 358 S.W.2d 547 (Tex. 1962); *Texas Osage Co-Op Royalty Pool v. Kemper*, 170 S.W.2d 849, 851 (Tex. Civ. App. - Galveston 1943, writ ref'd). *But see Timmins v. Independent Lumber Co.*, 7 S.W.2d 130, 131 (Tex. Civ. App. - Austin 1928, no writ).

435. *See Vogelsang v. Null*, 67 Tex. 465, 466-68, 3 S.W. 451, 452-53 (1887).

436. *Wheelock v. Cavitt*, 91 Tex. 679, 682, 45 S.W. 796, 797 (1898); *Webb v. Burney*, 70 Tex. 322, 325, 7 S.W. 841, 843 (1888); *Waltee v. Weaver*, 57 Tex. 569, 571 (1882); *Panhandle Constr. Co. v. Flesher*, 87 S.W.2d 273, 275 (Tex. Civ. App. - Amarillo 1935, writ disp'd); *Whittley v. Howerton*, 18 S.W.2d 687, 688 (Tex. Civ. App. - San Antonio 1929, writ disp'd).

This exception will apply where the grantee pays no consideration relying on the acknowledgment, *Panhandle Constr. Co. v. Flesher*, 87 S.W.2d 273, 275 (Tex. Civ. App. - Amarillo 1935, writ disp'd) or grossly inadequate consideration, *Webb v. Burney*, 70 Tex. 322, 325, 7 S.W. 841, 843 (1888).

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).

437. *Wheelock v. Cavitt*, 91 Tex. 679, 682, 45 S.W. 796, 797 (1898); *Jeffrey v. Balwin Motor Co.*, 32 S.W.2d 869, 870 (Tex. Civ. App. - Texarkana 1930, no writ); *Stewart v. Miller*, 271 S.W. 311, 317 (Tex. Civ. App. - Waco 1925, writ ref'd); *Cox v. Sinclair Gulf Oil Co.*, 26 S.W. 196, 202 (Tex. Civ. App. - Austin 1924, writ ref'd); *Stephenson v. Mallett*, 240 S.W. 633, 637 (Tex. Civ. App. - Beaumont, 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).

438. *See Caldwell Nat'l Bank v. O'Neil*, 785 S.W.2d 840, 846 (post 1968 acknowledgment); *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d 326, 330 (Tex. App. - Dallas 1987, writ denied) (post 1968 acknowledgment by male); *Pate v. Ponca Wholesale Mercantile Co.*, 386 S.W.2d 827, 830 (Tex. Civ. App. - Amarillo 1965, writ ref'd n.r.e.) (acknowledgment by male); *Leyva v. Pacheco*, 382 S.W.2d 898, 901 (Tex. Civ. App. 1961), *rev'd on other grounds*, 358 S.W.2d 547 (Tex. 1962) (acknowledgment by male); *Stout v. Oliveira*, 153 S.W.2d 590, 595 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.) (acknowledgment by male); *Smith v. Dozier Constr. Co.*, 66 S.W.2d 744, 745 (Tex. Civ. App. - Austin 1933, no writ) (joint acknowledgment).

439. *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d 326, 330 (Tex. App. - Dallas 1987, writ denied); *Stout v. Oliveira*, 153 S.W.2d 590, 597 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.).

440. *Mills v. Snyder*, 387 S.W.2d 954, 955 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *Pate v. Ponca Wholesale Mercantile Co.*, 386 S.W.2d 827, 830 (Tex. Civ. App. - Amarillo 1965, writ ref'd n.r.e.); *Stout v. Oliveira*, 153 S.W.2d 590, 596-97 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.); *Hightower v. Stafford*, 61 S.W.2d 857, 858 (Tex. Civ. App. - San Antonio 1933, writ dism'd); *Wells v. Laird*, 57 S.W.2d 395, 397 (Tex. Civ. App. - Texarkana 1933, writ ref'd).

