I. INTRODUCTION

In today’s presentation we will explore the legal framework under which notaries must operate in Texas – looking at statutes setting out qualifications, duties and responsibilities.

We will also discuss the acknowledgement process itself, including promulgated forms of acknowledgements and who may take acknowledgements in Texas and the requirements for doing so.

We will conclude with a discussion of jurats, since these occur frequently in documents appearing in real estate transactions resulting in title insurance. Along with the discussion of jurats, we will touch on the nature of affidavits – their purpose and who should make them.

II. NOTARIES PUBLIC

A. Introduction

1. From the Secretary of State:

A Notary Public is a public servant with statewide jurisdiction who is authorized to take acknowledgments, protest instruments permitted by law to be protested (primarily negotiable instruments and bills and notes), administer oaths, take depositions, and certify copies of documents not recordable in the public records.

A Notary Public is, in the true sense of the word, “a public servant” and “an officer of the State of Texas”, conveniently located in the community so that the notary may be of service to the public. Each Notary Public takes an official oath of office to faithfully perform the duties of the office, and to insure such performance, a notary public is required to post a $10,000.00 bond with the Secretary of State.

The primary duty of a Notary Public is to show that a disinterested party (the Notary Public) has duly notified the signer of an instrument as to the importance of such document, and the signer of such document has declared that the signer’s identity, signature, and reasons for signing such instrument are genuine. The signature and seal of a Notary Public do not prove these facts conclusively, but provide prima facie proof of them, and allow persons in trade and commerce to rely upon the truth and veracity of the Notary Public as a third party who has no personal interest in the transaction.

A Notary Public is personally liable for negligence or fraud in the performance of the duties of the office. The bond is to insure that the person injured can recover at least $10,000.00, but this does not protect the Notary Public from personal liability for the full extent of damages caused by a breach of official duty. In addition to civil liability, Notaries Public may be subject to criminal prosecution and the revocation or suspension of their notary public commission by the Secretary of State’s office.

2. From a title insurance perspective:

The functions of notaries public are critical to the real estate and title insurance industry in the State of Texas for a number of reasons. The primary reason is found in Section 12.001 of the Texas Property Code, as evidenced by this excerpt from the statute:
An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

B. Appointment, Term, Jurisdiction, Commission, Materials – Texas Government Code

Sec. 406.001. APPOINTMENTS.
(a) The secretary of state may appoint a notary public at any time.
(b) The secretary of state shall assign each notary public an identifying number and keep a record of the number assigned to each notary public.

Sec. 406.002. TERM. The term of a notary public expires four years after the date the notary public qualifies.

Sec. 406.003. JURISDICTION. A notary public has statewide jurisdiction.

Sec. 406.008. COMMISSION; NOTARY MATERIALS.
(a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.
(b) When the commission is issued, the secretary of state shall supply the notary public with:
(1) materials outlining the powers and duties of the office;
(2) a list of prohibited acts;
(3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition; and
(4) the identifying number assigned to the notary public.

(a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, the notary public's identifying number, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.
(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.
(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.
(d) Subsection (c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

D. Notary Records – from the Secretary of State

Tex. Gov't. Code Ann. § 406.014 requires that a Notary Public maintain a record book. This record book must be maintained whether or not any fees are charged for your notary public services.
NOTARIES, ACKNOWLEDGEMENTS and JURATS

A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

1. the date of each instrument notarized;
2. the date of the notarization;
3. the name of the signer, grantor, or maker;
4. the signer's, grantor's, or maker's residence or alleged residence;
5. whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;
6. if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;
7. the name and residence of the grantee;
8. if land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located; and
9. a brief description of the instrument.

NOTE: 1 T.A.C. §87.40 prohibits a notary from recording in the notary's book of record the identification number that was assigned by the governmental agency or by the United States to the signer, grantor or maker and that is set forth on the identification card or passport; or any other number that could be used to identify the signer, grantor or maker of the document. Section 87.40 does not prohibit a notary from recording a number related to the residence or alleged residence of the signer, grantor or maker of the document or the instrument.

Entries in the notary's book are public information. A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

E. Notary Records from Chapter 406.014 Texas Government Code

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

(e) A notary public may maintain the records required by Subsection (a) electronically in a computer or other storage device.

