

ANDERSON'S MANUAL

FOR

NOTARIES PUBLIC

A COMPLETE GUIDE FOR NOTARIES PUBLIC AND
COMMISSIONERS OF DEEDS WITH FORMS,
CHARTS AND INSTRUCTIONS

FOR USE IN ALL STATES

QUALIFICATIONS, APPOINTMENT, JURISDICTION,
TERM, POWERS, DUTIES, FEES, RECORDS, SEAL,
LIABILITIES, PENALTIES, REMOVAL

BY

CARL LOUIS MEIER

of the Cincinnati Bar



CINCINNATI

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PREFACE



HIS book is founded upon Giauque's Notaries Manual, which for many years has been an authoritative guide. It has been the aim of the present author thoroughly to revise and rewrite the text and to present in clear and concise form and understandable language those matters which every notary public should know.

The statutory provisions and forms in the chapter on Acknowledgments, and the forms of deeds in the chapter on Conveyances have been taken from Couse's Ohio Form Book, Fourth Edition. The Negotiable Instruments Law, with statutory variations, is taken from Brannan's Negotiable Instruments Law, Sixth Edition. Grateful acknowledgment is made to the publisher and the authors for the use of these materials. For quick reference, tables of statutory provisions, with the states alphabetically arranged, have been included in the chapter on the Office of the Notary Public.

The author has omitted legal verbiage as much as possible in order that the manual may be understandable and clear to notaries public who have had no legal training.

CARL LOUIS MEIER

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CHAPTER I: INTRODUCTION

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1. Definitions.
2. Origin and early history of office.

SECTION

3. What a notary should know.
4. What a notary can not do.

§ 1. **Definitions.**—A notary public is an officer appointed under authority of state law with power to administer oaths, certify affidavits, take acknowledgments, take depositions, or perpetuate testimony and protest negotiable instruments. The state statutes which define the powers and duties of a notary public frequently grant him authority to do all other acts justified by commercial usage and the law merchant.

The law merchant is that general body of commercial usages which have become an established part of the law of the land, and which relate chiefly to the transactions of merchants, mariners, and those engaged in trade.

The common law is that system of law which derives its force and authority from universal consent and immemorial usage, and which is evidenced by the decisions of the courts of law. It prevails except when abrogated or modified by statute.

Commercial law is that branch of the law which relates to the rights of property and relations of persons engaged in business.

§ 2. **Origin and early history of office.**—In the early days of the Roman Republic there were persons

who made it a business to draw important documents, and do other writing for whoever might employ them; and their number and importance increased with the growth of the wealth and power of the Roman Empire, under the various names of *scriba*, *cursor*, *tabularius*, *tabellio*, *exceptor*, *actuarius*, *notarius*, according to the time in which they lived and the duties which they performed. In the latter days of the Empire, they had become more or less subject to regulation by law, and some of their acts had been accorded such a degree of authenticity as to be specially designated as public instruments themselves, and were required to be deposited in public archives.

These semi-officials, and these regulations by law concerning them, spread to a greater or less degree into the various provinces of Rome, these including, among others, the present countries of France, Spain, and England.

They were well-known functionaries in the territories of Charlemagne who invested their acts with public authority, and provided for their appointment by his deputies in every locality, and that each bishop, abbot, and count should have a notary. That they acted as conveyancers, in some instances at least, in England, even before the Norman conquest, is shown by the fact that a grant of lands and manors was made by King Edward the Confessor, to the Abbot of Westminster by a charter written and attested by a notary.

In England, notaries have always considered themselves authorized to administer oaths; and this power is now expressly conferred on them by statute. It is probably their right to protest foreign bills of exchange, and the fact that their certificate of the presentment, demand, and dishonor of such bills, and of their protest thereof on account of such dishonor, is of itself proof of these matters, that is best established by the common law and law of merchants.

§ 3. **What a notary should know.**—Before entering upon his duties, a notary public should know and understand:

- The qualifications necessary for appointment;
- How to prepare an application for a commission;
- Who appoints notaries public in his state;
- The amount of the bond which he must furnish, if required;
- The fee which he must pay for his commission;
- The number of years he holds office;
- The extent of his jurisdiction;
- The scope of his powers and duties;
- Circumstances which disqualify him from acting;
- The manner of signing his official certificate;
- The requisites of his official seal, if required;
- What records he must keep;
- The amount of fees which he may charge for performing certain services;
- His liability for negligent and fraudulent acts;
- The fines and penalties to which he may be subject;
- The grounds for his removal from office;
- The manner of administering oaths;
- The preparation of affidavits;
- His duties in connection with the taking of acknowledgments, depositions and the perpetuation of testimony;
- His duties in presenting and protesting negotiable instruments; and
- What constitutes unauthorized practice of law.

§ 4. **What a notary may not do.**—A notary public has no authority to perform any act or acts which constitute practicing law, as that term has been defined by the courts of the various states. Like any other individual, he is free to prepare legal documents under directions from a competent person, but it is definitely contrary to law for him to draft legal papers, such as wills, trust agreements, and instruments of that character at his own

discretion and charge a fee for the service rendered. The objection lies not in the fact that it is unwise for a layman to draw an instrument of a legal nature, but the substance of the offense is the habitual preparation for a consideration of legal documents for others.¹ The habitual drafting of legal instruments for hire constitutes the practice of law, even though the individual so engaged makes no attempt to appear in court or to give the impression he is entitled to do so.²

A notary public may be enjoined not only from preparing instruments for compensation, but also from giving legal advice to those for whom he prepares deeds, contracts, or mortgages. A person who gives legal advice to those for whom he draws instruments, or holds himself out as competent to do so, does work of a legal nature, when the instruments he prepares either define, set forth, limit, terminate, specify, claim, or grant legal rights. Instruments coming within the scope of this definition are deeds, mortgages, leases, agreements, contracts, bills of sale, chattel mortgages, wills, notes, conditional sales contracts, options, powers of attorney, liens, bonds, mortgage assignments, releases, or satisfactions, and any other documents requiring the use of knowledge of law in their preparation.³

Unauthorized practice of law

¹ "To make it a business to practice as an attorney at law, not being a lawyer, is the crime. Therefore to prepare as a business legal instruments and contracts by which legal rights are secured, and to hold oneself out as entitled to draw and prepare such as a business, is a violation of the law." *People v. Alfani*, 227 N.Y. 334, 125 N.E. 671. See, also, *People v. Schreiber*, 250 Ill. 345, 95 N.E. 189.

² *Childs v. Smeltzer*, 315 Pa. 9, 171 Atl. 883.

³ *Paul v. Stanley*, 168 Wash. 371, 12 Pac. (2d) 401.

CHAPTER II: THE OFFICE OF NOTARY PUBLIC

APPOINTMENT, POWERS AND DUTIES

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- 123. Penalties.
- 124. Removal.

APPOINTMENT, POWERS AND DUTIES

§ 5. **Qualifications of applicant.**—In general an applicant must be of legal age, a citizen of the state, a person of good moral character, and a resident of the county or district within which he is to act. Several of the states require the production of some evidence of his qualifications. In Ohio an applicant must produce to the governor a certificate from a judge of the common pleas court, court of appeals, or supreme court, that he is of good moral character, twenty-one years of age, a citizen of the county in which he resides, and possessed of sufficient qualifications and ability to discharge the duties of the office.¹ In Illinois the applicant must have a petition signed by fifty legal voters where he resides.

§ 6. **Eligibility of women.**—The statutes in many states expressly provide for the appointment of women as notaries.² Since the enactment of the nineteenth amendment to the Federal Constitution in 1920, a woman, who is twenty-one years of age and otherwise properly qualified, may be appointed a notary public in almost every state. If a woman marries during her term of office, she is sometimes required to indicate her name previous to marriage on all documents which she signs.

§ 7. **Application.**—An applicant usually secures the necessary forms from the governor or other appointing authority. As a matter of convenience, surety companies frequently furnish forms.

¹ Similar provisions in Indiana, Iowa, Kansas, Nebraska and other states.

² See summary of statutory provisions, § 14, B.

In recent years there has developed a practice of submitting questionnaires to each applicant, preliminary to the approval of the application. Questions such as the following must be answered: how long the applicant has lived in the county; place and date of his birth; his business or employment; education; whether his commission has ever been revoked; whether he has ever been convicted of any offense; name and address of surety company or individual who will execute indemnity bond.

§ 8. **Appointment.**—In most of the states notaries public are appointed by the governor of the state.³ In some states the appointments are made by the governor by and with the advice and consent of the senate, or with the advice of his council. In Arizona, New York and Oklahoma the secretary of state has authority to make the appointment. Notaries are appointed by the court in Georgia, Tennessee and Vermont.

§ 9. **Bond.**—In many states a notary is required to file a bond with approved sureties. The public officer with whom the bond must be filed is designated by the statutes of the various states as follows:

Alabama	County probate judge
Arizona	County recorder
Arkansas	Recorder of deeds
California	County clerk
Colorado	County register of deeds
Dist. of Col.	Justice of supreme court
Idaho	Secretary of state
Illinois	Secretary of state
Indiana	Clerk of county circuit court
Iowa	Governor
Kansas	County district court
Kentucky	County court
Louisiana	Auditor of public accounts
Maryland	Governor
Michigan	County clerk
Minnesota	Secretary of state

³ See summary of statutory provisions, § 14, A.

Mississippi	Clerk of county chancery court
Missouri	County clerk
Montana	Secretary of state
Nebraska	County clerk
→ Nevada	County clerk
New Mexico	County clerk
North Dakota	Secretary of state
Ohio	Secretary of state
Oklahoma	County clerk and secretary of state
Pennsylvania	Governor
South Dakota	Secretary of state
Texas	County court clerk
→ Utah	Secretary of state
Virginia	Secretary of state
Washington	Secretary of state
West Virginia	County court
Wisconsin	Secretary of state
Wyoming	Register of deeds

The amount of such bond varies in the several states, ranging from \$500 to \$10,000.⁴ The purpose of the bond is to assure the faithful performance of his duties, and to compensate any person who may suffer a loss as a result of the notary's misconduct.

§ 10. **Oath.**—An oath of office is required in every state. Occasionally the oath is endorsed on the notary's commission; while in Idaho it must be endorsed on his bond. Both the oath and bond are ordinarily filed with the secretary of state or other designated public officer.

§ 11. **Commission.**—Upon the payment of a fee, usually to the secretary of state, a commission will be issued. The amount of this fee varies from \$1.00 to \$25.00, and in a few states there is apparently no fee.⁵

The commission, signed by the appointing power, gives the notary public official authority to act. In many states the notary, before entering upon his duties, must leave the commission with some officer designated by law, generally the clerk of court, to be recorded. A small fee is

⁴ See summary of statutory provisions, § 14, D.

⁵ See summary of statutory provisions, § 14, C.

charged by the county clerk, to cover the cost of recording the commission.

§ 12. **Term of office.**—The statutes of most states prescribe a certain number of years as the term of office of a notary public. These terms range from two to ten years.⁶ Three states are indefinite as to the term of office. In Louisiana a notary holds office during good behavior; in South Carolina, during the pleasure of the governor; and in Vermont, during the term of the appointing judge.

The death of a notary will terminate his office, although appointed for a definite term, and will not create a vacancy for the unexpired part of his term.

§ 13. **Territorial jurisdiction.**—In twenty states a notary public can act only within the county for which he has been appointed, or within the locality named in his commission. The statutes of twenty-eight states, however, permit a notary to act anywhere throughout the state.⁷ He has no jurisdiction outside the state of his appointment.

Some states⁸ allow the notary to act in any other county, or in a county adjoining the county of his residence, if he files a certified copy of his appointment with the clerk of such other county. Where the city in which a notary resides is located in two or more counties, he may perform his duties in either county.

§ 14. **Summary of statutory provisions.**—The following outline or chart is arranged according to states. It sets out: (A) appointing authority; (B) states in which women are eligible; (C) fee which notary public must pay for his commission; (D) amount of notary's bond; (E) term of office, in years; and (F) jurisdiction.

⁶ See summary of statutory provisions, § 14, E.

⁷ See summary of statutory provisions, § 14, F. Several states provide for notaries for the state at large.

⁸ Iowa, Kentucky, Missouri, Nebraska, New Jersey, New York, Virginia and West Virginia.

	Governor	(A) APPOINTMENT			(B) WOMEN ELIGIBLE	(C) COMMIS- SION FEE †
		Governor, with consent of Senate	Governor, with advice of council	Secretary of State		
Alabama	x				x	
Arizona				x		\$ 2.50
Arkansas	x				x	5.00
California	x				x	5.00
Colorado	x					5.00
Connecticut	x				x	10.00
Delaware	x					10.00
District of Columbia	*					
Florida	x				x	5.00
Georgia					x	2.00
Idaho	x					10.00
Illinois		x			x	2.00
Indiana	x				x	1.00
Iowa	x				x	5.00
Kansas	x					2.00 ¹
Kentucky	x				x	1.00
Louisiana		x				
Maine			x		x	5.00
Maryland		x			x	5.00
Massachusetts			x		x	5.00
Michigan	x				x	1.00
Minnesota		x				3.00
Mississippi	x					10.00
Missouri	x				x	5.00
Montana	x					5.00

* Appointed by the President of the United States.

† The absence of a figure in column C indicates that no fee is required.

¹ \$1.00 to clerk; \$1.00 to secretary of state.

(D) BOND ‡	(E) TERM (years)	(F) JURISDICTION		(G) STATUTORY REFERENCES
		State	County	
\$1,000	4		x	Code, 1928, §§ 9238 to 9256
1,000	4		x	Revised Code, 1928, §§ 2480 to 2484
1,000	4	x		Statutes, 1937, §§ 10362 to 10370
5,000	4		x	Political Code, §§ 791 to 801
1,000	4		x	Compiled Laws, 1921, §§ 6021 to 6030
	5	x		General Statutes, 1930, §§ 57, 58, 2233, 2277
	2		x	Revised Code, 1935, §§ 1136 to 1146
2,000	5			Code, 1929, Title 4, §§ 11 to 16
500	4	x		Compiled General Laws, 1927, §§ 479 to 485
	4		x	Code, 1933, §§ 71-101 to 71-206
1,000	4	x		Code, 1932, §§ 50-101 to 50-112
1,000	4	x		Revised Statutes, 1937, c. 99, §§ 1 to 14
1,000	4	x		Statutes (Burns), 1933, §§ 49-3501 to 49-3516
500	3		x	Code, 1935, §§ 1197 to 1214
1,000	4		x	General Statutes, 1935, §§ 53-101 to 53-113
Required ²	4		x	Statutes (Carroll), 1936, §§ 3721 to 3727
1,000 ⁴	Indefinite ³		x	General Statutes (Dart), 1932, §§ 6285 to 6337
	7	x		Revised Statutes, 1930, c. 97, §§ 36 to 44
2,000 ⁵	2	x		Code (Bagby), 1924, Art. 68, §§ 1 to 12
	7	x		Annotated Laws, 1933, c. 222, §§ 1, 8 to 10
1,000	4	x		Compiled Laws, 1929, §§ 1403 to 1415
2,000	7	x		Statutes (Mason), 1927, §§ 6937 to 6951-2
2,000	4		x	Code, 1930, §§ 2858 to 2867
2,000 ⁶	4		x	Revised Statutes, 1929, §§ 11738 to 11745
1,000	3	x		Revised Code, 1935, §§ 385 to 401

‡ The absence of a figure in column D indicates that no bond is required.

² Amount not stated.

³ During good behavior.

⁴ Outside Orleans Parish; \$10,000 in Parish of Orleans.

⁵ Outside Baltimore. \$6,000 in Baltimore.

⁶ In counties having over 100,000 in population, \$5,000.

	(A) APPOINTMENT					(B) WOMEN ELIGIBLE	(C) COMMISSION FEE † ¢
	Governor	Governor, with consent of Senate	Governor, with advice of council	Secretary of State	Court		
Nebraska	x					x	2.00
Nevada	x					x	10.00
New Hampshire			x			x	5.00
New Jersey	x					x	10.00
New Mexico	x						3.50 ⁷
New York				x		x	10.00 ⁸
North Carolina	x						3.00
North Dakota	x					x	5.00
Ohio	x					x	1.00
Oklahoma				x			2.00 ⁹
Oregon	x						6.00 ¹⁰
Pennsylvania	x					x	25.00
Rhode Island	x						10.00
South Carolina	x						2.00
South Dakota	x						2.50
Tennessee					x	x	3.00
Texas		x					1.00
Utah	x						5.00
Vermont					x		
Virginia	x					x	3.00
Washington	x					x	10.00
West Virginia	x						5.00
Wisconsin	x					x	2.00
Wyoming	x					x	10.00

† The absence of a figure in column C indicates that no fee is required.
⁷ \$2.50 to secretary of state; \$1.00 to clerk for recording.
⁸ In counties within the city of New York; \$5.00 in cities of less than 600,000 and more than 50,000; \$2.50 elsewhere.
⁹ \$1.00 to secretary of state; \$1.00 to county clerk.
¹⁰ \$5.00 to secretary of state; \$1.00 to county treasurer.

(D) BOND ‡	(E) TERM (years)	(F) JURISDICTION		(G) STATUTORY REFERENCES
		State	County	
2,000	6		x	Compiled Statutes, 1929, §§ 64-101 to 64-113
2,000	4	x		Compiled Laws, 1929, §§ 4715 to 4730
	5	x		Public Laws, 1926, c. 17, §§ 1 to 11
	5	x		Revised Statutes, 1937, §§ 52: 7-1 et seq.
500	4	x		Statutes, 1929, §§ 94-101 to 94-127
	2		x	Executive Law, §§ 101 to 105
	2	x		Code, 1935, §§ 3172 to 3179
500	6	x		Compiled Laws, 1913, §§ 835 to 850, 3529
1,500	3		x ¹¹	General Code (Page), 1939, §§ 119 to 131-1
1,000	4		x	Statutes, 1931, §§ 5902 to 5912
500	4	x		Code, 1930, §§ 58-101 to 58-110
3,000	4	x		Statutes (Purdon), 1938, Title 57, §§ 1 to 111
	5	x		General Laws, 1938, c. 489, §§ 8 to 16; c. 492
	Indefinite ¹²	x		Code of Laws, 1932, §§ 3459 to 3466
500	4	x		Compiled Laws, 1929, §§ 5234 to 5250
5,000	4		x	Code (Williams), 1934, §§ 5892 to 5914
1,000	2		x	Statutes (Vernon), 1936, Arts. 5949 to 5960
500	4	x		Revised Statutes, 1933, §§ 63-1-1 to 63-1-10
	Indefinite ¹³	x		Public Laws, 1933, §§ 3417 to 3421
500	4		x	Code, 1936, §§ 2850 to 2852
1,000	4	x		Compiled Statutes (Remington), 1927, §§ 9899 to 9909
	10		x	Code, 1937, §§ 2814 to 2824
500	4	x		Statutes, 1937, c. 137.01
500	4	x		Revised Statutes, 1931, §§ 75-101 to 75-114

‡ The absence of a figure in column D indicates that no bond is required.

¹¹ Attorneys have state-wide jurisdiction.

¹² During pleasure of governor.

¹³ During term of appointing judge.

§ 15. **Powers and duties.**—The statutes of practically every state grant to a notary public power to administer oaths, certify affidavits, present and protest commercial paper, take depositions, and take acknowledgments of instruments relating to the transfer of real estate and instruments relating to commerce and navigation. In addition, many states by express statutory provision authorize a notary to do all other acts justified by commercial usage and the law merchant.

The powers of a notary frequently correspond with those of a justice of the peace. In West Virginia a notary is a conservator of the peace within his county. The right to issue subpoenas and compel the attendance of witnesses is sometimes granted, and Ohio permits a notary to punish a witness for refusal to testify in the taking of a deposition.

A brief summary of the statutes of each state regulating the powers and duties of notaries is presented in the following sections.

§ 16. —**Alabama.**—May administer oaths in connection with their duties as notaries, or wherever a justice of the peace can; may take acknowledgments of instruments relating to commerce or navigation; may take acknowledgments of instruments relating to transfer of real estate, etc., and a seal in such case is necessary unless he be ex-officio a justice of the peace; may present and protest commercial paper; in some counties they have a criminal jurisdiction; one notary public in each county precinct and one in each city ward has all the powers of a justice of the peace.

§ 17. —**Arizona.**—May take depositions and administer oaths, draw and certify affidavits; may take proof and acknowledgment of instruments relating to transfer of real estate; may present and protest commercial paper; and may do all other acts justified by com-

mercial usage and the law merchant, and may be appointed commissioner to take testimony.

§ 18. —**Arkansas.**—May administer oaths; may take proof and acknowledgments of instruments relating to commerce and navigation; may take acknowledgment of instruments relating to the transfer of real estate, power of attorney, etc.; may make declarations and protests of commercial paper; may draw and certify affidavits, and in certain cases may take depositions.

§ 19. —**California.**—May administer oaths, draw and certify affidavits, and take depositions; may take acknowledgments of instruments relating to transfer of real estate, and of powers of attorney; may present and protest commercial paper, and may do all other acts justified by commercial usage, and the law merchant.

§ 20. —**Colorado.**—May administer oaths; may take acknowledgments of instruments relating to commerce and navigation; may take acknowledgments of instruments relating to transfer of real estate; may present and protest commercial paper.

§ 21. —**Connecticut.**—May take depositions and acknowledgments of deeds, administer oaths and protest commercial paper.

§ 22. —**Delaware.**—May exercise all the powers of the office of notary; may take acknowledgments of instruments relating to transfer of real estate, and may take the separate examination of the wife in such transfers.

§ 23. —**District of Columbia.**—May administer oaths, take depositions, and do all other acts in relation to testimony to be used in United States courts, draw and certify affidavits; may take and certify acknowledg-

ments of instruments relating to transfer of real estate, and may take the separate examination of the wife in such transfers; may present and protest commercial paper, and may do other acts authorized by commercial usage and the law merchant.

§ 24. —Florida.—May administer oaths, solemnize marriages, take relinquishment of dower of wife, take acknowledgments of instruments relating to transfers of real estate; may certify under seal any document necessary to be attested, protested, or published.

§ 25. —Georgia.—There are three classes of notaries in this state: first, commissioned notaries, one only being appointed for each militia district, who are ex-officio justices of the peace, and have all their powers; second, a more numerous class, known as commercial notaries; and, third, notaries for the state at large. The last two classes have power to take acknowledgments of all writings relating to commerce or navigation, and witness such deeds as are permitted by law; to demand acceptance and payment of all commercial paper, and to note and protest the same for nonacceptance or non-payment; to certify to all official acts when required; to administer oaths in all matters incident to them as commercial officers, and all other oaths which are not by law required to be administered by a particular officer; to exercise all other powers incumbent upon them by commercial usage or the laws of this state.

§ 26. —Idaho.—May administer oaths, draw and certify affidavits, and take depositions; may take acknowledgments of instruments relating to transfers of real estate, and powers of attorney; may present and protest commercial paper, and may do other acts justified by commercial usage and the law merchant.

§ 27. — **Illinois.**—May administer oaths and take depositions; may take acknowledgments of instruments relating to transfer of real estate; may present and protest commercial paper.

§ 28. — **Indiana.**—May take acknowledgments of all instruments required or authorized by law to be acknowledged; may administer oaths, take depositions and affidavits, and do all other acts which are authorized by common law or the law merchant.

§ 29. — **Iowa.**—May administer oaths; may take acknowledgments of instruments relating to the transfer of real estate, and may exercise all other powers justified by commercial usage or the law merchant.

§ 30. — **Kansas.**—May administer oaths; take depositions; may take proofs or acknowledgments of instruments relating to transfer of real estate; may present and protest commercial paper, and exercise all other power justified by commercial usage and the law merchant.

§ 31. — **Kentucky.**—May take affidavits and depositions; protest commercial paper.

§ 32. — **Louisiana.**—May make inventories, appraisements, partitions, receive wills, make protests, matrimonial contracts, conveyances, generally all contracts and instruments of writing; may hold family meetings, meetings of creditors, receive acknowledgments of instruments under private signature; may affix seals upon the effects of deceased persons, and raise the same, execute authentic acts, and administer oaths as to the duties of their office.

§ 33. — **Maine.**—May administer oaths necessary to his acts, and whenever a justice of the peace can; may take depositions; may make marine protest; may present

and protest commercial paper; may take acknowledgments of instruments relating to transfer of real estate, and may summon grantor to prove his deed; may perform all other acts justified by commercial usage or the law merchant.

§ 34. —**Maryland.**—May administer oaths and act in all civil matters wherever a justice of the peace can; may take proofs or acknowledgments of instruments relating to commerce or navigation; may make protests and declarations.

* § 35. —**Massachusetts.**—Have the same powers to administer oaths as justice of the peace; may take acknowledgments of instruments relating to transfer of real estate; may take proofs in insolvency; and may protest commercial paper.

* § 36. —**Michigan.**—May administer oaths (attorneys can not administer oaths to their clients), draw and certify affidavits; may take depositions upon agreement of parties; may take proofs or acknowledgments of deeds; may present and protest foreign bills, etc., and may exercise all other powers justified by commercial usage or the law merchant.

§ 37. —**Minnesota.**—Has power throughout the state while residing in the county appointed to administer oaths, take depositions, acknowledge deeds, mortgages, liens, powers of attorney and to protest commercial paper.

§ 38. —**Mississippi.**—May administer oaths; may take proofs or acknowledgments of instruments commonly proved or acknowledged before notaries; may take acknowledgments of instruments relating to transfer of real estate; may take depositions, and may protest bills and notes and must keep record of same.

§ 39. —**Missouri.**—May administer oaths, take proofs and acknowledgments of instruments relating to commerce and navigation, take and certify release of dower, and take acknowledgments of instruments relating to real estate, powers of attorney; may take depositions, draw and certify affidavits, take and perpetuate testimony the same as a justice of the peace, present and protest commercial paper, and may seal and authenticate all acts.

§ 40. —**Montana.**—May draw and certify affidavits, take depositions, administer oaths, compel attendance of witnesses same as justice of the peace, take proofs and acknowledgments of instruments relating to transfer of real estate, and of all other instruments required or permitted to be recorded or acknowledged; may protest commercial paper, and may perform all other acts justified by commercial usage and the law merchant.

§ 41. —**Nebraska.**—May administer oaths, take depositions, compel the attendance of witnesses, and commit for contempt if witness refuses to testify; may take proofs and acknowledgments of instruments relating to transfer of real estate, powers of attorney; may present and protest commercial paper, and perform all other acts justified by commercial usage and the law merchant.

§ 42. —**Nevada.**—May administer oaths, take depositions, draw and certify affidavits, and take acknowledgments of instruments relating to transfer of real estate, powers of attorney, etc.; may present and protest commercial paper, and perform all other acts justified by commercial usage and the law merchant.

§ 43. —**New Hampshire.**—In addition to the usual powers he has the same powers as justice of the peace, in taking depositions and acknowledgments of in-

struments relating to transfer of real estate, and the administering of oaths.

§ 44. —**New Jersey.**—May administer oaths, except official oaths, or those required to be taken in open court or where notice is necessary; take and certify proof, acknowledgment or affidavit; take and certify the acknowledgment of deeds for the conveyance of land to be recorded in state; may present and protest commercial paper.

§ 45. —**New Mexico.**—May administer oaths; may take and certify proof or acknowledgment of deeds, powers of attorney, conveyances and other instruments of writing; take and certify depositions and affidavits; may make declarations and protests.

§ 46. —**New York.**—May administer oaths, take and certify affidavits, take proof or acknowledgment of deeds and other written instruments to be read in evidence or recorded in this state; may present and protest commercial paper, and perform all other acts justified by commercial usage and the law merchant.

§ 47. —**North Carolina.**—May administer oaths, take depositions, draw and certify affidavits to be used before judges or courts; may take proofs and acknowledgments of instruments relating to transfer of real estate, and may make the separate examination of wife.

§ 48. —**North Dakota.**—May administer oaths, take and certify depositions, take proof or acknowledgment of instruments of writing, and may protest commercial paper.

§ 49. —**Ohio.**—May make and record notarial protests, administer oaths, take depositions, and take acknowledgments of all instruments of writing; may

compel attendance and answers of witnesses at taking of depositions, and fine for contempt. If the post office which is recorded in the governor's office as the address of any notary public is in a city or village situated in two or more counties in this state such notary public may receive, make, and record notarial protests within the established limits of such city or village.

§ 50. —**Oklahoma.**—May make proof and acknowledgment of deeds and other instruments of writing; may administer oaths and take depositions and affidavits; may protest commercial paper and exercise other powers as by law of nations and commercial usage may be performed by notaries.

§ 51. —**Oregon.**—May administer oaths; may take acknowledgments of instruments relating to transfer of real estate; may present and protest commercial paper.

§ 52. —**Pennsylvania.**—May administer oaths, take depositions, draw and certify affidavits; may take all acknowledgments and proofs of writings, and of instruments relating to transfer of real estate, and may take separate examination of wife as to the same; and protest commercial paper.

§ 53. —**Rhode Island.**—May administer oaths, take depositions; may take acknowledgments of deeds and other instruments, and present and protest commercial paper. Notary interested in bank can not protest paper placed in it for collection. *

§ 54. —**South Carolina.**—To administer oaths, take depositions and affidavits, protests for nonpayment of bonds, notes, drafts and bills of exchange, take acknowledgments and proof of deeds, take renunciation of dower, and perform all other acts provided by law; has no power or jurisdiction in criminal cases.

§ 55. —**South Dakota.**—May administer oaths, take depositions and affidavits, make protests, take acknowledgments and proofs of deeds and other instruments, and take renunciation of dower.

§ 56. —**Tennessee.**—May administer oaths; take depositions; qualify parties to bills in chancery, and to affidavits; may present and protest commercial paper.

§ 57. —**Texas.**—May administer oaths, including oath to petition or answer; take proofs and acknowledgments of instruments relating to commerce and navigation; may take acknowledgments and proofs of instruments for registrations, instruments relating to transfer of real estate, powers of attorney; may take the separate examination of married women; may make declarations and protests, and certify truth of things done by him officially; may take depositions, draw and certify affidavits, and present and protest commercial paper.

§ 58. —**Utah.**—May administer oaths, take depositions, and draw and certify affidavits; may take acknowledgments of instruments relating to transfer of real estate, powers of attorney, etc.; may make declarations and protests, and do all other acts usually done by notaries.

§ 59. —**Vermont.**—May administer oath, take depositions, issue summons and attachment for witnesses, take acknowledgments of instruments relating to transfer of real estate (no seal necessary in any of the above); and present and protest commercial paper.

§ 60. —**Virginia.**—May administer any oath which a justice of the peace can; may swear in members of the general assembly, exercise all the powers and duties of conservators of the peace, and may take acknowledg-

*

ments of both husband and wife to instruments relating to transfer of real estate; may take all other acknowledgments necessary.

§ 61. — **Washington.**—May administer oaths (attorney who is a notary may administer oaths to his client), take depositions, draw and certify affidavits, take acknowledgments of instruments relating to transfer of real estate, and present and protest commercial paper, and perform such other acts as pertain to the office of notary by the custom and law merchant.

§ 62. — **West Virginia.**—May administer oaths, take depositions, affidavits, acknowledgments of deeds and other writings; is a conservator of the peace within his county, and as such has all the powers of a justice of the peace. To his certificate as to these cases his notarial seal is unnecessary (in the state). He may demand acceptance of foreign and inland bills of exchange, including checks, and demand payment thereof; protest same for nonpayment or nonacceptance, and perform such other duties as the law of nations or commercial usage may require.

§ 63. — **Wisconsin.**—May administer oaths (except jurors', witnesses', and those otherwise required); may take depositions and acknowledgments to instruments relating to transfer of real estate; may present and protest commercial paper, and perform all other acts justified by commercial usage and the law merchant.

§ 64. — **Wyoming.**—May administer oaths, take depositions, take acknowledgments of instruments relating to transfer of real estate, powers of attorney, etc.; may present and protest commercial paper and perform all other acts justified by commercial usage and the law merchant.

§ 65. **Disqualifications.**—In a number of states there is a strict law declaring that no banker, broker, cashier, director, teller, or clerk or other person holding an official relation to a bank, banker or broker, shall be competent to act as a notary public in any matter in which such bank, banker or broker is interested.

Other states⁹ have adopted a more liberal attitude and allow any notary public who is a stockholder, director, officer, or employe of a bank or other corporation to take the acknowledgment of any party to any written instrument to or by such corporation, or to administer an oath to any other stockholder, director, officer or employe or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by such corporation; but such notary is disqualified from acting if he is a party to the instrument, either individually or as a representative of the corporation.

§ 66. **Signature.**—A notary public must sign his name to each official certificate. In addition, a few states require the notary's name to be engraved on his official seal,¹⁰ or printed, stamped or typewritten on the document.

§ 67. **Expiration of commission.**—To prevent a notary public from performing any act after his term of office expires, the following states require him to add to his jurat or other certificate the date of the expiration of his commission.

Arizona
Arkansas
Colorado
Florida

Indiana
Iowa
Kansas
Kentucky

⁹ Mississippi, Montana, New Mexico, New York, Washington and West Virginia.

¹⁰ For statutory requisites of seal, see § 69.

Massachusetts	Oregon
Michigan	Pennsylvania
Minnesota	Tennessee
Missouri	Utah
Montana	Virginia
Nebraska	West Virginia
North Carolina	Wisconsin
North Dakota	Wyoming
Oklahoma	

The usual form for such statement is "My commission expires _____ (date)."

While some of the states ¹¹ provide by statute that any act done by a notary public after the expiration of his term of office is valid, they also impose fines of \$5.00 to \$100.00 for failure to state the date when his commission expires.¹² It is always advisable for the notary to give

* [such date when the document is to be used in another state.] *

§ 68. **Seal.**—An official seal is an impression on the paper directly, or on wax or wafer attached thereto. The metallic instrument or plate on which are engraved the devices and words of the seal, and by which these are impressed upon the paper, is also called the seal.

Under the law merchant and law of nations, notaries must attest their official certificates and other writing by their seal of office. This is now an almost universal rule under the statutes of a majority of the states. While the laws of a few states provide that a seal is unnecessary for certain documents, the better practice for the notary is to affix his official seal to every certificate or affidavit.

§ 69. —**Statutory requisites.**—The requisites of a notary's seal are determined by the law of the state from

¹¹ Arkansas, Massachusetts, Minnesota, North Carolina, Tennessee and West Virginia.

¹² Arkansas, not to exceed \$5.00; Indiana, not to exceed \$25.00; Kansas, not to exceed \$100.00; Tennessee, not less than \$25.00 nor more than \$100.00. Oregon cancels the notary's commission.

which he derives his authority. In those states which prescribe what words and devices a notarial seal must contain, the statutory provisions must be complied with. A summary of these provisions follows.

REQUISITES OF SEAL

Alabama	Must contain name, office, state, and county.
Arizona	Words "Notary Public," name of county and notary.
Arkansas	The emblems of the great seal of state, surrounded by the words, "Notary Public, County of ———, Ark."
California	Arms of state, the words "Notary Public," and name of county for which notary is commissioned.
Colorado	Notary's name and residence.
Delaware	Notary's name, official title, date of appointment.
Georgia	Name officially, state, and county.
Idaho	Notary's name, "Notary Public," and "State of Idaho."
Illinois	Official character, and name of place or county in which notary resides.
Indiana	Official character, and such other devices as the notary may choose.
Iowa	Notary's name, and "Notarial Seal," and "Iowa."
Kansas	Notary's name and place of residence.
Maine	Notary's name, and "Notary Public," and "Maine," and arms of state or other device.
Maryland	Such device as notary chooses, his name, "Notary Public," and place of residence.
Minnesota	Diameter, one and five-eighths inches. Arms of state, "Notarial Seal," and name of county.
Mississippi	Name of county, state and notary around the margin, and "Notary Public" across the center.
Missouri	Notary's name, "Notary Public," name of county or city of residence and office, and state.
Montana	"Montana," "Notarial Seal," surname and at least initials of notary.
Nebraska	"Notarial Seal," name of county, "Nebraska," and at his option his own name. "General" if acting throughout the state.

* Nevada	<u>Name of county, initials of state, name of notary, and "Notary Public."</u>
New Mexico	Notary's name, title of office, name of county.
North Dakota	Notary's name.
Ohio	Not less than one and a fourth inch in diameter, emblem of state, the words, "Notary Public," "Notarial Seal," or words to that effect, notary's name, his county. Instead of his name on the seal, he may have it printed, typewritten or stamped in legible printed letters near his signature on each and every document by him signed.
Pennsylvania	Notary's name, surname, "Notary Public," and location of office.
Texas	"Notary Public, County of ———, Tèxas," and in center a five-pointed star.
* Utah	<u>"State of Utah," "Notary Public" with surname and Christian name or initials.</u>
Washington	<u>"Notary Public," "State of Washington," date commission expires, surname and at least initials of Christian name.</u>
Wisconsin	Notary's name, office, and county.
Wyoming	Notary's name, "Notary Public," county of residence, "Wyoming."

§ 70. Records required.—The statutes of many states require a notary public to keep a record or register of his official acts and particularly of every protest of commercial paper. Arizona, California, Nevada, and Texas also require a record of all instruments acknowledged. New Mexico requires a record of all depositions taken by the notary.

RECORD REQUIRED

Alabama	All official acts.
Arizona	All official acts and parties to, date, and character of every instrument acknowledged; description of property affected.
Arkansas	All official acts.
California	All official acts; parties to, date, and character of every instrument acknowledged.

Colorado	All official acts.
District of Columbia	All official acts.
Georgia	All notarial acts, and date of transaction.
Idaho	All official acts in presenting and protesting negotiable instruments.
Illinois	All notices, time and manner served, parties, description, and amount of instrument protested.
Iowa	All official acts.
Kansas	Protests for banks, all official acts.
Kentucky	All protests.
Louisiana	Keep original of all acts, contracts and instruments in writing, except affidavits and instruments under private signature acknowledged before him and depositions.
Maine	All mercantile and marine protests.
Maryland	All protests and other official acts.
Minnesota	Instruments of protest.
Mississippi	All official acts and protests.
Missouri	All official acts, except those connected with judicial proceedings, and those for whose public record the law provides.
Montana	Protests of bills and notes.
Nebraska	Official acts, except taking of acknowledgments of deeds and other instruments required to be recorded, affidavits, and depositions and other acts not relating to protests.
* Nevada	All official acts in relation to acknowledgments of execution of conveyances of real estate or other instruments required to be acknowledged; <u>protests.</u>
New Mexico	Protest notices; official acts, except those for whose public record law provides; depositions: title of cause, court, names of witnesses.
North Dakota	Protest notices.
Ohio	Copy of every certificate of protest and copy of note.
Oklahoma	All official acts.
Oregon	Protests.
Pennsylvania	Official acts.
South Dakota	Protests.
Texas	Date of all instruments acknowledged, date of acknowledgment, name of grantor or maker, his

residence, whether personally known or introduced, if introduced, name and residence of party introducing him, residence of witness if proved by him, name of grantee, county where land situated.

* Utah

Protests, time and manner of serving notices, names of all parties to whom directed, and description and amount of instrument. *

Washington

Protests, time and manner of serving notices, names of all parties to whom directed, and description and amount of instrument.

Wyoming

All official acts and protests.

Each notary public must give a certified copy of any record in his office to any person applying therefor, on payment of the necessary fee.

§ 71. Deposit of records at expiration of term.—

At the expiration of the notary's term of office, or upon his resignation, disqualification, death, removal from the county, or removal from office, his records must be deposited in the office of a designated public officer. A penalty frequently is imposed upon anyone who fails to deposit the records, and also upon any person destroying or defacing such records. In the following list, the officer with whom the records are to be deposited is an officer of the county for which the notary was commissioned or in which he resides, unless otherwise specified; the penalty prescribed by statutes in some of the states is imposed for the failure to deposit the notary's records with the designated officer.

STATE	OFFICER	PENALTY		
		Minimum	Maximum	Specific Sum
Alabama	Probate judge	\$ 100		
Arizona	Recorder	50	\$ 500	
Arkansas	County clerk			
California	County clerk			
Colorado	Register of deeds			
District of Columbia	Clerk of district court			
Idaho	Recorder			
Illinois	County clerk			
Iowa	Clerk of district court			
Kansas	Clerk of district court			
Kentucky	Clerk of county court			
Louisiana	Custodian of notarial records			
Maine	Clerk of courts	50	500	
Maryland	Clerk of circuit court			
Michigan	County clerk	50	200	
Minnesota	Clerk of district court			
Mississippi	Clerk of circuit court			
Montana	County clerk			
Nebraska	County clerk			\$ 200
→ Nevada	Recorder			
New Hampshire	Secretary of state		1000	
New Mexico	County clerk	50	500	
North Dakota	Clerk of district court	50	500	
Ohio	Recorder			
Oklahoma	County clerk			
Oregon	County clerk	50	500	
Pennsylvania	Recorder			100
South Dakota	Clerk of circuit court	50	500	
Texas	County clerk			
Washington	County clerk			1000
West Virginia	Clerk of county court		500	
Wisconsin	Clerk of circuit court	50	500	
Wyoming	Register of deeds			200

§ 72. Fees.—The compensation of a notary public for his services is in the form of fees, the amount of which is fixed by statute in each state. As will be shown in the following sections, the statutes prescribe exactly what a notary may charge for protesting commercial paper, administering an oath, taking a deposition or acknowledgment, or performing some other act.

In recent years several states have enacted laws prohibiting a notary from making a charge for any service to honorably discharged soldiers, sailors, marines, army or navy nurses in connection with application for pensions.

§ 73. —Alabama.—Protesting commercial paper, \$1.50; shall not charge any other fee except postage; oath, certificate, and seal, 50¢; copies from registers, per 100 words, 20¢; other certificates and seals, 50¢; acknowledgments, 50¢; proof of conveyance, same as allowed to other officers.

§ 74. —Arizona.—Protesting bill or note, registering and seal, \$2.00; each notice, 50¢; protest in all other cases, 20¢ per 100 words; certificate and seal to such protest, 75¢; each oath and acknowledgment of deed, etc., with certificate and seal, 75¢; all certificates under seal, 75¢; copies of records and papers, with certificate and seal, if less than 200 words, 75¢; if more, 20¢ per 100 words in addition to the fee; all notarial acts not otherwise provided for, 50¢; depositions, per 100 words, 20¢; swearing witness, certifying, and other business connected with depositions, 75¢; for each elector registered, 20¢; for acknowledgment to bill of sale of livestock, with certificate and seal, 25¢.

§ 75. —Arkansas.—Protesting commercial paper and registering same, \$1.00; each notice, 25¢; each certificate and seal, 50¢ (in no case to exceed \$2.50); ac-

knowledge, 50¢; marine protest, \$2.00; protest to secure insurance, \$2.00; affixing official seal, 25¢; copies of records, etc., per 100 words, 5¢; each deposition, \$2.00; mileage to and from place of taking, 5¢; all fees not to exceed \$5.00 from same party; and if more than one day, \$2.00 per day.

§ 76. —California.—Drawing and copying protest of commercial paper, \$2.00; drawing and serving each notice of same, \$1.00; recording protest of commercial paper, \$1.00; drawing affidavits or depositions, per folio, 30¢; acknowledgments or proofs, for first two signatures, \$1.00 each; each additional signature, 50¢; administering oath, 50¢; each certificate and seal, \$1.00.

§ 77. —Colorado.—Noting commercial paper, 25¢; protesting and recording same, 50¢; each notice of same, 20¢; each certificate and seal, 25¢; acknowledgment, first signature, 50¢; each additional signature, 25¢; drawing depositions, per 100 words, 15¢; swearing party to affidavit, certificate, and seal, 25¢; other fees same as justice of the peace for like services.

§ 78. —Connecticut.—Marine protest, \$2.00; entering protest of commercial paper or noting same without protest, 50¢; administering oath to pensioner, and taking acknowledgment of his papers, 25¢; noting commercial paper for protest, recording same, each notice of same, affixing notarial seal, and each certificate, 25¢; mileage, 10¢; copies, same fees as allowed clerk of superior court, 25¢ per page; oath out of court, 10¢; taking the acknowledgment of any instrument, 25¢.

§ 79. —Delaware.—Protesting commercial paper, and registering the same, 80¢; each notice of same, 20¢; exemplification of same and seal, 25¢; protest of foreign bill and registering same, \$1.00; each notice of same, 37¢; exemplification under seal, 75¢; registering, where

no fee for probating is charged, 20¢; registering common sea protest, 75¢; registering foreign sea protest, \$1.00; registering protest against merchant for detaining vessels, \$4.00; exemplification of the last three, \$1.00; registering obligations, letters of attorney, and instruments of similar length, \$1.00; taking acknowledgment of deed, power of attorney, etc., \$1.00; administering oath and certificate, 50¢; drawing depositions and affidavits, per line, 2¢; depositions taken under order of court, reasonable fees taxed by the court; certificate and seal, where no other service is performed for which fees are allowed, 35¢; under motor vehicle law, first certificate, 50¢; each additional, 25¢; no family license shall exceed \$1.00; for reporting deed to Board of Assessments of Sussex County, 25¢.

§ 80. — **District of Columbia.**—For each certificate and seal, 50¢; taking depositions and other writings, per 100 words, 10¢; administering oath, 15¢; acknowledgment of deed or power of attorney, with certificate, 50¢; each protest of note, etc., and record of, \$1.75; each notice of protest, 10¢; each noting of protest, \$1.00; each demand for acceptance or payment if accepted or paid, \$1.00, to be paid by the party accepting or paying the same.

§ 81. — **Florida.**—Protesting all paper, noting and registering same, issuing certificate with seal, all necessary notices and postage, and all acts necessary to perfect protest, \$2.00; administering each oath, 10¢; attendance at a demand, tender, or deposit, and noting same, \$1.00; each certificate, with seal, 50¢; each order for survey, 50¢; copying any paper, same fee as allowed clerks of circuit courts.

§ 82. — **Georgia.**—For protest, not over \$1.50; registering to be paid for by party having it done; administering oath of any kind, 30¢; each attendance on

any person to make proof as notary public, and certifying same, \$1.00; for every other certificate, 50¢; for any act which some other officer, or he, may perform, same fee as other officer; must give statement and bill of fees when called for; must have table of fees posted in office; or must have a copy of Code of Georgia in his office. Registering must be paid for by the party who has the service performed.

§ 83. —**Idaho.**—Drawing and copying protest of commercial paper, \$3.00; such sum shall be in full payment of all fees for services therefor. Taking acknowledgment, with seal and certificate, 50¢; administering and certifying oath, 25¢; every certificate under seal, to include noting the same, 50¢; taking deposition, \$5.00; if deposition exceeds 25 folios of 100 words each, 20¢ per folio exceeding 25. Honorably discharged soldiers, sailors, marines, army or navy nurses can not be charged for any service in connection with applications or other documents required for securing pensions.

