

Acknowledgment

A formal declaration before a duly authorized officer by a person who has executed an instrument that such execution is his act and deed.

Technically, an “acknowledgment” is the declaration of a person described in and who has executed a written instrument, that he executed the same.

As commonly used, the term means the certificate of a (notarial) officer, empowered to take an acknowledgment or proof of the transfer of real property, that on a specified date “before me came, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.”

The purposes of the law respecting acknowledgments are not only to promote the security of land titles and to prevent fraud, but to furnish proof of the transfer of property (Armstrong v. Combs, 15 App. Div. 246) so as to permit the document to be given in evidence, without further proof of its execution, and make it a recordable instrument.

An acknowledgment must not be taken by a notary public unless he knows, or has satisfactory evidence, that the identity of the person making the acknowledgment is the same person who is named in the document, and who has executed the document.

For an acknowledgment, it is not essential that the person who executed the instrument sign his name in the presence of the notary.

Taking acknowledgments over the telephone is illegal and a notary public is guilty of a misdemeanor in doing so.

In the certificate of acknowledgment, a notary public declares: “On this day of 20, before me came to me known,” etc. Unless the person purporting to have made the acknowledgment **actually and personally appeared before the notary on the day specified**, the notary’s certificate that he so came is palpably false and fraudulent.

Interest as a Disqualification: A notary public should not take an acknowledgment to a legal instrument to which the notary is a party in interest.

Fraudulent Certificates of Acknowledgment: A notary public who knowingly makes a false certificate that a deed or other written instrument was acknowledged by a party thereto is guilty of forgery in the second degree, which is punishable by imprisonment for a term of not exceeding 7 years. While the absence of guilty knowledge or criminal intent

would absolve the notary from criminal liability, the conveyance, of which the false certification is an essential part, is a forgery and, therefore, invalid.

Administrator

A person appointed by the court to manage the estate of a deceased person who left no will.

Affiant

The person who makes and subscribes his signature to an affidavit.

Affidavit

An affidavit is a signed statement, duly sworn to, by the maker thereof, before a notary public or other officer authorized to administer oaths. The venue, or county wherein the affidavit was sworn to should be accurately stated. But it is of far more importance that the affiant, the person making the affidavit, should have personally appeared before the notary and have made oath to the statements contained in the affidavit as required by law.

Under the Penal Law (§210.00) the wilful making of a false affidavit is perjury, but to sustain an indictment therefor, there must have been, in some form, in the presence of an officer authorized to administer an oath, an unequivocal and present act by which the affiant consciously took upon himself the obligation of an oath; his silent delivery of a signed affidavit to the notary for his certificate, is not enough.

A notary public will be removed from office for preparing and taking the oath of an affiant to a statement that the notary knew to be false.

Affirmation

A solemn declaration made by persons who conscientiously decline taking an oath; it is equivalent to an oath and is just as binding; if a person has religious or conscientious scruples against taking an oath, the notary public should have the person affirm.

The following is a form of affirmation: "Do you solemnly, sincerely, and truly, declare and affirm that the statements made by you are true and correct."

Apostile

Department of State authentication attached to a notarized and county-certified document for possible international use.

Attest

To witness the execution of a written instrument, at the request of the person who makes it, and subscribe the same as a witness.

Attestation Clause

The clause (e.g., at the end of a will) in which the witnesses certify that the document has been executed before them, and the manner of the execution of the same.

Authentication (Notarial)

A certificate subjoined by a county clerk to any certificate of proof or acknowledgment or oath signed by a notary; this county clerk's certificate authenticates or verifies the authority of the notary public to act as such.

Bill of Sale

A bill of sale is a written instrument given in order to pass a personal property title from vendor to vendee.

Certified Copy

A copy of a public record signed and certified as a true copy by the public official having custody of the original. A notary public has no authority to issue certified copies. Notaries must not certify to the authenticity of legal documents and other papers required to be filed with foreign consular officers.

Chattel

Chattel is personal property, such as household goods or fixtures.