F. Notary Records Retention from Rule 87.44 Texas Administrative Code

A notary shall retain, in a safe and secure manner, copies of the records of notarization performed for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

G. Authority – Excerpts from Section 406.016 Texas Government Code

(a) A notary public has the same authority as the county clerk to:
1. take acknowledgments or proofs of written instruments;
2. administer oaths;
NOTARIES, ACKNOWLEDGEMENTS and JURATS

(b) A notary public shall sign an instrument in Subsection (a) in the name under which the notary public is commissioned.
(c) A notary public may not issue an identification card.
(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

H. Mailing Address of Notary Public

From the Secretary of State: You may fill out a Notary Public Change of Address form or send a letter with your name, social security number, old address, and new address to: Secretary of State, Notary Public Unit, P. O. Box 13375, Austin, Texas 78711-3375. You may also file your change of address online. The failure to update your address may result in revocation of your commission if you fail to respond to a complaint or a request for information (1 TAC §87.50(b)).


A notary public shall notify the secretary of state of a change of the notary public's address not later than the 10th day after the date on which the change is made.

A notary public who removes his residence from this state vacates the office.

2. Texas Administrative Code RULE §87.50 Change of Address

(a) A notary must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary should complete and submit form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms.shtml.

(b) The secretary of state sends all official notices, including notices of complaints, to the notary at the address on file with the secretary's office. Requests to obtain copies of or inspect the records in the notary record book are also directed to the notary at the address on file. Failure to change the address may, consequently, result in a revocation of the notary commission if the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas vacates the office of notary public and must surrender the notary commission to the secretary of state.

3. Texas Administrative Code RULE §87.70 Qualification by an Escrow Officer Residing in an Adjacent State

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.3 of this title (relating to Issuance of the Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.
I. Fees

1. Texas Government Code Sec. 406.024 - Excerpts

(a) A notary public or its employer may charge the following fees:

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of $6 for the first signature and $1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of $6;

(8) for a copy of a record or paper in the notary public’s office, a fee of 50 cents for each page;

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection (a). The fee charged may not exceed the fee authorized by Subsection (a).

2. From the Secretary of State - Fee Book

Section 603.006 of the Government Code requires a Notary Public who charges a fee for notary services to keep a fee book.

An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

J. Liability

Texas notaries face both civil and criminal penalties for improperly discharging their official duties.

K. More Information

Notaries should periodically check the Secretary of State website to stay current in regard to their appointment: http://www.sos.state.tx.us/statdoc/notary-public.shtml

Notaries public are governed primarily by Chapter 406 of the Texas Government Code and the secretary of state’s administrative rules found in title 1, Chapter 87 of the Texas Administrative Code. Other statutes, such as Chapter 121 of the Texas Civil Practice & Remedies Code, also govern certain notary conduct.

The secretary of state commissions notaries public and has the authority to discipline notaries, including suspension or revocation of commission, for good cause. For information on filing a complaint against a Texas notary public with the secretary of state, see our FAQs Relating to Notary Public Complaints.

L. Questions and Answers – from the Secretary of State

The following section consists of questions Notaries Public often have about their office. If you have any questions about notarizing a document you should contact the maker of the document, the Notary Public Unit of the Secretary of State’s office, or an attorney.

1. May I Notarize my Spouse’s Signature?

2. May I Notarize for my Spouse’s Business?

3. May I Notarize for my Relatives?
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The basic rules are: the act of taking and certifying acknowledgments cannot be performed by a notary public financially or beneficially interested in the transaction; and one who is a party to an instrument, cannot act as a notary public. There is no specific prohibition against a notary public notarizing another spouse's signature or a notary public notarizing for a spouse's business. The facts in each situation will determine whether such action is proper.

4. May I Alter or Change the Instrument I Notarize?

To answer this question, a distinction must be made between the instrument and the acknowledgment. A Notary Public is not authorized to change, alter or draft any instrument. However, a Notary Public may correct the certificate of acknowledgment to reflect the proper facts. For example, if an acknowledgment is taken in Webb County and the certificate shows Marion County, the certificate may be corrected as follows:

The State of Texas
County of Marion Webb

Before me, (Notary Public's name), a Notary Public, on this day personally ... etc.

5. What if There is a Difference Between the Date the Instrument is Signed and the Date the Acknowledgment is Actually Taken?

To answer this question, an example is given. If an instrument ends with the wording: "Signed and executed at Tyler, Smith County, Texas, this 25th day of October, 2001," and the party whose name appears on such instrument appears before the Notary Public on October 27th, 2001, the Notary Public would fill in the acknowledgment with the true and correct date when the signer personally appeared before the Notary Public.