441. *Cowan v. Mason*, 428 S.W.2d 96, 103 (Tex. Civ. App. - Amarillo 1968, no writ); *Mills v. Snyder*, 387 S.W.2d 954, 956 (Tex. Civ. App. - Waco 1965, writ ref'd n.r.e.); *Gomez v. Riddle*, 334 S.W.2d 197, 199 (Tex. Civ. App. - San Antonio 1960, no writ); *Hightower v. Stafford*, 61 S.W.2d 857, 858 (Tex. Civ. App. - San Antonio 1933, writ dism'd); *Cockerell v. Callaham*, 237 S.W. 316, 321 (Tex. Civ. App. - Galveston 1923, no writ).

442. *Tompkins v. American Republic Corp.*, 248 S.W.2d 1001, 1010 (Tex. Civ. App. - Beaumont 1952, no writ); *Cockerell v. Griffith*, 255 S.W. 490, 493 (Tex. Civ. App. - Galveston 1923, no writ).

443. *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d 326, 330 (Tex. App. - Dallas 1987, writ denied); *Pate v. Ponca Wholesale Mercantile Co.*, 386 S.W.2d 827, 830 (Tex. Civ. App. - Amarillo 1965, writ ref'd n.r.e.); *Stout v. Oliveira*, 153 S.W.2d 590, 596 (Tex. Civ. App. - El Paso 1941, writ ref'd w.o.m.); *Willis v. Gibraltar Sav. & Bldg. Ass'n*, 78 S.W.2d 1030, 1032 (Tex. Civ. App. - Galveston 1935, no writ); *Small v. Daily*, 72 S.W.2d 663, 667 (Tex. Civ. App. - Galveston 1934, writ dism'd).

444. *1st Coppell Bank v. Smith*, 742 S.W.2d 454, 461 (Tex. App. - Dallas 1987, no writ); *Bell v. Sharif-Munir-Davidson Dev. Corp.*, 738 S.W.2d 326, 330 (Tex. App. - Dallas 1987, writ denied); *Hall v. Hayes*, 441 S.W.2d 275, 277 (Tex. Civ. App. - El Paso 1969, no writ); *Leyva v. Pacheco*, 352 S.W.2d 898, 901 (Tex. Civ. App. - El Paso 1962), *rev'd on other grounds*, 358 S.W.2d 547 (Tex. 1962).

445. *Hall v. Hayes*, 441 S.W.2d 275, 277 (Tex. Civ. App. - El Paso 1969, no writ); *Marinick v. Continental Southland Sav. & Loan Ass'n.*, 97 S.W.2d 480, 484 (Tex. Civ. App. - Dallas 1936, no writ).

446. *Hall v. Hayes*, 441 S.W.2d 275, 277 (Tex. Civ. App. - El Paso 1969, no writ); *Griffin v. Stewart*, 348 S.W.2d 800, 803-04 (Tex. Civ. App. - Amarillo 1961, writ dism'd by agr.); *Tompkins v. American Republics Corp.*, 248 S.W.2d 1001, 1010 (Tex. Civ. App. - Beaumont 1952, no writ); *Birdwell v. Kidd*, 240 S.W.2d 488, 490 (Tex. Civ. App. - Texarkana 1951, no writ); *Rinehart v. Tomerlin*, 227 S.W.2d 876, 880 (Tex. Civ. App. - Fort Worth 1950, writ ref'd).

447. *Griffin v. Stewart*, 348 S.W.2d 800, 804 (Tex. Civ. App. - Amarillo 1961, writ dism'd by agr.); *Cockerell v. Griffith*, 255 S.W. 490, 493 (Tex. Civ. App. - Galveston 1923, no writ).

For other cases involving insufficient corroboration see *Leyva v. Pacheco*, 352 S.W.2d 898, 901 (Tex. Civ. App. - El Paso 1961), *rev'd on other grounds*, 358 S.W.2d 547 (Tex. 1962); *Tompkins v. American Republics Corp.*, 248 S.W.2d 1001, 1010 (Tex. Civ. App. - Beaumont 1952, no writ); *Farmers Royalty Holding Co. v. Anglin*, 205 S.W.2d 410, 412 (Tex. Civ. App. - Texarkana 1947, writ ref'd n.r.e.); *Arkansas Louisiana Gas Co. v. Max*, 118 S.W.2d 383, 387 (Tex. Civ. App. - Beaumont 1938, writ dism'd).

