

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

The meeting was called to order by Rep. Neal D. Whitaker at  
Chairperson

1:30 ~~am~~ p.m. on March 21, 1983 in room 526-S of the Capitol.

All members were present except: Reps. Vancrum and Peterson, who were excused.

Committee staff present:

Mary Torrence, Revisor of Statute's Office  
Nora Crouch, Committee Secretary

Conferees appearing before the committee:

Senator Elwaine Pomeroy  
John Wine, Secretary of State's Office  
John McCabe, Legal Council, National Conference of Commissioners on  
Uniform State Laws  
Representative Norman E. Justice  
Dennis M. Shockley, City of Kansas City, Kansas

Chairman Whitaker called the meeting to order. He stated that this was a sad day for everyone with the loss of our Committee member and colleague, Rep. Reba Cobb.

Senator Elwaine Pomeroy appeared to explain the provisions of SB 89 stating this was recommended by the Uniform State Law Commissioners. He explained that this is a group of law trained persons for all 50 states who meet with the purpose of discussing and deciding whether in their opinion in a given field it would be wise to have uniform laws between states. This act was at one time controversial and was opposed by the Notaries. It deals with those acts performed within the state and those performed in other states and those performed in foreign countries. It sets forth the manner in which the notary acknowledges the oath or affirmation. It also deals with the short form certifications for various acts.

John Wine, Secretary of State's Office, appeared in support of SB 89 stating they have no objection to the act and would urge the adoption. It changes very little of existing Kansas laws and primarily clarifies existing laws. They believe it would be very helpful for notaries to have this clarification.

Rep. Norman Justice appeared on HB 2313 stating that the Black community had for the last 5 sessions been trying to honor the name of Dr. Martin Luther King, Jr. by having his birthday recognized as a holiday. A member questioned whether having this as a holiday would require state offices to be closed. Rep. Justice stated that it would not, it is simply to recognize a deed by a person who just wanted to better the life of all people. (See Attachment A)

Rep. Norman Justice appeared on HB 2122 stating that the proposal concerns 10 blocks of US 24 and US 73 that runs through Kansas City, Kansas. This is not the entire system just 10 blocks that run through the Black community. He stated that KDOT has no objections and there would be no fiscal note. (See Attachment A)

Dennis Shockley, City of Kansas City, Kansas, appeared in support of HB 2122 He further stated that the City of Kansas City would make the street signs and that they would comply with the traffic code. (See Attachments B & C)

John McCabe, Legal Counsel, National Conference of Commissioners on Uniform State Laws, appeared in support of SB 89 stating that this combines 2 acts, the Acknowledgement Act and the Recognition of Acknowledgment Act and is basically a modernization of of existing laws. It states that a notarial act committee in another state by an appropriate authority becomes a notarial act in another state. (See Attachments D & E)

The meeting adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 3-21-83

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
<i>Clarence Amery</i>		<i>Senator</i>
<i>John Wine</i>		<i>Secretary of State</i>
<i>W. M. (Mike) Lackey</i>		<i>KDOT</i>
<i>LARRY MORLAN</i>		<i>KDOT</i>
<i>Sheri L. Glitz</i>		<i>BD. of Admin</i>
<i>Tim Sullinger</i>		<i>HC Star</i>
<i>Sandra Johnson</i>		<i>KTWC</i>
<i>Ben Bauman</i>		<i>KTWC</i>

NORMAN E. JUSTICE  
REPRESENTATIVE THIRTY-FOURTH DISTRICT  
WYANDOTTE COUNTY  
506 WASHINGTON BLVD  
KANSAS CITY, KANSAS 66101



TOPEKA

COMMITTEE ASSIGNMENTS  
MEMBER ELECTIONS  
JUDICIARY  
TRANSPORTATION

HOUSE OF  
REPRESENTATIVES  
March 21, 1983

MARTIN LUTHER KING'S BIRTHDAY

This bill concerns recognition of Martin Luther King's birthday being recognized in the State of Kansas as a holiday, the same as Columbus Day, Veteran's Day, etc. Being that Kansas has a history of liberality towards freedom of former slaves, the constituency of the 34th District, as well as black constituencies throughout the State, are requesting the passage of HB 2313.

