

EXECUTION OF DOCUMENTS

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This compilation is intended to provide a convenient resource for attorneys who assist in real property transactions. The information in this article may not be sufficient in dealing with a client's particular legal problem, and the author cannot warrant or represent its suitability for such purpose. Attorneys using this article do so with the understanding that it should not be relied upon as a substitute for independent research to original sources of authority.

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EXECUTION OF DOCUMENTS

SCOPE OF THIS ARTICLE

The “simple” task of executing documents tends to fall prey to two common dangers. The first is that this rudimentary element of document preparation can come across some very unusual circumstances. When it does, your credibility as a specialist may depend upon your handling well this “simple” element of the transaction. The second is that simple chores are frequently glossed over. As a result, documents regularly are created containing technical deficiencies which draw into question the validity of the entire transaction.

This Article addresses both dangers. The first section is a Desk Reference, intended to aid you in quickly locating the information you need to answer the question “How do we do this?” Each situation shows you:

- (a) how to identify the party in the text of the document,
- (b) what the signature line should look like,
- (c) what the acknowledgment should contain, and
- (d) what other, related documents you should expect to prepare or review as part of the transaction.

The second section of the Article is a Trouble-Shooting Manual. Its purpose is to direct you to the law which addresses the question “Is this document effective, having been executed in the manner that it was?” Presuming that the document was not executed as you would have liked, are the deficiencies material or only superficial?

I. DESK REFERENCE.

A. INDIVIDUALS.

1. Single Person.

a. Identification of Parties.

“(Name), a single person,”

“(Name), a widower,”

Some authorities recommend that titles, degree notations, and other professional markings (e.g.: “Sr.”, “M.D.”, or “Col.”) not be used. However, such notations are at worst harmless surplusage, and they can provide genuine assistance in distinguishing between similarly named individuals. For precise identification, particularly of individuals with very common names, adding the party’s social security number is especially helpful. However, considering the capacity for identity theft, social security numbers or drivers’ licenses should never be used in documents to be publicly recorded, and should be carefully in any event.

When the grantor’s name appears in earlier documents in the same chain of title, it is preferable either that the name appear on the later instrument in the same configuration as in the earlier instrument, to avoid confusion, or that you provide a brief explanation in a parenthetical phrase immediately following the name.

b. Subscription.

(NAME)

The grantor’s name should be typed beneath the signature line in order to avoid a double filing fee being charged by the County Clerk upon the filing of the instrument for recording. TEX. LOC. GOV’T. CODE §§ 118.0525 and 191.007.

c. Acknowledgments.

(1) In state - short form

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (name(s) of person(s) acknowledging).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

The TEXAS CIVIL PRACTICE AND REMEDIES CODE, §§ 121.001 through 121.010 provide long and short forms for various types of acknowledgments. The authorization of these forms does not preclude the use of other forms. § 121-006(a). The short form acknowledgments are normally preferred because they provide less opportunity for incompleteness or error.

To take an acknowledgment, the notary must either know the person acknowledging the signature or be provided with satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in the instrument. "Satisfactory evidence" includes only (a) the oath of a credible witness personally known to the officer, or (b) a current identification card or other document issued by the federal government or any state government containing the photograph and signature of the acknowledging person. TEX. CIV. PRAC. & REM. CODE, § 121.005(a).

The County designated in the acknowledgment should be the county in which the acknowledgment is taken.

The date in the acknowledgment certificate should always be the date on which the acknowledgment is taken, regardless of the date of the instrument. An acknowledgment dated before or after the date of the document is not defective.

The notary's seal is required as a portion of any Texas acknowledgment certificate (TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 121.004). A notary's seal on an acknowledgment from another jurisdiction is required only if the jurisdiction in which the notary's certificate is made requires the attachment of the seal (TEX. CIV. PRAC. & REM. C., § 121.004 and TEX. PROP. C., § 12.001). The Texas Secretary of State annually distributes to all county clerks a list of states which require a notary public's certificate to be validated by a seal (TEX. GOVT. C., § 405.019).

When required, the seal may be embossed, but an inked stamp is acceptable and is preferable to the extent that it is easily visible on copies. An embossed seal is never required on an electronically transmitted document (TEX. CIV. PRAC. & REM. C., § 121.004(d)). In addition, it is appropriate for the notary's name and commission expiration date to be printed on the same stamp with the seal, eliminating the need for this information to be provided independently following the notary's signature on each certificate, as is otherwise required (TEXAS GOVERNMENT CODE § 406.13(d))

(2) In any state (long form).

STATE OF (STATE)
COUNTY OF (COUNTY)

Before me, the undersigned authority, on this day personally appeared _____, known to me [ALTERNATE 1: “proved to me on the oath of (name of affiant)”]; ALTERNATE 2: “proved to me through presentation of (description of identity card or other document)”] to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this __ day of _____, 20 __.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

The long form is appropriate for either in-state or out-of-state acknowledgments. The Certificate should reflect the county and state in which the acknowledgment is taken. The longer form is preferred for out-of-state acknowledgments in order to provide comfort to parties and notaries not familiar with the Texas short-form certificates.

(3) Outside of the United States.

(Name of Country)
(County or other Political Subdivision, if applicable)
Embassy of the United States of America

Before me, the undersigned authority, a (Title of Foreign Service Officer) of the United States of America resident in (City and Country), duly commissioned and qualified, on this day personally appeared (Name), known to me or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this __ day of _____, 20__.

(Typed Name of Foreign Service Officer)
(Title) of the United States of America

Acknowledgments or proofs may be taken outside the United States or its territories by: a minister, commissioner, or charge d’affaires of the United States, resident and accredited in the Country where taken (TEXAS CIVIL PRACTICE AND REMEDIES CODE §121.001(c)(1)); by a U.S. Foreign Service Officer (including Secretary of an Embassy, Secretary of a Legation, or consular officers, resident in the Country where taken (TEXAS CIVIL PRACTICE REMEDIES CODE §121.001(c)(2)); or before a Foreign Notary Public (TEXAS BUSINESS AND COMMERCE CODE §121.001(c)(3)).

(4) By Armed Forces Officer.

IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA with the (Branch) at (Name of Base and Country)

I, (Name of Officer), (Rank), (Branch), (Serial Number), a duly Commissioned Officer of the Armed Forces of the United States of America, do hereby certify that on this (day, month, year) before me personally appeared * (Name), (branch), (serial number) , known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this day and year last above written.

(Signature of Officer) _____
(Typed name of Officer)
(Rank, branch) _____
(serial number) _____

*If the acknowledgment is made by the husband or wife of the member, change this part to read: “(name), spouse of (name), (branch).”

Acknowledgments and proofs may be taken of persons serving in the United States Armed Forces and their spouses any place in the world before an Armed Services Commissioned Officer. (TEXAS CIVIL PRACTICE AND REMEDIES CODE §121.001(d)).

(5) By Subscribing Witness.

The State of Texas
County of (County)

Before me, the undersigned notary public, on this day personally appeared (name of witness), known to me to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he or she saw (name of the person who executed document), the grantor or person who executed the foregoing instrument, subscribe the same [or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed], and that he had signed the same as a witness at the request of the grantor [or person who executed the same].

Given under my hand and seal of office this __ day of __, 20____.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

TEXAS CIVIL PRACTICE AND REMEDIES CODE §121.010 provides this form for the acknowledgment of an instrument through proof made by a witness who has either executed the document along with the grantor or to whom the grantor made an acknowledgment after signing. If the grantor subscribed by signature, only one witness is necessary (§121.011).

d. Recommended Related Documentation.

(1) **Identification.** Where appropriate, you should require a driver’s license or other photograph-connected official identification card in order to verify the identity of the parties signing.

(2) **Affidavit of Lack of Identity.** The following affidavit can be used to distinguish the grantor from judgment debtors of record with the same or similar name.

LACK OF IDENTITY AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF (COUNTY) KNOW ALL PERSONS BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared _____, who upon oath, depose(s) and say(s) that the following statements are true:

(Name of Grantor) is the Grantor in a Deed dated ____ conveying the following described property:

[Legal Description]

Affiant's true and correct name is _____. I have presented my (Texas) driver's license to the notary public signed below and to (name any title insurance company, bank, or other official who requires proof of non-identity) and provided them with my Social Security Number. Affiant is not one and the same person as _____ named as judgment debtor in the following Abstracts of Judgment:

[List Judgments]

There are no judgments or federal tax liens of record against Affiant in the County in which all or any part of the property is located, or elsewhere.

AFFIANT is making this affidavit for the benefit of (Name of Interested Party) who is relying upon the correctness of this affidavit for (state purpose).

(Name of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME on (date).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

Remember that the jurat is a necessary part of any affidavit; TEXAS GOVERNMENT CODE §312.011. An acknowledgment is neither necessary to complete the affidavit nor required for recording purposes; TEXAS PROPERTY CODE §12.001. This section permits the recording of any instrument concerning real property if it is acknowledged, sworn to with a proper jurat, or proved according to law ("[Proved according to law" means according to TEX. CIV. PROC. & REM. CODE §121.009). The combination of both a jurat (to make it an affidavit) and an acknowledgment (to make it recordable) has not been required since 1989.

(3) Affidavit of Marital Status. In order to confirm the single marital status of the grantor, as affidavit containing the following provision may be used:

"On the date of signing and delivering said instrument, Affiant is not married and is not aware of any person who claims or who might legitimately claim to be the spouse of Affiant."

(4) Aliens. An alien has the same rights to hold and convey title to real and personal property as does a United States citizen (TEXAS PROPERTY CODE §5.005). However, the Agriculture Foreign Investment Disclosure Act of 1978 requires any foreign person who acquires or transfers any interest (other than a security interest) in agricultural land to file an informational form (ASCS-153) with the Secretary of Agriculture of the United States not later

than 90 days after the day of acquisition or transfer. The required forms are available from the County Agricultural Stabilization and Conservation Service (ASCS) office. The completed forms are filed through the County ASCS office in the County where the land is located.

2. **Married Person - Separate Property.**

a. **Identification of Parties.**

“(Name of Grantor), spouse of (Name of Spouse), as owner of his/her separate property,”

b. **Subscription.**

(Name of Grantor)

c. **Acknowledgment.**

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (name of person acknowledging).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____

My commission expires: _____

d. **Recommended Related Documentation.**

(1) **Non-Homestead** TEXAS FAMILY CODE §5.21 provides that each spouse has the sole management, control, and disposition of his or her separate property. Upon determination that the property is not homestead property, it is not necessary to require the joinder of the other spouse. However, because of the presumption of community property character, especially of property acquired during the marriage, it is always advisable to have a non-homestead affidavit and designation of homestead as provided below.

NON-HOMESTEAD AFFIDAVIT AND DESIGNATION OF HOMESTEAD

STATE OF TEXAS
COUNTY OF (COUNTY)

BEFORE ME, the undersigned authority, on this day personally appeared _____ and _____, husband and wife, each of whom, after being by me duly sworn, upon oath deposes and says that the following statements are true:

Neither of them now resides upon, uses in any manner, claims as either a business or residence homestead, and has no present intention of ever in the future residing upon, using or claiming as either a business or residence homestead, and does hereby renounce and disclaim any homestead right, interest or exemption in the following described property, to-wit:

[Legal Description of Non-homestead Property]

They now reside upon, use and claim as their legal homestead the following described property, to-wit:

[Description of Homestead]

Which said last described property is improved with a dwelling, is amply sufficient as a residence homestead for them, and the fee simple title to which is vested in them; AND they do hereby set apart and designate the said last described property as the homestead to which their family is entitled, under the Constitution and Laws of the State of Texas, exempt from forced sale, and they further declare that said property last described is all of the property and the only property to which they are now entitled as a homestead exempt from forced sale.

This affidavit and designation is made for the benefit of (Name of Party requesting affidavit) which upon these representations is (describe services being provided).

EXECUTED on (date).

[Add Signature and Jurat]

Remember that no Affidavit is effective without being sworn to (the jurat). A separate acknowledgment is not necessary for recording purposes. TEX. PROP. C. §12.001.

(2) **Existing Prenuptial Agreement.** When there is a question that all or a portion of the property may have been purchased during the marriage, the separate property nature of the title may still be wholly preserved by the existence of a written and subscribed marital property agreement entered into between the parties prior to marriage (TEXAS FAMILY CODE §5.41). If such an Agreement exists, it will be appropriate for the owning spouse to convey the property without the joinder of the other spouse. However, the Agreement should be recorded in the Official Public Records of the county in which the real property is located.

(3) **Homestead.** When the property being conveyed is homestead and is the separate property of either spouse, the joinder of both spouses is required, except as otherwise provided by statute (TEXAS FAMILY CODE §5.81). If none of the below special circumstances apply, use the forms provided in §A.5., below. Even though homestead, separate property may be conveyed by one spouse without the joinder of the other spouse if the other spouse has been judicially declared incompetent (TEXAS FAMILY CODE §5.82), is missing on public service (TEXAS FAMILY CODE §5.831), or the spouse has disappeared or permanently abandoned the homestead and the remaining spouse (TEXAS FAMILY CODE §5.83). Each of these last unusual circumstances requires a district court determination of the facts prior to the conveyance.

3. **Spouse - Joining *Pro Forma*.**

a. **Identification of Parties.**

“ . . . and his/her spouse (Name of spouse), joining for the sole purpose of [creating the lien *or* acknowledging consent to and satisfaction of the terms of this document] but not to assume any of the obligations hereunder, and to acknowledge that any homestead interest or exemption is subordinate to the lien created herein, . . . ”

b. **Subscription.**

(Name of Spouse), *Pro Forma*

c. **Acknowledgment.** Use the standard individual short form acknowledgment.

4. Tenant in Common.

a. Identification of Parties.

“(Name of co-tenant), owner of an undivided (state portion of ownership) interest in the below described real property,”

b. Subscription.

(Name of Grantor)

c. Acknowledgment. Use the standard individual short form acknowledgment.

d. Recommended related documentation. The ownership of real property by multiple parties is presumed to be a tenancy in common. Each party owns an undivided interest in the whole. Unless specified otherwise, there is a presumption that all of the interests are equal in percentage, but there is no requirement that the fractional undivided interests be equal. The main characteristic of a tenancy in common is that all of the co-tenants have a right to possession of the property.

Marital community property is a type of tenancy in common. Where a husband and wife become divorced and the divorce decree does not partition community real property, the former spouses are treated as tenants in common the same as though they had never been married. *Taylor v. Catalon*, 166 S.W.2d 102 (Tex. 1942); *Townsley vs. Townsley*, 222 S.W.2d 152 (Tex. Civ. App.– Dallas 1949, no writ).

(1) **Heirs or Devises.** Those who have inherited property as a group through testate or intestate succession hold the property as tenants in common. See Section A.18. “Estates,” below.

(2) **Partnerships.** Frequently individuals acquire and transfer property together as a partnership venture. See Section B. “Partnerships,” below.

(3) **Clarification of Interests.** When the current condition of title is ambiguous as to the interests held by co-tenants, obtain a Stipulation of Interests executed by all of the parties who claim a current interest in the title. For example:

STIPULATION OF INTERESTS

STATE OF TEXAS
COUNTY OF (COUNTY)

The parties to this agreement, (Names of all interest owners), are all of the owners in common of the following described real property:

[Legal Description of the Land]

The parties hereto agree to hereby stipulate to the proper ownership interests among them in the above described real property. In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned stipulate and agree that each has the ownership interest in the real property as set forth below: (set forth the agreed ownership interests in the property).

To effectuate this agreement, each of the parties hereto hereby grants, sells, and conveys to each other any interest in the above-described real property, consistent with the foregoing Stipulation of Interests.

Upon execution of this Stipulation by all of the parties in interest named above, this Stipulation of Interests shall be binding on all of the parties hereto, their heirs, successors, and assigns. If this Stipulation of Interests is not executed by all of the parties named above, it shall be wholly void and shall have no binding affect upon any of the signatories.

EXECUTED on (date).

(Name of Co-tenant)

(Name of Co-tenant)

[Add Acknowledgments]

5. Married Persons - Community Property - Non-Homestead.

a. Identity of Parties. Title to non-homestead community property held in the name of one spouse only is presumed to be subject to the sole management, control, and disposition of the named spouse, and is subject to conveyance by the managing spouse without joinder of the other. (TEXAS FAMILY CODE §5.24) However, if the community property is not clearly within the sole management of one spouse, it is subject to the joint management, control, and disposition of both spouses, and its conveyance requires the signature of both, unless the spouses provide otherwise by Power of Attorney in writing or other agreement (TEXAS FAMILY CODE §5.22). Community property subject to the joint management, control, and disposition of the spouses should identify the parties as follows:

“(Name of first spouse) and (Name of second spouse), husband and wife”

OR “(Name of first spouse) and (Name of second spouse), husband and wife, owning, occupying, and claiming other property as their homestead,”

If the property is subject to the sole management of one spouse only, use the following:

“(Name of controlling spouse), a married person, not joined herein by his/her spouse, as the property hereby conveyed constitutes no part of their business or residence homestead and is in his/her sole management and control,”

b. Subscription.

(Name of First Spouse)

(Name of Second Spouse)

c. Acknowledgment. While it is certainly appropriate to have a single, joint acknowledgment naming both individuals, unless you are certain that both parties will be available simultaneously for acknowledgment of their signatures, it is better practice to have two separate individual acknowledgments. Use the standard, individual, short-form acknowledgment.

d. Recommended related documentation.

(1) **Certificate of Management.** In order to establish the authority of an alleged managing spouse it is always appropriate to obtain an Affidavit of supporting facts from the grantor/managing spouse and the non-managing spouse.

AFFIDAVIT OF MANAGEMENT, CONTROL, AND DISPOSITION

Date:

Grantor:

Grantor's Spouse:

Grantee:

Property:

(Name of Grantor and/or Grantor's Spouse) represents and warrants to (Name of Party Requesting Affidavit) that Grantor has the sole management, control, and disposition of the property, that no divorce action is pending between the Grantor and Grantor's Spouse, that no part of the Property is claimed by Grantor or Grantor's Spouse as their homestead, and that no abstracts of judgment or federal liens are of record against either spouse.

This instrument is executed for valuable consideration for all subsequent transferee's of the property, all title insurance companies and agencies insuring title of the property, any applicable lien beneficiary, and the world at large to rely on in dealing with Grantor without joinder of Grantor's Spouse.

[Add Signature and Jurat]

Even though the community property is under the sole management of one spouse, check the judgment and lien records under the names of both spouses. TEXAS FAMILY CODE §5.61(b)(2) and §5.61(d).

(2) While Divorce Pending. If any conveyance of legal or equitable title is attempted during the pendency of a divorce proceeding, obtain the signatures of both parties, even though the property may normally be subject to the sole management of one of the spouses. In addition, it would be appropriate for both spouses to sign an affidavit verifying that the transaction does not violate any agreement between the spouses, pending the divorce, or any court order related to the divorce proceedings. In addition, take special caution to verify that both parties who present themselves for execution of the documents are in fact the grantors' spouses.

(3) To Effectuate Divorce Decree. A divorcing spouse's interest in community property can be divested by the court through the divorce decree. In such cases, require affidavits or other documentation to assure yourself that the court had jurisdiction over the divested spouse, that the decree or incorporated property settlement agreement contains a legal description of the property, and that the decree clearly conveys the appropriate land title interest. For example, the decree may state:

"IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that (Name of Acquiring Spouse) shall take the following described property as her separate property, and all title and interest of (Name of Divested Spouse) therein is divested out of him/her and vested in (Name of Acquiring Spouse): (Legal Description)"

Where property is being conveyed to a third party, check the divorce decree for any restrictions on sale for the benefit of children, the existence of owelty liens, and court-ordered provisions for the division of proceeds of sale. If the planned transaction is inconsistent with the Courts' Order, have the parties obtain a clarifying Order or, if necessary, a Modification.

(4) Unusual Circumstances. Provisions of the TEXAS FAMILY CODE permit a non-controlling spouse to convey community property normally under the sole management of the other spouse under special circumstances, including the managing spouse being missing on public service (§5.102), or when the managing spouse is mentally unable to exercise management and control of the property, disappears and his and/or her location remains unknown, the managing spouse permanently abandons the other, or the spouses are permanently separated. In these events, the capable spouse, remaining spouse, or abandoned spouse, or either spouse in case of a permanent separation, may obtain district court approval to convey the property without joinder of the other spouse (§5.103, *et seq.*).

6. Married Person - Homestead. The conveyance of legal or equitable title to homestead property, whether community or separate property of either spouse, must be by the joint action of both spouses, except in “Unusual Circumstances” as discussed in Section d(2) below. Article 16, section 50 of the TEXAS CONSTITUTION provides that an owner of homestead property “may not sell or abandon the homestead without the consent” of both spouses. Pursuant to this provision, the legislature enacted TEXAS FAMILY CODE section 5.001, which provides that a spouse may not “sell, convey or encumber [a] homestead without the joinder of the other spouse” even if the homestead is the separate property of either spouse. See *Schmidt v. Schmidt*, 403 S.W.2d 531, 533 (Tex. Civ. App.—Waco 1966, no writ). If a spouse sells or conveys the homestead without the joinder of the other spouse, it is “merely inoperative while the property continues to be a homestead,” the home is abandoned, or the deed is ratified. *Grissom v. Anderson*, 125 Tex. 26, 79 S.W.2d 619, 621 (1935); *Kunkel v. Kunkel*, 515 S.W.2d 941, 948 (Tex. Civ. App.—Amarillo 1974, writ ref’d n.r.e.).

a. Identification of Parties.

“(Name of First Spouse) and (Name of Second Spouse), husband and wife,”

b. Subscription.

(Name of First Spouse)

(Name of Second Spouse)

c. Acknowledgment.

(Use two individual, short form acknowledgments)

d. Recommended related documentation.

(1) **One Spouse as Agent for the Other.** It is appropriate for one spouse to sign for him or herself and also as agent for the other spouse if the other spouse has previously executed a valid power of attorney which remains in effect at the time of the execution of the document. See Section A.16. “Power of Attorney,” below.

(2) **Unusual Circumstances.** Through a district court order it is possible for one spouse to convey the homestead of both spouses under unusual circumstances. Such circumstances include one spouse missing in public service (TEXAS FAMILY CODE §5.87), or when a spouse is incompetent, disappears and his or her location remains unknown, a spouse permanently abandons the homestead and the other spouse, or a spouse permanently abandons the homestead and the spouses are permanently separated (TEXAS FAMILY CODE §5.85).