6. May I Take an Acknowledgment Over the Telephone?

No. The person whose signature is notarized must personally appear before the notary at the time the notarization is performed.

7. May I Change my Name From the Name Shown on my Notary Public Commission?

Yes. A Notary Public may change the name on their commission by sending the Secretary of State a name change application, your current certificate of commission, a rider or endorsement from the insurance agency or surety, and a $20.00 filing fee. The above four elements must be sent at the same time. For an instruction sheet, please contact the Notary Public Unit at (512) 463-5705.
8. May a Notary Public Determine Which Type of Notarial Certificate Should be Attached to a Document?

No. A Notary Public who is not an attorney should only complete a notarial certificate which is already on the document or type a certificate of the maker's choosing. If a notary public is brought a document without a certificate and decides which certificate to attach, that notary public would be "practicing law." However, a notary public is provided copies of sample notarial certificates with his or her notary commission. A person for whom a notarization is performed may choose the notarial certificate, and the notary may add such certificate to the document.

9. Should a Notary Public Rely Only on a Credit Card in Determining the Identification of a Signer?

No. If the signer is not personally known by the Notary Public or identified by a credible witness, the Notary Public must use an identification card issued by a governmental agency or a passport issued by the United States to identify the signer.

Note: By statute, a notary may also accept a foreign passport as identification for residential property transactions.

III. ACKNOWLEDGMENTS

An “acknowledgment” is a formal statement by the person executing (signing) a document, affirming that he executed the document as his free act and deed.

The statement – acknowledgment – is made in the presence of an official authorized to “take acknowledgments,” such as a Notary Public, who then completes and signs an “acknowledgment” or certificate attesting to the fact. It cannot be done by telephone as a personal appearance before the officer/notary is required.

An acknowledgement is generally required to allow a document to be filed in the real property records. The form and procedure, as well as the requirement, vary from state to state.

When an acknowledgment is taken outside of the state where the real property lies, the acknowledgment should conform to the law where the acknowledgment is taken, but must also be acceptable in the state where the property lies.

A missing, incomplete or improper acknowledgment may result in invalidation of the instrument, inability to record, loss of priority or failure to impart constructive notice to third parties. An acknowledgement by an official whose appointment has expired is invalid.

A. WHO MAY MAKE/GIVE AN ACKNOWLEDGMENT?

An acknowledgment is made by the person signing the instrument or that person's duly authorized representative. A person signing in two or more capacities, i.e., individually and as Independent Executor of an Estate, may make a single acknowledgment in both capacities. In general, acknowledgements are made by natural persons of sufficient age and mental capacity to understand the content and consequences of the document.
B. Identity of acknowledging party

The acknowledging party must be sufficiently identified or personally known by the officer/notary. It is the responsibility of the official taking the acknowledgment to verify the identity of the party and determine that the party is of age and mentally competent.

1. Texas Civil Practice and Remedies Code – Section 121.005

   (a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:
      (1) the oath of a credible witness personally known to the officer;
      (2) 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; or
      (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

   (b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:
      (1) he personally knows the acknowledging person; or
      (2) evidence of a witness or an identification card or other document was used to identify the acknowledging person.

2. Lack of Adequate Identity

When a title company notary is not able to take a person’s acknowledgment due to noncompliant identification, there are some possible solutions:

The acknowledging party may locate a notary who personally knows them and therefore does not need an identification card. Employers, banks, attorneys, relatives, churches, community businesses and others may be sources for locating a notary that knows the person signing. The notary who knows the acknowledging party should then attend closing for the purpose of taking the acknowledgement in the presence of the closing officer.

If the title company notary personally knows someone who personally knows the signing party, that person can attest to the signing person’s identity. This witness can offer an affidavit, such as the sample form appearing at the end of this section.

C. WHO MAY TAKE ACKNOWLEDGMENTS?

An appropriate officer authorized by state law may take an acknowledgment. Although varying from state to state, this generally includes notaries public and others acting in an official capacity. For our purposes today – we will focus on notaries public – unless the document is being signed outside the U.S. and its territories.

Federal law authorizes a commissioned officer of the United States Armed Forces or USAF Auxiliary to take acknowledgements for a member of the armed forces or the spouse of a member.

A minister, commissioner or charge d'affaires, a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy counsel, or consular agent of the United States who is a resident, and is accredited in the country where the acknowledgment is taken may take an acknowledgement.
Texas Civil Practices and Remedies Code – Section 121.001 – Excerpts

(a) An acknowledgment or proof of a written instrument may be taken in this state by:
   (3) a notary public;

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:
   (3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:
   (1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
   (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
   (3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

(d) A commissioned officer of the United States Armed Forces or of 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.