MARTIN LUTHER KING MEMORIAL HIGHWAY

HB 2122 concerns the naming of a very short portion of 24-73 Highway, to be specific 10 blocks running through the heart of the black community, to be named the Martin Luther King, Jr. Memorial Highway. This will not cost the State any money, it has the approval of the Kansas Department of Transportation, the City government of Kansas City, Kansas, and a very strong endorsement from the constituency of this locality.

Thanking you in advance for your kind consideration of two bills that will not be any expense to the taxpayers of this great, sovereign State of Kansas.

I solicit your support. Thank you.

Representative Justice

And love

*Atch. A*

RESOLUTION NO. 35527

WHEREAS, Representative Norman Justice has submitted House Bill No. 2122 requesting that U. S. 24 and State Highway 73 be designated the Dr. Martin Luther King, Jr. Memorial Highway; and

WHEREAS, the Board of Commissioners of the City of Kansas City, Kansas, concur with Representative Justice's request in honor of Dr. Martin Luther King, Jr.; and

WHEREAS, the highway designation signs will comply with the City Traffic Code.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF KANSAS CITY, KANSAS:

That House Bill No. 2122 promulgated by Representative Norman Justice to designate U. S. 24 and State Highway 73 as the Dr. Martin Luther King, Jr. Memorial Highway, be passed by the 1983 Kansas Legislature thus commemorating in a small way the memory of Dr. King.

BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the Chairman of the House of Federal and State Affairs Committee showing the support of the City of Kansas City, Kansas.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF KANSAS CITY, KANSAS, THIS 10th DAY OF MARCH, 1983.

  
City Clerk

*Atch. B*

# KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612



JOHN B. KEMP, Secretary of Transportation

JOHN GARLIN, Governor

MARCH 14, 1983

The Honorable John E. Reardon  
Mayor of Kansas City, Kansas  
City of Kansas City, Kansas  
Executive Chamber  
One Civic Center Plaza  
Kansas City, KS 66101

RECEIVED

MAR 17 1983

MAILING OFFICE

Dear Mayor Reardon:

Representative Norman Justice visited with me recently in the halls of the State Legislature concerning legislation of our mutual interest. House Bill 2122, introduced by Representative Justice, designates "United States Highways 24 and 73 from the west end of the intercity viaduct to its junction with United States Highway 40" as the "Dr. Martin Luther King, Jr. Memorial Highway".

While the Kansas Department of Transportation has not been, and does not plan to be in the future, an advocate of designating memorial highways, we did assist Representative Justice with the drafting of House Bill 2122. KDOT staff also appeared before the House Transportation Committee and testified on the bill. The legislation received favorable action by the House Transportation Committee, but was re-referred to the House Federal and State Affairs Committee when the bill came up for action on the floor of the House.

Any support your office could give to the passage of this legislation would be appreciated, I'm sure, by Representative Justice.

If my office can supply further information, please feel free to contact us.

Sincerely,

JOHN B. KEMP, P.E.  
SECRETARY OF TRANSPORTATION

Attachment

Atch c

UNIFORM LAW ON NOTARIAL ACTS

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE  
MEETING IN ITS NINETY-FIRST YEAR  
IN MONTEREY, CALIFORNIA  
JULY 30 - AUGUST 6, 1982



WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association  
New Orleans, Louisiana, February 9, 1983

*Atch. 0*

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Law on Notarial Acts was as follows:

- ROBERT A. STEIN, University of Minnesota, School of Law, Minneapolis, MN 55455, *Chairman*
- WILLIAM S. ARNOLD, P. O. Drawer A, Crossett, AR 71635
- WADE BRORBY, 306 South Gillette Avenue, Gillette, WY 82716
- WILLIAM GORDON, Suite 610, 100 North Stone Avenue, Tucson, AZ 85701
- LINDA JUDD, P. O. Box 999, Post Falls, ID 83854
- JAMES A. SHOWERS, 62 West Elm, Hillsboro, TX 76645
- FRED L. MORRISON, University of Minnesota, School of Law, Minneapolis, MN 55455, *Reporter*
- JOHN C. DEACON, P. O. Box 1245, Jonesboro, AR 72401, *President: 1979-1981 (Member Ex Officio)*
- M. KING HILL, JR., Sixth Floor, 100 Light Street, Baltimore, MD 21202, *President: 1981-1983 (Member Ex Officio)*
- CARLYLE C. RING, JR., 308 Monticello Boulevard, Alexandria, VA 22305, *Chairman, Executive Committee*
- WILLIAM J. PIERCE, University of Michigan, School of Law, Ann Arbor, MI 48109, *Executive Director*
- EDWARD F. LOWRY, JR., Suite 1650, 3300 North Central Avenue, Phoenix, AZ 85012, *Chairman, Division B: 1979-1981 (Member Ex Officio)*
- ROBERT H. CORNELL, 25th Floor, 50 California Street, San Francisco, CA 94111, *Chairman, Division B: 1981-1982 (Member Ex Officio)*

#### Review Committee

- FRANK W. DAYKIN, Legislative Building, Capitol Complex, Carson City, NV 89710, *Chairman*
- CHARLES W. JOINER, P. O. Box 7880, Ann Arbor, MI 48107
- ORLAN L. PRESTEGARD, Room 411 West, State Capitol Building, Madison, WI 53702

#### Advisors to Special Committee on Uniform Law on Notarial Acts

- HENRY M. KITTLESON, *American College of Real Estate Lawyers*
- FRANK R. ROSINY, *American Bar Association*
- MILTON G. VALERA, *National Notary Association*

Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
645 North Michigan Avenue, Suite 510  
Chicago, Illinois 60611

## UNIFORM LAW ON NOTARIAL ACTS

### Commissioner's Prefatory Note

This Uniform Act is designed to define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions. It thus replaces two Uniform Laws, the Uniform Acknowledgment Act (As Amended), and the later Uniform Recognition of Acknowledgments Act. The original Acknowledgment Act served to define the content and form of acknowledgments. The Recognition Act later provided for more specific rules for recognition of acknowledgments and "other notarial acts" from outside of the state, although its title was more narrowly stated.

This statute is thus a consolidation, extension, and modernization of the two previous acts. It consolidates the provisions of the two acts relating to acknowledgments of instruments. It extends the coverage of the earlier act to include other notarial acts, such as taking of verifications and attestation of documents.

In addition, the act seeks to simplify and clarify proof of the authority of notarial officers.

### UNIFORM LAW ON NOTARIAL ACTS

Sec.		Sec.	
1.	Definitions.	7.	Certificate of Notarial Acts.
2.	Notarial Acts.	8.	Short Forms.
3.	Notarial Acts in This State.	9.	Notarial Acts Affected by This Act.
4.	Notarial Acts in Other Jurisdictions of the United States.	10.	Uniformity of Application and Construction.
5.	Notarial Acts Under Federal Authority.	11.	Short Title.
6.	Foreign Notarial Acts.	12.	Repeals.
		13.	Time of Taking Effect.

#### § 1. Definitions

As used in this [Act]:

(1) "Notarial act" means any act that a notary public of this State is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(2) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(3) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

(4) "In a representative capacity" means:

(i) for and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(ii) as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(iii) as an attorney in fact for a principal; or

(iv) in any other capacity as an authorized representative of another.

(5) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

### Commissioners' Comment

This Uniform Law defines common notarial acts and provides for the recognition of notarial acts performed in other states and in foreign jurisdictions. It does not prescribe the qualifications of notaries public or other officers empowered to perform notarial functions, nor does it establish the procedure for their selection or term of office.