7. Joint Tenant. The distinction between a joint tenant and a tenant in common is that the ownership of real property in joint tenancy provides for the joint tenants to hold the property with a right of survivorship among them. A husband and wife can now own either separate property or community property in joint tenancy in Texas.

a. Identification of Parties.

“(Names of Joint Tenants), being all of the joint tenants in the below described real property, conveying all of their interest therein,”

b. Subscription.

(Name of Joint Tenant)

(Name of Joint Tenant)

c. Acknowledgment. Use the individual, short-form acknowledgments.

d. Recommended Related Documentation. (1) Examine the written agreement between the joint tenants creating the joint tenancy relationship for restrictions on conveyance or required prior written consent of other joint tenants, (2) Assure yourself that there are no prior deeds, executed by the joint tenants to each other, executed at the time of the creation of the joint tenancy agreement and held in escrow elsewhere for delivery to the survivor.

8. Blind or Illiterate, but able to sign. The identification of the parties, their subscriptions, and acknowledgments are identical as for other single or married persons dealing in their separate or community properties, as above provided.

a. Recommended related documentation - Affidavit of Reader. For a grantor unable to read the document to be executed, it is recommended that you have the instrument read to the grantor by an individual with no conflict of interest with the grantor. The reader should then execute for your records an Affidavit. The Affidavit should contain the following:

“I have no known current or potential conflict of interest with (Name of Grantor) regarding the execution of (description of document). Prior to his execution of such document, I correctly, clearly, and completely read the entire contents of the document to (Name of Grantor), who indicated to me that he understood the contents thereof.”

9. Illiterate in English, but Able to Sign. The identification of the parties, their subscriptions, and acknowledgments are identical as for other single or married persons dealing in their separate or community properties, as above provided.

a. Recommended related documentation - Affidavit of Interpreter. Since an instrument relating to real property may not be recorded in the real property records unless it is in English (TEXAS PROPERTY CODE §11.002), it will be necessary to utilize the services of an interpreter to translate an instrument for a grantor who does not speak or read English. In that event, the interpreter should execute an Affidavit which includes the following:

“I have no conflict of interest with (Name of Grantor). I am well versed in and competent to read and speak the (Language understood by Grantor) and English languages.”

“At the request of (Name of Grantor), I have made a true and complete interpretation to him of all of the contents of (Description of document) in a language that he understands, using my best skill and judgment. (Name of Grantor) indicated to me that he understood the contents of the instrument translated.”

If the translation is in writing, attach a copy of both the English version and the translated version of the instrument to the Affidavit.

10. Subscription by Mark.

a. Identification by Parties. No special identification of such a party is required or appropriate in the text of the document.

b. Subscription. It is a common misunderstanding that a special subscription is required for an individual signing by mark. Such is not the case. All signatures are individualized markings to one degree or another, and many highly stylized signatures contain no distinguishable letters of the alphabet. Nevertheless, some attorneys prefer that the subscription indicate the use of a mark:

HIS MARK
(Name of Grantor)

An inked thumb print is a good “mark” in that it reduces uncertainty in a forgery claim.

When a Grantor is signing by mark, and proof is being made not by acknowledgment but by the co-signing of two witnesses, some attorneys prefer that in addition to the signatures of the witnesses, a statement immediately above their names also be inserted such as:

“(Name of Grantor), being unable to otherwise subscribe hereto, made his mark in my presence, which mark I hereby witness at his request.”

(Name of Witness)

(Name of Witness)

c. **Acknowledgment.** As with the signature, no special acknowledgment is required for acknowledging the mark of a Grantor, and contrary to popular belief, no witnesses are required. The TEXAS CIVIL PRACTICE AND REMEDIES CODE §121.011(b) does require the joinder of two witnesses to an instrument executed by the Grantor by making his mark (rather than only one witness where a signature is provided by Grantor), but this provision only applies to the establishment of proof of the instrument for purposes of recording by handwriting of the Grantor where no acknowledgment was taken. Nevertheless, some attorneys prefer to clarify the use of the mark by utilizing the following optional acknowledgment:

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Grantor), the person who signed this instrument by his/her mark.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

d. **Recommended related documentation - Affidavit of Reader.** Possibly applicable. See I.A.8.a. supra.

11. Physically Unable to Sign. For someone who is mentally alert but whose ability to sign is impeded by a physical impairment, it is appropriate for a notary public and a disinterested witness to assist in the signing. If no Power of Attorney already exists, the party to the transaction may prefer to execute, by this method, a Power of Attorney, and thereby sign only one document instead of the multiple documents usually included in a real estate transaction.

a. **Identification of Parties.** No special identification is required.

b. **Subscription.** The notary public may sign the name of an individual who is physically unable to sign, if authorized by the disabled person in the presence of a disinterested witness. TEXAS GOVT. CODE, § 406.0165. In addition, any responsible adult may act as an "instrumentality" for another if acting in the presence of the other and under his/her direction (See II.A.3.b.(1) infra.).

(Name of Grantor)
Signature affixed by ___[name of notary public]___
a notary public of this State in the presence of
___[name of witness]___, a disinterested witness,
under Section 406.0165, Texas Government Code.

[Name of Witness]

Note: TEXAS GOVERNMENT CODE, § 406.0165(b) states that the notary who signs the document "shall write beneath the signature," the sentence beginning with "Signature affixed by . . ." If read literally and strictly, a court might require the notary to write the sentence in the notary's own hand, rather than having it pre-typed. This author believes such an interpretation to be a needless impediment to fulfilling the purpose of the statute.

c. **Acknowledgment.** The Grantor will be able to give a standard acknowledgment. However, you may prefer to use:

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Grantor) as having been executed by him/her with the assistance of (Name of Notary), a notary public, acting in the presence of Grantor and a disinterested witness, and under the Grantor’s direction.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Affidavit from Disinterested Witness.** If there is a reasonable possibility of later inquiry into the circumstances of the execution of the document, you might have the disinterested witness make an affidavit stating: that the person witnessed the execution of (describe the document); that the Grantor was physically unable to sign but expressed a desire that the document be executed; that the Grantor instructed the notary to sign the Grantor’s name to the document; and the notary did so in the Grantor’s presence.

(2) **Affidavit of Physician.** If the circumstances warrant, obtain an affidavit from a physician who regularly or recently examined the Grantor concerning the Grantor’s mental alertness at the time of the document’s execution.

12. Minor - Guardian - Uniform Transfers to Minors Act.

A “minor” is an individual who is younger than 21 years of age. TEXAS PROPERTY CODE, § 141.002.

a. Identification of Parties.

“(Name of Custodian), Custodian for (Name of Minor) under the Texas Uniform Transfers to Minors Act,”

Under the statute, only one person may be the custodian. § 141.011.

b. Subscription.

(Name of Custodian), as Custodian for (Name of Minor), a Minor

c. Acknowledgment.

STATE OF TEXAS §
COUNTY OF (COUNTY) §

This instrument was acknowledged before me on (Date) by (Name of Custodian) as Custodian for (Name of Minor), a Minor.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Valid Deed into Guardian.** The Texas Uniform Gifts to Minors Act (TEXAS PROPERTY CODE § 141.001, et seq.,) was revised in 1995 and became the Texas Uniform Transfers to Minors Act. Both statutes provide for a custodian to hold property for a minor and to convey it in the minor's behalf. Check the prior deed from the donor of the property into the custodian to insure that it makes the grant into the custodian's name followed by the phrase “as custodian for (Name of Minor) under the Texas Uniform Gifts [or Transfers] to Minors Act.” (TEXAS PROPERTY CODE § 141.004). While it is possible that the Real Property Records will contain a separate document from the Grantor, nominating the custodian to receive to property for a minor beneficiary, the nomination may be made in the deed. § 141.004.

(2) **Affidavit of Parent as to age of Child.** A third person, acting in good faith and without court order, may deal with any person purporting to make a transfer in the capacity of a custodian without responsibility of determining the validity of the purported custodian's designation. § 141.017. Nevertheless, the more cautious practice would be to assure yourself that the child has not reached 21 years of age. An affidavit from an appropriate parent or guardian should includes the following:

“That (Name of Minor) is the child of (Name of Parent); that the child was born in (Name of City, County, and State) on (Date of birth), and is now ___ years and ___ months old.”

13. Mentally Disabled - Guardian.

a. Identification of Parties.

“(Name of Guardian), Guardian of the [Person and] Estate of (Name of Incompetent), an Incompetent,”

b. Subscription.

(Name of Guardian) as Guardian for (Name of Incompetent)

c. Acknowledgment.

STATE OF TEXAS §
COUNTY OF (COUNTY) §

This instrument was acknowledged before me on (Date) by (Name of Guardian) as Guardian of the (Person and) Estate of (Name of Incompetent).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Obtain a copy of the appropriate Court Order authorizing the transaction, and if not clear therein, a copy of the prior court action which created the guardianship and appointed the Guardian.

14. Changed Name or Name Variance.

a. Identification of Parties.

“(Name of Grantor), formerly [or sometimes] known as (variant name) and being the same person so identified in (Description of document, with recording information, if applicable),”

b. Subscription.

(Current Name of Grantor)

c. Acknowledgment. Use the standard, appropriate short-form acknowledgment.

d. Recommended related documentation. For a more thorough explanation of appropriate circumstances, you may wish to have the grantor or other appropriate knowledgeable person sign an Affidavit of Identification, in addition to the explanatory note inserted into the text of the instrument.

AFFIDAVIT OF IDENTIFICATION

STATE OF TEXAS
COUNTY OF (COUNTY)

BEFORE ME, the undersigned authority, a Notary Public, personally appeared (Name of affiant) known to me to be a credible person and of lawful age, who being by me first duly sworn, on his/her oath, deposes and says:

1. I have known (Name of person to be identified) for a period of (Length of time) through (describe relationship).
2. (Name of person to be identified) is also known by (List various other names).
3. (State other explanatory facts, if any).

[Add Subscription of Affiant and Jurat]

15. Assumed Name, “doing business as”.

a. Identification of Parties.

“(Name of Individual) d/b/a/ (Assumed Name),”

OR “(Assumed Name),”

b. Subscription.

(Assumed Name) by (Name of Individual)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (name of person acknowledging) d/b/a (Assumed Name).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Verify that the assumed name certificate is properly filed with County Clerk and meets the requirements of the TEXAS BUSINESS AND COMMERCE CODE §36.10, or §36.11 if an incorporated business or profession, a limited partnership, a registered limited liability partnership, or a limited liability company.

16. Attorney in Fact.

a. Identification of Parties.

“(Name of Principal), acting by (Name of attorney), attorney in fact,”

b. Subscription.

(Name of Principal signed by attorney)
(Name of Principal)

BY: (Attorney's Signature) _____
(Name of Attorney-in-fact), His
Attorney-in-Fact

OR

(Name of Principal) by his agent and
Attorney-in-Fact, (Name of Attorney-in fact)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Attorney-in-Fact) as attorney-in-fact on behalf of (Name of Principal).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____

My commission expires: _____

d. Recommended related documentation.

(1) **Approval of Power of Attorney.** Obtain and review a copy of the Power of Attorney for its sufficiency to support the attorney's alleged authority to enter into the documents to be executed. For common-law powers of attorney, there are two rules of construction which apply to instruments creating Powers of Attorney: (a) the meaning of general words in the instrument will be restricted by the context and construed accordingly; and (b) the authority will be construed strictly, so as to exclude the exercise of any power not warranted either by the actual terms used or as a necessary means of executing the authority with effect. *Gouldy v. Metcalf*, 12 S.W. 830, 831 (Tex. 1889); *Gettings, Neiman-Marcus, Inc. v. Estes*, 440 S.W.2d 90, 93 (Tex. Civ. App.– Eastland 1969, no writ). Interpretation of powers of attorney created under the current (1993) Durable Power of Attorney Act (TEXAS PROBATE CODE, Chapter XII), interpretation will be statutorily controlled.

The Veterans Benefits Administration must approve a Power of Attorney used in a VA loan transaction. The Veterans Benefits Administration regional offices (there are two in Texas, in Houston and Waco) have pre-approved a special power of attorney form for the execution of VA-guaranteed loans.

(2) **Power of Attorney recorded.** TEXAS PROPERTY CODE §5.021 requires that an attorney in fact acting for a principal in the conveyance of an estate in land for more than one year be authorized in writing to do so. The original Power of Attorney should be recorded into the Land Records if it is relied upon for a real property conveyance.

(3) **Not Revoked.** Most Powers of Attorney relating to real estate transactions provide that revocation is effective only upon recording of a Notice of Revocation with the County Clerk's office. Immediately before closing, search the Official Public Records to determine the absence of a revocation notice. Also search the Bankruptcy records and the Probate records for any guardianship proceedings concerning the principal. In addition, a disinterested party may wish to communicate directly with the principal to confirm the continuation of the agency and then execute for you an affidavit which includes the following:

"I (Name of Affiant), did speak by telephone with (Name of Principal) at (Time) on (Date). He/She was alive and seemed to me to be well and competent, and he/she said:

- that the Power of Attorney given to (Name of Attorney-in-fact) for the purposes of (state purposes) was still in effect;
- that no guardianship has been ordered by any court since the execution of the power of attorney;
- that he/she has not been the debtor in any bankruptcy proceeding since the power of attorney was issued; and
- that he/she has not married since the power of attorney was issued."

The marriage of a principal who previously executed a power of attorney at common law terminates the agent's authority. *Wallis v. Hemnes*, 600 S.W.2d 407, 408 (Tex. Civ. App.– Fort Worth, 1980, no writ). A common law power of attorney is also revoked by the legal insolvency of the principal. *Interstate National Bank v. Claxton*, 80 S.W. 604 (Tex. 1904).

(4) **If Not a Durable Power of Attorney.** Unless the Power of Attorney is a durable power of attorney, containing the declaration and being executed and recorded as required by statute (prior to September 1, 1993 TEXAS PROBATE CODE §36A, and now in Chapter XII), the agency will automatically terminate upon the disability of the principal. *Harrington v. Bailey*, 351 S.W.2d 946 (Tex. Civ. App.– Waco, 1961, no writ). If not a durable Power of Attorney, you may wish to obtain a Physician's Affidavit which includes the following:

"My name is (Name of Physician). I am a practicing physician in (City), (County) County, Texas, and I have held the degree of Doctor of Medicine since (date).

"I have attended (Name of principal) since (date), and am competent to testify as to his/her condition, having last examined him/her on (date).

“In my professional opinion, the said (Name of principal) was mentally competent and able to manage his/her property and financial affairs on (date), when he/she executed the attached Power of Attorney, and is mentally competent on the date of this affidavit.”

(5) If a Durable Power of Attorney. If the Power of Attorney is a durable power of attorney, containing a properly-worded durability clause, was executed prior to September 1, 1993 (TEXAS PROBATE CODE, then §36A), and was recorded as required by statute, verify that the principal is alive, was competent at the time of the creation of the durable power, had not revoked the power at any time prior to becoming incompetent, and that the power has not otherwise automatically terminated by bankruptcy, marriage, divorce, annulment, or guardianship.

If the durable power of attorney was created on or after September 1, 1993 and was properly executed and recorded pursuant to the new statute, obtain an affidavit executed by the attorney-in-fact stating that the attorney-in-fact does not have, at the time of the exercise of the power, actual knowledge of the termination of the power by revocation, by the principal’s death, or by the qualification of a guardian of the estate of the principal. Such an affidavit is conclusive proof as between the attorney-in-fact and a person other than the principal of the principal’s personal representative dealing with the attorney-in-fact of the non-revocation or the non-termination of the power at that time.

17. Nominee or “Trustee” without Express Trust. A nominee is an individual who acquires title to property as an undisclosed agent for another. This process is normally used when an entity desires to buy out several surrounding tracts without disclosing major development plans to the various property owners and thus substantially raising prices during the negotiations. Normally, there is an unrecorded agency contract for the nominee’s services, which is filed of record only if necessary and after all of the purchase negotiations are concluded.

In addition, agents for a developing partnership, corporation, or other group may take title to a property as a “nominal trustee.” No trust instrument exists. Merely adding the word “Trustee” to the name of the purchasing agent does not create a trust since a parol trust of real estate is unenforceable due to the statute of frauds requirement that a trust be in writing. TEXAS PROPERTY CODE §112.004. However, a resulting trust arises when the purchase money of realty is paid by a principal and legal title is taken in the name of another (“the Trustee”). The resulting trust arises by operation of law and is not subject to the TEXAS TRUST CODE. *Cohrs v. Scott*, 338 S.W.2d 127 (Tex. 1960); §111.003.

a. Identification of Parties.

“(Name of agent), Trustee, as agent for (Name of principal),”

b. Subscription.

(Name of Agent), as Agent for (Name of Principal)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (name of agent), as agent for (Name of principal).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Contract for Nominee Services.** When an individual agent has acted as a Nominee for an undisclosed principal, there should have been a written agency contract for the Nominee services. Obtain and review a copy of the contract to establish the written authority from the principal for the agent to hold and convey the real property. TEXAS PROPERTY CODE §5.021. The original Contract should be recorded in the Official Public Records if it is relied upon for a real property conveyance as an agent of the principal.

(2) **Joinder of Spouse.** When a Nominee or “Trustee” takes title in his own name, and the principal in the agency relationship is undisclosed, the agent is personally liable on the contract. *Anderson V. Smith*, 398 S.W.2d 635 (Tex. Civ. App.– Dallas 1965, no writ). If a Contract for Nominee Services exists, it should include a paragraph indicating that the spouse of the agent/nominee is signing the contract in express repudiation of any claim of any community property interest in the title to the real property held under the Contract and agrees to execute any legal instruments necessary to transfer record title to the true principal owner. Whether or not such an agreement exists between the principal and agent, title in the name of the agent should be treated as though the spouse might be able to raise some claim of interest, and the spouse should be included in signing the conveyance document. See: Spouse - Joining Pro Forma, §I.A.3., above.

(3) **Sale to or from Governmental Entity.** A State agency or political subdivision may not purchase or sell real estate from or to a “trustee” until the trustee submits a copy of the trust “identifying the true owners.” TEXAS GOVERNMENT CODE, §§2252.091, *et seq.* A trust agreement submitted to a governmental entity under this provision is confidential information. §2252.094. Either record the document into the land records prior to the execution of the conveyance or record an affidavit from an authorize public official that the required documentation was provided. Otherwise, the attempted conveyance is void. TEXAS GOVERNMENT CODE, §§2252.093.

18. Estates.**a. Identification of Parties.****(1) Administrators.**

“I (Name of Administrator), Administrator of the Estate of (Name of Deceased), deceased, and by order of the Court as recorded in Cause No. (Number) in the County Court of (County) County, Texas, which Order was signed on (Date) and is shown in (set out recording information),”

(2) Executors.

“I, (Name of Executor), as Independent Executor of the Estate of (Name of Deceased), deceased,”

(3) Heirs.

“We, (Names of all heirs), being all of the heirs at law of (Name of deceased), deceased,”

b. Subscription.

(Name of Administrator, Executor, or Individual Heir),
as (Capacity) of the Estate of (Name of Deceased)

c. Acknowledgment.

(1) Administrator.

STATE OF TEXAS §
COUNTY OF (COUNTY) §

This instrument was acknowledged before me on (Date) by (Name of Administrator) as Administrator for the Estate of (Name of Deceased).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

(2) Executor.

STATE OF TEXAS §
COUNTY OF (COUNTY) §

This instrument was acknowledged before me on (Date) by (Name of Executor) as Executor of the Estate of (Name of Deceased).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

(3) Heirs. Use standard, individual, short form acknowledgments.

d. Recommended related documentation.

(1) Administrator appointed.

(a) Review Probate papers, including the application for probate, inventory and appraisal, and any order admitting a Will to probate.

(b) Regarding the conveyance, review the filed Application for Sale, Order of Sale, Report of Sale, and Decree Confirming Sale. The Administrator’s deed should recite that the Administrator is acting pursuant to the Decree Confirming Sale.

(c) Obtain satisfactory evidence that state inheritance and federal estate taxes are or will be paid.

(2) Independent Executor.

(a) Review Probate papers, including the application for probate, inventory and appraisal, and any order admitting the Will to probate.

(b) Conveyance should be executed by the Independent Executor.
(c) There should be a Decree ordering the sale, or you should require the joinder of the devisees under the Will.

(d) Obtain satisfactory evidence that state inheritance and federal estate taxes are or will be paid.

(3) Heirs.

(a) Obtain satisfactory evidence of death of the deceased.

(b) Obtain evidence that state inheritance and federal estate taxes are or will be paid.

(c) Obtain an affidavit of heirship regarding the deceased, preferably from both disinterested parties and from remaining heirs.

(d) Require the joinder in the conveyance of all the heirs at law.

(e) If decedent left a Will which has not been admitted to probate, conveyance should be by all heirs at law and by all devisees under the Will.

19. Court Appointed Receiver. This section covers state court appointed receivers authorized to convey real property under a court judgment (TEXAS PROPERTY CODE §5.004), conveyance by a Bankruptcy Trustee, by a Bankruptcy Debtor in Possession, and conveyance by a Bankruptcy Debtor of exempt property.

a. Identification of Parties.

“I (Name of receiver) as Court-Appointed Receiver for the property of (Name of Debtor), in Cause Number _____ of the _____ Court of (County), County, Texas,”

b. Subscription.

(Name of Receiver) Receiver of the property of (Name of Debtor)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Receiver), in his capacity as Receiver for the property of (Name of Debtor).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) State Court Receiver.

(a) Review a copy of the Order of Sale, Report of Sale, and Confirmation of Sale.

(b) The conveyance documents should refer to and identify the order confirming sale.

(c) If the litigation is pending in a court from another county, obtain satisfactory proof that no appeal from the order appointing the receiver or the order of sale has been filed. An affidavit from the Receiver or an attorney involved in the case should be sufficient.

(2) **Bankruptcy Trustee.**

- (a) Review a copy of the Petition in Bankruptcy and schedules of assets and liabilities.
- (b) Obtain a Bankruptcy Clerk's certificate of mailing of Notices regarding sale by Trustee free and clear of liens.
- (c) Obtain a copy of the final order authorizing sale by the Trustee.