448. *Crews v. General Crude Oil Co.*, 287 S.W.2d 243, 247 (Tex. Civ. App. - Beaumont 1955, no writ); *Bettis v. Bettis*, 83 S.W.2d 1076, 1078 (Tex. Civ. App. - El Paso 1935, no writ); *Colonial & U.S. Mortgage Co. v. Theford*, 66 S.W. 103, 104 (Tex. Civ. App. 1901, writ ref'd).

449. *Marinick v. Continental Southland Sav. & Loan Ass'n*, 97 S.W.2d 480, 484 (Tex. Civ. App. - Dallas 1936, no writ).

450. *Cosgrove v. Nelson*, 269 S.W. 891, 893-95 (Tex. Civ. App. - Waco 1925), *aff'd per curiam*, 277 S.W.2d 1118 (Tex. Comm'n App. 1925, judgm't adopted); *Yaseen v. Green*, 140 S.W. 824, 826 (Tex. Civ. App. - San Antonio 1911, writ ref'd).
451. *Cosgrove v. Nelson*, 269 S.W. 891, 893-95 (Tex. Civ. App. - Waco 1925), *aff'd per curiam*, 277 S.W.2d 1118 (Tex. Comm'n App. 1925, judgm't adopted); *Yaseen v. Green*, 140 S.W. 824, 826 (Tex. Civ. App. - San Antonio 1911, writ ref'd).
452. *Yaseen v. Green*, 140 S.W. 824, 826 (Tex. Civ. App. - San Antonio 1911, writ ref'd).
453. *Mack Financial Corp. v. Decker*, 461 S.W.2d 228, 230 (Tex. Civ. App. - Dallas 1970, no writ); *Hughes v. Dopson*, 135 S.W.2d 148, 150 (Tex. Civ. App. - Amarillo 1939, no writ).
454. *Martin v. Skelton*, 567 S.W.2d 585, 587 (Tex. Civ. App. - Fort Worth 1978, writ ref'd n.r.e.).
455. *Foster v. Cumbie*, 315 S.W.2d 151, 158 (Tex. Civ. App. - Dallas 1958, writ ref'd n.r.e.).
456. *Rogers v. Guinn*, 545 S.W.2d 861, 862 (Tex. Civ. App. - Amarillo 1976, no writ).
457. *Id.*
458. TEX. R. CIV. EVID., Rule 902(8); TEX. R. CRIM. EVID., Rule 902(8). *See also Wiggins v. Flesher*, 50 Tex. 57, 62 (1878); *Jousan v. Presidio Corp.*, 590 S.W.2d 524, 525 (Tex. Civ. App. - Houston [1st Dist.] 1979, no writ); *Reed v. Beheler*, 198 S.W.2d 625, 627 (Tex. Civ. App. - Fort Worth 1946, no writ); *Hughes v. Dopson*, 135 S.W.2d 148, 150 (Tex. Civ. App. - Amarillo 1939, no writ); *Thane v. Dallas Joint Stock Land Bank of Dallas*, 129 S.W.2d 795, 799 (Tex. Civ. App. - Amarillo 1939, no writ); *Smith v. Dozier Constr. Co.*, 66 S.W.2d 744, 745 (Tex. Civ. App. - Austin 1933, no writ).
459. *See McKellar v. Peck*, 39 Tex. 381, 388 (1873); *Lake v. Earnest*, 116 S.W. 865, 867 (Tex. Civ. App. 1909, writ ref'd).
460. 39 Tex. 381 (1873).
461. *Id.* at 388.
462. 116 S.W. 865 (Tex. Civ. App. 1909, writ ref'd).
463. *Id.* at 867.
464. *Chester v. Breitling*, 88 Tex. 586, 590, 32 S.W. 527, 529 (1895); *Hill v. McIntyre Drilling Co.*, 59 S.W.2d 193, 195 (Tex. Civ. App. - Texarkana 1933, writ disp'd); *Gaither v. Gaither*, 14 S.W.2d 286, 288 (Tex. Civ. App. - Eastland 1929), *aff'd*, 25 S.W.2d 299 (Tex. Comm'n App. 1930, judgm't adopted); *Carr v. Miller*, 123 S.W. 1158, 1160 (Tex. Civ. App. 1909, writ disp'd); *Halbert v. Hendrix*, 26 S.W. 911, 912 (Tex. Civ. App. 1894, writ ref'd).
465. *Grissom v. Anderson*, 125 Tex. 26, 31, 79 S.W.2d 619, 622 (1935); *Chester v. Breitling*, 88 Tex. 586, 590, 32 S.W. 527, 529 (1895).
466. *Gaither v. Gaither*, 14 S.W.2d 286, 288 (Tex. Civ. App. - Eastland 1929), *aff'd*, 25 S.W.2d 299 (Tex. Comm'n App. 1930, judgm't adopted); *Halbert v. Hendrix*, 26 S.W. 911, 912 (Tex. Civ. App. 1894, writ ref'd).
467. *Hill v. Foster*, 143 Tex. 482, 487, 186 S.W.2d 343, 346 (1945); *Gaither v. Gaither*, 14 S.W.2d 286, 287 (Tex. Civ. App. - Eastland 1929), *aff'd*, 25 S.W.2d 299 (Tex. Comm'n App. 1930,