The Act uses the term "notarial officer" to describe notaries public and other persons having the power to perform "notarial acts." These notarial acts are described in Section 2. Section 3 then describes who, in addition to notaries public, is a notarial officer in this state; Sections 4, 5, and 6 provide for the recognition of acts of notarial officers appointed by other jurisdictions.

### § 2. Notarial Acts

(a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(e) In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in [Section 3-509, Uniform Commercial Code].

(f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person (i) is personally known to the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents.

### Commissioners' Comment

This section authorizes common notarial acts. It does not limit other acts which notaries may perform, if authorized by other laws.

Subsection (a) specifies what a notarial officer certifies by taking an acknowledgment. The notarial officer certifies to two facts: (1) the identity of the person who made the acknowledgment and (2) the fact that this person signed the document as a deed (or other specific instrument), and not as some other form of writing. The personal physical appearance of the acknowledging party before the notarial officer is required. An acknowledgment, as defined in Section 1(2) is a statement that the person has signed and executed an instrument; it is not

the act of signature itself. Hence a person may appear before the notarial officer to acknowledge an instrument which that person had previously signed.

Similarly subsection (b) specifies the requisites of taking of a verification on oath or affirmation. There are again two elements: (1) the identity of the affiant and (2) the fact that the statement was made under oath or affirmation. Here again, the personal physical presence of the affiant is required.

Subsection (c) defines the requirements for witnessing (or attesting) a signature. Here only the fact of the signature, not the intent to execute the instrument, is certified by the notarial officer.

Subsection (d) defines the standards for attestation or certification of a copy of a document by a notarial officer. This is commonly done if it is necessary to produce a true copy of a document, when the original cannot be removed from archives or other records. In many cases, the custodian of official records may also be empowered to issue official certified copies. Where such official certified copies are available, they constitute official evidence of the state of public records, and may be better evidence thereof than a notarially certified copy.

Subsection (e) refers to a provision of the Uniform Commercial Code which confers authority to note a pro-

test of a negotiable instrument on notaries and certain other officers.

Subsection (f) describes the duty of care which the notarial officer must exercise in identifying the person who makes the acknowledgment, verification or other underlying act. California law, for example, provides an exclusive list of identification documents on which the notarial officer may rely. These are documents containing pictorial identification and signature, such as local drivers' licenses, and U.S. passports and military identification papers, issued by authorities known to exercise care in identification of persons requesting such documentation.

### § 3. Notarial Acts in This State

(a) A notarial act may be performed within this state by the following persons:

- (1) a notary public of this State,
- (2) a judge, clerk or deputy clerk of any court of this State,
- [(3) a person licensed to practice law in this State,] [or]
- [(4) a person authorized by the law of this State to administer oaths,] [or]
- [(5) any other person authorized to perform the specific act by the law of this State.]

(b) Notarial acts performed within this State under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

### Commissioners' Comment

Subsection (a) lists the persons who are entitled to serve as notarial officers in the state. In addition to notaries public, all judges, clerks and deputy clerks of courts of the state may automatically perform notarial acts. The language follows the more modern form of the Uniform Recognition of Acknowledgments Act. It is more abbreviated than the Uniform Acknowledgments Act, in that it consolidates the several judicial offices into one listing.

Several optional additional notarial officers are listed. A state may authorize all duly licensed attorneys at law to serve as notaries public by virtue of their attorneys' licenses. It may also authorize other individuals who have authority to administer oaths to do so. If other particular officers, such as recorders or registrars of deeds or commissioners of titles, may perform notarial acts in the state it

would be advisable to list them here, because this list will be a ready reference point for those who seek to determine the validity of their acts, when they are used in another state.

Proof of authority of a notarial officer usually involves three steps:

1. Proof that the notarial signature is that of the named person,
2. Proof that that person holds the designated office, and
3. Proof that holders of that office may perform notarial acts.

Subsection (c) sets forth the presumption of genuineness of signature and the presumption of truth of assertion of authority by the notarial officer, the first two elements of authentication. Since the officers listed in subsection (a) are authorized to act by this statute, no further proof of the third element, the authority of such an officer, is required.



