

Understanding Arizona Notarial Acts

BY TERRI L. CLARKE

“**N**otarize this” or “I need this notarized.” These statements are heard daily in businesses, law firms and governmental offices across Arizona. But what exactly does “notarize this” mean? Aren’t all notarial acts the same? What are some of the restrictions and requirements placed on Arizona notaries public? How can an attorney be sure the legal documents just drafted are requesting the appropriate notarial act?

Attorneys in many practice areas use notaries public, but not all attorneys understand the difference between the various notarial acts and what “notary language” on documents actually means. Some mistakenly believe that all notarial acts are essentially the same and the accompanying “notary language” is interchangeable. But the four different Arizona notarial acts are unique, and attorneys need to understand these differences in order to achieve desired outcomes, provide the best protection for clients and avoid malpractice claims. Because Arizona currently does not require any training for an individual to

become a notary public, attorneys need to be familiar with the various acts to ensure that notaries public in their office or those used by clients are performing those duties properly. An invalid notarization can result in claims, lawsuits and possible criminal charges.

Pursuant to A.R.S. § 41-313, Arizona notaries public are authorized to perform the following notarial acts:

- Acknowledgments
- Jurats
- Oaths or Affirmations
- Copy Certifications

GENERAL REQUIREMENTS

Personally Appearing Before the Notary; Signing the Notary’s Journal

For a notary to properly perform an acknowledgement or jurat or administer an oath or affirmation, it is imperative for the person to appear before the notary. There are no exceptions to this requirement.

As discussed below, for an acknowledgment, the signer is not required to sign the

document in the notary’s presence; however, the signer must still personally appear before the notary, acknowledge the signature on the document and sign the notary’s journal. For a jurat, the signer must personally appear, sign the document in the notary’s presence, give an oath or affirmation as to the truthfulness of the document and sign the notary’s journal.

Unfortunately, it is not unheard of for an attorney to have a client sign a document and then bring it back to the office for a notary to notarize. Usually, the office notary either doesn’t know the law or ignores it and proceeds to notarize the document for the convenience of the employer. If the office notary is aware of the legal requirements and refuses to notarize the document, the attorney may believe the notary is putting form over substance and will seek another notary who is more accommodating.

If tempted to ask a notary to “cut out the formalities,” bear in mind that nothing will be obtained except an invalid notarization. If the document is ever challenged

and it is shown that the notarization was done improperly, the validity of the document comes into question and the potential exposure for liability may become a real concern—not to mention potential embarrassment and/or malpractice claims.

Do not believe that “no one will ever find out” that the notarization violated the law and is invalid. Improper notarizations have been discovered. In addition, a notary’s journal is a public record, and a notary may be summoned as a witness. If a notary improperly performs notarial acts and it is discovered or reported, the Secretary of State’s Office may revoke the notary’s commission. Under some circumstances, the notary could also face criminal charges.

Satisfactory Evidence of Identity

If the notary does not know the signer, the notary must have satisfactory evidence of identity. What constitutes such evidence is set forth in A.R.S. § 41-311(11).

Some law office notaries are familiar with the following scenario: An attorney requests the office notary to notarize a document for a client. The notary does not know the client, gets out the notary journal and proceeds to ask for identification from the client and mentions the need to sign the notary journal. The attorney becomes upset, feels the client may be insulted because the notary made such requests and takes the client to another notary in the office who “will treat the client properly.”

The risks of engaging in this type of behavior should be clear. The notary, the client and the attorney all benefit if the notarization is performed in compliance

with applicable law. Even a high-maintenance client should appreciate that complying with notarial requirements ensures the document is being handled properly. After all, if the document is important enough to require a notarial act, it’s important to make sure the act is done correctly.

Journals

All notaries are required to keep a paper journal. A notary is required to make a journal entry of every notarial act at the time the act is performed. In general, a notary’s journal is a public record, and A.R.S. § 41-319 states that a notary must make a copy of a requested entry pertaining to a particular transaction for anyone who properly requests it.

For each notarial act, the signer is required to sign the notary’s journal. There are some exceptions to this requirement: (1) if multiple documents are presented by the same signer at the same time, the journal entries may be grouped together, and the signer signs the journal once to cover all the documents; and (2) if the signer has signed the notary’s journal within the past six months and is either known to the notary or has provided acceptable identification, the signer need not sign the journal. In each situation, however, the signer must still personally appear before the notary, and the notary is still required to make a journal entry recording the details of the act.

