

PRESENTED AT

The University of Texas School of Law
26th Annual Estate Planning, Guardianship
and Elder Law Conference

August 8-9, 2024

Execution of Documents

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This work is based upon the prior work of James Noble Johnson (1947-2911), a distinguished member of the Bar and a noted scholar in real estate law.

This compilation is intended to provide a convenient resource for attorneys who assist in real property transactions. The information in this article may not be sufficient in dealing with a client's particular legal problem, and the author cannot warrant or represent its suitability for such purpose. Attorneys using this article do so with the understanding that it should not be relied upon as a substitute for independent research to original sources of authority.

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EXECUTION OF DOCUMENTS

SCOPE OF THIS ARTICLE

The “simple” task of executing documents tends to fall prey to two common dangers. The first is that this rudimentary element of document preparation can come across some very unusual circumstances. When it does, your credibility as a specialist may depend upon your handling well this “simple” element of the transaction. The second is that simple chores are frequently glossed over. As a result, documents regularly are created containing technical deficiencies which draw into question the validity of the entire transaction.

This Article addresses both dangers. The first section is a Desk Reference, intended to aid you in quickly locating the information you need to answer the question “How do we do this?” Each situation shows you:

- (a) how to identify the party in the text of the document,
- (b) what the signature line should look like,
- (c) what the acknowledgment should contain, and
- (d) what other, related documents you should expect to prepare or review as part of the transaction.

The second section of the Article is a Trouble-Shooting Manual. Its purpose is to direct you to the law which addresses the question “Is this document effective, having been executed in the manner that it was?” Presuming that the document was not executed as you would have liked, are the deficiencies material or only superficial?

I. DESK REFERENCE.

A. INDIVIDUALS.

1. Single Person.

a. Identification of Parties.

“(Name), a single person,”

“(Name), a widower,”

Some authorities recommend that titles, degree notations, and other professional markings (e.g.: “Sr.,” “M.D.,” or “Col.,”) not be used. However, such notations are at worst harmless surplusage, and they can provide genuine assistance in distinguishing between similarly named individuals. For precise identification, particularly of individuals with very common names, adding the party’s social security number is especially helpful. However, considering the capacity for identity theft, social security numbers or drivers’ licenses should never be used in documents to be publicly recorded, and should be carefully in any event.

When the grantor’s name appears in earlier documents in the same chain of title, it is preferable either that the name appear on the later instrument in the same configuration as in the earlier instrument, to avoid confusion, or that you provide a brief explanation in a parenthetical phrase immediately following the name.

b. Subscription.

(NAME)

The grantor’s name should be typed beneath the signature line in order to avoid a double filing fee being charged by the County Clerk upon the filing of the instrument for recording. TEX. LOC. GOV’T. CODE §§ 118.0525 and 191.007.

c. Acknowledgments.

(1) In state - short form

STATE OF TEXAS
COUNTY OF (COUNTY)

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

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

The TEXAS CIVIL PRACTICE AND REMEDIES CODE, §§ 121.001 through 121.010 provide long and short forms for various types of acknowledgments. The authorization of these forms does not preclude the use of other forms. § 121-006(a). The short form acknowledgments are normally preferred because they provide less opportunity for incompleteness or error.

To take an acknowledgment, the notary must either know the person acknowledging the signature or be provided with satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in the instrument. "Satisfactory evidence" includes only (a) the oath of a credible witness personally known to the officer, or (b) a current identification card or other document issued by the federal government or any state government containing the photograph and signature of the acknowledging person. TEX. CIV. PRAC. & REM. CODE, § 121.005(a).

The County designated in the acknowledgment should be the county in which the acknowledgment is taken.

The date in the acknowledgment certificate should always be the date on which the acknowledgment is taken, regardless of the date of the instrument. An acknowledgment dated before or after the date of the document is not defective.

The notary's seal is required as a portion of any Texas acknowledgment certificate (TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 121.004). A notary's seal on an acknowledgment from another jurisdiction is required only if the jurisdiction in which the notary's certificate is made requires the attachment of the seal (TEX. CIV. PRAC. & REM. C., §121.004 and TEX. PROP. C., § 12.001). The Texas Secretary of State annually distributes to all county clerks a list of states which require a notary public's certificate to be validated by a seal (TEX. GOVT. C., § 405.019).

When required, the seal may be embossed, but an inked stamp is acceptable and is preferable to the extent that it is easily visible on copies. An embossed seal is never required on an electronically transmitted document (TEX. CIV. PRAC. & REM. C., §121.004(d)). In addition, it is appropriate for the notary's name and commission expiration date to be printed on the same stamp with the seal, eliminating the need for this information to be provided independently following the notary's signature on each certificate, as is otherwise required (TEXAS GOVERNMENT CODE § 406.13(d))

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First appeared as part of the conference materials for the
26th Annual Estate Planning, Guardianship and Elder Law Conference session
"Execution of Documents"