#### § 4. Notarial Acts in Other Jurisdictions of the United States

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (1) a notary public of that jurisdiction;
- (2) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in subsection (a)(1) or (a)(2) conclusively establish the authority of a holder of that title to perform a notarial act.

#### Commissioners' Comment

Sections 4, 5, and 6 of this act are adapted from Sections 1 and 2 of the Uniform Recognition of Acknowledgments Act. That Act set forth the individuals outside of the state who could take acknowledgments or perform other notarial acts, and separately set forth the authentication of those acts which was necessary. Different standards applied in the cases of persons acting under the authority of another state, of the federal government, or of a foreign country. This statute distinguishes between the three kinds of authority from outside the state, and provides the authentication separately for each type.

Subsection (a) is adapted from Section 1 of the Uniform Recognition of Acknowledgments Act. Subsection (b) gives prima facie validity to the signature and assertion of title of the person who acts as notarial officer. It follows Section 2(d) of the Uniform Recognition of Acknowledgments Act. It thus provides the first two elements of proof of authority of the notarial

officer set forth in the comments to Section 3.

Subsection (c) provides the third element of that proof of authority. It recognizes conclusively the authority of a notary public or of a judge or clerk or deputy clerk of court to perform notarial acts, without the necessity of further proof that such an officer has notarial authority. It is copied from Section 2(a) of the Uniform Recognition of Acknowledgments Act. These two subsections abolish the need for a "clerk's certificate" to authenticate the act of the notary, judge, or clerk. The authority of a person other than a notary, judge, or clerk to perform notarial acts can most readily be proven by reference to the law of that state. Any other form of proof of such authority acceptable in the receiving jurisdiction, such as a clerk's certificate, as is currently provided by Section 2(c) of the Uniform Recognition of Acknowledgments Act, would also suffice.

#### § 5. Notarial Acts Under Federal Authority

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed anywhere by any of the following persons under authority granted by the law of the United States:

- (1) a judge, clerk, or deputy clerk of a court;
- (2) a commissioned officer on active duty in the military service of the United States;
- (3) an officer of the foreign service or consular officer of the United States; or

(4) any other person authorized by federal law to perform notarial acts.

(b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in subsection (a)(1), (a)(2), or (a)(3) conclusively establish the authority of a holder of that title to perform a notarial act.

#### Commissioners' Comment

Some acknowledgments are performed by persons acting under federal authority, or holding office under federal authority. This section provides for the automatic recognition of those notarial acts within the enacting state. The list of persons whose acts are immediately recognized by this section is drawn from Section 1 of the Uniform Recognition of Acknowledgments Act, but has been simplified. This law no longer limits recognition of the notarial acts performed by military officers to acts performed for persons in the military service "or any other persons serving with or accompanying the armed forces of the United States." Such a limitation in recognition merely places another cloud on the validity of the notarial act. The act does not purport to extend the authority of military officers to perform these acts, but merely immunizes the private party relying on them from any consequences of the officer's excess of authority. Both in the case of commissioned military officers and foreign service officers, the language has been modified to reflect modern descriptions of the offices in question. In both instances, the further reference to "any other person authorized by regulation" has also been omitted as duplicative of paragraph 4 of this subsection.

Subsection (b), like its counterpart in Section 4, is drawn from Section 2(d) of the Uniform Recognition of Acknowledgments Act. It confers pri-

ma facie validity upon the signature and assertion of rank or title by the notarial officer, thus providing the first two elements of proof described in the comments to Section 3.

Subsection (c) is drawn from Section 2(a) of the same law. It provides the third element of proof of the notarial officer's authority. It immediately recognizes the authority of a judge or clerk, or military officer or foreign service or consular officer to perform notarial acts, without the necessity of further reference to the federal statutes or regulations to prove that the officer has notarial authority. There is no need for further authentication of these persons' authority to perform notarial acts. A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons, but their authority must be demonstrated by other means. The authority of such an officer to perform the notarial act can most readily be demonstrated by reference to the federal law or published regulation granting such authority. Any other form of authentication, such as a clerk's certificate, could also be used.