§ 84. —**Illinois.**—Noting, and noting for protest, and noting commercial paper, 25¢; protesting same, 75¢; each notice of same, 25¢; marine protest, extending same and copy, \$4.00; extra copy, \$1.00; certificate and seal other than above, 25¢; acknowledgments, 25¢; administering oath, 25¢; drawing depositions in counties of first and second class, per folio, 15¢; third class, per folio, 10¢.

§ 85. —**Indiana.**—Protest fees must not exceed 50¢; 25¢ for each notice, and 50¢ for record; acknowledgments, 25¢; each certificate and seal, 50¢; taking depositions, per 100 words, 25¢; administering oaths, 25¢; only one protest allowed on bank notes.

§ 86. —**Iowa.**—Protesting commercial paper, all services, \$2.00; attending at demand, tender, deposit, etc., and noting the same. 75¢; administering oath, 10¢:

certificate of same, under seal, 25¢; certificate under seal, 25¢; other fees, same as allowed justices of the peace.

§ 87. —**Kansas.**—Protesting commercial paper, and registering the same, 25¢; each notice of same, 10¢; certificate and seal, 25¢; other fees, same as allowed clerk of district court; i. e., oath, or certificate, etc., to one pension voucher, 15¢; each subpoena, attachment, or commitment, 50¢; swearing each witness, 10¢; taking and certifying deposition, 15¢ per 100 words; taxing costs and making out fee bill, per folio, 10¢; taking and certifying affidavit, 25¢; making record or copy required, 7¢ per folio; taking acknowledgment, 25¢.

§ 88. —**Kentucky.**—Each attestation, protestation, acknowledgment, and certifying same under seal, 50¢; recording same, 75¢; each notice of protest, 25¢; administering oath and certificate of same, 20¢; depositions, where no more than one is taken for the same party the same day, \$2.00; where more than one is taken, \$1.00 each; but fees not to exceed \$3.00 per day against any one party; for issuing subpoena or any other writ, same fees as allowed to clerks of circuit courts; no fees allowed for affixing jurat in claims of persons in army or navy, or their dependents.

§ 89. —**Louisiana.**—Writing original acts, including recording of same, 20¢ per 100 words; if written by other person, 25¢ for passing act, and 10¢ per 100 words for recording it; for each necessary certificate and seal, 25¢; no act to have more than one certificate and seal; copies of all official documents, 10¢ per 100 words; for certificate and seal to every copy, 25¢; for proving up a private act, 25¢; for recording act under private signature, 10¢ per 100 words, and 25¢ for the certificate and seal showing the recording thereof; for certificate of mortgage with seal, \$1.00, and for every 100 words after

the first 400, 20¢; for canceling mortgage, with certificate and seal, \$1.00; if parties waive certificate required by § 3328, C. C., then no charge for same; for fixing seal on effects of deceased persons, \$2.00; swearing each appraiser or expert, 25¢; for recording acts passed before other notaries, 10¢ per 100 words, and 25¢ for one certificate and seal only; for making inventories of successions or other property out of office, 50¢ per hour, but never over 12 hours per day; for proces-verbal of the inventory, and recording it, 25¢ per 100 words, and 25¢ for certificate and seal thereon; for making and recording inventory in the office, 20¢ per 100 words, and 25¢ for certificate and seal; writing deposition, per 100 words, 20¢; affixing seal, 25¢; swearing witness, 20¢.

§ 90. —Maine.—Protesting commercial paper, \$1.50, including notices and registering.

§ 91. —Maryland.—Protesting commercial paper, \$2.00; drawing proceedings, not exceeding two sides, 50¢; extra sides, 25¢; registering or copying each side, 10¢; presenting commercial paper which is not afterward protested, \$1.00; noting same, \$1.00; noting marine protest, \$1.00; affixing seal, 50¢; search without copy, 25¢; taking oath or acknowledgment, 12½¢; mileage beyond three miles, 20¢; notice of protest of commercial paper, 5¢; presenting commercial paper, if paid to notary, \$1.00. One half of protest fee to be paid into State Treasury quarterly, January, April, July and October.

§ 92. —Massachusetts.—Protesting commercial paper, \$500.00 or more, \$1.00; less than \$500.00, 50¢; recording same, 50¢; noting commercial paper, 75¢; each notice of same, 25¢; entire cost of above, \$500.00 or more, not more than \$2.00; less than \$500.00, \$1.50; and whole cost of noting, including recording and notices, not to exceed \$1.25.

§ 93. —Michigan.—Drawing and copying protest of commercial paper, when necessary, 50¢; other cases, 25¢; drawing, copying, and serving notices, 25¢; taking, certifying, sealing, and forwarding depositions, \$2.00; each 100 words, 10¢; copies of testimony, 3¢ per 100 words; drawing affidavits, per folio, 20¢; copying same, 6¢ per folio, acknowledgments, each person, 25¢; other fees same as allowed other officers.

§ 94. —Minnesota.—Protesting commercial paper, where necessary, \$1.00; other cases, 25¢; notice of same, 25¢; drawing affidavit or other paper, per folio, 20¢; copying same, per folio, 6¢; administering oath, 25¢; acknowledgments, each person, 25¢; recording instrument required to be recorded, per folio, 10¢.

§ 95. —Mississippi.—Protesting commercial paper and notice, \$1.00; registering same, 50¢; attesting letters of attorney and seal, 50¢; notarial affidavit to account, or other writing, and seal, 50¢; administering oath, and seal, 50¢; notarial procuration and seal, \$1.00; certificate of sales at auction and seal, 50¢; proof of debts to be sent abroad, 50¢; protest in insurance cases, and seal, \$1.00; copy of record and affidavit, \$1.00; acknowledgment, 25¢; administering oath and certificate on deposition, 50¢; writing or copying deposition, per 100 words, 10¢.

§ 96. —Missouri.—For noting paper for protest, 15¢; entering protest, 35¢; registering protest, 35¢; noting without protest, 35¢; for notice to each endorser or other person, 15¢; for travel, per mile, 8¢; taking an acknowledgment, with certificate, and seal, 50¢; marine protest, \$5.00; fire insurance protest, \$5.00; drawing contract of boatman, 75¢; certificate attested by seal, 50¢; making entry of boatman not coming on board as per his contract, 15¢; sealing same, 10¢; all copies of papers and records, 15¢ per 100 words; in all other cases the

same fees as are allowed justice of peace; administering oath to witness on deposition, 5¢; writing or copying deposition, 15¢ per 100 words; signing and certifying depositions, 35¢.

§ 97. — Montana.—Each protest and record thereof, \$1.00; each notice of protest, 25¢; drawing affidavit or deposition, 20¢ per folio; taking acknowledgment, including seal, \$1.00 for first signature, 50¢ for each additional signature; administering oath, 25¢; certifying affidavit, with or without seal, including oath, 50¢; provided the maximum fee that can be computed or charged for drawing, keeping a record of protest and for drawing and certifying notice of nonpayment or nonacceptance shall be \$2.50.

§ 98. — Nebraska.—Protesting commercial paper, \$1.00; recording same, 50¢; each notice of same, 25¢; taking an affidavit, and seal, 25¢; administering oaths or affirmations, 5¢; taking depositions, per 100 words, 10¢; certificate and seal, 25¢; acknowledgments, 50¢; mileage in serving notices, 5¢.

§ 99. — Nevada.—Drawing protest of commercial paper and copying same, \$2.00; drawing and serving each notice of same, \$1.00; drawing affidavits, depositions, etc., per folio, 30¢ (20¢ in counties polling over 800 votes); drawing acknowledgments and seal, first signature, \$1.00; each additional signature, 50¢; administering oath, 25¢; certificate and seal, 50¢.

§ 100. — New Hampshire.—Protest of commercial paper, and seal, 50¢; certificate under seal, 25¢; attending at a demand, tender, deposit, etc., and certifying same under seal, 50¢; noting commercial paper, 25¢; depositions, same fees as allowed to justices of the peace, to wit: for swearing each witness and caption of deposi-

*Protest
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tion, 34¢; writing deposition, 17¢ per page; taking and certifying acknowledgment of deed or other instrument, by one or more persons at one time, 17¢; administering and certifying oaths, 25¢.

* § 101. —New Jersey.—Protesting commercial paper, and registration of same, \$2.00; each notice 10¢ and postage if sent by mail; each oath, 25¢; examination of witness, per folio, 30¢; copy of testimony, per folio, 10¢; certifying exhibit, 15¢; proof of deed, \$1.00; acknowledgment of deed, \$1.00; affidavit, 25¢; acknowledgment of warrant to satisfy judgment, \$1.00; forfeit for overcharge, \$25.00.

§ 102. —New Mexico.—Each act of protest and certificate thereof, \$2.00; each notice of protest forwarded to parties entitled to notice, 25¢; certificate under seal, 50¢; acknowledging deed or power of attorney, 25¢; administering or certifying any oath, 25¢. When authorized to take depositions, noting meetings, \$1.00; adjournment, \$1.00; swearing witness, 25¢; certifying and transmitting record, \$1.50; transcribing, 15¢ per folio; copies, 5¢ per folio, mileage, 10¢ per mile.

§ 103. —New York.—Protest fees shall not be greater than 75¢ for each protest; 10¢ each notice, not to exceed five, and upon request the seal shall be affixed free; tax redemption by mortgagor, 75¢; administering and certifying oath, taking and certifying acknowledgment or proof of written instrument by one person, 25¢; by each additional person, 12¢; swearing each witness, 6¢; for affidavits, etc., not otherwise provided for, the same fees as allowed attorneys in the supreme court.

§ 104. —North Carolina.—Protest of commercial paper, 50¢; each notice, 10¢; certificate and seal, 50¢; other cases, per 90 words, 20¢; acknowledgment of chattel mortgage, 25¢.

§ 105. —North Dakota.—Each protest, 50¢; recording same, 25¢; taking affidavit and seal, 25¢; oath or affirmation, 10¢; taking deposition, each 10 words, 1½¢; each certificate and seal, 25¢; proof of acknowledgment, 25¢. List of fees must be posted in a conspicuous place in notary's office.

§ 106. —Ohio.—Presentment, demand, notices, and protest of commercial paper, \$1.00 and necessary expenses in going beyond corporate limits; recording instruments required to be recorded, per 100 words, 10¢; copy of affidavit, including certificate, if required, 20¢ per 100 words; taking acknowledgments, 80¢; affidavits and oaths, 40¢; depositions and certificate, 25¢ per hundred words; proof of account, 50¢; pension oath, 10¢.

Proof of account

§ 107. —Oklahoma.—Protest and record of commercial paper, 50¢; each notice, 10¢; each certificate and seal, and each affidavit, 25¢; swearing each witness to deposition, 10¢; each subpoena, attachment, or order of commitment, 50¢; each 100 words and certificate, 15¢; for other services, same fees as are allowed clerk of district court for like services; acknowledging deed or mortgage, 35¢; certificate and seal to any instrument already drawn, 25¢. Notary must keep posted a list of fees charged in a conspicuous place in his office. Not allowed to charge discharged soldiers or sailors, widows, orphans or legal representatives in pension matters.

§ 108. —Oregon.—Protest of commercial paper, \$1.00; attesting a written instrument and seal, \$1.00; noting commercial paper, \$1.00; registering protest of commercial paper, \$1.00; certificate and taking affidavits, all certificates under seal, \$1.00; acknowledgments, \$1.00; making and taking proof of legal instruments, for each folio, 25¢; drawing depositions, per folio, 25¢; administering oath, 25¢.

§ 109. — Pennsylvania.—Demand for payment or acceptance of commercial paper, 75¢; protesting same, 75¢; registering same, 50¢; first notice, 20¢; each additional, 5¢; administering oath, writing with certificate and seal, 50¢; bill of account, certificate and seal, 50¢; each acknowledgment or probate of deed or other instrument for first name, 50¢; each additional, 25¢; taking depositions, first page, \$1.00; each additional, 75¢; marine protest, complete, \$10.00.

§ 110. — Rhode Island.—Marine protest, \$1.00; drawing, entering, and recording same, \$1.50; protest for \$500 or more, \$1.00; less than \$500, 50¢; recording same, 50¢; noting same, 75¢; each notice, 25¢. Protest fee not to exceed \$2.00, and for noting not to exceed \$1.25; mileage, more than one mile, 10¢; extending and recording protest of commercial paper, 75¢; acknowledgments and seal, 50¢; acknowledgments, one or more persons at same time, 50¢; taking affidavits, 25¢; taking depositions, per hour, 40¢; each page of 200 words, 30¢; mileage, 10¢.

§ 111. — South Carolina.—Protest, 50¢ and postage; depositions and swearing witnesses, per copy sheet, 25¢; duplicate of depositions, protest, and certificate, per copy sheet, 100 words, 10¢; attendance for proving a matter, and certificate, 50¢; notarial certificate and seal, 50¢; oath on an affidavit, 25¢; renunciation of dower or inheritance, \$1.00. *

§ 112. — South Dakota.—Each protest, \$1.50; recording same, 50¢; taking affidavit and seal, 25¢; for administering oath or affirmation, 10¢; for taking deposition, each 10 words, 1½¢; for each certificate and seal, 25¢; for taking proof of acknowledgment, 25¢; for making and mailing each notice of protest, 25¢ and postage.

§ 113. — Tennessee.—Protest, \$1.50, without regard to number of parties to the instrument; recording

each attestation, protestation, or other instrument, \$1.00; each deposition, \$1.00; each acknowledgment or proof of deeds and other instruments, with seal, 50¢; other fees same as allowed other officers. Must keep list of fees conspicuously posted.

§ 114. — Texas.—Protest of commercial paper, registry and seal, \$1.00; each notice of same, 25¢; other protests, per 100 words, 25¢; certificate and seal for same, 50¢; acknowledgment or proof of deed, etc., for registration, including certificate and seal, 50¢; acknowledgments of married woman, certificate and seal, 50¢; oath, certificate, and seal, 50¢; other certificates and seal, 50¢; copies of records, etc., 200 words or less, with certificate and seal, 50¢; each additional 100 words, 25¢; other notarial acts, 50¢; depositions, per 100 words, 15¢; swearing witnesses, certificate, seal, etc., 50¢. List of fees permitted to be charged must be kept posted in conspicuous place in notary's office. Fees must not be demanded in advance.

§ 115. — Utah.—Protest of note, bill of exchange, draft, or check, \$1.00; drawing and serving each notice of nonpayment or nonacceptance, 35¢; recording each protest, 50¢; drawing an affidavit, deposition, or other paper, for which provision is not made herein, for first folio, 50¢; each subsequent folio, 15¢; each acknowledgment, or proof of deed, or other instrument, including writing, certificate and seal, first signature, 50¢; each additional signature, 25¢; administering oath or affirmation, 25¢; every certificate, to include writing same, and seal, 50¢.

§ 116. — Vermont.—Noting and protesting commercial paper, \$1.00; each certificate under seal, 25¢.

§ 117. — Virginia.—Protest of commercial paper and one notice, besides maker, \$1.00; each extra notice,

10¢; acknowledgments, 50¢; oath and certificate (except affidavits), 25¢; affidavits or depositions, one hour or less, 75¢; per hour, additional, 75¢; other fees same as allowed to clerk of county court.

§ 118. — Washington.—Protesting commercial paper, \$1.00; noting same, 50¢; registering protest of same, 50¢; attesting instruments of writing, 50¢; acknowledgments, 50¢ for two persons, and 25¢ for each additional person; certificate to affidavits, and all other certificates under seal, 50¢; without seal, 25¢; attendance at demand, tender, deposit, etc., 50¢; mileage, 10¢; copying any instrument or record, 15¢ per folio.

§ 119. — West Virginia.—Making out protest under seal, and notice of dishonor to one person beside maker or acceptor, \$1.00; each additional notice, 10¢; taking and certifying acknowledgment, 50¢; administering and certifying oath, except affidavit of witness, 25¢; taking and certifying affidavits or depositions of witnesses, per hour actually employed in taking, 75¢; for other services, same fees as circuit court clerks for like services.

§ 120. — Wisconsin.—Protesting commercial paper, where necessary, 50¢; other protests, 25¢; copying and serving every notice, 25¢; affidavits, etc., per folio, 25¢; copy of same, per folio, 6¢; acknowledgments, 25¢ for each person acknowledging.

§ 121. — Wyoming.—Protesting commercial paper, \$1.00; each notice of same, 50¢; acknowledgments, 50¢ for one person, 25¢ for each additional person; certificate and seal, 50¢; administering oath or affirmation, 50¢; taking deposition, 15¢ per folio; and \$5.00 for all other services in taking, certifying, directing, endorsing and transmitting the same.

§ 122. **Civil liability.**—A notary public must perform his duties honestly, skillfully, and with reasonable diligence. He owes such duty to anyone who employs him officially. While the governor or the state is ordinarily a nominal party to a notary's bond, the real beneficiaries of his bond are those persons who may incur some loss as a proximate result of misconduct on the part of the notary.

Both the notary and the surety on his bond are liable for any loss which is the proximate result of the careless or fraudulent performance of his duties.¹³ Liability arises for his negligence in the taking of an acknowledgment or for making a false certificate of acknowledgment. If a notary certifies to an acknowledgment of an instrument without personal knowledge as to the identity of the party, and without careful investigation, he is guilty of negligence and liable for all damage resulting therefrom. The public is entitled to rely upon the verity of a notary's certificate; therefore, he can be held liable for falsely certifying that grantors had personally appeared before him and acknowledged the execution of a deed.

§ 123. **Penalties.**—The statutes of many states provide severe punishment for specific wrongful acts by a notary. If he certifies to the affidavit of a person without administering the oath, he is frequently subject to fine or imprisonment, and removal from office. When he knowingly performs any act after the expiration of his term of office, he must pay a fine and be declared ineligible for reappointment. Penalties of imprisonment and fines are likewise imposed upon a notary who falsely certifies that a person was sworn before him, or who knowingly asks or receives a fee greater than the amount fixed by law.

¹³ California, Idaho, Nevada, and Wyoming have statutes providing that both the notary public and the sureties on his bond are liable in a civil action brought by the party damaged by the misconduct or neglect.

A list of the wrongful acts or misdemeanors as set out in the statutes, together with the fines and penalties imposed, follows:

	MISDEMEANORS	FINES			IMPRISONMENT	
		Minimum	Maximum	Specific Sum	Minimum	Maximum
Colorado	Failure to keep record	\$100				
Delaware	Charging excessive fees for service under motor vehicle laws		\$ 200			6 mos.
Florida	Acting after expiration of commission		100			3 mos.
	Making false return upon process		1000			1 yr.
Indiana	Acting, while holding lucrative office, or being officer of bank or building and loan association	10	1000		10days	6 mos.
	Falsely attesting affidavit or acknowledgment	10	1000		1 yr.	3 yrs.
	Failure to explain contents of instrument to person signing by mark	5	500		10days	6 mos.
	Acting after expiration of commission	25	500			
	Affixing name to a blank	10	1000		2 yrs.	14 yrs.
	Charging excessive fees	10	500			6 mos.
	Iowa	Acting after expiration of commission or signing when parties have not appeared before him	50			

	MISDEMEANORS	FINES			IMPRISONMENT	
		Minimum	Maximum	Specific Sum	Minimum	Maximum
Kentucky	Failure to record protest			\$5		
Louisiana	Acting after bond expired	50	500		10 days	6 mos.
Massachusetts	Acting after expiration of commission	100	500			
Minnesota	Acting after expiration of term or signing acknowledgments when parties have not appeared					
Nevada	Refusal or neglect to keep record of acknowledgments	50	500			
	Wilful violation or neglect of duty		2000			
New Mexico	Failure to keep record of acts		25			30 days
	Acting after commission expires			100		
	False certificate		200			3 mos.
New York	Fraud or deceit					
North Dakota	Acting after commission expires or signs when parties have not appeared before him			100		
Ohio	Acting after expiration of term		500			
	Certifying affidavit without administering oath		100			30 days
Oregon	Practice fraud or deceit, or make false certificate or acknowledgments					

	MISDEMEANORS	FINES			IMPRISONMENT	
		Minimum	Maximum	Specific Sum	Minimum	Maximum
South Dakota	Exercising duties after expiration of commission or signing when parties have not appeared			100		
Tennessee	Acting after expiration of commission	100	1000			
Texas	Failure to keep record of acknowledgment	100	500			
	False certificate, or declaration of protest				2 yrs.	5 yrs.
Wyoming	False jurat or false certificate of acknowledgment					3 yrs.
	Acting after expiration of term	25	500			

§ 124. **Removal.**—In a number of states, the statutes expressly specify grounds for the removal of a notary public and designate the authority or officer who has the power to remove. Following is a summary of such statutory provisions.

	GROUND	AUTHORITY
Alabama	Wilful neglect of duty; incompetency	Governor or circuit or criminal court
Delaware	Unlawful charges for services; seal not properly engraved	Governor
Georgia	Malpractice in office	
Iowa	Acting after expiration of commission; signing when parties have not appeared	Governor

	GROUNDS	AUTHORITY
Massachusetts		Governor, with consent of council
Minnesota	Charging excessive fees; dishonestly or unlawfully discharging his duties	District court of county where he resides
Montana	Any sufficient cause	Governor
Nebraska	Malfeasance in office	Governor
* <u>Nevada</u>	Wilful violation or neglect of duty	
New Mexico	Malfeasance in office or failure to comply with statutes; acting when disqualified	Governor
Ohio	Charging excessive fees; dishonestly or unfaithfully discharging any of his duties; certifying affidavit without administering oath	Court of Common Pleas
Texas	Wilful neglect of duty; malfeasance in office	Court
Virginia	Misconduct, incapacity, or neglect of official duty	Governor

CHAPTER III: OATHS AND AFFIDAVITS

OATHS

SECTION

- 125. Definitions.
- 126. Manner of administering.

SECTION

- 127. Forms of oath.
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AFFIDAVITS

- 129. Definitions.
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- 134. Signatures.

- 135. Jurat.
- 136. Seal.
- 137. General form of affidavit.
- 138. Form of affidavit for use in legal proceeding.
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OATHS

§ 125. Definitions.—An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God.

An affirmation is a solemn declaration without oath. Generally, the word “oath” includes affirmation; and whenever an oath is required or authorized by law, an affirmation may be taken in lieu thereof by any person having conscientious scruples to taking an oath. The statutes in most of the states provide that an affirmation has the same force and effect as an oath.

§ 126. Manner of administering.—The form of administering an oath may be varied to conform to the religious belief of the individual so as to make it binding on his conscience. One form consists in the person taking the oath or affirmation holding up his right hand while the officer repeats to him the words of the oath, which begins, “You do solemnly swear that” and ends “so help you God” or “this you do as you shall answer unto God.”

In the case of an affirmation, the officer’s statement begins, “You do solemnly, sincerely and truly affirm and declare that” and ends “this you do under the pains and penalties of perjury.” The person being sworn or affirmed then gives an affirmative answer.

In the case of a public official taking an oath of office, he may place his right hand on the Holy Bible, instead of raising his hand while the words are repeated by the officer administering the oath.¹

§ 127. **Forms of oath.**—In addition to and between the introductory and closing clauses, the oath may contain a statement such as: “That the various matters and things set forth in this paper which you have here signed before me are true”; “that the statements contained in the pleading you have just heard read are true”; or, “that you will faithfully and diligently perform your duties as director of the _____ Company.”

Corporate

The form of oath which is ordinarily administered to a witness whose deposition is to be taken is as follows: “You do solemnly swear that you will testify the truth, the whole truth, and nothing but the truth in the deposition you are about to give in the case now pending in the _____ Court, wherein A B is plaintiff and C D is defendant, and this you do as you shall answer to God.”

The usual form of oath administered to a witness during a trial is: “You do solemnly swear that the evidence you are about to give in the cause now here pending shall be the truth, the whole truth, and nothing but the truth, so help you God.”

The ordinary form of oath of office is as follows: “You do solemnly swear that you will support the Constitution of the United States, the constitution of the state of _____, and that you will faithfully discharge the duties of the office of _____, during the term for which you have been elected (*or*, appointed), so help you God.”

§ 128. **Who may administer.**—In practically every state the statutes authorize a notary public to administer

¹ A Jewish person should be sworn on the Old Testament; a Moham-
medan on the Koran.

an oath.² In all cases in which, under the laws of the United States, oaths are authorized or required to be administered, they may be administered by notaries public duly appointed in any state, district or territory of the United States.³

AFFIDAVITS

§ 129. **Definitions.**—An affidavit is a voluntary declaration, reduced to writing, signed by the affiant, and sworn to before an officer authorized by law to administer oaths. An affidavit is generally taken without notice to the adverse party, and without cross-examination, differing in this and other respects from a deposition.⁴

The affiant is the one who swears or affirms that the matters contained in the affidavit are true. Such person is sometimes termed the deponent.

§ 130. **Component parts.**—An affidavit consists of (1) the caption, which may include the title and venue; (2) the body of the affidavit, which includes the introductory statement and the allegations; (3) the conclusion, being the signatures, seal and jurat.

§ 131. **The caption.**—In an affidavit which is not to be used in any proceeding in court, no title need be given. If, however, an affidavit is to be used in court, the title must show the names of the parties to the suit and the court in which it is to be used.

The venue, or name of the state and county where the affidavit is taken, must never be omitted. It precedes the body of the affidavit and definitely fixes the place where the affidavit is made, to show that it is within the jurisdiction of the officer. The letters "ss." frequently added to the venue have no legal significance and are not essential.

² See statutory provisions for each state, § 16 et seq.

³ U.S.C., Title 5, § 92a.

⁴ For depositions, generally, see § 280 et seq.

§ 132. **Introductory statement.**—The body of the affidavit usually begins with the following formal statement: “Before me, G H, a notary public in and for said county, personally came E F, who, being duly sworn according to law, deposes and says that.” If desired, the phrase “authorized by law to administer oaths” may be inserted after the word “county.” The affidavit may begin with a more simple introductory statement, such as, “E F, being duly sworn, says that.”

Where an agent or attorney makes an affidavit, it must expressly state that the affiant is such agent or attorney. The correct way is to say, “E F, being duly sworn, says that he is the agent of A B”; it is incorrect to begin the affidavit, “E F, agent of A B, being duly sworn, says that.” In like manner, an affidavit for a partnership in proof of a claim due the partnership must be sworn to by one of the partners as agent for the firm. Such an affidavit should begin: “Before me, G H, a notary public in and for said county, personally came E F, who, being duly sworn, says that he is a member of the firm of _____ Company.”

Where it is necessary to show the residence of the affiant, the name of the place of his residence can not be added as a matter of description to his name; instead, the locality must be expressly stated and verified.

§ 133. **Allegations.**—The affiant’s allegations may be classified as positive and not positive. Positive allegations are such as state facts and not opinions, and are not modified by any such phrase as “to the best of affiant’s knowledge and belief,” or “as he verily believes.”

Allegations which are not positive may be classified as (1) allegations made upon knowledge and belief; (2) upon information and belief; (3) upon belief.

It is a common practice for the affiant to add, at the close of his statements, the words, “to the best of his knowledge and belief,” even when the matters stated are

“Mentioned” = word for Secretary

not merely matters of opinion but are clearly within his own knowledge, and could be positively averred; lest he might unwittingly make oath to an untruth by reason of the infirmity of human memory.

It is customary in some states to close the allegations with the words "and further saith not," or "and further affiant saith not."

§ 134. **Signatures.**—Even in the absence of statutory requirement, the affiant should sign his name to the affidavit at the close of the allegations made by him.

To complete an affidavit taken before a notary public it is essential that he sign his name thereto.

§ 135. **Jurat.**—The jurat is that part of an affidavit in which the notary public states that it was sworn to before him. The omission of words such as "before me," in the jurat will void the affidavit. The usual form of the jurat is: "Sworn to before me and subscribed in my presence this _____ day of _____, 19—." Shorter forms, such as: "Subscribed and sworn to before me," are also sufficient.

§ 136. **Seal.**—In all states requiring the notary public to have an official seal, he must further attest the affidavit by affixing his seal.⁵

§ 137. **General form of affidavit.**

State of _____, County of _____, ss.

E F, being first duly sworn, says that _____ (allegations).

And further affiant saith not.

(Signature of affiant)

Sworn to before me and subscribed in my presence this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

⁵ See §§ 68 and 69.

§ 138. Form of affidavit for use in legal proceeding.

In the _____ Court of _____

A B, Plaintiff v. C D, Defendant	}	Case No. _____ Affidavit of E F
--	---	------------------------------------

E F, being first duly sworn, says that _____ (allegations).

And further affiant saith not.

(Signature of affiant)

Sworn to before me and subscribed in my presence this _____ day of _____, 19____.

(SEAL) G H, Notary Public

§ 139. **Before whom affidavits made.**—When an affidavit is made in the state where it is to be used, it may be made before a notary public within the limits of his jurisdiction. The statutory provisions of every state authorize a notary public to take affidavits.⁶ The statutes also authorize the following officers to take affidavits in the state where they are to be used: justice of the peace, mayor, clerk of court, judge of any court of record and court commissioner.

When an affidavit is made within the United States, but out of the state where it is to be used, it may be made before a notary public in a majority of the states. The statutes also permit such affidavit to be taken by a commissioner of the state where it is to be used, or by anyone authorized to administer oaths or take depositions.

When the affidavit is made out of the United States, it may sometimes be made before a notary public; but the statutes of many states authorize the following officers to take such affidavits: ambassador of the United States, consul and consular agent.⁷

⁶ See statutory provisions for each state, § 16 et seq.

⁷ See statutory provisions for officers authorized to take acknowledgments without the United States, § 162 et seq.

CHAPTER IV: ACKNOWLEDGMENTS

ESSENTIAL REQUISITES

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140. Definition and purpose.	152. —Name of grantor.
141. Instruments requiring acknowledgment.	153. —Knowledge of identity.
142. Officers authorized to take.	154. —Voluntary nature of acknowledgment.
143. Disqualification of officer.	155. —Married woman.
144. Certificate of acknowledgment.	156. —Testimonium clause.
145. —Component parts.	157. —Officer's signature.
146. —General form.	158. —Seal of officer.
147. —Venue.	159. —Date of expiration of commission.
148. —Introductory clause.	160. Authentication of officer's authority.
149. —Date.	161. Proving deeds.
150. —Description of officer.	
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165. California.	190. New Jersey.
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167. Connecticut.	192. New York.
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180. Maryland.	205. Vermont.
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ESSENTIAL REQUISITES

§ 140. **Definition and purpose.**—Acknowledgment is a formal declaration before an authorized officer by the person who has signed an instrument that it is his voluntary act and deed. The term also includes the written certificate of the officer, as to the act of acknowledgment, upon the same sheet as the instrument or attached thereto.

* Acknowledgment must be distinguished from attestation, which is merely the act of witnessing the execution of a paper and subscribing one's name thereto as a witness.

* * The purpose of acknowledgment is to entitle the instrument to record, and to provide official evidence of its execution.

§ 141. Instruments requiring acknowledgment.—

* * An instrument need not be acknowledged unless required by statute, as acknowledgment was unknown to the common law. The statutory provisions of each state must be consulted to determine what particular instruments require acknowledgment. Some idea of the scope of such statutes will be gained from the following list of instruments which, under the laws of Ohio, must be acknowledged: deeds, mortgages and leases of any interest in real property; powers of attorney to convey, mortgage or lease the same; satisfactions and releases of mortgages, when not made on the original mortgage or on the margin of the record thereof; plats of towns, additions and subdivisions; deeds of sheriffs, master commissioners, and other officers selling real property in pursuance of an order of court; written agreements of owners of adjoining lands fixing the corners or boundary lines; articles of incorporation; certificates of limited partnerships; trade-marks of timber dealers.

Some statutes provide that certain instruments need not be acknowledged; for example, leases for a short term, or releases of mortgages when made on the original mortgage.

§ 142. Officers authorized to take.—Acknowledgments can be taken only by those officers specifically authorized by statute. Three different situations are recognized in the statutory provisions of most states, designating in separate lists what officers may take acknowledgments (1) within the state, (2) elsewhere in

the United States, and (3) without the United States.¹

A notary public has authority under the laws of practically every state to take acknowledgments in any of the three situations. Other officers frequently named in the various statutes are: justice of the peace, mayor of a city, judges of courts of record, clerks of courts, commissioners of deeds,² and consuls.

§ 143. **Disqualification of officer.**—The fact that the notary public is related to one of the parties signing the instrument does not disqualify him from taking the signer's acknowledgment. If, however, the notary is interested as grantor or grantee, or has some financial interest in the transaction, he is disqualified.

In recent years several states have enacted laws permitting a notary public who is a stockholder, director, officer, or employe of a bank or other corporation to take the acknowledgment of any party to any written instrument to or by such corporation, provided such notary is not a party to the instrument, either individually or as a representative of the corporation.

§ 144. **Certificate of acknowledgment.**—The certificate should be written on the same sheet with the instrument acknowledged. This requirement is mandatory under the laws of a number of states, although a few states allow it to be on a separate paper, attached to the instrument. In both printed forms and typewritten documents the certificate follows immediately after the signatures to the deed or other instrument to be acknowledged.

§ 145. — **Component parts.**—The officer's certificate of acknowledgment may be analyzed as consisting of the following parts:

- (1) Venue, or statement of locality

¹ See statutory provisions for each state, § 162 et seq.

² For powers of commissioners of deeds, see § 396 et seq.

- (2) Body of certificate, which states
 - (a) Introductory clause
 - (b) Date when acknowledged
 - (c) Description of officer
 - (d) Presence of grantor
 - (e) Name of grantor
 - (f) Officer's knowledge of grantor's identity
 - (g) Voluntary nature of acknowledgment
 - (h) Separate examination of married woman
 - (i) Explanation of instrument to her
 - (j) Her separate acknowledgment
 - (k) Her continued satisfaction therewith
- (3) Testimonium clause
- (4) Officer's signature
- (5) Seal of officer
- (6) Date of expiration of officer's commission

§ 146. — General form.—With the exception of those states which have adopted the Uniform Acknowledgments Act, few states prescribe a form of certificate.³ The figures and letters in parentheses in the following general form have been inserted only for the purpose of identifying the component parts as outlined in the preceding section.

(1) State of _____, County of _____, ss.

(2) (a) Be it remembered that (b) on the _____ day of _____, 19—, (c) before me, G H, a notary public in and for said county, (d) personally came and appeared (e) A B, C D and E D, the grantors in the foregoing deed (f) to me known to be the same persons described in and who executed the foregoing instrument, (g) and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

(h) And the said E D, wife of the said C D, being examined by me separate and apart from her said hus-

³ Forms for each state are given in § 162 et seq.

band, (i) and the contents of said deed being by me made known and explained to her as the statute directs, (j) declared that she did voluntarily sign and deliver the same, (k) and that she is still satisfied therewith as her voluntary act and deed, for the uses and purposes therein mentioned.

(3) In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last above mentioned.

(4) G H, Notary Public

(5) (SEAL)

(6) My commission expires ——— (date).

§ 147. —**Venue.**—The state and county where the acknowledgment is made should appear at the beginning of each certificate. It is then presumed that the officer acted within that locality. This statement is also important by reason of the fact that an acknowledgment can be taken by an officer only within the locality for which he has been appointed.

§ 148. —**Introductory clause.**—The phrase, “Be it remembered that” is of no legal significance whatever, and can be omitted if desired.

§ 149. —**Date.**—The date when the acknowledgment is taken should always be given in the certificate. It generally is the same as the date of signing the instrument; obviously, the date of acknowledgment can not be earlier than the day of execution of the instrument.

There is no reason why an instrument may not be acknowledged even many years after its execution, or at different times and places by various grantors. If several persons acknowledge before the same officer, but on different days, he can state the facts as follows: “Before me, G H, a notary public in and for said county, on the first day of June, 19—, personally came A B and C D,

two of the grantors in the foregoing deed, and on the third day of June, 19—, personally came E D, another of said grantors.”

§ 150. —Description of officer.—The certificate should contain the name and title of the officer before whom the acknowledgment is taken, together with a reference to the locality within which he is authorized to act. The words “within and for said county” are sufficient if the state and county are named in the venue at the beginning of the certificate.

§ 151. —Presence of grantor.—It is essential that the grantor personally appear before the notary public at the time of acknowledging the instrument. An officer who falsely certifies that a person has appeared before him, when in fact he has not, is guilty of misconduct and becomes liable on his bond.

§ 152. —Name of grantor.—All the grantors should be named in the certificate of acknowledgment. The name of the wife of each grantor should likewise be included, although she joins in the execution of the deed for the sole purpose of relinquishing her right of dower. Care should be exercised that the name of the grantor as it appears in the certificate is the same as that in the deed or other instrument being acknowledged. Furthermore, the certificate should identify the party by showing that it is the grantor or other signer of the instrument who acknowledges it. A phrase such as “the grantors in the foregoing deed,” or “the parties to the within lease,” may be used immediately after the names of the parties.

§ 153. —Knowledge of identity.—The certificate uniformly must state that the signer is known to the officer, or has been proved to him to be the person who signed. The phrase “known to me” or “proved to me on ^{“one”}”

the oath of ——” precedes the general statement “to be the same person whose name is subscribed to the foregoing instrument.”

It is not enough for the officer to say that he is “satisfied” as to the identity.

§ 154. — Voluntary nature of acknowledgment.

—The fact that the person who has signed the instrument also acknowledges it must be stated in the certificate. The usual phrases are “acknowledged that he executed the same as his free act and deed,” or “acknowledged the signing thereof to be his voluntary act and deed.” Failure to include such statement will render the acknowledgment invalid.

In several states it is necessary to add the words “for the uses and purposes therein mentioned.”⁴

§ 155. — Married woman.—When a married woman is a party to a deed, the laws of some states require that the officer examine her separate and apart from her husband.⁵ Where this examination is required, the certificate must show that, upon being examined separate and apart from her husband, and the contents of the instrument being explained to her, she declared that she signed and acknowledged the same voluntarily, and was still satisfied therewith.

In a majority of the states, however, a wife need not be examined separately.

§ 156. — Testimonium clause.—The certificate of acknowledgment frequently contains a statement by the officer that the signature and seal to his certificate are his signature and seal. Instead of the long sentence, “In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last”

⁴ See forms for each state, § 162 et seq.

⁵ See statutory provisions for each state, § 162 et seq.

above mentioned," the following brief statements are used: "Witness my hand and seal of office;" "Given under my hand and seal this _____ day of _____, 19—;" or, simply "Before me."

The forms of acknowledgments in a number of states omit the testimonium clause as being unnecessary.

§ 157. —**Officer's signature.**—The notary public must sign his name at the end of the certificate of acknowledgment. His mere personal signature is not sufficient; the words "Notary Public" should be added to his name. If the description of the officer in the body of the certificate has not already stated his locality, it is proper to sign, "G H, Notary Public, in and for _____ County, State of _____."

§ 158. —**Seal of officer.**—Custom generally, and the statutes or decisions in many of the states, require that the certificate of acknowledgment should be authenticated by the officer's seal, if he be required by law to have a seal.⁶ In view of the well-known principle of law that a notary's seal proves itself, he should affix his seal to every acknowledgment taken by him. *

§ 159. —**Date of expiration of commission.**—In those states which by statute require a notary public to add to his certificate the date of the expiration of his commission, a certificate of acknowledgment must conclude with the statement: "My commission expires _____ (date)."⁷

§ 160. **Authentication of officer's authority.**—In general, no certificate of authentication need accompany an acknowledgment made before a notary public of another state, attested by his official seal.

⁶ See statutory provisions, § 68 et seq.

⁷ For list of states, see § 67.

When a justice of the peace, mayor, or similar officer takes the acknowledgment of a deed to land outside of his own state, there must be affixed to his certificate of acknowledgment a certificate of the clerk of the court of his county, under the signature and seal of such clerk, as to the official capacity of such justice or mayor, that he is authorized by law to take acknowledgments, that the clerk is acquainted with the handwriting of such justice, and that the signature to the certificate of acknowledgment is that of such justice.⁸

§ 161. Proving deeds.—It is lawful and customary in some of the states to prove deeds instead of acknowledging them. One or more of the subscribing witnesses goes before an officer authorized to administer oaths, and testifies that the grantor executed and acknowledged the instrument in the presence of the affiant and the other witness. The officer then prepares a certificate of this oath on the deed in the same manner as a certificate of acknowledgment is made.⁹ In some states this procedure is termed probating the deed.

STATUTORY PROVISIONS AND FORMS

§ 162. Alabama.¹⁰

Officers authorized to take

Within the state acknowledgments may be made before judges of the supreme court, court of appeals and circuit court, and the clerks thereof, chancellors, registers of the circuit court, judges of the courts of probate, justices of the peace, and notaries public. (§ 6841)

⁸ See statutory provisions for each state, § 162 et seq. For forms of such certificate, see § 175 (Iowa), § 181 (Massachusetts), § 182 (Michigan), § 190 (New Jersey), § 192 (New York), § 193 (North Carolina), § 202 (Tennessee).

→ ⁹ For forms of proof by subscribing witness, see § 162 (Alabama), § 164 (Arkansas), § 170 (Florida), § 171 (Georgia), § 173 (Illinois), § 174 (Indiana), § 177 (Kentucky), § 184 (Mississippi), § 187 (Nebraska), § 190 (New Jersey), § 192 (New York), § 198 (Pennsylvania), § 200 (South Carolina), § 202 (Tennessee), § 203 (Texas), § 204 (Utah), § 206 (Virginia).

¹⁰ References in parentheses are to Code of 1928 and 1936 Supplement.

Elsewhere in the United States acknowledgments may be made before judges and clerks of any federal court, judges and clerks of any court of record of any states, notaries public, or commissioners appointed by the governor of this state.

Without the United States acknowledgments may be made before the judge of any court of record, mayor or chief magistrate of any city, town, borough or county; a notary public, or a diplomatic, consular or commercial agent of the United States. (§ 6842)

Authentication of officer's authority

No certificate of authentication of the officer's authority is required. The signature and official seal of the officer are sufficient.

Witnesses

None required if the instrument is acknowledged. If not acknowledged, two witnesses are required where the grantor can not write, or is a married woman. One witness is sufficient in other cases. (§§ 6838, 6840)

Seal

None required. (§ 6839)

Married women and dower

A husband must join in conveyances by his wife. (§ 8269)

A married woman, if eighteen years of age or over, may release dower by joining in conveyance. (§ 7433)

To convey a homestead, the joint deed of husband and wife is required, with separate acknowledgment of wife. (§ 7883)

General form (§ 6845)

State of Alabama, ——— County, ss.

I, G H, notary public, hereby certify that A B, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal this ——— day of ———, 19—.

G H, Notary Public

Acknowledgment by corporation (§ 6845)

State of Alabama, ——— County, ss.

I, G H, a notary public in and for said county in said state, hereby certify that R S, whose name as president of the ———,

a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and notarial seal this _____ day of _____, 19—.

G H, Notary Public



Proof by subscribing witness (§ 6846)

State of Alabama, _____ County, ss.

I, G H, notary public, hereby certify that E F, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that A B, the grantor, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor, and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

Acknowledgment by wife; conveyance of homestead
(§ 6845)

State of Alabama, _____ County, ss.

I, G H, a notary public, do hereby certify that on the _____ day of _____, 19—, came before me the within named C B, known to me (*or* made known to me) to be the wife of the within named A B, who, being examined separate and apart from the husband touching her signature to the within deed, acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of her husband.

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

§ 163. Arizona.¹¹

Officers authorized to take

Within the state acknowledgments may be made before a clerk of a court having a seal, a notary public, a county recorder, a justice of the peace. (§ 963)

Elsewhere in the United States acknowledgments may be made before a clerk of some court of record having a seal, a commis-

¹¹ References in parentheses are to Revised Code of 1928.

sioner of deeds duly appointed under the laws of Arizona, a notary public. (§ 963)

Without the United States acknowledgments may be made before a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is made; a consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul, or consular agent of the United States, resident in the country where the acknowledgment is made; or a notary public. (§ 963)

Authentication of officer's authority

No certificate of authentication of the officer's authority is required by statute. The signature and official seal of the officer with a statement of the time of the expiration of his commission seem to be sufficient. (§ 966)

Witnesses

None necessary. (§ 961)

Seal

Required only in the case of corporations. (§ 3048)

Married women

Property acquired by either husband or wife during marriage, except that acquired by gift, devise or descent, or earned by the wife and her minor children while living separate and apart from her husband, is the common property of husband and wife, and all deeds and mortgages must be executed by both. (§§ 955, 2172)

Separate property may be conveyed without husband or wife joining (§ 955), excepting a homestead, which must be executed by both with separate acknowledgment of the wife. (§§ 956, 1734)

Statutory form (§ 966)

State of Arizona, County of _____, ss.

This instrument was acknowledged before me this _____ day of _____, 19—, by _____ (*if by a natural person or persons, here insert name or names; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney in fact, or other capacity; if by an officer or officers of a corporation, then insert name or names of such officer or officers as the president or other officer of such corporation, naming it*).

G H, Notary Public

My commission expires _____ day of _____, 19—.

§ 164. Arkansas.¹²

Officers authorized to take

Within the state acknowledgments may be made before the supreme, circuit or chancery courts or any of the judges thereof; the clerk of any court of record; any county or probate judge; a justice of the peace or notary public.

Elsewhere in the United States acknowledgments may be made before courts of the United States, or of any state or territory, having a seal; or a clerk thereof, a mayor or chief officer of a city or town having a seal; a notary public, or commissioner appointed by the governor of Arkansas.

Without the United States acknowledgments may be made before a United States consul; any court having a seal; any mayor or chief officer of a city or town having a seal, and any officer of a foreign country authorized to take probate of the conveyance of real estate in his own country, if he has an official seal. (§ 1825)

Authentication of officer's authority

No certificate of authentication of the officer's authority is required, unless the instrument is acknowledged.

The certificate of acknowledgment must be under the official seal of the officer, if he have an official seal; if not, then under his official signature. (§§ 1826, 1827)

Witnesses

Two witnesses are required. (§ 1824)

Seal

Is not required. (Const. schedule § 1)

Married women and dower

A married woman may convey separate property as if she were a *feme sole*. (Const. Art. 9, § 7; § 1814)

Dower may be released by joining in conveyance. Separate acknowledgment is required. (§§ 1815, 1834)

To convey homestead, wife must join in deed; separate acknowledgment required. (§ 7181)

General form

State of Arkansas, County of _____, ss.