THE FOUR ARIZONA NOTARIAL ACTS

Acknowledgments

An acknowledgment is defined in A.R.S. § 41-311 (1):

“Acknowledgment” means a notarial act in which a notary certifies that a signer, whose identity is proven or known by satisfactory evidence, appeared before the notary and acknowledged that the signer signed the document.

As set out in the statute, an acknowledgment does not require the signer to sign the document in the notary’s presence. An acknowledgement is not made under oath or affirmation. It does not require the signer to avow to the truthfulness of the document’s contents.

There are several formats of acknowledgment language. THE ARIZONA NOTARY PUBLIC HANDBOOK, published by the Arizona Secretary of State’s Office, provides sample formats (see Figures 1 and 2).

Jurats

Jurats contain the familiar notary language “subscribed and sworn” that most people think of when they think of a notarized document. A.R.S. § 41-311(6) provides the following definition:

“Jurat” means a notarial act in which the notary certifies that a signer, whose identity is proven by satisfactory evidence, has made in the notary’s presence a voluntary signature and has taken an oath or affirmation vouching for the truthfulness of the signed document.

Whereas acknowledgments do not need to be signed in the notary’s presence, jurats require the signer to sign the document in the notary’s presence (see Figure 3). Furthermore, the notary must place the signer under oath. This means exactly what

it sounds like: The notary asks the signer to raise her or his right hand and “swear” or “affirm” under penalty of perjury to the truthfulness of the signed document. The language used may vary; several examples are found in the Secretary of State’s publication, THE ARIZONA NOTARY

State of Arizona)	
)	
County of _____)	
<p>On this _____ day of _____, 20____, before me personally appeared _____, (name of signer) whom I know personally, and acknowledged that he/she executed the same.</p>		
(seal)		_____ Notary Public

Figure 1: Sample acknowledgment when the notary personally knows the signer

State of Arizona)
)
 County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, (name of signer) whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledge that he/she signed the above/attached document.

(seal) _____ Notary Public

Figure 2: Sample acknowledgment when the notary does not personally know the signer

PUBLIC HANDBOOK.

Unfortunately, as with acknowledgments, a few attorneys have clients execute jurats and then take the documents to the notary’s desk or back to the office for the notary to notarize. Again, if a notary does so, it is an improper notarization: The signer was never placed under oath or made an affirmation, the signer did not sign in the notary’s presence, the signer did not sign the notary’s journal and the notary did not verify identification. All jurats must be conducted with the signer in the actual presence of the notary public.

Documents With Jurats Cannot Contain Blanks at the Time of Execution

It is critical to note that when a notary performs a jurat, the document cannot contain any blanks. That is because the signer is asked to swear or affirm to the truthfulness of the contents. If there are blanks and the document is notarized, the blanks could later be filled in without the signer’s knowledge or approval. The potential for fraud in such cases is evident.

To avoid this problem, A.R.S. § 41-328 prohibits notaries public from performing a jurat on a document that is incomplete. If there are blanks, the signer should mark those as “N/A” or otherwise mark though blanks. Attorneys drafting documents that require a jurat need to draft such documents so they are complete at the time of signing.

Problems with blanks in forms requesting jurats are more common than one might think. For example, an Arizona employ-

er allows employees to donate leave time to other employees in the event of an extended illness or other event. The initial version of the form had two columns: the left column for the employee to complete and the right column for Human Resources to complete. The form advises the employee that once leave time is donated to the other employee, the gift cannot be revoked.

However, the form requires—for lack of a better description—a “partial jurat” in that it only recites “sworn to before me this _____ day of _____, 2002.” Apparently, someone read or recalled some “notary language” and thought this sounded reasonable. Legally, however, this form has at least two critical flaws. First, because it uses “sworn,” it appears the intent of the drafter was to require a notary to have the signer—in this case the employee donating the time—make an oath or to affirm. It doesn’t state “subscribed,” so a notary cannot properly perform a jurat, which requires both signing and making an oath or affirmation.

The employer attempted to correct this problem by merely changing the language to jurat language. However, that was ineffective because the second problem with the form is its actual design—split columns

in the top half of the form. This makes it impossible for the signer to be placed under oath for a jurat because the entire right-hand column of the document contains blanks. The HR column is not filled out until after the signer has had the form notarized and turned in for

processing. This form has been in use for some time now without question, and it has yet to be revised. Notaries should be refusing to notarize this form pursuant to A.R.S. § 41-328, but again, because Arizona does not require any formal training for notaries, experience proves it is easy to find notaries who do not know or understand the law and its requirements.