(3) **Bankruptcy Debtor in Possession.**

- (a) Obtain a copy of the petition in Bankruptcy and schedules of assets and liabilities.
- (b) Obtain the Bankruptcy Clerk's certificate of mailing of Notices regarding sale by the debtor.
- (c) Review a copy of the order of sale.

(4) **Bankruptcy Debtor - Exempt Property.**

- (a) Review a copy of the petition in Bankruptcy and schedule showing that the subject property is claimed as exempt.
- (b) Review of a copy of the order allowing exemptions or satisfactory evidence that no objection was raised during the time for objections following the meeting of creditors.
- (c) Inquire as to any order of the court affecting the subject property.

20. Digital Signatures. A "digital signature" is a unique electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature. This is not a photographic digital facsimile of a hand-made signature. A "digital signature" is a cryptographic message, generated by an algorithmic program maintained by a trusted third party, called a "certification authority." Two distinct, but mathematically related "keys" are produced. Both keys are needed to open the document and verify the signer's identity. The certification authority issues a "digital certificate," after verifying that a particular person or company holds a certain mathematical "key." The digital certificate is then sent with the electronic document to verify that the sender is truly the person or entity identifying itself in the transmission. The recipient uses the widely publicized "public key" to open the document and be assured of who sent it.

A "digital notarization" (a so-called "cyber notary") can be added to the electronic document by combining the digital "fingerprint" of the original electronic document with the certification authority's time stamp and its own digital signature, thus providing a verifiable record of the date, time, and parties involved with the document and its digital signature.

The processes for operating electronically with digital signatures are still being formed. They are not yet reliable and practical for general use, but they probably will be within the next few years. When they are practical, Texas government should be ready.

Government Code, §2054.060 authorizes the Texas Dept. of Information Resources to develop rules for creating and using digital signatures by governmental entities. Those regulations are available at 1 T.A.C. §§ 203.20 *et seq.* A valid digital signature must be unique to the person using it, be capable of independent verification, remain under the sole control of the person using it, and be transmitted in a manner that will make it infeasible to change the data in the communication or the digital signature without invalidating the digital signature.

Local Government Code, §195.002 authorizes the Texas State Library and Archives Commission to adopt rules (after consulting with the Department of Information Resources) to permit the use of digital signatures in the electronic filing of instruments by the County Clerk into the real property records of the county. Those regulations are available at 7 T.A.C. §§ 7.141 et seq.

Local Government Code, §191.009 authorizes County Clerks to file and record digitally-signed, electronic documents. Section 195.003 permits the filing of electronic documents for recording from attorneys, financial institutions, title insurance companies, and state agencies.

B. PARTNERSHIPS.

1. General Partnerships.

a. Identification of Parties. Title is in the Partnership itself. Neither a partner nor a partner’s spouse has an interest in specific partnership property. “Tex. General Partnership Law,” BUSINESS ORGANIZATIONS CODE § 152.101.

“(Name of Partnership), a Texas partnership,”

OR “(Name of Partnership), a Texas partnership composed of (Names of all partners),”

OR “(Name of Partnership), a Texas partnership represented in this transaction by (Name of partner), an authorized general partner,”

b. Subscription.

(NAME OF PARTNERSHIP)

By: (Name of Partner), Partner

c. Acknowledgment.

(1) By one or more partners.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of acknowledging partner or partners), partner(s) on behalf of (Name of partnership), a partnership.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

(2) By another partnership.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of acknowledging partner in partnership that is a partner), partner, on behalf of (Name of partnership that is a partner), a partnership, and that partnership acknowledged this instrument as partner on behalf of (Name of partnership that is a party to the instrument), a partnership.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

(3) By a corporation.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of officer), as (Title of officer) of (Name of corporation that is a partner), a (State of Incorporation) corporation, on behalf of said corporation, and the corporation executed this instrument as partner on behalf of (Name of partnership that is a party to the instrument), a partnership.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Partnership Agreement.** Obtain a copy of the partnership agreement to determine the authority of the signatories to act on behalf of the partnership. The Agreement should specify whether any individual partner, the majority, or all of the partners must execute a real property conveyance instrument.

(2) **Assumed Name Certificate.** Review a copy of the assumed name certificate, signed and acknowledged by each of the partners, and reflecting the recording of the certificate into the County records of the County in which any portion of the property is located and in the County of the principal place of business of the partnership.

(3) **Affidavit of Partners.** In addition, you may want to obtain an affidavit from the signing partners which includes the following:

“(a) That the partnership is duly formed and validly existing and is constituted as a general partnership under the laws of the State of Texas and possessing the requisite power and authority to enter into the contemplated transaction;

(b) That the partnership has not been voluntarily or involuntarily terminated or subjected to dissolution at any time subject to its creation as reflected in the provided Partnership Agreement and that no action or proceeding is pending or to the knowledge of the undersigned, is contemplated toward to the dissolution of the partnership;

(c) That the partners are those identified, and that they constitute all of the partners of the partnership, and that all consent to and authorize the execution and delivery of the described documents and the consummation of the contemplated transaction;

(d) That the signing partners have full power and authority to execute and deliver the specified documents and that upon signing, all of the documents shall be valid, binding and enforceable obligations of the

partnership, and that such execution and delivery will not violate the Partnership Agreement or any existing obligations of the partnership.”

2. **Joint Ventures.** Legally, a joint venture is a general partnership, created to pursue one specific project. All of the materials shown above for general partnerships apply.

a. **Identification of Parties.**

“(Name of Partnership), a Texas Joint Venture,”

OR “(Name of Partnership), a Texas Joint Venture, composed of (Names of all Partners),”

b. **Subscription.**

(NAME OF PARTNERSHIP)

By: (Name of Partner), Partner

c. **Acknowledgment.**

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Joint Venturer), Joint Venturer on behalf of (Name of Joint Venture), a Joint Venture.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. **Recommended related documentation.**

(1) **Joint Venture Agreement.** Obtain a copy of the partnership agreement to determine the authority of the signatories to act on behalf of the partnership. The Agreement should specify whether any individual partner, the majority, or all of the partners must execute a real property conveyance instrument.

(2) **Assumed Name Certificate** - signed and filed.

(3) **Affidavit of Joint Venturers.** An Affidavit may also be used containing the same contents set out under the similar affidavit provided under the general partnership provisions above (I.B.1.d.3).

3. **Limited Partnerships.**

a. **Identification of Parties.** Title is in the Limited Partnership itself. No partner has an interest in specific limited partnership property. BUSINESS ORGANIZATIONS CODE §§ 154.001(c) and 154.002.

“(Name of Limited Partnership), a Texas Limited Partnership, acting by and through (Name of General Partner) a General Partner,”

b. Subscription.

(NAME OF LIMITED PARTNERSHIP)

By: (Name of General Partner), General Partner**c. Acknowledgment.**STATE OF TEXAS
COUNTY OF (COUNTY)

Before me, the undersigned authority on this day personally appeared (Name of General Partner acknowledging), a General Partner of the partnership of (Name of limited partnership), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same is the act of (Name of limited partnership), a Texas Limited Partnership, and that he/she executed the same as its General Partner and as the act of such limited partnership and for the purposes and consideration expressed in the foregoing instrument.

Given under my hand and seal of office on (Date).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____

My commission expires: _____

d. Recommended related documentation.

(1) **Limited Partnership Agreement.** Review a copy of the Limited Partnership Agreement to determine the authority of the signing general partner to act on behalf of the Limited Partnership.

(2) **Consent.** For the transfer of real property, the limited partnership agreement may require the consent or ratification of limited partners. If it does not, you may wish to obtain an opinion letter from the partnership's attorney stating that such ratification is not necessary.

(3) **Certificate of Limited Partnership.** Obtain a letter from the Secretary of State of Texas evidencing the filing of the Certificate of Limited Partnership.

4. Limited Liability Partnership. In 1991, Texas created a general partner liability shield within a "registered limited liability partnership," now called simply a "Limited Liability Partnership." BUSINESS ORGANIZATIONS CODE §§ 152.801 *et seq.* For a *domestic* limited liability partnership, the Code requires annual registration with the Secretary of State (§ 152.802), notice of limited liability in the name (§§ 5.063 and 152.803), and appropriate liability insurance (§152.804). In other respects, the limited liability partnership is organized and operated as any other partnership. Other than a name containing (but not necessarily ending in) the words "limited liability partnership," "registered limited liability partnership" or an abbreviations thereof (§ 5.063), the execution of land title conveyances should proceed as with other partnerships. For a *foreign* limited liability partnership transacting business in Texas, you should require a copy of the entity's certificate of authority of registration statement filed with the Secretary of State's Office. BUSINESS ORGANIZATIONS CODE, § 152.905.

5. Joint Stock Company. A joint stock company is a legal, unincorporated entity, which can sue and be sued in its own name, but is an unincorporated business association consisting of individual "stockholders" or "members" and run by elected officers under a written organizational agreement. Texas Revised Civil Statutes, Articles 6133 *et seq.* Joint Stock Company provisions of the statutes were not codified into the BUSINESS ORGANIZATIONS CODE.

a. Identification of Parties.

“(Name of Joint Stock Company), a Joint Stock Company, by (Name of Officer), its (Title of Officer),”

b. Subscription.

(Name of Officer), (Title of Officer)
(Name of Joint Stock Company)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Officer), (Title of Officer), of (Name of Joint Stock Company), a Joint Stock Company, acting on behalf of said Company.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recorded related documentation.

(1) **Organizational Agreement.** Review for authority of officers to act.

(2) **Resolution of Members.** Obtain any necessary resolution of the shareholders or members authorizing the transaction.

(3) **Assumed Name Certificate.** Review a copy of the recorded Assumed Name Certificate for the company.

C. TRUSTS - EXPRESS TRUSTS.

1. Inter Vivos Trusts - (Including Deeds of Trust).

a. Identification of Parties.

“(Name of Trustee), Trustee for the (Name of Trust) Trust under an instrument dated (date), recorded in (County Land Records recording information),”

b. Subscription.

(Name of Trustee), Trustee for
(Name of Trust)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Trustee), as Trustee for (Name of Trust) Trust.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Trust Agreement.** Review a copy of the Trust Agreement to determine the authority of the Trustee. A trustee may exercise any powers granted in the Texas Trust Code and any other powers that are necessary or appropriate to carry out the purposes of the Trust. TEXAS PROPERTY CODE §113.002.

(2) **Blind Trust.** In the case of a blind or undisclosed trust (one in which property is conveyed into the Trustee without identifying a trust or disclosing the name of any beneficiary), there used to be a legal problem with the possibility with individual liens of the Trustee attaching to the property. However, now, the person designated as Trustee may convey or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under a Trust or who claims by, through, or under any disclosed beneficiary or by, through, under the person designated as Trustee in that person’s individual capacity. TEXAS PROPERTY CODE §101.001. Moreover, although trust property is held by the Trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the Trustee. TEXAS PROPERTY CODE §114.0821.

(3) **Sale to or from Governmental Entity.** A State agency or political subdivision may not purchase or sell real estate from or to a “trustee” until the trustee submits a copy of the trust “identifying the true owners.” TEXAS GOVERNMENT CODE, §§2252.091, *et seq.* A trust agreement submitted to a governmental entity under this provision is confidential information. §2252.094.

Either record the document into the land records prior to the execution of the conveyance or record an affidavit from an authorize public official that the required documentation was provided. Otherwise, the attempted conveyance is void. TEXAS GOVERNMENT CODE, §2252.093.

2. Testamentary Trusts.

a. Identification of Parties.

“(Name of Trustee), Testamentary Trustee under the Will of (Name of deceased), Deceased, of (County) County, Texas,”

b. Subscription.

(Name of Trustee), Trustee

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Trustee), Testamentary Trustee under the Will of (Name of Deceased).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Review a copy of the Will to determine the authority of the Trustee to act, and any related probate proceedings.

3. Real Estate Investment Trusts.

a. Identification of Parties.

“(Name of real estate investment trust) by (Name of Trust manager), as Trust Manager thereof pursuant to the Declaration of Trust recorded in (County Clerk’s recording reference)”

b. Subscription.

(Name of Manager), Trust Manager
(Name of Real Estate Investment Trust)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Manager), Trust Manager of (Name of Real Estate Investment Trust), on behalf of said Real Estate Investment Trust.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Declaration of Trust.** Review a copy of the Declaration of Trust reflecting the filing for record of the Declaration with the County Clerk of the County of the principal place of business of the Trust. Satisfy yourself that the purpose of the Trust and the other provisions of the Declaration satisfy the requirements of BUSINESS ORGANIZATIONS CODE, §§ 2.012 and 200.051 *et seq.* of the Texas Real Estate Investment Trust Law, BUSINESS ORGANIZATIONS CODE, Chap. 200. A Real Estate Investment Trust created under the Texas Real Estate Investment Trust Law is considered an unincorporated trust created by one or more trust managers and operated under the Texas Real Estate Investment Trust Law. BUSINESS ORGANIZATIONS CODE, § 200.001.

(2) **Assumed Name Certificate.** Review a copy of the Trust’s Assumed Name Certificate confirming that it has been filed in the appropriate counties, as required by BUSINESS ORGANIZATIONS CODE, § 3.012(1).

D. CORPORATIONS - BUSINESS.

1. Promoters (Pre-Incorporation). On occasion, incorporators of a proposed corporation will employ a manager or promoter to assist in the creation and initial development of the proposed corporation. Such an employment is an agency relationship between the agent-promoter and the principal incorporators.

a. Identification of Parties.

“(Name of Promoter), Agent for (Names of Incorporators)”

If the Promoter is also to be a shareholder, the identification should read:

“(Name of Promoter), individually and as Agent for (Names of other Incorporators)”

b. Subscription.

 (Name of Promoter), [individually and as]
 agent for (Names of Incorporators)

c. Acknowledgment.

STATE OF TEXAS
 COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Promoter), [individually and] as Agent for (Names of Incorporators).

[Seal]

 Notary Public in and for
 The State of Texas

Notary’s Name (Printed): _____
 My commission expires: _____

d. Recommended related documentation. Review a copy of the Promotion and Management (agency) Contract, which should set forth the duties and authorities of the Promoter. If any uncertainty exists, require the joinder of all of the incorporators.

2. Attempted Incorporation. If incorporators have begun conducting business believing themselves to be incorporated, but later finding that one or more of the procedural prerequisites have not been completed and that the incorporation is in fact not formed, treat all of the alleged shareholders as tenants in common.

3. **Standard Business Corporation.**

a. **Identification of Parties.**

“(Name of Corporation), a (state of incorporation) Corporation,”

OR “(Name of Corporation), a Corporation acting by and through its duly authorized officer,”

b. **Subscription.**

(NAME OF CORPORATION)

(Name of Officer), (Title of Officer)

Signing on behalf of the Corporation only.

When conveying land in Texas, any corporation may effectively do so without the use of a corporate seal and without attestation by the corporate secretary. “Texas Corporation Law”, BUSINESS ORGANIZATIONS CODE, §§ 10.251 and 10.253.

The phrase below the signature “Signing on behalf of the Corporation only” is recommended in light of *Taylor-Made Hose v. Wilkerson*, 21 S.W.3d 484 (Tex. App.– San Antonio 2000, pet. denied). In that case, an en banc court ruled that a corporate officer, signing in her corporate capacity as Vice-President, and identified in the document as being the corporate contact person for purchasing, was held personally liable for the contract debt because of printed language in the Credit Account Terms and Conditions provision, stating that “I personally agree to pay all invoices”

c. **Acknowledgment.**

(1) **Texas Corporation.** Use either the short or long form acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Officer), (Title of Officer) of (Name of Corporation acknowledging), a Texas corporation, on behalf of said corporation.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____

My commission expires: _____

(2) **Foreign Corporation.** When Grantor is a foreign corporation, he may wish to use the long-form acknowledgment for the comfort of the parties.

STATE OF TEXAS
COUNTY OF (COUNTY)

Before me, the undersigned authority, on this day personally appeared (Name of Officer) (Title of Officer) of (Name of Corporation), a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledging to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal on (date).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____

My commission expires: _____

d. Recommended related documentation.

(1) **Certificate of Formation.** A certificate of formation should be obtained from the Secretary of State. If foreign corporation, obtain a copy of the Certificate of Authority to Transact Business issued by the Secretary of the State of Texas.

(2) **Bylaws.** Review these organizational documents for authority and limitations of authority of officers to enter into the transaction.

(3) **Good Standing Certificate.** A good standing certificate should be obtained from the Comptroller of Public Accounts of Texas or similar official of the State of Incorporation, confirming the filing of all required franchise tax reports and payments.

(4) **Corporate Resolution.** A corporate deed signed by an officer of the corporation, acknowledged by such officer, and recorded into the Official Public Records of the County, constitute prima facie evidence that the act was pursuant to a duly adopted resolution of the Board of Directors or shareholders of the corporation. BUSINESS ORGANIZATIONS CODE, § 10.253(b). The Code provides for corporate conveyance by “an officer, authorized attorney in fact, or other authorized person” applies the recording presumption of an underlying Resolution upon signature of any of these persons. The signatory need no longer be an officer of the corporation for the presumption of an authorizing resolution to attach. But it is only a rebuttable presumption, and it is recommended that you obtain, review, and possibly file for recording a properly executed corporate resolution of the shareholders or directors of the Grantor authorizing the proposed transaction and granting authority to the signing officer to act on behalf of the corporation.

(5) **Certificate of Incumbency.** As an added precaution, in order to assure yourself that the individuals are signing in their appropriate capacities, you may wish to obtain a certificate of incumbency, which is an affidavit by the Secretary of the Corporation certifying that the corporation is organized and existing in good standing under the laws of the State of its incorporation, that it is authorized to do business in Texas, and that the listed officers and directors are the duly elected qualified officers and directors of the corporation. Beside the name of each officer and director, you may wish to provide a signature line for a sample signature of each person.

4. Limited Liability Company.

a. Identification of Parties.

“(Name of Corporation, L.L.C.), a (State of incorporation) limited liability company, acting through its authorized manager(s) [OR member(s) OR officer OR agent],” [Other abbreviations of L.C., Ltd., and Co. are also permissible.] BUSINESS ORGANIZATIONS CODE, § 5.056.

Conveyance of real property must be made in the name of the limited liability company, with the instrument executed by: (1) one or more of its managers, if management of the company has been vested in managers; (2) any member or members, if management is retained by the members; or (3) any officer or agent vested with actual or apparent authority. BUSINESS ORGANIZATIONS CODE, §§ 2.101, 10.253, and 101.254.

b. Subscription.

(NAME OF CORPORATION, L.L.C.)

By: (Name of person signing), (Title)

c. Acknowledgment. Use the same forms as for general business corporations, with changes to reflect the proper designation of the person(s) signing.

d. Recommended related documentation.

(1) Certificate of Formation. A certificate of formation should be obtained from the Secretary of State. If a foreign company, obtain a copy of the Certificate of Authority, together with the attached copy of the company's application therefor.

(2) Entity Regulations. Review these organizational documents to determine the appropriate signatories for the transaction.

(3) Good Standing Certificate. A good standing certificate should be obtained from the Comptroller of Public Accounts in Texas or similar official in the State of incorporation, confirming the required filings of reports and payments.

(4) Authorization Documentation. There may not be a need for an authorizing resolution. By statute, every manager and officer is an agent of the limited liability company for the purpose of its business. The actions of a manager or officer, including specifically the execution of documents in the name of the company for apparently carrying on in the usual way the business of the company, binds the company (unless the acting party actually lacks the authority to act and the other party knows of the lack of authority. BUSINESS ORGANIZATIONS CODE, § 101.254.

5. Professional Association.**a. Identification of Parties.**

“(Name of Professional Association, P.A.), acting through its authorized officer(s) [OR member(s) OR agent],”

Before 1999, only doctors of medicine, doctors of osteopathy, and doctors of podiatry were allowed to form Professional Associations. Since that time, the legislature has added professions almost every legislative session. Other professions now included are: dentists, veterinarians, psychologists, clinical social workers, licensed professional counselors, licensed marriage and family therapists, therapeutic optometrists, and chiropractors. Conveyance of real property by a Professional Association must be made in the name of the Association, with the instrument executed by one or more of its officers, governing members, or other authorized person. BUSINESS ORGANIZATIONS CODE, §§ 10.253 and 302.001.

b. Subscription.

(NAME OF PROFESSIONAL ASSOCIATION, P.A.)

By: (Name of person signing), (Title)
on behalf of the Professional Association

c. Acknowledgment. Use the same forms as for general business corporations, with changes to reflect the proper designation of the person(s) signing.

d. Recommended related documentation.

(1) **Certificate of Formation.** A certificate of formation should be obtained from the Secretary of State. If a foreign company, obtain a copy of the Certificate of Authority, together with the attached copy of the company's application therefor.

(2) **Good Standing Certificate.** A good standing certificate should be obtained from the Comptroller of Public Accounts in Texas or similar official in the State of incorporation, confirming the required filings of reports and payments.

(3) **Authorization Documentation.** There may not be a need for an authorizing resolution. By statute, every member is an agent of the Association for the purpose of its business. The actions of a member or officer, including specifically the execution of documents in the name of the Association for apparently carrying on in the usual way the business of the company, binds the company (unless the acting party actually lacks the authority to act and the other party knows of the lack of authority. BUSINESS ORGANIZATIONS CODE, §§ 10.252 and 10.253.

6. Professional Corporation.

a. Identification of Parties.

“(Name of Professional Corporation, P.C.), acting through its authorized officer(s) [OR shareholder(s) OR agent],”

Conveyance of real property by a Professional Corporation must be made in the name of the P.C., with the instrument executed by one or more of its officers, shareholders, or other authorized person. BUSINESS ORGANIZATIONS CODE, §§ 10.253 and 303.001.

b. Subscription.

(NAME OF PROFESSIONAL CORPORATION, P.C.)

By: (Name of person signing), (Title)
on behalf of the Professional Corporation

c. Acknowledgment. Use the same forms as for general business corporations, with changes to reflect the proper designation of the person(s) signing.

d. Recommended related documentation.

(1) **Certificate of Formation.** A certificate of formation should be obtained from the Secretary of State.

(2) **Good Standing Certificate.** A good standing certificate should be obtained from the Comptroller of Public Accounts in Texas or similar official in the State of incorporation, confirming the required filings of reports and payments.

