

SUMMARY OF THE DUTIES OF A NOTARY IN A REAL ESTATE TRANSACTION

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INTRODUCTION

People pay large amounts of money for a house and rely on the deed to be a valid transfer of the property to them. Banks part with large amounts of money in exchange for a note and a mortgage, relying on the mortgage to provide security for the debt. Our real estate industry is dependent upon the validity of such documents. Notaries have an important role in assuring such validity by determining, and then certifying, that the documents were signed by the person named in the document. For that reason, we all have a vested interest in the truthfulness and accuracy of notary certifications. It is essential to all of us that we can rely on the notary. Discussed below are the two certifications (of oaths and acknowledgments) made by notaries on real estate documents. This paper is to briefly explain the uses and rules of each.

OATHS

A notary may administer and certify an oath. Minn. Stat. § 358.09. Such certification is referred to as a “jurat” and is required for statements made under oath, such as affidavits, certificates of trust and mechanic lien statements. (Deeds, mortgages and satisfactions are not such documents.)

Requirements: The document must be signed in the presence of the notary. The notary must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary is the person whose true signature is on the document. Minn. Stat. §§ 358.42(b), 358.47(c), and 359.085 Subd. 2. A notary has satisfactory evidence that a person is the person whose true signature is on the document if that person (i) is personally known to the notary, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notary, or (iii) is identified on the basis of identification documents. Minn. Stat. § 359.085 Subd. 6.

Form of oath: The person making the sworn statement uplifts a hand. The notary administers an oath substantially in the following form. Minn. Stat. § 358.09.

“You do swear that the statements of this affidavit by you subscribed, are true. So help you God.” Minn. Stat. § 358.07(10).

The word “affirm” may be substituted for “swear” and the phrase “and this you do under penalties of perjury” may be substituted for “So help you God” if the affiant claims religious scruples against taking the oath. Minn. Stat. § 358.08.

Certificate of Notary: The short form certificate for a verification upon oath or affirmation is set out in Minn. Stat. § 358.48(3):

State of
County of

Signed and sworn to (or affirmed) before me on _____ (date) by _____ (name(s) of person(s) making statement).

(Seal, if any)

.....
(Signature of notarial officer)

.....
Title (and Rank)
My commission expires:

The certificate calls for the state and county where the oath was administered and the document signed. The date of such signing and oath is required, not the date of the notary's certification. The notary signs the certificate and affixes his or her seal (stamp). Title and rank is not required for notaries. Because the seal states the date of expiration of the notary's commission, it need not be added to the certificate.

ACKNOWLEDGMENTS

Notaries are authorized to take acknowledgments. Minn. Stat. § 358.41(1). An acknowledgment is a declaration by a person that the person has executed a document for the purposes stated in the document. Minn. Stat. § 358.41(2). Before being acceptable for recording, deeds must be acknowledged by the grantor and mortgages acknowledged by the mortgagor. Minn. Stat. §§ 507.24 Subd. 1 and 386.39. (Although unacknowledged documents may not be recorded, they are valid between the parties to the document.)

Requirements: The notary must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the acknowledgment is the person whose true signature is on the document. Minn. Stat. §§ 358.42(a) and 359.085 Subd. 1. A notary has satisfactory evidence that a person is the person whose true signature is on a document or electronic record if that person (i) is personally known to the notary, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notary, or (iii) is identified on the basis of identification documents. Minn. Stat. § 359.085 Subd. 6.

Notary's Certificate of Acknowledgment: The form of the notary's certificate of acknowledgment by an **individual** is set out in Minn. Stat. § 358.48(1) as follows:

State of
County of

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s)).

(Seal, if any)

.....
(Signature of notarial officer)

.....
Title (and Rank)
My commission expires:

The form of the notary's certificate of acknowledgment made in a **representative** capacity is set out in Minn. Stat. § 358.48(2) as follows:

State of
County of

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom the instrument was executed).

(Seal, if any)

.....
(Signature of notarial officer)

.....
Title (and Rank)
My commission expires:

Note that while the acknowledged document need not be signed in front of the notary, in light of the notary's duty to determine that the signature is the true signature, the best practice is to require the signature to be made in the notary's presence. Note also that the person acknowledging does not first take an oath.

If the document is made by a husband and wife, the certificate of acknowledgment should identify them as such. If they acknowledge the document before separate notaries, each certificate of acknowledgment should identify the name of the acknowledger's spouse. Minn. Stat. § 358.14.

GENERAL INFORMATION

The signature of a person (1) must be in the handwriting of the person, or (2) if the person is unable to write (i) the person's mark or name written by another at the request and in the presence of the person, or (ii) by a rubber stamp facsimile of the person's actual signature, mark or a signature of the person's name or a mark made by another and adopted for all purposes of signature by the person with a motor disability and affixed in the person's presence. Minn. Stat. § 645.44 Subd 14. In such a situation, the notary's certificate should be amended to state sufficient facts to show that the statutory requirements were met.

Notaries can act throughout the state. The county where the document was signed under oath or acknowledged to the notary must be noted in the notary's certificate.

The notary's certificate of verification or acknowledgment need not be put on the document the same day the document was signed or acknowledged.

A notary may not certify his or her own acknowledgment. Minn. Stat. § 359.085 Subd. 7. A notary should not certify a document in which he or she takes an interest. Bank of Benson vs. Hove, 45 Minn. 40, 47 NW 449 (1890).

The specifications of a notary's stamp are set out in Minn. Stat. § 359.03 Subd. 3:

The seal of every notary public may be affixed by a stamp that will print a seal which legibly reproduces under photographic methods the seal of the state of Minnesota, the name of the notary, the words "Notary Public," and the words "My commission expires, " with the expiration date shown thereon or may be an electronic form. A physical seal used to authenticate a paper document shall be a rectangular form of not more than three-fourths of an inch vertically by 2-1/2 inches horizontally, with a serrated or milled edge border, and shall contain the information required by this subdivision.

SUMMARY

Notaries have an important function...one that our industry relies upon to be performed with the utmost integrity and according to law.

ADDENDUM

The Minnesota Department of Commerce is empowered to bring enforcement actions against notaries. Following is a list of notary enforcement actions listed on the Department of Commerce website, Jan 2009-2010. Note also that false certification by a notary may be a crime under Minn. Stat. § 609.65.

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Respondent notarized a document prior to being appointed as a notary, failed to verify accuracy of signatures, failed to record her signature, and failed to notify the Secretary of State of her address change.

Respondent notarized a quit claim deed without verifying that the signatures of the individuals whose names appeared on the document were true and accurate.

Respondent notary requested another notary to notarize a signature without witnessing the signing.

Respondent affixed his notary stamp and signature to a document without witnessing the document being signed or verifying the signature to be true and accurate.

Respondent failed to update name and address; failed to notify Secretary of State of criminal charges and conviction.

Respondent improperly notarized a document.

Respondent charged notary fees greater than that allowed by law.

Respondent notarized documents after his commission expired.

Respondent notarized documents with incorrect dates

Respondent acted as a notary without having a valid notary commission.

Respondent failed to accurately complete the acknowledgement section of a modification of mortgage document by writing a name other than the name of the individual who Resp was witnessing.

Respondent failed to accurately complete the acknowledgement sections on three modification of mortgage documents by failing to put a date in the acknowledgement section of those documents.

Respondent affixed notary stamp and signature to a document without having actually witnessed anyone sign the document.

Respondent notarized a document that contained a forged signature.

Respondent affixed her notary stamp and signature to a document that failed to include any signature or jurisdiction where notarization occurred.

Respondent notarized numerous affidavits not signed in her presence.