A military officer who performs notarial services should insert the appropriate title (e.g., commanding officer) in the place designated for "title (and rank)" to conform to 10 U.S.C. § 936(d). The officer's rank and branch of service should also be inserted there.

#### § 6. Foreign Notarial Acts

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (1) a notary public or notary;
- (2) a judge, clerk, or deputy clerk of a court of record; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in subsection (a)(1) or (a)(2) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

**Commissioners' Comment**

This section deals with the authority of notarial officers empowered to act under foreign law. Note that the act of any notary is recognized, as well as that of judges or clerk of courts of record. The notarial acts of other persons will be recognized if they are authorized by the law of the place in which they are performed.

Proof of validity of foreign notarial acts is a more difficult problem than recognition of such acts from other states of the United States, because the relative authority of public and

quasi-public officers may vary. See the special rules previously provided under the Uniform Recognition of Acknowledgments Act, Section 2(b).

The United States is now a party to an international convention regarding the authentication of notarial and other public acts. The first method of recognition of foreign notarial acts is that set forth in the treaty. The Apostille may be stamped on the document or an attached page by a specified officer in the foreign country. It has the following form.

**APOSTILLE**

(Convention de La Haye du 5 octobre 1961)

- 1. Country: .....  
This public document
- 2. has been signed by .....
- 3. acting in the capacity of .....
- 4. bears the seal/stamp of .....

**CERTIFIED**

- 5. at ..... 6. the .....
- 7. by .....
- 8. No. ....
- 9. Seal/Stamp ..... 10. Signature: .....

It may be in the language of the issuing country, but the words "Apostille (Convention de La Haye, du 5 octobre 1961)" are always in French. Under the terms of the treaty, to which the United States is a party, the Apostille must be recognized if issued by a competent authority in another nation which has also ratified it. The

text of the convention is reproduced in the volume of 28 U.S.C.A. containing the annotations to Rule 44 of the Federal Rules of Civil Procedure, and in Martindale-Hubbell.

Although federal law provides for mandatory recognition of an Apostille only if issued by another ratifying nation, this statute provides for recogni-

tion of all apostilles issued by any foreign nation in that form. They, are in effect, no more than a standard form for authentication. Use of the form eases problems of translation.

Recognition may also be accorded in a number of other ways, which are taken from Section 2(b) of the Uniform Recognition of Acknowledgments Act.

**§ 7. Certificate of Notarial Acts**

(a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) and it:

- (1) is in the short form set forth in Section 8;
- (2) is in a form otherwise prescribed by the law of this State;
- (3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- (4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by Section 2.

**Commissioners' Comment**

This section requires a written certification by the notarial officer of the notarial act. That certification may be simple. It need only record the notarial act and its place and date, together with the signature and office of the notarial officer. Subsection (b) provides that the certificate may be in any one of the short forms set forth in this act, or in any other form provided by local law, or in any other form provided by the law of the place where it is performed, or in any form that sets

forth the requisite elements of the appropriate notarial act. Thus acknowledgments or other notarial acts executed in the more elaborate forms of the former Uniform Acknowledgments Act or the Uniform Recognition of Acknowledgments Act would continue to qualify under subsection (b)(4). Subsection (c) reemphasizes the obligation of the notarial officer to make the determinations required by Section 2 and to certify that the officer has done so.

**§ 8. Short Forms**

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Section 7(a):

(1) For an acknowledgment in an individual capacity:

State of \_\_\_\_\_  
(County) of \_\_\_\_\_

(date)

This instrument was acknowledged before me on \_\_\_\_\_ by  
(name(s) of person(s))

(Seal, if any)

\_\_\_\_\_  
(Signature of notarial officer)

\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_\_]

(2) For an acknowledgment in a representative capacity:  
State of \_\_\_\_\_  
(County) of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

(3) For a verification upon oath or affirmation:  
State of \_\_\_\_\_  
(County) of \_\_\_\_\_

(date)

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ by (name(s) of person(s) making statement).

