

ACKNOWLEDGEMENTS AND DEEDS: 15 QUESTIONS AND ANSWERS

Stewart Title Guaranty Company ~ 2005 Webinar Series

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1. What is an acknowledgement, and what is its function?

--Certificate of Acknowledgment serves two-fold purpose:

- * Proves document-signature's authenticity
- * Entitles document to be accepted for filing and recording
[TEX. PROPERTY CODE §12.001(a)]

--Essential elements of the Certificate of Acknowledgement:

- * Shows that acknowledging party appeared personally before the officer (e.g. notary public) taking the acknowledgement
 - * Identifies acknowledging party by name corresponding to acknowledged document
 - * Signed by officer taking acknowledgement
 - * Sealed with officer's official seal (if applicable)
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2. How is a jurat different from an Acknowledgement?

--Jurat is an officer's certificate showing that:

- *Officer administered an oath to the affiant signing
- *Affiant swore under oath that facts stated are true
- *Affiant's signature was witnessed by the officer

--Prior to September 1, 1989, documents could only be accepted for filing with an acknowledgement. Documents executed on or after September 1, 1989, are recordable with either an acknowledgement or a jurat

[TEX. PROPERTY CODE §12.001(a)].

3. Who can take a person's Texas acknowledgement within the United States or its territories?

--Within Texas [TEX. CIV. PRACTICE & REMEDIES CODE §121.001(a)]:

*District Court clerk

*County Court judge or clerk

*Notary Public commissioned in Texas

--TEX. GOVERNMENT CODE §§602.002–602.203:

Compare who can generally execute a jurat in Texas (same three, PLUS retired judge, justice of the peace, justice court clerk, serving legislator or retired legislator, Attorney General, Speaker of the House of Representatives, Secretary of State, Lieutenant Governor, or Governor!)

3. Who can take a person's Texas acknowledgement within the United States or its territories?

--Elsewhere in the United States [TEX. CIV. PRACTICE & REMEDIES CODE §121.001(b) for acknowledgements and TEX. GOVERNMENT CODE §602.003 for jurats]:

- *Clerk of any court of record having a seal

- *Commissioner of Deeds appointed under Texas law

- *Notary Public commissioned in the state

--See also 18 U.S.C. 4004: In federal penal/correctional institutions, acknowledgement of any officer, employee, or inmate may be taken by warden, superintendent, associate warden/superintendent, chief clerk, or record clerk.

4. Who can take a Texas acknowledgement in a foreign country (outside the United States or its territories)?

--See TEX. CIVIL PRACTICE & REMEDIES CODE §121.001(c):

- *any Minister, Commissioner, or Charge D'Affairs of the United States who is a resident of and officially accredited to the foreign country
- *any Consul-General, Consul, Vice-Consul, Commercial Agent, Vice-Commercial Agent, Deputy Consul, or Consular Agent of the United States who resides in the foreign country
- *Notary Public or other official of the foreign country who has legal authority to administer an oath

--See TEX. GOVERNMENT CODE §602.004: Same rules apply for obtaining a jurat.

5. Is there a special rule for acknowledgements given by military personnel and their spouses?

--See TEX. CIV. PRACTICE & REMEDIES CODE §121.001(d):

* Anywhere in the world: Acknowledgement given by a member of the United States Armed Forces or member's spouse can be taken by any commissioned officer of the United States Armed Forces

* Applies to both active duty members and reserve members

* Acknowledgement can be accepted at face value

* No seal is required

--See TEX. GOVERNMENT CODE §602.005: Same rule applies for obtaining jurats from military personnel and spouses.

6. Is there a special rule for acknowledgements given by military personnel and their spouses?

--See TEX. CIVIL PRACTICE & REMEDIES CODE
§§121.006–121.009:

- *Statutes set out one so-called “long-form acknowledgement” (§121.007) and five variations of the “short-form” acknowledgement (§121.008).
 - *§121.006: Statutory forms may be altered as circumstances require, and statutory authorization of particular forms does not prevent the use of other forms (i.e., out-of-state and foreign certificates, so long as other forms contain the essential elements of a proper acknowledgement).
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7. What documents are recordable without either an acknowledgement or a jurat?

--See TEX. PROPERTY CODE §12.006: Official grants made by the State of Texas or the United State are recordable without necessity of acknowledgment or further proof, and official grants include:

- * Patents executed by the Governor of Texas

- * Deeds from agencies of the State of Texas, including the Veterans Land Board

--Copies of documents from official records, properly certified and, when required, authenticated (and unadulterated!) [e.g., see TEX. PROBATE CODE §§96–97 concerning foreign wills]

8. What are the ramifications of a fatally defective certificate of acknowledgment?

See TEX. PROPERTY CODE T.2, Title Examination Standard 4.20: Sufficiency of acknowledgement affects the legal effectiveness of the instrument's recording. Presence of a so-called "fatal" defect in its acknowledgment will cause an instrument be denied the benefit of recordation—in other words, even though the instrument physically appears in the real estate records, it will, as a matter of law, be treated as unrecorded.