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

468. *Starnes v. Beitel*, 50 S.W. 202, 203 (Tex. Civ. App. 1899, writ ref'd).

469. 50 S.W. 202 (Tex. Civ. App. 1899, writ ref'd).

470. *Id.* at 203.

471. *Id.*

472. *Id.*

473. *Hill v. Foster*, 143 Tex. 482, 489, 186 S.W. 343, 347 (1945); *Gaither v. Gaither*, 14 S.W.2d 286, 287 (Tex. Civ. App. - Eastland 1929), *aff'd*, 25 S.W.2d 299 (Tex. Comm'n App. 1930, judgm't adopted).

474. TEX. PROP. CODE ANN. § 11.005(b) (Vernon 1984). *See also Hill v. Foster*, 143 Tex. 482, 487, 186 S.W. 343, 346 (1945); *Johnson v. Taylor*, 60 Tex. 360, 362 (1883); *Cates v. Greene*, 114 S.W.2d 592, 594 (Tex. Civ. App. - Austin 1938, no writ); *Gaither v. Gaither*, 14 S.W.2d 286, 287 (Tex. Civ. App. - Eastland 1929), *aff'd*, 25 S.W.2d 299 (Tex. Comm'n App. 1930, judgm't adopted); *McCracken v. Sullivan*, 221 S.W. 336, 338-39 (Tex. Civ. App. - San Antonio, no writ).

475. *Johnson v. Taylor*, 60 Tex. 360, 362 (1883); *Silcock v. Baker*, 61 S.W. 939, 940 (Tex. Civ. App. 1901, no writ). *See also Downs v. Peterson*, 99 S.W. 751, 752-53 (Tex. Civ. App. 1907, writ ref'd).

476. 99 S.W. 751 (Tex. Civ. App. 1907, writ ref'd).

477. *Id.* at 753.

478. TEX. PROP. CODE ANN. § 11.005(c) (Vernon 1984). *See also Johnson v. Taylor*, 60 Tex. 360, 362 (1883).

479. *Hughes & Wright v. Vaughn*, 97 S.W. 525, 526 (Tex. Civ. App. 1906), *rev'd on other grounds*, 100 Tex. 511, 101 S.W. 579 (Tex. 1907).

480. *Johnson v. Taylor*, 60 Tex. 360, 364 (1883).

481. *Veeder v. Gilmer*, 103 Tex. 458, 464, 129 S.W. 595, 598 (1910); *Norton v. Davis*, 83 Tex. 32, 37, 18 S.W. 430, 431 (1892); *Taylor v. Silliman*, 108 S.W. 1011, 1012 (Tex. Civ. App. 1908, writ ref'd); *Kimmy v. Abney*, 107 S.W. 885, 886 (Tex. Civ. App. 1908, no writ); *Kopke v. Votaw*, 95 S.W. 15, 16 (Tex. Civ. App. 1906, writ ref'd); *Starnes v. Beitel*, 50 S.W. 202, 203 (Tex. Civ. App. 1899, writ ref'd).

