

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

Richard Melamed

P.O. Box 3130
Belaire, Texas 77402
(713) 884-0104
rm@rmstty.com

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.

SUMMARY OF CONTENTS

I.	DESK REFERENCE FOR EXECUTION OF DOCUMENTS	1
A.	INDIVIDUALS	1
B.	PARTNERSHIPS	24
C.	TRUSTS - EXPRESS TRUSTS	28
D.	CORPORATIONS - BUSINESS	31
E.	NON-PROFIT ASSOCIATIONS	39
F.	GOVERNMENTS	48
II.	TROUBLE-SHOOTING MANUAL	52
A.	SUBSCRIPTION	52
B.	ACKNOWLEDGMENT	61
C.	DELIVERY	63
D.	ACCEPTANCE	67
E.	COMPLETENESS OF THE TRANSACTION	68
	APPENDIX	

TABLE OF CONTENTS

I. DESK REFERENCE FOR EXECUTION OF DOCUMENTS	1
A. INDIVIDUALS	1
1. Single Person	1
a. Identification of Parties	1
b. Subscription	1
c. Acknowledgment	2
d. Recommended related documentation	4
2. Married Person - Separate Property	6
a. Identification of Parties	6
b. Subscription	6
c. Acknowledgment	6
d. Recommended related documentation	6
3. Spouse - Joining <i>Pro Forma</i>	7
a. Identification of Parties	7
b. Subscription	7
c. Acknowledgment	7
4. Tenant in Common	8
a. Identification of Parties	8
b. Subscription	8
c. Acknowledgment	8
d. Recommended related documentation	8
5. Married Person - Community Property	9
a. Identification of Parties	9
b. Subscription	9
c. Acknowledgment	9
d. Recommended related documentation	9
6. Married Person - Homestead.....	11
a. Identification of Parties	11
b. Subscription	11
c. Acknowledgment	11
d. Recommended related documentation	11
7. Joint Tenant.....	11
a. Identification of Parties	11
b. Subscription	11
c. Acknowledgment	11
d. Recommended related documentation	11
8. Blind or Illiterate, but Able to Sign.....	12
a. Recommended related documentation - Affidavit of Reader	12
9. Illiterate in English, but Able to Sign	12
a. Recommended related documentation - Affidavit of Interpreter	12
10. Subscription by Mark.....	12
a. Identification of Parties	12
b. Subscription	12
c. Acknowledgment	13
d. Recommended related documentation - Affidavit of Reader	13
11. Physically Unable to Sign	13
a. Identification of Parties	13
b. Subscription	13
c. Acknowledgment	14
d. Recommended related documentation	14
12. Minor - Guardian - Uniform Gifts to Minors Act.....	14
a. Identification of Parties	14
b. Subscription	14

c.	Acknowledgment	15
d.	Recommended related documentation	15
13.	Mentally Disabled - Guardian	15
a.	Identification of Parties	15
b.	Subscription	15
c.	Acknowledgment	15
d.	Recommended related documentation	16
14.	Changed Name or Name Variance	16
a.	Identification of Parties	16
b.	Subscription	16
c.	Acknowledgment	16
d.	Recommended related documentation	16
15.	Assumed Name, “doing business as”	16
a.	Identification of Parties	16
b.	Subscription	17
c.	Acknowledgment	17
d.	Recommended related documentation	17
16.	Agent.....	17
a.	Identification of Parties	17
b.	Subscription	17
c.	Acknowledgment	17
d.	Recommended related documentation	18
17.	“Nominee” or “Trustee” without Express Trust.....	19
a.	Identification of Parties	19
b.	Subscription	19
c.	Acknowledgment	19
d.	Recommended related documentation	20
18.	Estates	20
a.	Identification of Parties	20
b.	Subscription	20
c.	Acknowledgment	21
d.	Recommended related documentation	21
19.	Court Appointed Receiver.....	22
a.	Identification of Parties	22
b.	Subscription	22
c.	Acknowledgment	22
d.	Recommended related documentation	22
20.	Digital Signatures	23
B.	PARTNERSHIPS	24
1.	General Partnerships	24
a.	Identification of Parties	24
b.	Subscription	24
c.	Acknowledgment	24
d.	Recommended related documentation	25
2.	Joint Ventures	26
a.	Identification of Parties	26
b.	Subscription	26
c.	Acknowledgment	26
d.	Recommended related documentation	26
3.	Limited Partnerships	26
a.	Identification of Parties	26
b.	Subscription	27
c.	Acknowledgment	27