(3) **Authorization Documentation.** There may not be a need for an authorizing resolution. By statute, every shareholder is an agent of the P.C. for the purpose of its business. The actions of a shareholder or officer, including specifically the execution of documents in the name of the P.C. for apparently carrying on in the usual way the business of the firm, binds the P.C. (unless the acting party actually lacks the authority to act and the other party knows of the lack of authority. BUSINESS ORGANIZATIONS CODE, §§ 10.252 and 10.253.

7. Professional Limited Liability Company. Professional Limited Liability Companies conduct business in the same manner as a regular Limited Liability Company. BUSINESS ORGANIZATIONS CODE, § 304.001. See Section I.D.4. “Limited Liability Companies,” above.

8. Financial Institutions.

a. Identification of Parties.

“(Name of Financial Institution), (description of institution), by (Name of Officer), its authorized officer,”

Typical descriptions are “a National Banking Association,” “a Federal Savings Bank,” “a state-chartered banking association,” “a state-chartered Savings and Loan Association”, and “a Texas Credit Union”. A descriptive phrase is unnecessary if the name adequately describes the institution.

b. Subscription.

(NAME OF FINANCIAL INSTITUTION)

By: (Name of Officer), (Title of Officer)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (Date) by (Name of Officer), (Title of Officer) of (Name of Financial Institution), a (description of institution), on behalf of said (description of institution).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Although it is usually impractical to make any demands upon financial institutions, should turnabout ever become fair play, it would not be inappropriate to (1) obtain and review a copy from the applicable governmental regulatory body, a letter confirming that the institution’s charter is in good standing, (2) review the Articles of Association enumerating the powers of the Institution, and (3) obtain a Certificate of Incumbency indicating the appropriate officers with the authority to enter into the transaction on behalf of the institution. For an out-of-state financial institution, confirm with the Secretary of State that the institution has qualified with the Secretary of State under FINANCE CODE, § 201.102 or Texas Trust Company Act, § 9.004.

On a more practical side, if the institution is conveying property which it has acquired through foreclosure and/or Bankruptcy proceedings, you should: (1) Review the underlying deed of trust, foreclosure notice, trustee’s deed and other documentation relating to the foreclosure process and obtain an Affidavit from the Trustee concerning factual matters of compliance with the provisions of the underlying deed of trust and the applicable state law, if such an Affidavit is not already in the Official Public Records, filed in connection with the Trustee’s Deed; and (2) Review any applicable Bankruptcy documents including a copy of the Motion to Lift Stay or the Notice of Intent to Abandon, a certificate that all interested parties were notified, and a Clerk’s Certificate or other satisfactory evidence that no objections were filed, or a copy of the Order of Abandonment.

9. **MERS (Mortgage Electronic Registration Systems).**

a. **Identification of Parties.**

“Mortgage Electronic Registration Systems, Inc., a Delaware corporation, its successors and assigns, as nominee for [name of initial lender], its successors and assigns, 1595 Spring Hill Rd, Suite 310; Vienna, Virginia 22182”

b. **Subscription.**

Mortgage Electronic Registration Systems, Inc.

BY: _____

c. **Acknowledgment.**

STATE OF _____

COUNTY OF _____

On the ____ day of _____, 2006, before me appeared _____, personally known to me to be the _____ of Mortgage Electronic Registration Systems, Inc., who resides at 1595 Spring Hill Rd, Suite 310; Vienna, Virginia 22182, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporation seal; that it was so affixed by order of the board of directors of said corporation, and that he/she signed his/her name thereto by like order.

In witness whereof I hereunto set my hand and official seal.

Notary Public, State of _____

10. Delinquent Corporations. If the corporation is more than 90 days past due in filing its annual franchise tax report, and after receipt of a forfeiture notice, its corporate privileges are forfeited. TEXAS TAX CODE §171.251. The comptroller must revive the corporate privileges if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this chapter. TEXAS TAX CODE §171.258). After the 120th day after the date that the corporate privileges are forfeited, the Comptroller certifies the name of the corporation to the Secretary of State who is then authorized to forfeit the charter or certificate of authority of the corporation. TEXAS TAX CODE §171.309). If the corporate charter or certificate are forfeited, the corporation can not conduct business in its own name, and any transaction must either: (1) be by all of the shareholders thereof; or (2) occur only after the Secretary of State has set aside the forfeiture through the corporation’s compliance with Texas Property Code §§ 171.312 and 171.313.

If the entity is successfully reinstated within three years after an involuntary termination, the entity is considered to have continued in existence without interruption. BUSINESS ORGANIZATIONS CODE, § 11.253.

a. **Identification of Parties.**

“(Names of all shareholders), being all of the shareholders of (Name of corporation)”.

b. Subscription.

(Name of Shareholder), Shareholder

(Name of Shareholder), Shareholder

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Shareholder), as Shareholder in (Name of Corporation) acting in conjunction with all other shareholders thereof, on behalf of said corporation.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Also obtain and file an Affidavit explaining the status of the corporation and confirming all names of shareholders as being the sole shareholders of the corporation and acting in its place.

11. Post-Dissolution.

a. Identification of Parties.

“(Names of all Shareholders), being all of the shareholders of (Name of corporation), a dissolved corporation,”

b. Subscription.

(Name of Shareholder), Shareholder

(Name of Shareholder), Shareholder

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Shareholder), as Shareholder in (Name of Corporation), a dissolved corporation, acting in conjunction with all other shareholders thereof.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

d. **Recommended related documentation.** Review a copy of the filed Articles of Dissolution and confirm that all shareholder/grantors are the same as the shareholders listed in the Articles.

12. **Joinder Pro Forma.**

a. **Identification of Parties.**

“(Name of Grantor), (title or capacity), joined herein pro forma by his/her spouse (Name of spouse)”

b. **Subscription.**

(Name of Primary Party)

(Name of Spouse), Pro Forma

c. **Acknowledgment.** Use the standard individual short form acknowledgment.

E. **NON-PROFIT ASSOCIATIONS.**

1. **Unincorporated Associations and Clubs.** An association is not a legal entity. An instrument which purports to convey title to an unincorporated association, passes title to its members. If the association’s Articles of Association provide, Trustee’s may hold title and otherwise act for the benefit of the association. Beginning September 1, 1995, the “Uniform Unincorporated Nonprofit Association Act” (BUSINESS ORGANIZATIONS CODE, Chap. 252) permits an association to file a “statement of authority” into the Official Public Records in the County in which the property is located, designating a person (an individual or any legal entity) to act for the association in managing and transferring its real property.

a. **Identification of Parties.**

“(Name of authorized person), on behalf of (Name of Association), acting pursuant to the Statement of Authority recorded in Document No. _____, Official Public Records of (County) County, Texas...”

OR “(Names of Trustees), Trustees for (Name of Association), as duly authorized agents therefor,”

The Code chapter does not automatically remove the authority of “trustees” or the ability of all of the members of the association to execute a conveyance document. But the trustees may transfer property originally vested in them as trustees into the name of the association itself. By appropriate proceedings, the association may require that the property be transferred into the association’s name. BUSINESS ORGANIZATIONS CODE, §252.015. Once the property is in the association’s name, the person named in the recorded Statement of Authority may execute a conveyance on behalf of the association. The validity of authority is conclusive in favor of a person who gives value without notice that the person lacks authority. BUSINESS ORGANIZATIONS CODE, §252.005.

b. **Subscription.**

(Name of Designated Person), for
(Name of Association)

OR

(Name of Trustee), Trustee
(Name of Association).

c. Acknowledgment.

STATE OF TEXAS
 COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Authorized Person or Trustee), (“authorized agent” or “Trustee”), acting on behalf of (Name of Association).

[Seal]

 Notary Public in and for
 The State of Texas

Notary’s Name (Printed): _____
 My commission expires: _____

d. Recommended related documentation.

- (1) **Recorded Statement of Authority.** Insure that the Statement of Authority:
- is recorded in the Official Public Records;
 - was executed in the same manner as a deed;
 - was executed by a person other than the person named therein as being authorized to transfer property;
 - has not been amended or canceled by a later filing; and
 - was not recorded more than five years before the proposed transfer.

All of these are statutory requirements to validity.

(2) **Articles of Association.** Review a copy of the Articles to determine the capacity of Trustees to act on behalf of the members as their agent.

(3) **Affidavit of Authority.** If trustees are signing, obtain an Affidavit from appropriate parties confirming that the Trustees are authorized to act on behalf of all of the members of the association, are duly elected or otherwise installed, and are authorized by the members to enter into this transaction.

2. Incorporated Associations and Clubs. (Including hospitals, private schools, civic leagues, and labor unions) The incorporation of such entities is governed by the Texas Non-Profit Corporation Law (BUSINESS ORGANIZATIONS CODE, Chap.s 20 and 22), and conveyances by such corporations are covered in Chapter 22.

a. Identification of Parties.

“(Name of Corporation), a Texas Non-Profit Corporation, acting by (Name of Officer), its (Title of Officer),”

b. Subscription.

(NAME OF CORPORATION)

BY: (Name of Officer), its (Title)

Any officer, attorney-in-fact, or other agent of the corporation may sign. BUSINESS ORGANIZATIONS CODE, § 10.253.

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Officer), (Title), of (Name of Corporation), on behalf of said corporation.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Certificate of Formation.** Review the Certificate of Formation to determine the method of governing the corporation. Members may or may not have voting rights, and management may be vested in a board of directors, trustees, or the members. *See* BUSINESS ORGANIZATIONS CODE, §§ 3.001 and 3.007

(2) **Resolution.** Review the resolution authorizing the transaction, and confirm its compliance with the requirements of BUSINESS ORGANIZATIONS CODE, §§ 22.252 – 22.254. The resolution will need to be by the board of directors, or by the membership, depending upon the management structure set out in the Certificate of Formation.

(3) **Certificate of Incumbency.** Obtain a certificate of incumbency to assure that the resolution was adopted and the conveyance documents executed by the appropriate individuals.

3. Lodges. Lodges include specifically by statute the Masons, Odd Fellows, and other like institutions and orders organized for charitable or benevolent purposes. They are governed in Texas as a “Special-Purpose Corporation. BUSINESS ORGANIZATIONS CODE, Chap. 23, Subchapter C. Lodges have an umbrella institution called a “Grand Lodge” and local chapters called “Subordinate Lodges”. The incorporation of the grand lodge includes all of its subordinate lodges, but the subordinate lodges may have all of the rights of other corporations, if their Certificate of Formation so provides. BUSINESS ORGANIZATIONS CODE, § 23.104.

a. Identification of Parties.

“(Name of Subordinate Lodge), a chapter of (Name of Grand Lodge), acting by and through (Name of presiding officer), its presiding officer on behalf of such Lodge,”

b. Subscription.

(NAME OF SUBORDINATE LODGE)

By: (Name of presiding officer),
(Title of presiding officer)

ATTESTED: (Name of Secretary), Secretary

[Seal of Lodge]

Unlike other corporations, Lodges whether grand or subordinate, are required to sell or mortgage their property upon conveyances “executed by the presiding officer, attested by the Secretary with the Seal.” BUSINESS ORGANIZATIONS CODE, § 23.108(b).

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of presiding officer) as (Title of presiding officer) of (Name of Subordinate Lodge), on behalf of such Lodge.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Articles of Incorporation of Grand Lodge.** Review a copy of the Articles and assure yourself of its current filing with the Secretary of State.

(2) **Certificate of Formation, Charter, or Warrant of Subordinate Lodge.** Review the charter to insure that it is exercising its corporate authority under the name given it by the Charter issued by the Grand Lodge and that it is acting in accordance with its rights provided for in the charter. The Grand Lodge and the subordinate lodge may act either through trustees or directors. BUSINESS ORGANIZATIONS CODE, § 23.105.

(3) **Affidavit of Good Standing.** Obtain an Affidavit from an appropriate official of the Grand Lodge that the local lodge is a subordinate body duly chartered under the organization’s provisions of the Grand Lodge, in good standing. Upon the demise of any subordinate lodge, title to all property held in the name of the subordinate lodge vests in the Grand Lodge, and conveyances should be made by the presiding officer of that body. BUSINESS ORGANIZATIONS CODE, § 23.110.

4. Cooperatives. Although cooperatives are incorporated under the Cooperative Association Law BUSINESS ORGANIZATIONS CODE, Chap. 251, they are subject to the provisions of the Texas Non-Profit Corporation Law and exercise all powers granted to a non-profit corporation, except as limited in the BUSINESS ORGANIZATIONS CODE, § 251.002.

Other specialized cooperatives include utilities organized under the Electric Cooperative Corporation Act (TEXAS UTILITIES CODE, Chap. 161) or the Telephone Cooperative Act (TEXAS UTILITIES CODE, Chap. 162). Those entities are exempt from compliance with the provisions of the Business Organizations Code. BUSINESS ORGANIZATIONS CODE, § 251.003.

a. Identification of Parties.

“(Name of cooperative), duly organized under the Texas Cooperative Association Law, acting by and through the undersigned officers,” The cooperative must use the word “Cooperative”, or an abbreviation, in its name. BUSINESS ORGANIZATIONS CODE, § 5.057.

b. Subscription.

(NAME OF COOPERATIVE)

(Name of Officer), (Title)

c. Acknowledgment.STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Officer), (Title), of (Name of cooperative), on behalf of said cooperative.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

d. Recommended related documentation.

(1) **Certificate of Formation.** Insure that the Certificate are duly filed with the Secretary of State and authorize the contemplated transaction. BUSINESS ORGANIZATIONS CODE, § 3.013.

(2) **Corporate Resolution.** The resolution should be by the board of directors authorizing the transaction and authorizing the officers to act on behalf of the cooperative.

(3) Certificate of Incumbency.**5. Religious Organizations - Unincorporated.**

(a) **Identification of Parties.** On and after September 1, 1995, unincorporated, non-profit associations in Texas have the capacity to take or hold title to real property in their own names. See, §I.E.1., above. However, it is still common that title is held in Trust for the association by a board of trustees, or occasionally in the name of a Bishop for the benefit of the association. *Parrish et al. v. Looney et al.*, 194 S.W.2d 419 (Tex. Civ. App.– Texarkana, 1946, no writ). Unlike a business association, the trustees of a non-profit association hold the title, not for the individual members composing the association at the time the title was acquired, but for the benefit of the association itself, the membership of which continuously changes. *Brown v. Clark*, 116 S.W. 360 (Tex. 1909). In fact, title to the property stays with the underlying religious organization by operation of law, and title is not affected so long as the identity of the organization is maintained, even though the name of the church is changed. *Magnolia Petroleum Company v. Jackson*, 82 S.W.2d 1011 (Tex. Civ. App.– El Paso, 1935, writ dis'm.).

“(Names of trustees), Trustees, on behalf of (Name of church),”

b. Subscription

(Name of Church)

(Name of Trustee), Trustee_____
(Name of Trustee), Trustee**c. Acknowledgment.**STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Trustee), Trustee for (Name of Church), on behalf of said church.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____

My commission expires: _____

d. Recommended related documentation.

(1) **Ecclesiastical Structure.** When title is held by a religious organization which is subordinate to a general church organization which includes one or more levels of superior governing bodies, the controlling organization will have adopted a written constitution or similar enactment which addresses the holding, mortgaging and disposition of property.

(a) **Constitution.** Review the constitution and any other applicable document of operation which governs the conveyance of real property, and satisfy yourself as to compliance.

(b) **Congregational Resolution.** Although the title is vested in the Trustees, the trust is regarded as a passive trust. *Methodist Episcopal Church v. Roach*, 51 S.W.2d 1100 (Tex. Civ. App.– Texarkana, 1932, no writ). Any action of the trustees normally must be supported by an authorizing resolution of the church membership acting in accordance with its controlling rules. The resolution should also expressly contain a statement that the meeting was held and the resolution was passed in accordance with the formalities of procedure required by the church's internal rules. If that is not available, an Affidavit from the minister or other official of the Larger Church governing body should be obtained. Ecclesiastical Rules established by the governing body of the larger church will not be reviewed or disturbed by the civil courts. *Brown v. Clark*, 116 S.W. 360 (Tex. 1909). However, when title is held in the name of a Bishop in his official capacity for the benefit of the church, the only resolution or affidavit necessary should be an affidavit that the individual signing in the capacity of Bishop is in fact the person holding that office at the time.

(2) **Congregational Structure.** Where the property is held by a religious organization which is wholly independent of other church governing bodies, the Trustees will be authorized to act upon a majority vote of the members present at a duly called meeting. *Stogner v. Laird*, 145 S.W. 644 (Tex. Civ. App.– Dallas, 1912, writ ref'd). Review a copy of the congregation's bylaws or other regulations for meetings and conveyance of title. Obtain a copy of a duly passed congregational resolution authorizing the transaction, and obtain an affidavit from the minister that the resolution was passed in accordance with the congregation's regulations.

(3) **Beliefs Society.** A relatively rare, and more difficult situation occurs when property has been conveyed to a loose association of individuals who espouse and practice a specific religious doctrine. There may not be

an express trust or trustees named, but only a reference to the common name to the group. In such a situation, title is fixed in the trustees or otherwise for the benefit of those who adhere to the doctrines professed by the congregation. *Peace v. First Christian Church of McGregor*, 48 S.W. 534 (Tex. Civ. App. 1898, writ ref’d.). In such situations, it may be that the numerical minority of the congregation who accept the doctrine of beliefs will prevail in a title dispute. *Norton v. Green*, 304 S.W.2d 420 (Tex. Civ. App.– Waco 1957, writ ref’d, n.r.e.). In such situations, the much safer practice will be to obtain a Statement of Authority under the Texas Uniform Unincorporated Nonprofit Association Act and proceed under that statute. See §I.E.1., above. Otherwise, it will be necessary to obtain a unanimous resolution of the membership, affidavits from appropriate officers of the association, and provide your client with a written statement that your preparation of the instruments can not act as a guaranty of title conveyance.

6. Religious Organizations - Incorporated. Churches are incorporated under the Texas Non-Profit Corporations Law, BUSINESS ORGANIZATIONS CODE, Chap. 22.

a. Identification of Parties. An incorporated church will normally provide for a board of directors or board of trustees to hold title to property. However, it is possible for a church to incorporate and vest the management of its affairs with its members. BUSINESS ORGANIZATIONS CODE, § 22.202. In that event, the Certificate of Formation should designate the appropriate officer for conducting transactions on behalf of the corporation.

“(Name of Corporation), a Texas non-profit corporation, acting by and through its (Title of officers), on behalf of said corporation.”

b. Subscription

(NAME OF CORPORATION)

By: (Name of officer), (Title)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Officer), as (Title of Officer) of (Name of Corporation), on behalf of said corporation.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____

My commission expires: _____

d. Recommended related documentation.

(1) **Certificate of Formation.** Review the Articles for appropriate filing and for provisions regarding conveyance of title.

(2) **Church Constitution.** Review the church’s constitution and other regulatory documents which outline the means for holding and conveying title to real property.

(3) **Congregational Resolution.** Unless the Certificate of Formation and constitution of the church clearly provide otherwise, obtain a congregational resolution authorizing the transaction. Approval of a majority of the members present at an appropriately called meeting is normally required, even though title may be held in the name of the board of directors or trustees.

