

7 FAM 840

ACKNOWLEDGMENTS AND ATTESTATION OF WITNESS TO ACKNOWLEDGMENT OF EXECUTION OF AN INSTRUMENT

(CT:CON-110; 09-13-2005)
(Office of Origin: CA/OCS/PRI)

7 FAM 841 CERTIFICATE OF ACKNOWLEDGMENT

(CT:CON-110; 09-13-2005)

- a. The proper form of a certificate of acknowledgment depends on the laws of the jurisdiction where the acknowledged document is to be used and the intended purpose of the document.
- b. If the person who requests the certificate of acknowledgment gives you a specific form of notarial certificate to be used, you should comply with the request, making such amendments to the form as are necessary to show the venue and your name, title, and authority.
- c. If the requester does not provide a certificate, use the **Certificate of Acknowledgment of Execution of An Instrument** (Form OF-175) or **Individual Acknowledgment Certificate** (Form DS-1986).
- d. If in doubt as to the legality of the certificate of acknowledgment under the laws of the jurisdiction where the instrument is to be used, see the Martindale-Hubbell Law Digest volume or consult the State Notary Public Administrator. If no information is available, you should inform the acknowledger that the certificate may or may not be admissible in the state where it is to be used and that he or she may wish to ask an attorney in that state about the state's requirements.

7 FAM 842 CORPORATE ACKNOWLEDGMENTS

(CT:CON-110; 09-13-2005)

Officials of U.S. corporations traveling abroad frequently desire to execute an instrument in their capacity as corporate officials.

7 FAM 842.1 Language

(CT:CON-110; 09-13-2005)

The notarial certificate presented by the corporate official to the notarizing officer generally contains clauses such as, “_____, known to me personally and known to be the President of Jones, Inc., Boise, Idaho.” The notarizing officer who executes such a certificate is attesting not only to the personal identity of the individual but also to the person’s corporate position. It is usually difficult to establish the corporate identity of the business representative because documents such as business cards and letterhead can be fraudulent. Therefore, you **should not** to execute a preprinted corporate acknowledgment certificate if you cannot attest personally to the business identity of the requesting party. You frequently can circumvent the corporate acknowledgment problem by changing the “known to me to be” language to read, “who acknowledged himself to be the President of Alliance, Inc.”.

7 FAM 842.2 Format

(CT:CON-110; 09-13-2005)

Each state of the United States has a different form for corporate acknowledgments. Requesters should consult legal counsel to confirm language in the document is appropriate.

7 FAM 842.3 Identification of The Person Making The Acknowledgment

(CT:CON-110; 09-13-2005)

Some states of the United States only require that a notary be assured of the personal identity of the corporate representative who is to sign the instrument. Other states require a notary to verify not only the corporate representatives personal identity, but also the legal or business identity. Some of these permit the corporate representative’s legal or business identity to be proved by the oath of a third party, other than the notarizing officer, who has personal knowledge of the representative’s identity and who accompanies the representative.

7 FAM 842.4 Identification by Third Party

(CT:CON-110; 09-13-2005)

Where the relevant state permits a third party to verify the grantor's legal or business identity, you may take an affidavit from the third party. In such a case, you should change the language of the certificate of acknowledgment from "known to be" to "proved on oath of John Roberts (see attached affidavit) to be"

7 FAM 842.5 Notarizing Officer Verification of Grantor's Identity

(CT:CON-110; 09-13-2005)

For States that require a notary to attest to the corporate representative's personal and business identity or when there is no third person who can swear to this, the notarizing officer must be satisfied of the representative's legal or business identity before executing the acknowledgments. You should do your utmost to verify that the representative is, for example, president of Jones, Inc. There are few foolproof ways of doing so, as corporate letterhead, business cards, legal papers, even articles of incorporation, partnership agreements, or letters of guardianship or administration can easily be forged. Taken together, however, these documents may have some weight in establishing an individual's legal or business identity.