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

(4) For witnessing or attesting a signature:  
State of \_\_\_\_\_  
(County) of \_\_\_\_\_

(date)

(name(s) of person(s)).

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

(5) For attestation of a copy of a document:  
State of \_\_\_\_\_  
(County) of \_\_\_\_\_

I certify that this is a true and correct copy of a document in the position of \_\_\_\_\_.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

**Commissioners' Comment**

This section provides statutory short forms for notarial acts. These forms are sufficient to certify a notarial act. See Section 7(b)(1). Other forms may also qualify, as provided in Section 7.

A notarial seal is optional under this Act. See Section 7(a). A military officer who is acting as a notarial officer will normally enter both title (e.g., commanding officer, Company A, etc.) and rank (Captain, U.S. Army) as identification.

**§ 9. Notarial Acts Affected by This Act**

This [Act] applies to notarial acts performed on or after its effective date.

**§ 10. Uniformity of Application and Construction**

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

**§ 11. Short Title**

This [Act] may be cited as the Uniform Law on Notarial Acts.

**§ 12. Repeals**

The following acts and parts of acts are repealed:

- (1) [The Uniform Acknowledgment Act (As Amended)]
- (2) [The Uniform Recognition of Acknowledgments Act]
- (3) \_\_\_\_\_

**Commissioners' Comment**

This statute is intended to replace the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Act, and may also replace other state legislation on this topic.

**§ 13. Time of Taking Effect**

This [Act] takes effect \_\_\_\_\_.



## UNIFORM LAW ON NOTARIAL ACTS

The National Conference of Commissioners on Uniform State Laws (ULC) adopted the first Uniform Acknowledgments Act in 1892, the year, not coincidentally, of its first conference. It has been perfectly clear, right from the beginning of the uniform laws movement, that uniformity in the means, recognition, and form of acknowledgment makes great sense. What is valid and recognized in California as a true signature ought to be valid and recognized in Maine, as well.

Over time, the ULC has reviewed the Acknowledgments Act. Revisions took place in 1939, 1942, 1949 and 1960. In addition, the ULC added the Uniform Foreign Acknowledgments Act in 1914, and replaced it with the Uniform Recognition of Acknowledgments Act in 1968. These latter Acts were meant to improve the interstate and international recognition of acknowledgments. In 1982, the ULC has combined the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Act into the single Uniform Law on Notarial Acts.

The new Law is somewhat broader than the prior Acts. Its scope includes those acts called "notarial acts" or "any act that a notary public of this State is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument." The old Acknowledgment Act dealt only with the less inclusive "acknowledgment," which is the signator's verified statement of his proper capacity to execute the acknowledged instrument. The Recognition of Acknowledgments Act recognized "notarial acts," but more restrictively. The new Law simply recognizes that the responsibility of the official in all cases is the verification of the true signature and, in all instances, that every verification should be valid everywhere under the terms of this Uniform Law.

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It is the problem of recognition between states, between states and the federal government, and between nations that this Uniform Law principally addresses. Section 4 of the new Uniform Law on Notarial Acts states the basic rule: Any notarial act performed by a notarial officer in another state "has the same effect under the law of this State as if performed by a notarial officer of this State." Section 5 accords the same treatment to notarial acts of federal officers. Notarial acts committed in another nation, also, have the same stature as notarial acts committed in the home state, under Section 6. In all cases, the signature of the notarial officer is prima facie evidence that it is genuine.

The new Uniform Law also breaks ground in the simplification of notarial acts. Section 8 offers short forms for the commission of all notarial acts. These forms are clear, concise and inclusive. And the use of Section 8 forms meets all of the certificate requirements to which notarial officers will be subject.

In this reconsideration and combination of the two earlier Uniform Acts, the ULC has further improved signature verification and its recognition. Improved practices should be the inevitable result.