d.	Recommended related documentation	27
4.	Limited Liability Partnership	27
5.	Joint Stock Company	27
a.	Identification of Parties	28
b.	Subscription	28
c.	Acknowledgment	28
d.	Recommended related documentation	28
C.	TRUSTS - EXPRESS TRUSTS	28
1.	Inter Vivos Trusts - Including Deeds of Trust.....	28
a.	Identification of Parties	28
b.	Subscription	28
c.	Acknowledgment	29
d.	Recommended related documentation	29
2.	Testamentary Trusts	29
a.	Identification of Parties	29
b.	Subscription	29
c.	Acknowledgment	30
d.	Recommended related documentation	30
3.	Real Estate Investment Trusts	30
a.	Identification of Parties	30
b.	Subscription	30
c.	Acknowledgment	30
d.	Recommended related documentation	31
D.	CORPORATIONS - BUSINESS	31
1.	Promoters (Pre-Incorporation).....	31
a.	Identification of Parties	31
b.	Subscription	31
c.	Acknowledgment	31
d.	Recommended related documentation	31
2.	Attempted Incorporation	31
3.	Standard Business Corporation	32
a.	Identification of Parties	32
b.	Subscription	32
c.	Acknowledgment	32
d.	Recommended related documentation	33
4.	Limited Liability Company	33
a.	Identification of Parties	33
b.	Subscription	34
c.	Acknowledgment	34
d.	Recommended related documentation	34
5.	Professional Association	34
a.	Identification of Parties	34
b.	Subscription	34
c.	Acknowledgment	34
d.	Recommended related documentation	35
6.	Professional Corporation.....	35
a.	Identification of Parties	35
b.	Subscription	35
c.	Acknowledgment	35
d.	Recommended related documentation	35
7.	Professional Limited Liability Company	35
8.	Financial Institutions	36

a.	Identification of Parties	36
b.	Subscription	36
c.	Acknowledgment	36
d.	Recommended related documentation	36
9.	MERS (Mortgage Electronic Registration Systems)	37
a.	Identification of Parties	37
b.	Subscription	37
c.	Acknowledgment	37
10.	Delinquent Corporations	37
a.	Identification of Parties	37
b.	Subscription	38
c.	Acknowledgment	38
d.	Recommended related documentation	38
11.	Post-Dissolution	38
a.	Identification of Parties	38
b.	Subscription	38
c.	Acknowledgment	38
d.	Recommended related documentation	39
12.	Joinder Pro Forma	39
a.	Identification of Parties	39
b.	Subscription	39
c.	Acknowledgment	39
E.	NON-PROFIT ASSOCIATIONS	39
1.	Unincorporated Associations and Clubs.....	39
a.	Identification of Parties	39
b.	Subscription	39
c.	Acknowledgment	40
d.	Recommended related documentation	40
2.	Incorporated Associations and Clubs	40
a.	Identification of Parties	40
b.	Subscription	40
c.	Acknowledgment	41
d.	Recommended related documentation	41
3.	Lodges.....	41
a.	Identification of Parties	41
b.	Subscription	41
c.	Acknowledgment	42
d.	Recommended related documentation	42
4.	Cooperatives.....	42
a.	Identification of Parties	42
b.	Subscription	43
c.	Acknowledgment	43
d.	Recommended related documentation	43
5.	Religious Organizations - Unincorporated	43
a.	Identification of Parties	43
b.	Subscription	44
c.	Acknowledgment	44
d.	Recommended related documentation	44
6.	Religious Organizations - Incorporated.....	45
a.	Identification of Parties	45
b.	Subscription	45
c.	Acknowledgment	45
d.	Recommended related documentation	45

7. Religious Organizations - Specific Recommended Documentation	46
a. Assembly of God	46
b. Baptist	46
c. Christian Church	46
d. Christian Science	46
e. Church of Christ.....	46
f. Church of God	46
g. Church of Jesus Christ of Latter Day Saints (Mormons)	46
h. Church of the Nazarene	46
i. Episcopal	46
j. Greek (Eastern) Orthidox Church in America.....	46
k. Jehovah’s Witnesses	47
l. Jewish	47
m. Lutheran	47
n. Methodist, Free	47
o. Methodist, United	47
p. Pentecostal	47
q. Presbyterian Church of America	47
r. Presbyterian Church (USA)	47
s. Roman Catholic	47
t. Seventh Day Adventists	47
u. Unitarian	48