Acknowledgments are not “sworn” or “under oath”

Acknowledgements are sometimes confused with jurats. Remember that acknowledgements are not under oath; a notary does not place the signer under oath to “swear” or “affirm” as to the truthfulness of the document for an acknowledgment.

An Arizona state agency recently was using a form that stated on the first page, “Read Carefully, this instrument is a sworn document.” On the back of the document, the requested notarial act was an acknowledgment. Next to the applicant’s signature was the following language: “I, (name of signer), hereby declare that I am the Applicant filing this questionnaire. I have read this questionnaire and the contents and all statements are true, correct, and complete.”

However, without the required oath or

State of Arizona)
)
 County of _____)

Subscribed and sworn (or affirmed) before me this _____ day of _____, 20____.

(seal) _____ Notary Public

Figure 3: Sample Jurat language

State of Arizona)	
)	
County of _____)	
<p>I, _____, a notary public, do certify that, on the _____ day of _____, 20____, I personally made the above/attached copy of _____ from the original, and it is a true, exact, complete, and unaltered copy.</p>		
(seal)	_____	Notary Public

Figure 4: Copy Certification

affirmation, there was no “sworn” or “affirmed” avowal to the truthfulness of the document. As a result, the agency was not receiving sworn documents; it was receiving documents that had only been acknowledged.

In another matter, a different agency required “Affidavits” for certain matters. These Affidavits, however, were using the acknowledgment language, not the jurat. It, too, was not receiving sworn documents.

Oaths or Affirmations

Oaths or Affirmations are an integral part of jurats. These terms are defined by A.R.S. § 41-311(10):

“Oath” or “Affirmation” means a notarial act or part of a notarial act in which a person made a vow in the presence of the notary under penalty of perjury, with reference made to a supreme being in the case of an oath.

Because perjury is mentioned in this definition, a brief review of the perjury statutes may be helpful. Perjury is a class 4 felony in Arizona and is defined by A.R.S. § 13-2702:

A person commits perjury by making either:

1. A false sworn statement in regard to a material issue, believing it to be false.
2. A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.

For purposes of the perjury statute, “sworn statement” is defined by A.R.S. § 13-2701(3) as:

any statement knowingly given under

oath or affirmation attesting to the truth of what is stated, including a notarized statement whether or not given in connection with an official proceeding.

Perjury then, covers sworn oral testimony (depositions and courtroom testimony) but also may cover notarized statements containing a jurat (if the jurat was properly performed). Keep in mind that perjury also may encompass unsworn statements, as defined previously—even statements that are not notarized.

Copy Certifications

Before envisioning the huge sums of money to be saved by having the office notary make certified copies of court documents, realize first that although notaries public may perform “copy certifications,” it cannot be done for documents that are public record or publicly recordable, as set out in A.R.S. § 41-311(3).

A notary performs a copy certification if, after determining that the document presented is an original and is not a public record and not publicly recordable, the notary then personally makes a photocopy of the document. The notary cannot delegate the actual task of making the photocopy to another. After the notary has personally photocopied the document, the notary must add the copy certification notarial language (see Figure 4).

The Attorney as the Notary?

A.R.S. § 41-328 provides that the notary is to be an impartial witness and cannot notarize his or her own signature or the signa-

ture of any person who is related by marriage or adoption. For example, a notary cannot notarize her spouse’s signature. Furthermore, THE ARIZONA NOTARY PUBLIC HANDBOOK explains:

An impartial witness must have no conflict of interest. This means that,

as the Notary, you cannot be a “party to the transaction” or a “party to the instrument,” and you cannot have any financial or beneficial interest in the transaction, no matter how small.

It follows then that an attorney who is retained to prepare a document should not act as the notary to avoid any appearance of impropriety. In addition, should a dispute over the execution of the document later arise, it rests not only on the word of the attorney/notary; there is a notary public as an impartial witness available as a witness to testify about the execution of the document and the notarial act performed.

References & Help

There are countless other details and regulations affecting notaries public. For additional information concerning notary questions and issues, the Notary Division at the Arizona Secretary of State’s Office is a great resource. Currently, the Secretary of State offers free training for notaries public. Attorneys should consider sending their office notaries to a formal training class. The training reviews the four notarial acts and applicable Arizona laws and provides practical examples. ▀

Terri L. Clarke has been a prosecutor with the Maricopa County Attorney’s Office for the past 11 years and has been an Arizona notary public for more than 19 years. She prosecuted one notary public in a case that involved an improper notarization in an elder financial exploitation case, and she routinely seeks information from notaries public in cases where notarized documents are involved.