On this _____ day of _____, 19—, before me, G H, a notary public within and for the county of _____, in the state of Arkansas, appeared in person A B, to me personally well known

¹²References in parentheses are to Digest of Statutes, 1937.

as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such notary public, in the county of _____, on the _____ day of _____, 19—.

G H

If the grantor is unknown to the notary, instead of the words "to me personally well known as the person" say "who, being unknown to me, was proved to my satisfaction to be the identical _____, whose name appears upon the within and foregoing deed as the party grantor, by the oath of _____ and _____, witnesses sworn and examined by me as to such identity."

By husband and wife; conveyance of homestead

State of Arkansas, County of _____, ss.

Be it remembered that on this day came before me, G H, a notary public within and for the county aforesaid, duly commissioned and acting, A B, to me well known (*or* who being unknown to me was proved, etc.), as the grantor in the foregoing deed, and stated that he had executed the same for the considerations and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me the said C B, wife of said A B, to me well known as the party signing the foregoing conveyance, and in the absence of her said husband declared that she had, of her own free will, executed said deed and signed and sealed the relinquishment of dower and homestead in said deed for the consideration and purposes therein contained and set forth, without compulsion or undue influence of her husband.

Witness my hand as such this _____ day of _____, 19—.

G H, Notary Public

By unmarried man or woman, or married woman

State of Arkansas, County of _____, ss.

Before me, G H, a notary public within and for said county and state, personally appeared on this _____ day of _____, 19—, A B, to me well known as the party grantor in the foregoing deed, and acknowledged that she (*or* he) executed the same for the consideration and purposes therein mentioned and set forth. And I do so certify.

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

* Proof by subscribing witness

State of Arkansas, County of _____, ss.

Be it remembered, that on this _____ day of _____, 19____, before me, G H, a notary public in and for the county aforesaid, personally appeared E F, one of the subscribing witnesses to the foregoing deed, to me personally well known, who, being by me first duly sworn, on his oath stated that he saw A B, grantor in said deed, subscribe said deed on the day of its date (*or* that the said A B, grantor in said deed, acknowledged in his presence, on the _____ day of _____, 19____, that he had subscribed and executed said deed), for the uses, purposes and consideration therein expressed, and that he and J K, the other subscribing witness, subscribed the same as attesting witnesses at the request of said grantor.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such notary public at the county aforesaid, this _____ day of _____, 19____.

G H, Notary Public

Proof of handwriting of grantor and subscribing witness

State of Arkansas, County of _____, ss.

Be it remembered, that on this _____ day of _____, before me, G H, a notary public in and for the county aforesaid, came J K and L M, and upon their oaths stated that the signatures of A B, the grantor in the within and foregoing deed, and of E F, a witness thereto, are genuine, and are in the handwriting of the said A B and E F respectively.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such notary public at the county aforesaid, this _____ day of _____, 19____.

G H

By husband and wife; deed of land of wife

State of Arkansas, County of _____, ss.

On this _____ day of _____, before me, G H, a notary public, appeared in person A B and C B, his wife, to me personally well known (*or* who being unknown to me were proved, etc.), as the persons whose names appear on the within and foregoing deed of conveyance as the parties grantor; and the said A B stated that he had executed the same for the consideration and purposes therein mentioned and set forth; and also voluntarily appeared before me the said C B in the absence of her said husband and declared that she had of her own free will executed the same for the consideration and purposes therein mentioned

and set forth, without compulsion or undue influence of her said husband.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such notary public, in the county of _____, on the _____ day of _____, 19—.

G H

By corporation (§ 1836)

State of Arkansas, County of _____, ss.

On this _____ day of _____, 19—, before me, G H, a notary public (*or before any officer within this state or without the state now qualified under existing law to take acknowledgments*) duly commissioned, qualified and acting, appeared in person the within named _____ and _____ (*being the person or persons authorized by said corporation to execute such instrument, stating their respective capacities in that behalf*), to me personally well known, who stated that they were the _____ and _____ of the _____, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 165. California.¹³

Officers authorized to take

Within the state. At any place within the state the proof or acknowledgment of instruments may be made before a justice or clerk of the supreme court, or a judge of a superior court (§ 1180); within the city, county, township, or district for which the officer was elected or appointed, the proof or acknowledgment may be made before (1) a clerk of a court of record; (2) a county recorder; (3) a court commissioner; (4) a notary public; (5) a justice of the peace. (§ 1181)

Elsewhere in the United States acknowledgments may be made before a justice, judge, or clerk of a court of record of the United States, or of any justice, judge or clerk of a court of record of the United States, or of any state, or a notary public, a commissioner appointed by the governor for that purpose, or any other officer

¹³ References in parentheses are to Civil Code of 1937.

of the state where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. (§ 1182)

Without the United States acknowledgments may be made before (1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made, (2) a consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made, (3) a judge of a court of record of the country where the proof or acknowledgment is made, (4) a commissioner appointed by the governor for the purpose, or (5) a notary public. (§ 1183)

A legally appointed deputy of any officer authorized to take acknowledgments may take acknowledgments in the name of his principal. (§ 1184)

Authentication of officer's authority

When an acknowledgment is taken without the state in accordance with the laws of the place where the acknowledgment is made, "the certificate of the clerk of a court of record of the county or district, where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk." (§ 1189)

Where no certificate is required the officer should add the title of his office after his signature.

Witnesses

→ None is required if instrument is acknowledged, otherwise two. (§§ 1195, 1198)

* Where the signature is by mark two witnesses are required in addition to acknowledgment. (§ 14)

Seal

Is not required except in the case of corporations (§§ 1628, 1629); but officers having official seals must affix them. (§ 1193)

Married women

Must join to release homestead; but not otherwise as dower and curtesy are abolished. (§§ 173, 1242)

General form (§ 1189)

State of California, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared A B, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.

G H, Notary Public

→ **Acknowledgment by corporation** (§ 1190)

State of California, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared A B, known to me (or proved to me on the oath of _____) to be the president (or the secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

G H, Notary Public

→ **Acknowledgment by attorney in fact** (§ 1192)

State of California, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared C D, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument as the attorney in fact of A B, and acknowledged to me that he subscribed the name of A B thereto as principal, and his own name as attorney in fact.

G H, Notary Public

§ 166. Colorado.¹⁴**Officers authorized to take**

Within the state acknowledgments may be made before any judge, clerk or deputy clerk of a court of record, the clerk and recorder of a county, or his deputy, a notary public, each of whom must certify the acknowledgment under his official seal; a justice of the peace within his county. (§ 4891)

Elsewhere in the United States acknowledgments may be made before the secretary of any state or territory, the clerk of a court of record of any state, territory, or of the United States, having a seal, a notary public, a commissioner of deeds appointed under the laws of the State of Colorado, each of whom must certify the acknowledgment under his official seal, any officer of another state or territory authorized to take acknowledgments by the laws of

¹⁴ References in parentheses are to Compiled Laws of 1921.

such state or territory, whose official character, authority, and signature must be certified under seal by the clerk of a court of record of the county, city or district where he resides.

Without the United States acknowledgments may be made before any judge, clerk or deputy clerk of a court of record having a seal, the chief magistrate or other chief executive officer of any province, colony, island possession or bailiwick, or the mayor or chief officer of a city or town, having a seal, or any ambassador, minister, consul, vice consul, consular agent, vice consular agent, charge d'affaires, vice charge d'affaires, commercial agent, vice commercial agent, or any diplomatic, consular or commercial agent, or deputy thereof of the United States or of any other government, appointed to reside in the foreign country where the acknowledgment is made, each of whom must certify the acknowledgment under his seal. (§ 4891)

Authentication of officer's authority

In addition to his seal a notary public must state the date of the expiration of his commission.

Witnesses

None required if the instrument is acknowledged; if not acknowledged, one witness. (§ 4901)

Seal

None required. (§ 4883)

Married women and dower

Dower and curtesy are abolished (§ 5151); but both husband and wife must join in a conveyance or encumbrance of the homestead, which may be by one instrument in writing signed by both or by separate instruments in writing, and no special form of acknowledgment shall be necessary. (§ 5929)

The person executing an instrument must be personally known to the officer, or must prove his identity by one credible witness known to the officer. But it is not necessary to state such evidence in the certificate. (§ 4899)

General form (§ 4899)

State of Colorado, County of _____, ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by _____.

Witness my hand and official seal.

G H, Notary Public

My commission expires _____.

Another form (§ 4882)

State of Colorado, County of _____, ss.

I, G H, a notary public in and for said county, in the state aforesaid, do hereby certify that _____, who _____ personally known to me to be the person— whose name— _____ subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that _____ signed, sealed and delivered the said instrument in writing as _____ free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and _____ seal, this _____ day of _____, 19—.

G H, Notary Public

My commission expires _____.

Acknowledgment by corporation

State of Colorado, County of _____, ss.

I, G H, a notary public in and for said _____ county, in the state aforesaid, do hereby certify that _____ and _____, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument in writing as *president* and *secretary*, respectively, of the _____, a corporation, and who are personally known to me to be such officers, respectively, appeared before me this day in person and severally acknowledged that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said seal was thereunto affixed by the authority of said corporation; that the name of said corporation was, and their names as *president* and *secretary*, respectively, thereof were, subscribed to said instrument by like authority; that said _____ is the *president* of said corporation and said _____ is the *secretary* thereof; that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and _____ seal, this _____ day of _____, 19—.

G H, Notary Public

My commission expires _____.

§ 167. Connecticut.¹⁵**Officers authorized to take**

Within the state acknowledgments may be made before a judge of a court of record of the state or United States, a clerk of the

¹⁵References in parentheses are to General Statutes of 1930.

superior, common pleas or district court, justice of the peace, commissioner of the superior court, notary public, either with or without his official seal, town clerk or assistant town clerk.

Elsewhere in the United States acknowledgments may be made before a commissioner appointed by the governor of this state and residing therein, or any officer authorized to take acknowledgments in the state or territory where the same is made.

Without the United States acknowledgments may be made before any ambassador, minister, charge d'affaires, consul, vice consul, deputy consul, consul general, vice consul general, deputy consular general, consular agent, vice consular agent, commercial agent, or vice commercial agent of the United States, representing or acting as agent of the United States in such foreign country, or before any notary public, or justice of the peace in such foreign country; but no officer shall have power to take such acknowledgment except within the territorial limits in which he may perform the proper duties of his office. (§ 5003)

Authentication of officer's authority

No certificate of authentication is required, except to acknowledgments before justices of the peace, and before notaries not having a seal.

Witnesses

Two are required. (§ 5003)

Seal

A seal is required. (§ 5003)

Married women and dower

If marriage occurred prior to April 20, 1877, wife must join to release dower; but as to marriages since said time, there is no dower or curtesy. (§§ 5156, 5157)

To release homestead, husband or wife of its owner must join. (§ 5042)

General form

State of Connecticut, ——— County, ss.

———, 19—.

Personally appeared before me, A B, the signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

Witness my hand and seal of office.

G H, Notary Public

(SEAL)

By corporation

State of Connecticut, --- County, ss.

_____, 19__.

Personally appeared before me the _____ company, by _____, its president, and _____, its secretary, signer and sealer of the foregoing instrument, and acknowledged the same to be their free act and deed individually, and the free act and deed of said _____ (*name of corporation*), before me.

Witness my hand and seal of office.

(SEAL)

G H, Notary Public

By husband and wife

State of Connecticut, _____ County, ss.

_____, 19__.

Personally appeared before me A B and C B, his wife, the signers and sealers of the foregoing instrument and severally acknowledged the same to be their free act and deed, before me.

Witness my hand and seal of office.

(SEAL)

G H, Notary Public

§ 168. Delaware.¹⁶**Officers authorized to take**

Within the state acknowledgments may be made in the superior court, or before the chancellor or any judge, or notary public, or before two justices of the peace for the same county, or before the judge of the municipal court of the city of Wilmington or before the mayor of the city of Wilmington. (§ 3660)

Without the state acknowledgments or proofs may be made before any consul general, consul, vice consul, consular agent, or commercial agent of the United States duly appointed in any foreign country at the places of their respective official residence; before the judge of any district or circuit court of the United States, or the chancellor or any judge of a court of record of any state, territory or country; or the mayor or chief officer of any city or borough, certified under the hand of such chancellor, judge, mayor or officer, and the seal of his office, court, city or borough; a commissioner appointed by the governor; acknowledgments may also be taken in open court, certified under the hand of the clerk and seal of the clerk and seal of the court. Acknowledgments may

¹⁶ References in parentheses are to Revised Code of 1935.

also be made before a notary public of any state or territory, or of the District of Columbia. (§ 3670)

Authentication of officer's authority

No certificate of authentication is required, the official seal of the officer or court being sufficient. (§ 3670)

Witnesses

None necessary if instrument is acknowledged; otherwise one or more. (§ 3660)

Seal

A scroll is sufficient.

Married women and dower

Wife must join to release dower; separate examination required. Husband must join in wife's deed to bar curtesy. (§§ 3661, 3731)

By husband and wife

State of Delaware, ——— County, ss.

Be it remembered, that on this ——— day of ———, 19—, personally came before me, G H, notary public for the state of Delaware, A B and C B, his wife, parties to this indenture (*or instrument*), known to me personally (*or proved upon the oath of ———*) to be such, and severally acknowledged this indenture (*or instrument*) to be their act and deed; and the said C B, being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture (*or instrument*) willingly, without compulsion, or threats, or fear of her husband's displeasure.

Given under my hand and seal of office the day and year aforesaid.

(SEAL)

G H, Notary Public

By corporation

State of Delaware, ——— County, ss.

Be it remembered, that on this ——— day of ———, 19—, personally came before me, G H, a notary public, ———, president of the ——— (*name of corporation*), a corporation of the state of ———, party to the foregoing indenture (*or instrument*), known to me personally (*or proved on the oath of ———*) to be such, and acknowledged said indenture to be his act and deed and the act and deed of said corporation; that the signature of the said president is his own proper handwriting, and, being by me duly sworn, deposed and said that he is the president of said

———; that the seal affixed to said indenture (*or* instrument) is the common or corporate seal of the said corporation; and that his act of signing, sealing, executing, acknowledging and delivering said indenture was duly authorized by resolution of the directors (*or* trustees) of said corporation, and that he by like authority subscribed his name thereto as president.

Given under my hand and seal of office the day and year aforesaid.

(SEAL)

G H, Notary Public

§ 169. District of Columbia.¹⁷

Officers authorized to take

Within the District of Columbia acknowledgments may be made before any judge of any of the courts of said district, the clerk of the supreme court of the district, or any justice of the peace or notary public, or the recorder of deeds of said district. (§ 493)

Elsewhere in the United States acknowledgments may be made before any judge of a court of record and of law, or any chancellor of a state, any judge or justice of the supreme, circuit or territorial courts of the United States, any justice of the peace or notary public. (§ 495)

Without the United States acknowledgments may be made before any judge or notary public, or before any secretary of legation or consular officer, or acting consular officer of the United States; as such consular officer is described in § 1674, Rev. Stats. of the United States. (§ 496)

Authentication of officer's authority

A certificate of acknowledgment, made in the United States without the District of Columbia, by any officer of a state or territory not having a seal, must be "accompanied by the certificate of the register, clerk, or other public officer that the officer taking the acknowledgment was in fact the officer he professed to be." (§ 495)

When an acknowledgment is made in a foreign country before any other officer than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment must be certified in the manner prescribed for officers of a state or territory not having a seal. (§ 496)

Witnesses

One is customary.

¹⁷ References in parentheses are to Code of 1925.

Seal

A seal is required. (§ 492)

Married women and dower

Wife may release dower by joining in deed of husband or by separate deed. (§ 494) Husband is entitled to an estate by curtesy. (§ 1159)

General form (§ 493)

United States of America, District of Columbia, to wit:

I, G H, a notary public in and for the District of Columbia, do hereby certify that _____, party to a certain deed bearing date on the _____ day of _____, and hereto annexed, personally appeared before me in said district, the said _____ being personally well known to me as (*or* proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this _____ day of _____, 19—.

(SEAL)

G H

By husband and wife

United States of America, District of Columbia, to wit:

I, G H, a notary public in and for the District of Columbia, do hereby certify that A B and M B, husband and wife, parties to a certain deed bearing date on the _____ day of _____, and hereto annexed, personally appeared before me in said district, the said A B and M B being personally well known to me as (*or* proved by the oath of credible witnesses to be) the persons who executed the said deed, and the said A B acknowledged the same to be his act and deed; and the said M B, being by me examined privately, apart from her said husband, the said deed being by me fully explained to her, acknowledged the same to be her act and deed, and that she willingly signed, sealed and delivered the same.

Given under my hand and seal this _____ day of _____, 19—.

(SEAL)

G H

§ 170. Florida.¹⁸**Officers authorized to take**

Within the state acknowledgments may be made before any judge, clerk or deputy clerk of any court of record, notary public, a United States commissioner, or justice of the peace. The certificate of acknowledgment must be under the seal of the court or officer.

¹⁸ References in parentheses are to Compiled General Laws of 1927.

Elsewhere in the United States acknowledgments may be made before a commissioner of deeds appointed by the governor of Florida, or before a judge or clerk of any court of the United States, or of any state, territory or district, having a seal; a notary public or justice of the peace, master in chancery, register or recorder of deeds, having an official seal. The certificate of acknowledgment must be under the official seal of the court or officer.

Without the United States acknowledgments or proofs may be made before a commissioner of deeds appointed by the governor of Florida to reside in a foreign country, or before a notary public having an official seal, or before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice consul, consular agent or any other diplomatic or consular agent of the United States appointed to reside in such country, or a military or naval officer authorized by the laws or articles of war of the United States to take acknowledgments. The certificate of acknowledgment must be under the seal of the officer. (§ 5699)

Authentication of officer's authority

No certificate of authentication is required. The official seal of the officer must be affixed.

Within the state, a notary public must add to his official signature a statement of the time of the expiration of his commission in the following form: "My commission expires ——." (§ 485)

Witnesses

Two are required. (§ 5660)

Seal

A seal is required. (§ 5660)

Married women and dower

Wife should join in deed of husband to release dower. Separate examination required. Husband must join in wife's deed. (§§ 5674, 5676)

By unmarried person

State of Florida, County of ——, ss.

On this day personally appeared before me, G H, a notary public, A B, to me well known as (*or to me satisfactorily proved to be*) the person described in and who executed the foregoing instrument, and acknowledged that he executed the same for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and official seal at _____, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My commission expires _____.

By husband and wife

State of Florida, County of _____, ss.

On this day personally appeared before me, G H, a notary public, A B and M B, his wife, to me well known (*or to me satisfactorily proved to be*) the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same for the uses and purposes therein expressed. And the said M B, wife of the said A B, on a private examination by me, separate and apart from her husband, acknowledged that she did execute the same freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband, for the purpose of renouncing and relinquishing all her rights, title, dower and interest, either legal or equitable, in and to the lands in the said instrument described.

In witness whereof, I have hereunto set my hand and official seal at _____, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My commission expires _____.

Proof by subscribing witness

State of Florida, County of _____, ss.

On this day personally appeared before me, E F, whose name is affixed as a subscribing witness to the foregoing deed between A B and C D, who, being duly sworn, did depose and say that the said A B duly signed, sealed and delivered the foregoing deed to the said C D as his free and voluntary act and deed, in the presence of the deponent and also in the presence of J K, the other subscribing witness to said deed, who then, at the request of the said A B (*grantor*), duly signed and attested the same in the presence of the deponent and of the said A B, the grantor.

In witness whereof, I have hereunto set my hand and official seal at _____, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My commission expires _____.

§ 171. Georgia.¹⁹

Officers authorized to take

Within the state acknowledgments may be made before a judge of a court of record, including a judge of a municipal court, or a

¹⁹ References in parentheses are to Code of 1935.

justice of the peace, or notary public, or clerk of the superior court, within the county for which they are appointed. (§ 29-406)

Without the state acknowledgments may be made before a commissioner of deeds for the state of Georgia, or consul or vice consul of the United States, the certificate of these officers under their seals being evidence of the fact, or by a judge of a court of record in the state where executed with a certificate of the clerk under the seal of such court of the genuineness of the signature of such judge, or by a clerk of a court of record under the seal of the court, or by a notary public of the state and county where executed with his seal of office attached, or if he has no seal, then his official character must be certified by a clerk of a court of record of the county of the residence of the notary. (§ 29-409)

Witnesses

Two are required. (§ 29-409)

Seal

A scrawl is sufficient. (§§ 29-410, 102-103)

Proof by subscribing witness

State of Georgia, County of _____, ss.

Before me, G H, a notary public, personally came E F, to me known to be the individual whose signature is affixed to the foregoing deed as one of the witnesses thereto, who being sworn says that he was present at the time when said deed was executed; that he saw the same signed, sealed and delivered by A B, whose signature is thereto affixed as grantor, for the purposes therein expressed; that J K, the other subscribing witness thereto, was likewise present at said time, and witnessed said execution of said deed; and that he, the said E F, and the said J K then and there signed the same as attesting witnesses.

E F

Sworn to and subscribed before me this _____ day of _____, 19—.

G H, Notary Public

Acknowledgment

State of Georgia, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared in person A B, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he signed, sealed and delivered the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand as such notary public, in the county of _____, on the _____ day of _____, 19—.

G H

If the grantor is unknown to the officer, instead of the words "to me personally well known as the person, etc.," say "who being unknown to me, was proved to my satisfaction to be the identical _____, whose name appears upon the within and foregoing deed as the party grantor, by the oath of _____ and _____, witnesses, sworn and examined by me as to such identity."

§ 172. Idaho.²⁰

Officers authorized to take

Within the state the proof or acknowledgment of deeds may be made before a justice or clerk of the supreme court, or a notary public, or the secretary of state, at any place within the state (§ 54-701); and within the city, county or district for which the officer was elected or appointed, before (1) a judge or clerk of a court of record, (2) a county recorder, or (3) a justice of the peace. (§ 54-702)

Elsewhere in the United States and within the jurisdiction of the officer, acknowledgments may be made before either (1) a justice, judge or clerk of any court of record of the United States, (2) a justice, judge or clerk of any court of record of any state or territory, (3) a commissioner appointed by the governor of this state for that purpose, (4) a notary public, (5) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. (§ 54-703)

Without the United States acknowledgments may be made before (1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made, (2) a consul or vice consul of the United States, resident in the country where the proof or acknowledgment is made, (3) a judge of a court of record of the country where the proof or acknowledgment is made, (4) commissioners appointed for such purposes by the governor of the state pursuant to statute, (5) a notary public. (§ 54-704)

Authentication of officer's authority

No certificate of authentication is necessary; the signature followed by the name of the office and seal of the officer being sufficient (§ 54-715); except that an acknowledgment made before a

²⁰ References in parentheses are to Code of 1932.

justice of the peace and used in a county other than that in which he resides must be accompanied by a certificate under the hand and seal of the recorder of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the recorder is acquainted with his handwriting and believes that the signature to the original certificate is genuine. (§ 54-716)

Witnesses

Required only when the instrument is not acknowledged; one is sufficient in such case. (§ 54-717)

Seal

Not required except in the case of corporations. (§§ 28-107, 28-108)

Married women and dower

There is no dower or curtesy; but all property acquired after marriage is community property and both husband and wife must join in conveyances thereof. (§§ 31-907, 31-913, 31-915) Separate acknowledgment of wife not required. (§ 54-707) Both husband and wife must join to convey homestead. (§ 54-1006)

General form (§ 54-709)

State of Idaho, County of _____, ss.

On this _____ day of _____, in the year 19—, before me, G H, a notary public, personally appeared A B, known to me (*or* proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (*or* they) executed the same.

(SEAL)

G H, Notary Public

By corporation (§ 54-710)

State of Idaho, County of _____, ss.

On this _____ day of _____, in the year 19—, before me, G H, a notary public, personally appeared A B, known to me (*or* proved to me on the oath of _____) to be the president or vice-president (*or* secretary or assistant secretary) of the corporation that executed the instrument, and acknowledged to me that such corporation executed the same.

(SEAL)

G H, Notary Public

By attorney in fact (§ 54-711)

State of Idaho, County of _____, ss.

On this _____ day of _____, in the year 19—, before me, G H, a notary public, personally appeared L M, known to me (*or*

proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of A B, and who acknowledged to me that he subscribed the name of A B thereto as principal and his own name as attorney in fact.

(SEAL)

G H, Notary Public

§ 173. Illinois.²¹

Officers authorized to take

Within the state acknowledgments may be made before “a master in chancery, notary public, United States commissioner, county clerk, justice of the peace, or any court of record having a seal, or any judge, justice, clerk or deputy clerk of any such court. When taken before a notary public or United States commissioner, the same shall be attested by his official seal; when taken before a court or the clerk thereof, or a deputy clerk thereof, the same shall be attested by the seal of such court; and when taken before a justice of the peace there shall be added the certificate of the county clerk under his seal of office that the person taking such acknowledgment or proof was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands mentioned in the instrument are situated, no such certificate shall be required.”

Elsewhere in the United States or its dependencies, acknowledgments may be “before a justice of the peace, notary public, master in chancery, United States commissioner, commissioner to take acknowledgments of deeds, mayor of city, clerk of a county, or before any judge, justice, clerk or deputy clerk of the supreme, circuit or district court of the United States, or before any judge, justice, clerk or deputy clerk, prothonotary, surrogate, or registrar, of the supreme, circuit, superior, district, county, common pleas, probate, orphan’s or surrogate’s court of any of the states, territories or dependencies, of the United States. In any dependency of the United States such acknowledgment or proof may also be taken or made before any commissioned officer in the military service of the United States. When such acknowledgment or proof is made before a notary public, United States commissioner or commissioner of deeds, it shall be certified under his seal of office. If taken before a mayor of a city it shall be certified under the seal of the city; if before a clerk, deputy clerk, prothonotary, registrar, or surrogate, then under the seal of his court; if before a justice of the peace or a master in chancery, there shall be added

²¹ References in parentheses are to Revised Statutes of 1937.

a certificate of the proper clerk under the seal of his office setting forth that the person before whom such proof or acknowledgment was made was a justice of the peace or master in chancery at the time of taking such acknowledgment or proof. An acknowledgment or proof of execution of any instrument aforesaid may be made in conformity with the laws of the state, territory, dependency, or district where it is made; provided, that if any clerk of any court of record within such state, territory, dependency or district shall, under his hand and the seal of such court, certify that such acknowledgment or proof was made in conformity with the laws of such state, territory, dependency or district, or it shall so appear by the laws of such state, territory, dependency or district, such instrument or a duly proved or certified copy of the record of such deed, mortgage or other instrument relating to real estate heretofore or hereafter made and recorded in the proper county may be read in evidence as in other cases of such certified copies."

Without the United States acknowledgments may be made "before any court of any republic, dominion, state, kingdom, empire, colony, territory, or dependency having a seal, or before any judge, justice or clerk thereof, or before any mayor or chief officer of any city or town having a seal, or before a notary public, or commissioner of deeds, or any ambassador, minister or secretary of legation or consul of the United States or vice consul, deputy consul, commercial agent or consular agent of the United States in any foreign republic, dominion, state, kingdom, empire, colony, territory, or dependency attested by his official seal, or before any officer authorized by the laws of the place where such acknowledgment or proof is made to take acknowledgments of conveyances of real estate or to administer oaths in proof of the execution of conveyances of real estate. Such acknowledgments to be attested by the official seal, if any, of such court or officer, and in case such acknowledgment or proof is taken or made before a court or officer having no official seal, a certificate shall be added by some ambassador, minister, secretary of legation, consul, vice consul, deputy consul, commercial agent or consular agent of the United States, residing in such republic, dominion, state, kingdom, empire, colony, territory, or dependency under his official seal, showing that such court or officer was duly elected, appointed, or created and acting at the time such acknowledgment or proof was made." (c. 30, § 19)

Witnesses

None are required if instrument is acknowledged.

Seal

A seal is required, but a scroll is sufficient. (c. 29, § 1)

Married women and dower

Wife should join in deed of husband to release dower. Separate acknowledgment not required. (c. 30, §§ 17, 18, 19) Wife must join also to convey interest in homestead. (c. 30, § 26)

General form (c. 30, § 25)

State of Illinois, County of _____, ss.

I, G H, a notary public, do hereby certify that A B, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By corporation

State of Illinois, County of _____, ss.

I, G H, a notary public, do hereby certify that A B, personally known to me to be the president (*or other officer*) of _____ (*name of corporation*), and _____, personally known to me to be the secretary (*or other officer*) of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such president and secretary (*or other officers*) they signed and delivered the said instrument, and caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act and the free and voluntary act of said _____ (*name of corporation*) for the uses and purposes therein set forth, and that they were duly authorized to execute and deliver the same, as aforesaid, by resolution of the board of directors of said corporation.

Given under my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Proof by subscribing witness

State of Illinois, County of _____, ss.

I, G H, a notary public, do hereby certify that on this _____ day of _____, before me personally appeared E F, personally known to me (*or proved to me by* _____, a credible witness.

under oath) to be the person whose name appears subscribed to the foregoing deed as a witness of the execution thereof, who on oath testified that A B, whose name appears subscribed to said deed as grantor, is the real person who executed the same as grantor, and that he, E F, subscribed his name as a witness thereto in the presence and at the request of said A B; which is satisfactory proof to me of the due execution of said deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Release of homestead (c. 30, § 26)

State of Illinois, County of _____, ss.

I, G H, a notary public, do hereby certify that A B and E B, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 174. Indiana.²²

Officers authorized to take

Within the United States acknowledgments may be made before any judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, or mayor of a city in this or any other state, or a commissioner of deeds appointed in any other state by the governor of this state, or before any minister, charge d'affaires, or consul of the United States. (§ 56-123)

In foreign countries, acknowledgments may be made before any diplomatic or consular officer of the United States duly accredited, or any officer authorized by the laws of the country in which the acknowledgment is made to take acknowledgments. (§ 56-126)

Attestation of officer's authority

When the acknowledgment is made within the state in any county other than the one in which the instrument is required to be recorded and before an officer not having an official seal, the acknowledgment and signature of the officer must be certified by

²² References in parentheses are to Burns' Statutes of 1933.

the clerk of the circuit court of the county in which the officer resides, and attested by the seal of the court. (§ 56-124)

When the acknowledgment is made without the state but within the United States before an officer not having an official seal, the acknowledgment and signature of the officer must be certified by the clerk of any court of record of the county in which the officer resides, and attested by the seal of the court. (§ 56-125)

Without the United States when the acknowledgment is not attested by the seal of the officer, or is not made in the English language, the instrument must be accompanied by a certificate of an officer of the United States authorized to take acknowledgments, to the effect that it is duly executed according to the laws of such foreign country, that the officer certifying to the acknowledgment or proof had legal authority so to do, and the meaning of his certificate if the same is made in a foreign language, and that the signature of the officer to the certificate is genuine. (§ 56-126)

Witnesses

None required if instrument is acknowledged; otherwise one. (§ 56-123)

Authentication of officer's authority

None required, if the officer has an official seal which is affixed to the certificate of acknowledgment.

Seal

Necessary only when a seal is expressly required by statute. (§§ 56-103, 56-104)

Married women and dower

Dower and curtesy are abolished, but husband must join in a conveyance of the property of the wife. (§§ 6-2351, 56-110)

Separate acknowledgment not necessary. (§ 56-127)

General form (§ 56-129)

State of Indiana, _____ County, ss.

Before me, G H, a notary public, this _____ day of _____, A B (and M B, his wife) acknowledged the execution of the annexed deed (*or* mortgage).

Witness my hand and official seal.

(SEAL)

G H, Notary Public

My commission expires _____.

Proof by witness

State of Indiana, _____ County, ss.

Before me, G H, a notary public, this _____ day of _____, personally appeared E F, a competent witness of legal age, who, being by me first duly sworn, deposed and said: that he attested the execution and delivery of the foregoing deed as a subscribing witness (*or* that he saw the foregoing deed executed and delivered) and that the grantor, A B, was at said time of full age and of sound mind and memory.

Witness my hand and official seal.

(SEAL)

G H, Notary Public

My commission expires _____.

By corporation

State of Indiana, _____ County, ss.

Be it remembered, that on the _____ day of _____, 19____, before me, G H, a notary public, in and for the county and state aforesaid, personally appeared A B, president (*or other authorized officer*) of the _____ (*name of corporation*), and acknowledged the execution of the foregoing instrument on behalf of said corporation as the voluntary act and deed of said corporation for the uses and purposes therein set forth.

Witness my hand and official seal.

(SEAL)

G H, Notary Public

My commission expires _____.

§ 175. Iowa.²³**Officers authorized to take**

Within the state acknowledgments may be made before some court having a seal, or some judge or clerk thereof, or some county auditor or his deputy, or a justice of the peace within the county, or notary public within the county of his appointment, or in an adjoining county in which he has filed with the clerk of the district court a certified copy of his certificate of appointment. (§ 10085)

Elsewhere in the United States acknowledgments may be made before some court of record, or officer holding the seal thereof, or some commissioner appointed by the governor of Iowa, or some notary public, or justice of the peace. (§ 10086)

The acknowledgment may also be made before any officer authorized to take acknowledgments by the laws of the state or territory where the same is made. (§ 10088)

²³ References in parentheses are to Code of 1931.

Without the United States acknowledgments may be made before any ambassador, minister, secretary of legation, consul, vice consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country authorized to issue certificates under the seal of the United States; or any officer of a foreign country authorized by its laws to take acknowledgments. (§ 10091)

Authentication of officer's authority

Without the state and within the United States, when the acknowledgment is made before a judge, or a justice of the peace, or other officer authorized, by the laws of his state, to take acknowledgments, a certificate under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state or territory within which the acknowledgment was taken, under seal of his office, of the official character of said judge or justice, and of the genuineness of his signature, and in the case of an officer authorized by the laws of his state to take acknowledgments, certifying that he is so authorized and that the conveyance and acknowledgment are in due form of law, must accompany the certificate of acknowledgment. (§§ 10088, 10089)

No certificate of authentication need accompany acknowledgments made before a notary public, attested by his official seal. (§ 10087)

When an acknowledgment is taken without the United States before a foreign officer, the certificate of acknowledgment must be authenticated by an officer of the United States authorized to take acknowledgments, "whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of such officer to take acknowledgments and certify thereto, and of the genuineness of his signature and seal, if he have any." (§ 10093)

Witnesses

None required when instrument is acknowledged except to prove the identity of the grantor. (§§ 10094, 10095)

Seal

Not required. (§ 10098)

Married women and dower

Husband and wife must join in conveyances by the other to release statutory estate which takes the place of dower and curtesy. (§§ 10050, 10051)

Separate examination not required. (§ 10099)

Both must join to convey or encumber the homestead. (§ 10147)

General form (§ 10103)

State of Iowa, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) named in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) voluntary act and deed.

G H, Notary Public in and for said county

By attorney in fact (§ 10103)

State of Iowa, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and who acknowledged that he executed the same as the voluntary act and deed of said C D.

G. H., Notary Public in and for said county

By corporation (§ 10103)

State of Iowa, County of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the voluntary act and deed of said corporation (*or association*).

(SEAL)

G H, Notary Public in and for said county

(In case the corporation has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation, and that" and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

§ 176. Kansas.²⁴**Officers authorized to take**

Within the state acknowledgments may be made before some court having a seal, or some judge, justice or clerk thereof, or some justice of the peace, notary public, county clerk or register of deeds, or mayor or clerk of an incorporated city. (§ 67-211)

²⁴ References in parentheses are to General Statutes of 1935.

Without the state acknowledgments must be made before some court of record, or clerk or officer holding its seal, or before some commissioner appointed by the governor of Kansas, or before some notary public or justice of the peace, or before any consul of the United States resident in any foreign port or country. (§ 67-212)

Instruments acknowledged in any other state, territory or country in accordance with the laws of such state, territory or country, are valid. (§ 67-228)

Authentication of officer's authority

When the acknowledgment is taken before a justice of the peace without the state, it must be accompanied by a certificate of his official character, under the hand of the clerk of some court of record, to which the seal of said court shall be affixed. (§ 67-212)

A notary public should always affix his seal of office.

Witnesses

Not required if instrument is acknowledged. (§ 67-214)

Seal

Not required, except in the case of corporations. (§ 67-217)

Married women and dower

Dower and curtesy are abolished. Neither husband nor wife need join in deed of the other. (§ 22-127)

The homestead can not be conveyed without joint consent of husband and wife. (§ 60-3501)

General form

State of Kansas, County of _____, ss.

Be it remembered, that on this _____ day of _____, 19____, before me, G H, a notary public, duly commissioned in and for the county and state aforesaid, personally came A B, who is personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at _____, the day and year last above written.

(SEAL)

G H, Notary Public

My term expires _____.

By corporation

State of Kansas, County of _____, ss.

On this _____ day of _____, 19—, before me, G H, a notary public, personally came _____, president (*or other officer*) of _____ (*name of corporation*), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as president (*or other officer*) of _____ (*name of corporation*), and in behalf of said corporation acknowledged the execution of the same as his own voluntary act and deed and the voluntary act and deed of said corporation; and that he affixed the corporate seal of said corporation to said instrument, and that the same was so executed by authority of the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at _____, the day and year last above written.

(SEAL)

G H, Notary Public

My term expires _____.

By attorney in fact

State of Kansas, County of _____, ss.

Be it remembered, that on this _____ day of _____, 19—, before me, G H, a notary public, in and for the county and state aforesaid, came C D, who is to me personally known to be the attorney in fact of A B, grantor in the foregoing instrument of writing, and who executed the same in _____ name as such grantor, and who is to me personally known to be the same person who executed the foregoing instrument of writing as the attorney in fact of said A B, and he duly acknowledged the execution of the same for himself and for said A B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written.

(SEAL)

G H, Notary Public

My term expires _____.

§ 177. Kentucky.²⁵**Officers authorized to take**

Within the state acknowledgments may be made before a clerk of the county court or his deputy or a notary public. (§§ 501, 515)

Elsewhere in the United States acknowledgments may be made before the clerk of a court, or his deputy, under seal; a notary

²⁵ References in parentheses are to Statutes of 1936.

public, mayor of a city, secretary of state, a commissioner appointed by the governor of Kentucky, a justice of the peace, under his seal or the seal of his court, or a judge under the seal of his court. (§ 502)

Without the United States acknowledgments may be made before a foreign minister, consul, or secretary of legation of the United States, or by a notary public of the nation in which the acknowledgment is made, a secretary of foreign affairs under his seal of office, a judge or clerk of a superior court. (§ 503)

Authentication of officer's authority

None required beyond his seal of office. A notary public must state the date of the expiration of his commission.

Witnesses

Not necessary if instrument is acknowledged; otherwise two. (§ 501)

Seal

Not required. (§ 471)

Married women and dower

Husband and wife should join in each other's deed. Separate acknowledgment of wife not required. (§§ 505, 506, 2132)

By husband and wife

State of Kentucky, County of _____, ss.

I, G H, a notary public, do certify that this instrument of writing from C D and wife E D, was this day produced to me in my county by the parties, and acknowledged by the said C D and E D to be their act and deed respectively.

Given under my hand and seal of office this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My commission expires _____.

By corporation

State of Kentucky, County of _____, ss.

I, G H, a notary public, do certify that on the _____ day of _____, 19—, the foregoing instrument of writing was produced to me in my county by the parties thereto, and acknowledged by _____, as president, and _____, as secretary, of the _____ (*name of corporation*) a corporation party thereto, to be the act and deed of said corporation by them as president and secretary, respectively, and the seal of said corporation as affixed to said

instrument was attested and proved before me by said _____ as such secretary.

Given under my hand and seal this _____ day of _____, 19____.
(SEAL) G H, Notary Public

My commission expires _____.

Proof by subscribing witness

State of Kentucky, County of _____, ss.

I, G H, a notary public, do certify that this day came before me _____ and _____, the subscribing witnesses to the foregoing deed (*or other instrument*) by _____ to _____, which witnesses are personally known to me to be the same whose names are so written as witnesses, and being solemnly sworn by me in due manner, did severally declare on their oaths that the said _____ (*name of grantor*) did acknowledge this instrument to be his act and deed; that the signature thereto was made by him; that they know him to be the same person who is named as the grantor therein, and that they did subscribe said deed as witnesses by his request.

Given under my hand and seal of office this _____ day of _____, 19____.

(SEAL) G H, Notary Public
My commission expires _____.

§ 178. Louisiana.²⁸

Officers authorized to take

Within the state, a parish recorder, a notary public, the clerk of the supreme court or his deputy. (§ 6286)

Elsewhere in the United States, a commissioner appointed by the governor of Louisiana, or a notary public, or an officer authorized by the laws of the state where the acknowledgment is taken. (§ 6542)

Without the United States, an ambassador, minister, envoy or charge d'affaires of the United States, in the country to which he is accredited or before one of the following officers commissioned to act at the place where the acknowledgment is taken and having an official seal: any officer of the United States; a notary public; or a commissioner or other agent of this state having power to take acknowledgments to deeds. (§ 6544)

Authentication of officer's authority

No certificate of authentication is necessary where the acknowledgment is taken before a notary public, or commissioner for

²⁸ References in parentheses are to General Statutes of 1932.

Louisiana, or other officer having an official seal, whose official seals are affixed to the certificate of acknowledgment. (§§ 2019, 2031)

Witnesses

Two witnesses over the age of fourteen are required. The officer may not act as a witness. Where the person making the acknowledgment is blind three witnesses are necessary.

Seal

Not required.

Married women and dower

Wife need not join in conveyances of the property of husband. Husband should join in conveyance of property of wife except separate and paraphernal property. Separate acknowledgment of wife not required. (§ 6541)

Wife must join in waiver of homestead. (§ 3806)

By natural persons in their own right (§ 6540)

State of Louisiana, Parish (*or* County) of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public

Natural person by attorney in fact (§ 6540)

State of Louisiana, Parish (*or* County) of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person described in and who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public

By corporation (§ 6540)

State of Louisiana, Parish (*or* County) of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent*) of _____ (*name of corporation or association*); that the seal affixed to the foregoing instrument is the corporate seal of said corporation (*or* association), and that said instrument was executed in behalf of said corporation (*or* association) by authority of its board of direc-

tors (*or* trustees), and that A B acknowledged said instrument to be the free act and deed of said corporation (*or* association).

G H, Notary Public

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or association] and that," and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

§ 179. Maine.²⁷

Officers authorized to take

Within the state acknowledgments may be made before a justice of the peace, or notary public having a seal.

Elsewhere in the United States acknowledgments may be made before any clerk of a court of record having a seal, a notary public or commissioner appointed by the governor for the purpose, or a commissioner authorized in the state where the acknowledgment is taken.

Without the United States acknowledgments may be made before a United States minister, consul, or a notary public or commissioner appointed for the purpose by the governor. (c. 87, § 23)

Authentication of officer's authority

None required except the seal of the court or notary.

Witnesses

One required unless deed is acknowledged. (c. 87, § 28)

Seal

A seal is required.

Married women and dower

Dower and curtesy are abolished. (c. 89, § 8)

But to release rights of inheritance in the land conveyed, husband and wife should join in deed of the other. (c. 89, § 9; c. 87, § 20)

General form

_____, 19—

State of Maine, County of _____, ss.

Personally appeared the above-named _____ (*name of grantor*), and acknowledged the foregoing instrument to be his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

(SEAL)

G H, Notary Public

²⁷ References in parentheses are to Revised Statutes of 1930.

By corporation

_____, 19—

State of Maine, County of _____, ss.

Personally appeared the above-named _____ (*name of the corporation's officer or officers by whom the instrument is executed*) and acknowledged the foregoing instrument to be his (*or their*) free act and deed and the free act and deed of said _____ (*name of corporation*).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year aforesaid.

(SEAL)

G H, Notary Public

§ 180. Maryland.²⁸**Officers authorized to take**

Within the state, and in the county or city within which the real estate or any part of it lies, acknowledgments may be made before (1) a justice of the peace for such city or county, (2) a judge of the orphan's court of such city or county, (3) a judge of the circuit court for the county, (4) a judge of the supreme bench of Baltimore city, (5) a notary public.

Within the state but without the county or city within which the real estate or any part of it lies, acknowledgments may be made before (1) a notary public, (2) any judge of the circuit court for the circuit, or of the orphan's court of the county in which the grantor may be, (3) any judge of the supreme bench of Baltimore city or any judge of the orphan's court of said city, (4) any justice of the peace for the county or city where the grantor may be at the time of acknowledgment, the official character of the justice being certified to by the clerk of the circuit or superior court under his official seal. (Art. 21, §§ 2, 3)

Elsewhere in the United States acknowledgments may be made before (1) a notary public, (2) a judge of any court of the United States, (3) a judge of any court of any state or territory having a seal, (4) a commissioner of this state to take acknowledgments of deeds.

Without the United States acknowledgments may be made before an ambassador, minister, envoy, or charge d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken and having an official seal, viz: Any consular officer of the United States, a notary

²⁸ References in parentheses are to Bagby's Code of 1925.

public, or a commissioner or other agent of this state having power to take acknowledgments to deeds. (Art. 21, §§ 4, 5)

Authentication of officer's authority

Where the officer has an official seal, which is affixed, no further authentication is required.

Witnesses

One required. (Art. 21, § 10)

Seal

Seal or scroll is necessary. (Art. 21, § 10)

Married women and dower

Wife may release dower by joining in deed of husband or by separate deed. (Art. 45, § 12)

Separate examination not required. (Art. 21, § 71)

General form (Art. 21, § 70)

State of Maryland, _____ County, to wit:

I hereby certify that on this _____ day of _____, in the year _____, before the subscriber, G H, a notary public, personally appeared A B, and acknowledged the foregoing deed to be his act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year above written.

(SEAL)

G H, Notary Public

Taken out of state (Art. 21, § 72)

State of _____, _____ County, to wit:

I hereby certify that on this _____ day of _____, in the year _____, before the subscriber, G H, a notary public, personally appeared _____ (*here insert the name of the person making the acknowledgment*), and acknowledged the foregoing deed to be his act.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By corporation

State of Maryland, _____ County, to wit:

I hereby certify that on this _____ day of _____, 19—, before the subscriber, G H, a notary public, personally appeared _____, the president (*or other officer*) of the _____ (*name of corporation*) named in the foregoing instrument of writing, and acknowledged the same to be the act and deed of said _____ (*name of corporation*).

(If taken out of the state, add) ———.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal, this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Acknowledgment made abroad (Art. 21, § 5)

——— (Name of country.)

——— (Name of city, province or other political subdivision.)

Before the undersigned, ——— (naming the officer and designating his official title), duly commissioned (or appointed) and qualified, this day personally appeared at the place above named ——— (naming the person or persons acknowledging), who declared that he (she or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act.

Witness my hand and official seal this ——— day of ———, 19—.