Chattel Paper

A writing or writings which evidence both an obligation to pay money and a security interest in a lease or specific goods. The agreement which creates or provides for the security interest is known as a security agreement.

Codicil

A document made subsequent to a will and modifying it in some respects.

Credential Analysis

A process where a third-party service validates a government-issued identification presented by an individual through a review of public and proprietary data sources.

Communication Technology

An electronic device or process that:

1. Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
2. When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

Consideration

Anything of value given to induce entering into a contract; it may be money, personal services, or even love and affection.

Contempt of Court

Contempt of Court is behavior disrespectful of the authority of a court which disrupts the execution of court orders.

Contract

An agreement between competent parties to do or not to do certain things for a legal consideration, whereby each party acquires a right to what the other possesses.

Conveyance (Deed)

Every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered.

County Clerk's Certificate

See "Authentication (Notarial)."

Deponent

A deponent is one who makes an oath to a written statement. Technically, a deponent is a person subscribing a deposition, but the term is used interchangeably with "Affiant."

Deposition

The testimony of a witness taken out of court or other hearing proceeding, under oath or by affirmation, before a notary public or other person, officer or commissioner before whom such testimony is authorized by law to be taken, which is intended to be used at the trial or hearing.

Duress

Unlawful constraint exercised upon a person whereby he is forced to do some act against his will.

Electronic Notary

A notary public who has registered with the secretary of state the capability of performing electronic notarial acts.

Electronic Notarial Act

An official act by a notary public, physically present in the state of New York, on or involving an electronic record and using means authorized by the secretary of state.

Electronic Record

Information that is created, generated, sent, communicated, received or stored by electronic means.

Escrow

The placing of an instrument in the hands of a person as a depository who on the happening of a designated event, is to deliver the instrument to a third person. This agreement, once established, should be unalterable.

Executor

One named in a will to carry out the provisions of the will.

Ex Parte (From One Side Only)

A hearing or examination in the presence of, or on papers filed by, one party and in the absence of the other.

Felony

A crime punishable by death or imprisonment in a state prison.

Guardian

A person in charge of a minor's person or property.

Identity Proofing

A process or service through which a third party confirms the identity of a signer through review of personal information from public and proprietary data sources.

Judgment

Decree of a court declaring that one individual is indebted to another and fixing the amount of such indebtedness.

Jurat

A jurat is that part of an affidavit where the officer (notary public) certifies that it was sworn to before him. It is not the affidavit. The following is the form of jurat generally employed:

“Sworn to before me this day of, 20”

Those words placed directly after the signature in the affidavit stating that the facts therein contained were sworn to or affirmed before the officer (notary public) together with his official signature and such other data as required by law.

Laches

The delay or negligence in asserting one's legal rights.

Lease

A contract whereby, for a consideration, usually termed rent, one who is entitled to the possession of real property transfers such right to another for life, for a term of years or at will.

Lien

A legal right or claim upon a specific property which attaches to the property until a debt is satisfied.

Litigation

The act of carrying on a lawsuit.

Misdemeanor

Any crime other than a felony.

Mortgage On Real Property

An instrument in writing, duly executed and delivered that creates a lien upon real estate as security for the payment of a specified debt, which is usually in the form of a bond.

Notary Public

A public officer who executes acknowledgments of deeds or writings in order to render them available as evidence of the facts therein contained; administers oaths and affirmation as to the truth of statements contained in papers or documents requiring the administration of an oath.

Oath

A verbal pledge given by the person taking it that his statements are made under an immediate sense of this responsibility to God, who will punish the affiant if the statements are false. Notaries public must administer oaths and affirmations in manner and form as prescribed by law.