482. TEX. CIV. PRAC. & REM. CODE ANN. § 16.033 (Vernon Supp. 2000). *See also Bunrow v. McMahan*, 384 S.W.2d 124, 127 (Tex. 1964).

483. TEX. CIV. PRAC. & REM. CODE ANN. § 16.033(a)(6) (Vernon Supp. 2000).

484. *Id.* at § 16.033(a)(8).

485. TEX. REV. CIV. STAT. ANN. art. 3726, 3726b (now repealed).

486. TEX. R. CIV. EVID. Rule 803(14). *See also 2 Texas Practice, Texas Rules of Evidence: Civil and Criminal* § 803.19 (1993).

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).

489. *Waters v. Spofford*, 58 Tex. 115, 122 (1882); *Butler v. Dunagan*, 19 Tex. 559, 565 (1857); *McCelvey v. Cryer*, 28 S.W. 691, 692 (Tex. Civ. App. 1894, no writ).

490. *Holland v. Votaw*, 103 Tex. 534, 535, 131 S.W. 406, 406 (1910); *Savage v. Rhea*, 33 S.W.2d 429, 432 (Tex. Comm'n App. 1930, judgm't adopted); *Klumpp v. Stanley*, 113 S.W. 602, 603 (Tex. Civ. App. 1908, no writ).

491. *Houston Oil Co. v. Kimball*, 103 Tex. 94, 110-11, 122 S.W. 533, 541 (1909); *Ariola v. Newman*, 113 S.W. 157, 158 (Tex. Civ. App. 1908, writ ref'd); *Haney v. Gartin*, 113 S.W. 166, 167 (Tex. Civ. App. 1908, writ ref'd).

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

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

494. *Hill v. Floating Ducks of America, Inc.*, 590 S.W.2d 723, 729 (Tex. Civ. App. - San Antonio 1979, no writ).

495. TEX. GOV'T CODE ANN. § 602.002(1) (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).

497. TEX. GOV'T CODE ANN. § 602.002(3) (Vernon Supp. 2000).

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).

506. 28 U.S.C. §§ 459, 636.

507. TEX. GOV'T CODE ANN. § 602.003(1) (Vernon 1994).

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).

515. *See In the Interest of Bruno*, 974 S.W.2d 401, 404 (Tex. App. - San Antonio 1998, no writ); *Terrell v. Chambers*, 630 S.W.2d 800, 802 (Tex. App. - Tyler 1982), *rev'd on other grounds*, 639 S.W.2d 451 (Tex. 1982); *Morris v. Dunn*, 164 S.W.2d 562, 563 (Tex. Civ. App. - Fort Worth 1942, no writ).

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.*

520. TEX. GOV'T CODE ANN. § 312.011(1) (Vernon 1998); *See Sullivan v. First Nat'l Bank of Flatonia*, 83 S.W. 421, 422 (Tex. Civ. App. - 1904, no writ).

521. *Id.*

522. *Id.*

523. *Id.*

524. *De Los Santos v. S.W. Texas Meth. Hosp.*, 802 S.W.2d 749, 755 (Tex. App. - San Antonio 1990, no writ). *See also* 3 Am.Jur. *Affidavits* § 11.

525. *Colbert v. State*, 314 S.W.2d 602, 603 (Tex. Crim. App. - 1958); *Murphy v. State*, 103 S.W.2d 765, 765-66 (Tex. Crim. App. - 1937); *State v. Bishop*, 921 S.W.2d 765, 767 (Tex. App. - San Antonio 1996, no writ); *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ).

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).

527. *State v. Bishop*, 921 S.W.2d 765, 766 (Tex. App. - San Antonio 1996, no writ); *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ).