7 FAM 842.6 Verification Procedures

(CT:CON-110; 09-13-2005)

If you are not satisfied that the documents presented establish corporate representative's legal or business identity, the three recommended ways to verify the legal or business identity are to:

- (1) Explain the problem to the corporate representative and say that you cannot execute the acknowledgment unless you have solid evidence of his or her status in the corporation. Ask permission to telephone collect to the corporate office and ask for the name of its president, vice president, or other officer, as the case may be. According to the Better Business Bureau, this is the recommended solution for use by U.S. notaries public.
- (2) Seek the assistance of the commercial officer who may have been alerted to the arrival of a U.S. citizen corporate officer. For confirmation, refer to Standard and Poor's or Dun & Bradstreet's registers of corporations, directors, and executives, which should be available in the post's commercial section.

- (3) Consult the Department (CA/OCS/ACS in consultation with CA/OCS/PRI (ASKPRI@state.gov)).

7 FAM 843 EXECUTION OF SELF-PROVING WILLS

7 FAM 843.1 Prohibitions Against Consular Action

(CT:CON-110; 09-13-2005)

- a. The role of U.S. Department of State officers in connection with the execution of wills is limited. 22 CFR 92.81 prohibits notarizing officers from writing wills or accepting a will for safekeeping.
- b. **Do Not Witness Wills:** Notarizing officers also **are prohibited from witnessing wills** or obtaining witnesses for a person desiring to have a will executed at a Foreign Service post. See 22 CFR 92.81. Notarizing officers may, however, acknowledge the signatures of testators and or witnesses to self proving wills, as provided for under the Uniform Probate Code, Article II, Part 10.
- b. **International Wills Act:** U.S. consular officers and other notarizing officers cannot execute the certificate under the Uniform International Wills Act (1977) (Uniform Probate Code, as enacted in the individual U.S. state (see National Conference of Commissioners on Uniform State Laws (NCCUSL) NCCUSL A Few Facts About the International Will Act), because the United States has not, to date, become a party to the Convention Providing a Uniform Law on the Form of an International Will of October 26, 1973. Address your questions about this to CA/OCS/PRI at ASKPRI@state.gov.

7 FAM 843.2 Execution of Self-Proving Wills

(CT:CON-110; 09-13-2005)

- a. The testator and all the witnesses (who have already witnessed the will) appear together before the notarizing officer.
- b. You first verify their identities.
- c. You then place the testator and witnesses under oath. The testator executes an affidavit affirming that the document is the testator's last will and that the testator has signed it freely and knowingly. The witnesses execute affidavits attesting that the testator appeared to be of sound

mind and made the will voluntarily.

- d. The testator and the witnesses then acknowledge their signatures on the will.
- e. If it appears to you at any time that the testator is unable to understand the significance of the affidavit and acknowledgment, or that the testator is acting under undue influence or duress, you should not proceed

7 FAM 844 ATTESTATIONS

7 FAM 844.1 Attestation as Alternative to Acknowledgment

(CT:CON-110; 09-13-2005)

- a. Not all states use the acknowledgment procedure to prove that a document has been properly executed. As an alternative, some states require that one or more witnesses appear before a consular officer and attest that the person signing it executed and acknowledged the document in the presence of the witnesses.
- b. A notarizing officer may not act as an attesting witness to the execution of an instrument in connection with any private party matter, such as powers of attorney, wills, or contracts. The function of a witness is to be available to testify in the event a dispute arises at a later date concerning the circumstances surrounding the execution of a document, and is not compatible with the function of a notarizing officer. If a document needs witnessing, the person requesting the notarial service must provide the witness(es).
- c. While either attestations or acknowledgments are generally required by jurisdictions in the United States, the execution of both an attestation and an acknowledgment on the same instrument is rarely required. When a notarizing officer is called upon to administer an oath to an attesting witness **and** to take an acknowledgment from the persons signing the instrument, two separate notarial acts are performed and you should collect two separate fees.
- d. If in doubt as to the legality of the attestation under the laws of the jurisdiction where the instrument is to be used, see the Martindale-Hubbell Law Digest volume or consult the State Notary Public Administrator. If no information is available, you should inform the grantor and/or witness that the attestation may or may not be admissible

in the state where it is to be used and that the grantor/witness may wish to ask an attorney in that state about the state's requirements.

7 FAM 844.2 Oath by Attesting Witness

(CT:CON-110; 09-13-2005)

The attesting witness must swear or affirm to knowing the signer of the instrument and to being present when the document was signed. Some states may have more specific requirements. Mere acknowledgment by the witness of having seen the instrument signed by the grantor is not always sufficient.

7 FAM 845 THROUGH 849 UNASSIGNED