- An oath or affirmation must be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.
- An oath must be administered as required by law. The person taking the oath must personally appear before the notary; an oath cannot be administered over the telephone, and the oath must be administered in the form required by the statute.
- When an oath is administered the person taking the oath must express assent to the oath repeated by the notary by the words “I do” or some other words of like meaning.
- For an oath or affirmation to be valid, whatever form is adopted, it is necessary that: **first**, the person swearing or affirming must personally be in the presence of the notary public; **secondly**, that the person unequivocally swears or affirms that what he states is true; **thirdly**, that he swears or affirms as of that time; and, **lastly**, that the person conscientiously takes upon himself the obligation of an oath.
- A notary public does not fulfill his duty by merely asking a person whether the signature on a purported affidavit is his. An oath must be administered.

- A corporation or a partnership cannot take an oath; an oath must be taken by an individual.
- A notary public cannot administer an oath to himself.
- The privileges and rights of a notary public are personal and cannot be delegated to anyone.

Plaintiff

A person who starts a suit or brings an action against another.

Power of Attorney

A written statement by an individual giving another person the power to act for him.

Principal

An individual:

1. whose signature is reflected on a record that is notarized;
2. who has taken an oath or affirmation administered by a notary public; or
3. whose signature is reflected on a record that is notarized after the individual has taken an oath or affirmation administered by a notary public.

Proof

The formal declaration made by a subscribing witness to the execution of an instrument setting forth his place of residence, that he knew the person described in and who executed the instrument and that he saw such person execute such instrument.

Protest

A formal statement in writing by a notary public, under seal, that a certain bill of exchange or promissory note was on a certain day presented for payment, or acceptance, and that such payment or acceptance was refused.

Record

Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Seal

The laws of the State of New York do not require the use of seals by notaries public. If a seal is used, it should sufficiently identify the notary public, his authority and jurisdiction. It is the opinion of the Department of State that the only inscription required is the name of the notary and the words "Notary Public for the State of New York."

Signature of Notary Public

A notary public must sign the name under which he was appointed and no other. In addition to his signature and venue, the notary public shall print, typewrite or stamp beneath his signature in black ink, his name, the words "Notary Public State of New York," the name of the county in which he is qualified, and the date upon which his commission expires (§137, Executive Law).

When a notary marries during the term of office for which he/she was appointed, he/she may continue to use the name under which he/she was commissioned as a notary public. However, if he/she elects to use his/her marriage name, then for the balance of his/her term as a notary public he/she must continue to use the name under which he/she is commissioned in his/her signature and seal when acting in his/her notarial capacity, adding after his/her signature his/her married name, in parentheses. When renewing his/her commission as a notary public, he/she may apply under his/her married name or the name under which he/she was formerly commissioned. He/she must then perform all his/her notarial functions under the name selected.

A member of a religious order, known therein by a name other than his secular cognomen, may be appointed and may officiate as a notary public under the name by which he is known in religious circles.

Statute

A law established by an act of the Legislature.

Statute of Frauds

State law which provides that certain contracts must be in writing or partially complied with, in order to be enforceable at law.

Statute of Limitations

A law that limits the time within which a criminal prosecution or a civil action must be started.

Subordination Clause

A clause which permits the placing of a mortgage at a later date which takes priority over an existing mortgage.

Sunday

A notary public may administer an oath or take an affidavit or acknowledgment on Sunday. However, a deposition cannot be taken on Sunday in a civil proceeding.

Swear

This term includes every mode authorized by law for administering an oath.

Taking an Acknowledgment

The act of the person named in an instrument telling the notary public that he is the person named in the instrument and acknowledging that he executed such instrument; also includes the act of the notary public in obtaining satisfactory evidence of the identity of the person whose acknowledgment is taken.

The notary public “certifies to the taking of the acknowledgment” when the notary signs his official signature to the form setting forth the fact of the taking of the acknowledgment.

Venue

The geographical place where a notary public takes an affidavit or acknowledgment. Every affidavit or certificate of acknowledgment should show on its face the venue of the notarial act. The venue is usually set forth at the beginning of the instrument or at the top of the notary’s jurat, or official certification, as follows:

“State of New York, County of (New York) ss.:

A notary public must include the venue of his act in all certificates of acknowledgments or jurats to affidavits.

Will

The disposition of one’s property to take effect after death.