F. GOVERNMENTS	48
1. United States Agencies (VA, FHA, FmHA, SBA, FNMA, FDIC, FedLnBk)	48
a. Identification of Parties	48
b. Subscription	48
c. Acknowledgment	48
2. State of Texas (Gen. Ln. Off.; Tx. Vet. Ln. Bd.; etc)	49
a. Identification of Parties	49
b. Subscription	49
c. Acknowledgment	49
3. Political Subdivisions (Counties, Cities, I.S.D.s)	50
a. Identification of Parties	50
b. Subscription	50
c. Acknowledgment	50
d. Recommended related documentation	50
4. Quasi-Public Authorities (MUDs, RUDs, Water Districts, etc.)	50
a. Identification of Parties	50
b. Subscription	50
c. Acknowledgment	51
d. Recommended related documentation	51
5. Sheriff	51
a. Identification of Parties	51
b. Subscription	51
c. Acknowledgment	51
d. Recommended related documentation	51

II. TROUBLE-SHOOTING MANUAL	52
A. SUBSCRIPTION	52
1. Written Conveyance.....	52
a. Required	52
b. Exceptions	52

2.	Identity of Party	52
a.	Required First Name, Surname	52
b.	Abbreviations, Derivations, and Corruptions	52
c.	Middle Names	52

d.	Initials	52
e.	Prefixes and Suffixes	53
f.	Idem Sonans - Misspellings	53
g.	Use of assumed names and aliases	54
h.	Signing but unnamed as a party	54
i.	Variance between name in instrument and signature	54
j.	Variances within Instrument	54
k.	Identification by class rather than by name	55
l.	Error in additional descriptive information	55
3.	Special Subscriptions	55
a.	Rubber stamped, typed, or printed signature	55
b.	By Agent	55
(1)	Signing as Instrumentality for Another	55
(2)	Formal Agent - Attorney in Fact	55
c.	By Partner	56
d.	By Corporate Officer.....	56
e.	Mental Incapacity	56
f.	By Minors	57
g.	Sheriff's Deed	57
h.	Husband Not Joining Wife, As Then Required	58
i.	Digital Signatures	58
4.	Effect of Signing "in blank"	58
a.	Necessity for grantee	58
b.	Discretionary Grants	58
5.	Alteration after execution.....	59
a.	Of Name in Instrument	59
b.	Of Contents of the Instrument	59
6.	Effect of Fraud	59
7.	Effect of Undue Influence or Duress	60
8.	Effect of Forgery	60
9.	Ratification and Adoption	61
10.	Supplemental Elements (Seals and Attestation)	61
B.	ACKNOWLEDGMENT	61
1.	Defined	61
2.	Not essential for conveyance	62
3.	Assumed Valid	62
4.	Incomplete Certificates	62
5.	Conflicts between the instrument and the acknowledgment	62
6.	Disqualified Notary	63
7.	No Personal Appearance	63
8.	Curative Actions	63
C.	DELIVERY	63
1.	Delivery Required	63
2.	Elements of Delivery	63
a.	"Within control of the Grantee"	63
(1)	When presumed	63
(2)	Constructive delivery	64
(3)	Multiple grantors	64
(4)	To one of multiple grantees	64
(5)	To third party.....	64
(6)	To third party with limiting instructions	65
(7)	Retention of instrument by grantor	65
(8)	Delivery after grantor's death	65

(9) Delivery after grantee's death	65
(10) Delivery to Corporation with Forfeited Charter	66
(11) Delivery to Dissolved Corporation	66
b. Intent of grantor.....	66
(1) Controlling element	66
(2) When presumed	66
(3) Mental reservation of grantor upon delivery	66
(4) Effect of conditions placed upon delivery	67
(5) Delivery of post-dated instrument	67
(6) Fraud or duress	67
(7) Unilateral mistake	67
(8) Mutual mistake	67
D. ACCEPTANCE	67
1. Required	67
2. When presumed	67
3. Conditional acceptance	68
4. Partial acceptance.....	68
5. Exercise of Control	68
6. Effect of acceptance	68
7. Fraud	68
E. COMPLETENESS OF THE TRANSACTION	68
1. Alteration of the instrument	68
2. Loss or destruction of the instrument	68
3. Redelivery of the instrument to grantor	68
4. Failure to record the instrument	68

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))

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Execution of Documents

Also available as part of the eCourse

[Best Practices and Tips for the Estate Planner](#)

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