——— (Name of officer.)

——— (Title.)

(SEAL)

§ 181. Massachusetts.²⁹

Officers authorized to take

Within the state acknowledgments may be made before a justice of the peace or notary public.

Elsewhere in the United States acknowledgments may be made before a justice of the peace, notary public, magistrate or commissioner appointed for the purpose by the governor, or any officer authorized by the laws of his state or territory to take acknowledgments.

Without the United States acknowledgments may be made before a justice of the peace, notary, magistrate, or commissioner, or before an ambassador, minister, consul, vice consul, charge d'affaires or consular officer or agent of the United States, accredited to the country where the acknowledgment is made. (c. 183, § 30)

Authentication of officer's authority

When an instrument is made without the state there must be attached a certificate of the secretary of state, or of the clerk of a court of record of the county in which such officer resides, or in which the acknowledgment is taken, under the seal of such state

²⁹ References in parentheses are to Annotated Laws of 1933.

or court, "stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized thereto in said state, and that said secretary of state or clerk of court is well acquainted with his handwriting and verily believes that the signature affixed to such certificate or proof or acknowledgment is genuine." (c. 183, §§ 33, 41)

Witnesses

None required if instrument is acknowledged, but one is customary. (c. 183, §§ 34, 39)

Seal

A seal is necessary. A wafer or impression in wax should be affixed. A scroll is not sufficient.

Married women and dower

Dower may be released by wife joining in the deed of her husband, or by her separate deed. Her separate acknowledgment is not necessary. Husband may release curtesy by joining in conveyance of wife's separate estate. (c. 183, § 31; c. 189, § 5; c. 209, § 1)

General form (c. 183)

State of Massachusetts, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me personally known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

(SEAL)

G H, Notary Public

By attorney in fact (c. 183)

State of Massachusetts, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument on behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

(SEAL)

G H, Notary Public

By corporation (c. 183)

State of Massachusetts, County of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn (*or* affirmed), did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*).

and that said instrument was signed and sealed in behalf of said corporation (*or* association) by authority of its board of directors (*or* trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or* association).

G H, Notary Public

(If the corporation has no seal the words "the seal affixed to said instrument is the corporate seal of said corporation and that" should be omitted and at the end of the affidavit should be added the words "and that said corporation has no corporate seal.")

Certificate of authentication of officer's authority (c. 183)

(Caption specifying the state, county or place where the authentication is made.)

I, _____, clerk of the _____ in and for said county, which court is a court of record having a seal (*or* I, _____, the secretary of state of such state or territory), do hereby certify that _____, by and before whom the foregoing acknowledgment (*or* proof) was taken, was, at the time of taking the same, a notary public (*or other officer*) residing (*or* authorized to act) in said county, and was duly authorized by the laws of said state (territory *or* district) to take and certify acknowledgments or proofs of deeds of land in said state (territory *or* district), and further that I am well acquainted with the handwriting of said _____ and that I verily believe that the signature to said certificate of acknowledgment (*or* proof) is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court (*or* state) this _____ day of _____, 19—.

(SEAL) _____

§ 182. Michigan.³⁰

Officers authorized to take

Within the state acknowledgments may be made before any judge, clerk or commissioner of a court of record, or before any notary public, justice of the peace, or master in chancery. (§ 13284)

Elsewhere in the United States acknowledgments may be made before any judge of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of his state, territory or district to take acknowledgments, or a commissioner appointed by the governor of Michigan for such purpose. (§ 13285)

³⁰ References in parentheses are to Compiled Laws of 1929.

Without the United States acknowledgments may be made before any notary public, minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul of the United States appointed to reside therein. (§ 11387)

Authentication of officer's authority

No certificate of authentication is required if the acknowledgment is taken before an officer having an official seal, which is affixed. (§ 13286)

But if taken before a justice of the peace or other officer not having an official seal, there must be annexed a certificate of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state. (§ 13286)

Witnesses

Two are required. (§ 13284)

Seal

A seal is necessary, but a scroll or word "seal" or letters "L. S." is sufficient. (§§ 13313, 13328)

Married women and dower

Wife may release dower by joining in deed of husband or by her separate deed. (§ 13080)

Separate examination not required. (§ 13331)

By natural persons in their own right (§ 13330)

(Caption specifying the state and place where the acknowledgment is taken.)

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public, _____ County, _____

My commission expires _____, 19—.

By attorney in fact (§ 13330)

State of Michigan, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public, _____ County, _____

My commission expires _____, 19—.

By corporation (§ 13330)

State of Michigan, County of _____, ss.

On this _____ day of _____, _____, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

(If the corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that," and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

Certificate of authentication of officer's authority (§ 13334)

(Caption specifying the state, territory or district and county or place where the authentication is made.)

I, _____, clerk of the _____ in and for said county, which court is a court of record, having a seal (*or I, _____, the secretary of state of such state or territory*), do hereby certify that _____, by and before whom the foregoing acknowledgment (*or proof*) was taken, was, at the time of taking the same, a notary public (*or other officer*) residing (*or authorized to act*) in said county, and was duly authorized by the laws of said state (*territory or district*) to take and certify acknowledgments or proof of deeds of land in said state (*territory or district*), and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment (*or proof*) is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court (*or state*) this _____ day of _____, 19—.

(SEAL) _____

§ 183. Minnesota.³¹**Officers authorized to take**

Within the state acknowledgments may be made before a judge or clerk or deputy clerk of any court of record, residing within

³¹ References in parentheses are to Mason's Statutes of 1927.

the state, including those of the district court of the United States and resident United States commissioners, a notary public, a justice of the peace, a register of deeds, a court commissioner, a county auditor or his deputy, a clerk or recorder of a town, village, borough or city, or a member of the Legislature. (§ 6973)

Elsewhere in the United States acknowledgments may be made before any judge or justice of the supreme or district courts of the United States, or of a court of record of any state, territory or district therein, the clerk or deputy clerk of any of said courts, any notary public, justice of the peace, within the territorial jurisdiction, or commissioner appointed by the governor. (§ 6977)

Without the United States acknowledgments may be made before any notary public, minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such foreign country, or their deputies or vice representatives. (§ 6979)

Authentication of officer's authority

If the officer before whom the acknowledgment is taken has no official seal, there must be attached a certificate from the secretary of state of the state, or clerk or other proper certifying officer of the court of record of the county in which the acknowledgment is taken. (§ 6978)

Witnesses

Two are required. (§ 8213)

Seal

Not required, except in the case of corporations. (§ 6933)

Married women and dower

Dower and curtesy are abolished (§ 8720), but husband should join in all deeds of wife's property (§§ 8196, 8618), and both husband and wife must join to encumber or convey the homestead. (§ 8340) Separate acknowledgment is not required. (§ 6972)

By natural persons in their own right (§ 6970)

State of Minnesota, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public

My commission expires _____.

Natural person acting by attorney (§ 6970)

State of Minnesota, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public

My commission expires _____.

By corporation (§ 6970)

State of Minnesota, County of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent*) of _____ (*name of corporation or association*); that the seal affixed to the foregoing instrument is the corporate seal of said corporation (*or association*), and that said instrument was executed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

My commission expires _____.

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that" and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

§ 184. Mississippi.³²**Officers authorized to take**

Within the state acknowledgments may be made before any judge of a United States court, any judge of the supreme or circuit court, any chancellor, any clerk of a court of record, or notary public, who shall certify the same under his seal of office; or any justice of the peace, or police justice, or mayor of any city, town or village, or member of the board of supervisors, whether the property conveyed be within his county or not. (§ 2136)

Elsewhere in the United States acknowledgments may be made before the chief justice or an associate justice of the supreme court of the United States, a circuit or district judge of the United States, or any other United States judge, or any judge or justice of the supreme or superior court of any state or territory, or any

³² References in parentheses are to Code of 1930.

justice of the peace, whose official character shall be certified under seal of some court of record of his county; a commissioner residing in such state appointed by the governor for the purpose, or a notary public or clerk of a court of record having a seal of office. (§ 2138)

Without the United States acknowledgments or proofs may be made before any court of record, the mayor or chief magistrate of any city, borough or corporation, in which the party or witness resides or may be, or a commissioner residing in the country, who may be appointed by the governor; or any ambassador, foreign minister, secretary of legation, or consul of the United States to the foreign country in which the party or witness resides or may be. The certificate must show that the party or witness was identified before the officer. (§ 2139)

Witnesses

None required if instrument is acknowledged, otherwise one. (§ 2146)

Seal

None required except in the case of corporations. (§ 3302)

Married women and dower

Dower and curtesy are abolished. (§ 1942) A wife may convey her property as if unmarried. (§ 1940) A deed or mortgage of the homestead must be executed by both husband and wife, whether owned by husband or wife. (§§ 1778, 1780) Separate examination of wife not required. (§ 2137)

General form (§ 2137)

State of Mississippi, County of _____, ss.

Personally appeared before me, G H, a notary public, the within-named A B, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Proof by subscribing witness (§ 2137)

State of Mississippi, County of _____, ss.

Personally appeared before me, G H, a notary public, C D, one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposes and says that he saw the within (*or above*) named A B, whose name is subscribed thereto, sign and deliver the same to the said E F (*or that he heard the*

said A B acknowledge that he had signed and delivered the same to the said E F); that he, this affiant, subscribed his name as a witness thereto in the presence of the said A B.

(SEAL)

G H, Notary Public

§ 185. Missouri.³³

Officers authorized to take

Within the state acknowledgments may be made before some court having a seal, or some judge, justice or clerk thereof, notary public, or some justice of the peace of the county in which the real estate conveyed or affected is situated. (§ 3021)

Elsewhere in the United States acknowledgments may be made before any notary public, any court of the United States, or of any state or territory having a seal, or the clerk of such court, or any commissioner appointed by the governor of this state to take acknowledgment of deeds. (§ 3021)

Without the United States acknowledgments may be made before any court of any state, kingdom or empire having a seal, or the mayor, or chief officer of any city or town, having an official seal, or any minister or consular officer of the United States, or notary public having a seal. (§ 3021)

The acknowledgment of persons engaged in the military or naval service of the United States may be taken before any officer above the grade of lieutenant or ensign. (§ 3023)

Authentication of officer's authority

No certificate of authentication is necessary; but an officer having an official seal must affix it. (§ 3027)

A notary public must give the date of the expiration of his commission.

Witnesses

None required if instrument is acknowledged; otherwise one. (§§ 3014, 3019, 3030)

Seal

Not required except in case of corporations. (§ 2957)

Married women and dower

Husband must join in deed of wife; and wife should join in deed of husband to release her dower. (§ 3015)

Her separate acknowledgment is not required. (§ 3029)

³³ References in parentheses are to Revised Statutes of 1929.

By natural persons acting in their own right (§ 3029)

State of Missouri, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public

My commission expires on the _____ day of _____, 19—.

Natural person acting by attorney (§ 3029)

State of Missouri, County of _____, ss.

On this _____ day of _____, before me appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of C D.

G H, Notary Public

My commission expires on the _____ day of _____, 19—.

By corporation (§ 3029)

State of Missouri, County of _____, ss.

On this _____ day of _____, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to the foregoing instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

My commission expires on the _____ day of _____.

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that" and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

§ 186. Montana.³⁴**Officers authorized to take**

Within the state acknowledgments may be made before a justice or clerk of the supreme court, or a judge of the district court.

³⁴ References in parentheses are to Revised Code of 1935.

Within the city, county or district for which the officer was elected or appointed acknowledgments may be made before (1) a clerk of a court of record, (2) a county clerk, (3) a notary public, (4) a justice of the peace, or a United States commissioner. (§§ 6905, 6906)

Elsewhere in the United States acknowledgments may be made within the jurisdiction of the officer before (1) a justice, judge or clerk of any court of record of the United States, (2) a justice, judge or clerk of any court of record of any state or territory, (3) a commissioner appointed by the governor for that purpose, (4) a notary public, (5) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take acknowledgments. (§ 6907)

Without the United States acknowledgments may be made before (1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is made, (2) a consul, vice consul, or consular agent of the United States, resident in the country where the acknowledgment is made, (3) a judge of a court of record of the country where the acknowledgment is made, (4) commissioners appointed for such purposes by the governor of the state, pursuant to special statutes, (5) a notary public. (§ 6908)

Deputies, appointed under authority of law by any of the above-mentioned officers, may take acknowledgments in the name of the officer. (§ 6909)

Authentication of officer's authority

Official seals must be affixed if required by laws of state or country where the acknowledgment is taken. (§ 6918)

The certificate of a justice of the peace, if used in a county other than that of his residence, must be authenticated by a clerk's certificate as to his signature and official character. (§ 6919)

Witnesses

Not required if instrument is acknowledged; otherwise one. (§ 6920)

Seal

Not required except in the case of corporations. (§§ 7524, 7525)

Married women and dower

Wife should join in deed of husband to release dower. (§ 5813)

Separate acknowledgment of wife is not required. (§ 6912)

Estate by curtesy is abolished. (§ 5812)

The deed or mortgage of a homestead must be signed by both husband and wife. (§ 6950)

General form (§ 6914)

State of Montana, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared _____, known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (*or they*) executed the same.

G H, Notary Public

By corporation (§ 6915)

State of Montana, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared _____; known to me (*or proved to me on the oath of _____*) to be the president (*or vice-president*) or secretary (*or assistant secretary*) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

G H, Notary Public

By attorney in fact (§ 6917)

State of Montana, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared _____, known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the within instrument as the attorney in fact of _____, and acknowledged to me that he subscribed the name of _____ thereto as principal, and his own name as attorney in fact.

G H, Notary Public

§ 187. Nebraska.³⁵

Officers authorized to take

Within the state acknowledgments may be made before a judge or clerk of any court, or some justice of the peace or notary public. No officer can take acknowledgments out of his territorial jurisdiction. (§ 76-203)

Elsewhere in the United States. An instrument may be executed and acknowledged or proved in accordance with the laws of Nebraska, or with the laws of the state, territory or district where executed. The acknowledgment may be taken before some court of record or officer holding the seal thereof, or before a

³⁵ References in parentheses are to Compiled Statutes of 1929.

commissioner to take acknowledgments of deeds, appointed by the governor of Nebraska, or before a notary public or justice of the peace. (§ 76-204)

Without the United States acknowledgments may be made before any notary public, or any minister plenipotentiary, minister extraordinary, or minister resident, charge d'affaires, commissioner, commercial agent, or consul of the United States. (§ 76-207)

Authentication of officer's authority

When taken within the United States outside of Nebraska, before a commissioner, notary public, or other officer using an official seal, no further authentication is necessary. But when taken before any other officer there must be attached a certificate of the clerk of a court of record, or other proper certifying officer of the county, district or state, under the seal of his office, certifying to the official character and signature of the officer, and that the instrument is executed according to the laws of such state, territory or district, if such is the case. (§ 76-206)

A notary public should state the date of the expiration of his commission.

No authentication is necessary where the acknowledgment is taken outside of the United States, except the seal of the notary public.

The other officers may certify acknowledgments under their hands. (§ 76-207)

Witnesses

At least one is required. (§ 76-201)

Seal

Not required. (§ 76-256)

Married women and dower

Dower and curtesy are abolished. (§ 30-104)

Husband and wife must join to execute an instrument of conveyance or encumbrance of homestead. (§ 40-104)

General form

State of Nebraska, County of _____, ss.

On the _____ day of _____, before me, G H, a notary public in and for said county, personally appeared _____ and _____, his wife, to me personally known (*or* by the oaths of _____ witnesses whose names are hereto subscribed satisfactorily proved) to be the identical persons described in, and whose names are affixed

to, the foregoing conveyance as grantors, and they severally acknowledged the same to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ———, in said county, the day and year last above written.

(SEAL)

G H, Notary Public

My commission expires ———.

By corporation

State of Nebraska, County of ———, ss.

On the ——— day of ———, before me, G H, a notary public in and for said county, personally appeared ———, ——— of the ——— company, a corporation, to me personally known (*or* by the oath of ———, a witness whose name is hereto subscribed, satisfactorily proved) to be the identical person whose name is affixed to the foregoing conveyance as the ——— of said corporation, and personally known (*or* by the oath of said witness satisfactorily proved) to be the ——— of said corporation, and acknowledged the same to be his voluntary act and the voluntary act of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ———, in said county, the day and year first above written.

(SEAL)

G H, Notary Public

My commission expires ———.

Proof by subscribing witness

State of Nebraska, County of ———, ss.

On this ——— day of ———, 19—, it satisfactorily appearing to me that the attendance of the said A B, the grantor in the foregoing conveyance, can not be procured in order to make acknowledgment thereof (*or* that the said A B, the grantor in the foregoing conveyance, is dead, or, having executed and delivered the foregoing conveyance, refuses to make acknowledgment thereof), before me, G H, a notary public in and for said county, personally appeared E F, to me personally known (*or* by the oath of ——— witnesses whose names are hereto subscribed, to me satisfactorily proved) to be the identical person whose name is subscribed to the foregoing conveyance as attesting witness, who, being first duly sworn on his oath, says that his place of residence is at ———, in the county of ———, and state of ———; that he set his name to the foregoing conveyance as a witness; that he knew A B, the grantor in said conveyance, and that he knew A B to be the iden-

tical person described therein and who executed the same, and saw him sign (*or* heard him acknowledge that he had signed) the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at _____, in said county, the day and year last above written.

(SEAL)

G H, Notary Public

My commission expires _____.

§ 188. Nevada.³⁶

Officers authorized to take

Within the state acknowledgments may be made before some judge or clerk of a court having a seal; a notary public or justice of the peace. When taken before a justice of the peace in a county other than that in which the real estate is situated, a clerk's certificate as to his signature and official character must be attached. (§ 1478)

Elsewhere in the United States acknowledgments may be made before some judge or clerk of any court of the United States, or of any state or territory, having a seal, a commissioner appointed by the governor of this state for that purpose, a justice of the peace. Acknowledgments before a justice of the peace must have attached the certificate of the clerk of a court of record of the county, having a seal, as to the official character of the justice, and the authenticity of his signature. (§ 1478)

Without the United States acknowledgments may be made before an ambassador, minister, envoy or charge d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or credited to act at the place where the acknowledgment is taken, and having an official seal, viz: Any consular officer of the United States, notary public, or a commissioner or other agent of this state having power to take acknowledgments to deeds. (§ 1478)

Witnesses

None required if acknowledged, and if grantor can write; otherwise one. (§§ 1485, 1493)

Seal

Not required. (§ 1553)

Married women and dower

Dower and curtesy are abolished. (§ 3361)

Deeds and mortgages of a homestead must be executed and acknowledged by both husband and wife, with separate acknowledgment of wife. (§ 3360)

³⁶ References in parentheses are to Compiled Laws of 1929.

General form (§ 1483)

State of Nevada, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, a notary public in and for _____ county, A B, known (*or proved*) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he (*or she*) executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

G H, Notary Public

By attorney in fact (§ 1483)

State of Nevada, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, a notary public in and for _____ county, A B, known (*or proved*) to me to be the person whose name is subscribed to the within instrument as the attorney in fact of C D, and acknowledged to me that he subscribed the name of the said C D thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

G H, Notary Public

By corporation (§ 1483)

State of Nevada, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, a notary public in and for _____ county, A B, known (*or proved*) to me to be the president (*vice-president or secretary or other duly authorized person executing the same on behalf of the corporation*) of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures, and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

G H, Notary Public

Where grantor is unknown to officer (§ 1484)

State of Nevada, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, a notary public in and for said county, A B, satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C D, a competent and credible witness, for that purpose by me duly sworn, and he, the said

A B, acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

G H, Notary Public

Acknowledgment made abroad (§ 1557)

_____ (*Name of country.*)

_____ (*Name of city, province or other political subdivision.*)

Before the undersigned _____ (*naming the officer and designating his official title*), duly commissioned (*or appointed*) and qualified, this day personally appeared at the place above named _____ (*naming the person or persons acknowledging*), who declared that he (*she or they*) knew the contents of the foregoing instrument, and acknowledged the same to be his (*her or their*) act.

Witness my hand and official seal this _____ day of _____, 19—.

_____ (*Name of officer.*)

_____ (*Title.*)

(SEAL)

§ 189. New Hampshire.³⁷

Officers authorized to take

Within the United States acknowledgments may be made before a justice, notary public, or commissioner. (c. 213, § 3)

Without the United States acknowledgments may be made before an ambassador, minister, envoy or charge d'affaires of the United States in the country to which he is accredited or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken, and having an official seal, viz: Any consular officer of the United States, a notary public, or a commissioner or other agent of this state having power to take acknowledgments of deeds. (c. 213, § 4)

Authentication of officer's authority

No certificate of authentication is required, except when the acknowledgment is taken before a justice of the peace outside of the state. In such case his official character must be certified to by the clerk of a court of record, or by the secretary of state.

Witnesses

One is required. (c. 213, § 3)

³⁷ References in parentheses are to Public Laws of 1926.

Seal

A seal is required. A scroll is not sufficient. (c. 213, § 3)

Married women and dower

Wife should join in deed of husband to release dower, and husband should join in deed of wife to release curtesy. (c. 288, § 4)

Both husband and wife must join to convey or encumber homestead. (c. 214, § 4)

General form

_____, 19—

State of New Hampshire, County of _____, ss.
 Personally appeared the above-named _____ and _____, his wife, and acknowledged the foregoing instrument to be their voluntary act and deed, this _____ day of _____, before me.
 (SEAL) G H, Notary Public

Acknowledgment made abroad

_____ (*Name of country.*)
 _____ (*Name of city, province or other political subdivision.*)
 Before the undersigned _____ (*naming the officer and designating his official title*), duly commissioned (*or appointed*) and qualified, this day personally appeared at the place above named _____ (*naming the person or persons acknowledging*), who declared that he (*she or they*) knew the contents of the foregoing instrument, and acknowledged the same to be his (*her or their*) act.
 Witness my hand and official seal this _____ day of _____, 19—.
 (SEAL) _____ (*Name of officer.*)
_____ (*Title.*)

§ 190. New Jersey.³⁸

Officers authorized to take

Within the state acknowledgments may be made before the chancellor, a justice of the supreme court, a master in chancery, a judge or clerk of the court of common pleas, a surrogate, a deputy surrogate, a notary public, commissioner of deeds, a deputy county clerk, a register of deeds, or an attorney at law of this state. (§ 46:14-6)

Elsewhere in the United States acknowledgments may be made before any justice of the United States supreme court or any circuit or district judge of the United States, a justice or judge of the supreme or superior court, or the chancellor of any state or

³⁸ References in parentheses are to Revised Statutes of 1937.

territory of the Union, or of the District of Columbia, a judge of the court of common pleas of any state, territory or district under the great seal of state; any foreign commissioner of deeds for New Jersey, under his official seal, a master of chancery for New Jersey, a mayor or other chief magistrate of any city, borough or corporation in any state, territory or district under the seal of such city, borough or corporation; or any officer authorized to take acknowledgments by the laws of the place where the same is taken. (§ 46: 14-7)

Without the United States acknowledgments may be made before any master in chancery for New Jersey, any public ambassador, minister, consul, vice consul, consular agent, charge d'affaires, or other representative of the United States at any foreign court or government, or before any court of law, or any notary public, mayor, or other chief magistrate of any city, borough, or corporation, certified in the manner such acts are usually authenticated. (§ 46: 14-8)

Authentication of officer's authority

When the acknowledgment is made in another state, territory or district before an officer authorized by its laws to take acknowledgments, his certificate of acknowledgment must be accompanied by a certificate under the great seal of such state, territory or district, or under the seal of some court of record of the county, that the officer before whom the same is taken was at such time authorized by its laws to take acknowledgments and proofs of deeds or conveyances. (§ 46: 14-7)

Witnesses

None required, if instrument is acknowledged; otherwise one.

Seal

Seal is not essential if deed recites that instrument is signed and sealed. (§ 46: 13-3)

Married women and dower

Husband and wife should join in deeds of the other to release curtesy and dower. Separate acknowledgment of wife not required. (§ 46: 14-1)

Both husband and wife must execute conveyance, encumbrance or lease of homestead. (§ 2: 26-121)

By husband and wife

State of New Jersey, County of _____, ss.

Be it remembered that on this _____ day of _____, 19____, before me, the subscriber, G H, a notary public, personally ap-

peared A B and M B, his wife, who I am satisfied are the grantors named in and who executed the within deed, and, I having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said M B, wife of the said A B, being by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of or from her said husband.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

(SEAL)

G H, Notary Public

Proof by subscribing witness

State of New Jersey, County of _____, ss.

Be it remembered that on this _____ day of _____, 19—, before me, G H, a notary public, personally appeared A B, who, being by me duly sworn according to law, on his oath says that he saw C D, the within-named grantor, sign, seal and deliver the within deed, as his voluntary act and deed, and that he, the said A B, subscribed his name to the same, at the same time, as an attesting witness.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

(SEAL)

G H, Notary Public

By corporation

State of New Jersey, County of _____, ss.

Be it remembered that on the _____ day of _____, 19—, before me, G H, a notary public, personally appeared E F, to me known, who, being by me duly sworn according to law, on his oath says: that he is the secretary (*or is acquainted with the seal*) of the corporation, the grantor named in the foregoing deed; that the seal affixed to the said deed is the corporate seal of the said _____ (*name of corporation*); that it was so affixed by order of the said _____ (*name of corporation*); that _____ is the president (*or other officer*) of the said _____ (*name of corporation*); that he saw the said _____ as such president (*or other officer*) sign the said deed and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the

said _____ (*name of corporation*) by its order, and that this deponent signed his name thereto, at the same time, as a subscribing witness.

E F

Subscribed and sworn to before me, the day and year above written.

G H, Notary Public

Certificate of authentication of officer's authority

State of _____, County of _____, ss.

I, _____, clerk of the _____ court, in and for the county of _____, in the state of _____, which court is a court of record, do hereby certify that _____, whose name is subscribed to the foregoing certificate of acknowledgment of _____, was, at the time of taking such acknowledgment, and now is, a _____ in and for the county of _____, in the state of _____, and as such _____ was, at the time of taking such acknowledgment, and now is, duly authorized by the laws of the state of _____ to take the acknowledgments and proofs of deeds and conveyances for lands, tenements and hereditaments lying and being in said state of _____, and further that I am well acquainted with the handwriting of such _____ and verily believe that the signature to said certificate of acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, the _____ day of _____, 19—.

(SEAL)

_____ (*Signature and title.*)

§ 191. New Mexico.³⁹

Officers authorized to take

Within the state acknowledgments may be taken before a clerk of the district court, a judge or clerk of the probate court, using the probate seal, a notary public, a justice of the peace, or a county clerk using the county clerk seal. (§ 1-108)

Elsewhere in the United States acknowledgments may be made before a notary public having a seal, a clerk of some court of record having a seal, or a commissioner of deeds duly appointed under the laws of this state.

Without the United States acknowledgments may be made before a minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is made, a consul general, consul, vice consul, deputy

³⁹ References in parentheses are to Statutes of 1929.

consul, or consular agent of the United States resident in the country where the acknowledgment is made, having a seal; or a notary public having a seal. (§ 1-110)

Witnesses

None required. (§ 118-119)

Seal

Not required except in the case of corporations. (§ 117-105)

Married women and dower

Separate acknowledgment of wife not required. A married woman signing a deed should be described in deed as the wife of grantor. (§ 1-113)

Joint deed of husband and wife necessary to convey or encumber homestead. (§ 48-118)

Natural persons acting in their own right (§ 1-112)

State of New Mexico, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B (*or* A B and C D), to me known to be the person (*or* persons) described in and who executed the foregoing instrument and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public

Natural person acting by attorney (§ 1-112)

State of New Mexico, County of _____, ss.

On this _____ day of _____, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public

By corporation (§ 1-112)

State of New Mexico, County of _____, ss.

On this _____ day of _____, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of such corporation and that" and add at the end of the affidavit clause the words "and that said corporation has no corporate seal.")

§ 192. New York.⁴⁰

Officers authorized to take

Within the state acknowledgments may be made at any place within the state before a justice of the supreme court, an official examiner of title or an official referee; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds. (§ 298)

Elsewhere in the United States acknowledgments may be made before (1) a judge of the supreme court, of the circuit court of appeals, or of the district court of the United States, (2) a judge of the supreme, superior or circuit court of a state, (3) a mayor of a city, (4) a commissioner appointed for the purpose by the governor of the state, (5) any officer of the state or territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, (6) any officer of the District of Columbia authorized by the laws of the United States to take acknowledgment or proof of deeds to be recorded in said district, (7) any officer authorized to authenticate certificates of acknowledgment or proof of deeds to be recorded in this state. (§ 299)

If the party executing the conveyance is or resides in Porto Rico or the Philippines and Cuba, or any other place over which the United States of America has or exercises sovereignty, control or protectorate, or, if the officer certifies that such party is enlisted or commissioned in the military or naval forces of the United States, either within or without the United States, acknowledgments may be made before (1) a judge or clerk of a court of record thereof, acting within his jurisdiction, (2) a mayor or other chief officer of a city, acting in such city, (3) a commissioner appointed for the purpose by the governor of this state and acting within his jurisdiction, (4) an officer of the United States regular army or volunteer service or national army or United States national guard or United States marine corps, of the rank

⁴⁰ References in parentheses are to Real Property Law of 1937.

of captain or higher, or an officer of the United States navy or United States aviation corps, of the rank of lieutenant or higher.

Such officer of the army or navy must state in the certificate, his rank, the name of the city or other political division or country or place where taken, and that the party or parties executing such conveyance are enlisted or commissioned and engaged in military or naval duties, and the same must be authenticated by the secretary of war or of the navy, as the case may be. Other officials must affix their seals of office, if any they have. (§ 300)

Without the United States acknowledgments may be made before:

(1) An ambassador, a minister plenipotentiary, minister extraordinary, minister resident, or charge d'affaires of the United States residing and accredited within the country.

(2) A consul general, vice consul general, deputy consul general, a consul, vice consul or deputy consul, a consular or vice consular agent, or a commercial or vice commercial agent of the United States residing within the country, or a secretary of legation at the post, port, place or within the limits of his legation.

(3) A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

(4) A person specially authorized for that purpose by a commission, under the seal of the supreme court, issued to a reputable person, residing in or going to the country where the acknowledgment or proof is so to be taken.

(4a) Any person authorized by the laws of such foreign country to take such acknowledgment or proof, which must be accompanied by a certificate to the effect that such acknowledgment or proof is in the manner prescribed by the laws of such foreign country. Such certificate may be made by an attorney admitted to practice in the state of New York, resident in such foreign country, or by a consular officer of the United States under the seal of his office, or by a consular officer of such foreign country resident in the state of New York under the seal of his office, or by such other person as the court may deem qualified. In the last case the justice shall sign and append to the instrument his statement in writing that he deemed such person qualified to make such certificate.

(5) If within the Dominion of Canada, it may also be made before any judge of a court of record, or before any officer of a province or territory of such Dominion authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

(6) If within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, it may also be made before the mayor, provost, or other chief magistrate of a city or town therein, under his hand and the seal of such city or town.

If within the states, republics, or other civil divisions in the territory of the former Empire of Germany, or in Italy, it may also be made before a judge of a court of record under the seal of such court or before a notary public under the seal of his office and the seal of the city or town in which the notary resides. (§ 301)

Authentication of officer's authority

Within the state instruments acknowledged before a commissioner of deeds, justice of the peace or notary public, can not be recorded or read in evidence, except in the county in which the officer resides, unless authenticated by a certificate of the clerk of the same county. (§ 310)

Without the state the certificate of a commissioner appointed by the governor must be authenticated by the secretary of state. The certificate of a judge of a court of record of Canada must be authenticated by the clerk of the court. The certificate of an officer of a state or of a province or territory of the Dominion of Canada authorized by its laws to take acknowledgments (including a notary public), must be authenticated by the secretary of state of the state, the provincial secretary (or deputy or assistant provincial secretary) of the province, or commissioner of the territory of the Dominion of Canada, or the clerk, register, recorder or prothonotary of the county, city or parish in which the certificate purports to be made, or by the clerk of any court in or of such state or dominion, county, city or parish, having a seal, except that where such certificate of acknowledgment or proof is made by a person authorized to authenticate such a certificate, authentication of such certificate shall not be required. (§ 311)

Witnesses

None required if instrument is acknowledged; otherwise at least one. (§§ 291, 292)

Seal

A seal is required. The word "Seal" or "L. S." opposite signature is sufficient; or it may consist of a wafer, wax or other adhesive substance.

Married women and dower

Wife should join in deed of husband to release dower. Separate examination not required. (§§ 207, 302)

General form

State of New York, County of _____, ss.

On this _____ day of _____, 19—, personally came before me A B (*or* A B and C D), to me known, and known to me to be the person (*or* persons) described in and who executed the foregoing instrument, and he (*or* they severally) acknowledged that he (*or* they severally) executed the same.

G H, Notary Public

By grantor unknown to officer

State of New York, County of _____, ss.

On this _____ day of _____, 19—, personally came before me A B, the grantor named in and who executed the foregoing instrument, and acknowledged that he had executed the foregoing instrument; and at the same time personally came before me C D, to me known, who, being by me duly sworn, did say that he resided in the city of _____, county of _____, and state of _____; that he knew the said A B, the person appearing before me and making said acknowledgment, to be the individual described in and who executed said foregoing instrument.

G H, Notary Public

By corporation (§ 309)

State of New York, County of _____, ss.

On the _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ (*president or other officer*) of the _____ (*name of corporation*), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

G H, Notary Public

By attorney in fact

State of New York, County of _____, ss.

On this _____ day of _____, 19—, personally came A B, to me known, and known to me to be the person who executed the foregoing instrument in the name of C D, and he, the said A B, acknowledged that he executed the same in the name and as the act and deed of said C D, by virtue of a power of attorney duly executed by the said C D, bearing date the _____ day of _____, 19— (and recorded in the office of the *clerk* of said county of _____, on the _____ day of _____, 19—).

G H, Notary Public

Proof by subscribing witness (§ 304)

State of New York, County of _____, ss.

On this _____ day of _____, 19—, personally came before me C D, to me personally known, and known to me to be the same person whose name is subscribed to the foregoing instrument as a witness thereto, who, being by me duly sworn, said: that he resides at _____, in the city of _____, county of _____, and state of _____; that he was personally acquainted with A B and knew him to be the person described in and who executed the said instrument, and that he saw him execute the same, and that said A B acknowledged to him, the said C D, that he executed the same, and that thereupon he, the said C D, subscribed his name as a witness thereto.

G H, Notary Public

Certificate of authentication of officer's authority

State of _____, County of _____, ss.

I, _____, clerk (*or* register, recorder *or* prothonotary) of said county (*or* of the _____ court of said county, the same being a court of record and having by law a seal), do hereby certify that _____, who subscribed the foregoing certificate of acknowledgment (*or* proof), was at the time of taking such acknowledgment (*or* proof) a notary public (*or other officer*) residing in said county, and duly authorized by the laws of said state to take the acknowledgment and proof of deeds to be recorded therein, and that the same is taken and certified in all respects as required by the laws of said state; that I am acquainted with the handwriting of said _____ (*or* that I have compared the signature attached to the foregoing certificate of acknowledgment with that deposited in my office by said _____), and verily believe the signature attached to the foregoing certificate is the genuine signature of said _____.

Witness my hand and official seal this _____ day of _____, 19—.

(SEAL)

_____, Clerk (*or* Register)**§ 193. North Carolina.⁴¹****Officers authorized to take**

Within the state acknowledgments may be made before the several justices of the supreme court, the several judges of the superior court, commissioners of affidavits appointed by the gov-

⁴¹ References in parentheses are to Code of 1931.

ernor of this state, clerk of the supreme court, clerks and deputy clerks of the superior court, the several clerks of the criminal courts, notaries public, and the several justices of the peace. (§ 3293)

Without the state acknowledgments may be made before any judge or clerk of a court of record, any notary public, any commissioner of deeds, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul or commercial agent of the United States, any justice of the peace of any state or territory of the United States whose signature and official character must be certified to by the clerk of a court of record. (§ 3294)

Authentication of officer's authority

Within the state when an acknowledgment is taken before a justice of a county other than the one in which the instrument is offered for registration, there must be annexed a certificate of the clerk of the superior court of the county in which such justice resides, under his hand and official seal, that such justice was, at the time his certificate bears date, an acting justice of such county, and that such justice's genuine signature is set to his certificate. (§ 3296)

Outside of the state, when the officer has an official seal, no further authentication is required; but if he has no official seal a certificate from the clerk of a court of record is required. (§§ 3294, 3296, 3328)

Witnesses

None required if instrument is acknowledged; otherwise one. (§ 3308)

Seal

Required, but a scroll is sufficient.

Married women and dower

Husband and wife must join in the deed of the other. Separate examination required. (§ 997)

By husband and wife before the same officer (§ 3325)

North Carolina, ——— County, ss.

I, G H, a notary public, do hereby certify that A B personally appeared before me this day and acknowledged the due execution of the foregoing instrument, and the said M B, wife of A B, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or

compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By corporation (§ 3326)

(Instrument executed by president, presiding member or trustee of corporation, sealed with its common seal, and attested by its secretary.)

North Carolina, _____ County, ss.

This _____ day of _____, 19—, personally came before me, G H, a notary public, A B, who, being by me duly sworn, says that he is the president (presiding member *or* trustee) of the _____ company, and that the seal affixed to the foregoing instrument in writing is the corporate seal of the company; and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given, and the said A B acknowledged the said writing to be the act and deed of said corporation.

(SEAL)

G H, Notary Public

(Instrument executed by president, presiding member or trustee of corporation, attested by secretary and sealed with common seal.)

North Carolina, _____ County, ss.

This _____ day of _____, 19—, personally came before me, G H, a notary public, A B, who, being by me duly sworn, says that he knows the common seal of _____ (*name of the corporation*), and is acquainted with C D, who is the president of said corporation, and that he, the said A B, is the secretary of the said corporation, and saw the said president sign the foregoing instrument and saw the said common seal of said corporation affixed to said instrument by said president (*or* that he, the said A B, secretary, as aforesaid, affixed said seal to said instrument), and that he, the said A B, signed his name in attestation of the execution of said instrument in the presence of said president of said corporation.

Witness my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 194. North Dakota.⁴²

Officers authorized to take

Within the state acknowledgments may be made, within the judicial district, county, subdivision or city for which the officer

⁴² References in parentheses are to Compiled Laws of 1913.

was elected or appointed, before either (1) a judge or clerk of a court of record, (2) a mayor of a city, (3) a register of deeds, (4) a justice of the peace, (5) a United States district court commissioner, (6) a county auditor. (§ 5564)

Elsewhere in the United States acknowledgments may be made before either (1) a justice, judge or clerk of any United States court of record, or (2) of any court of record of any state or territory, (3) a notary public, or (4) any other officer authorized by the laws of the state or territory where the same is made to take the acknowledgments and proof of deed. (§ 5565)

Without the United States acknowledgments may be made before either:

(1) A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made, or

(2) A secretary of legation, consul, vice consul or consular agent of the United States resident in the country where the proof or acknowledgment is made, or

(3) A judge, clerk, register or commissioner of a court of record of the country where the proof or acknowledgment is made, or

(4) A notary public of such country, or

(5) An officer authorized by laws of the country where the proof or acknowledgment is taken to take proof or acknowledgments, or

(6) When any of the officers mentioned are authorized to appoint a deputy, such acknowledgment or proof may be taken by such deputy in the name of his principal, as deputy, or by such deputy as deputy. (§ 5566)

Authentication of officer's authority

Every notary public must state immediately following his signature, the time of the expiration of his commission, as follows: "My commission expires ———, 19—." (§ 848)

No certificate of authentication is required, except when the proof or acknowledgment is taken before a justice of the peace and is to be used in a county other than that in which he resides, in which case the certificate of the clerk of a court of record must be affixed. (§ 5583)

Witnesses

Not required if instrument is acknowledged; otherwise one. (§ 5569)

Seal

Not required. (§§ 5516, 5894)

Married women and dower

Dower and curtesy are abolished. (§ 4414) Neither husband nor wife need join in deed of the other. (§ 4410)

General form (§ 5574)

State of North Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me personally appeared A B, known to me (*or proved to me on the oath of _____*) to be the person who is described in and who executed the within instrument, and acknowledged to me that he (*or they*) executed the same.

(SEAL)

G H, Notary Public

My commission expires _____.

By corporation (§ 5574)

State of North Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared A B, known to me (*or proved to me on the oath of _____*) to be the president (*or other officer or person*) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

(SEAL)

G H, Notary Public

My commission expires _____.

By attorney in fact (§ 5574)

State of North Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared A B, known to me (*or proved to me on the oath of _____*) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of C D, and acknowledged to me that he subscribed the name of C D thereto as principal, and his own name as attorney in fact.

(SEAL)

G H, Notary Public

My commission expires _____.

§ 195. Ohio.⁴³**Officers authorized to take**

Within the state acknowledgments may be taken before a notary public within the county or counties for which he is appointed

⁴³ References in parentheses are to Page's General Code of 1939.

(§§ 126, 8510); or a judge or clerk of a court of record, a county auditor, county surveyor, mayor or a justice of the peace (§ 8510); or a judge of a police court. (§ 4585)

Without the state written instruments to be recorded or used in Ohio may be acknowledged before a commissioner of the state of Ohio (§ 132); or a commissioner specially appointed by the governor for that purpose, or a consul general, vice consul general, deputy consul general, consul, vice consul, deputy consul, commercial agent and consular agent of the United States resident in any foreign country (§ 8515); or an officer authorized to take acknowledgments by the laws of the state in which an instrument of conveyance or encumbrance of real property is made. (§§ 8515, 8516)

All instruments for the conveyance or encumbrance of real property within Ohio, executed and acknowledged, or proved, in any other state, territory or country in conformity with the laws of such state, territory or country, or in conformity with the laws of this state, are valid in this state. (§ 8516)

Authentication of officer's authority

No certificate of authentication is provided for, or required, except for acknowledgment of certain articles of incorporation. (§ 710-42)

Witnesses

Deeds, mortgages and leases of real property must be signed in the presence of two witnesses, who must attest the signing and subscribe their names to the same. (§ 8510) The officer taking the acknowledgment may also sign as an attesting witness.

Seal

Private seals are abolished by statute, and give no force or effect whatever to any instrument. (§§ 32, 8623-8)

Married women and dower

A deed must be executed by the grantor's spouse to bar dower.

General form

State of Ohio, ——— County, ss.

Before me, a notary public, in and for said county, personally appeared the above-named A B, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Acknowledgment by attorney in fact

State of Ohio, _____ County, ss.

On this _____ day of _____, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same, as the free act and deed of said C D.

(SEAL)

G H, Notary Public

Acknowledgment by corporation

State of Ohio, _____ County, ss.

Before me, a notary public, in and for said county, personally appeared _____, president, and _____, secretary, of The _____ Company, the corporation which executed the foregoing instrument, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; that they did sign and seal said instrument as such president and secretary on behalf of said corporation and by authority of its board of directors; and that said instrument is their free act and deed individually and as such president and secretary and the free and corporate act and deed of said The _____ Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 196. Oklahoma.⁴⁴

Officers authorized to take

Within the state acknowledgments may be made before a notary public, county clerk, clerk of the district court, clerk of the county court, or county judge.

Elsewhere in the United States acknowledgments may be made before any notary public, clerk of a court of record, or commissioner of deeds, duly appointed by the governor of the state for the county, state, or territory where the same is taken.

Without the United States acknowledgments may be made before any court of record or clerk of such court, or before any consul of the United States; provided that acknowledgments re-

⁴⁴ References in parentheses are to Statutes of 1931.

lating to military business of the state may be taken before an officer in charge of any summary court-martial, a certified copy of whose appointment is placed of record in the office of the secretary of state by the adjutant general. (§ 9704)

Authentication of officer's authority

None required excepting seal of officer. A notary public must add to his signature the date of the expiration of his commission. (§ 5907)

Seal

Not required (§ 9458), except in the case of corporations. (§ 9695)

Witnesses

None required. (§ 9659)

Married women and dower

Dower and curtesy are abolished and neither husband nor wife need join in deed of the other (§ 1618); but both must join in deed of homestead. (§ 9661)

General form (§ 9702)

State of Oklahoma, _____ County, ss.

Before me, _____, in and for said county and state, on this _____ day of _____, personally appeared _____ and _____, to me known to be the identical persons— who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

G H, Notary Public

My commission expires _____.

By corporation (§ 9696)

State of Oklahoma, _____ County, ss.

Before me, a _____, in and for said county and state, on this _____ day of _____, personally appeared _____, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its _____ (attorney in fact, president, vice-president *or* mayor, *as the case may be*), and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

G H, Notary Public

My commission expires _____.

§ 197. Oregon.⁴⁸**Officers authorized to take**

Within the state acknowledgments may be made before any judge of the supreme court, county judge, circuit judge, justice of the peace or notary public. (§ 63-111)

Elsewhere in the United States acknowledgments may be made before any judge of a court of record, justice of the peace, notary public, or other officer authorized by the laws of the state, territory or district where the same is made to take acknowledgments; or before a commissioner appointed by the governor of this state for such purpose. (§ 63-112)

Without the United States acknowledgments may be made before any notary public in such foreign country, any minister plenipotentiary, minister resident, charge d'affaires, commissioner, consul, vice consul or consul general of the United States appointed to reside therein, which acknowledgment shall be certified by the officer taking the same under his hand, and if taken before a notary public, his seal of office must be affixed to his certificate. It is not necessary to state that the instrument is executed according to the laws of the country where made. (§ 63-114)

Authentication of officer's authority

When an acknowledgment is taken in the United States outside of Oregon before a notary public under his notarial seal, or before a clerk of a court of record under seal of said court, or before a commissioner appointed by the governor of Oregon for that purpose, no certificate of authentication is necessary. But when taken in the United States outside of Oregon before any other officer, the instrument must have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district in which the same is taken, under seal, that the person subscribing the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine and that the deed is executed and acknowledged according to the laws of such state, territory or district. (§ 63-113)

Witnesses

Two are required. (§§ 63-111, 63-122)

Seal

A seal is required on some instruments. (§ 9-707)

⁴⁸ References in parentheses are to Code of 1930.

Married women and dower

Wife may release dower by joining in deed of husband or by separate deed. (§ 10-313) Separate examination not required. (§ 63-116)

General form

State of Oregon, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, G H, a notary public in and for said county and state, the within-named A B and M B, his wife, to me personally known to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

G H, Notary Public

By corporation (§ 63-118)

State of Oregon, County of _____, ss.

On this _____ day of _____, 19—, before me appeared _____, to me personally known, who, being duly sworn, did say that he is the president (*or other officer, officers or agent of the corporation*) of _____ (*describing the corporation*), and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the day and year first in this, my certificate, written.

