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 _ 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, M. 48901.

565.267 Statutory short forms

(1) The forms of acknowledgment set forth in this section may be used and are sufficient for their purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(2) For an individual acting in his own right: [See Figure 2].

The Uniform Act 1) greatly simplifies the wording for an acknowledgment by establishing the term of art "acknowledged before me"; 2) sets an example of a "statutory short form of acknowledgment"; and 3) makes this form voluntary, not mandatory, by stating, "The authorization of the forms in this section does not preclude the use of other forms."

Requirements for an Acknowledgement

The Uniform Act does not state mandatory requirements for an acknowledgment. However, the Act implies the following requirements:

- The term of art "acknowledged before me." or its substantial equivalent;
- The location (venue), i.e., the county and state in which the acknowledgment was made;
 - · The date:
- The name of the person who did the acknowledging;
 - The signature of the notary, and;
 - The title of the notary.

The Act uses the words "The foregoing instrument" but does not state that these words are required. These words could be replaced by the plain English words "the preceding document." However, why use the words at all? Isn't it apparent that it is the preceding document? What other document could it mean—especially since in a one-page deed everything is all on one page?

Furthermore, in a multipage mortgage, the acknowledgment always follows the signature line. And even if the acknowledgment was at the top of a new page, it is apparent that the acknowledgment is for "the preceding

Figure 1 A Traditionally Worded Acknowledgment Form (for an Individual)

State of Michigan)

) SS:

County of Wayne)

On this 6th day of April, 1989, before me personally appeared Jane A. Smith, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed in the capacity above designated.

Notary Public, Wayne County, Michigan My Commission expires June 19, 1991

Figure 2 Uniform Act "Statutory Short Form of Acknowledgment" (Individual)

State of Michigan County of Wayne

The foregoing instrument was acknowledged before me this 6th day of April, 1989 by Jane A. Smith.

Notary Public, Wayne County, Michigan My commission expires: Jan. 19, 1991

document." If the acknowledgment is at the top of a new page and you have trouble proving that the acknowledgment is for the "preceding pages," you still have that problem regardless of whether the acknowledgment states "the foregoing instrument," the preceding document, or nothing.

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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

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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				
on, 19						igun.
Notary	's sigr	nature		400 MT 0	5682 2	
Notary mission			5	Title.	My C , 19_	om-

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.

Plain English Ackno	Figure 3 www.edgment Form (Individual)			
Acknowledged before me in by Jane A. Smith.	County, Michigan, on 19			
Notary's Stamp	Notary's Signature			
Plain English Acknow	Figure 4 wledgment 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 Acknow	vledgment Form (Corporation)			
Acknowledged before me in	County, Michigan, on 19			
by	the			
and The ABC Company, a Michigan cor	the of reporation, for the corporation.			
Notary: Stamp	Notary's Signature			