

Plain English Acknowledgment Forms

By George H. Hathaway

An acknowledgment is the act by which you go before a notary public and acknowledge (state) that you have signed a document. The notary then signs what is officially called a "Certificate of Acknowledgment," referred to simply as an "acknowledgment." Under MCL 565.201 (b) an acknowledgment is required before a document can be recorded in the county Register of Deeds office.

Types of Documents

Acknowledgments are used only on the type of documents that are recorded with the county Register of Deeds. To illustrate the type and relative numbers of these documents, data was obtained from the Wayne County Register of Deeds. In 1987, 293,000 documents were recorded in the office. The relative percentages were 35% deeds, 20% mortgages, 20% discharges of mortgages, 5% assignments of mortgages, 10% construction and tax liens, 5% UCC finance statements, 1% sheriff's foreclosures, 1% lis pendens, and 3% miscellaneous. Ninety percent of the acknowledgments were for deeds, mortgages (or mortgage-related documents); and liens. Therefore, when you talk about acknowledgments, you're talking primarily about deeds, mortgages, and liens.

Case Precedent

There is very little case precedent for the specific words that must be used in an acknowledgment. What little case precedent there is, is usually very old (1888, 1915, etc.). Furthermore, there

are thousands of variations on the wording of "traditional" acknowledgment forms. Every legal secretary uses different language. Questions about acknowledgments arise over the way that the blanks are filled in, i.e., the names of the people who did the acknowledging and the way these names are written and spelled. But no one has ever questioned, nor cared to question, the printed language of an acknowledgment form itself in Michigan for the last 50 years. The printed acknowledgment form is simply there. As long as it starts out with the archaic "State of Michigan, County of _____ SS.," is signed by a notary, takes up lots of space, and looks prestigious, everyone is satisfied and doesn't care what it actually says. One of the thousands of differently worded traditional acknowledgment forms still used in Michigan is shown in Figure 1.

Uniform Recognition of Acknowledgments Act

In 1970 Michigan passed the Uniform Recognition of Acknowledgments Act, MCL 565.261 to .270. This Act, which is effective in 20 states, explains the requirements for an acknowledgment.

565.264 Certification involved in acknowledgment

The person taking an acknowledgment shall certify that the person acknowledging appeared before him and acknowledged he executed the instrument; and the person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment has satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

565.265 Form of acknowledgment

The form of a certificate of acknowledgment used by a person whose authority is recognized under Section 2 shall be accepted in this state if one of the following is true:

(a) The certificate is in a form prescribed by the laws or regulations of this state. [Note: There are none in Michigan other than this Act.]

(b) The certificate is in a form prescribed by the laws applicable in the place in which the acknowledgment is taken.

(c) The certificate contains the words "acknowledged before me," or their substantial equivalent.

565.266 Acknowledged before me, meaning

The words "acknowledged before me" means:

(a) That the person acknowledging appeared before the person taking the acknowledgment.

(b) That he acknowledged he executed the instrument.

(c) That, in the case of:

(i) A natural person, he executed the instrument for the purposes therein stated. . . .

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

Plain English Acknowledgment Forms

From the preceding analysis, plain English acknowledgment forms can be developed. See Figures 3-5. The first word in these forms is the word "acknowledged." This definitely helps to identify and label this as an acknowledgment, rather than an affidavit, a verification, or some other type of clause. This is an improvement over the traditional acknowledgment clauses, which are never labeled. You usually have to read through 100 or more words before you finally find the key word "acknowledged" to make it valid. The next

two words are "before me." Therefore, in the first three words, "acknowledged before me," we have the three required words of an acknowledgment—the three most important words of the acknowledgment.

Next comes the location, XXXXX County, Michigan, in three words instead of six words, plus the ridiculous SS (note—the SS was eliminated in the Uniform Act). Then the date in number form, "April 6, 1989," rather than the lengthy, space-wasting, prestigious "6th day of April, 1989." And finally, by _____. Then you have a line for the notary's 1) stamp (containing name, title, and date commission expires) and 2) signature.

Thus, in 3 lines you have everything you need for an acknowledgment. It's legal and much shorter, it takes up less space, and you can concentrate on the requirements without being confused by all the unnecessary words.

Furthermore, it's now much easier to see the difference between an acknowledgment and a notary's jurat on an affidavit. A plain English jurat simply states:

Signed and sworn to before me in _____ County, Michigan on _____, 19____.

*Notary's signature
Notary Public Name & Title. My Commission Expires _____, 19____*

An acknowledgment states that you have "acknowledged" (told the notary that the signature at the end of the document was your signature). A jurat at the end of an affidavit states that you have "signed and sworn to" (signed the document and told the notary that the statements in the document were true).

Promoting Plain English Acknowledgment Forms

Nineteen years after the Uniform Act was passed in Michigan, many Michigan lawyers and legal secretaries still use lengthy archaic acknowledgment forms rather than the Uniform Act statutory short forms. Thus the track record for using simplified acknowledgment forms is poor. If plain English acknowledgment forms are ever going to be voluntarily accepted and used in Michigan, they must be promoted by the State Bar of Michigan, the Michigan Legal Secretaries Association, and the Michigan Association of Registers of Deeds.

Even then, lawyers and legal secretaries who don't want to use plain English acknowledgment forms are going to ask, "How do we know plain English acknowledgment forms are legal?" (Note: They will ask this question even though they won't be able to answer that same question for any of the lengthy archaic acknowledgment forms that they now use.) Therefore, the Michigan Legislature could solve this problem by adding the plain English acknowledgment forms as permitted voluntary forms in an amendment to either the Uniform Recognition of Acknowledgments Act or the Notaries Act. ■

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Figure 3

Plain English Acknowledgment Form (Individual)

Acknowledged before me in _____ County, Michigan, on _____ 19____
by Jane A. Smith.

Notary's Stamp

Notary's Signature

Figure 4

Plain English Acknowledgment Form (Partnership)

Acknowledged before me in _____ County, Michigan, on _____ 19____

by _____, partner of _____ partnership, for the partnership.

Notary's Stamp

Notary's Signature

Figure 5

Plain English Acknowledgment Form (Corporation)

Acknowledged before me in _____ County, Michigan, on _____ 19____

by _____ the _____

and _____ the _____ of
The ABC Company, a Michigan corporation, for the corporation.

Notary's Stamp

Notary's Signature