7. Religious Organizations - Specific Recommended Documentation.

a. **Assembly of God.** Assembly of God churches are usually unincorporated congregations associated with a District Council of Assemblies of God. Title to local church property is under the control of the congregation acting through designated Trustees. In the event of a congregation's demise, title to congregational property reverts to the incorporated District Council.

b. **Baptist.** Baptist churches are congregational in structure. Trustees hold land titles and act on resolution of the congregation, which should name the Trustees and authorize them to undertake the proposed transaction.

c. **Christian Church.** Christian churches are congregational, and act through Trustees upon resolutions adopted by the congregation at properly called congregational meetings.

d. **Christian Science.** Local congregations exercise independent control of their real property. Most congregations are not incorporated but are organized through a "Board of Directors." Land title transactions occur through congregational resolution authorizing the Board to act.

e. **Church of Christ.** Churches of Christ are congregational in structure. They conduct land title transactions through a Board of Trustees authorized to act by congregational resolution.

f. **Church of God.** Churches of God are part of an ecclesiastical structure, under state and national supervision, but title to property is held by local churches acting through Trustees under the direction of Congregational Resolutions.

g. **Church of Jesus Christ of Latter Day Saints (Mormons).** The Church of Jesus Christ of Latter Day Saints operates as a Utah Corporation "Sole." Authority to hold and convey property is in the one man who is the corporation, and he executes instruments on behalf of corporation. The presiding Bishop as the "Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints" may acquire, hold, donate, or otherwise convey property without approval of the members. Instruments are executed in the name of the corporation, signed by the person representing the corporation in official capacity designated in the Articles of Incorporation or by authorized agents designated in a certificate filed by the corporation in the office of the Secretary of State. The acknowledgment will be made in the State of Utah, County of Salt Lake.

h. **Church of the Nazarene.** The Church of the Nazarene is an Ecclesiastical organization including a superintendency, a General Assembly, and District Assemblies. Local congregations may incorporate and may hold title in the corporate name. Title is transferred by Trustees acting upon instruction of majority vote of the congregation at an annual meeting or at a specially called meeting, with written approval of the District Superintendent, and if debt is incurred, with additional approval of the District Board of Church Extension.

i. **Episcopal.** Episcopal churches are ecclesiastical in structure, with local congregations governed in all but far West Texas by the "Protestant Episcopal Church Council of the Diocese of Texas, a Texas non-profit corporation." Real property conveyances originate with a resolution of the local congregation authorizing the "Vestry" to take the proposed action. The Vestry then conducts a meeting and authorizes the Senior Warden and Junior Warden of the Vestry to execute the necessary documents. Both the Congregational and Vestry actions should be supported by authorizing resolutions. Mortgages of local church property should be joined by the Diocese, by act of the President of the Board of Trustees.

j. **Greek (Eastern) Orthodox Church in America.** The Greek (Eastern) Orthodox Church in America is a communion of self governing Churches, each administratively independent of the other. The local Parish congregation holds title to real property in its corporate name. Real property is purchased, sold, mortgaged or otherwise encumber upon approval of two-thirds of the members present at a Parish Assembly duly called for that purpose upon ten days written notice, and the subsequent consent of the Diocesan Bishop in consultation with the Diocesan Council.

k. Jehovah's Witnesses. Local congregations have independent control of their property. Title is held in Trustees, or a Board of Directors, if incorporated. Title is conveyed upon vote of the local congregation, instructing the Directors or Trustees to act.

l. Jewish. All Jewish congregations, whether Orthodox, Conservative, or Reform, are congregational in structure. Land titles in Texas are held through means of Trustees, who conduct transactions upon instruction by congregational resolutions.

m. Lutheran. Although ecclesiastical in structure, with a Texas District and supervising Synod, title to property is held in the local congregation, acting by resolution of its members, and through a board of directors, if incorporated. Higher governing body approval is not required.

n. Methodist, Free. The Free Methodist Church is a distinct and separate religious organization from the better known United Methodist Church. It has an ecclesiastical structure which includes a District Superintendent, and a National Board of Directors. Title is held in the Congregation's name (if incorporated) or through a Board of Trustees. Sale of the property must be upon vote of the Board of Trustees and must also reflect the consent of the District Superintendent and the Board of Directors of the Free Methodist Church of North America.

o. Methodist, United. The Methodist Church is an ecclesiastical church, with local congregations governed through a "quarterly conference." The Administrative Board, convened as a quarterly Conference, is composed of members of the church and is presided over by the District Superintendent. If the congregation is incorporated, title to its real property is held in its corporate name, and if unincorporated, in Trustees for the benefit of the congregation. A conveyance by the church must be preceded by a notice of the proposed action to the congregation and a resolution passed by the quarterly Conference authorizing the transaction. The resolution must direct that the documentation be executed by specified officers of the Board of Trustees (or Board of Directors, if incorporated). The written consent of the local church pastor and of the District Superintendent must be affixed to the conveyance documents.

p. Pentecostal. The Pentecostal Church of God of America is a single religious corporation. It has an executive Board which, under its Constitution, is authorized to act on behalf of the church without further authorization from local congregations.

q. Presbyterian Church of America. This is a smaller, separate organization from the better known Presbyterian Church (USA). The P.C.A. is ecclesiastical in structure, in that it has regional "Presbyteries" and a national "General Assembly." However, for purposes of land titles, it is Congregational. If incorporated, the church holds title in the corporate officers or a Board of Trustees. The governing body of the congregation is the Session, which has the authority to authorize the purchase or sale of real property. Minutes of the Session will authorize the Clerk of Session, the Moderator of the Session (the pastor), or any other designated party (e.g., Trustees) to sign the required documents. The higher church governing bodies never have any supervisory control or authority over property of the local church.

r. Presbyterian Church (USA). This is an ecclesiastically structured organization, with local congregations governed by a "Session" of Elders, a regional "Presbytery" governing body, and a national "General Assembly". Title to property is held in the corporate name, if incorporated, and/or through Trustees. Whether legal title is held in the name of the corporation or in the names of Trustees, the property is ordinarily held in trust for the use and benefit of the national denomination. Conveyances should be by vote of the Congregation at a duly called meeting, but conveyance can not occur without the written permission of the Presbytery.

s. Roman Catholic. Although the church is structurally ecclesiastical, title to its real property is held in the Bishop and may be conveyed or mortgaged without any further authorization. The only documentation you need is that the individual signing is the current Bishop.

t. Seventh Day Adventists. The "General Conference" of the denomination is housed at the World Headquarters in Washington, D.C. The ecclesiastical structure also includes "World Divisions" (North America), multi-state "Unions" (Southwest) and area "Conferences" (all but West Texas is in the Texas Conference). Local churches are not incorporated. Title to church property is held by the Conference. Conveyances are approved by vote

of the local congregation in a business meeting. Upon resolution by the "Conference Association," the Conference Association President is authorized to execute the transaction.

u. Unitarian. Although headquartered in Boston, the denomination is a loose association of, usually incorporated, congregations. For most purposes, including land title transactions, the local congregation acts independently, through its corporate officers or trustees.

F. GOVERNMENTS.

1. United States Agencies (VA, FHA, FmHA, SBA, FNMA, FDIC, FedLnBk).

a. Identification of Parties.

VA: "(Name of administrator), Administrator of Veterans' Affairs, United States Veterans' Administration," OR "(Name of administrator), Administrator of the Veterans Benefits Administration of the United States"

FDIC: "The Federal Deposit Insurance Corporation, by and through the undersigned representative,"

FHA: "The Federal Housing Administration, by and through the Secretary of Housing and Urban Development of Washington, D.C., or his/her authorized representative,"

FNMA: The Federal National Mortgage Association is now a private corporation. It operates under a unique federal Charter as a "national mortgage institution". It is subject to oversight by both the Secretary of the Treasury and the Secretary of Housing and Urban Development, but all of its documents are executed just as any other corporation.

FmHA: "The United States of America, acting through the Farmers' Home Administration, United States Department of Agriculture, through the undersigned representative,"

FedLnBk: "The Federal Land Bank of Texas and/or the Federal Land Bank Association of (regional name), through its authorized representative,"

SBA: "The Small Business Administration, through the undersigned representative,"

b. Subscription.

(NAME OF AGENCY)

By:(Name and Title of Administrator)

c. Acknowledgment. A grant from the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgment or proof. TEXAS PROPERTY CODE §12.006. In such cases, insert only the following notation:

"Notarization is not required, per Texas Property Code §12.006.

For other purposes, use:

STATE OF TEXAS
COUNTY OF (COUNTY)

Before me, the undersigned authority, on this day personally appeared (Name of Administrator), (Title of Administrator), known to me to be the person whose name is subscribed on the foregoing instrument, and acknowledged

to me that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on (Date).

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

2. **State of Texas Gen. Ln. Off.; Tx. Vet. Ln. Bd.; Gen. Services Commission; Tx. Dept. of Transportation).**

a. **Identification of Parties.**

“The Veterans’ Land Board of the State of Texas”

OR

Office,”
OR

“The State of Texas, acting through (Name of Commissioner), Commissioner of the General Land

Laws of this State,”
OR

“(Name of Governor), Governor of the State of Texas, acting by virtue of and in accordance with the

“The General Services Commission, an agency of the State of Texas”.

b. **Subscription.**

THE STATE OF TEXAS

By: _____
(Name of Officer), (Title of Officer)

c. **Acknowledgment.** A grant from the State that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgment or proof. TEXAS PROPERTY CODE §12.006. In such cases, insert only the following notation:

“Notarization is not required, per Texas Property Code §12.006.

For other purposes, use:

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Officer), (Title of Officer), (Name of Agency), acting in his/her official capacity.

[Seal]

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

3. **Political Subdivisions. (Counties, Cities, I.S.D.’s, Community Colleges)**

a. **Identification of Parties.**

“(Name of Political Subdivision), a political subdivision of the State of Texas, by and through (Name of presiding officer), its (Title of executive officer), on behalf of (name of governing body)”

b. **Subscription.**

(NAME OF POLITICAL SUBDIVISION)

By: _____
(Name of executive officer), (Title)

c. **Acknowledgment.**

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of executive officer), (Title of executive officer) of (Name of governing body), on behalf of (Name of governing body).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Satisfy yourself that the governing body has the authority to enter into the contemplated transaction and that the transaction is the result of a resolution appropriately adopted at a public meeting where the requirements of public notice have been met. The sale or lease of property by a city, county, or other local government is controlled by the Tex. Loc. Gov’t. Code, Ch. 272. Sale or lease of property by a county also must be in conformance with Tex. Loc. Gov’t. Code, §263.001. In addition, check any enabling statute directed at a particular-sized County or municipality or which mentions the political subdivision by name.

4. **Quasi-Public Authorities (MUD’s, RUD’s, Water Districts, etc.).**

a. **Identification of Parties.**

“(Name of Authority), by the undersigned majority of the members of its Board of Directors,”

OR for certain Water Districts:

“(Name of Authority), by [name of representative], its [title]”

WATER CODE §49.054(c) permits the Board of Directors of certain water districts to adopt a resolution authorizing the general manager or other employee of the district to execute documents on behalf of the district, in addition to the chief executive officer of the district.

b. **Subscription.**

[multiple subscriptions by officers and other directors]

(Name of Representative), (Title)

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Representative), as (Title) of (Name of authority).

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Insure that the Representative is duly authorized under the empowering documentation of the authority and by resolution of the Authority adopted in accordance with its regulatory requirements. Also check for special requirements in the enabling statutes. For example, WATER CODE, § 49.054(c) authorizes the board of directors of a water district to adopt a resolution authorizing the chief executive officer, the general manager or other employee of the district to execute documents on behalf of the district.

5. Sheriff, Constable, or Deputy.

a. Identification of Parties.

“(Name of Sheriff), Sheriff of (Name of County), County, Texas pursuant to the Order of (Name of Court) Court in execution of a Judgment in Cause No. (number) against (Name of Judgment Debtor), Defendant.”

b. Subscription.

(Name of Sheriff), Sheriff
(Name of County) County, Texas

c. Acknowledgment.

STATE OF TEXAS
COUNTY OF (COUNTY)

This instrument was acknowledged before me on (date) by (Name of Sheriff), Sheriff of (Name of County) County, Texas in his/her official capacity.

[Seal]

Notary Public in and for
The State of Texas

Notary’s Name (Printed): _____
My commission expires: _____

d. Recommended related documentation. Satisfy yourself that the judgment debtor was property served in the lawsuit resulting in the judgment and that the owner of the property being conveyed is the same individual as the judgment debtor.

II. TROUBLE SHOOTING MANUAL.

A. Subscription.

1. Written Conveyance

a. **Required.** Although there are exceptions, as a general rule, a conveyance of an interest of more than one year in real property must be in writing and must be signed by the Grantor or the Grantor's agent authorized in writing, and must be delivered to be effective. TEXAS PROPERTY CODE §5.021. Even between partners, no conveyance by implication will be recognized without a written conveyance as prescribed by the statute. *Jewell v. Jewell*, 602 S.W.2d 315 (Tex. Civ. App.– Texarkana 1980, no writ).

The Grantor's signature is a fundamental requirement on virtually any document in order for it to be relied on or binding upon him or her. TEXAS BUSINESS AND COMMERCE CODE §3.401 provides that no person is liable on any instrument under the Uniform Commercial Code unless the person's signature appears on the instrument.

b. **Exceptions.** An oral contract to purchase real property can be enforceable if there has been payment of consideration, possession of the property by the purchaser, and the construction of valuable improvements upon the land by the purchaser. *Harris v. Potts*, 528 S.W.2d 321 (Tex. Civ. App.– Beaumont 1975), affirmed 545 S.W.2d 126. Similarly, parol gifts of land can be enforced, but only to prevent fraud where the donee acts in reliance upon the donor's words, has taken possession of the property, and has erected valuable and permanent improvements on it. *Root v. Mecom*, 542 S.W.2d 878 (Tex. Civ. App.– Beaumont 1976, no writ).

2. Identity of Party.

a. **Required First Name, Surname.** Obviously, the purpose of describing a person by name in an instrument is to identify the person. *Presley v. Wilson*, 125 S.W.2d 654 (writ dismissed, judgment correct). The identity of name is only prima facie evidence of identity of the person. *Kerby v. Ogletree*, 313 S.W.2d 325 (Tex. Civ. App.– Beaumont 1958, writ refused, n.r.e.). However, if there is no evidence to the contrary, the use of the same name from one instrument to the next will suffice to show identity of person. *Hart v. Floyd*, 558 S.W.2d 578 (Tex. Civ. App.– San Antonio 1977, no writ).

The designation of a person by a surname materially different from the person's true surname is insufficient to identify him or her unless an explanation is provided in the instrument or in a related, filed document. *Russell v. Oliver*, 14 S.W. 264 (Tex. 1890).

b. **Abbreviations, Derivations, and Corruptions.** When two names have the same derivation or when one is an abbreviation or corruption of the other, but both are commonly used interchangeably, even though completely different in sound, the use of one for the other is not a material deviation, *Missouri, K. & T. R. Co. v. Cardwell*, 70 S.W. 103 (Tex. Civ. App.– 1902, writ refused); at least so long as there is no evidence indicating that a different party is intended. *Salazer v. Tower* 683 S.W.2d 797 (Tex. App.– Corpus Christi 1984, no writ). The propriety of even severe abbreviation has been upheld. For example, "H. & Bro.") for "Hollingsworth and Brother" (*Hollingsworth v. Wm. Cameron & Co.*, 160 S.W. 644 (Tex. Civ. App. 1913, no writ)); and "M.K. & T. Ry. Co." for "Missouri Kansas and Texas Railway Company of Texas" (*Missouri, K. & T. R. Co. vs. Cardwell*, 70 S.W. 103, (Tex. Civ. App. 1902, writ refused)).

c. **Middle Names.** Texas law, like the common law, has never recognized the necessity or relevance of a middle name. *Jeffus v. Mullins*, 78 S.W.2d 1023 (Tex. Civ. App. 1935, no writ). A total variance in a person's middle name is completely immaterial except to the extent that it points to the identity of a different person. *State Bank & Trust Co. v. W. O. Horn & Bro., Inc.*, 295 S.W. 698 (Tex. Civ. App. 1927, no writ).

d. **Initials.** The irrelevancy of middle names also applies to middle initials. This is true even when the individual uses first and middle initials together in the writing of his name. *Zimmerman v. First Nat. Bank*, 235 S.W.2d 720 (Tex. Civ. App.– Ft. Worth 1950, writ refused, n.r.e.).

The use of the first name initial in place of the first name will be presumed to be the proper use of the first name, and no material variation will be found without affirmative testimony to the contrary. *Jordan v. Madison*, 250 S.W.2d 228 (Tex. Civ. App.– Dallas 1952, no writ).

However, the use of an incorrect first initial can be fatal unless evidence is clear that the same person was intended. *Zimmerman v. First Nat. Bank*, 235 S.W.2d 720 (Tex. Civ. App.— Ft. Worth 1950, writ ref'd n.r.e.). A transposition of the first and middle initials also results in a presumption that a different individual is intended. However, where there is an absence of evidence controverting the identity of the named individual, the identity is established. *Dittman v. Cornelius*, 234 S.W. 880 (Tex. Com. App. 1923).

e. Prefixes and Suffixes. Prefixes (“Mr.,” “Ms.,” “Dr.,” etc.) and suffixes (“Sr.,” “MD”, etc.) constitute no part of a person’s legal name and may be disregarded as surplusage. *Kane v. Sholars* 90 S.W. 937 (Tex. Civ. App. 1906, no writ). The only suffix that may be relevant is “Jr.”. Although the Court of Criminal Appeals considers it mere surplusage for identifying an individual in a criminal charging instrument (*Cherry v. State*, 447 S.W.2d 154 (Tex. Cr. App. 1969)), the Texas Supreme Court has held that the suffix “Jr.” is a part of a person’s name for purposes of civil service of process. *Uvalde Country Club v. Martin Linen Supply Co.*, 690 S.W.2d 884 (Tex. 1985).

Although surplusage, such suffixes and prefixes can assist in the identification of the parties and are appropriate.

f. Idem Sonans - Misspellings. The phrase “idem sonans” means “of the same sound.” The rule of idem sonans is that absolute accuracy in spelling a name is not required in a legal document. If the name as spelled in the document, though different from the correct spelling, conveys to the attentive ear, when pronounced according to the commonly accepted methods of English pronunciation, a sound which is difficult to distinguish from the correct name as commonly pronounced, the name in the instrument will be found to be a sufficient identification of the individual referred to. *Polk v. State*, 704 S.W.2d 929 (Tex. App.— Dallas 1986, writ ref’d). Note that the emphasis is on common pronunciations, and not necessarily correct pronunciation. The comparison is to be made among the names as pronounced by common and long continued usage, irrespective of the rules of orthography. *Grant v. State*, 568 S.W.2d 353 (Tex. Cr. App. 1978).

For land title purposes, the rule of idem sonans is most often applied to the question of the effectiveness of a recorded instrument as providing adequate notice in the Land Records. A variance will be material only if it is prejudicially misleading. *Adams v. Grogan-Cochran Lumber Co.*, 181 S.W.2d 582 (Tex. Civ. App.— Amarillo 1944, affirmed *McCall v. Grogan-Cochran Lumber Co.*, 186 S.W.2d 677 (1945)). For indexing and notice purposes, a variance in the initial letter of a name, otherwise identical, will much more likely result in a finding of dissimilarity and therefore inadequate notice.

A variance between the grantor’s signature and the recital of the name in the acknowledgment certificate will not invalidate the acknowledgment where the doctrine is applicable. *Arnall v. Newcom*, 69 S.W. 92 (Tex. Civ. App. 1902, writ ref’d).

Special attention should be given to foreign names. When a variance develops in the pronunciation of a foreign name, the doctrine of idem sonans will apply in accordance with rules of English pronunciation, unless evidence on the correct pronunciation is offered. *Adams v. Grogan-Cochran Lumber Co.*, 181 S.W.2d 582 (Tex. Civ. App.— Amarillo 1944), affirmed *McCall v. Grogan-Cochran Lumber Co.*, 186 S.W.2d 677 (1945)).

The application of the rule of idem sonans is always a fact question for the trial court. Because it is a discernment of sound, the trial court’s decision will almost never be disturbed on appeal. As a result, the cases tend to vary widely on what is acceptable as idem sonans. “Ida” has been accepted for “Iida.” *City of Houston v. Darland*, 264 S.W.2d 783 (Tex. Civ. App.— Galveston 1954, ref. n.r.e.); “Baxley” has been accepted for “Barkley”. *Hill v. Foster*, 181 S.W.2d 299 (Tex. Civ. App.— Amarillo 1944, affirmed 186 S.W.2d 343). On the other hand, “Anton Metzger” has been held not admissible to prove title through “Anton Metzger”; *Mattfield v. Cotton*, 47 S.W. 549 (Tex. Civ. App. 1898, writ dism.); and “Eigeneaur” was not the same as “Eigenauer”. *Slattery v. Adams*, 279 S.W.2d 445 (Tex. Civ. App.— Beaumont 1954, affirmed 295 S.W.2d 859). A lesson to be learned from this is to not become too immersed in the doctrine of idem sonans. Establishing the true identity of the grantor or grantee is the goal. Although names may be ruled to be idem sonans, the result is only that a presumption of identity of person is established. It does not necessarily establish that the person to whom land was granted was the same person who conveyed it to another. *Galveston, H. & S. A. R. Co. v. Stealy*, 1 S.W. 186 (Tex. 1886).

g. Use of Assumed names and aliases. A practical definition of an “assumed name” is in TEXAS BUSINESS AND COMMERCE CODE §36.02(7). An assumed name of an individual is any name that does not include the surname of the individual. A general partnership or joint venture name that does not include the surname or other legal name of all of the partners is an assumed name. References in a business name that suggest the existence of additional owners (such as “Company”, “and son”, “Brothers”, or “and associates”) constitute assumed names. In the case of a limited partnership or corporation, any name other than the name stated in the Certificate of Limited Partnership or Corporate Charter is an assumed name.

A contract or obligation may be entered into by a person using any name he or she may choose to assume. The law looks only to the identity of the individual. When that is clearly established, the act will be binding upon that person. *Presley v. Wilson*, 125 S.W.2d 654 (Tex. Civ. App.– Dallas 1938, writ dismissed, judgment correct). Even though a person takes title in an assumed name as a trustee for a dissolved corporation and without an assumed name certificate on file and later conveys title using the same assumed name in which title was taken, title effectively passes to the alleged successors in title. *Reagan v. Andrews*, 241 S.W.2d 249 (Tex. Civ. App.– Ft. Worth 1951, no writ). TEXAS BUSINESS AND COMMERCE CODE §3.401 is an example of the broad discretion given to individuals in selecting an assumed name. A signature upon an instrument can be made by the use of any name, assumed name, word, or mark. The person is liable thereon to the same extent as if the person had signed in his/her own name. *Tom v. First Nat. Bank*, 104 S.W.2d 130 (Tex. Civ. App.– El Paso 1937, writ dismissed).

h. Signing but unnamed as a party. In order for an instrument to be fully binding upon a signatory, that person’s name must appear as a party in the instrument. *Creosoted Wood Block Paving Co. v. McKay*, 211 S.W. 822 (Tex. Civ. App. 1919, no writ). Merely signing and acknowledging an instrument in which another person appears as grantor is not sufficient to convey the interest of the signatory. *Thompson v. Johnson*, 58 S.W. 1030 (Tex. Civ. App. 1900, no writ). But see *Texas Pac. Coal & Oil Co. v. Patton*, 238 S.W. 202 (Tex. Com. App. 1922, rehearing denied 240 S.W. 303).

However, the signature of a person not named as a party in the instrument will have some legal effect. A signature alone may be sufficient to manifest consent of the signatory to the transaction. *Stone v. Sledge*, 26 S.W. 1068 (Tex. 1894). Such a signatory on a UCC instrument will be treated as an endorsement. TEXAS BUSINESS AND COMMERCE CODE §3.402. In a real property conveyance instrument, although a deed executed by a person not shown as a grantor in the granting clause fails as a conveyance, the instrument does bind the signatory as a contract to convey his interest in the property. TEXAS PROPERTY CODE §5.002; *Magee v. Young*, 198 S.W.2d 883 (Tex. 1947).

i. Variance between name in instrument and signature. Where there is a slight discrepancy between the name used in the body of the instrument and the name signed by the grantor, the discrepancy is immaterial if it appears that the named grantor is the same person who signed the instrument. *Hill v. Foster*, 181 S.W.2d 299, (Tex. Civ. App.– Amarillo 1944, affirmed 186 S.W.2d 343). Of course, the use of a mark as a signature is no variance from the name of the person used in the instrument. TEXAS GOVERNMENT CODE §312.011.

j. Variances within the instrument. Where the party to the instrument can be discerned, the instrument will not fail because of variances within the instrument in reference to the same party. An instrument that in the first instance correctly states the name of a party is not invalidated by subsequently stating the name incorrectly. *Hurlbut v. Gainor*, 103 S.W. 409 (Tex. Civ. App. 1907, no writ). This is true even if the name of another party appears in certain portions of the instrument, so long as it is clear from the entire instrument that the intention of the grantor was to convey to the grantee named somewhere in the instrument. *Hanrick v. Jackson*, 55 Tex 17 (1881).