D. WHO IS DISQUALIFIED FROM TAKING ACKNOWLEDGMENTS?
An official who is financially or beneficially interested in a transaction is disqualified from taking an acknowledgment concerning the transaction, such as: the grantor or grantee; trustee on a mortgage or Deed of Trust; a corporate shareholder (for a document executed on behalf of the corporation).

Persons who are not disqualified from taking an acknowledgment would include: a party's attorney; an officer of a lienholder; an employee unless there is direct monetary interest; a state employee on behalf of a state agency.

E. Method of Acknowledgment – Texas Civil Practices and Remedies Code – Section 121.004 – Excerpts

(a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

(b) The officer shall:
   (1) make a certificate of the acknowledgment;
   (2) sign the certificate; and
   (3) seal the certificate with the seal of office.

F. SAMPLE FORMS OF ACKNOWLEDGMENTS IN TEXAS

1. Texas Civil Practices and Remedies Code – Section 121.006

(a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person's name.
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(b) In an acknowledgment form "acknowledged" means:

1. in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;

2. in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;

3. in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;

4. in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity stated, as the act of the corporation, for the purposes and consideration expressed in it; and

5. in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it.

2. Sample Acknowledgements from Texas Civil Practices and Remedies Code

In the following examples a personalized seal means: the words "Notary Public, State of Texas" around a star of five points, the Notary Public's name and Identification Number, and the date the Notary Public's commission expires.

Form for Ordinary Certificate of Acknowledgment

State of Texas
County of _______________
Before me, (insert the name and character of the officer), on this day personally appeared ________________, known to me (or proved to me on the oath of ______________ or through (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __________ day of __________, (year).

__________________
Notary Public's Signature
(Personalized Seal)
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Short Forms

Note: An acknowledgment taken outside Texas must contain at least the words of the Texas short form acknowledgment, even if it contains more words.

For a natural person acting in his/her own right:

State of Texas
County of _______________

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

Notary Public’s Signature
(Personalized Seal)

For a natural person as principal acting by attorney-in-fact:

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).

Notary Public’s Signature
(Personalized Seal)

For a partnership acting by one or more partners:

State of Texas
County of _______________

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

Notary Public’s Signature
(Personalized Seal)

For a corporation:

State of Texas
County of _______________

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

Notary Public’s Signature
(Personalized Seal)

For a public officer, trustee, executor, administrator, guardian, or other representative:

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)

Notary Public’s Signature
(Personalized Seal)
G. Brief Checklist for Reviewing Acknowledgments

- Proper County and State
- Personal appearance before officer/notary
- Statement that acknowledger executed the instrument
- Capacity in which acknowledger signed
- No material variance between signed name and acknowledger’s name
- Date of acknowledgment (not prior to date of instrument)
- Signature of officer/notary
- Printed name of officer/notary
- Notary’s Identification Number
- Expiration of commission of officer/notary
- Seal of officer/notary [where required by state law]
- Statement showing of officer’s/notary’s official capacity
- Allegation that acknowledger was sufficiently identified or personally known by officer/notary.

H. Acknowledgment of Documents in a Foreign Country

A foreign country is a country other than the United States or its possessions or territories.

I. Documents Executed by Military Personnel in a Foreign Country

Most states authorize authentications of documents executed by military personnel or their dependents taken in foreign lands by military officers using standard authentication forms prescribed by state law.

ACKNOWLEDGMENT BY ARMED FORCES OFFICER

IN THE ARMED FORCES OF THE United States of America with the [Branch] at [Name of Base and Country].

I, [Name of Officer], [Rank], [Branch], [Serial Number], a duly Commissioned Officer of the Armed Forces of the United States of America, do hereby certify that on this [day, month, year] before me personally appeared [Name], [Branch], [Serial Number] known to me 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.

IN WITNESS WHEREOF, I have hereunto set my hand this day and year last above written.

[Signature of Officer]

[Typed Name of Officer]

[Rank, Branch, Serial Number]
J. Documents Executed by Others in a Foreign Country

1. Most states authorize authentications taken in a foreign country by U.S. Embassy and Consular officers using standard authentication forms prescribed by state law.

It is a generally accepted underwriting preference that any transaction document signed in a foreign country be executed at a United States embassy or consulate.