528. *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ); *Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
529. *Kohn Bros. v. Wesler & August*, 69 Tex. 67, 68-69, 6 S.W. 551, 552 (1887); *Acme Brick v. Temple Associates, Inc.*, 816 S.W.2d 440, 441 (Tex. App. - Waco 1991, writ denied).
530. *See Hardy v. Beaty*, 84 Tex. 562, 566, 19 S.W. 778, 779 (1892); *Marion Mach. Foundry & Supply Co. v. Central Motor Co.*, 285 S.W. 933, 935 (Tex. Civ. App. - Eastland 1926, no writ); *Neiman v. State*, 16 S.W. 253, 253 (Tex. App. 1891, no writ).
531. *Steinham v. Gahwiler*, 30 S.W. 472, 474 (Tex. App. - 1895, no writ).
532. *Id.*
533. *Id.*
534. *Norcross v. Conoco, Inc.*, 720 S.W.2d 627, 630 (Tex. App. - San Antonio 1986, no writ). *But see Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
535. *Order of Aztecs v. Noble*, 174 S.W. 623, 624 (Tex. Civ. App. - Austin 1915, no writ).
536. *See Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
537. TEX. GOV'T CODE ANN. § 312.011(1) (Vernon 1998). *See also Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
538. TEX. PROP. CODE ANN. § 12.001(b) (Vernon Supp. 2000). *See also Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, writ denied).
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.
550. *See Harvey v. Cummings*, 68 Tex. 599, 604, 5 S.W. 513 514-15 (1887); *Riley v. Pool*, 24 S.W. 85, 86 (Tex. Civ. App. 1893, no writ).
551. TEX. CIV. PRAC. & REM. CODE ANN. § 121.010 (Vernon 1997).

552. *Watkins v. Hall*, 57 Tex. 1, 3-4 (1882).
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.
556. *Id.*, 5 S.W. at 515. *See also Riley v. Pool*, 24 S.W. 85, 86 (Tex. Civ. App. 1893, no writ).
557. 76 S.W. 611 (Tex. Civ. App. 1903, no writ).
558. *Id.* at 612.
559. *Id.*
560. *Id.*
561. TEX. CIV. PRAC. & REM. CODE ANN. § 121.010 (Vernon 1997).
562. *Jones v. Robbins*, 74 Tex. 615, 619-20, 12 S.W. 824, 826 (1889); *Downs v. Porter*, 84 Tex. 59, 64 (1880); *Deen v. Wills*, 21 Tex. 642, 645 (1858); *Dorn v. Best*, 15 Tex. 62, 65-66 (1855). *But see, Johnson v. Franklin*, 76 S.W. 611, 612 (Tex. Civ. App. 1903, no writ).
563. TEX. PROP. CODE ANN. § 12.001(b) (Vernon Supp. 2000). *See also Drake v. McGalin*, 626 S.W.2d 786, 788 (Tex. App. 1981, no writ).
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).
575. *McCracken v. Sullivan*, 221 S.W. 336, 337-39 (Tex. Civ. App. - San Antonio 1920, no writ).
576. TEX. CIV. PRAC. & REM. CODE ANN. § 121.014 (Vernon 1997). *See also Lawyers Surety Corp. v. Gulf Coast Inv. Corp.*, 416 S.W.2d 779, 779 (Tex. 1967); *Standard Accident Ins. Co. v. State*, 57 S.W.2d 191, 193 (Tex. Civ. App. - Fort Worth 1933, writ dismissed); *Britain v. Monsur*, 195 S.W. 911, 915 (Tex. Civ. App. - Beaumont 1917, writ dismissed).

577. *Standard Accident Ins. Co. v. State*, 57 S.W.2d 191, 194 (Tex. Civ. App. - Fort Worth 1933, writ dismissed); *Britain v. Monsur*, 195 S.W. 911, 915 (Tex. Civ. App. - Beaumont 1917, writ dismissed).

578. 195 S.W. 911 (Tex. Civ. App. - Beaumont 1917, writ dismissed).

579. *Id.* at 915-16.

580. *Id.* at 916.

581. TEX. GOV'T CODE ANN. § 406.017 (Vernon 1998).

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

583. *Id.* at § 32.21. *See also Sheffield v. State*, 307 S.W.2d 100,104 (Tex. Crim. App. 1957).

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

585. *See Brown v. State*, 43 Tex. 478, 480 (1875).

586. 19 U.S.C. § 1016 (Supp. 1999).

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.