The same rule applies where the name of the grantee has not been properly filled in at all in certain portions of the instrument. If the identity of the grantee can be determined from the instrument as a whole, the instrument will be upheld, even though the name of the grantee appears only in the covenant of warranty. *Bailey v. Mullens*, 313 S.W.2d 99 (Tex. Civ. App.– San Antonio 1958, writ refused, n.r.e.).

A discrepancy between the name appearing in the instrument and the name in the acknowledgment certificate will not defeat the acknowledgment if there is evidence to explain the discrepancy and indicate that the individual is the same. *Merriman v. Blalack*, 121 S.W. 552 (Tex. Civ. App. 1909, writ refused).

k. Identification by class rather than by name. The designation of a party need not be by name. *Vineyard v. O'Connor*, 36 S.W. 424 (Tex. 1896). For example, the use of the phrase “and his wife” was sufficient to designate the wife as a grantor of the instrument. *Creosoted Wood Block Paving Co. v. McKay*, 211 S.W. 822 (Tex. Civ. App. 1919, no writ). The name of the grantor, otherwise made certain in the instrument, can be designated in the instrument only by the pronoun “I”. *Vasquez v. Texas Loan Agency*, 45 S.W. 942 (Tex. Civ. App. 1898, no writ). However, the reference to the individual grantor in the instrument must be to the same person who signed the instrument. For example, where a deed is in the name of a grantor who dies before executing the instrument, and it is later executed by persons shown to be the heirs of the deceased grantor, because the deed did not identify the parties as such, it did not pass the interest of the heirs. *Le Blanc v. Jackson*, 210 S.W. 687 (Tex. Com. App. 1919). However, see Section II.A.2.h. “Signing but un-named as a party”, above.

Similarly, the designation of a grantee may be made by reference to a classification so long as the intended grantees can be ascertained. For example, a deed made to the “heirs and assigns” of a deceased person is valid if it can be shown that it was the intention of the grantor to convey title to such heirs and assigns. *Wilson v. Dearing, Inc.*, 415 S.W.2d 475 (Tex. Civ. App.—Eastland 1967, no writ). Similarly, a deed to the Estate of a deceased person is valid so long as the estate or heirs are capable of being ascertained. *Haile v. Holtzclaw*, 414 S.W.2d 916 (Tex. 1967).

The traditional common law rule has been that a deed must designate a grantee in existence at the time of its execution. Thus a deed to the heirs of a living person without specifying their names was void. *Spaulding v. Higgs*, 254 S.W.2d 208 (Tex. Civ. App.—Austin 1953, writ ref. n.r.e.). However, for conveyances taking effect on or after January 1, 1964, the TEXAS PROPERTY CODE §5.042 provides that a deed or other conveyance of property that limits an interest in the property to a class such as the heirs of the conveyor is effective according to the intent of the conveyor. The failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect the person’s right to take an interest as a conveyee. The intention of the conveyor controls unless otherwise limited by law.

l. Error in additional descriptive information. Descriptive matter added to the name of a party to an instrument (such as being of a certain County, being a certain type of entity, or being in a certain relationship with another) is a further means of identification of the party but is not essential to the validity of the instrument. An error in descriptive matter does not defeat a conveyance. *Simonds v. Stanolind Oil & Gas Co.*, 136 S.W.2d 207 (Tex. Civ. App.—1940, no writ).

3. Special Subscriptions.

a. Rubber stamped, typed, or printed signature. An instrument which provides the grantor’s signature by use of a rubber stamp, typewriter, or printing may be adopted by the grantor. Acknowledgment of the instrument is evidence of its adoption by the grantor. *Mondragon v. Mondragon*, 257 S.W. 215 (Tex. 1924).

b. By agent.

(1) Signing as Instrumentality for another. A grantor may verbally authorize a third party to sign an instrument for the grantor. In such an occurrence, the third party actually signing the name of the grantor is regarded not as an agent but as a mere instrumentality. *Houston Oil Co. v. Biskamp*, 99 S.W.2d 1007 (Tex. Civ. App.—Beaumont 1937, writ dismissed). The instrument is the act of the grantor and is binding as if the grantor had personally executed the instrument. *Lee v. Kirby*, 277 S.W. 225 (Tex. Civ. App. 1926, no writ). Such an arrangement has even been upheld when a seller’s name was signed to a contract by the buyer and the seller’s signature was not acknowledged on the instrument, because the contract had been prepared in the presence of and under the direction of the seller and had been delivered by the seller to the buyer upon receipt of consideration paid by the buyer. *Mondragon v. Mondragon*, 257 S.W. 215 (Tex. 1924).

In 1997, GOVERNMENT CODE, § 406.0165 was added to provide a specific statutory form for execution of a document by a person physically unable to sign, allowing the notary to sign the grantor’s name in the presence of a disinterested witness and under the direct instruction of the grantor. The notary must require identification of the witness in the same manner as is required for an acknowledging person.

(2) Formal Agent - Attorney-in-Fact. An agent’s authority to execute a real property conveyance (i.e. the deed itself) normally must be in writing and must be specific. *Donovan v. Mercer*, 747 F.2d 304 (US.Ct.App., 1984). However, the requirement for written authorization does not extend to other, related documents.

An agent's authorization to make an executory contract for the sale or purchase of real estate need not be in writing. *Adams v. Abbott*, 254 S.W.2d 78, 80 (Tex. 1952); *Smith v. Warth*, 483 S.W.2d 834 (Tex. Civ. App.—Waco 1972, no writ). Therefore when a deed's validity is questioned because the agent executed it under verbal authorization only, the instrument may still be enforceable as a contract to convey the realty. *Hoover v. Wukasch*, 254 S.W.2d 507, 509 (Tex. 1953). An agent or other representative does not require any particular form of appointment in order to establish the agent's authority to sign a UCC document on behalf of his/her principal. TEXAS BUSINESS & COMMERCE CODE, §3.403.

An agent's written authority to convey real property through a Power of Attorney will be strictly construed. The power to sell property for a particular price implies only the power to sell for cash, and a sale for partial payment in cash and credit passes no title. *Horst v. Lightfoot*, 132 S.W. 761 (Tex. 1911). Further, authority to sell property does not include the authority to execute a Deed of Trust. *Texas Moline Plow Co. v. Klapproth*, 209 S.W. 392 (Tex. Com. App. 1919).

A duly authorized attorney-in-fact may convey title even though the executed instrument refers to the agent's authority as being through another instrument which is invalid. *Link v. Page*, 10 S.W. 699 (Tex. 1889). Even where the agent signs the instrument in his/her own name, and the instrument does not indicate the existence of any agency, the deed nevertheless conveys the title which the agent had the authority to convey, whether as an agent or as principal. *Bennett v. Virginia Ranch, Land & Cattle Co.*, 21 S.W. 126 (Tex. Civ. App. 1893, no writ).

A Power of Attorney authorizing the execution of a conveyance is automatically revoked upon the death of the principal. *Gilmer v. Veatch*, 121 S.W. 545 (Tex. Civ. App. 1909, writ ref'd.).

c. By Partner. When a partner has executed a conveyance in his/her own name, but title to the realty was in the name of the partnership, the conveyance passes the equitable interest of the partnership. Vernon's Ann. Civ. St. art. 6132b, §10(2). The partnership could recover the clear title only if the signing partner in fact had no authority to act for the partnership in the conveyance and the grantee had knowledge that the partner had no such authority (art. 6132b, §9(1)).

The same principle and the same single exception apply when title to real property is in the name of one or more or all of the partners, or in a third person in trust for the partnership, and a conveyance is executed by a partner in the partnership name or in his/her own name (art. 6132b, §10(4)).

When property was acquired in one or more partners' names, without reference to the partnership and without the use of partnership assets, there is a presumption that title to the property is in the individual(s), and not in the partnership, regardless of whether the property is used for partnership purposes. Vernon's Ann. Civ. St. Art. 6132b, §2.05(d).

In any situation where clarification of authority or the interests conveyed would be helpful, obtain and record a Certificate of Ratification from the Partnership.

d. By corporate officer. Since a corporate conveyance of land by deed requires an appropriate resolution of its board of directors or shareholders (Tex. Bus. Corp. Act, Art. 5.08), if the existence of a resolution is not evident from the record and is open to question, obtain a Resolution of Ratification from the grantor corporation. Suits which question the validity of a real property conveyance based upon (1) lack of the signature of the proper corporate officer or manager, (2) failure of the record to show authority of the board of directors, stockholders, officers, managers, or members, (3) the legal standing of the corporation, or (4) propriety of the corporate acknowledgment, have a four-year statute of limitations. TEX. CIV. PRAC. & REM. C., §16.033.

e. Mental Incapacity. Unless a court is exercising jurisdiction of guardianship, only the integrity of the mind of the grantor is relevant to the grantor's competency to execute an instrument. Neither old age, illness, physical disabilities, nor mental stress can negate the act of the grantor. *Crow v. Childress*, 169 S.W. 927, Tex. Civ. App. 1914, no writ). An individual has "mental capacity" if he/she has the possession of sufficient mind and memory to understand the nature and effect of his/her act in executing the instrument. *Pollard v. El Paso Natl. Bank*, 343 S.W.2d 909, 913 (Tex. Civ. App.—El Paso 1961, writ ref'd n.r.e.). Mere mental weakness does not necessarily incapacitate. It has been held that memory is not an essential element of capacity to convey property, nor is it essential that the grantor have a full

knowledge of the contents of his entire estate. It is sufficient if he understands the nature and effect of the contested document. *Klindworth v. O'Connor*, 240 S.W.2d 470 (Tex. Civ. App.— Dallas 1951, writ ref. n.r.e.).

If an incompetent has executed a deed, the deed is not void but only voidable. See *Free v. Owen*, 113 S.W.2d 1221 (Tex. 1938). The same rule applies to contracts, and such instruments may be ratified by the grantor after recovery from the mental incapacity. *Gaston v. Copeland*, 335 S.W.2d 406, 409 (Tex. Civ. App.— Amarillo 1960, writ ref'd, n.r.e.). Until canceled by a court judgment, the instrument remains valid. *Houston Oil Co. v. Biskamp*, 99 S.W.2d 1007 (Tex. Civ. App.— Beaumont 1936, writ dismiss.). However, if the incompetent, or his/her guardian, seek to avoid the deed, the grantee's good faith purchase, for valuable consideration, and without fraud will not prevent it. *Lucas' Estate v. Whiteley*, 550 S.W.2d 767, 768 (Tex. Civ. App.— Amarillo 1977, writ ref'd, n.r.e.).

Even where the incompetent grantor has previously been adjudicated to be an incompetent, the deed remains only voidable and not void. *Bennett v. Romos*, 252 S.W.2d 442, (Tex. 1952). Even where an active guardianship over the incompetent is pending in the probate court, the incompetent's deed is not void except as it may conflict with the actual exercise of the guardian's authority. The probate court's order authorizing the guardian's deed and the deed itself, has the legal effect of disaffirming the incompetent's prior deed. *Baldwin v. Davis Hill Oil Co.*, 245 S.W.2d 353 (Tex. Civ. App.— Beaumont 1951, writ ref'd, n.r.e.). Likewise, any subsequent deed by the ward will be set aside. *Walker v. Robinson*, 683 S.W.2d 875, 877 (Tex. App.— Texarkana 1984, no writ).

f. By Minors. A minor is a person who is not yet 18 years of age (TEX. CIV. PRAC. & REM. CODE §129.001) and whose disabilities have not been removed under TEX. FAM. CODE §§31.01 and 31.07. (But note that under to Texas Uniform Transfers to Minors Act in TEX. PROPERTY CODE, §141.002, a "minor" is defined as an individual who is younger than 21 years of age.) The deed of a minor is not void but is voidable at the election of the minor. *Dairyland County Mutual Ins. Co. of Texas v. Roman*, 498 S.W.2d 154, 158 (Tex. 1973). In order to set aside the instrument, the minor must disaffirm the instrument by a distinct act within a reasonable time after attaining majority. *Uhlmann Grain Co. v. Wilson*, 68 S.W.2d 281, 283 (Tex. Civ. App.— Ft. Worth 1933, writ dismiss.). Such an avoidance requires the return of any of the consideration which the grantor still possesses, but the minor is not estopped from the disaffirmation by misrepresentations made by the minor at the time of the transaction, unless the acts were intentional and fraudulent and the grantee relied upon such acts. *Rutherford v. Hughes*, 228 S.W.2d 909 (Tex. Civ. App.— Amarillo 1950, no writ).

As with incompetents, the pendency of a guardianship proceeding on the minor's estate at the time that the minor executes a conveyance does not of itself operate to void the instrument. The deed is only subject to being defeated by a subsequent exercise of the probate court's jurisdiction so long as the guardianship proceeding remains open. If no conflicting action is taken under the court's discretion, the instrument remains valid. *McGill v. Reed*, 64 S.W.2d 358 (Tex. Civ. App.— Texarkana 1933, no writ).

g. Sheriff's Deed. A sheriff may conduct a sale only under instruction from a court of competent jurisdiction. Without proof of power to conduct the sale through a judgment and execution, a sheriff's deed is inoperative. *Sledge v. Craven*, 254 S.W.2d 888 (Tex. Civ. App.— Galveston 1953, no writ). Recitals in the deed of such power do not have the affect of proving the authority to sell. *Stark v. Stefka*, 491 S.W.2d 757 (Tex. Civ. App.— Austin 1973, no writ).

Generally, irregularities in a Sheriff's sale, standing alone, may not warrant setting aside an execution sale. However, when irregularities are coupled with a grossly inadequate purchase price, even minor irregularities become material and permit a court to set aside the sale. *Pantaze v. Slocum*, 518 S.W.2d 407 (Tex. Civ. App.— Ft. Worth 1974, writ ref'd, n.r.e.).

Some courts have held that the irregularity must be calculated to affect the sale and must have contributed to the inadequate price. Without irregularities, an inadequate price standing alone, is not sufficient to set aside a sheriff's deed in State court. *Prudential Corp. v. Bazaman*, 512 S.W.2d 85 (Tex. Civ. App.— Corpus Christi 1974, no writ).

The description of the property conveyed in the Sheriff's deed must be limited to the property levied upon. *Smoot v. Woods*, 363 S.W.2d 798 (Tex. Civ. App.— Ft. Worth 1962, writ ref'd, n.r.e.).

h. Husband Not Joining Wife, as then Required. Prior to its repeal in 1963, Vernon's Ann. Civ. St. Art. 1299 required that a husband join in the conveyance by his wife of her separate property. However, if the husband did not execute the deed as then required, the conveyance is nevertheless valid and is not voidable. *Wessely Energy Corp. v. Jennings*, 736 S.W.2d 624 (Tex. 1987).

i. Digital Signatures. A digital signature is different from a facsimile. A digital signature is an electronic identifier imbedded in a particular electronic transmission, intended by the person using it to have the same effect as the person's manual signature. Industry standards are still being developed as to both the characteristics of a digital signature and a method for verifying its authenticity. In 1997, TEX. BUSINESS & COMMERCE CODE, § 2.108 was adopted to authorize digital signatures on electronic communications sent to State agencies (under regulations still being developed by the State Department of Information Resources) and on electronic transmissions connected with UCC, Article 2 (Sales) transactions. Digital Signatures are not yet acceptable for real property conveyances.

4. Effect of Signing "in blank".

a. Necessity for Grantee. Generally, it is necessary that a conveyance designate a grantee. A deed cannot pass title to a grantee that is not in existence. *Wilson v. Dearing, Inc.*, 415 S.W.2d 475 (Tex. Civ. App.— Eastland 1967, no writ). A conveyance that is to a fictitious person is void. *Johns v. Wear*, 230 S.W. 1008 (Tex. Civ. App.— Texarkana 1921, no writ). However, a fictitious name is not a fictitious person. A fictitious name may simply be used as an alias as a convenience, and upon appropriate proof of identity, the transaction will be upheld. *Buist v. Connell*, 233 S.W.2d 458 (Tex. Civ. App.— Eastland 1950, writ ref.).

b. Discretionary Grants. Generally, TEXAS PROPERTY CODE §5.021 (requiring that a real property conveyance be made in writing) requires that the writing signed by the Grantor contain the essential elements of a conveyance. As a result, the signing of a blank piece of paper or a printed blank form without the insertion of other matter is meaningless and is not an execution of a conveyance. *Southern Pine Lumber Co. v. Arnold*, 139 S.W. 917 (Tex. Civ. App. 1911, no writ).

However, where a Grantor delivers a deed with the name of the Grantee left blank, intending that the title vest in the person to whom the deed is delivered, and the purchaser is expressly authorized at the time of deliver to insert his name or any other name as Grantee, an irrevocable power coupled with an interest is vested in the person to whom the deed is delivered. *Glasscock v. Farmers Royalty Holding Co.*, 152 F.2d 537 (5th Circuit, 1945). Moreover, the power to fill in the blank with the name of the Grantee continues to pass to persons to whom the deed is delivered, and title becomes vested in the person whose name is ultimately inserted, in accordance with the power and authority originally conferred. *Fennimore v. Ingham*, 181 S.W. 513 (Tex. Civ. App. 1915, mod. on other grounds (Com.) 215 S.W. 956).

When the deed is actually delivered to a purchaser, with the express intent of the Grantor that the name of the purchaser be inserted in the blank, equitable title to the property passes with delivery and is not defeated even by the death of the Grantor before the blank is filled in. *Womack v. Stegner*, 293 S.W.2d 124 (Tex. Civ. App.— El Paso 1956, writ ref. n.r.e.). Note that this is not a mere Power of Attorney. Authority of an agent would require written authority to convey and would be limited by the express terms of the Power of Attorney. The deed signed in blank must be delivered to the purchaser in order for equitable title to vest.

When a Grantor signs an instrument in blank and verbally authorizes another to exercise discretion to write a conveyance over his or her signature, with power to determine whether the conveyance will be filled in and delivered at all, and to whom the grant will be made, and to what property it is to apply, the instrument is fundamentally incomplete and the authority to fill in the blanks and deliver the instrument is ineffectual. *Southern Pine Lumber Co. v. Arnold*, 139 S.W. 917 (Tex. Civ. App. 1911, no writ).

Although there are no cases on point, if a Grantor can deliver a deed to a purchaser with the Grantee's name left blank, a Grantor should also be able to deliver a deed containing a vendor's lien, with the assignee of the vendor's lien left blank. However, it would certainly be much better practice for a Grantor to provide a written Power of Attorney to an appropriate agent authorizing the agent to complete the instrument by filling in the name of the purchaser and the name of the assignee of any vendor's lien retained. A Power of Attorney which authorizes the agent

to fill in the Grantee's name only cannot empower the agent to Insert the name of the assignee of the vendor's lien. Since sales are rarely for cash, it would certainly be prudent to include both authorities in a Grantor's Power of Attorney.

5. **Alteration after Execution.**

a. Of Name In Instrument. Generally, a material change in an instrument without the consent of the parties will invalidate the instrument. *Reagan v. City Nat'l Bank, N.A.*, 714 S.W.2d 425, 429 (Tex. App.— Eastland 1986, writ ref'd n.r.e.). However, an alteration in the spelling of the Grantee's name made by the Grantee after the execution and delivery of the instrument by the Grantor will not defeat a title honestly acquired. *Starks v. Loftus*, 248 S.W. 1090, 1094 (Tex. Civ. App.— Galveston 1923, no writ). Even if the surname of the Grantee (for example changing from a married name to a maiden name) after execution and delivery to the Grantee, does not preclude the Grantee from becoming the property owner through the deed. *Jackson v. Brackens*, 409 S.W. 482 (Tex. Civ. App.— Houston [1st Dist.] 1966, writ ref'd. n.r.e.). Obviously, the much better practice would be to obtain a Correction Deed or to at least have any minor alteration initialed by the Grantor. In addition, if the minor alterations are made after the execution and acknowledgment of the instrument, it would be prudent to have the instrument re-acknowledged as corrected.

b. Of Contents of the instrument. Generally, the addition of a substantive clause into an instrument without the Grantor's consent materially changes the contract of the parties and invalidates the instrument. *Kalteyer v. Mitchell*, 110 S.W. 462 (Tex. Civ. App. 1908, affirmed 117 S.W. 792). However, the alteration of a deed or other conveyancing instrument after its execution and delivery does not invalidate the instrument as a conveyance. *Calame v. Miller*, 703 S.W.2d 229, 231 (Tex. App.— Waco 1985, writ ref'd n.r.e.). The deed, after alteration, is effective as originally written. *Nabors v. Nabors*, 230 S.W. 1109, 1112 (Tex. Civ. App.— El Paso 1921, writ ref'd.). The Grantee is not divested of title by the alteration nor is it revested in the Grantor. *Nat'l Bank of Commerce v. May*, 583 S.W.2d 685, 689 (Tex. Civ. App.— Eastland 1979, writ ref'd n.r.e.). Therefore, a material alteration of the contents of a deed, after delivery, will not effect the original conveyance but will void the deed and any executory rights or future obligations contained in it. *Nabors v. Nabors*, 230 S.W. 1109, 1112 (Tex. Civ. App.— El Paso 1921, writ ref'd.).

As suggested in the section immediately above, alterations should at least be initialed by the Grantor. If clerical errors are found in an instrument after it has been recorded, and the errors constitute a material variance from the intent of the parties, a correction instrument should be obtained and filed. However, if after recording, clerical errors are discovered which are less serious, it may be acceptable to file an "Affidavit of Scrivener's Error" explaining the error. It would be best to have the Affidavit signed by the parties, but may be acceptable if it is signed by someone with personal knowledge of the mutual intention of the parties. Such an Affidavit might contain the following:

"The (Description of Instrument) recorded in (recording information) execute by (Name of Grantor) to (Name of Grantee) contains a clerical error. The described instrument is attached hereto as Exhibit "A" and is made a part hereof for all purposes. The instrument attached is corrected to show (describe the correction)."

6. Effect of Fraud. Fraud is different from forgery. In a forgery, an instrument is executed which purports to be the act of another who did not authorize the act. TEXAS PENAL CODE §32.21(a)(1). In a fraud situation, the signature is genuine but is procured through deceptive means. In Texas, an instrument procured by fraud is not void. *Deaton v. Rush*, 252 S.W. 1025, 1031 (Tex. 1923). It is only voidable at the election of the defrauded Grantor. See *Slaughter v. Qualls*, 162 S.W.2d 671 (Tex. 1942). Such an instrument is effective as a conveyance of legal title until set aside by the defrauded person through a judicial proceeding. *Lighthouse Church of Cloverleaf v. Texas Bank*, 889 S.W.2d 595, 602 (Tex. App.— Houston [14th Dist.] 1994, writ denied).