The location of and information about US embassies and consulates worldwide can be obtained at the following website: http://www.usembassy.gov/.

ACKNOWLEDGMENT – OUTSIDE THE UNITED STATES

[Name of Country]
[County or other Political Subdivision if applicable]

Before me, the undersigned authority, a [Title of Foreign Service Officer] of the United States of America resident in [City and County] duly commissioned and qualified, on this day personally appeared [Name], known to me 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 this ______ day of ____________________, _____.

________________________________
[Signature of Officer]

________________________________
[Title or Type Capacity of Officer]

2. Apostilles for Documents Executed in a Foreign Country

If executing documents at the consulate or embassy poses a problem for the party because of inaccessibility or hardship and the country is a member of the Hague Convention, an “apostille” can be obtained to authenticate the acknowledgment by a local notary public.

If you receive a document executed in a foreign country, it is unlikely that you will know whether you can rely on the authentication of the document unless an apostille is attached. Even if you become comfortable with the authentication there is no guarantee the local recorder will accept the document for recording.

Apostilles were enabled by the recognition of an agreement in the Hague Convention dated October 5, 1961 titled “Convention Abolishing the Requirements of the Legalization for Foreign Public Documents.” If the form of acknowledgement used in the country of origin is not sufficient to authenticate a document in another country, an apostille may be added if both countries are parties to the convention.

Since October 15, 1981, the United States has been part of the 1961 Hague Convention. The Convention provides for the simplified certification of public (including notarized) documents to be used in countries that have joined the convention. It provides a
procedure for authentication of documents by designated officials in the jurisdiction in which the document has been executed.

If you receive a document executed in a foreign country with an apostille attached, examine the apostille to verify that it has been executed by that country’s government, specifically the arm of the government responsible for foreign affairs. For example, if you have a document executed in Mexico, it must be acknowledged by a Mexican Notary Public (Notario), and then an apostille must be added from the appropriate Mexican government official empowered by the Ministry of Foreign Affairs.

If you have any doubt about the authenticity of the apostille, ask for more information about its execution from the party offering the apostille, or ask for help from underwriting counsel.

When a country is a member of the Hague Convention, information for obtaining an apostille can be found at the following website:

http://www.hcch.net/index_en.php?act=conventions.status&cid=41

**APOSTILLE**
(Convention de la Haye du 5 octobre 1961)

Country: ________________________________

This public document has been signed by: ____________________________

in the capacity of: ________________________________

bears the seal/stamp of: ________________________________

Certified at ______________ the __________________ by _____________________

Number:

Seal/Stamp ____________________________ Signature ____________________________
NOTARIES, ACKNOWLEDGEMENTS and JURATS

PROOF OF IDENTITY OF ACKNOWLEDGING PERSON
BY OATH OF CREDIBLE WITNESS PERSONALLY KNOWN TO NOTARY PUBLIC
PURSUANT TO §121.005 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE

THE STATE OF TEXAS §
COUNTY OF _____________ §

Before me, the undersigned authority, on this day personally appeared _______________, who, after being by me duly sworn, upon oath deposes and says:

"That I am over the age of 18 years, have never been convicted of a felony, and I am fully competent to give testimony.

That this affidavit is made concerning the identity of _____________________________ ("Acknowledging Person"), who is or is to be a signatory on the attached ___________________ ("Written Instrument") and whose execution is to be acknowledged by ______________________ ("Notary Public").

That I personally know the Acknowledging Person by reason of the following described relationship or background: _________________________________________________________________________.

That I personally know the Notary Public and confirm to the Notary Public that the Acknowledging Person is the person that has executed or will be executing the Written Instrument and acknowledging such execution to the Notary Public.

Further Affiant saith not"

Witness my hand this ____ day of _____________, _______.

____________________________________
JURAT

State of Texas
County of _____________

Sworn to and subscribed before me on (date) by (name or names of person or persons signing).

____________________
Notary Public's Signature
(Personalized Seal)

ACKNOWLEDGMENT

State of Texas
County of _____________

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

____________________
Notary Public's Signature
(Personalized Seal)
IV. JURATS AND AFFIDAVITS

A. What is a Jurat?
A jurat is a certificate signed by an officer authorized to administer oaths before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. An affidavit must contain a jurat to be effective. (from V.T.C.A., Property Code T.2, App., Title Examination Standard 13.10)

A jurat is the second most common form signed by a notary. It is the part of an affidavit where the official certifies that the same was "sworn" before him.