(SEAL)

G H, Notary Public

By attorney in fact

State of Oregon, County of _____, ss.

Before the undersigned, a notary public in the county and state aforesaid, appeared the within (*or above*) named A B, by his attorney in fact, the within (*or above*) named C D, to me known to be the individual described in and who executed the within (*or above*) conveyance for and on behalf of the said A B, and acknowledged that he executed the same, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 198. Pennsylvania.⁴⁶**Officers authorized to take**

Within the state acknowledgments may be made before a judge of the supreme court, a judge of the court of common pleas, a notary public, a recorder of deeds, a justice of the peace, the mayor and recorder of Philadelphia, an alderman of Philadelphia, the mayor, recorder or an alderman of Pittsburgh, the prothonotary or clerk of any court of record. (§§ 17-23, 21-141, 21-144, 57-53)

Elsewhere in the United States acknowledgments may be made before any judge of any court of record, a judge of the supreme or district court of the United States; or of the supreme, superior or common pleas court of any state, a notary public under his seal of office, a mayor or chief magistrate of a city or town certified under the seal of such city or town; a commissioner of deeds, any officer authorized to take acknowledgments by the laws of the state where the same is taken, whose authority must be certified to by the clerk or prothonotary of a court of record. (§§ 21-41, 21-186, 21-381, 21-971)

In Cuba, Porto Rico or the Philippine Islands, or other possessions of the United States, acknowledgments may be made before any person holding the rank of major or any higher rank in the military service of the United States. (§ 21-187)

Without the United States acknowledgments may be made before any consul or vice consul of the United States duly appointed for and exercising consular functions in the state, kingdom, country or place where the acknowledgment may be made (§ 21-221), a commissioner in chancery (§ 21-224), an ambassador, minister plenipotentiary, charge d'affaires, or other person exercising public ministerial functions, duly appointed by the United States (§ 21-222), a notary public (§ 21-184), a deputy consul, commercial agent, vice or deputy commercial agent or consular agent of the United States. (§ 21-223)

Within or without the state acknowledgments may be made before an officer in the military service of the United States of the rank of major or higher, but the acknowledgment must be accompanied by a certificate of the adjutant or commanding officer of the regiment or commanding officer of the division, certifying to the rank of the officer taking the acknowledgment. (§ 20-223)

⁴⁶ References in parentheses are to Purdon's Statutes of 1930.

Authentication of officer's authority

None required if acknowledgment is taken before an officer having a seal which is affixed. (§ 21-190) A notary public must add the date of expiration of his commission. (§ 57-33)

When taken before an officer authorized by the laws of another state or territory to take acknowledgments there should be annexed a certificate by the clerk or prothonotary of a court of record, as to such authority. (§ 21-381)

Seal

A seal is customary.

Witnesses

Two are required. (§ 21-42)

Married women and dower

Wife should join in deed of husband to release dower. Separate examination not required. (§ 21-82)

General form (§ 21-81)

State of Pennsylvania, County of _____, ss.

On this _____ day of _____, 19—, before me, G H, a notary public, came the above-named A B, and acknowledged the foregoing deed to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid
(SEAL) G H, Notary Public

My commission expires _____, 19—.

By corporation (§§ 21-111, 21-112)

State of Pennsylvania, County of _____, ss.

I hereby certify that on this _____ day of _____, in the year of our Lord _____, before me, the subscriber, G H, a notary public, personally appeared _____ (*name of attorney*), the attorney named in the foregoing _____ (*name of instrument*), and by virtue and in pursuance of the authority therein conferred upon him acknowledged the said _____ (*name of instrument*) to be the act of said _____ (*corporation's name*).

Witness my hand and official seal the day and year aforesaid.
(SEAL) G H, Notary Public

My commission expires _____.

The authority to acknowledge a conveyance by a corporation may be embodied in the conveyance as follows:

"The _____ (*name of corporation*) doth hereby constitute and appoint _____ (*name of appointee*) to be its attorney for it.

and in its name and as and for its corporate act and deed to acknowledge this ——— (*name of instrument*) before any person having authority by the laws of the commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.”

Proof by subscribing witness (§ 21-42)

State of Pennsylvania, County of ———, ss.

Be it remembered that on this ——— day of ———, 19—, before me, G H, a notary public, personally appeared E F, one of the subscribing witnesses to the execution of the above indenture, who, being duly sworn according to law, does depose and say that he did see A B, the grantor above named, sign and seal, and as his act and deed deliver the above indenture, for the uses and purposes therein mentioned, and that he did also see J K subscribe his name thereto as the other witness of such sealing and delivery, and that the name of this deponent thereto set and subscribed as a witness is of this deponent's own proper handwriting.

E F

Sworn to and subscribed before me the day and year aforesaid.

Witness my hand and official seal.

(SEAL)

G H, Notary Public

My commission expires ———.

§ 199. Rhode Island.⁴⁷

Officers authorized to take

Within the state acknowledgments may be made before any state senator, judge, justice of the peace, mayor, notary public, town clerk or recorder of deeds.

Elsewhere within the United States acknowledgments may be made before any judge or justice of a court of record or other court, justice of the peace, mayor or notary public, of the state, District of Columbia, or territory, in which the same is made, or before any commissioner appointed by the governor of this state. Instruments may be executed in compliance with the laws of the state, etc., where made.

Without the United States acknowledgments may be made before any ambassador, minister, charge d'affaires, consul general, vice consul general, consul, vice consul, consular agent, or commercial agent of the United States, or before any commissioner appointed by the governor of this state in the country in which

⁴⁷ References in parentheses are to General Laws of 1923.

such acknowledgment is made, or before any notary public commissioned or accredited to act in the place in which such acknowledgment is made.

Within or without the state acknowledgments may be made by persons actually engaged in the military or naval service of the United States, before any colonel, lieutenant colonel, or major, in the army, or before any officer in the navy not below the grade and rank of lieutenant commander. (c. 297, § 8)

Authentication of officer's authority

No certificate of authentication is required.

Witnesses

None required, but one is customary. (c. 297, § 2)

Seal

A seal is not required. (c. 297, § 4)

Married women and dower

Wife may release dower by joining in the deed of her husband or by her separate deed. Separate acknowledgment not required. (c. 290, § 6; c. 297, § 5)

General form

State of Rhode Island, County of _____, ss.

Be it remembered that on the _____ day of _____, 19—, before me, G H, a notary public, personally appeared the above-named grantor, A B (and M B, his wife), (each *or* all) personally known to me, and known by me to be the persons who executed the foregoing instrument, and acknowledged the said instrument, by them executed, to be their free and voluntary act and deed.

IN WITNESS WHEREOF, I have set my hand and seal, at _____, the day and year above written.

(SEAL)

G H, Notary Public

§ 200. South Carolina.⁴⁸

In this state deeds are proved by the affidavits of subscribing witnesses; but a married woman must acknowledge her relinquishment of dower. Such affidavits may be made:

Within the state before any officer competent to administer an oath, including a clerk of the court of common pleas (§ 3590), a notary public (§ 3463), and a probate judge. (§ 3655)

⁴⁸ References in parentheses are to Code of 1932.

Without the state such affidavits or acknowledgments by married women may be made before a commissioner or commissioners appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded; or before a commissioner of deeds of this state; or a clerk of a court of record, who shall make certificate thereof under his official seal; or before a justice of the peace who must append to the certificate his official seal; or before a notary public who must affix his official seal within the state of his appointment, which seal shall be a sufficient authentication of his or her signature, residence and official character; or before a minister, ambassador, consul general, consul, or vice consul or consular agent of the United States. An acknowledgment taken without the state before a justice of the peace or notary public, without his official seal, is valid if his official character is attested by the clerk of the court of record of the county of his residence. (§§ 3598, 3632, 8578)

Witnesses

Two or more are always required. (§ 8694)

Seal

A seal is required. (§§ 6751, 8964)

Married women and dower

To release dower, a wife must join in the deed of her husband and be separately examined. (§ 8579)

Separate acknowledgment by married woman (§ 8581)

State of South Carolina, ——— County, ss.

I, G H, a notary public, do hereby certify unto all whom it may concern, that E B, the wife of the within-named A B, did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish, unto the within-named C D, his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to, all and singular the premises within mentioned and released.

E B (L.S.)

Given under my hand and seal, this ——— day of ———,
19—.

(SEAL)

G H, Notary Public

Proof by subscribing witness

State of South Carolina, County of _____, ss.

Personally appeared before me E F and made oath that he saw the within-named A B sign, seal and deliver the within conveyance as his act and deed and for the uses and purposes therein mentioned, and that he, deponent, with J K, in the presence of each other, witnessed the due execution thereof as the free act and deed of said A B.

E F

Sworn to and subscribed before me this _____ day of _____, 19__.

(SEAL)

G H, Notary Public

Proof by subscribing witness; deed of corporation

State of South Carolina, County of _____, ss.

Personally appeared before me E F and made oath that he saw C D, president (*or other officer*), sign, affix the corporate seal of _____ (*name of corporation*) and deliver the within conveyance as the act and deed of said corporation and for the uses and purposes therein mentioned, and that he, deponent, with J K, witnessed the due execution thereof as the free act and deed of said corporation.

E F

Sworn to and subscribed before me this _____ day of _____, 19__.

(SEAL)

G H, Notary Public

§ 201. South Dakota.⁴⁹**Officers authorized to take**

Within the state acknowledgments may be made before a justice or clerk of the supreme court or a notary public at any place within the state; and within the judicial circuit, county, subdivision or city, for which the officer was elected or appointed, before either,

- (1) A judge of the circuit, municipal or county court;
- (2) A clerk of circuit, county, or municipal court;
- (3) A county auditor;
- (4) A register of deeds;
- (5) A mayor of a city;
- (6) A justice of the peace;
- (7) A United States district court commissioner. (§§ 575, 576)

⁴⁹ References in parentheses are to Compiled Laws of 1929.

Elsewhere in the United States acknowledgments may be made within the jurisdiction of the officer before either (1) a justice, judge or clerk of any court of record of the United States, (2) a justice, judge or clerk of any court of record of any state or territory, (3) a notary public, (4) any officer of the state or territory where the acknowledgment is made authorized by its laws to take the same, (5) a commissioner appointed for the purpose by the governor of this state. (§ 578)

Without the United States acknowledgments may be made before either:

(1) An ambassador, a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made, or

(2) A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made, or

(3) A judge, clerk, register or commissioner of a court of record of the country where the proof or acknowledgment is made, or

(4) A notary public of such country, or

(5) An officer authorized by the laws of the country where the proof or acknowledgment is taken to take proof or acknowledgments, or

(6) When any of the officers mentioned in this section are authorized to appoint a deputy, the acknowledgment or proof may be taken before such deputy. (§ 579)

Authentication of officer's authority

Every officer having a seal must affix it to his certificate of acknowledgment and must add the name of his office to his signature. (§ 587)

A certificate of acknowledgment made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of courts of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine. (§ 587)

Witnesses

None required when instrument is acknowledged; otherwise one. (§§ 541, 570)

Seal

A seal is not required. (§ 541)

Married women and dower

Dower and curtesy are abolished. (§ 702)

General form (§ 587)

State of South Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me personally appeared A B, known to me (*or* proved to me on the oath of _____) to be the person who is described in and who executed the within instrument, and acknowledged to me that he (*or* they) executed the same.

G H, Notary Public

By attorney in fact

State of South Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me personally appeared A B, known to me (*or* proved to me on the oath of _____) to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of C D, and acknowledged to me that he subscribed the name of C D thereto as principal, and his own name as attorney in fact.

G H, Notary Public

By corporation

State of South Dakota, County of _____, ss.

On this _____ day of _____, in the year _____, before me, G H, a notary public, personally appeared _____, known to me (*or* proved to me on the oath of _____) to be the _____ of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

G H, Notary Public

§ 202. Tennessee.⁵⁰**Officers authorized to take**

Within the state acknowledgments may be made before a clerk or deputy clerk of a county court, or clerk and master of chancery court of some county in the state, or a notary public. (§ 7631)

Elsewhere in the United States acknowledgments may be made (1) before any court of record, or before the clerk of any court of record; or before a commissioner for Tennessee, appointed by

⁵⁰ References in parentheses are to Williams' Code of 1934.

the governor; or before a notary public authorized there to take proof or acknowledgments. (2) Or, before any officer of the state, territory or district where the acknowledgment is made, authorized to take acknowledgments by the laws of such state, territory or district. (§ 7632)

Without the United States acknowledgments may be made before an ambassador, minister, envoy, or charge d'affaires of the United States in the country to which he is accredited, or before any consular officer of the United States, a notary public, or a commissioner or other agent of this state having power to take acknowledgment to deeds. (§ 7633)

Authentication of officer's authority

Certificates of acknowledgment or proof taken in the United States without the state must have annexed a certificate of the secretary of state of the state or territory, or of the clerk of a court of record of the state, territory or district in which the officer resides or took the acknowledgment or proof, under seal of the court, stating that the officer was, at the time of taking the proof or acknowledgment, duly authorized to take acknowledgments and proof of deeds of lands, and that the secretary of state or clerk of court is well acquainted with the handwriting of such officer and that he verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine. (§ 7632)

Witnesses

Not required if instrument is acknowledged; otherwise two. (§ 7630)

Seal

Not required.

Married women and dower

Wife should join in deed of husband to release dower. Separate acknowledgment not required. (§ 7635)

General form; by natural person (§ 7634)

State of Tennessee, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared _____, to me known to be the person (*or* persons) described in and who executed the foregoing instrument, and acknowledged that he (*or* they) executed the same as his (*or* their) free act and deed.

G H, Notary Public

Natural person by attorney in fact (§ 7634)

State of Tennessee, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public

By corporation (§ 7663)

State of Tennessee, County of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*), and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

(If the corporation has no seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or association] and that," and add at the end of the affidavit clause "and that said corporation [or association] has no corporate seal.")

Proof by subscribing witness

State of Tennessee, County of _____, ss.

Personally appeared before me, G H, a notary public, in and for said county, E F and J K, subscribing witnesses to the within deed, who, being first sworn, deposed and said that they are acquainted with A B, the bargainer, and that he acknowledged the same, in their presence, to be his act and deed upon the day it bears date.

Witness my hand, at office, this _____ day of _____, 19—.

G H, Notary Public

Certificate of authentication of officer's authority (§ 7634)

State (*or District*) of _____, County of _____, ss.

I, _____, clerk of the _____, in and for said county, which court is a court of record, having a seal (*or I, _____, the secretary of state of said state*), do hereby certify that G H, by and before whom the foregoing acknowledgment was taken, was at the time of taking the same, a notary public residing (*or authorized to act*) in said county, and was duly authorized by the laws

of said state (*or* district) to take and certify acknowledgment or proof of deeds of land in said state (*or* district), and further that I am well acquainted with the handwriting of said G H, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court (*or* state) this _____ day of _____, 19—.

(SEAL) _____

§ 203. Texas.⁵¹

Officers authorized to take

Within the state acknowledgments may be made before:

- (1) A clerk of the district court;
- (2) A judge or clerk of the county court;
- (3) A notary public. (Art. 6602)

Elsewhere in the United States acknowledgments may be made before either:

- (1) A clerk of some court of record having a seal;
- (2) A commissioner of deeds duly appointed under the laws of Texas;
- (3) A notary public. (Art. 6602)

Without the United States acknowledgments may be made before either:

- (1) A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made;
- (2) A consul general, consul, vice consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States, resident in the country where the acknowledgment is made;
- (3) A notary public. (Art. 6602)

Authentication of officer's authority

No certificate of authentication required, but every officer having an official seal must affix the same. (Arts. 6603, 6606)

Witnesses

Two witnesses are required if instrument is not acknowledged. (Art. 1294)

⁵¹ References in parentheses are to Revised Statutes of 1936.

Seal

Not required except in case of corporations. (Art. 1322)

Married women and dower

Wife should join in deed of husband. Separate examination required. (Art. 6605)

Husband must join in conveyance of separate property of wife. Wife's acknowledgment of such conveyance must be separate. (Arts. 1299, 6605)

Ordinary form (Art. 6606)

State of Texas, County of _____, ss.

Before me, G H, a notary public, on this day personally appeared A B, known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By married woman (Art. 6607)

State of Texas, County of _____, ss.

Before me, G H, a notary public, on this day personally appeared M B, wife of A B, known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privately and apart from her husband, and having the same fully explained to her, she, the said M B, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By corporation

State of Texas, County of _____, ss.

Before me, G H, a notary public, personally came _____ (*name of corporation*), by its *president*, (*presiding member or trustee*), A B, known to me (*or proved to me on the oath of _____*), and who acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

By attorney in fact

State of Texas, County of _____, ss.

Before me, G H, a notary public, on this day personally appeared C D, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Proof by subscribing witness (Art. 6611)

State of Texas, County of _____, ss.

Before me, G H, a notary public, on this day personally appeared E F, known to me (*or* proved to me on the oath of _____) 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 saw A B, 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 _____, 19—.

(SEAL)

G H, Notary Public

§ 204. Utah.⁵²

Officers authorized to take

Within the state acknowledgments may be made before some judge or clerk of a court having a seal, or some notary public, county clerk, or county recorder.

Elsewhere in the United States acknowledgments may be made before some judge or clerk of any court of the United States, or of any state or territory having a seal, or a notary public, or a commissioner appointed by the governor of this state for that purpose.

⁵² References in parentheses are to Revised Statutes of 1933.

Without the United States acknowledgments may be made before some judge or clerk of any court of any state, kingdom or empire having a seal, or any notary public therein, or any ambassador, minister, commissioner, or consul of the United States appointed to reside therein. (§ 78-2-2)

When any of the above mentioned officers are authorized by law to appoint a deputy, such deputy may take acknowledgments in the name of his principal. (§ 78-2-3)

Authentication of officer's authority

No certificate of authentication is required. Every officer having an official seal must affix the same. When acknowledgments are made before any judge or court, the certificate must be under the hand of such judge or court, and the seal of the court. (§ 78-2-4)

A notary public must state the date on which his commission expires. (§ 63-1-8)

Witnesses

One witness is required, unless the instrument is acknowledged. (§§ 78-3-1, 78-2-9)

Seal

Not required. (§ 104-48-4)

Married women and dower

Dower and curtesy are abolished. (§ 101-4-9)

Both husband and wife must join in a conveyance of the homestead. (§ 38-0-13)

General form (§ 78-2-6)

State of Utah, County of _____, ss.

On the _____ day of _____, 19—, personally appeared before me, A B, the signer of the above instrument, who duly acknowledged to me that he executed the same.

G H, Notary Public

My commission expires _____.

Where grantor is unknown to officer (§ 78-2-7)

State of Utah, County of _____, ss.

On this _____ day of _____, 19—, personally appeared before me, A B, satisfactorily proved to me to be the signer of the above instrument by the oath of C D, a competent and credible witness for that purpose, by me duly sworn, and he, the said A B, acknowledged that he executed the same.

G H, Notary Public

My commission expires _____, 19—.

By corporation (§ 78-2-6)

State of Utah, County of _____, ss.

On the _____ day of _____, 19—, personally appeared before me A B, who, being by me duly sworn, did say, that he is the president (*or other officer or agent*) of _____ (*naming the corporation*), and that said instrument was signed in behalf of said corporation by authority of its by-laws (*or by resolution of its board of directors*), and said A B acknowledged to me that said corporation executed the same.

G H, Notary Public

My commission expires _____.

Proof by subscribing witness (§ 78-2-12)

State of Utah, County of _____, ss.

On this _____ day of _____, 19—, before me, personally appeared A B, personally known to me (*or satisfactorily proved to me by the oath of C D, a competent and credible witness for that purpose, by me duly sworn*) to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in _____, county of _____, and state of Utah; that he was present and saw E F, personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and heard him acknowledge that he executed the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto at the request of said E F.

G H, Notary Public

My commission expires _____.

§ 205. Vermont.⁵³**Officers authorized to take**

Within the state acknowledgments may be made before a justice, town clerk, notary public, master in chancery, county clerk, or judge or register of probate. (§ 2592)

Without the state acknowledgments may be certified agreeably to the laws of the state, province or kingdom in which the same are taken, and may be made before a justice of the peace, magistrate, or notary public, within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the governor of this state; or before a minister, charge d'affaires, consul or vice consul of the United States in a foreign country. (§ 2612)

⁵³ References in parentheses are to Public Laws of 1933.

Authentication of officer's authority

No certificate of authentication is required.

Witnesses

Two or more are required. (§ 2592)

Seal

Is required. (§ 2592)

Married women and dower

Wife may convey real estate as if unmarried. (§ 3076) Wife has estate in lieu of dower in lands of which husband died seized. She therefore need not join in his deed.

Wife must join to convey homestead. (§ 2568)

By husband and wife

State of Vermont, County of _____, ss.

At _____, this _____ day of _____, 19—, personally appeared A B and M B, his wife, the signers and sealers of the above written instrument, and acknowledged the same to be their free act and deed.

Before me.

(SEAL)

G H, Notary Public

By corporation

State of Vermont, County of _____, ss.

At _____, this _____ day of _____, 19—, personally appeared A B, who has executed the above written instrument as the duly authorized agent of _____ (*name of corporation*), and acknowledged the same to be the free act and deed of said corporation, and that he, as such agent, freely executed the same.

Before me.

(SEAL)

G H, Notary Public

§ 206. Virginia.⁵⁴**Officers authorized to take**

Acknowledgments may be made before the clerk of the circuit court of any county, or the clerk of the corporation court of any city, other than the city of Richmond, or the clerk of the chancery court of the city of Richmond, when the instrument is to be or may be recorded in said city, or before the clerk of any court of record of this state or his deputy; or before the clerk of any court

⁵⁴ References in parentheses are to Code of 1936.

of record within the United States, or before a justice of the peace, or a notary public, or a commissioner in chancery, or a clerk of a court of record within the United States, or in the Philippine Islands, Porto Rico, or in any territory or other possession or dependency of the United States; or a commissioner appointed for the purpose by the governor. (§ 5205)

Without the United States acknowledgments may be made before any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul general, consul, vice consul, or commercial agent appointed by the government of the United States to any foreign country, or before the proper officer of any court of record of such country, or the mayor or other chief officer of any city, town or corporation therein. (§ 5206)

Authentication of officer's authority

When an acknowledgment is taken without the state, the certificate of a notary public should be under his official seal, and the certificate of a justice of the peace or a commissioner in chancery must have affixed a certificate of the clerk of the court in which he qualified or by which he was appointed, under the seal of the court, to the effect that he is such officer as is described in the certificate, and the certificate of acknowledgment of a clerk of a court must have the seal of the court affixed. (§ 5205)

A notary public should add to his signature the words "My term of office expires on _____ day of _____, 19—.

Witnesses

If instrument is not acknowledged, two witnesses are required. (§ 5204)

Seal

Is required but a scroll is sufficient. (§ 5562)

Married women and dower

Wife should join in deed of husband to release dower. Separate acknowledgment not required. (§ 5211)

General form (§ 5205)

State of Virginia, County of _____, to wit:

I, G H, a notary public, for the county aforesaid, do certify that E F, whose name is signed to the writing above, bearing date on the _____ day of _____, has acknowledged the same before me, in my county aforesaid.

Given under my hand and notarial seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My term of office expires on the _____ day of _____.

Certificate of acknowledgment taken before a commissioner appointed by the governor (§ 5205)

State of _____, to wit:

I, _____, a commissioner appointed by the governor of the state of Virginia for said state of _____, do certify that E F, whose name is signed to the writing above, bearing date on the _____ day of _____, has acknowledged the same before me in my state aforesaid.

Given under my hand and official seal this _____ day of _____, 19—.

(SEAL)

Acknowledgment of writing signed in behalf of a person or corporation or in a representative capacity (§ 5207)

State of _____, County of _____, to wit:

I, G H, a notary public in and for the state and county aforesaid, do certify that _____ (*the name or names of the persons signing the writing on behalf of the person or corporation, or the name of the person signing the writing in a representative capacity*), whose name is signed to the writing above, bearing date on the _____ day of _____, has acknowledged the same before me in my county aforesaid.

Given under my hand this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My term of office expires on _____ day of _____.

Proof by subscribing witness (§ 5205)

State of _____, County (*or* corporation) of _____, to wit:

I, G H, a notary public, for the county aforesaid (*or* a commissioner appointed by the governor of the state of Virginia for said state), do certify that the execution of the writing above, bearing date on the _____ day of _____, by A B, whose name is signed thereto, was proved before me in my county aforesaid, by the evidence on oath of E F and J K, subscribing witnesses to said writing.

Given under my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

My term of office expires on the _____ day of _____, 19—.

§ 207. Washington.⁵⁵**Officers authorized to take**

Within the state acknowledgments may be made before a judge of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the superior court in this state, a qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or before a justice of the peace, or a county auditor, or the deputy of such auditor, or a qualified notary public, or any qualified United States commissioner appointed by the district court of the United States for the state of Washington. (§ 10559)

Elsewhere in the United States acknowledgments may be made before any person authorized to take acknowledgments by the laws of the state or territory where the same are taken, or before a commissioner appointed by the governor of this state for such purpose. (§ 10560)

Without the United States acknowledgments may be made before any minister plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the government of the United States, or before any notary public, or before the proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town, or other municipal corporation therein. (§ 10563)

Authentication of officer's authority

When acknowledgments are made within the United States without the state of Washington before a commissioner appointed by the governor for that purpose, or by the clerk of a court of record or before a notary or other officer having a seal, no certificate of authentication is required. In all other cases the certificate of acknowledgment must have attached thereto a certificate of the clerk of a court of record, under seal of the court, or certificate of any other proper certifying officer, of the district or county within which the acknowledgment is made, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represented himself to be, that he is authorized by law to take acknowledgments and that he verily believes the signature of the person subscribed thereto is genuine. (§ 10561)

The officer must affix his seal to his certificate, if he has one. (§ 10564)

⁵⁵ References in parentheses are to Remington's Revised Statutes of 1936.

ing date the _____ day of _____, 19—, have this day acknowledged the same before me in my said _____.

Given under my hand this _____ day of _____, 19—.

By wife alone (§ 3951)

State of West Virginia, County of _____, to wit:

I, G H, a notary public, do certify that M B, the wife of A B, whose names are signed to the writing above, bearing date the _____ day of _____, 19—, has this day acknowledged the same before me in my said _____.

And I further certify that before taking said acknowledgment, it was proved to my satisfaction that the real estate in said writing mentioned was the sole and separate property of said M B, and that she was at the date of said writing, and now is, living separate and apart from her said husband (*or that her husband is non compos mentis*).

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

By corporation (§ 3955)

State of West Virginia, County of _____, to wit:

I, G H, a notary public, do certify that A B personally appeared before me in my said _____, and being by me duly sworn, did depose and say that he is the president (*or other officer or agent*) of the corporation (*or association*) described in the writing above, bearing date the _____ day of _____, 19—, authorized by said corporation (*or association*) to execute and acknowledge deeds and other writings of said corporation (*or association*), and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation (*or association*) by its authority duly given. And the said A B acknowledged the said writing to be the act and deed of said corporation (*or association*).

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

(If the corporation has no seal, omit the words "seal affixed to said writing is the corporate seal of said corporation," and insert "said corporation has no seal." In such case omit the word "sealed" after the word "signed" and insert in lieu of it the word "executed.")

§ 209. Wisconsin.⁵⁷

Officers authorized to take

Within the state acknowledgments may be made before any judge or clerk of a court of record, court commissioner, county

⁵⁷ References in parentheses are to Statutes of 1937.

clerk, notary public, justice of the peace, police justice, or United States court commissioner residing within this state who shall file with the clerk of the circuit court of the county in which he resides his certificate of appointment as such commissioner, or a copy thereof certified by the clerk of the court which appointed him. (§ 235.19)

Elsewhere in the United States acknowledgments may be made before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take acknowledgments; or before any commissioner appointed by the governor of this state for such purpose; and if an instrument is executed within the jurisdiction of any military post of the United States, without this state, it may be acknowledged before the commanding officer thereof. (§ 235.23)

Without the United States acknowledgments may be made before an ambassador, minister, envoy or charge d'affaires of the United States, or before one of the following officers having an official seal: Any consular officer of the United States, a notary public, or a commissioner or other agent of Wisconsin having power to take acknowledgments to deeds. (§ 235.25)

Authentication of officer's authority

When an acknowledgment made in the United States without this state is certified by a commissioner appointed by the governor of this state for that purpose, a clerk of a court of record, with its seal attached, a notary public with his seal attached, or the commanding officer of a military post, no certificate of authentication is required. If the instruments are executed and acknowledged according to the laws of the state or territory where made, the certificate should so state.

Instruments acknowledged in the United States without this state before any officer other than those above mentioned must have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district where the same is made, under seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be and that he believes the signature of such person to be genuine. If executed according to the laws of such state such certificate must so state. (§ 235.24)

A notary public must add to his attestation the day, month and year when his commission will expire. (§ 137.01)

Witnesses

Two are required. (§ 235.19)

Seal

Is required. (§ 235.01)

Married women and dower

Husband and wife should join in deeds of the other, but may convey their interest in property of the other, or release dower, by a separate deed. Separate acknowledgment is not required. (§§ 235.26, 235.27, 235.29)

General form (§ 235.22)

State of Wisconsin, _____ County, ss.

Personally came before me this _____ day of _____, 19—, the above named A B and C D, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

(SEAL)

G H, Notary Public

My commission expires _____.

Acknowledgment made abroad (§ 235.25)

_____ (*Name of country.*)

_____ (*Name of city, province or other political subdivision.*)

Before the undersigned _____ (*naming the officer and designating his official title*), duly commissioned (*or appointed*) and qualified, this day personally appeared at the place above named A B, who declared that he knew the contents of the foregoing instrument, and acknowledged the same to be his act.

Witness my hand and official seal this _____ day of _____, 19—.

_____ (*Name of officer.*)

_____ (*Title.*)

(SEAL)

§ 210. Wyoming.⁵⁸**Officers authorized to take**

Within the state acknowledgments may be made before any judge or clerk of a court of record, or before any United States commissioner appointed under and by authority of the laws of the United States, any county clerk, justice of the peace, or notary public, or a clerk of the United States circuit or district court for the district of Wyoming. (§§ 97-114, 97-116)

⁵⁸ References in parentheses are to Revised Statutes of 1931.

Elsewhere in the United States acknowledgments may be made before any officer authorized by law to take acknowledgments at the place where taken. (§ 97-117)

Without the United States acknowledgments may be made before a consul general, consul or vice consul of the United States, certified over his hand and official seal or the seal of the consulate to which he is attached if there be any such seal; if none, that fact shall be stated in the certificate. (§ 97-119)

Authentication of officer's authority

Whenever an officer, authorized to take acknowledgments in the United States without this state, has no official seal, his certificate must have attached the certificate of the clerk of the court of record, or a county clerk, of the same place, having a seal, certifying that the officer taking the acknowledgment is authorized to take the same and that he believes that the signature appended to the acknowledgment is genuine. (§ 97-117)

Every notary public, justice of the peace, and commissioner of deeds must add to his certificate the date of the expiration of his commission. (§ 97-126)

Witnesses

One is required. (§ 97-114)

Seal

Is not required except in the case of corporations. (§ 97-122)

Married women and dower

Dower and curtesy are abolished. (§ 88-4001)

A wife must join in deed of homestead, signing and acknowledging the same separate and apart from her husband. (§ 97-205)

General form (§ 97-125)

State of Wyoming, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(If the right of homestead is released, add including the release and waiver of the right of homestead, the said wife having been by me fully apprised of her right and the effect of signing and acknowledging the said instrument.)

G H, Notary Public

My commission expires _____, 19—.

By attorney in fact (§ 97-125)

State of Wyoming, County of _____, ss.

On this _____ day of _____, 19—, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

G H, Notary Public

My commission expires _____, 19—.

By corporation or joint stock association (§ 97-125)

State of Wyoming, County of _____, ss.

On this _____ day of _____, 19—, before me appeared A B, to me personally known, who, being by me duly sworn, did say that he is the president (*or other officer or agent of the corporation or association*) of _____ (*describing the corporation or association*), and that the seal affixed to said instrument is the corporate seal of said corporation (*or association*) and that said instrument was signed and sealed in behalf of said corporation (*or association*) by authority of its board of directors (*or trustees*), and said A B acknowledged said instrument to be the free act and deed of said corporation (*or association*).

G H, Notary Public

My commission expires _____, 19—.

(If the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that" and add at the end of the affidavit clause the words, "and that said corporation has no corporate seal.")

CHAPTER V: CONVEYANCES

DEEDS—ESSENTIAL REQUISITES

SECTION	SECTION
211. Definitions.	218. Habendum clause.
212. Parts of a deed.	219. Exceptions and reservations.
213. Parties; description.	220. Conditions.
214. —Husband and wife as grantors.	221. Restrictions.
215. —Corporation.	222. Covenants.
216. Consideration.	223. Execution.
217. Description of property.	224. Delivery.
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MORTGAGES—ESSENTIAL REQUISITES

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TYPICAL FORMS OF MORTGAGES

278. Form of real estate mortgage.	279. Form of chattel mortgage.
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DEEDS—ESSENTIAL REQUISITES

§ 211. Definitions.—A deed is a written instrument whereby the title to real property is conveyed.

A quitclaim deed conveys such interest as the grantor may have, without covenants of title or warranty.

A general warranty deed, in addition to the usual covenants of seizin, contains a covenant on the part of the grantor that he, his heirs, executors and administrators, will warrant and defend the premises conveyed to the grantee, his heirs and assigns forever, against all lawful claims whatsoever.

A special warranty deed contains covenants that the premises conveyed are free and clear from all encumbrances by, from, through or under the grantor, and that the grantor will warrant and defend the same against the lawful claims of all persons claiming by, from, through or under said grantor.

§ 212. **Parts of a deed.**—The component parts of a warranty deed are (1) the premises, which include the names and description of the parties, the consideration and its receipt, the operative words of conveyance and the description of the property conveyed; (2) the habendum clause, which defines the quantity of interest or estate conveyed to the grantee; (3) the reddendum clause, which contains the reservations and exceptions; (4) the conditions; (5) covenants; (6) covenant of warranty; (7) the conclusion, containing the signatures, date, attestation and acknowledgment.

§ 213. **Parties; description.**—The grantor and grantee should be described in the premises so as to clearly identify the person by whom, and the person to whom, the conveyance is made. Errors in these respects, however, are not fatal, if the parties can be identified by reference to other parts of the instrument. The correct signature of the grantor may cure a misdescription in the body of the instrument, providing the certificate of acknowledgment contains the correct name, or refers to him as “the above named grantor.”

§ 214. —**Husband and wife as grantors.**—If the title and ownership is in the husband alone, it is sufficient for the wife to release her right of dower, without joining in the granting part of the deed or in the covenants. But if the wife has any interest in the property beyond a contingent right of dower she must join in the granting clause. Her release of dower does not operate to pass her title.

To bar a wife's right of dower, words showing that intent must be used or she must join in the granting clause. Where a wife is named in the clause describing the parties and in the attesting clause, the covenants all being by the husband alone, and no terms employed touching her contingent estate of dower, the wife's right of dower is not barred.

§ 215. —**Corporation.**—A conveyance to or by a corporation should be in the name of the corporation. A deed executed in the name of a corporation, by its president, under the seal of the corporation, is presumed to have been authorized by the directors, and is *prima facie* valid.

The officer who executes a deed on behalf of the corporation, and affixes its corporate seal, is the proper person to acknowledge the deed.

§ 216. **Consideration.**—A consideration must be stated in the deed. The consideration may be a good or a valuable consideration. A good consideration is such as that of blood, or of natural love and affection, when a man grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty. A valuable consideration is such as money, marriage or the like, which the law esteems an equivalent given for the grant; and is therefore founded in motives of justice.

The consideration of one dollar expressed in a deed is a valuable consideration, and as between the parties is sufficient to support the deed.

§ 217. **Description of property.**—The description of the property is sufficient if it indicates the land intended to be conveyed.

Most descriptions contain several, if not all, of the following items:

- (1) state, county and city in which the land is situated;
- (2) reference to official surveys;
- (3) monuments from which courses and distances are measured;
- (4) streets or highways, on which a starting point may be located;
- (5) boundaries, directions and distances;
- (6) area of land.

In describing land which has been registered under the Torrens registration system, the number of the certificate of title must be given.

§ 218. **Habendum clause.**—The usual effect of a habendum clause is to define the extent of the ownership in the thing granted to be held and enjoyed by the grantee; yet it is not an essential part of a deed, and its effect may not only be qualified and restrained by other parts of the deed, but where it is repugnant to the grant, it has no validity or effect whatever. It yields to the manifest intent and terms of the grant; but when not repugnant to other parts of the instrument, full effect is given to its provisions.

§ 219. **Exceptions and reservations.**—The reddendum clause contains the exceptions and reservations from the grant. An exception is the separation of part of the property or right embraced in the description, and already existing in species; as, excepting a particular parcel of land from a farm granted by general words. A reservation is something newly created out of the granted premises by force and effect of the reservation itself; as, an easement out of land granted.

§ 220. **Conditions.**—A condition is some quality annexed to real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event.

A condition precedent is one which must happen or be performed before the estate can vest or be enlarged. A condition subsequent is one, upon the failure or nonperformance of which, an estate already vested may be defeated.

§ 221. **Restrictions.**—Stipulations in a deed imposing restrictions on the use of the property by the grantee are valid, when the effect of the stipulation is not to accomplish an unlawful purpose. The following restrictive provisions have been upheld: a stipulation prohibiting the use of the property for hotel purposes; prohibiting the sale of liquor; prohibiting the erection of a building within a prescribed distance from the street; limiting the use of the premises to residence purposes only, and requiring that all buildings erected shall cost a specified amount.

§ 222. **Covenants.**—A covenant is an agreement in a deed whereby either party stipulates for the truth of certain facts, or binds himself to perform, or give, something to or for the other.

The customary covenants in a deed are (1) covenant of seizin and right to convey, (2) against encumbrances, and (3) of warranty, that the grantor will warrant and defend the title against all lawful claims and demands whatsoever. A covenant of warranty is in the nature of a covenant for quiet enjoyment.

§ 223. **Execution.**—A deed must be signed by the grantor, and such signing must also be acknowledged by the grantor before an officer authorized by law to take acknowledgments.¹

¹ A deed must be acknowledged in every state except South Carolina, where it is proved by affidavit of the subscribing witnesses.

The signature of the grantor may be by mark, in which event two witnesses must sign. When the deed has been acknowledged, ordinarily no witnesses are required, although several states require the signature of one or two witnesses in addition to the acknowledgment.²

§ 224. **Delivery.**—An instrument, although duly executed, can not take effect as a deed unless it is delivered. The time of delivery, rather than the date of execution, determines when a deed becomes effective.

An escrow is a conditional delivery of a deed to a third person, to be delivered by him to the grantee when certain specified conditions have been performed; until that time it does not acquire the force of a deed.

§ 225. **Record.**—A deed must be recorded in the county where the land is situated. Until a deed is so recorded, it is deemed fraudulent so far as it relates to a subsequent bona fide purchaser having no knowledge, at the time of his purchase, of the existence of such deed.

FORMS OF DEEDS

§ 226. Alabama; warranty deed.

Know all men by these presents, That we, A B and C B, his wife, of ———, in the State of Alabama, for and in consideration of the sum of ——— (\$——) Dollars, to us paid by C D of ———, in the State of ———, the receipt whereof we hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said C D, his heirs and assigns, the following described real estate, all situated in ——— County, State of Alabama, to wit: (*description*).

To have and to hold the aforegranted premises to the said C D, his heirs and assigns, forever.

And we, for ourselves and our heirs and assigns, do hereby covenant with the said C D, his heirs and assigns, that we are lawfully seized in fee of the aforegranted premises; that they are

² See forms of deeds for each state, § 226 et seq.

free from all encumbrances; that we have good right to sell and convey the same; and that we will warrant and defend the said premises to the said C D, his heirs and assigns, forever against the lawful claims and demands of all persons.

In witness whereof, we, A B and C B, his wife, have hereunto set our hands and seals this _____ day of _____, 19—.

A B
C B

Alabama form of acknowledgment; see § 162.

§ 227. Arizona; warranty deed.

For the consideration of _____ dollars, I hereby convey to A B the following tract of real estate: _____ (*description*).

And I warrant the title against all persons whomsoever.

Dated this _____ day of _____, 19—.

Arizona form of acknowledgment; see § 163.

§ 228. Arkansas; warranty deed.

Know all men by these presents, that we, _____ and _____, his wife, for and in consideration of the sum of _____ dollars, to us paid by _____, do hereby grant, bargain, sell and convey unto the said _____ and unto _____ heirs and assigns forever, the following lands lying in the county of _____ and state of Arkansas, to wit: _____ (*description*).

To have and to hold the same unto the said _____ and unto _____ heirs and assigns forever, with all appurtenances thereunto belonging.

And _____ hereby covenant with said _____ that _____ will forever warrant and defend the title to said lands against all claims whatever. And I, _____, wife of the said _____, for and in consideration of the said sum of money, do hereby release and relinquish unto the said _____ all my right of dower and homestead in and to the said lands.

Witness our hands and seals on this _____ day of _____, 19—.

Signed, sealed and delivered

(SEAL)

Arkansas form of acknowledgment; see § 164.

§ 229. California; statutory form.

I, A B, grant to C D, all that real property situated in _____ county, state of California, bounded (*or* described) as follows: _____ (*description*).

Witness my hand this _____ day of _____, 19—.

A B

California form of acknowledgment; see § 165.

§ 230. Colorado; statutory form.

Know all men by these presents that I, _____, of the county of _____, and state of _____, for the consideration of _____ dollars, in hand paid, hereby sell and convey (*or* quitclaim) to _____, of the county of _____ and the state of _____, the following real property situate in the county of _____ and state of Colorado, to wit: _____, with its appurtenances (and warrant the title to the same).

Signed and delivered this _____ day of _____, 19—.

Colorado form of acknowledgment; see § 166.

§ 231. Connecticut; warranty deed.

To all people to whom these presents shall come, greeting: know ye, that I, A B, of _____, for the consideration of _____ dollars (\$_____) received to my full satisfaction of C D, of _____, do give, grant, bargain, sell and confirm unto the said C D, his heirs and assigns, _____ (*description of property*).

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him, the said grantee, his heirs and assigns forever, to his and their own proper use and behoof. And also, I, the said grantor, do for myself, my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that at and until the ensembling of these presents, I am well seized of the premises, as a good indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever.

And furthermore, I, the said grantor, do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to him, the said grantee, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, I have hereunto set my hand and seal this
 _____ day of _____, 19—.

Signed, sealed and delivered in presence of

A B (SEAL)

Connecticut form of acknowledgment; see § 167.

§ 232. Delaware; warranty deed.

This indenture, made the _____ day of _____, in the year of our Lord, one thousand nine hundred and _____, between _____, part— of the first part, and _____, part— of the second part, witnesseth, that the said part— of the first part, for and in consideration of the sum of _____ dollars, current lawful money of the United States of America, unto _____ well and truly paid by the said part— of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha— granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these present do— grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said part— of the second part, _____ heirs and assigns, all _____ (*description of property*).

Together with all and singular the _____, improvements, woods, ways, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof and all the estate, right, title, interest, property, claim and demand, whatsoever of _____ the said part— of the first part in law, equity, or otherwise, howsoever, of, in and to the same, and every part and parcel thereof.

To have and to hold the said _____ hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said part— of the second part, _____ heirs and assigns, to and for the only proper use and behoof of the said part— of the second part, _____ heirs and assigns forever.

And the said _____, _____ heirs, executors and administrators do— by these presents covenant, grant and agree to and with the said part— of the second part, _____ heirs and assigns that _____, the said part— of the first part, _____ heirs all and singular the hereditaments and premises herein above described and granted, or mentioned, or intended so to be, with the appurtenances unto the said part— of the second part, _____ heirs and assigns against the said part— of the first part, _____ heirs and

against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will by these presents warrant and forever defend.

In witness whereof, the said part— of the first part ha— hereunto set ——— hand— and seal— dated the day and year first above written.

Sealed and delivered in the presence of
 _____ (SEAL)

Delaware form of acknowledgment ; see § 168.

§ 233. District of Columbia; deed.

This deed, made this _____ day of _____, in the year one thousand nine hundred and _____ by and between A B, of _____, party of the first part, and C D, of _____, party of the second part:

Witnesseth, that, in consideration of _____ dollars, the party of the first part does grant unto the party of the second part, in fee simple, all that piece or parcel of land in the city of Washington, District of Columbia, described as follows, to wit: _____ (*description of property*), together with the improvements, rights, privileges, and appurtenances to the same belonging.

And the said party of the first part covenants that he will warrant the property hereby conveyed: and that he will execute such further assurances of said land as may be requisite.

Witness _____ hand and seal the day and year hereinbefore written.

In presence of

 _____ (SEAL)

District of Columbia form of acknowledgment ; see § 169.

§ 234. Florida; warranty deed.

This indenture, made this _____ day of _____, _____, between _____ of the county of _____, in the state of _____, party of the first part, and _____ of the county of _____, in the state of _____, party of the second part, witnesseth:

That said party of the first part, for and in consideration of the sum of _____ dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit: _____

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Signed, sealed and delivered in presence of

_____ (SEAL)

Florida form of acknowledgment; see § 170.

§ 235. Georgia; warranty deed.

State of Georgia, _____ County, ss.

This indenture, made the _____ day of _____, 19—, between A B and M B, husband and wife, of _____, of the one part, and C D, of _____, of the other part, witnesseth, that the said A B and M B, for and in consideration of the sum of _____ dollars, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said C D, his heirs and assigns, all that tract or parcel of land, situate _____ (*description of property*).

To have and to hold the said premises, with all and singular the rights, members and appurtenances thereof to the same belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said C D, his heirs and assigns, in fee simple.

And the said A B and M B, for themselves, their heirs, executors, administrators and assigns, the said bargained premises unto the said C D, his heirs and assigns, against the said A B and M B, their heirs, executors, administrators and assigns, and all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said A B and M B have hereunto set their hands and affixed their seals the day and year first above written.

Signed, sealed and delivered in presence of

A B (SEAL)

M B (SEAL)

Georgia form of acknowledgment; see § 171.

§ 236. Idaho; deed.

This indenture, made this _____ day of _____, in the year one thousand nine hundred and _____, between A B of _____, County of _____, State of Idaho, the party of the first part, and C D of _____, County of _____, State of _____, the party of

the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of _____ (\$_____) dollars, of the U. S. of America, to _____ in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to _____ heirs and assigns forever, all the following described real estate, situated in the _____, County of _____, State of Idaho, to wit: (*description*).