A deed obtained by fraud can only be set aside by a District Court Judgment canceling the deed, and such an action can be brought only by the party defrauded. *Hughes v. Wright*, 127 S.W.2d 215 (Tex. Civ. App.— Ft. Worth 1939, no writ). In such a situation, where the deed is merely voidable and the equitable powers of the court must be evoked to cancel the deed, suit must be brought within a four year statute of limitations. *Goodwin v. Dallas*, 496 S.W.2d 722 (Tex. Civ. App.— Waco 1975, no writ). However a cause of action to set aside a fraudulent conveyance does not accrue nor its limitations begin to run until the fraud is or could have been discovered by the exercise of reasonable diligence. *Lathem v. Richey*, 722 S.W.2d 249 (Tex. App.— Dallas 1989, writ denied).

In order to cancel a deed on the grounds of fraud, the Grantor must prove that: (1) there was a false representation as to a material fact; (2) the perpetrator had guilty knowledge of its falsity; (3) the person to whom is was

made must have been ignorant of the falsity; (4) there must have been an intention that it should have been acted upon; (5) the Grantor must have relied upon the representation, have been deceived by it, and acted upon it; and (6) the Grantor suffered some loss in consequence of it. *Booth v. Chadwick*, 154 S.W.2d 268 (Tex. Civ. App. 1941, writ ref'd.).

The elements of fraud also apply to a good faith purchaser who pays valuable consideration without actual notice of Grantor's fraudulent intent. *First Southern Properties, Inc. v. Gregory*, 538 S.W.2d 454 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). A conveyance by a tenant in common as if a sole owner of a specified portion of jointly held property is not void, but voidable by the co-tenants insofar as it affects their rights. *Zinn v. Farmer*, 243 S.W. 523 (Tex. Civ. App.—1922, no writ).

7. Effect of Undue Influence or Duress. Like fraud, an instrument obtained through undue influence or duress is not void, but voidable. In deciding whether there was undue influence, whether by pressure or persuasion, upon the Grantor, three factors will be considered: (1) the existence and exertion of an influence; (2) whether the influence operated to subvert or overpower the Grantor's mind when executing the deed; and (3) whether the Grantor would not have executed the deed but for the influence. *Dulak v. Dulak*, 513 S.W.2d 205, 209 (Tex. 1974). The influence must have been to such a degree as to overcome and supplant the will of the Grantor for the will of the perpetrator, and such influence must also have been exercised for a disadvantageous purpose. *Rodriguez v. Garcia*, 519 S.W.2d 908 (Tex. Civ. App.—Corpus Christi 1975, writ ref'd. n.r.e.). A beneficiary's participation in the preparation and execution of the deed is a factor in considering undue influence. *In Re Olsson's Estate*, 344 S.W.2d 171 (Tex. Civ. App.—El Paso, 1961, writ ref'd n.r.e.). But such participation alone will not constitute undue influence. *Molnari v. Palmer*, 890 S.W.2d 147, 149 (Tex. App.—Texarkana, 1994, no writ).

8. Effect of Forgery. Unlike fraud, duress, and undue influence, a forged deed and its recording are wholly ineffective for any purpose. *Pure Oil Co. v. Swindall*, 58 S.W.2d 7, 10 (Tex. Comm'n. App. 1933, holding approved); *Dyson Descendant Corp. v. Sonat*, 861 S.W.2d 942, 947 (Tex. App.—Houston [1st Dist.] 1993, no writ). A Grantee cannot claim as an innocent purchaser for value under a forged deed. *Blair v. Hennessy*, 138 S.W. 1076 (Tex. Civ. App.—Galveston 1911, aff'd. 173 S.W. 871 (1915)); *1st Coppell Bank v. Smith*, 742 S.W.2d 454, 461 (Tex. App.—Dallas 1987, no writ).

A forgery includes any alteration, execution, or authentication of any writing so that it purports to be the act of another who did not authorize the act. TEXAS PENAL CODE §32.21(a)(1). There is no different definition for forgery for civil law. *1st Coppell Bank v. Smith*, 742 S.W.2d 454 (Tex. App.—Dallas 1987, no writ). Not only is a forged deed totally void *ab initio*, but it is not possible by implication or estopped to make it effective. *Libby v. Libby*, 114 S.W.2d 284 (Tex. Civ. App.—El Paso 1938, writ dismiss.).

A deed executed by a person with the same name as the true owner but being a different person constitutes a forgery. *West v. Houston Oil Co. of Texas*, 120 S.W. 228 (Tex. Civ. App. 1909, writ ref'd.). In addition, when an instrument containing blanks is executed and delivered by the Grantor with authority to another person to fill in the blanks in a prescribed manner, the fraudulent filling in of the blanks contrary to the authority given constitutes forgery. *Erwin v. Curtis*, 5 S.W.2d 547 (Tex. Civ. App.—Eastland 1928, writ ref'd.).

Because a forged deed is void *ab initio*, a reference to it in a subsequent document references nothing. *Commonwealth Land Title Company of Houston, Inc. v. Nelson*, 889 S.W.2d 312, 318 (Tex. App.—Houston [14th Dist.] 1994, no writ). A valid deed of trust does not become inoperative because it incorporates by reference a forged subordination agreement and forged vendor's lien deed. *Id.*, at 317.

A somewhat different rule applies in UCC instruments. Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he or she ratifies it or is precluded from denying it. TEXAS BUSINESS AND COMMERCE CODE §3.404. A significant difference from land title documents is that UCC documents may be more easily ratified when an unauthorized signature has been used. §3.404(b). Moreover, a person who by negligence substantially contributes to the making of an unauthorized signature on a UCC instrument is precluded from asserting the lack of authority against a holder in due course or against a payor who pays the instrument in good faith and in accordance with reasonable commercial standards. §3.406.

9. Ratification and Adoption. Although there is some confusion in the use of the terms, most courts make a distinction between “ratification” and “adoption”. Ratification is a subsequent act by a Grantor to remedy a defect in a deed previously signed by the Grantor. It applies where there is a voidable prior act (such as fraud, duress, or mutual mistake) which the Grantor now expresses an intent to knowingly be bound by. *Williams v. Hooks*, 333 S.W.2d 184 (Tex. Civ. App.– Beaumont 1960, no writ). Because it applies to a voidable, rather than a void instrument, it is frequently said that a forgery can never be ratified. *Pure Oil Co. v. Swindall*, 58 S.W.2d 7, 11 (Tex. Comm’n. App. 1933, holding approved); *Gaynier v. Ginsberg*, 715 S.W.2d 749, 756-757 (Tex. App.– Dallas 1986, writ ref’d n.r.e.). The purported grantor’s negligence will not waive the grantor’s protection from the illegal act of forgery. *Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 211 (Tex. App.– Fort Worth 1992, writ denied).

Other defects in deeds which can be remedied by ratification include errors in the description of the land to be conveyed (*Reserve Petroleum Co. v. Hodge*, 213 S.W.2d 456 (Tex. 1948)), and defects in execution of the original instrument. *Click v. Seale*, 519 S.W.2d 913 (Tex. Civ. App.– Austin 1975, writ ref, n.r.e., appeal after remand 556 S.W.2d 95, writ ref. n.r.e.).

Although a forged deed may never be ratified, the act may be “adopted” by the Grantor. *Mondragon v. Mondragon*, 257 S.W. 215, 217 (Tex. 1923); *Bell v. Sharif-Munir-Davidson Development Corp.*, 738 S.W.2d 326, 330 (Tex. App.– Dallas 1987, writ denied). Adoption occurs when the apparent Grantor duly acknowledges and delivers the instrument. *Viersen v. Bucher*, 342 S.W.2d 203 (Tex. Civ. App.– Amarillo 1960, no writ). Adoption may also occur by means other than acknowledgment and delivery directly upon the deed. The action of a Grantor’s wife in signing and acknowledging three releases of vendor’s lien notes given in exchange for a deed to land given by the Grantor which lacked the wife’s signature constituted complete formal adoption of the original deed the same as if she had signed and acknowledged it herself. *Kunkel v. Kunkel*, 515 S.W.2d 941 (Tex. Civ. App.– Amarillo 1974, writ ref. n.r.e.).

10. Supplemental Elements - (Seal and Attestation) By statute, no seal or attestation is necessary in a conveyance by a business corporation. TEXAS BUSINESS CORPORATION ACT Article 5.08. No written instrument requires a private seal. *Rex Liquor Stores v. McCart*, 152 S.W.2d 376 (Tex. Civ. App.– Waco 1941, writ ref’d.). Further, an acknowledgment taken by a notary public failing to meet the requirements of the statute pertaining to the proof necessary to place an instrument into the Real Property Records does not render the deed void. *Drake v. McGalin*, 626 S.W.2d 786 (Tex. Civ. App.– Beaumont 1982, no writ). In any event, attacks on conveyances for lack of a corporate seal, attestation, or other supplemental element have a four-year statute of limitations. TEX. CIV. PRAC. & REM. C., §16.033(a).

B. ACKNOWLEDGMENT.

1. Defined. An “acknowledgment” is really a certificate made by a notary public or by another authorized by statute to take acknowledgments, stating that the designated party personally appeared before the notary and acknowledged executing the instrument “for the purposes and consideration expressed in it” TEXAS CIVIL PRACTICE AND REMEDIES CODE §121.006(b)(1). Acknowledgments authenticate an instrument as being the act of the person executing the instrument. See *Punchard v. Masterson*, 100 Tex. 479, 101 S.W. 204, 205 (1907); *Shelton v. Swift Motors, Inc.*, 674 S.W.2d 337, 341-42 (Tex. App.– San Antonio 1984, writ ref’d n.r.e.). An acknowledgment also makes an instrument recordable in the county clerk’s office. See *Martin v. Skelton*, 567 S.W.2d 585, 586 (Tex. Civ. App.– Fort Worth 1978, writ ref’d n.r.e.); see also TEX. PROP. CODE Ann. § 12.001(a) (Vernon Supp. 1998) (“An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.”).

The TEXAS CIVIL PRACTICE AND REMEDIES CODE §§121.001-121.004 set out the persons before whom acknowledgments or proofs may be made, describe the legal effect of acknowledgments, and provide sample, traditional and short forms for various types of acknowledgments. In addition, TEXAS GOVERNMENT CODE §406.013 and 406.014 provide additional requirements for the taking of acknowledgments and making acknowledgment certificates by notaries public.

An acknowledgment can be made only by the person who executed the document. A conveyancing instrument can, of course, be ratified by executors, guardians, directors, or others. However, unlike a jurat (which states that the instrument was “Subscribed . . . before me, . . .”), an acknowledgment may be made by the grantor at any time after the document is executed. The signing party simply appears before the notary public or other authorized officer

and acknowledges that the signature appearing on the document is his/hers and that the instrument **was** executed for the purposes and consideration expressed in it. TEX. CIV. PRAC. & REM. CODE, §121.006(b).

2. Not essential for Conveyance. Neither the acknowledgment nor the recording of an instrument conveying land titles is necessary to make it a valid and binding conveyance between the immediate parties thereto. *Chicago Title Insurance Co. v. Alford*, 3 S.W.3d 164 (Tex. App.– Eastland 1999, n.w.h.). An unrecorded instrument is also binding upon the parties' heirs and on subsequent purchasers who do not pay valuable consideration and who have notice of the instrument. *Denson v. First Bank & Trust of Cleveland*, 728 S.W.2d 876 (Tex. App.– Beaumont 1987, no writ).

3. Assumed Valid. Acknowledgments are presumed to be valid. A certificate of acknowledgment is prima facie evidence that the grantor appeared before the notary and executed the deed in question for the purposes and consideration therein expressed. *Stout v. Oliveira*, 153 S.W.2d 590, 596 (Tex. Civ. App.– El Paso 1941, Writ ref'd. w.o.m.). Clear and unmistakable proof that either the grantor did not appear before the notary or that the notary practiced some fraud or imposition upon the grantor in necessary to overcome the presumption of validity of a certificate of acknowledgment. *Id.*, at 596-97. A suit to recover real property conveyed by an instrument without a proper acknowledgment or jurat has a four-year statute of limitations. TEX. CIV. PRAC. & REM. C., §16.033(a).

4. Incomplete Certificates. Section 12.001 of the TEXAS PROPERTY CODE provides that instruments concerning real property may be recorded if they have been acknowledged, sworn to, or proved according to the statutes, but that instruments conveying real property may not be recorded unless they are acknowledged by the Grantors. When an acknowledgment is defective to the degree that it becomes ineffective, no recording is possible and the conveyance is subject to being cut off by the filing for record of a subsequent deed to a Grantee who has no knowledge of the prior unrecorded deed. TEXAS PROPERTY CODE §13.001; *Gulf Production Co. v. Continental Oil Co.*, 164 S.W.2d 488, 494 (Tex. 1942).

Since the acknowledgment performs an important function, the courts liberally construe the requirements of an effective acknowledgment. For example, the failure of the notary to show the date that his or her commission expires, or to show the date of the acknowledgment, or even to insert into the certificate the name of the Grantor making the acknowledgment does not invalidate the acknowledgment. *Sheldon v. Farinacci*, 535 S.W.2d 938 (Tex. Civ. App.– San Antonio 1976, no writ). Although an acknowledgment is not an essential part of a deed, when it is used, it is part of the deed. Facts which can be discerned from reviewing the deed as a whole are considered to be adequately provided. Even the fact that the Grantor signs only below the acknowledgment is immaterial. *Bailey v. Mullens*, 313 S.W.2d 99 (Tex. Civ. App.– San Antonio 1958, writ ref. n.r.e.).

However, the acknowledgment must meet the minimum requirements of the statute. The absence of a notary's seal is fatal to the effectiveness of the acknowledgment in Texas. TEX. CIV. PRAC. & REM. CODE, §121.004. A notary's seal on an acknowledgment from another jurisdiction is not required if the jurisdiction in which the notary's certificate is made does not require the attachment of the seal (TEX. CIV. PRAC. & REM. C., §121.004 and TEX. PROP. C., §12.001). The Texas Secretary of State annually distributes to all county clerks a list of states which require a notary public's certificate to be validated by a seal (TEX. GOVT. C., §405.019).

5. Conflicts between the Instrument and the Acknowledgment. Because an acknowledgment is part of the larger instrument, the instrument will be read as a whole, and if the facts can be clearly ascertained from the instrument as a whole, a variance within a particular portion will not be material. See §II.A.2.j. "Variances within the Instrument", above. An acknowledgment on an instrument does not indicate when the parties intended to execute the instrument. See *Martin v. Skelton*, 567 S.W.2d 585, 586-87 (Tex. Civ. App.– Fort Worth 1978, writ ref'd n.r.e.). The Courts do not look to the acknowledgment on the document in question to construe the document's execution date. An acknowledgment does not reflect the date a party intended to execute an agreement. See *Martin*, 567 S.W.2d at 586-87. Where a deed is dated as having been executed on one date and the acknowledgment is on a different date, in the absence of evidence showing the date on which the deed was actually delivered, it will be presumed that it was delivered on the date of the deed and not on the date of acknowledgment. *Bell v. Smith*, 532 S.W.2d 680 (Tex. Civ. App.– Ft. Worth 1976, no writ). An instrument which has no date or an impossible date (such as April 31) is presumed to take effect on the date of its delivery. *Webb v. Huff*, 61 Tex. 677 (1884).

6. **Disqualified Notary.** A notary or other officer otherwise qualified to take acknowledgments under Tex. Civ. Prac. & Rem. Code §121.001 is nevertheless disqualified to take an acknowledgment to an instrument in which the notary has a beneficial interest. *Gulf Production Co. v. Continental Oil Co.*, 164 S.W.2d 488 (Tex. 1942). However, an employee or agent of a party in interest to a transaction is not disqualified by that fact alone, so long as there is no direct pecuniary or beneficial interest in the transaction. *Director, Dallas County Child Welfare v. Thompson*, 667 S.W.2d 282, 283 (Tex. App.– Dallas 1984, no writ). In *Chambers v. Terrell*, 639 S.W.2d 451 (Tex. 1982), the Texas Supreme Court disapproved an appellate court’s finding that an acknowledgment and jurat taken by an attorney and notary public was void. The attorney represented one party to the transaction and notarized the signature of the other party. Although the Court refused the Writ of Error on other grounds, the Court noted that being an attorney of one party to a transaction does not constitute a financial interest in the transaction.

7. **No Personal Appearance.** The person acknowledging the instrument must appear “in person” before the notary. TEX. CIV. PRAC. & REM. CODE §121.004. It is a violation of the statute for a notary to take an acknowledgment over the telephone. *Charlton v. Richard Gill Co.*, 285 S.W.2d 801, 803 (Tex. Civ. App.– San Antonio 1955, no writ).

8. **Curative Actions.** There are various ways to correct a defective acknowledgment, depending upon the circumstances. (1) First and simplest, a notary who has failed to affix the seal or forgotten to sign the certificate can simply complete the certificate to correct the error. (2) Second, if an acknowledgment has been taken improperly, the Grantor may re-acknowledge the same instrument. (3) If the instrument has already been recorded, it will probably be necessary to execute another instrument with a proper acknowledgment certificate. (4) Finally, if the Grantor properly acknowledged the instrument, but the certificate was improperly executed, a District Court is empowered to order the correction of the acknowledgment certificate. TEXAS PROPERTY CODE §11.005. A suit to recover real property conveyed by an instrument without a proper acknowledgment or jurat has a four-year statute of limitations. TEX. CIV. PRAC. & REM. C., §16.033(a).

C. **DELIVERY.**

1. **Delivery Required.** It is sometimes said that a deed is not executed until there is delivery of it. *Johnson v. Freytag*, 338 S.W.2d 257 (Tex. Civ. App.– Beaumont 1960, ref. n.r.e.). At least it is certainly true that a deed must be delivered in order to transfer title. TEX. PROPERTY CODE, § 5.021; *Robert Burns Concrete Contractors Inc. v. Norman*, 561 S.W.2d 614 (Tex. Civ. App.– Tyler 1978, writ ref. n.r.e.). The deed must be delivered to the Grantee or to some third party for the use and benefit of the Grantee. *Neff v. Ulmer*, 404 S.W.2d 644 (Tex. Civ. App.– Amarillo 1966, writ ref. n.r.e.). A conveyance is effective and title is transferred upon (1) execution of the deed; and (2) delivery of the deed. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 261 (Tex. 1974); *Hicks v. Loveless*, 714 S.W.2d 30, 32 (Tex. App.– Dallas 1986, writ ref’d n.r.e.); *see also Rothrock v. Rothrock*, 104 S.W.3d 135, 138 (Tex. App.– Waco 2003, pet. denied).

What constitutes a delivery is a question of law. *Ragland v. Kelner*, 221 S.W.2d 357, 359 (Tex. 1949); *see also Rothrock v. Rothrock*, 104 S.W.3d 135, 138 (Tex. App.– Waco 2003, pet. denied). Whether there has been a delivery of a deed is a fact question. *Ragland*, 221 S.W.2d at 359; *see also Rothrock*, 104 S.W.3d at 138.

2. **Elements of Delivery.** “Delivery” occurs when the instrument (a) is placed within the Grantee’s control for the purpose of having it become operative as a conveyance, and (b) with Grantor’s intention to relinquish control of the instrument to the Grantee. *Binford v. Snyder*, 189 S.W.2d 471, 475 (Tex. 1945); *Hicks v. Loveless*, 714 S.W.2d 30 (Tex. App.– Dallas 1986, writ ref. n.r.e.); *see also Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 213 (Tex. App.– Fort Worth 1992, writ denied). Delivery may be by words without acts or by acts without words, or by both words and acts. *Davis v. Bond*, 141 S.W.2d 979 (Tex. Civ. App.– Texarkana 1940, affirmed 158 S.W.2d 297).

a. **Within control of the Grantee.**

(1) **When presumed.** A Grantee’s possession of a deed raises a presumption that it was delivered to the Grantee by the Grantor. *Chandler v. Hartt*, 467 S.W.2d 629 (Tex. Civ. App.– Tyler 1971, writ ref’d n.r.e.). Also, the recording of a deed for record raises the prima facie presumption that the instrument was effective as a conveyance and was delivered by the Grantor and accepted by the Grantee, *Texas Land & Mortgage Co. v. Cohen*, 159 S.W.2d 859 (Tex. 1942); but the presumption is rebuttable. *Jackson v. Hernandez*, 285 S.W.2d 184, 190-91 (Tex. 1956); and *Savell v. Savell*, 837 S.W.2d 836, 840 (Tex. App.– Houston [14th Dist.] 1992, no writ hist.).

The instrument is presumed to have been delivered on the date of execution and acknowledgment. *Hicks v. Loveless*, 714 S.W.2d 30, 32 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). That presumption may be overcome by showing that the grantor did not intend to deliver the deed on that date. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 262 (Tex. 1974).

However, delivery of a deed by the Grantor to the Grantee for a purpose other than conveyance, such as for the purpose of finding out whether the Texas Veterans' Land Board would buy the property for Grantee's son is not a delivery because it is not made with the intention to convey title and is therefore void. *Estes v. Redine*, 398 S.W.2d 148 (Tex. Civ. App.—El Paso 1965, writ ref. n.r.e.). Once a deed becomes effective by delivery, its return to the Grantor for acknowledgment does not alter the completion of the delivery. *Phoenix Ins. Co. v. Neal*, 56 S.W. 91 (Tex. Civ. App. 1900, no writ).

(2) **Constructive Delivery.** Physical delivery of the instrument to the grantee is not necessary in order to complete the conveyance. There must be an intention on the part of the grantor to deliver the instrument and acts sufficient to show constructive delivery. *Smith v. Smith*, 607 S.W.2d 617 (Tex. Civ. App.—Waco 1980, no writ). An act sufficient to show constructive delivery may be merely the expression by the grantor upon execution and acknowledgment of the instrument that his intent is to pass title immediately. Such an expression of intent constitutes constructive delivery, and title passes. *Hayes v. Pennock*, 192 S.W.2d 169 (Tex. Civ. App.—Beaumont 1945, writ ref. n.r.e.). The Grantor's filing of the deed for recording has been held to constitute constructive delivery. *Levy v. Winfree*, 99 S.W.2d 1043, 1047 (Tex. Civ. App.—Galveston 1936, no writ).