In a jurat a Notary certifies that a signer declared under oath or affirmation that the document is truthful, and signed in the Notary's presence.

A jurat is different from an acknowledgment.
- An acknowledgment only requires the signer to agree that he signed the document.
- A jurat, however, requires the signer to swear or affirm that the content of the signed document is true.
- In addition, a document with a jurat must be signed in the Notary's presence.

B. Is there some special ceremony for administering the oath?
There is no required ceremony for administering an oath, however the official must witness the signing of the document and should formally ask the signer whether he or she swears – or affirms – that the facts in the affidavit are true.

C. Interesting Facts
Most states have criminal laws for perjury or false swearing. For example, Texas Penal Code 37.02 makes perjury a Class A misdemeanor and Texas Penal Code 12.21 affixes punishment at a fine of not to exceed $4,000.00, confinement in jail for a term not to exceed one year or both.

SAMPLE OF A JURAT

State of Texas
County of _______________

Sworn to and subscribed before me on the __________ day of _______________, (year), by (name of signer).

________________________________________
Notary Public’s Signature
(Personalized Seal)
V. What is an Affidavit?
An affidavit is a written statement, under oath, signed by the affiant and evidenced by a jurat.
(from V.T.C.A., Property Code T.2, App., Title Examination Standard 13.10)

An affidavit is a formal sworn statement of fact, signed by the author, who is called the affiant or deponent, and witnessed as to the authenticity of the affiant’s signature by a taker of oaths, such as a notary public or commissioner of oaths. The name is Medieval Latin for he has declared upon oath.
(From Wikipedia, the free encyclopedia - http://en.wikipedia.org/wiki/Affidavit )

A. Contents of an Affidavit
1. The name of the person making the sworn statement (the affiant) and that it is being sworn to before an official authorized to administer oaths.
2. The facts that are being sworn to. It is helpful if the information contained in the affidavit is divided up into distinct parts or paragraphs with, in the case of a complex affidavit, headings for each.
3. Signature of the affiant.
4. Details of the swearing – known as a “jurat” – signed by the official.
5. If the Affidavit is to be filed for record, an acknowledgment is generally added as well.

B. Title Affidavits
A “title affidavit” is a written statement of fact made by someone with knowledge, or in a position to be knowledgeable about the facts contained therein. It is made under oath and will generally be relied upon in regard to some aspect of the ownership or title to the real estate.

Title affidavits are commonly used to provide information necessary to comply with commitment requirements or to otherwise give facts about ownership or title aspects of the property. They are usually necessary in regard to information which may not be available from the public record.

C. Who can sign an Affidavit?
Since an affidavit is a sworn statement, it may only be signed by a natural person. If it is necessary for the owner of property to swear to some facts in regard to the property – and the owner is, for example, a corporation, the affidavit may be signed by the president of the corporation, but he will not be signing as the president, but rather will be signing as a person, knowledgeable of the facts, who also happens to be the president.

The person – affiant – should be:
• Reliable: Someone the title company believes to be trustworthy;
• Knowledgeable: Someone who knows, or should be in a position to know, the information contained in the affidavit.
D. Frequently Asked Questions

1. What should be included in an affidavit?

An affidavit should include all the facts necessary to meet the needs of a particular situation.

For example, if the purpose of the affidavit is to convince someone that you are not the same person as another, these facts would contain your name, a statement that you are not the same person as – the name of the other person – and some identifying information about that person, such as “who is named in Bankruptcy Filing #4325.”

2. What should not be included in an affidavit?

Generally, an affidavit should not contain opinions, nor should it contain information known to the affiant only by hearsay, rather than by personal knowledge.

3. Does the affidavit have to be signed in the presence of the notary?

Yes, a notary should refuse to sign a jurat if he/she did not witness the affiant’s signing the affidavit.

Sample Title Affidavit of Fact

Date:
Affiant:
Property:

Affiant on oath swears the following statements are true and within the personal knowledge of Affiant:

1. My full legal name is as set forth above, and I am over the age of eighteen years.
2. I currently reside at __________________________
3. Statement of Fact:

   Statement of fact to be added here.

4. Anyone concerned with title to the Property may rely on these statements.
5. I agree to indemnify and hold ____, Underwriter, and its Agent harmless from any loss or expense, including reasonable attorney fees, resulting from false or incorrect information in this affidavit.

________________________
(Name of Affiant)

SIGNED under oath before me on _____, by (name of Affiant).

________________________  
Notary Public’s Signature

(Personalized Seal)

Standard acknowledgement for an individual.