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part. To have and to hold, all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part, and to _____ heirs and assigns forever. And the said party of the first part, and _____ heirs, the said premises in the quiet and peaceable possession of the said party of the second part, _____ heirs and assigns, against the said party of the first part, and _____ heirs, and against all and every person and person whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof, the said party of the first part has hereunto set _____ hand and seal the day and year first above written.

Signed, sealed and delivered
in the presence of:

Idaho form of acknowledgment; see § 172.

§ 237. Illinois; warranty deed.

The grantor _____ (*name or names and place of residence*), for and in consideration of _____, in hand paid, conveys and warrants to _____ (*grantee's name or names*), the following described real estate _____ (*description*), situated in the county of _____, in the state of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this _____ day of _____, 19—.

A B (L. S.)

Illinois form of acknowledgment; see § 173.

§ 238. Indiana; warranty deed.

A B conveys and warrants to C D _____ (*here describe the premises*) for the sum of _____ (*the consideration*).

Signed, sealed and dated this _____ day of _____, 19—.

A B (SEAL)

Indiana form of acknowledgment; see § 174.

§ 239. Iowa; statutory form.

For the consideration of _____ dollars, I hereby convey to A B the following tract of real estate _____ (*description*).

And I warrant the title against all persons whomsoever.

Dated this _____ day of _____, 19—.

Iowa form of acknowledgment; see § 175.

§ 240. Kansas; warranty deed.

This indenture, made this _____ day of _____, 19—, between A B, of _____ county, in the state of _____, of the first part, and C D, of _____ county, in the state of _____, of the second part:

Witnesseth, that said party of the first part, in consideration of the sum of _____ dollars, the receipt of which is hereby acknowledged, does by these presents, grant, bargain, sell and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of _____, and state of Kansas, to wit: _____ (*description of property*).

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

And said A B, for himself, his heirs, executors or administrators, does hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents, he is lawfully seized in his own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances, that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind soever _____ (except _____), and that he will warrant and forever defend the same unto said party of the second part, his heirs or assigns, against said party of the first part, his heirs, and

all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.

A B

Kansas form of acknowledgment; see § 176.

§ 241. Kentucky; warranty deed.

Know all men by these presents, that A B, of _____, for and in consideration of _____ dollars (\$_____) to him paid by C D, of _____, the receipt whereof is hereby acknowledged (*or*, the receipt of \$_____, whereof is hereby acknowledged, and the balance of \$_____ is to be paid on _____, 19—, and to secure said deferred payment a lien is hereby expressly retained upon the real estate hereinafter described), does hereby bargain, sell and convey to the said C D, his heirs and assigns forever, the following described real estate, to wit: _____ (*description of property*); being the same property conveyed to said party of the first part by _____, by deed dated _____, and recorded on _____ in the office of _____ in _____; together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said C D, his heirs and assigns forever, the grantor, his heirs, executors and administrators, hereby covenanting with the grantee, his heirs and assigns, that the title so conveyed is clear, free and unencumbered, and that he will warrant and defend the same against all legal claims whatsoever.

In witness whereof, the said grantor and his wife, M B, who includes, releases and transfers to said grantee all homestead exemption, dower and other right to said property, have hereunto set their hands this _____ day of _____, in the year 19—.

Teste:

Kentucky form of acknowledgment; see § 177.

§ 242. Louisiana; deed.

_____, 19— Sale of property by A B to C D	}	United States of America. State of Louisiana. (Parish of New Orleans—City of New Orleans.) _____ Be it known, that on this _____ day of the month of _____ in the year of our Lord, one thousand nine hundred and _____ and of the Independence of the United States of America, the one hundred and _____.
--	---	--

Before me, G H, a notary public, duly commissioned and qualified, in and for (this city and the Parish of Orleans), therein residing, and in the presence of the witnesses hereinafter named and undersigned.

Personally came and appeared A B, of _____, who declares that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which he has or may have against all preceding owners and vendors unto C D, of _____, here present, accepting and purchasing for himself and his heirs and assigns, and acknowledging due delivery and possession thereof, all and singular the following described property, to wit: _____ (*description of property*).

To have and to hold the above described property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of _____ dollars (\$_____) cash, which the said purchaser has well and truly paid in ready and current money to the said A B, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

All state and city taxes up to and including the taxes due and exigible in _____ are paid as per _____.

(By reference to the certificates of the Register of Conveyances and Recorder of Mortgages in and for the Parish of _____ annexed _____ it does not appear that said property has been heretofore alienated by the said A B or that it is subject to any encumbrance whatever.)

Thus done and passed, in my office, at the (city of New Orleans), on the day, month and year herein first above written, in the presence of Messieurs E F and R S, competent witnesses,

who hereunto sign their names with the said appearers and me, notary, after reading of the whole.

Witnesses:

E F
R S

A B
C D

G H, Notary Public

Louisiana form of acknowledgment; see § 178.

§ 243. Maine; deed.

Know all men by these presents: that A B, of _____, in consideration of _____ (\$_____) dollars paid by C D, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey, unto the said C D, _____ heirs and assigns forever, a certain lot or parcel of land: (*description*):-

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said C D, _____ heirs and assigns, to _____ and their use and behoof forever.

And _____ do covenant with the said grantee, _____ heirs or assigns, that _____ lawfully seized in fee of the premises, that they are free of all encumbrances (except _____); that _____ have good right to sell and convey the same to the said grantee _____ to hold as aforesaid; and that _____ and _____ heirs, shall and will warrant and defend the same to the said grantee, _____ heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof _____, the said _____ and _____ wife _____ of the said _____ joining in this deed as grantor and relinquishing and conveying _____ right by descent and all other rights in the above-described premises, have hereunto set _____ hand— and seal— this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

_____ (L. S.)

Signed, sealed and delivered
in the presence of:

Maine form of acknowledgment; see § 179.

§ 244. Maryland; statutory form.

This deed, made this _____ day of _____, in the year _____, by me, _____ (*name of the grantor*), witnesseth, that in consideration of _____ (*consideration*), I, the said _____, do grant

unto _____ (*name of the grantee*), all that _____ (*description of property*).

Witness my hand and seal.

Teste:

A B _____ (SEAL)

Maryland form of acknowledgment; see § 180.

§ 245. Massachusetts; warranty deed.

Know all men by these presents that I, A B, of _____, in consideration of _____ dollars (\$_____), paid by C D, of _____, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said C D, the following described real property, to wit: _____ (*description of property*).

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging to the said C D and his heirs and assigns, to their own use and behoof forever.

And I do hereby for myself and my heirs, executors and administrators, covenant with the grantee and his heirs and assigns that I am lawfully seized in fee simple of the granted premises, that they are free from all encumbrances, and that I have good right to sell and convey the same as aforesaid; and that I will and my heirs, executors and administrators shall warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons.

And for the consideration aforesaid, I, M B, wife of said A B, hereby release unto the grantee and his heirs and assigns all right of or to both dower and homestead in the granted premises, and all other rights and interests therein.

In witness whereof we, the said A B and M B, hereunto set our hands and seals this _____ day of _____, in the year one thousand nine hundred and _____.

Signed and sealed in presence of

_____ (SEAL)

_____ (SEAL)

Massachusetts form of acknowledgment; see § 181.

§ 246. Michigan; statutory form.

A B conveys and warrants to C D _____ (*description of premises*) for the sum of _____ (*the consideration*).

Signed, sealed and dated this _____ day of _____, 19—.

Signed, sealed and delivered in presence of

_____ A B (SEAL)

Michigan form of acknowledgment; see § 182.

§ 247. Minnesota; statutory form.

A B, grantor, of _____ (*place of residence*), for and in consideration of _____ (*consideration*), conveys and warrants to C D, grantee, of _____ (*place of residence*), the following-described real estate in the county of _____, in the state of Minnesota: _____ (*description of premises*).

Dated this _____ day of _____, 19—.

Executed in presence of

Minnesota form of acknowledgment; see § 183.

§ 248. Mississippi; warranty deed.

In consideration of _____, I convey and warrant to _____ the land described as _____ (*description*).

Witness my signature the _____ day of _____, 19—.

Mississippi form of acknowledgment; see § 184.

§ 249. Missouri; warranty deed.

This indenture, made on this _____ day of _____, one thousand nine hundred and _____, by and between A B of the county of _____, state of _____, party of the first part, and C D of the county of _____, state of _____, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of _____ dollars to him paid by said party of the second part, the receipt of which is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situated in the county of _____ and state of Missouri, to wit: all _____ (*description of property*).

To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto the said party of the second part and unto his heirs and assigns forever; the said party of the first part hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear from any encumbrance done or suffered by him or those under whom he claims; and that he will warrant and defend the title to the said premises unto the said party of the second part

and unto his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year above written.

A B

Missouri form of acknowledgment; see § 185.

§ 250. Montana; warranty deed.

This indenture, made this _____ day of _____, one thousand nine hundred and _____, between A B and M B, husband and wife, of _____, parties of the first part, and C D of _____, party of the second part, witnesseth:

That said parties of the first part, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, convey, warrant and confirm unto the said party of the second part, and to his heirs and assigns forever, the hereinafter-described real estate, situated _____ (*description of property*), together with all and singular the hereinbefore-described premises, together with all the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging.

To have and to hold all and singular the above mentioned and described premises unto the said party of the second part and to his heirs and assigns forever.

And the said parties of the first part, and their heirs, do hereby covenant that they will forever warrant and defend all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the second part, his heirs and assigns, against the acts and deeds of the said parties of the first part and all and every person and persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

A B
M B

Montana form of acknowledgment; see § 186.

§ 251. Nebraska; deed.

Know all men by these presents, That A B and C B, husband and wife, in consideration of _____ (\$_____) dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto C D the following described real estate situate in the county of _____, and State of Nebraska, to wit: (*description*) together with all the tenements, hereditaments and appurtenances to the same belonging and all the estate, title, dower, right of homestead, claim or demand whatsoever of the _____ of, in, or to the same or any part thereof.

To have and to hold the above-described premises, with the appurtenances, unto the said C D, and to his heirs and assigns forever, and we, the said A B and C B, for ourselves and our heirs, executors and administrators, do covenant with the said C D, and with his heirs and assigns, that we are lawfully seized of said premises; that they are free from encumbrance except _____; that we have good right and lawful authority to sell the same and that we will and our heirs, executors and administrators shall warrant and defend the same unto the said _____ and his heirs and assigns forever against the lawful claims of all persons whomsoever.

In witness whereof, we have hereunto set our hands this _____ day of _____, 19—.

In presence of:

A B
C B

Nebraska form of acknowledgment; see § 187.

§ 252. Nevada; deed.

This indenture, made this _____ day of _____, 19—, between A B of the county of _____, party of the first part, and C D, of the county of _____, party of the second part.

Witnesseth: That said party of the first part, for and in consideration of the sum of _____ (\$_____) dollars to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell unto said party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the county of _____, State of _____, and more particularly described as follows, to wit: (*description*).

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents,

issues and profits thereof. To have and to hold, all and singular the said premises together with the appurtenances unto said party of the second part, and to his heirs and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

A B

Nebraska form of acknowledgment; see § 188.

§ 253. New Hampshire; warranty deed.

Know all men by these presents, that I, A B of ———, for and in consideration of the sum of ——— dollars, to me in hand before the delivery hereof well and truly paid by C D, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said C D, his heirs and assigns forever, ——— (*description of property*).

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to the said C D, and his heirs and assigns, to his and their only proper use and benefit forever.

And I, the said A B, and my heirs, executors and administrators, do hereby covenant, grant and agree to and with the said C D, and his heirs and assigns, that until the delivery hereof I am the lawful owner of said premises and am seized and possessed thereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that said premises are free and clear from all and every encumbrance whatsoever; and that I, and my heirs, executors and administrators, shall and will warrant and defend the same to the said C D, and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, M B, wife of said A B, in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we, and each of us, do hereby release all rights of homestead and other rights whatsoever which are secured to us, or either of us, by the statute of the state of New Hampshire passed July 4, 1851, entitled, "An act to exempt the homestead of families from attachment and levy for sale on execution" or by any other statute of said state.

In witness whereof, we have hereunto set our hands and seals this _____ day of _____, 19—.

Signed, sealed and delivered in presence of

A B (SEAL)

M B (SEAL)

New Hampshire form of acknowledgment; see § 189.

§ 254. New Jersey; statutory form.

This deed made this _____ day of _____, in the year _____, between _____ (*names and residences of parties*);

Witnesseth, that in consideration of _____ (*consideration*), the said _____ doth (*or do*) grant and convey unto the said _____ all, _____ (*description of the property and covenants or any other provisions*).

In witness whereof, the said party of the first part ha— hereunto set _____ hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of

New Jersey form of acknowledgment; see § 190.

§ 255. New Mexico; warranty deed.

This indenture, made this _____ day of _____, in the year 19—, between A B and M B, husband and wife, of the first part, and C D, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do hereby grant, bargain, sell, remise, release, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described lot or parcel of land and real estate, situate _____ (*description of property*), together with all and singular the lands, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said parties of the first part, for themselves, and their heirs, executors and administrators, do covenant and agree, to and with said party of the second part, his heirs and assigns, that at the time of delivery of these presents we are well seized of the premises above conveyed, as of a good, sure, perfect and indefeasible estate of inheritance, in law, in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances of what kind and nature soever (except ——); and the above-bargained premises in the quiet and peaceable possession of the party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

Signed and delivered in presence of

A B

M B

New Mexico form of acknowledgment; see § 191.

§ 256. New York; statutory form.

This indenture, made the —— day of ——, in the year 19—, between —— of —— (*residence*), of the first part, and —— of —— (*residence*), of the second part.

Witnesseth, that the said party of the first part, in consideration of —— dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever, all —— (*description*), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the said party of the second part, his heirs and assigns forever. And said —— covenants as follows:

First. That said —— is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from encumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said _____ will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of

_____ (SEAL)

New York form of acknowledgment; see § 192.

§ 257. North Carolina; deed.

This deed, made and entered into this, the _____ day of _____, 19—, by and between _____, party of the first part, and _____, party of the second part, witnesseth:

That for and in consideration of the sum of _____ dollars to _____ in hand paid, the receipt of which is hereby fully acknowledged, said party of the first part has given, granted, bargained and sold and does by these presents, give, grant, bargain, sell and convey unto _____, said party of the second part and _____ heirs and assigns, the following _____ or parcel of land, lying and being in _____ township, in said county and state, bounded and described as follows, to wit (*description*).

To have and to hold said _____ or parcel of land, together with all privileges and appurtenances thereon and thereto belonging, unto _____, said party of the second part, and _____ heirs and assigns forever in fee simple.

And said _____ for himself and his heirs covenants to and with said party of the second part and his heirs and assigns that _____ seized of said premises in fee, and has good right to convey the same in fee simple; that the same are free and clear of all encumbrances, and that he will forever warrant and defend the said title to the same against the claims of all persons whomsoever.

In testimony whereof, the said party of the first part has set his hand and seal the day and year first above written.

(SEAL)

_____.
North Carolina form of acknowledgment; see § 193.

§ 258. North Dakota; statutory form.

This grant made the _____ day of _____, in the year _____, between A B of _____, of the first part, and C D of _____, of the second part, witnesseth, that the party of the first part hereby grants to the party of the second part, in consideration of _____

dollars, now received, all the real property situated in _____, and bounded (or described) as follows: _____.

Witness the hand of the party of the first part.

A B.

North Dakota form of acknowledgment; see § 194.

§ 259. Ohio; warranty deed.

Know all men by these presents, that A B, of _____, the grantor, in consideration of _____ dollars (\$_____) to him paid by C D, the grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said grantee, his heirs and assigns forever, the following described real estate, situated in the _____ of _____, county of _____ and state of Ohio, and _____ (*description of property*), and all the estate, title and interest of said grantor in and to said premises.

To have and to hold said premises, with all the rights, easements and appurtenances thereunto belonging, and all the rents, issues and profits thereof, to the said grantee, his heirs and assigns forever, subject, however, to all legal highways, block and zoning restrictions and to the conditions herein contained.

And the said grantor, for himself and his heirs, executors and administrators, hereby covenants with the said grantee, his heirs and assigns, that said grantor is the true and lawful owner of said premises, and is well seized of the same in fee simple, and has good right and full power to bargain, sell and convey the same in manner aforesaid, and that the same are free and clear from all encumbrances, and further, that said grantor will warrant and defend the same against all claims of all persons whatsoever (except as hereinbefore provided).

And M B, wife of said A B, does hereby release to said grantee, his heirs and assigns, all her right and expectancy of dower in said premises.

In witness whereof, the said A B and M B have hereunto set their hands, this _____ day of _____, 19—.

Signed and acknowledged in presence of

A B.

M B.

Ohio form of acknowledgment; see § 195.

§ 260. Oklahoma; statutory form.

Know all men by these presents, that _____, part— of the first part, in consideration of the sum of _____ dollars, in hand

paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto _____ the following-described real property and premises, situate in _____ county, state of Oklahoma, to wit: _____, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said part— of the second part —, _____ heirs and assigns forever, free, clear and discharged of and from all former grants, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this _____ day of _____, 19—.

Oklahoma form of acknowledgment; see § 196.

§ 261. Oregon; deed.

Know all men by these presents, that A B of _____, State of Oregon, in consideration of _____ (\$_____) dollars, to him paid by C D of _____, State of Oregon, has bargained and sold, and by these presents does grant, bargain, sell and convey unto said C D, his heirs and assigns, all the following bounded and described real property, situated in the county of _____, and State of Oregon: (*description*), together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all his estate, right, title and interest in and to the same, including dower and claim of dower.

To have and to hold, the above described and granted premises unto the said C D, his heirs and assigns forever. And A B, grantor above named, does covenant to and with C D, the above-named grantee, his heirs and assigns, that _____ lawfully seized in fee simple of the above-granted premises. that the above-granted premises are free from all encumbrances, _____ and that _____ will and _____ heirs, executors and administrators, shall warrant and forever defend the above-granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In witness whereof, A B, the grantor above named, has hereunto set his hand and seal this _____ day of _____, 19—.

A B (SEAL)

Oregon form of acknowledgment; see § 197.

§ 262. Pennsylvania; warranty deed.

This indenture, made the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, between A B of the _____ of _____, county of _____ and state of _____, party of the first part, and C D of the _____ of _____, county of _____ and state of _____, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of _____ dollars (\$_____), to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, his heirs and assigns, all that certain _____ (*description of property*).

Together with all and singular the improvements, ways, streets, alleys, passages, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the remainders and reversions, rents, issues and profits thereof. Also, all the estate, right, title, interest, property, claim or demand whatsoever of the said party of the first part, in law, equity or otherwise howsoever, of, in or to the same and every part thereof.

To have and to hold the said premises as above described with the appurtenances unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the party of the second part, his heirs and assigns forever; and the said party of the first part, his heirs, executors and administrators, does covenant, grant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that the above-bargained premises with the appurtenances in the quiet and peaceable possession of the party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the same or any part thereof will forever warrant and defend.

In witness whereof, the party of the first part hath hereunto set his hand and seal the day and year first above written.

Sealed and delivered in presence of

_____ (L. S.)

Pennsylvania form of acknowledgment; see § 198.

§ 263. Rhode Island; warranty deed.

Know all men by these presents, that _____, hereinafter called the grantor, in consideration of the sum of _____ dollars, to him paid by _____, hereinafter called the grantee, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said grantee and _____ heirs and assigns forever in fee simple _____ (*description of property*).

To have and to hold the afore-granted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said grantee, and _____ heirs and assigns forever in fee simple.

And he, the said grantor, does hereby, for _____ and for _____ heirs and assigns, covenant with the said grantee and _____ heirs and assigns, that _____ is lawfully seized in fee simple of the said granted premises; that the same are free from all encumbrances (except _____); that _____ has good right, full power and lawful authority to sell and convey the same in manner as aforesaid; that the said grantee and _____ heirs and assigns shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that _____, the said grantor, will, and _____ heirs and assigns shall, warrant and defend the same to the said grantee and _____ heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, _____ do hereby release all _____ right of dower in and to the granted premises unto the said grantee and _____ heirs and assigns forever.

In witness whereof, the said _____ ha— hereunto set _____ hand— and seal— this _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

Signed and sealed in presence of _____

_____ Rhode Island form of acknowledgment; see § 199.

§ 264. South Carolina; statutory form.

State of South Carolina:

Know all men by these presents, that I, A B of _____ in the state aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said C D, all that _____ (*describe the premises*), together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

To have and to hold all and singular the premises before mentioned unto the said C D, his heirs and assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said C D, his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal this _____ day of _____, in the year of our Lord _____, and in the _____ year of the independence of the United States of America.

Executed in the presence of _____ (L. S.)

South Carolina form of proof by subscribing witness; see § 200.

§ 265. South Dakota; warranty deed.

_____, grantor, of _____ county, state of _____, for and in consideration of _____ dollars, grants, conveys and warrants to _____, grantee, of _____ P. O., the following-described real estate in the county of _____ in the state of South Dakota: _____.

Dated this _____ day of _____, 19—.

South Dakota form of acknowledgment; see § 201.

§ 266. Tennessee; warranty deed.

I hereby convey to A B the following tract of land _____ (*describing it*), and I warrant the title against all persons whomsoever.

Dated this _____ day of _____, 19—.

Tennessee form of acknowledgment; see § 202.

§ 267. Texas; statutory form.

State of Texas, County of _____, ss.

Know all men by these presents, that I, _____ of the _____ (*name of city, town or county*), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____, of the _____ (*name of city, town or county*), in the state of _____, all that certain _____ (*describe the premises*).

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in any-wise belonging, unto the said _____, his heirs or assigns forever.

And I do bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said _____, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand this _____ day of _____, 19—.

Signed and delivered in the presence of _____

Texas form of acknowledgment; see § 203.

§ 268. Utah; warranty deed.

A B, grantor, _____ (*name or names and place of residence*), hereby conveys and warrants to C D, grantee, _____ (*name or names and place of residence*), for the sum of _____ dollars, the following-described tract of land in _____ county, Utah: _____ (*describe the premises*).

Witness the hand of said grantor this _____ day of _____, 19—.

In presence of _____

Utah form of acknowledgment; see § 204.

§ 269. Vermont; deed.

Know all men by these presents: That A B of _____, in the county of _____, State of Vermont, in consideration of _____ (\$_____) dollars paid to his full satisfaction by C D of _____, in the county of _____, and State of Vermont, by these presents, do freely give, grant, sell, convey and confirm unto the said C D and his heirs and assigns forever, a certain piece of land in _____, in the county of _____, and State of Vermont, described as follows: (*description*).

To have and to hold said granted premises, with all the privileges and appurtenances thereof, to the said C D, his heirs and assigns, to their own use and behoof forever; and A B, the said grantor, for himself and his heirs, executors and administrators, does covenant with the said C D, his heirs and assigns, that until the ensembling of these presents, he is the sole owner of the premises, and has good right and title to convey the same in

manner aforesaid: that they are free from every encumbrance; _____ and _____ hereby engage to warrant and defend the same against all lawful claims whatever _____.

In witness whereof, A B has hereunto set his hand and seal this _____ day of _____, 19—.

In presence of:

_____ A B (SEAL)

_____ Vermont form of acknowledgment; see § 205.

§ 270. Virginia; statutory form.

This deed, made the _____ day of _____, in the year _____, between _____ (*names of the parties*), witnesseth, that in consideration of _____ (*consideration*), the said _____, doth (*or do*) grant unto the said _____, all _____ (*description of the property, covenants and any other provisions*).

Witness the following signature and seal.

_____ (SEAL)

_____ Virginia form of acknowledgment; see § 206.

§ 271. Washington; warranty deed.

The grantor, _____ (*name or names and place of residence*), for and in consideration of _____ (*consideration*), in hand paid, convey and warrant to _____ (*grantee's name or names*), the following-described real estate: _____ (*description*), situate in the county of _____, State of Washington.

Dated this _____ day of _____, 19—.

_____ Washington form of acknowledgment; see § 207.

§ 272. West Virginia; statutory form.

This deed made the _____ day of _____, in the year _____, between _____ (*names of parties*), witnesseth, that in consideration of _____ (*consideration*), the said _____ doth (*or do*) grant unto the said _____ all _____ (*description of the property, and covenants or any other provisions*).

Witness the following signature and seal.

_____ West Virginia form of acknowledgment; see § 208.

§ 273. Wisconsin; warranty deed.

A B, grantor, of _____ county, Wisconsin, hereby conveys and warrants to C D, grantee, of _____ county, Wisconsin, for

the sum of _____ dollars, the following tract of land in _____ county: _____ (*describe the premises*).

Witness the hand and seal of said grantor this _____ day of _____, 19____. _____ (SEAL)

In the presence of

Wisconsin form of acknowledgment; see § 209.

§ 274. Wyoming; warranty deed.

A B, grantor (*and place of residence*), for and in consideration of _____ (*consideration*) in hand paid, conveys and warrants to C D, grantee (*and place of residence*), the following described real estate _____ (*description*), situate in the county of _____, state of Wyoming. Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this _____ day of _____, 19____.

In presence of

Wyoming form of acknowledgment; see § 210.

MORTGAGES—ESSENTIAL REQUISITES

§ 275. **Definition.**—A mortgage is a conveyance of property, real or personal, to a person called the mortgagee, to secure the performance of some act, such as the payment of money by the mortgagor, and to become void upon the performance of such act. The mortgagor is the one who executes and gives the mortgage and the mortgagee is the one to whom it is made, and to whom payment of money is secured thereby.

§ 276. **Mortgages of realty.**—In most of the states mortgages on land must be executed, acknowledged and recorded in the same way as deeds conveying land. In form they are the same as a deed, except that they contain a provision which, if complied with, makes the conveyance void. This defeasance clause contains a recital of the debt or obligation secured by the mortgage, together with the provision that upon payment of the

debt, or performance of the obligation, the instrument shall be void. The customary phraseology is "provided, however," or "on condition," but any words which indicate that the conveyance is intended as security for a debt, merely, will be sufficient.

§ 277. Chattel mortgages.—A chattel mortgage is a transfer of personal property as security for a debt, or for the performance of an obligation. Chattel mortgages generally must be acknowledged, and are executed in much the same manner as mortgages on lands. In many states, to make them valid against third persons, when the mortgagor retains possession of the goods mortgaged, they must be recorded. The place of recording is ordinarily in the office where deeds must be recorded, in the county of the mortgagor's residence. If, however, the mortgagor be a nonresident of the state, the mortgage must be recorded in the county where the chattels are.

TYPICAL FORMS OF MORTGAGES

§ 278. Form of real estate mortgage.

Know all men by these presents, that A B, of ———, in consideration of ——— (\$——) dollars to him paid by C D, does hereby grant, bargain, sell, and convey to the said C D, his heirs and assigns forever, the following described real estate, situate in the City of ———, in the County of ———, and State of ———, to wit: (*description of property*).

And all the estate, right, title, and interest of the said grantor in and to said premises; to have and to hold the same, with all the privileges and appurtenances thereunto belonging, to said grantee, his heirs and assigns forever.

And the said grantor does hereby covenant and warrant that the title so conveyed is clear, free, and unencumbered, and that he will defend the same against all lawful claims of all persons whomsoever.

Provided, nevertheless, that if the said A B shall pay or cause to be paid his certain promissory note of even date herewith, for ——— (\$——) dollars, due one year after date, with interest

at six per cent (6%) per annum, payable to the order of C D, then these presents shall be void.

In witness whereof, the said A B and M B, his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands this _____ day of _____, 19—.

Signed in presence of us:

A B
M B

(Certificate of acknowledgment)

§ 279. Form of chattel mortgage.

Know all men by these presents, that A B, in consideration of _____ (\$_____) dollars to him paid by C D, the receipt whereof is hereby acknowledged, does hereby sell and convey unto said C D and assigns, the following described goods and chattels, to wit: (*description*).

Provided, nevertheless, that if the said A B shall pay or cause to be paid his certain promissory note of even date herewith, for _____ (\$_____) dollars, due _____, with interest at _____ (_____%) per cent per annum, payable to the order of C D, then these presents shall be void; otherwise they shall remain in full force.

In witness whereof, the said A B has hereto set his hand this _____ day of _____, 19—.

A B

(Signature of witnesses, if required)
(Certificate of acknowledgment)

CHAPTER VI: DEPOSITIONS

ESSENTIAL REQUISITES

SECTION	SECTION
280. Definitions.	290. Caption of deposition.
281. Right to take depositions.	291. Form of deposition.
282. Classification.	292. Officer's certificate.
283. Who may take depositions.	293. Interpreters.
284. Notice of intention to take.	294. Adjournments.
285. Manner of taking depositions —in general.	295. Objections.
286. Taken under agreement or stipulation.	296. Exhibits.
287. Swearing the witness.	297. Return of deposition.
288. Writing of depositions.	298. Compelling attendance of witness.
289. Signing the deposition.	299. Punishment for contempt.

STATUTORY PROVISIONS AND FORMS

300. United States.	325. Montana.
301. Uniform Foreign Depositions Act.	326. Nebraska.
302. Alabama.	327. Nevada.
303. Arizona.	328. New Hampshire.
304. Arkansas.	329. New Jersey.
305. California.	330. New Mexico.
306. Colorado.	331. New York.
307. Connecticut.	332. North Carolina.
308. Delaware.	333. North Dakota.
309. Florida.	334. Ohio.
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311. Idaho.	336. Oregon.
312. Illinois.	337. Pennsylvania.
313. Indiana.	338. Rhode Island.
314. Iowa.	339. South Carolina.
315. Kansas.	340. South Dakota.
316. Kentucky.	341. Tennessee.
317. Louisiana.	342. Texas.
318. Maine.	343. Utah.
319. Maryland.	344. Vermont.
320. Massachusetts.	345. Virginia.
321. Michigan.	346. Washington.
322. Minnesota.	347. West Virginia.
323. Mississippi.	348. Wisconsin.
324. Missouri.	349. Wyoming.

ESSENTIAL REQUISITES

§ 280. **Definitions.**—A deposition is the testimony of a witness reduced to writing, in the manner and before an officer or person designated by law, for use on the trial of a cause in court. The statutes of some states define a deposition as a written declaration, under oath,

made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine.¹

A deponent is the person who gives testimony under oath, which is reduced to writing.

A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.²

Interrogatories are verbal questions put to a witness before an examiner and answered on oath; or, framed questions in writing, annexed to a commission to take the deposition of a witness, to be put to and answered by the witness under oath.

“De bene esse” is a technical phrase applied to a thing done conditionally or provisionally, and out of due course; for example, testimony taken in advance of a trial, where there is danger that it may be lost, owing to the age, infirmity, or intended absence of the witness. If the oral testimony of such witness can not be had at the trial, his deposition taken conditionally, or to provide for such contingency, may then be used.³

“Dedimus potestatem,” literally, “we have given the power,” means a writ or commission empowering the person or officer to whom it is directed to take the deposition of witnesses who are generally out of the jurisdiction of the court issuing the writ.

Perpetuating testimony is the act of reducing to writing the testimony of a witness, to be used in a suit thereafter to be commenced, when by reason of age, or infirmity, or his going abroad, such testimony is likely to be lost.

¹ California Code of Civil Procedure (1937), § 2004.

² Idaho Code (1932), § 19-3103.

³ See statutory provisions of the various states for circumstances when depositions may be used, § 302 et seq.

A letter rogatory is an instrument sent in the name and by the authority of one judge of a court to another, generally in a foreign country, requesting the latter judge to have the testimony of a witness taken and forwarded to the former. An American court receiving such a letter from a judge in another country would execute it, probably by appointing a notary public within its jurisdiction to take the testimony desired, in accordance with the law of the notary's state.

A subpoena is a writ commanding attendance in a court under a penalty. A "subpoena ad testificandum" is personally served upon a witness to compel him to appear and give testimony. A "subpoena duces tecum" is one commanding the witness to bring with him and produce certain documents, books, or papers, which he has in his possession.

§ 281. **Right to take depositions.**—The use of depositions was not permitted in the early common law courts except by consent of the parties. Courts of equity, however, had power to obtain testimony by deposition, having created three different forms of relief: (1) A bill to take testimony *de bene esse*; (2) a bill to perpetuate testimony; and (3) a bill of discovery.⁴ To correct this situation, most of the state have enacted statutes which now permit the use of depositions and prescribe the manner in which they are to be taken. Strict compliance with these statutory provisions is necessary. The recently enacted Federal Rules of Civil Procedure incorporate and broaden the provisions of the United States statutes for depositions.

§ 282. **Classification.**—Depositions are frequently mentioned under different names and phrases in the various statutory provisions, with reference chiefly to the

⁴ Stern, *Getting the Evidence*, § 127.

manner, authorization, purpose, and time of their taking. They may be classified accordingly:

1. Deposition taken in reply to (a) oral interrogatories or questions, and (b) written interrogatories or questions.

2. Depositions taken (a) on notice; (b) under commission, or *dedimus potestatem*; (c) under notice and commission; (d) by stipulation or agreement; (e) under letters rogatory.

3. Depositions taken (a) *de bene esse* (conditionally); (b) to perpetuate testimony.

§ 283. **Who may take depositions.**—The statutes ordinarily name the officers before whom depositions may be taken. Not only notaries public, but frequently the clerk of courts, a judge of a particular court, a justice of the peace, and a commissioner are authorized to take depositions. Some statutes confer such power generally upon any officer authorized to administer an oath.

If the witness whose deposition is to be taken resides out of the state, a commission is usually issued by the clerk of the court in which the suit is pending, to any person agreed upon by the parties to the suit, or to a notary public selected by the officer issuing the commission, or to a commissioner appointed by the governor to take depositions in other states.

The statutes of many states expressly provide that the officer before whom the deposition is taken must not be related to or the attorney or agent of either of the parties, or interested in the result of the suit.

§ 284. **Notice of intention to take.**—The written notice of intention to take a deposition, given to the adverse party, may contain any or all of the following items: (1) Names of the parties to the suit; (2) court in which the deposition is to be used; (3) time when and place where it will be taken; (4) name of the witness or

witnesses; (5) name of officer who will take; (6) reason for taking; (7) whether examination is to be adjourned from day to day; (8) matters upon which witness is to be examined; (9) signature of party giving notice, or his attorney.

The manner and time of serving such notice are regulated by statutes, varying according to the laws of the several states. If neither the adverse party nor his attorney reside in the state, provision is usually made for service by publication in a newspaper.

Depositions taken on notice are generally taken in answer to oral questions propounded by the attorneys of the parties, the notice being the only writing which comes to the notary public as evidence of his right to take the deposition. He must, therefore, be an officer expressly authorized by statute to take depositions.

§ 285. **Manner of taking depositions—in general.**—Depositions in reply to oral questions are generally taken under notice or agreement, before a duly authorized officer with whom the parties have arranged to be present and to have the witnesses present at the time and place mentioned in the notice or agreement. Either or both parties have the right to be present at such taking, by attorney or in person, or both. The officer, after having written out the proper caption, proceeds to write or to have written the questions submitted orally to the witnesses by the parties to the suit, or by their attorneys, and the answers of each witness.

Depositions in reply to written interrogatories are taken generally under a commission, at which taking neither party to the suit has a right to be present or to be represented by attorney or agent, the interrogatories being put to the witness by the officer, and the answers thereto written by him or some authorized person. In addition to the interrogatories prepared by the attorney of the party desiring the deposition, cross-interrogatories

may be submitted by the opposing attorney. Both the interrogatories and cross-interrogatories are attached to the commission. The law of the state whence the commission issues governs such depositions and the manner of their taking.

§ 286. **Taken under agreement or stipulation.**—The parties to a suit may agree or stipulate that the deposition of a witness or witnesses may be taken before a certain officer, at a designated time and place, and waive some of the strict statutory requirements as to adjournments or other particulars. Such agreement or stipulation is usually reduced to writing, and takes the place of a commission or similar authority. As to matters not provided for in the agreement, the statutes and practice governing them in the state where the deposition is to be used should be carefully observed.

§ 287. **Swearing the witness.**—The statutes of most of the states require that the witness be sworn before giving his testimony. The usual form of oath to the witness is as follows:

“You do solemnly swear that you will testify the truth, the whole truth, and nothing but the truth in answer to the several questions (or interrogatories and cross-interrogatories) about to be put to you in the case now pending in the —— Court, wherein A B is plaintiff and C D is defendant, and this you do as you shall answer unto God?”

§ 288. **Writing of depositions.**—Under the statutory provisions of a majority of the states, only the officer, or the witness who is deposing, or some disinterested third person, is allowed to write the answers to the questions put to the witness. The recently enacted Federal Rules of Civil Procedure require that the officer before whom the deposition is to be taken shall personally, or by some

one acting under his direction and in his presence, record the testimony of the witness. In most states, depositions may be taken stenographically and transcribed. When the testimony is fully transcribed, the deposition is submitted to the witness for examination and will be read to or by him for his correction or approval. Any changes in form or substance which the witness desires to make should be noted upon the deposition by the notary public with a statement of the reasons given by the witness for making them.

§ 289. **Signing the deposition.**—The deposition must be signed by the witness at the end thereof. The laws of Minnesota require the witness to sign the deposition not only at the end thereof, but also upon each piece of paper upon which any portion of his testimony is written. If, from ignorance, disability, or illness, the witness is unable to write his signature at the end of the deposition, the notary public may write the witness' name for him as follows: "William Brown, by George Houston;" or: "William ^{his} x Brown," the mark x being made by _{mark} the witness, or by the notary public while the witness is touching the pen.

In some states, the officer must certify, after the signature of each witness, as follows: "Sworn to and subscribed before me, by the said E F, this —— day of ——, 19—, at the place and within the hours above mentioned. G H, Notary Public."

§ 290. **Caption of deposition.**—The introductory statement or caption of the deposition may show: (1) Name and title of officer before whom taken; (2) date and time when, and (3) place where taken; (4) by what authority taken; (5) in what court to be used; (6) names of the parties to suit; (7) names and

residences of witnesses; (8) in whose behalf taken; (9) who was present in behalf of each party; and (10) that the witness was duly sworn.

§ 291. **Form of deposition.**⁵—The statutes of a few states prescribe the form of a deposition. In the absence of a specific statutory form, the following general form may be used:

Deposition of E F taken before me, G H, a notary public in and for _____ County, State of _____, pursuant to the annexed notice (*or*, commission; *or*, agreement) at the time and place therein specified, to be read in evidence on behalf of the plaintiff (*or*, defendant), in an action pending in the _____ Court of _____ County, State of _____, in which A B is plaintiff, and C D is defendant. L M appeared in behalf of the plaintiff and R S on behalf of the defendant.

E F, of lawful age, being first duly sworn, deposes and says as follows:

Question:

Answer:

Question:

Answer: (and so continue until the direct examination be finished. If the deposition is taken under written interrogatories, the officer or stenographer writes, not the interrogatory, but only: "To the first interrogatory he says:" and "To the second interrogatory he says:" etc.).

Cross-examination of E F, by _____, in behalf of _____:

Question:

Answer: (and so proceed to the close of the cross-examination).

Re-direct examination of E F by _____:

Question:

Answer: (and so to the end of his testimony).

(Signature) E F

Witness

⁵ See statutory provisions and forms for each particular state, § 300 et seq.

§ 292. **Officer's certificate.**⁶—After the testimony of all the witnesses has been taken, the officer usually must add to the deposition a certificate stating: (1) That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; (2) by whom the deposition was written, and if written by deponent or some disinterested person, that it was written in the presence and under the direction of the officer; (3) the time and place of taking the deposition; (4) that the witness signed it; (5) that the officer is not counsel, attorney or relative of either party, or otherwise interested in the result of the suit. The officer must sign the certificate and affix his seal.

§ 293. **Interpreters.**—Even in the absence of express statutory authority, the right to take testimony would imply the power to employ an interpreter when the witness does not understand English, or can not intelligently testify in that language. If the officer taking the deposition understands the witness' language, he may interpret the testimony.

An oath, in substantially the following form, should be administered to the interpreter: "You do solemnly swear that you know the English and the —— languages, and can interpret from either of them into the other; and that you will truly and impartially interpret from the English language into the —— language to E F, the witness, the oath that shall be administered to him, and the questions that shall be put to him as a witness, and that you will truly and impartially interpret from the —— language into the English language the answers that said witness shall give; and this you do as you shall answer unto God."

An interpreter also must sign the deposition with the witness whose testimony he interprets. The following

⁶ See statutory provisions and forms for each particular state, § 300 et seq.

statement should be inserted in the deposition, just preceding the testimony: "It appearing that the witness, E F, could not understand the English language (*or*, could not intelligently testify in the English language), and did understand the ——— language, one L M, who also well understands said ——— language, was employed as interpreter and sworn to impartially interpret the oath, questions and answers."

§ 294. **Adjournments.**—Generally, when the deposition has not been finished and the closing hour of the day has come, or for other good reason an adjournment is necessary, the further taking of the deposition should be adjourned to the next day unless it be Sunday or a legal holiday. A notice to take depositions usually provides for adjournment from day to day.

The adjournment should be to the same place, unless the parties agree to some other place. The taking of a deposition under commission, at which the parties can not be present, may be adjourned to such times and places as will suit the convenience of the officer and the witnesses.

There being more testimony than can be taken conveniently in one day, or a witness in attendance becoming sick and unable to attend longer on that day, or a witness duly subpoenaed failing to attend, are good reasons for an adjournment to the next day.

The adjournment may be noted by the officer as follows: "The taking of said deposition not being finished at ——— o'clock of said ——— day of ———, 19—, the further taking thereof is adjourned to ——— o'clock of the ——— day of ———, 19— (the next business day, omitting Sundays and legal holidays)."

The resumption of taking testimony, after adjournment, may be noted: "The taking of said E F's deposition commenced on the ——— day of ———, 19—, was resumed on ——— ———, 19—, at ——— o'clock — M."

§ 295. **Objections.**—The adverse party or his attorney may object to a question as leading, and have his objection noted by the officer; after writing the question, the officer writes, “The plaintiff (*or*, defendant) objects to this question as leading,” and then, nevertheless, writes the answer. But neither party has the right to object to a question, or to an answer, at the taking of the deposition, as being incompetent or irrelevant, these latter being matters to bring up, and for the court before whom the action is pending to determine, at the time of reading the deposition in that court.

§ 296. **Exhibits.**—If a letter, telegram, or other paper is introduced in evidence during the taking of a deposition, it should be marked for identification as required by the statutes or custom of the state in which the deposition is to be used. In many of the states, such papers are described carefully in the deposition, the witness then adding some such words as “which letter is hereto attached, marked Exhibit A;” the next one is called “Exhibit B;” the next one “Exhibit C,” and they are all fastened to the deposition.

In other states, however, such exhibits must be annexed to the deposition, subscribed by the witness, and endorsed by the commissioner, as follows: “At the execution of a commission for the examination of witnesses in a suit between A B, plaintiff, and C D, defendant, the paper writing was produced and shown to E F and by him deposed unto at the time of the examination before

G H
Commissioner”

§ 297. **Return of deposition.**⁷—After the deposition has been completed, it must be fastened together with the notice, commission, or agreement, written interrogatories,

⁷ See statutory provisions of each state, § 300 et seq.

if any, and exhibits into one package. All of these papers, including each page of the deposition, may be held firmly together by means of a piece of tape run through eyelets placed near the top of all the sheets or along one side of the sheets. To prevent any one from tampering with the package, sealing wax or a paper seal may be placed over the ends of the tape, and an impression of the officer's seal made on the wax or paper seal.

The deposition must then be enclosed in some suitable cover such as a large envelope, and sealed. The package so sealed, as a general rule, must be addressed to the clerk of the court in which the cause is pending, as follows:

A B, Plaintiff v. C D, Defendant	} No. _____ Pending in _____ Court	Deposition of E F, taken in behalf of the plaintiff (<i>or</i> , defendant), before G H, Notary Public.

To the Clerk of the _____ Court

(*name of postoffice*),

_____ County,

(*State*).

Across the back of the envelope, or sealed place of the cover, the officer should write:

Deposition taken
before me, and
sealed, addressed
and transmitted
by me. G H,
Notary Public in
and for _____
County, State of
_____.

The object of endorsing the envelope is to identify the deposition without opening it, and thus prevent its being

opened by the wrong parties. This endorsement should, therefore, not be omitted even where not required by statute.

The statutes of most of the states, either expressly require or permit the depositions, properly sealed and addressed, to be transmitted to their destination by mail.

§ 298. **Compelling attendance of witness.**—In most of the states, the officers authorized to take depositions are also empowered, by statute, to subpoena witnesses to attend and to testify, and to compel them to do so in case of their neglect or refusal to do either. In several states, however, compulsory measures to secure attendance, answers, and signatures of witnesses, at the taking of depositions, must be secured through the court alone. In the United States district courts proof of service of a notice to take a deposition constitutes a sufficient authorization for the issuance by the clerk of the district court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein; a subpoena commanding the production of documentary evidence on the taking of a deposition can not be used without an order of the court.⁸

§ 299. **Punishment for contempt.**—Disobedience of a subpoena, a refusal to be sworn, a refusal to answer as a witness or to subscribe a deposition, may be punished as a contempt of the court or officer by whom the attendance or testimony of the witness is required. The statutes of several states authorize the officer to impose a fine or commit the witness to prison. In a recent decision⁹ the United States Supreme Court held that commitment by a notary before whom depositions were being taken, in a case pending in a state court, did not constitute a denial of due process.

⁸ Federal Rules of Civil Procedure, Rule 45(d)(1).

⁹ *Bevan v. Kreiger*, 289 U.S. 459, 77 L.Ed. 1316, 53 S.Ct. 661.

The federal courts, however, have not followed the practice permitted in some states under which the officer before whom the deposition was being taken could commit a party or witness for refusal to answer a question. If a party or other deponent refuses to answer any question propounded upon oral examination, or any interrogatory, the examination will be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in the district where the deposition is taken for an order compelling an answer. The failure to comply with such order will be considered a contempt of that court.¹⁰

STATUTORY PROVISIONS AND FORMS

§ 300. United States.¹¹

Who may take

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. (Rule 28 [a])

In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (*here name the country*)". (Rule 28 [b])

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action. (Rule 28 [c])

¹⁰ Federal Rules of Civil Procedure, Rule 37.

¹¹ References in parentheses are to the Federal Rules of Civil Procedure.