(3) **Multiple Grantors.** Although all of the grantors may have signed the deed, if one or more, but not all, of the co-grantors deliver a signed conveyance instrument to the grantee with the intent that it become operative, the delivery is not effective as to the non-consenting co-grantors. *North v. North*, 2 S.W.2d 481 (Tex. Civ. App.—Waco 1927, no writ). On the other hand, if a deed from two co-grantors is executed and mailed to another co-grantor with the intent that the deed become effective and be delivered to the grantee, the fact that the third co-grantor does not execute the instrument does not render the deed invalid as to the interests of the two consenting co-grantors. *Webb v. Mitchell*, 371 S.W.2d 754 (Tex. Civ. App.—Houston [1st Dist.] 1963, no writ).

(4) **To one of Multiple Grantees Delivery.** Delivery of a deed to one of two grantees is sufficient to include the other grantee. *Lowe v. Ragland*, 297 S.W.2d 668 (Tex. 1957).

(5) **To Third Party.** If a grantor delivers a deed to a third person without any reservation on the grantor's part to recall it and with instructions to record the instrument, an effective delivery occurs. *Amend v. Kay*, 304 S.W.2d 735 (Tex. Civ. App.—Amarillo 1957, writ ref. n.r.e.). A delivery to a third person by consent of the grantee, of course, is effective. *Neblett v. Slosson*, 223 S.W.2d 938 (Tex. Civ. App.—Galveston 1949, writ ref. n.r.e.). A valid delivery may even be made to a third person who is not the agent of the grantee and even though the grantee may not be aware of the execution or delivery of the instrument. The critical element is that the grantor delivers the instrument to the third person without reservation of a right to recall it. *Ragland v. Kelner*, 221 S.W.2d 357 (Tex. 1949).

However, the mere delivery of an instrument to a third person does not raise a presumption that the grantor intended to pass title. This is true even though the third person may have had the deed recorded. *Anglin v. Cisco Mortg. Loan Co.*, 141 S.W.2d 935 (Tex. 1940).

When a conveyancing instrument is deposited into escrow, under an escrow agreement, equitable title vests immediately in the named Grantee, while legal title remains in the depositor. *Cowden v. Broderick & Calvert, Inc.*, 114 S.W.2d 1166, 1169 (Tex. 1938). Legal title then passes to the named Grantee immediately upon compliance with the conditions of the escrow. *Sheldon v. Stagg*, 169 S.W.2d 550, 553 (Tex. Civ. App.—Amarillo 1943, writ ref'd w.o.m.). Passage of legal title is not dependent upon physical delivery of the instrument from the escrow agent to the Grantee. *Boles v. Stonehocker*, 275 S.W.2d 141, 143 (Tex. Civ. App.—El Paso 1954, writ ref'd n.r.e.).

When there is an existing escrow agreement in effect, but documents are delivered to the named Grantee out of escrow in contradiction to the terms of the escrow arrangement, the delivery is not effective, and no title passes. *Alamo Lumber Company v. Lawyers Title Insurance Corp.*, 439 S.W.2d 423, 426 (Tex. Civ. App.—San Antonio 1969, writ ref'd n.r.e.).

(6) **To Third Party With Limiting Instructions.** Even though a deed is delivered to a third party with tentative instructions for later delivery to the named grantee upon the death of the grantor, if the instructions also include an understanding that the grantor may withdraw the deed at any time, there is no delivery of the deed, and more importantly, the instrument has no effect, unless executed with the formalities required for execution of a Will. *Hayhurst v. Paylor*, 293 S.W.2d 531 (Tex. Civ. App.– Amarillo 1956, no writ).

However, when the conveyance is unconditional as to withdrawal, it is effective. A valid delivery of a deed may be made to a third person who is not an agent of the purchaser, and even though the grantee is not aware of the execution and delivery of the instrument, if the instructions to the third person from the grantor are to deliver the instrument to the grantee upon the grantor's death, the delivery is complete. Without a reservation of the right to recall the instrument, as a matter of law, the grantor has made an immediately effective conveyance of the property to the grantee subject to a life estate in the grantor. *Ragland v. Kelner*, 221 S.W.2d 357 (Tex. 1949).

In *Vasquez v. Vasquez*, 973 S.W.2d 330 (Tex. App.– Corpus Christi 1998, writ denied), the Grantor had bequeathed the property in her Will to one relative, but later signed a quitclaim deed for the property to another relative. The Grantor gave the quitclaim deed to her own attorney, instructing him to hold it and not to tell anyone about it until after her death, when he was to file it for recording. The Grantor continued in possession of the property during the remainder of her lifetime. Although the Grantor retained the *power* to reclaim the deed, that fact does not negate the fact of Grantor's intent to relinquish control of the deed by delivering it to her attorney with unconditional instructions. *Vasquez v. Vasquez*, 973 S.W.2d 330, 332-33 (Tex. App.– Corpus Christi 1998, writ denied).

When the deed is delivered to the third person with instructions that it be delivered to the grantee upon the performance of specific acts by the grantee or the happening of some other contingency, a delivery has not been made, although it may be made upon the occurrence of the contingency or the completion of the required acts. *Woods v. Osborn*, 113 S.W.2d 636 (Tex. Civ. App.– Eastland 1938, no writ). If the deed is delivered to the grantee without the appropriate circumstances having occurred, the instrument is of no effect. *Binford v. Snyder*, 189 S.W.2d 471 (Tex. - 1945).

(7) **Retention of Instrument by Grantor.** The courts distinguish between retaining “dominion and control” over the instrument and retaining physical possession of it. When a grantor does not relinquish dominion and control, there is no delivery. *Hart v. Rogers*, 527 S.W.2d 230 (Tex. Civ. App.– Eastland 1975, writ ref. n.r.e.). On the other hand, where the intention to deliver is clear, title passes to the grantee, even though the grantor retains physical possession of the deed during his lifetime. *Henry v. Phillips*, 151 S.W. 533 (Tex. 1913). Thus, when a husband had his wife read a deed in which he conveyed land to her to take effect upon his death and then took the deed upstairs, where it was found after his death in his trunk, there was an effective delivery and conveyance of title from the date that he showed her the deed. *Texas Pacific Coal & Oil Co. v. Bruce*, 233 S.W. 535 (Tex. Civ. App.– 1921, no writ).

(8) **Delivery After Grantor's Death** For a deed to be valid, there must be a delivery with intent to part with the title to the property prior to the grantor's death. If the property is still in the grantor's estate at the time of his death, title vests in the grantor's devisees or heirs and is subject to administration of his estate by the probate court. TEXAS PROBATE CODE §37.

However, as we have seen, manual delivery is not necessary. If a constructive delivery to a third party or otherwise has taken place before grantor's death, the conveyance is immediately effective and title to the property is out of grantor's estate. *Harrison v. Craddock*, 178 S.W.2d 296 (Tex. Civ. App.– Galveston 1944, no writ). A deed placed into the hands of another, even though not recorded until after grantor's death, nevertheless immediately passes title. *Singer v. Singer*, 230 S.W.2d 242 (Tex. Civ. App.– Austin 1950, affirmed in relevant part, 237 S.W.2d 600). Similarly, a deed placed into the hands of a third party in escrow for the completion of terms of a contract of sale constitutes a conditional delivery, and upon satisfaction of the conditions, the title passes to the grantee for whom the deed is held in escrow, regardless of the intervening death of the grantor. *Fuqua v. Fuqua*, 528 S.W.2d 896 (Tex. Civ. App.– Houston [14th Dist.] 1975, writ ref. n.r.e.).

(9) **Delivery After Grantee's Death** Normally, a deed to a grantee who is already deceased is void for want of a grantee. *Wm. Cameron & Co. v. Trueheart*, 165 S.W. 58, 61 (Tex. Civ. App.– Austin 1914, no writ). However, a deed to “the [deceased person's] Estate” is valid so long as the estate or heirs are capable of being

ascertained. *Haile v. Holtzclaw*, 414 S.W.2d 916 (Tex. 1967). On the same rationale, a deed to “the estate of [deceased person], his heirs or assigns” has been upheld. *McGee v. Ellis*, 83 S.W. 880 (Tex. Civ. App.— 1904, no writ). Courts try to accomplish the intentions of the grantor whenever possible. Therefore, even a deed to “[deceased person], her heirs or assigns” has been enforced when the evidence was clear that the grantor was well aware of the named grantee’s death and clearly intended to convey the property to the heirs, and where the identities of the persons intended by the term “heirs and assigns” were ascertainable beyond a doubt. *Lott v. Dashiell*, 233 S.W. 1103, 1108 (Tex. Civ. App.— San Antonio, 1921 mod’d on other grounds, 243 S.W. 1072 Tex. Comm. App. 1922).

(10) Delivery to Corporation with Forfeited Charter. Forfeiture of a corporate charter does not extinguish the corporation as a legal entity so long as there is a statutory right to have the corporate charter reinstated. *McGown v. Kittel*, 480 S.W.2d 47, 49 (Tex. Civ. App.— Fort Worth 1972, writ ref’d n.r.e.). A corporation which has forfeited its charter for failure to pay franchise taxes can still hold title and the right to possession. *Lighthouse Church of Cloverleaf v. Texas Bank*, 889 S.W.2d 595, 601 (Tex. App.— Houston [14th Dist.] 1994, writ denied). A defunct corporation may look dead; it can’t move; but it is never truly dead. It is a “Sleeping Beauty,” waiting for Prince Charming to come along and pay its franchise taxes. As such, a sole shareholder has no individual capacity to act upon the title still held by the defunct corporation. *El T. Mexican Restaurants, Inc. v. Bacon*, ___ S.W.2d ___ (Tex. App.— Houston [1st Dist.] 1995, ___).

(11) Delivery to Dissolved Corporation. When a corporation is dissolved, it is dead and no longer exists for any purpose. *Lighthouse Church of Cloverleaf v. Texas Bank*, 889 S.W.2d 595, 601 (Tex. App.— Houston [14th Dist.] 1994, writ denied). A deed to a grantee which no longer exists at the time the conveyance is executed is void. *Id.*

b. Intent of Grantor. In addition to the first element of delivery (placing the instrument within the control of the grantee), there is the element of the grantor’s intent that the conveyance be operative.

(1) Controlling Element. Of the two elements, the intention of the grantor to deliver the instrument is determinative of whether there has been a delivery. *Raymond v. Aquarius Condominium Owners Ass’n. Inc.*, 662 S.W.2d 82 (Tex. App.— Corpus Christi 1983, no writ). An instrument which passes into the possession of the grantee without the grantor’s intention to effect a conveyance is wholly inoperative. *Bellaire Kirkpatrick Joint Venture v. Loots*, 826 S.W.2d 205, 211 (Tex. App.— Fort Worth 1992, writ denied).

The intent of the grantor is determined by examining all the facts and circumstances preceding, attending, and following the execution of the deed. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 262 (Tex. 1974); *Rothrock v. Rothrock*, 104 S.W.3d 135, 138 (Tex. App.— Waco 2003, pet. denied); see *Thorton v. Rains*, 299 S.W.2d 287, 288 (Tex. 1957). Even though the grantor may have filed the deed for recording, if evidence shows that the grantor did not intend that it become effective at the time as a conveyance of the land, there was no delivery. *Driskill v. Forbes*, 566 S.W.2d 90 (Tex. Civ. App.— Eastland 1978, writ ref. n.r.e.). The intention of the grantor overcomes the presumption of delivery based upon the physical presence of the deed in the custody of the grantee. *Vannerberg v. Anderson*, 206 S.W.2d 217 (Tex. 1948); *Cecil v. Smith*, 821 S.W.2d 375 (Tex. App.— Tyler 1991, opinion on remand, no writ).

(2) When Presumed. The recordation of the deed creates a presumption that the grantor recorded the instrument to make the deed operative as a conveyance. *Vannerberg v. Anderson*, 206 S.W.2d 217 (Tex. 1948). However, the question of delivery is controlled by the intention of the grantor. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257 (Tex. 1974).

(3) Mental Reservation of Grantor upon delivery. Within the issue of delivery, one of the few situations in which the grantor’s intention does not control is when it is the grantor’s intention that an instrument not become operative until a certain contingency event occurs if there is no express reservation or condition stated in the instrument. Under these circumstances, the instrument is effective upon physical delivery. *Carlisle v. MacDonald*, 200 S.W.2d 436 (Tex. Civ. App.— Texarkana 1947, affirmed in part, reversed in part on other grounds 206 S.W.2d 224). Similarly, a mental reservation by the grantor at the time of delivery which is contrary to the intention expressed in the instrument will have no adverse effect on the completion of the conveyance. *Davis v. Bond*, 141 S.W.2d 979 (Tex. Civ. App.— Texarkana 1940, affirmed 158 S.W.2d 297); 30 Tex. Jur. 3d Deeds § 30 (citing *Ferrell v. Delano*, 144 S.W. 1039 (Tex. Civ. App.— San Antonio 1912)).

(4) **Effect of Conditions placed upon Delivery.** Oral conditions placed upon an instrument are not effective. When a deed is complete on its face and sufficient to pass title, upon delivery to the grantee it becomes an operative deed and is not subject to any condition not expressed in the deed itself. *Manton v. City of San Antonio*, 207 S.W. 951 (Tex. Civ. App. 1919, writ ref'd.). When a deed or deed of trust is delivered to the Grantee it normally becomes a completed conveyance, and testimony of oral instructions or conditions inconsistent with its terms are not admissible. *Niemann v. Zarsky*, 233 S.W.2d 930 (Tex. Civ. App.– El Paso 1950, writ ref'd. n.r.e.).

(5) **Delivery of Post-Dated Instrument.** Although deeds are presumed to be delivered on the date of execution as shown on the face thereof, the presumption may be overcome by evidence regarding the actions of the parties. When a grantor delivers a completed instrument into the hands of a third party with the intent that it be delivered to the grantee at a date in the future set out as being the date of the instrument, the delivery nevertheless dates back to the date the deed was delivered to the third party and is a valid delivery to the purchaser on that date. *Muller v. Killam*, 229 S.W.2d 899 (Tex. Civ. App.– El Paso 1949, no writ).

(6) **Fraud or Duress.** As with the subscription of the grantor to the Deed, the delivery of the deed obtained through fraud, duress or undue influence subjects the instrument to being set aside as voidable. *Dyer v. Dyer*, 616 S.W.2d 663 (Tex. Civ. App.– Corpus Christi 1981, writ dismissed.). For further discussion see §§II.A.6., and II.A.7., above.

(7) **Unilateral Mistake.** A unilateral mistake regarding the contents of a deed or its delivery is not grounds for rescinding or reforming the deed where the other party did nothing to induce the mistake. *McKee v. Douglas*, 362 S.W.2d 870 (Tex. Civ. App.– Texarkana 1962, writ ref'd. n.r.e.).

(8) **Mutual Mistake.** Whether the mistake was in the delivery, the legal effect of the instrument, or the express contents of the instrument, the mistake must be shown to be mutual before avoidance of the deed can be sustained on the ground of such mistake. *Spain v. Fuston* 242 S.W.2d 892 (Tex. Civ. App.– Ft. Worth 1951, no writ). As with fraud or duress, a deed subject to cancellation for mutual mistake is only voidable, and not void. *Puckett v. Frizzell*, 377 S.W.2d 715 (Tex. Civ. App.– Tyler 1964, no writ).

Where there is no ambiguity in the language used in the instrument, the voidability of the instrument by reason of mutual mistake will be lost upon the conveyance of the property to a subsequent purchaser who relies upon the recorded instrument and has no actual knowledge of the mutual mistake. *Farley v. Deslonde*, 6 S.W. 786 (Tex. 1888).

For the elements of mutual mistake in the preparation of an instrument, see: *Cherokee Water Co. v. Forderhause*, 741 S.W.2d 377 (Tex. 1987).

D. ACCEPTANCE.

1. **Required.** “Delivery of a deed” involves and requires acceptance of the instrument, either expressly or impliedly by the grantee. *Robert Burns Concrete Contractors, Inc. v. Norman*, 561 S.W.2d 614, 618 (Tex. Civ. App.– Tyler 1978, writ ref. n.r.e.). Without an effective acceptance, a deed conveys no interest. *Young v. Jewish Welfare Federation of Dallas*, 371 S.W.2d 767 (Tex. Civ. App.– Dallas 1963, writ ref. n.r.e.).

2. **When Presumed.** Payment by the grantee of the consideration expressed in the deed raises the presumption of acceptance by the grantee. *Phillips v. Anderson*, 93 S.W.2d 171 (Tex. Civ. App.– Austin 1936, no writ).

Possession of the deed by the grantee raises a presumption that the deed was accepted by the grantee, in absence of evidence to the contrary. *Fox v. Lewis*, 344 S.W.2d 731 (Tex. Civ. App.– Austin 1961, writ ref. n.r.e.).

The recording of the deed is prima facie evidence of acceptance of the instrument by the grantee. *Sorsby v. State*, 624 S.W.2d 727 (Tex. Civ. App.– Houston [1st Dist.] 1981, no writ). However, the failure to place a deed on the record does not necessarily imply that there has been no acceptance by the grantee. *Chandler v. Hartt*, 467 S.W.2d 629 (Tex. Civ. App.– Tyler 1971, writ ref. n.r.e.).

A grantee may overcome the presumption of acceptance (caused by the recording of the deed) by showing that the grantor executed and recorded the instrument without the knowledge, acquiescence, or approval of the grantee. Under these circumstances, the recording of the deed does not even raise a fact question for summary judgment purposes. *Martin v. Uvalde Savs. & Ln. Ass'n.*, 773 S.W.2d 808 (Tex. App.– San Antonio 1989, no writ).

3. Conditional Acceptance. A grantee may conditionally accept an instrument, and title does not pass under the instrument until fulfillment of the conditions. However, the conditions must be on the acceptance from the beginning. A grantee may not accept a conveyance and later place conditions upon it. *Puckett v. Hoover*, 202 S.W.2d 209 (Tex. 1947).

4. Partial Acceptance. A grantee choosing to accept a conveyance must accept it as received and cannot accept any part of it without all of the other parts. The grantee must accept each and every term and provision contained in the instrument. *Chandler v. Hartt*, 467 S.W.2d 629 (Tex. Civ. App.– Tyler 1971, writ ref. n.r.e.).

5. Exercise of Control. Once a Grantee or estate beneficiary exercises dominion and control over the property, acceptance has occurred and cannot be later disclaimed. *Badouh v. Hale*, 22 S.W.3d 392 (Tex. 2000). In *Badouh*, a mother executed a will specifically bequeathing her home to her daughter. The daughter later pledged her expectancy in the property as security for a note. When Mom died and her Will was admitted to probate, a third party, who held a judgment against the daughter, applied for a turnover order of the daughter's interest in her mother's estate. Daughter then filed a disclaimer of her entire interest in her mother's estate. See TEX. PROB. CODE 37A.

The Court reasoned that property may not be disclaimed if it has been accepted. See TEX. PROB. CODE 37A(g). "Acceptance" occurs if the person making the disclaimer has previously exercised dominion and control over the property "in the capacity of beneficiary." See TEX. PROB. CODE 37A(g). The Court held that the daughter was acting in the capacity of a beneficiary when she pledged her expectancy in her mother's home to the note holder. The daughter had accepted the property by pledging it as security and could not thereafter disclaim it.

6. Effect of Acceptance. Ordinarily, once an Instrument is accepted, the grantee is conclusively presumed to have assented to all of its terms and is bound thereby. *Gahagan v. Texas & P. Ry. Co.*, 231 S.W.2d 762 (Tex. Civ. App.– Tyler 1950, no writ). There is no need for the grantee to have made a written acknowledgment of acceptance on an instrument in order to be bound by its terms. *Rutten v. Cazey*, 734 S.W.2d 752 (Tex. App.– Waco 1987, writ denied).

7. Fraud. As with the subscription of the grantor to the Deed, the acceptance of the deed obtained through fraud, duress or undue influence subjects the instrument to being set aside as voidable. *Munawar v. Cadle Co.*, 2 S.W.3d 12 (Tex. App.– Corpus Christi 1999, no writ). For further discussion, see §§II.A.6., and II.A.7., above.

E. COMPLETENESS OF THE TRANSACTION.

1. Alteration of the Instrument. An erasure or alteration in a deed, after delivery, whether recorded or not, does not reinvest the title in the grantor or nullify the title in the grantee. *Stanley v. Epperson*, 45 Tex. 644 (1876). Similarly, an effort to substitute the name of the grantee with the name of a different grantee has no effect of putting the title into the substituted grantee. *Nabors v. Nabors*, 230 S.W. 1109 (Tex. Civ. App. 1921, writ ref'd.).

2. Loss or Destruction of the Instrument. Once the conveyance is complete, the document which evidences the conveyance has performed its function, and its continued existence is not necessary to the continuation of title in the grantee. Therefore, the loss or destruction of the deed itself has no legal effect. *David v. State Bank of Groom*, 238 S.W. 979 (Tex. Civ. App. 1922, no writ). This is so even though the grantee intentionally destroys the document for the purpose of reverting title to the grantor. *Riggs v. Farmer*, 234 S.W.2d 1021 (Tex. Civ. App.– Ft. Worth 1951, no writ).

3. Redelivery of the Instrument to Grantor. Once the transaction is complete, title is conveyed to the grantee, and the usefulness of the instrument which evidenced the conveyance is expended. The redelivery of the instrument to the grantor for the purpose of reconveying title is wholly ineffective. *Higgs v. Farmer*, 234 S.W.2d 1021 (Tex. Civ. App.– Ft. Worth 1951, no writ).

4. Failure to Record the Instrument. Title to transferred property vests in the Grantee upon execution and delivery of a deed. *Stephens County Museum, Inc. v. Swenson*, 517 S.W.2d 257, 261 (Tex. 1974). A deed does not have

to be recorded to convey title. *Thorton v. Rains*, 299 S.W.2d 287, 288 (Tex.1957); *Burriss v. McDougald*, 832 S.W.2d 707, 709 (Tex. App.– Corpus Christi 1992, no writ). An unrecorded instrument relating to real property is binding on the parties and their heirs, as well as a subsequent purchaser who has notice of the instrument. *See Waggoner v. Morrow*, 932 S.W.2d 627, 631 (Tex. App.– Houston [14th Dist.] 1996, no writ).