9. What defects are fatal to an acknowledgement's legal effectiveness?

- *failure to include acknowledging party's name in Certificate of Acknowledgement;
 - *significant variance in acknowledging party's name in the Certificate versus the instrument being acknowledged;
 - *omission of the word "acknowledged" in the Certificate;
 - *failure of officer taking acknowledgement to sign the Certificate;
 - *absence of the officer's official seal when its use is applicable; or,
 - *officer taking acknowledgement was disqualified, and his/her disqualification is evident on the face of the instrument.
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10. How can a defective acknowledgement be cured/fixed?

--FIRST QUESTION: Does the acknowledgement really need to be fixed? NOT necessary if:

- *Bad acknowledgement appears on a recorded Transfer of Lien, Assignment of Lien, Corporate Resolution, etc. (peripheral, non-conveyance documents); or
 - *Bad acknowledgement appears on a recorded Deed of Trust being paid off and released as result of property's sale; or
 - *Bad acknowledgment appears on a recorded Deed of Trust being refinanced, and no other liens (voluntary or involuntary) have been filed in the interval.
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10. How can a defective acknowledgement be cured/fixed?

--NEXT QUESTION: How much time has passed since filing of the document with a bad acknowledgment? Four years with no lawsuit pending that affects title? No problem! TEX. CIVIL PRACTICE & REMEDIES CODE §16.033(a)(8) automatically cures every "failure of [an] instrument to show an acknowledgment or jurat that complies with applicable law."

--OTHERWISE, FATAALLY DEFECTIVE ACKNOWLEDGEMENT MUST BE CURED, and three options are available:

- *correction of acknowledgement by original notary public, followed by re-filing of original instrument; OR

- *grantor's re-acknowledgment of original instrument before a different notary public, followed by re-filing of original instrument; OR

- *filing new properly acknowledged correction instrument executed by the same grantor

11. Can a document be recorded if its text is in a language other than English?

--See TEX. PROPERTY CODE §11.002: No real estate document having text/content in a foreign language can be accepted for recording unless:

- *document is dated prior to August 22, 1897, and
 - *document is accompanied by English-language transaction authenticated on oath by the translator.
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12. Can an English-language document be recorded in Texas with a foreign-language Certificate of Acknowledgement?

--See TEX. PROPERTY CODE §11.002: When an English-language document bears a Certificate of Acknowledgement containing a foreign-language certification, stamp, or seal, the document can be accepted for filing and validly recorded if:

- *accompanied at filing by an English-language translation of the foreign-language portion of the certificate, stamp, or seal, and
 - *accuracy of the translation is sworn to by the translator.
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13. What is an “apostille” (a/k/a “apostile”)?

--An apostille is a certificate issued by governmental authority for the purpose of proving the regularity of a public record, including acknowledgements, in order for the document to be legally acceptable in another country.

--See TEX. PROPERTY CODE §11.02:

- *Apostille is not a substitute for an acknowledgement (“... any apostille relating to an acknowledgement...”)
 - *If not in English language, apostille must be accompanied by an authenticated translation
 - *Form of apostille must conform to the Hague Convention (treaty) dated October 5, 1961
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14. In order for an instrument to be recorded in Texas, is it mandatory that the officer apply an official seal to the certificate of acknowledgment?

--See TEX. PROPERTY CODE §12.001(d) and TEX. CIVIL PRACTICE & REMEDIES CODE §121.004(c):

* Outside Texas, *but within the United States or territories*:
Notary Public's seal is not required if the jurisdiction where taken does not require use of a seal

* Outside the U.S. and its territories: Seal still required

--See TEX. CIVIL PRACTICE & REMEDIES CODE §121.004(d):

* Commissioned military officer taking acknowledgement of military service member or member's spouse: No seal required

15. When is a Texas Notary Public disqualified from taking another person's acknowledgement?

--Notary Public taking an acknowledgement cannot also be:

- *a party to the instrument, e.g. grantor or grantee, including named Trustee in a Deed of Trust
 - *a spouse of a party to the instrument
 - *a participant in an entity-party to the instrument, e.g. partner in partnership or stockholder/officer of corporation
 - *a trust participant, e.g. trustee or beneficiary, if the instrument affects the trust
 - *a person having a direct financial interest/stake in the transaction producing the instrument, e.g. real estate broker
 - *a person acting as agent or attorney-in-fact for another party to the instrument
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