When taken

By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action or without such leave after an answer has been served, the testimony of any person whether a party or not, may be taken at the instance of any party by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. (Rule 26 [a])

Depositions shall be taken only in accordance with these rules. (Rule 26 [a]) ¹²

When used

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

2. The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

3. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of

¹² This and subsequent rules incorporate, modify, and broaden the provisions for depositions under U.S.C., Title 28, §§ 639 (Depositions de bene esse; when and where taken; notice), 640 (Same; mode of taking), 641 (Same; transmission to court), 644 (Depositions under *dedimus potestatem* and in *perpetuam*), 646 (Deposition under *dedimus potestatem*; how taken). These statutes are superseded in so far as they differ from this and subsequent rules. U.S.C., Title 28, § 643 (Depositions; taken in mode prescribed by State laws) is superseded by the third sentence of subdivision (a) of Rule 26.

justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

4. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. (Rule 26 [d])

Taking by stipulation

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. (Rule 29)

Notice

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time. (Rule 30 [a])

Record of examination

The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the

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objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. (Rule 30 [c])

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or can not be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. (Rule 30 [e])

Return

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (*name of witness*)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. (Rule 30 [f])

Interrogatories

A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter the latter may serve redirect interrogatories upon a party who has served cross-interrogatories. Within three days after being served with redirect interrogatories, a party may serve re-cross interrogatories upon the party proposing to take the deposition. (Rule 31 [a])

A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30 (c), (e), and (f), to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him. (Rule 31 [b])

Form of deposition

Depositions of E F, J K and L M, taken before me, G H, a notary public in and for the County of _____, State of _____, at my office at No. _____, _____ building, in the City of _____, County of _____, State of _____, on the _____ day of _____, 19____, in the above entitled action and pursuant to the notice hereto annexed.

There appeared on behalf of the above named plaintiff his attorney, _____, and on behalf of the above named defendant his attorney, _____.

Defendant called as a witness E F, who after being first duly sworn by me, testified as follows:

Direct examination by _____, attorney for plaintiff (*or, defendant*):

(Questions and answers.)

Form of officer's certificate

I, G H, a notary public in and for the County of _____, State of _____, hereby certify that the above and foregoing is a true record of the testimony given by E F, J K and L M, before me and that said E F, J K and L M were each first duly sworn by me.

I further certify that the foregoing deposition of E F was not examined, read or signed by him for the reason that such examination and reading were waived by the parties to the action and by said witness, and the parties by stipulation waived the signing of his deposition by said witness.

I further certify that the foregoing deposition of J K was not signed by him for the reason that upon the completion of the foregoing transcript from the stenographic report of the testimony of said J K, said J K was absent from the County of _____, State of _____.

I further certify that L M refused to sign the foregoing deposition for the reason as given by said L M, that his answers to questions 12 and 18 in his deposition were not correctly re-

ported and that a part of his answer to said question was omitted.

I further certify that I am not a relative, employe, attorney or counsel of any of the parties to the action in which the foregoing depositions were taken, and that I am not a relative or employe of any such attorney or counsel, and that I am not financially interested in said action.

G H

Notary Public, County of _____, State of _____.

Perpetuating testimony

A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the district court of the United States in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (4) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony. (Rule 27 [a] [1])

The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4 (d) for service of summons; but if such service can not with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. (Rule 27 [a] [2])

If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. (Rule 27 [a] [3])

If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the United States, in accordance with the provisions of Rule 26 (d). (Rule 27 [a] [4])

If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show: (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court. (Rule 27 [b]).

Rule 27 does not limit the power of a court to entertain an action to perpetuate testimony. (Rule 27 [c])

§ 301. Uniform Foreign Depositions Act.—The Uniform Foreign Depositions Act is concerned with the taking of depositions in one state to be used in any foreign jurisdiction and to make uniform the law in reference thereto. It has been enacted in Arizona, California, Louisiana, Maryland, Michigan, Nevada, Pennsylvania, South Dakota, Tennessee, and Wyoming; and reads as follows:

Section 1. Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

Section 2. This act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

Section 3. This act may be cited as the Uniform Foreign Depositions Act.

Section 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 302. Alabama.¹³

Who may take

Commissioner named by clerk of court. (§ 7745)

When taken

Deposition may be taken by either party in civil cases: (1) When witness is woman; (2) when from age, infirmity, or sickness witness is unable to attend court; (3) when witness resides more than a hundred miles from place of trial, or is absent from state; (4) when witness is about to leave state, and will not return until after trial; (5) when claim, or defense, depends exclusively upon evidence of witness; (6) when witness is public officer. (§ 7744)

Procedure

Party desiring to take depositions, or his agent or attorney, must make affidavit before clerk of court or any officer authorized to administer oaths, setting forth one or more of above causes for taking depositions and that witness is material. (§ 7745)

Clerk issues commission to one or more persons. The opposite party must file objections to commissioner named within ten days after notice. (§ 7747)

¹³ References in parentheses are to Code, 1928.

Notice

Notice of taking depositions is essential. Clerk must prescribe notice to be given to opposite party of time and place of taking. If party on whom notice is to be served is nonresident of county and has no attorney of record, notice may be filed with papers. (§ 7745)

When interrogatories are filed, clerk must give opposite party notice in writing. If oral testimony is requested by opposite party, notice of taking of same must be given to other side. If cross-interrogatories are filed, party filing may have notice, on demand, so that he may be present at taking of deposition. Depositions will be suppressed for failure to give notice. If party to whom notice is to be given is absent from, and has no attorney of record within county, notice may be given by filing interrogatories in office of clerk for ten days, and by clerk mailing copy of notice ten days before issuance of commission. (§ 7746)

Interrogatories

Either party to a suit in equity or at law may submit interrogatories to the other. When testimony is desired under third cause above, same may be taken by interrogatories. After making affidavit, party may file interrogatories with clerk. If opposite party makes affidavit that testimony should be taken orally, it is so taken. Otherwise, opposite party may within ten days file cross-interrogatories if he so desires, to which rebutting interrogatories may be filed. (§ 7746)

Return

When completed, depositions together with commission and any document must be sealed and sent to the clerk of court where cause is pending. (§ 7754)

Form of deposition

A B, Plaintiff,

vs.

C D, Defendant.

_____ Court, County of _____, State of Alabama.

Deposition of E F, witness examined on behalf of plaintiff (or defendant) in the foregoing cause, by commissioner, and at place, time and manner hereinafter stated.

1. To the first interrogatory, he says: (*Answer*).

E F, Witness

Form of commissioner's certificate

State of Alabama, }
 County of ———. } ss.

The undersigned, G H, the commissioner named in the commission hereto attached, hereby certifies that E F is to him personally known to be the same person named in the commission; that E F was by him first duly sworn to speak the truth, the whole truth and nothing but the truth, and then examined in the manner required by law, and that the answers of said E F were by him (*or* by ———, a disinterested person) reduced to writing as near as may be in the language of said E F, and was subscribed by him in the presence of the undersigned, G H, on the ——— day of ———, 19—.

The undersigned further certifies that he is not of-counsel or kin to either of the parties in the cause, nor in any manner interested in the result thereof.

Witness my hand and seal this ——— day of ———, 19—. (SEAL) G H, Commissioner

Agreement to waive commission

Where parties or their attorneys agree in writing to waive commission, answers of witness may be taken under such agreement, and person acting as commissioner is authorized to administer usual oath to witness. (§ 7762)

Perpetuating testimony

Testimony of witness may be taken conditionally and perpetuated. (§ 7778)

Applicant must make affidavit before circuit or probate judge or register. (§ 7779)

Judge or register, or commissioner in case of nonresident witness, must then take depositions, which must be read to and subscribed by witness, certified by judge or register, and filed with clerk of circuit court for county in which depositions were taken. (§ 7780)

Adverse party must be given ten days' notice of examination. (§ 7780)

Nonresident party must be notified by publication or by mailing notice to last address. (§ 7781)

§ 303. Arizona.¹⁴**Who may take**

Deposition may be taken orally before notary public if witness is in county where action is pending. Commission may be issued

¹⁴ References in parentheses are to Revised Code, 1928.

to notary public if witness resides within the state, without the state and within the United States, or without the United States. (§ 4426)

When taken

In a civil action: (1) When witness is unable to attend court by reason of age, infirmity, sickness, or official duty; (2) when witness resides without the state, or county in which action is pending, or more than fifty miles from place of trial; (3) when witness has left, or is about to leave, state or county in which action is pending, and probably will not be present at trial; (4) when party desires to perpetuate testimony of witness. (§ 4421)

Procedure

Depositions may be taken either upon written interrogatories and cross-interrogatories, or upon oral examination and cross-examination. (§ 4422)

Deposition may be taken upon oral examination upon notice to adverse party of time and place of taking. (§ 4430)

To take deposition upon written interrogatories, party must file with clerk a notice of his intention to apply for a commission to take answers of witness to interrogatories attached to notice. Copy of notice and of interrogatories must be served upon adverse party five days before issuance of commission. Adverse party may file cross-interrogatories at any time before commission issues. (§ 4423)

Commission shall issue not less than twenty days after interrogatories are filed when it is shown by affidavit that either party is beyond jurisdiction of court, or that he can not be found, or has died since commencement of action. (§ 4424)

Notice

When deposition is taken upon oral examination, notice must be in writing, state reason for taking, be served in same manner as notices in civil actions, and must allow adverse party one day for every one hundred miles of distance between place of service and place of taking deposition, and one day for preparation. (§ 4431)

When witness is in county, notice must state name and residence of witness, or place where he is to be found, and action in which deposition is to be used; such notice must be at least five days, and in addition, one day for every twenty-five miles of distance from residence of party to whom notice is given to place of examination. (§ 4432)

Interrogatories

Commission must authorize and require notary public to summon witness before him and to take his answers under oath to direct and cross-interrogatories, a copy of which shall be attached to commission. (§ 4425)

Return

Depositions may be returned to court either by mail, by interested party, or by any person. If sent otherwise than by mail, person delivering them into court must make affidavit that he received them from hands of notary public, and that they have not been out of his possession and have not been altered. (§ 4436)

Form of officer's certificate (§ 4433)

State of Arizona, }
County of ———. } ss.

Be it known that I took the annexed deposition pursuant to the annexed notice (*or*, order; *or*, stipulation); that I was then and there a notary public; that by virtue thereof I was authorized to administer an oath; that each witness before testifying was duly sworn to testify to the whole truth and nothing but the truth, and that the testimony of each witness was reduced to writing by me, or under my direction, and was carefully read over to him before he signed the same.

G H, Notary Public

Stipulation by parties

By stipulation in writing, parties to any civil action may agree upon any other mode of taking depositions either within or without state; they may also waive signing or certifying of any deposition or any other formality required by law for taking and returning same. (§ 4434)

Perpetuating testimony

When person anticipates institution of action in which he may be interested and desires to perpetuate testimony of witness to be used in such action, he may file in court of county where such action could be instituted verified written statement of facts and names and residences of persons supposed to be interested adversely to said person and notice of intention to apply for commission to take testimony of witnesses upon interrogatories to be attached. (§ 4445)

Notice and copy of statement and interrogatories must be served upon persons interested adversely, or if their residence is

unknown, by publication. Cross-interrogatories may be filed within ten days after service of notice. (§ 4445)

After expiration of ten days from service, court or clerk shall issue commission and depositions of such witnesses may be taken and returned in form and manner provided for taking deposition upon written interrogatories. (§ 4446)

§ 304. Arkansas.¹⁵

Who may take

Notary public may take depositions in or out of state. (§ 5223)

When used

Depositions may be used in any action: (1) Where witness does not reside in county where action is pending, or in adjoining county, or is absent from state, or is in military service; (2) where witness is public officer, judge or clerk of court, officer or clerk of bank, physician, or lawyer; (3) when witness is unable to attend court from age, infirmity, or imprisonment, or is dead; (4) where the witness resides thirty or more miles from place where action is pending. (§ 5217)

Procedure

Court may fix time within which depositions must be taken. When no time is fixed, depositions of plaintiff shall be completed within forty days, and those of defendant within thirty days after case is at issue. (§ 5218)

Notice

Depositions must be taken upon reasonable notice to adverse party, or upon interrogatories. (§ 5227)

Notice must be in writing, signed by party or attorney, and specify time and place of taking deposition, and action in which it is to be used. (§ 5228)

Notice to be reasonable must allow one day for each thirty miles of distance which party must travel and one day for preparation where distance is less than one hundred miles, and two days where it is more. (§ 5231)

Interrogatories

Either party by notice to adverse party may require all depositions taken out of county to be taken on interrogatories. (§ 5237)

¹⁵ References in parentheses are to Digest of Statutes, 1937.

Interrogatories must remain in clerk's office fifteen days; or if notice is served, ten days after service. (§ 5240)

Thereafter, commission shall be issued by clerk authorizing notary public to examine witness. (§ 5241)

Return

Deposition must be sealed by notary and sent to clerk of court in which action is pending. Deposition taken out of state may be delivered to party taking same, or his attorney. (§ 5248)

Form of deposition

State of Arkansas, }
County of ———. } ss.

The deposition of E F, taken between the hours of ——— A.M. and ——— P.M., on the ——— day of ———, 19—, at ———, in the City of ———, State of Arkansas, to be read as evidence in an action between A B, plaintiff, and C D, defendant, pending in the ——— Court, on the part of the plaintiff (*or* defendant). (*Questions and answers.*)

E F, Witness

Form of officer's certificate (§ 5246)

State of Arkansas, }
County of ———. } ss.

I, G H, a notary public in and for said county, do hereby certify that the foregoing deposition of E F was taken before me and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, said witness having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth; that his statements were reduced to writing by me in his presence (*or*, by ——— in my presence) the plaintiff alone (*or*, the defendant, *or* both plaintiff and defendant, *or* either party in person or by attorney) being present at the examination.

Witness my hand and seal this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Person may present to judge of circuit court of county in which adverse party resides, or, if he be nonresident, then of county in which petitioner resides, a petition stating that petitioner expects to be party to action; also name of adverse party, residence and age; that evidence of witness is material; that obstacles prevent action being immediately brought. (§ 5252)

§ 305. California.¹⁶**Who may take**

An officer authorized to administer oaths, when deposition is to be taken of a witness in this state. (§ 2031)

A notary public or commissioner agreed upon by the parties or selected by the court, when deposition of witness out of state is to be taken. (§ 2024)

When taken

Testimony of witness in this state may be taken in action any time after service of summons or appearance of defendant: (1) When witness is party to action or officer or employe of corporation, or employe of municipal corporation which is a party to the action; (2) when witness resides out of county or more than fifty miles from place of trial; (3) when witness is about to leave county and will probably continue absent when testimony is required; (4) when witness is too infirm; (5) when testimony is required upon motion or any other case where oral examination of witness is not required; (6) when witness is only one who can establish facts material to issue; provided, his deposition shall not be used if his presence can be procured at time of trial. (§ 2021)

Testimony of witness out of state may be taken: (1) Any time after service of summons or appearance of defendant; (2) in special proceeding any time after question of fact has arisen; (3) where default has been made by any or all of defendants. (§ 2020)

Procedure

Either party may have deposition taken of witness in this state on serving upon adverse party previous notice of time and place of examination, together with copy of affidavit showing that case is one for which a deposition may be taken within the state. (§ 2031)

Deposition of witness out of state may be taken upon commission issued from court, on application of either party, upon five days' previous notice to the other. (§ 2024)

Notice

Notice of time and place of examination must be at least five days, adding also one day for every one hundred miles of distance of place of examination from residence of witness, unless judge by order prescribes shorter time. (§ 2031)

¹⁶ References in parentheses are to Code of Civil Procedure, 1937.

Interrogatories

Party applying for commission to take deposition out of state must attach interrogatories to notice of motion. On hearing of motion, other party must submit cross-interrogatories if desired. (§ 2025)

Return

When completed deposition must be read to witness and corrected by him; it must then be subscribed by witness and certified to by officer taking deposition; it must then be enclosed in envelope, sealed, and sent to clerk of court in which action is pending. (§ 2032)

Form of deposition

In the ——— Court of the State of California,

County of ———.

A B, Plaintiff,

v.

C D, Defendant.

Deposition of E F, a witness sworn and examined under and by virtue of the annexed commission (and interrogatories attached thereto) issued by the ——— Court of ——— in the County of ———, in the State of California, in the above entitled cause.

E F, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows: (*Questions and answers*). (§ 2026)

E F, Witness

Form of officer's certificate

State of California, }
County of ———. } ss.

I, G H, a notary public in and for the County of ———, State of California, and commissioner named to take the deposition of E F, do hereby certify that said witness appeared before me, and after being duly sworn, his evidence was taken down, read over and corrected by him after which he subscribed the same in my presence on the ——— day of ———, 19—, at my office, ———, in the City of ———, County of ———, and State of California.

In Witness Whereof, I have hereunto subscribed my hand and set my official seal this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must present petition stating: (1) That he expects to be a party to an action, and names of adverse parties; or,

(2) that proof of some fact is necessary to perfect title to property in which he is interested; and (3) name of witness to be examined, his residence, and outline of facts expected to be proved. Judge must make order allowing examination and designating officer before whom same must be taken, and prescribing notice to be given and designating clerk of county to whom deposition must be returned. (§ 2084)

Notary is authorized to take deposition on receiving copy of order and notice, with proof of its personal service or publication. (§ 2085)

Examination must be by question and answer; if taken in another state, it must be upon commission and interrogatories. (§ 2086)

§ 306. Colorado.¹⁷

Who may take

Notary public if witness is in state. (§ 393)

If witness is out of state, commission will be issued by clerk of court to any person agreed upon by parties or to notary public selected by officer issuing commission, or to commissioner appointed by governor to take depositions in other states. (§ 400)

When taken

Testimony of witness in this state may be taken by deposition in action, any time after service of summons or appearance of defendant: (1) When witness is party to action or person for whose benefit action is brought or defended, or officer of corporation which is a party; (2) when witness resides out of county; (3) when witness is about to leave county and will probably continue absent; (4) when witness is too infirm; (5) when witness is for any other cause expected to be unable to attend trial. (§ 392)

Procedure

Either party taking deposition must serve on adverse party notice of time and place of examination, together with copy of affidavit of party or attorney, showing that case comes within statutory grounds for taking deposition mentioned above. (§ 393)

Notice

Must be at least five days, and in addition, one day for every twenty-five miles of distance of place of examination from resi-

¹⁷References in parentheses are to Code (Courtright), 1933.

dence of witness unless judge, by order, prescribes shorter time. (§ 393)

Interrogatories

Deposition of witness out of state may be taken upon commission issued by clerk of court, on application of either party, upon written interrogatories; five days' previous notice must be accompanied by copy of interrogatories to be attached to commission. (§ 400)

The commission must authorize commissioner to administer oath to witness and to take his deposition in answer to interrogatories. (§ 402)

Return

When completed, deposition must be read to witness and corrected by him if desired; it must then be subscribed by witness, certified by officer, enclosed in envelope, sealed and sent to clerk of court in which action is pending. (§ 394)

Form of deposition

The deposition of E F, of the County of ———, and State of Colorado.

E F, a witness of lawful age produced, sworn and examined, upon his corporal oath, on the ——— day of ———, 19—, at the office of G H, in the City of ———, in the County of ———, and State of Colorado, aforesaid by me, G H, a commissioner duly appointed by *dedimus potestatem*, issued out of the clerk's office of the district court of ——— County, in the State of Colorado, bearing teste in the name of ———, Esq., Clerk of the said district court, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said E F, witness in a certain suit and matter in controversy now pending and undetermined in the said district court, wherein A B is plaintiff and C D is defendant, in behalf of the said plaintiff (*or* defendant), as well on the cross-interrogatories of the defendant (*or* plaintiff), as upon the interrogatories of the plaintiff, which were attached to, or included with the said commission, and upon none others.

The said E F, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows: (*Answers to interrogatories*).

E F, Witness

Form of officer's certificate

State of Colorado, }
 County of ———. } ss.

I, G H, of the County of ———, and State of Colorado, a notary public (*or* commissioner) duly appointed to take the deposition of E F, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of said E F as a witness in the said suit between A B, plaintiff, and C D, defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between said parties, so far as he should be interrogated concerning same; that the deposition was taken by ——— and reduced to writing by ———, at my office in the City of ———, County of ———, and State of Colorado, on the ——— day of ———, 19—; and that after said deposition was taken by me the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by said deponent before me at the place and on the date aforesaid.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must present to judge a petition stating: (1) That applicant expects to be party to action, and names of adverse parties; or (2) that proof of some fact is necessary to perfect title to property in which he is interested; and (3) names of witnesses to be examined, their place of residence, and outline of facts expected to be proved. Judge must make order allowing examination and prescribing notice to be given, which notice if parties reside in state must be personally served on them; if unknown, notice must be served on clerk of county where property to be affected is situated, and notice published in designated newspaper. (§ 417)

§ 307. Connecticut.¹⁸**Who may take**

Notary public (§ 5589) or commissioner of deeds. (§ 60)

When taken

Notary may issue subpoena for appearance of witness before him to give his deposition in a civil action: (1) If such witness

¹⁸ References in parentheses are to General Statutes, 1930.

is going to sea or out of the state; (2) shall have reached the age of sixty years; or (3) shall live more than twenty miles from place of trial. (§ 5589)

Superior court and any court of common pleas or judge may issue commission to take deposition of any person resident out of state, to be used in cause pending before such court; whenever whereabouts of adverse party is unknown, it shall be lawful to take deposition of nonresident or of witness who is going out of state, or who has reached age of sixty years, or who is sick and unable to attend court. (§ 5590)

Notice

Reasonable notice must be given to adverse party or his known agent or attorney, or left at his usual place of abode, to be present at time of taking deposition. (§ 5584)

Before issuing commission to take deposition of nonresident, notice must be given to adverse party to appear before court or judge. (§ 5590)

Return

Witness must be cautioned to speak the whole truth and carefully examined, and must subscribe his deposition and make oath before officer taking same, who must sign same and certify whether or not adverse party or his agent was present, and whether or not he was notified, and must also certify reason of taking deposition, seal it, and send it to the court where it is to be used or to party at whose request it was taken. (§ 5584)

Form of deposition

A B, Plaintiff, }
 v. } _____ Court, _____ County, Connecticut.
 C D, Defendant. }

I, E F, of _____, in the County of _____, and State of Connecticut, of lawful age, being first duly cautioned and sworn, depose and say: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Connecticut, }
 County of _____. } ss.

On this _____ day of _____, 19—, personally appeared the above-named E F, signer of the foregoing deposition, and after having been duly cautioned to speak the whole truth, and carefully examined, did subscribe the same and make oath before me

that the same contains the truth, the whole truth, and nothing but the truth.

The foregoing deposition is taken pursuant to the annexed notice, at the request of the plaintiff (*or* defendant), to be read on the trial of an action pending before the _____ Court, within and for the County of _____, and state of Connecticut, in which action A B is plaintiff and C D is defendant. The cause of taking this deposition is _____.

The adverse party was notified to be present at the taking of this deposition, and was (*or* was not) present.

(SEAL)

G H, Notary Public

Perpetuating testimony

Any person desirous of perpetuating testimony of any witness, concerning any matter which is or may be the subject of a suit, may present a petition in writing to any judge of the superior court, setting forth the reasons of his application, name of witness, subject matter of controversy and names of all persons interested. If judge finds that notice has been given to parties, he shall direct that deposition be taken at such time and place as he may prescribe, either by himself or by some other person whom he may appoint. (§ 5592)

§ 308. Delaware.¹⁹

Who may take

Commissioner named by justice of the peace, if witness resides out of county. (§ 4539)

Commissioner designated by register of wills, if witness is aged, ill, or about to depart from state, or beyond process. (§ 3836)

Procedure

Party files affidavit that there is material witness whose attendance it is not practicable to procure; party must also file in writing all questions to be put to witness, giving at least four days' notice to other party, who may file other questions. Justice forwards copy of rule and questions to commissioner. (§ 4539)

Return

Deposition must be signed by witness, certified by commissioner, sealed, and sent to justice. (§ 4539)

Form of deposition

Deposition of witness produced, sworn and examined, on the _____ day of _____, 19—, at my office, _____, in the City of _____

¹⁹ References in parentheses are to Revised Code, 1935.

_____, in _____ County, and State of Delaware, by virtue of a commission issued out of _____ Court, of the State of Delaware, in and for _____ County, to G H, directed for the examination of a witness in a cause therein pending between A B, plaintiff, and C D, defendant, on the part and behalf of A B, the plaintiff (*or*, C D, the defendant).

E F, of _____, in the County of _____, aged _____ years, a witness produced, sworn and examined, on the part and behalf of the plaintiff (*or* defendant) deposes and says as follows: (*Answers to interrogatories*).

E F, Witness

The commissioner should sign his name at the foot of each page, and should identify each exhibit as follows:

A B, Plaintiff,	}	ss.
v.		
C D, Defendant.		

At the execution of a commission in this cause, this paper writing was produced and shown to E F, a witness, sworn and examined, and by him deposed to at the time of his examination in behalf of _____.

G H, Commissioner

Form of officer's certificate

State of Delaware,	}	ss.
County of _____.		

To _____ (*the presiding judge whose name is given in the commission*).

I, G H, commissioner named in the foregoing writ, do certify that, in pursuance of the authority therein contained, I caused the witness whose deposition appears in the schedule thereto annexed, to be examined, on oath or affirmation, upon the interrogatories annexed, and that I caused such examination to be reduced to writing as the same in such schedule appears.

G H, Commissioner

Perpetuating testimony

Any person interested to perpetuate testimony respecting boundaries, or landmarks, may file a petition in the Court of Chancery representing the case, and naming the tenants, and the owners of adjoining land, and praying for an order to take depositions. If no sufficient objection be shown, the Chancellor shall order that commission issue to one or more persons, to take depositions on interrogatories filed. (§ 4166)

§ 309. Florida.²⁰**Who may take**

Depositions de bene esse may be taken before any notary public or officer authorized to take acknowledgments or proof of execution of deeds. Such officer must not be of counsel to either of parties or interested in result of action. (§ 4921 [3])

Depositions may be taken before two or more commissioners who may be selected, one by each party to the suit, but who are appointed by the clerk of the court where suit is pending. (§ 4418)

When taken

Testimony of witness may be taken by deposition de bene esse, either within or without United States, when witness resides out of county in which cause is pending, is bound on voyage to sea, or is about to leave state of Florida, or to go out of county in which cause is pending before time of trial, or when he is old or infirm. (§ 4921 [3])

Procedure

Party wishing to obtain commission must submit interrogatories to witness and must deliver to opposite party or his attorney a reasonable time before applying for commission copy of such interrogatories, together with notice in writing, setting forth reasons why testimony is to be taken, date at which application for commission will be made, and name of commissioner for plaintiff. Original of interrogatories and notice must be filed in court from which commission is to issue. (§ 4415)

Opposite party may file cross-interrogatories and written statement of name of commissioner selected by him to assist in execution of commission. (§ 4416)

Notice

Upon receipt of commission and interrogatories by commissioner named by applicant for commission, he must give notice in writing to commissioner named by other party, stating time and place of taking depositions. (§ 4420)

If adverse party has no attorney and does not reside in the state, applicant shall give notice by advertisement in newspaper once each week for four consecutive weeks; upon proof of advertisement commission shall issue as if there had been personal service. (§ 4415)

²⁰ References in parentheses are to Compiled General Laws, 1927.

In taking deposition de bene esse reasonable notice must be given in writing by party proposing to take such deposition to opposite party of record, which notice must state name of witness or witnesses, time and place of taking, name of officer to take same, and reason for taking. Whenever, by reason of absence from jurisdiction of court of adverse party or for any other reason, giving of such notice is impractical, such deposition may be taken upon such notice as judge may prescribe. (§ 4921 [3])

Interrogatories

Plaintiff any time after filing a bill in chancery and not later than twenty-one days after issue, and defendant at any time after filing his answer may file interrogatories in writing for discovery by opposite party of facts and documents material to cause. (§ 4921 [4])

Return

Commissioners, when they enclose interrogatories, answers and commission to be returned to court, shall write their names across seals of envelope and direct it to court. (§ 4425)

Packet containing commissions, interrogatories, and answers may be returned to court by party to action, or by any other person, or by mail; if returned by individual, person so returning it must make oath before clerk that he received packet from one of commissioners, that it has been in his possession ever since, and has not been opened or altered. (§ 4426)

Every deposition de bene esse, together with a certificate of reasons for taking such deposition and notice, if any, given to adverse party, must be sealed by the officer and sent to the court. (§ 4921 [3])

Form of deposition

Deposition of witnesses sworn, and examined on the _____ day of _____, 19____, at the _____, in the State of Florida, by virtue of the annexed commission issued out of the clerk's office of the circuit court of the _____ Circuit of Florida for the County of _____, to us directed, for the examination of the said witnesses, in a cause therein pending between A B, plaintiff, and C D, defendant, on the part of the plaintiff (*or* defendant).

E F, of _____, being duly sworn, deposes and answers as follows, namely:

1. To the first interrogatory, the witness says that: (*Answer*).

Sworn to and subscribed before us, the _____ day of _____, 19____.

G H
J K
Commissioners

Oath of commissioners

Commissioner or commissioners taking testimony shall make oath before notary public that he is not of kin to, nor attorney, nor agent of either party, nor interested in result, and that he will well and faithfully perform duties of commissioner; such oath must be in writing and returned with commission. (§ 4423)

Perpetuating testimony

Person desiring to perpetuate testimony of any witness living in or out of state, must file in office of clerk of circuit court interrogatories to be submitted to witness, and statement setting forth briefly his title, claim or interest in subject matter concerning which he desires to perpetuate evidence, together with names and residences of all persons known to him to claim interest in subject matter, and names of witnesses proposed to be examined. Upon expiration of time fixed in notice (served on adverse party at least fifteen days before issuance of commission) or in newspaper advertisement (for four successive weeks), clerk issues commission to two commissioners to be named by him to take testimony of witness. (§ 4433)

§ 310. Georgia.²¹

Who may take

Testimony may be taken by commissioners selected by parties. (§ 38-2107)

No person who would be incompetent as a juror on account of relationship, or as a witness, on account of interest, nor the attorney of the party, or his clerk or agent, is competent to be a commissioner. (§ 38-2108)

Depositions also may be taken, without a commission, before a notary public. (§ 38-2201)

When taken

Witness may be examined on interrogatories by commission, when: (1) Witness resides out of county; (2) where from condition of health, age, or otherwise, he can not attend court, or from nature of his business or occupation, it is not possible to secure his attendance without manifest inconvenience to public; (3) where witness is about to remove from county or leave home on business for a tour which will extend beyond term of court; (4) all female witnesses; (5) where he is only witness to a material point in case. (§ 38-2101)

²¹ References in parentheses are to Code, 1933.

Procedure

Party seeking to examine witness by commission must prepare written interrogatories and state residence of witness; original interrogatories are filed in clerk's office for ten days during which time cross-interrogatories may be filed; at expiration of ten days clerk issues commission. (§ 38-2104)

Notice

Notice of time of filing interrogatories must be served on opposite party. (§ 38-2104)

When deposition is taken without commission, reasonable notice, not less than ten days, must first be given in writing by party or his attorney proposing to take deposition, to opposite party or his attorney of record, stating name of witness and time and place of taking his deposition. (§ 38-2202)

Return

Interrogatories, answers and commission must be sealed in an envelope with names of commissioners written across seal and directed to officer of court from which commission issues; package may be sent by mail or express or intrusted to party or some individual. (§ 38-2113)

A deposition taken on notice, without commission, must be kept by officer taking it until he delivers it with his own hands into court; or it shall, with certificate of reasons for taking it, and of want of interest of officer and stenographer, and with notice given to adverse party, be sealed and sent to court. (§ 38-2205)

Form of deposition

State of Georgia, }
County of _____. } ss.

By virtue of a commission from the _____ Court of _____ County (*or*, an agreement between the parties or counsel) in the case of A B vs. C D, pending in the _____ Court of _____ County, the undersigned, acting as commissioners, have caused to come before us, E F, a witness in said case, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

To the first interrogatory he answers (*Answer*).

Answered, subscribed, and sworn to before us this _____ day
of _____, 19____.

E F, Witness

G H (L. S.)

J K (L. S.)

Commissioners

Form of officer's certificate (when taken without commission)

The foregoing deposition was taken before me, as stated in the caption, and the answers reduced to writing by me (*or*, by _____ in my presence); and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties.

G H, Notary Public

Perpetuating testimony

A person desiring to perpetuate testimony, in anticipation of litigation not yet pending, and not in his power to commence, may make written application to judge of superior court of county where witness resides, stating facts, proof expected, and parties probably interested on other side, accompanying application with written interrogatories to be submitted to witness; whereupon judge shall require some disinterested attorney to take such testimony. (§ 38-1401)

§ 311. Idaho.²²**Who may take**

Depositions of witnesses, taken within or without the state, may be taken before a notary public or commissioner appointed by the court. (§§ 16-901, 50-104)

When taken

In all actions depositions may be taken by either party in vacation or term time, at any time after service of summons, without order of court. (§ 16-906)

When used

Depositions may be used: (1) When witness does not reside in county, or when he resides in county adjoining and more than thirty miles from place of trial, or is absent from state; (2) when deponent is so aged, infirm or sick as not to be able to attend court or place of trial, or is dead; (3) when depositions have been taken by agreement of parties, or by order of court trying cause; (4) when deponent is state or county officer, or judge, physician, or attorney, and trial is to be had in county in which deponent does not reside. (§ 16-906)

Procedure

When deposition is to be taken within or without the state, but within United States, no commission is necessary. When taken out of United States, clerk shall, upon request of party taking

²² References in parentheses are to Code, 1932.

deposition, issue a commission to an officer or commissioner designated to take depositions. No order of court or affidavit is necessary to authorize issuing of commission. (§ 16-916)

Notice

Party wishing to take depositions must give notice to adverse party, if only one person; if several, to any one of them who is real party in interest. Notice must specify: (1) Cause or matter in which deposition is to be used; (2) court in which trial is to be had; (3) time and place of taking deposition, and names of witnesses. After default of any defendant has been entered no notice of taking of any deposition shall be served upon defendant in default. (§ 16-902)

Notice may be served by any person authorized to serve subpoenas. If neither party nor his agent or attorney reside in state, notice may be filed in clerk's office and be published for three successive weeks and copy mailed to each party or his attorney at last known address. (§ 16-904)

Interrogatories

Party desiring to take deposition upon written interrogatories must serve upon opposite party notice of his intention together with copy of interrogatories, and file notice and interrogatories with clerk. Within five days thereafter, opposite party must file cross-interrogatories. Clerk then issues to some officer, by him to be selected, authorized to take depositions, a commission with interrogatories and cross-interrogatories annexed thereto. (§ 16-925)

Return

Officer taking deposition must seal up same in envelope, direct same to clerk of court in which action is pending, and endorse upon envelope names of parties whose depositions are enclosed. (§ 16-914)

Requisites of officer's certificate

Officer must annex his certificate stating: (1) That deponent was sworn according to law; (2) by whom deposition was written, and if written by deponent or some disinterested person, that it was written in presence and under direction of officer; (3) whether or not adverse party attended; (4) time and place of taking deposition, and hours between which same was taken. Officer must sign and attest the certificate and seal same. (§ 16-913)

Perpetuating testimony

Applicant must present to district or probate judge a petition verified by oath, stating: (1) That applicant expects to be party

to an action in court in this state, and names of persons whom he expects will be adverse parties; or (2) that proof of some fact is necessary to perfect title to property in which he is interested, though no suit may be anticipated at the time; and, (3) name of witness to be examined, his place of residence, and general outline of facts expected to be proved. Judge then makes an order allowing examination, designating officers before whom deposition must be taken, and prescribing notice to be given, which notice, if parties are known and reside in state, must be personally served. (§ 16-1102)

§ 312. Illinois.²³

Who may take

Notary public or commissioner (c. 51, §§ 24, 26) or a commissioner of deeds. (c. 26, § 4)

When taken

When testimony of any witness, residing or being within state, shall be necessary in any suit in chancery in state, party wishing to use same may cause deposition to be taken without a commission or filing interrogatories for such purpose. (c. 51, § 24)

It is also lawful, upon filing affidavit, to take deposition of witness residing in the state, in suit at law, where witness resides in different county from that in which court is held, is about to depart from state, is in legal custody, or is unable to attend on account of advanced age, sickness, or other bodily infirmity. (c. 51, § 25)

When testimony of witness residing within state more than one hundred miles from place of holding court, or not residing in state, or who is engaged in military or naval service and is out of state, is necessary in any civil cause pending in a court in state, party wishing to use same may sue out from proper clerk's office a *dedimus potestatem* or commission and attach interrogatories thereto. (c. 51, § 26)

Notice

In taking deposition of resident witness, party must give adverse party or his attorney ten days' notice of time and place of taking same and one day in addition thereto for every fifty miles' travel from place of holding court to place where deposition is to be taken. If party entitled to notice and his attorney reside in

²³ References in parentheses are to Revised Statutes, 1937.

county where deposition is to be taken, five days' notice is sufficient. (c. 51, § 24)

When witness is nonresident, party must give ten days' previous notice, together with copy of interrogatories intended to be put to such witness. (c. 51, § 26)

When adverse party is not resident of county in which suit is pending, or is in default, and no attorney has appeared for him, upon filing affidavit of such fact and stating place of residence of adverse party, if known, or that upon diligent inquiry, his place of residence can not be ascertained, notice may be given by sending copy by mail addressed to such party at his place of residence, if known, or if not known, by posting copy of such notice at door of court house, or publishing same in newspaper. (c. 51, § 27)

Interrogatories

Witness must be sworn to testify the truth, in relation to matter in controversy; whereupon notary public proceeds to examine witness upon all such interrogatories as may be enclosed with or attached to commission; or where testimony is taken upon oral interrogatories, upon all such interrogatories as may be directed to be put by either party litigant; such interrogatories, together with answers of witness thereto must be reduced to writing and signed by witness. (c. 51, § 30)

Return

Notary must annex at foot of deposition a certificate, subscribed by himself, stating that it was sworn to and signed by deponent, and time and place when and where same was taken. Deposition, together with commission and interrogatories, if any, must be enclosed, sealed up, and sent to clerk of court in which action is pending, with names of parties litigant endorsed thereon. (c. 51, § 30)

Form of deposition

The deposition of E F, of ———, in the City of ———, County of ———, and State of Illinois, of lawful age, produced, sworn and examined upon his oath, on the ——— day of ———, 19—, at the office of ———, in the City of ———, by me, G H, a notary public in and for ——— County, and State of Illinois (*or*, a commissioner duly appointed by a dedimus potestatem or commission hereto attached, issued by ——— Court, dated ———, 19—, to me directed as such commissioner for the examination of the said witness) in a certain suit now pending in ——— Court,

wherein A B is plaintiff and C D is defendant, in behalf of said plaintiff (*or*, defendant).

The said E F, being by me, the said G H, as notary (*or*, commissioner), first duly sworn as a witness in said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between said plaintiff and defendant in said suit, so far as he should be interrogated, deposes and testifies as follows in answer to the interrogatories enclosed with said commission (*or*, in answer to the questions asked orally by ———, who acted as attorney for said plaintiff (*or*, defendant), as follows): (*Interrogatories and answers*).

E F, Witness

Form of officer's certificate

I, G H, as notary (*or*, commissioner) as aforesaid, do hereby certify, that previous to the commencement of the examination of the said E F as a witness in the suit between the said A B, plaintiff, and the said C D, defendant, he was duly sworn by me as such notary (*or*, commissioner), to testify the truth in relation to the matters in controversy between the said A B, plaintiff, and the said C D, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken at my office in the City of ———, on the ——— day of ———, 19—; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness; and that thereupon the same was signed and sworn to by the said deponent before me at the place, and on the day and year last aforesaid, and that said deposition was retained by me until sealed up and directed to the said ———.

G H, Notary Public

Perpetuating testimony

To perpetuate evidence person must file petition supported by affidavit in Circuit Court of proper county, setting forth briefly and substantially his interest, claim, or title in or to subject concerning which he desires to perpetuate evidence, fact intended to be established, names of all other persons interested therein, whether there are any persons interested therein whose names are unknown to petitioner, and name of witness proposed to be examined. Court will issue a *dedimus potestatem* or commission directed to notary public in county in which witness resides, or in which testimony is to be taken, authorizing him to take deposition of such witness. (c. 51, § 39)

§ 313. Indiana.²⁴**Who may take**

Depositions of witnesses, taken within or without state, may be taken before notary public or commissioner appointed by court; they can not be taken before any person being of kin to either party or interested in action. (§ 2-1501)

When taken

In all actions depositions may be taken by either party, in vacation or term time, at any time after service of summons, without order of court. (§ 2-1506)

When used

Depositions may be used: (1) Where witness does not reside in county, or in county adjoining one in which trial is to be held, or is absent from state; (2) when deponent is so aged, infirm, or sick as not to be able to attend court, or is dead; (3) when depositions have been taken by agreement of parties, or by order of court; (4) when deponent is state or county officer, or judge, physician, or attorney, and trial is to be had in any county in which deponent does not reside. (§ 2-1506)

Procedure

When deposition is to be taken within or without state, but within United States, no commission is necessary. When taken out of United States clerk shall, upon request of party taking deposition, issue commission to officer designated to take deposition. No order of court or affidavit is necessary to authorize issuing of commission. (§ 2-1516)

Notice

Notice must specify: (1) Cause in which deposition is to be used; (2) court or tribunal in which trial is to be had; (3) time and place of taking deposition, and names of witnesses. (§ 2-1502)

Notice may be served in same manner and by any person authorized to serve summons for a witness. If neither party nor his attorney or agent resides in state, notice may be filed in clerk's office or published three weeks successively in county where suit is pending. (§ 2-1504)

Interrogatories

Party desiring to take deposition on written interrogatories must serve notice of his intention, together with copy of inter-

²⁴ References in parentheses are to Statutes (Burns), 1933.

rogatories; opposite party may file cross-interrogatories with clerk within five days. Clerk then issues to some officer to be selected by him, authorized to take depositions, a commission with interrogatories and cross-interrogatories annexed thereto, requiring him to cause witness to come before him at such time and place as he may appoint. Neither of the parties, their agents or attorneys, shall be present nor shall they be informed of nature of evidence until deposition is finished. (§ 2-1532)

Return

Officer taking deposition must seal up same in envelope and direct it to clerk of court, endorsing on envelope names of parties and of witness whose deposition is enclosed. (§ 2-1514)

Form of deposition

Deposition of E F, a witness produced before and sworn by me, a notary public of ———, at ———, in the County of ———, and State of Indiana, on the ——— day of ———, 19—, in pursuance to the notice hereto attached (*and* commission, if any), in a cause now pending in the ——— Court of ——— County, in the State of Indiana, wherein A B is plaintiff, and C D is defendant, on the part of the said plaintiff (*or*, defendant).

Appearances for the plaintiff: (*Name of attorney*).

Appearances for the defendant: (*Name of attorney*).

The said E F, having been first duly sworn by me, to testify the truth, the whole truth, and nothing but the truth, relating to the said cause, deposes and says as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Indiana, County of ———, ss.

I, G H, a notary public in and for the County and State above named, duly commissioned and qualified, do hereby certify that the above named E F was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause; that his deposition was reduced to writing by a disinterested person, in my presence, and under my direction; that the said ——— (the litigant against whom the deposition is to be used), adverse party herein, did not attend, either in person or by attorney (*or*, did attend, in person) the taking of said deposition; and said deposition was taken at my office, ———, in the City of ———, in the County of ———, and State of Indiana, on the ——— day of ———, 19—, between the hours of ——— o'clock A. M., and ——— P. M., of said day.

In testimony whereof, I have hereunto set my hand and official seal, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Whenever a person makes affidavit before any circuit court or judge, or clerk, that he expects to be made a party in an action thereafter to be commenced and that testimony of affiant or any other person (to be named in affidavit) is material, court or officer shall order reasonable notice to be given to party expected to be adverse to applicant or his attorney, that on designated day and place witness will be examined before officer specified in order. (§ 2-1524)

§ 314. Iowa.²⁵

Who may take

Notary public or commissioner. (§§ 11358, 11365)

When taken

Party may take deposition after commencement of civil action if witness is or is about to go beyond reach of subpoena, or is for any other cause expected to be unable to attend court at time of trial; if action is triable by equitable proceedings then without any other reason either party may take deposition of any witness. (§ 11358)

Procedure

If deposition is to be taken within state, it may be upon notice or upon commission; and, if without state, it must be by latter method, except by agreement of parties. (§ 11359)

By written consent of parties, depositions may be taken in either method and without any reason therefor being made to appear, and before any person designated in agreement. (§ 11360)

Notice

When deposition is taken upon notice, it must be before some person authorized to administer oaths, or agreed upon by the parties; notice of name of witness, and time when, place where, and person before whom it is to be taken must be given to opposite party. (§ 11361)

In taking deposition by commission, party may serve on opposite party a notice that on a day named a commission will issue

²⁵ References in parentheses are to Code, 1935.

from office of clerk of court in which action is pending; such notice must give name of witness whose deposition is to be taken; copy of written interrogatories must accompany and be served with notice. (§ 11364)

Notice of taking depositions by either method may be served personally upon opposite party or his attorney of record. (§ 11377)

If party sought to be served with notice is nonresident, or his residence is unknown, or in case of default, and party has no attorney of record who is resident of state, notice of taking depositions or suing out a commission therefor may be served by filing notice with clerk of court ten days before taking depositions or issuance of commission. (§ 11378)

Notice of taking depositions by either method, when served on attorney, shall be at least ten days, and upon parties within county where deposition is to be taken or commission obtained, at least five days. If depositions are to be taken upon notice, whether served upon attorney or party, one day in addition to specified time must be allowed for every one hundred miles' travel from place where it is served to where deposition is to be taken. (§ 11379)

Interrogatories

Party taking deposition by commission must file written interrogatories with clerk. (§ 11364)

At or before time fixed in notice for issuance of commission, opposite party may file cross-interrogatories; if cross-interrogatories are not filed, clerk files certain questions. (§ 11371)

Return

Deposition, duly certified by officer taking same, with commission and interrogatories, if taken on commission, must be sealed up and delivered by him to clerk of proper court within thirty days, or sent to him by mail or express, unless some other mode be agreed upon between parties. (§ 11387)

Form of deposition

Deposition of E F, a witness produced, sworn, and examined on his oath on the _____ day of _____, 19—, in pursuance of the annexed notice (*or*, commission and interrogatories), at the office of _____, _____, in the City of _____, in the County of _____, and State of Iowa, before me, a notary public in and for said County (*or*, commissioner appointed by a commission from the office of the Clerk of _____ Court), in a certain action

now pending in the ——— Court, in which A B is plaintiff and C D is defendant, in behalf of the plaintiff (*or*, defendant).

E F, of lawful age, being duly sworn, deposes as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Iowa, County of ———, ss.

