

questions involved. In many instances the matters referred to in an affidavit will be of a technical or special nature beyond the officer's general knowledge or experience. However, he may, in certain circumstances, refuse to take an affidavit. (See § 92.9 regarding the types of situations in which an officer might properly refuse to perform a notarial service; also see § 92.10 regarding the waiver and other statements which may be included in a notarial certificate where evidence exists of falsity in the affiant's declaration.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

**§ 92.28 Signature of affiant on affidavit.**

The signature of the affiant is indispensable. The affiant should always sign the affidavit in the presence of the notarizing officer.

**§ 92.29 Oath or affirmation to affidavit.**

Affidavits made before notarizing officers must be sworn to or affirmed (see § 92.23(d)).

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

**§ 92.30 Acknowledgment defined.**

An acknowledgment is a proceeding by which a person who has executed an instrument goes before a competent officer or court and declares it to be his act and deed to entitle it to be recorded or to be received in evidence without further proof of execution. An acknowledgment is almost never made under oath and should not be confused with an oath (see § 92.18(a) for definition of oath). Moreover, an acknowledgment is not the same as an attestation, the latter being the act of witnessing the execution of an instrument and then signing it as a witness. Instruments requiring acknowledgment generally are those relating to land, such as deeds, mortgages, leases, contracts for the sale of land, and so on.

**§ 92.31 Taking an acknowledgment.**

(a) *Officers' assurance of acceptability of notarial act.* A notarizing officer taking an acknowledgment should, if possible, ascertain the requirements of the jurisdiction in which the acknowledged

document is to be used and execute the certificate in accordance with those requirements. Not all States or Territories will accept certificates of acknowledgment executed by notarizing officers other than consuls. Therefore, notarizing officers and consular agents who are called upon to perform this notarial act should consult the applicable State or territorial law to ascertain whether certificates of acknowledgment will be acceptable. (See § 92.5 regarding acceptability of consular notarial acts under state or territorial law.) Furthermore, public policy generally forbids that the act of taking and certifying an acknowledgment be performed by a person financially or beneficially interested in the transaction to which the acknowledged document relates. Notarizing officers should keep this point in mind, especially in connection with acknowledgments by members of their families.

(b) *Personal appearance of grantor(s).* A notarizing officer taking an acknowledgment should always require the personal appearance of the grantor(s), *i.e.*, the person or persons who have signed the instrument to be acknowledged. Since the officer states in his certificate that the parties did personally appear before him, failure to observe this requirement invalidates the notarial act and makes the officer liable to the charge of negligence and of having executed a false certificate. A notarizing officer should never take an acknowledgment by telephone.

(c) *Satisfactory identification of grantor(s).* The notarizing officer must be certain of the identity of the parties making an acknowledgment. If he is not personally acquainted with the parties, he should require from each some evidence of identity, such as a passport, police identity card, or the like. The laws of some States and Territories require that the identity of an acknowledger be proved by the oath of one or more "credible witnesses", and that a statement regarding the proving of identity in this manner be included in the certificate of acknowledgment. (See § 92.32(b) regarding forms of certificates of acknowledgment generally.) Mere introduction of a person not known to the notarizing officer, without further proof of identity, is