I, G H, a notary public within and for said county do hereby certify that, in pursuance of the within (*or*, annexed) notice (*or*, commission and notice) came before me on the ——— day of ———, 19—, E F, who was by me sworn and examined, and such examination reduced to writing by me (*or*, by L N, who is neither a party, nor agent nor attorney of either party, nor in any way interested in the event of this suit), and after being read over by me to said deponent, the same was sworn to and subscribed by said witness in my presence, at the time and place therein mentioned, and his said deposition is herewith returned. (If taken on notice, add: And I further certify that ——— was present and conducted said examination on behalf of the plaintiff; and that ——— was present and cross-examined said witness on behalf of the defendant.)

(If taken on commission and interrogatories, add: And I further certify that neither of the parties, nor the agent nor attorney of either, was present during the examination of any of said witnesses; *or*, state who was there and in whose behalf).

Given under my hand and official seal, hereto attached, at ———, in the County of ———, and State of Iowa, this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of district or superior court a verified petition setting forth subject matter relative to which testimony is to be taken, names of persons interested, if known, and if not, such general description as he can give of such persons; it must also state names of witnesses to be examined, interrogatories to be submitted to each, that applicant expects to be party to action in a court of state, in which such testimony will be material, and obstacles which prevent immediate commencement of action, where he expects to be plaintiff. (§ 11400)

Court or judge makes order allowing examination of witnesses, prescribing time and place of examination, and manner in which interested parties shall be notified. (§ 11401)

Such deposition shall be taken before someone authorized by law to take depositions, method of taking and verifying being the same as that provided for in case of depositions. (§ 11403)

§ 315. Kansas.²⁶

Who may take

A notary public (§§ 60-2823, 60-2824), commissioner appointed by governor of this state to take deposition (§§ 53-201, 60-2824), or any person authorized by special commission. (§§ 60-2824, 60-2826)

Officer must not be relative or attorney of either party or otherwise interested, or a clerk or stenographer of either party or of the attorney of either party. (§§ 60-2825)

When taken

Either party may commence taking testimony by deposition at any time after service upon defendant of summons or date of first publication of notice. (§ 60-2820)

When used

Deposition of any witness may be used only: (1) When witness does not reside in county where action or proceeding is pending, or is absent therefrom; (2) when from age, infirmity or imprisonment, witness is unable to attend court, or is dead; (3) when testimony is required upon motion, or in any other case where oral testimony of witness is not required. (§ 60-2819)

Procedure

A court or judge, before whom action is pending, is authorized to grant a commission to take depositions within or without state; commission must be issued to person therein named, by clerk, under seal of court granting same; depositions under it must be taken upon written interrogatories, unless parties otherwise agree. (§ 60-2826)

Notice

Prior to taking of any deposition, unless taken under special commission, written notice specifying action or proceeding, name of court in which it is to be used, and time and place of taking same, shall be served upon adverse party, his agent or attorney, or left at his usual place of residence. (§ 60-2827)

²⁶ References in parentheses are to General Statutes, 1935.

When party against whom deposition is to be read is absent from or nonresident of state, and has no attorney of record therein, he may be notified of taking of deposition by publication for three consecutive weeks in newspaper printed in county where action is pending. (§ 60-2836)

Return

Deposition must be sealed up and endorsed with title of cause and name of officer taking same, addressed and sent to clerk of court where action is pending. (§ 60-2838)

Form of deposition

Deposition of E F, taken before me, a notary public within and for the County of _____, in the State of Kansas, on the _____ day of _____, 19—, between the hours of _____ A. M. and _____ P. M., at _____ in said County, pursuant to the annexed notice (*or*, agreement) in an action pending in the _____ Court, within and for the County of _____ in the State of Kansas, wherein A B is plaintiff and C D is defendant.

The said A B appeared in person and by his attorney, _____, and the said C D appeared in person and by his attorney, _____.

E F, of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Kansas, County of _____, ss.

I, G H, notary public, do hereby certify that E F was by me sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed was reduced to writing by myself (*or*, by J K, who is not interested in the suit, in my presence), and was subscribed by said E F in my presence and was taken at the time and place specified in the annexed notice (*or*, agreement), and that I am not counsel, attorney, or relative of either party, or clerk or stenographer of either party, or attorney of either party, or otherwise interested in the event of this suit.

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of district court a verified petition setting forth subject matter relative to which testimony is to be taken, names of persons interested, if known; if not known, general description of such persons; stating also names of wit-

nesses to be examined and interrogatories to be submitted to each; that applicant expects to be party to action in which such testimony will be material, and obstacles preventing immediate commencement of action, where applicant expects to be plaintiff. (§ 60-2872)

Court or judge may make order allowing examination of witnesses, prescribing time and place of examination and manner in which interested parties shall be notified. (§ 60-2873)

Such deposition shall be taken before someone authorized by law to take depositions. (§ 60-2875)

§ 316. Kentucky.²⁷

Who make take

Notary public. (§§ 562, 564)

When taken

Plaintiff may commence taking depositions immediately after service of summons, and defendant immediately after filing his answer. (§ 557)

Procedure

Depositions must be taken upon reasonable notice to adverse party or upon interrogatories. (§ 565)

Notice

Must be in writing, signed by party giving it, or his attorney; addressed to party on whom it is to be served, and specify time and place of taking deposition, and action in which it is to be used; must also state name of proposed witness, if deposition be taken out of county where court is held, unless it be taken to prove a law, custom or usage. (§ 566)

A notice shall be deemed reasonable that allows one day for each thirty miles which party will have to travel and one day for preparation if distance be less than one hundred miles, and two days if it be more. If distance be less than thirty miles, notice which gives party reasonable opportunity to be present is sufficient. (§ 567)

Interrogatories

If more than three days' notice to take deposition be required, party to whom notice is given may, by notice to adverse party require deposition to be taken upon interrogatories. (§ 571)

²⁷ References in parentheses are to Civil Code (Carroll), 1938.

Depositions may be taken upon interrogatories with consent of parties who are free from disability, or consent of guardian or husband of party who is under disability. (§ 572)

Court on motion of either party, may permit or require depositions to be taken upon interrogatories: (1) If ascertainment of a fact or stating of an account be referred to a commissioner; (2) if any of parties against whom deposition is to be read be defendants who may have been constructively summoned and have not appeared, or be under any disability other than coverture, or infancy and coverture combined; (3) if parties against whom deposition is to be read be numerous and have not appointed attorney residing in state known to party taking deposition. (§ 573)

After interrogatories have remained due length of time in clerk's office, one or more commissions, at request of party, shall be issued by clerk, with copies of interrogatories and cross-interrogatories annexed, authorizing person to whom commission is directed to examine witnesses; commission may be directed generally "to any officer authorized to take depositions in or out of this state." (§ 577)

Return

Officer must deliver deposition to clerk of court in which action is pending; or send it by mail or private conveyance, in sealed envelope, directed to clerk, with endorsement showing style of action and that it contains a deposition. (§ 583)

Form of deposition

The deposition of E F, taken on behalf of the plaintiff (*or*, defendant), on this _____ day of _____, 19—, at _____, in an action now pending in the _____ Court, wherein A B is plaintiff and C D is defendant.

The said E F, having been first duly sworn, deposes and says: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Kentucky, County of _____, ss.

I, G H, a notary public within and for said county, do certify that the above and foregoing deposition of E F, was taken before me at my office at _____, in the City of _____, on the _____ day of _____, 19—, upon the interrogatories (*or*, in pursuance of the notice or agreement hereto annexed); that said witness was sworn by me that the evidence he should give in said action should be the truth, the whole truth, and nothing but the truth,

before giving his testimony; that the testimony of said witness was written by me in presence of the witness testifying (*or*, by the witness testifying in my presence; or otherwise), was read to and subscribed by him in my presence.

I further certify that, at the taking of said deposition, neither party was present, nor represented by agent nor attorney (*or*, that said plaintiff was present in person, and that said defendant was represented by J R, his attorney).

G H, Notary Public

Perpetuating testimony

Person who expects to be party to action in court in state, or nonresident of state who has interest in real property in state, concerning which he expects to be a party to an action, may file in circuit court of county in which he resides, or in which property is situated petition in equity, verified by his affidavit, stating: (1) That he expects to be a party to an action in a court of this state, and nature of expected controversy; (2) name, age, and place of residence of expected adverse party, if known (or his ignorance thereof, if not known by him); (3) that evidence of witnesses, whose names and facts expected to be proved must be stated, is believed to be material to him; (4) obstacles preventing commencement of action, if he expects to commence same. (§ 610)

§ 317. Louisiana.²⁸

Who may take

Testimony of any witness taken for use within state may be taken before any officer authorized by law to administer oaths, who is not attorney for any party to suit, or otherwise interested in outcome of case. (§ 1998.3)

Any notary public is appointed commissioner to take testimony of witnesses in suits pending in courts of parish of Orleans. (§ 2005)

Person appointed by governor of state to take deposition in another state. (§ 2013)

Any person authorized by law to administer oaths may take deposition of witness who resides out of parish in which suit is pending. (Practice, § 425)

When taken

Commission to take testimony may issue at any time after service of petition and citation. (§ 1996.1)

²⁸ References in parentheses are to General Statutes (Dart), 1932.

When witness resides in parish where cause is pending, but is old, infirm, or about to depart from the state, so that party having need of his testimony fears that he may be deprived of the advantage he expects to derive from same, such party may, on motion, even before issue joined, obtain a commission from the court directing deposition of such witness to be taken. (Practice, § 430)

Procedure

Whenever any party desires to take testimony of witness who resides outside state or within state but outside of parish where cause is pending, he must first obtain permission of court after opposing counsel has been ruled into court to show cause why permission should not be granted. (§ 1998.1)

Notice

Written notice of intention to take testimony must be given opposite party not less than ten days prior to taking testimony; it must state concisely: (1) Name and title of cause and court where same is pending; (2) name and address of witness to be examined; (3) time and place at which testimony is to be taken; (4) name of officer before whom testimony will be taken. Notice must be served either by sheriff, party or registered mail. (§ 1998.2)

If adverse party, having no advocate, reside in parish where deposition is to be taken, it is not necessary to give written notice to such party of place and day when deposition of witness will be taken. (Practice, § 428)

When adverse party, having no advocate on record, resides neither at place where court is held, nor in parish where deposition is to be taken, copy of interrogatories must be delivered to clerk of court to be posted in his office. (Practice, § 429)

Interrogatories

Party desiring to take deposition of witness residing out of parish must annex to commission written interrogatories, containing questions to be put to witness; previous to being sent, such interrogatories must be submitted to adverse party, who may add whatever questions he wishes; they must be served on adverse party or his counsel three days previous to having them forwarded. (Practice, § 426)

Return

All testimony, together with exemplified copy of notice served upon opposite party, and affidavit of party in whose behalf testi-

mony is taken, reciting time when and manner in which original notice was served upon opposite party, and certificate of officer taking deposition must be returned to court where cause is pending under seal of officer, in same manner as depositions are returned for interrogatories under commission. (§ 1998.5)

Deposition must be signed by witness; officer must then draw a verbal process of taking of deposition, annex same to commission and interrogatories, if there be any; and the whole must be enclosed, sealed and directed to the clerk of court. (Practice, § 433)

Form of deposition

State of Louisiana,
County of _____,
_____ Court for Parish of _____

A B, Plaintiff, vs. C D, Defendant

Depositions of witnesses, produced, sworn, and examined on the days hereinafter stated, at _____, in the City of _____, Parish of _____, State of Louisiana, under and by virtue of the annexed commission issued out of the _____ Court, to take depositions in a certain cause pending between A B, plaintiff, and C D, defendant.

E F, being first duly sworn, deposes and says as follows: To the first interrogatory, he says: (*Answer*). E F, Witness

Sworn to and subscribed before me this _____ day of _____, 19—.

G H, Notary Public

Form of officer's certificate (§ 1998.5)

State of Louisiana, Parish of _____, ss.

I, G H, a notary public in and for the Parish of _____, and not of counsel or attorney for any party to this suit or otherwise interested in the outcome, do certify that I caused E F, of _____, the witness hereinbefore named, to appear before me at the time and place above named; and, after publicly and solemnly swearing or affirming him to tell the truth, the whole truth, and nothing but the truth in answer to the annexed direct and cross-interrogatories, I then and there proceeded to examine him by propounding to him the said direct and cross-interrogatories, and reducing (*or*, causing to be reduced) in my presence, and in presence of the witness, his answers thereto in writing, with my own hand (*or*, by the hand of _____, a disinterested person), and then caused the witness to sign his deposition in my presence.

Said A B appeared by his attorney, _____, and C D by his attorney, _____.

In testimony whereof, I have hereunto set my hand and seal on this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 318. Maine.²⁹

Who may take

Notary public (c. 121, § 2) or commissioner to take deposition without state. (c. 121, § 21)

When taken

Depositions may be taken: (1) When deponent is so aged, infirm, or sick as to be unable to attend at place of trial; (2) when deponent resides out of or is absent from state; (3) when deponent is bound to sea on voyage or is about to go out of state or more than sixty miles from place of trial, and is not expected to return while court is in session; (4) when deponent is justice of supreme judicial court or superior court, or is judge of court of probate, and is prevented by official duty from attending trial; (5) when deponent resides in town other than that in which trial is to be held; (6) when deponent is confined in prison. (c. 121, § 4)

Procedure

On application of either party to a justice of the peace or notary public, he may issue a summons to any deponent, except adverse party, to appear at a designated time and place to give his deposition, and shall issue notice to adverse party to be present; deposition may then be taken by him or any other notary. Deposition of adverse party may be taken by commission. (c. 121, § 5)

Notice

Where there are several plaintiffs or defendants, notice is sufficient if given by notary to one or more of them; adverse party must be allowed not less than rate of one day for every twenty miles' travel from his place of abode to place of caption between service of notice and time appointed for taking deposition. Verbal notice to adverse party by notary is sufficient. (c. 121, § 8)

Form of notice to adverse party (c. 121, § 9)

State of Maine, County of _____, ss.

To C D, of _____, in the County of _____, Greeting:

Whereas, A B, of _____, has requested that the deposition of E F, of _____, may be taken to be used in an action pending

²⁹ References in parentheses are to Revised Statutes, 1930.

between you and the said A B, and the office of _____, in _____, and the _____ day of _____, 19____, at _____ o'clock in the _____ noon, are the place and time appointed therefor; you are hereby notified to be present and put such questions as you think fit.

Dated this _____ day of _____, 19____.

G H, Notary Public

Form of summons to deponent (c. 121, § 10)

State of Maine, County of, ss.

To E F, of _____, in the County of _____.

Whereas, A B of _____, in the County of _____, has requested that your deposition be taken to be used in an action now pending between him and C D, of _____, in the County of _____, and the office of _____, in the City of _____, and the _____ day of _____, 19____, at _____ o'clock in the _____ noon are the place and time appointed therefor; you are therefore required, in the name of the State of Maine there and then to appear and testify what you know relating to said action.

Dated this _____ day of _____, 19____.

G H, Notary Public

Interrogatories

Depositions to perpetuate testimony of person living out of state may be taken in any other state or foreign country upon a commission issued by superior court. (c. 121, § 26)

Deposition must be taken on interrogatories filed by applicant, and cross-interrogatories by any party adversely interested. (c. 121, § 28)

Return

Deposition must be taken by notary, or by deponent or some disinterested person in presence or under direction of such notary; and after it has been read to or by deponent, it must be subscribed by him. (c. 121, § 13)

Deposition must be delivered by notary to court in which cause is to be tried, or must be enclosed and sealed by him and directed to said court. (c. 121, § 16)

Form of deposition

The deposition of E F, to be used in a certain cause now pending in the _____ Court, wherein A B is plaintiff and C D is defendant.

E F, of ———, being first duly sworn, deposes and says:
(*Questions and answers*).

E F, Witness

Form of officer's certificate (c. 121, § 15)

State of Maine, County of ———, ss.

On this ——— day of ———, 19—, the above named deponent personally appeared before me, at ———, was first duly sworn by me according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which his foregoing deposition was taken, and being then examined on interrogatories (*or*, orally) according to law, gave on oath the foregoing deposition, which was written by me (*or*, by L M, a disinterested person, in my presence and under my direction); and after said deposition had been carefully read by me to said deponent, he then subscribed his name to his deposition in my presence. Said deposition was taken at the request of the plaintiff (*or*, defendant), the adverse party having been notified to attend at the taking, which he did (*or*, did not do). The cause in which said deposition is to be used is an action for ———, wherein A B is plaintiff and C D is defendant, now pending in the ——— Court, within and for the County of ———, in said State, to be tried in said Court at ——— term. The cause of the taking of said deposition is nonresidence, (*etc.*).

Witness my hand and seal at ———, on this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Person desiring to perpetuate testimony must make statement in writing under oath, briefly setting forth his title, interest, or claim in subject, names of all persons supposed to be interested therein, and name of each witness proposed to be examined; and must deliver statement to a judge or register of probate, notary public, clerk of judicial courts, or justice of the peace requesting him to take deposition of such witness; the notice must then be given of time and place for taking depositions to all persons named in statement. (c. 121, § 22)

§ 319. Maryland.³⁰

Who may take

County commissioners appointed by circuit courts may take depositions of witnesses in state. (Art. 35, § 19)

³⁰ References in parentheses are to Code (Bagby), 1924.

A notary public may take deposition of nonresident witnesses. (Art. 35, § 17)

When taken

If any witness whose deposition is required is sick, and likely to die, or is about to leave the state, the commissioner, upon proof of fact, may take deposition de bene esse upon such notice as he may prescribe to be given to opposite party, his attorney, or guardian. (Art. 35, § 29)

When used

Either party may take deposition to be used as testimony only in case of death of witness, or on proof to satisfaction of court of inability of parties to procure attendance of such witness at time of trial and probable continuance of said inability until and at next term. (Art. 35, § 21)

Procedure

Commission may be issued for taking deposition of material witness who resides out of state or for any reason can not be brought before court. (Art. 35, § 16)

Notice

Commissioners to take depositions of witnesses in state on such notice to opposite party and in such manner as court shall prescribe. (Art. 35, § 19)

Deposition of nonresident witness may be taken upon giving notice of not less than five days to opposite party of time and place when and where testimony of such nonresident witness will be taken and name of commissioner or notary public before whom same is to be taken, together with name of witness proposed to be examined. (Art. 35, § 17)

Return

Deposition must be certified and returned by commissioner taking same, under his hand, to clerk of court in which it is intended to be used; if court is any other than that by which commissioner was appointed there must be annexed to his return a certificate by the clerk, under seal of court, that he is commissioner. (Art. 35, § 22)

Form of deposition

In the _____ Court of _____

A B, Plaintiff, vs. C D, Defendant

At the execution of the annexed commission issued out of the _____ Court, and to us directed, empowering us to examine wit-

nesses in the cause depending in said court, between A B, as plaintiff, and C D, as defendant, we, G H and R S, the commissioners in the said commission named, having first duly taken the oath to the said commission annexed, met on the —— day of ——, in the year 19—, at ——, in the City of ——, and assigned the —— day of ——, in the same year, at —— o'clock in the —— noon, and the same place, as time and place for the examination of witnesses under the said commission; at which last mentioned time and place the commissioners met, pursuant to notice, and we proceeded to take the following depositions, to wit:

E F, a witness of lawful age, produced on behalf of the plaintiff (or, defendant), being by us first duly sworn, being examined on the interrogatories to him propounded in that behalf, and herewith returned, makes oath, deposes and says, as follows: (*Interrogatories and answers*).

E F, Witness

Form of commissioners' certificate (c. 121, § 15)

There being no other witnesses to be examined, the commissioners closed the said commission, and herewith return the same under their hands and seals, this —— day of ——, 19—.

G H
R S

Commissioners

(SEAL)

§ 320. Massachusetts.³¹

Who may take

Notary public. (c. 233, § 32)

When taken

If a witness or party whose testimony is wanted lives more than thirty miles from place of trial, or is about to go out of state and not to return in time for trial, or is so ill, aged, or infirm as to make it probable that he will not be able to attend at trial, his deposition may be taken. (c. 233, § 25)

Procedure

After service of process in an action or after submission to referees, either party may apply to a notary public who shall issue a notice to adverse party to appear and propose interrogatories before said notary or any other notary public at time and place appointed for taking deposition. (c. 233, § 26)

³¹ References in parentheses are to Annotated Laws, 1933.

Notice

Notice must be served by delivering attested copy thereof to person to be notified, or by leaving copy at his place of abode, not less than twenty-four hours before time appointed for taking deposition, and also allowing not less time than at rate of one day, Sundays excluded, for every twenty miles' travel to place appointed. (c. 233, § 28)

Notary who takes deposition may give verbal instead of written notice. If adverse party or his attorney in writing waives notice, or if defendant does not enter his appearance within time required, no notice is required. (c. 233, § 29)

Interrogatories

Deposition of person without state, taken before commissioners, must be taken upon written interrogatories which must be filed in clerk's office and notice thereof given to adverse party or his attorney, and upon cross-interrogatories, if any are filed by him. (c. 233, § 42)

Return

Deposition must be delivered by notary to court, referees or endorsed with title of court and cause, and that deposition was and sealed by him and directed to it or them. (c. 233, § 34)

Form of commission

State of Massachusetts, County of _____, ss.

To any commissioner appointed by the Governor of said Commonwealth of Massachusetts, or to any justice of the peace, notary public, or other officer, legally empowered to take depositions or affidavits in the _____ of _____, Greeting:

Whereas C D in an action between A B and C D which is now pending in the _____ Court within and for said County of _____, has, pursuant to the rules of said court, filed in the office of the clerk of said court, certain interrogatories, which are hereunto annexed, in order that the deposition of E F in said interrogatories mentioned, may be taken, to be used in the trial of said action;

Now, therefore, you are by these presents authorized and empowered at the request of the said C D to take the deposition of the said E F, and to this end to cause E F to come before you, and the deponent, after having been sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, is to be examined, and the testimony taken in writing.

You shall permit neither party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent while giving his deposition in answer to the interrogatories annexed to his commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly, before proceeding to the next, and not read to the deponent, nor permit the deponent to read, a succeeding interrogatory, until the answer to the preceding has been fully taken down.

Witness, _____, esquire, chief justice of said court, at _____, this _____ day of _____ in the year of our Lord 19—.

Y Z, Clerk

Form of officer's return (c. 233, § 33)

State of Massachusetts, County of _____, ss.

Pursuant to the foregoing commission, I caused the said E F to come before me, on the _____ day of _____, 19—; and having sworn the said E F to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, I examined the said E F, and reduced his testimony to writing. Neither of said parties was present by himself, or by an agent, or an attorney, nor did either of them communicate, in any manner, with the deponent while giving his deposition; and I took said deposition separate and apart from all other persons, no person being present except myself and _____; and in taking the depositions I put the interrogatories and cross-interrogatories to the deponent as directed in the foregoing commission, and in all respects fully and exactly complied with the directions in said commission in taking the same. And after the said deposition was taken, I carefully read the same to the said E F, and he subscribed it in my presence.

G H, Notary Public

Perpetuating testimony

Person desiring to perpetuate testimony shall apply in writing to notaries public or a justice of the peace and a notary public, one of whom shall be an attorney at law, requesting them to take his deposition or the deposition of the person whose testimony he

desires to perpetuate, and stating briefly and substantially his title, claim or interest in or to the subject, the names of all other persons interested or supposed to be interested therein, and the name of the witness to be examined. (c. 233, § 46)

§ 321. Michigan.³²

Who may take

Notary public, not being of counsel or attorney for either of the parties, nor interested in the result of the cause. (§ 14160)

When taken

The testimony of any witness may be taken by deposition *de bene esse*, in any civil cause begun or pending in any court of record, at law or in chancery, or before any probate court or commissioners on claims appointed by any probate court or arbitrators, referees, or before department of labor and industry, or in any other civil proceeding, when witness is or is about to go or resides out of state, or is about to go or reside more than fifty miles from place of trial, or beyond jurisdiction of court; or when witness is sick, aged, or infirm, or where there is reasonable cause for apprehension that his testimony can not be had at trial or cause, and in any other case when justice will be aided thereby. (§ 14160)

Procedure

Deposition in any case where it can be taken upon notice, may instead be taken under commission. (§ 14161)

Interrogatories

Written interrogatories to be put to witness by commissioner may be attached to commission. Cross-interrogatories must be promptly furnished to parties and commissioner. (§ 14161)

Notice

Reasonable notice must first be given in writing by party or his attorney proposing to take deposition to opposite party or his attorney, stating name of witness and time and place of taking deposition, name of official before whom same will be taken; whenever, by reason of absence of party from jurisdiction, or want of opposite party, or other reason, giving of notice is impracticable, depositions may be taken upon such notice as any judge thinks reasonable. (§ 14160)

³² References in parentheses are to Compiled Laws, 1929.

Return

Deposition must be enclosed by official before whom taken and endorsed with title of court and cause, and that deposition was taken and sealed up by him, and how it is to be sent; he must sign endorsement and transmit same by mail or otherwise to court in which cause is pending. (§ 14163)

Form of deposition

A B, Plaintiff, vs. C D, Defendant
State of Michigan

In the _____ Court for the County of _____.

The deposition of E F, of _____, a witness produced, sworn, and examined pursuant to the notice hereto annexed, at the instance of the plaintiff (*or*, defendant) in the above entitled cause, to be used as evidence in said cause.

The said E F, having been by me first duly sworn, was examined and testified and deposed as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Michigan, County of _____, ss.

I, G H, a notary public residing in _____, in the County of _____, in the State of Michigan, do hereby certify:

That the foregoing deposition of E F was taken before me, pursuant to notice; a copy of which, with affidavit of service, is hereto attached. That said deposition was taken on the _____ day of _____, 19—, before me, at the office of _____, in the City of _____, County of _____, State of Michigan. That the taking of the same was begun on the _____ day of _____, 19—, at _____ o'clock in the _____-noon; that there then appeared _____, attorney for plaintiff, and _____, attorney for the defendant, for the purpose of taking said deposition; that the taking of said deposition was continued and completed on said day (*or* if more than one day, note the adjournments). That said witness was first sworn by me to tell the truth, the whole truth, and nothing but the truth, concerning the matter at issue in the case entitled in said notice, and was then examined on oral interrogatories, propounded by _____, attorney for plaintiff, and by _____, attorney for defendant. The said interrogatories, and the answers of the witness thereto, were taken down stenographically by me, and were then forthwith transcribed by me (*or*, were taken down stenographically by I J, and were then forthwith transcribed by him under my direction); and the said transcript was then correctly read over to the said witness by me, and was then signed

by the witness in my presence; and the said transcript so read and signed is hereto attached, and constitutes the foregoing deposition of the witness; and I certify that the same is correct, and that the said deposition contains truly and fully all interrogatories put to the witness and his answers thereto on said examination, and nothing more nor less. That I am not counsel or attorney for either of the parties in said suit, and am not interested in the event of the said cause; that I am a notary public in and for said County of _____, in the State of Michigan, duly appointed and qualified and authorized by the laws of the State of Michigan to administer oaths.

G H, Notary Public

Perpetuating testimony

Any person who expects to be a party to a suit which may thereafter be commenced may cause testimony of any witness material to him to be taken conditionally and perpetuated, under a commission issued by any circuit court, commissioner, or judge of a court of record upon affidavit showing necessity therefor, and, so far as known, persons interested in such matter. (§ 14164)

§ 322. Minnesota.³³

Who may take

Any officer authorized to administer an oath in the state. (§ 9820)

When taken

In any civil cause pending in state court, when witness: (1) Is within state and lives more than thirty miles from place of trial; or is about to go out of state, not intending to return in time for trial or hearing; or is so sick, infirm, or aged as to make it probable that he will not be able to attend trial; (2) is without state and within any state or territory of United States. (§ 9820)

Notice

Notice must be in writing, state reason for taking deposition, and must be served in same manner as other notices in civil actions, so as to allow adverse party sufficient time, at rate of one day for every one hundred miles of travel between place of service and place of taking deposition and one day for preparation. (§ 9821)

³³ References in parentheses are to Statutes (Mason), 1927.

Interrogatories

Deposition of witness without state may be taken under commission issued by court of record to any competent person in any state: (1) When issue of fact has been joined, on application of either party made upon eight days' notice; (2) when time for answering has expired and defendant has not answered, on application of plaintiff without notice to other parties. (§ 9823)

When such application is by plaintiff and there has been no appearance by defendant, deposition may be taken upon interrogatories filed by plaintiff and annexed to commission. In all other cases such depositions must be taken upon written interrogatories served upon adverse party or his attorney, and cross-interrogatories to be filed by him if he desires. (§ 9824)

Return

When completed, witness must sign deposition at end thereof as well as upon each piece of paper upon which any portion of his testimony is written. Officer must annex to deposition the notice, order, or commission and a certificate. (§ 9827)

Officer must enclose and seal deposition and deliver or mail it to court before which cause is pending or from which commission issues. (§ 9828)

Form of deposition

Directions which sometimes accompany the notice, stipulation or agreement, are:

Give state, county, court, and title of cause as found in the notice (*or* stipulation). Prefix the testimony of each witness with the following:

"Testimony of E F, in the County of _____, and State of Minnesota, taken before G H, a notary public, by virtue of the notice (*or* stipulation) hereto attached as stated in the return thereto."

Do not copy the interrogatories or cross-interrogatories, but before each answer put the following: "To the first interrogatory the witness deposes and says." "To the second interrogatory the witness says," etc. At the end of the deposition the witness should sign his name, and the officer should add:

"Subscribed and sworn to before me, _____, 19—.

(SEAL)

G H, Notary Public"

Form of officer's certificate (§ 9827)

State of Minnesota, County of _____, ss.

Be it known, that I took the annexed deposition pursuant to the annexed notice (*or*, order; *or*, commission); that I was then

and there a notary public; that I exercised the powers of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that said witness before testifying was duly sworn to testify the whole truth, and nothing but the truth, relative to the cause specified in the annexed notice (*or*, order); that the testimony of said witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the plaintiff by L M; that the examination was conducted on behalf of the defendant by T U; that the reason for taking said deposition was _____.

Witness my hand and seal, this _____ day of _____, 19____.

(SEAL)

G H, Notary Public

Perpetuating testimony

A person must make statement in writing setting forth briefly his title, claim or interest in subject, names of all persons interested or supposed to be interested, their residences, if known, and name of witness to be examined; statement must be delivered to judge of district court and request him to take deposition of witness. (§ 9839)

Judge must make order fixing time and place of taking deposition, which order shall be served upon all interested persons. (§ 9840)

§ 323. Mississippi.³⁴

Who may take

Any officer authorized to administer oaths. (§ 1540)

When taken

After declaration, bill or petition has been filed and summons served, plaintiff, complainant or petitioner may take depositions of witnesses residing or being within state, and defendant or respondent may take depositions after filing his answer or cross bill: (1) When person whose testimony is required is about to depart from state, or, by reason of age, sickness, or other cause shall be unable to attend court; (2) when claim or defense, or material point thereof, depends upon testimony of single witness; (3) when person whose testimony is required is a judge or other governmental officer who can not conveniently attend court; (4) when testimony of clerk of court, sheriff, or justice of the peace is required beyond limits of county of his residence; (5) when wit-

³⁴ References in parentheses are to Code, 1930.

ness is a female; (6) when witness resides within state and more than sixty miles from place of trial. (§ 1538)

Notice

Depositions of witnesses in state may be taken on ten days' notice to opposite party or his attorney of time and place of taking; in cases of emergency, shorter notice is sufficient. (§ 1540)

Interrogatories

Deposition of any witness absent from or residing out of state may be taken by any party to cause; such party must file interrogatories in clerk's office and serve opposite party or his attorney with copy thereof ten days before issuing commission, in which time opposite party must file cross-interrogatories. (§ 1542)

Return

Testimony taken, with commission, if any, and interrogatories and every exhibit, and also a certificate by officer of all his proceedings, must be sealed up and directed to clerk of court where action is pending, and transmitted in safe and convenient manner. (§ 1545)

Form of deposition

State of Mississippi, County of _____, ss.

Be it remembered, that on this _____ day of _____, 19—, by virtue and in pursuance of the annexed notice (*or*, agreement; *or*, in pursuance of a commission to me directed from the circuit court for the _____ judicial district of the State of Mississippi), to take the deposition of E F, of the City of _____, State of Mississippi, aforesaid, a witness for the complainant in a certain case therein pending, where in A B is complainant and C D is defendant, on the interrogatories and cross-interrogatories annexed to, and accompanying the said commission (*or*, on the questions to be propounded orally to him in said cause), I caused the said E F, a person of sound mind, and upwards of twenty-one years of age, to come before me at my office in _____, State of Mississippi; and said E F, being by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did depose and say:

In answer to the first interrogatory: (*Answer*).

E F, Witness

Sworn to and subscribed before me this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Form of officer's certificate

State of Mississippi, County of _____, ss.

I, G H, a notary public in and for said county, duly authorized by law to administer oaths in said state (*and add also, if so,* and specially appointed a commissioner in the cause styled in the caption of the foregoing deposition, to take the testimony of E F, a witness for the complainant in said cause) do hereby certify that I caused to come before me the said E F, at _____, in the state aforesaid; and he, being by me first duly cautioned, sworn, and examined, to speak the truth, the whole truth, and nothing but the truth, in answer to the questions to be propounded to him in the case of A B vs. C D, or in answer to the said interrogatories and cross-interrogatories, did give the foregoing deposition; that the answers of the said E F were by me (*or, caused to be*) reduced to writing in the presence of said witness, and by me carefully read to, and were thoroughly understood by said witness as his deposition in said cause; that he signed the same as his deposition in my presence; that the questions propounded to said witness, and which he has answered, are the same direct and cross-interrogatories accompanying said commission; that said deposition has in no manner been changed or altered since the same was subscribed by said witness, but that the same has remained in my possession up to the time of sealing and delivering the same to the post office directed to the clerk of said court.

In witness whereof, I have hereto set my hand and affixed my seal, this _____ day of _____, 19—.

G H, Notary Public

(SEAL) (Or, Commissioner for Mississippi, in _____)

Perpetuating testimony

Person may file his written statement, verified by oath, in office of clerk of chancery court of county in which it would be lawful to institute suit, at law or in chancery; statement must set forth subject matter concerning which testimony is sought to be perpetuated, names and places of residence of witnesses whose testimony is wanted, and nature of testimony of each witness, and names and places of residence of all persons interested in matter to which testimony relates; if unknown, that must be stated. (§ 1553)

Any officer authorized to take depositions for use in pending cases may take depositions of witnesses whose testimony is to be perpetuated. (§ 1559)

§ 324. Missouri.³⁵**Who may take**

Notary public, if taken within state or without state. (§ 1756)

When taken

Any party to a suit pending in any court in this state may obtain the deposition of any witness, to be used in such suit, conditionally. (§ 1753)

When used

Depositions may be read and used as evidence: (1) If witness resides or is gone out of state; (2) if he be dead; (3) if by reason of age, sickness, or bodily infirmity he be unable to attend court; (4) if he reside in a county other than that in which trial is held, or if he be gone to a greater distance than forty miles from place of trial without consent or collusion of party requiring his testimony; (5) if he be a judge of a court of record, a practicing attorney or physician, and engaged in discharge of his official or professional duties at time of trial. (§ 1780)

Procedure

When witness is found in state, deposition may be taken without any commission or order from any court or clerk. (§ 1759)

When witness resides out of state, party desiring his testimony may sue out of court in which suit is pending or out of office of clerk thereof, a commission to take deposition. (§ 1754)

Commission shall be under seal of court, and shall be directed to any officer authorized to take depositions within state where witness may be found. (§ 1757)

Notice

Party at whose instance deposition is taken must cause notice in writing of time and place of taking to be served on adverse party or his attorney, where such party or his attorney resides in state. (§ 1761)

If neither adverse party nor his attorney reside in state, posting notice in office of clerk of court where suit is pending is sufficient. (§ 1762)

Interrogatories

Must be annexed to commission, and shall be drawn and signed by parties or their counsel, under sanction and direction of court or judge. (§ 1769)

³⁵ References in parentheses are to Revised Statutes, 1929.

Return

Depositions and all exhibits, together with commission and interrogatories, if any, must be enclosed, sealed up and directed to clerk of court in which action is pending. (§ 1779)

Form of deposition

Deposition of E F, produced, sworn, and examined, on the _____ day of _____, 19____, between the hours of _____ o'clock in the forenoon, and _____ o'clock in the afternoon, of that day, at _____, in the City of _____, in the County of _____, and State of Missouri, before me, G H, a notary public, in a certain cause now pending in the _____ Court of the County of _____, in the State of Missouri, between A B, plaintiff, and C D, defendant, on the part of the plaintiff (*or*, defendant).

E F, of lawful age, being produced, sworn, and examined on the part of the plaintiff (*or*, defendant) deposes and says: (*Questions and answers*).

E F, Witness

Form of officer's certificate (§ 1774)

I, G H, a notary public within and for the _____ County, in the State of Missouri, do certify that in pursuance of the within (*or*, annexed) commission and notice (*or*, notice; *or*, agreement) came before me at _____, in the county and state last aforesaid, E F, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined, and his examination reduced to writing in my presence, and subscribed and sworn to by him on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned. (If the officer knows the residence of the witness, add:) And I further certify that said E F is resident of the County of _____, in the State of _____.

Given at _____, in the County of _____, and State of Missouri, this _____ day of _____, 19____.

G H, Notary Public

Perpetuating testimony

Person desiring to perpetuate testimony must present petition in writing supported by his affidavit, setting forth nature of his interest, right or claim, facts intended to be proved, names of individuals whose testimony is desired and their places of residence. (§ 1790)

Commission shall be issued by clerk of court in which judge granting same presides and must be directed to a notary public in the county where such testimony is to be taken. (§ 1791)

§ 325. Montana.³⁶**Who may take**

Officer authorized to administer oaths. (§ 10651), or commissioner if witness is out of state. (§ 10646)

When taken

Testimony of witness in state may be taken at any time after service of summons or appearance of defendant: (1) When witness is party to action, or officer or member of corporation which is a party, or person for whose immediate benefit action is prosecuted or defended; (2) when witness resides out of county in which his testimony is to be used; (3) when witness is about to leave county where action is to be tried, and will probably continue absent when testimony is required; (4) when witness is too infirm to attend; (5) when testimony is required upon motion, or in any other case where oral examination of witness is not required; (6) when witness is only one who can establish facts material to issue; deposition of such witness must not be used if his presence can be procured at time of trial. (§ 10645)

Procedure

Party taking deposition must serve upon adverse party previous notice of time and place of examination, together with copy of affidavit showing that case comes within one of the above grounds for taking depositions. (§ 10651)

Notice

Must be at least five days, adding also one day for every twenty-five miles of distance of place of examination from residence of witness, unless, for cause shown, a judge by order prescribes a shorter time. (§ 10651)

The deposition of witness out of state can be taken upon commission issued from court on application of either party, upon five days previous notice to the other. (§ 10646)

Interrogatories

Proper interrogatories, direct and cross, as respective parties may prepare may be annexed to commission; or when parties agree to that mode, examination may be without written interrogatories. (§ 10647)

Return

When completed, deposition must be carefully read to witness and subscribed by him; it must then be certified by officer taking,

³⁶ References in parentheses are to Revised Code, 1935.

enclosed in an envelope, sealed and directed to clerk of court in which action is pending and either delivered by officer to clerk or transmitted through mail. (§ 10652)

Form of deposition

Be it remembered, that pursuant to the stipulation (commission, *or* notice) hereunto annexed, and on the _____ day of _____, 19—, at my office, in the County of _____, State of Montana, before me, G H, a notary public in and for the said _____, County of _____, duly appointed and commissioned to administer oaths, etc., personally appeared E F, a witness produced on behalf of the plaintiff in the above-entitled action now pending in the said court, who, being first by me duly sworn, was then and there examined and interrogated by I J, of counsel for the said plaintiff, and K L, of counsel for the said defendant, and testified as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of Montana, County of _____, ss.

I, G H, a notary public in and for said _____ County, do hereby certify that the witness, E F, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was taken at the time and place mentioned in the annexed stipulation (commission, *or* notice), to wit, at my office in said _____, County of _____, in the State of Montana, and on the day of _____, 19—, between the hours of _____ and _____ of that day; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness; and being by him corrected, was by him subscribed in my presence.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must produce to judge of district court a petition, verified by oath, stating: (1) That applicant expects to be a party to an action in a court in this state, and names of persons who he expects will be adverse parties; or, (2) that proof of some fact is necessary to perfect title to property, though no suit may at any time be anticipated; and (3) name of witness to be examined, his place of residence, and general outline of facts expected to be proved. Judge must make order allowing examination and designating officer before whom same must be taken and prescribing notice to be given. (§ 10687)

§ 326. Nebraska.³⁷**Who may take**

Notary public. (§ 20-1248)

Officer must not be relative or attorney of either party, or otherwise interested in event of action. (§ 20-1250)

When taken

Either party may commence taking testimony by deposition at any time after service upon defendant. (§ 20-1247)

When used

Deposition of any witness may be used only: (1) When witness does not reside in county where action is pending, or is absent therefrom; (2) when, from age, infirmity, or imprisonment, witness is unable to attend court, or is dead; (3) when testimony is required upon motion or in any other case where oral examination of witness is not required. (§ 20-1246)

Procedure

Any court of record of state, or any judge is authorized to grant a commission to take depositions within or without state. Commission must be issued to person therein named by clerk, under seal of court granting same, and depositions under it must be taken upon written interrogatories, unless parties otherwise agree. (§ 20-1251)

Notice

Written notice specifying action, name of court in which deposition is to be used, and time and place of taking same, must be served upon adverse party or his attorney, or left at his usual place of abode. Notice must be served so as to allow adverse party sufficient time by usual route of travel to attend, and one day for preparation. Notice must also specify names of witnesses to be examined. (§ 20-1252)

Interrogatories

When place of taking depositions is out of state, or more than fifty miles from place of trial, adverse party within forty-eight hours after service of notice may serve upon party taking deposition written cross-interrogatories to be submitted to witness. (§ 20-1252)

³⁷ References in parentheses are to Compiled Statutes, 1929.

Return

Deposition must be sealed up and endorsed with title of cause and name of officer, and by him addressed and transmitted to clerk of court where action is pending. (§ 20-1255)

Form of deposition

Deposition of E F, taken before me, G H, a notary public, within and for the County of ———, in the State of Nebraska, on the ——— day of ———, in the year 19—, between the hours of ——— A.M. and ——— P.M., at ———, in said county, pursuant to the annexed notice (*or*, agreement) to be read in evidence in behalf of the plaintiff (*or*, defendant) in an action pending in ——— Court, in which A B is plaintiff and C D is defendant.

E F, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposes and says as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

I, G H, a notary public, do hereby certify that E F was by me first duly sworn to tell the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed as above set forth, was reduced to writing by myself (*or*, by ———, who is not interested in the suit, in my presence, and) in the presence of the witness, and was subscribed by the said witness in my presence and was taken at the time and place in the annexed notice (*or*, agreement) specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the result of this suit. (*If there be adjournments, add:*) and said depositions were commenced at the time in said notice specified and continued by adjournments from day to day as above stated.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at ———, in said county, the day and year last above written.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of district court a petition to be verified, setting forth subject matter relative to which testimony is to be taken, names of persons interested, if known; if not known, general description of such persons; names of witnesses to be examined, and interrogatories to be submitted to each; that applicant expects to be a party to an action in court of state in

which such testimony will be material; and obstacles preventing immediate commencement of action. (§ 20-1294)

Court or judge may make order allowing examination of witnesses, prescribing time and place of examination and manner in which interested parties shall be notified. (§ 20-1295)

§ 327. Nevada.³⁸

Who may take

Notary public. (§ 9002)

When taken

Testimony of witness in state may be taken by deposition at any time after service of summons or appearance of defendant: (1) When witness is party to action, or person for whose immediate benefit action is prosecuted or defended; (2) when witness is president or other officer of corporation for whose benefit action is prosecuted or defended; (3) when witness resides out of county in which testimony is to be used; (4) when witness is about to leave county where action is to be tried and will continue absent when testimony is required; (5) when witness is too infirm to attend, or resides within county but more than fifty miles from place of trial. (§ 9001)

Procedure

Either party may take deposition of witness in state on serving on adverse party previous notice of time and place of examination together with copy of affidavit showing that case comes within one of above-mentioned grounds. (§ 9002)

Deposition of witness out of state may be taken upon commission issued by court on application of either party upon five days' previous notice to other. If issued to any place within United States commission may be directed to a person agreed upon by parties, or, if they do not agree, to any notary public. (§ 9006)

Notice

Notice must be at least five days, and in addition one day for every twenty-five miles of distance of place of examination from residence of witness unless judge by order prescribes shorter time. (§ 9002)

Interrogatories

Party applying for commission must, unless it is waived by other party, attach to notice of motion the interrogatories upon

³⁸ References in parentheses are to Compiled Laws, 1929.

which he desires it to be taken. On hearing of motion other party may propose cross-interrogatories. (§ 9007)

Return

When completed, deposition must be subscribed by witness, certified by officer, enclosed in envelope, sealed and directed to clerk of court in which action is pending, and either delivered by officer or transmitted through mail. (§ 9003)

Form of deposition

Deposition of E F produced, sworn, and examined, the —— day of ——, in the year 19—, at ——, under and by virtue of a commission issued out of the —— Court, of the —— judicial district of the State of Nevada, in a certain cause therein pending and at issue between A B and C D, as follows:

E F, of ——, aged —— years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff (*or*, defendant) does depose and say as follows, namely: (*Answers to interrogatories*).

E F, Witness

Form of officer's certificate

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this —— day of ——, 19—, before
G H, Commissioner (*or*, Notary Public)

Perpetuating testimony

Applicant must present to district judge a petition verified by oath, stating: (1) That applicant expects to be party to action in court in state and names of persons whom he expects will be adverse parties; or, (2) that proof of some fact is necessary to perfect title to property in which he was interested, though no suit may at the time be anticipated; and (3) name of witness to be examined, his place of residence, and general outline of facts expected to be proved. (§ 9112)

Judge shall make order allowing examination before any judge of court of record, prescribing notice to be given; if parties are known and reside in state, notice must be personally served on them; if unknown, or nonresidents, notice must be served on clerk of county where property is situated, and copy thereof published in newspaper designated by judge. (§ 9113)

§ 328. New Hampshire.³⁹

Who may take

Notary public in state, any commissioner appointed to take depositions in other states, any notary public in any other state. (c. 337, § 2)

When taken

Deposition of any witness in a civil cause may be taken and used at the trial, unless adverse party procures him to attend so that he may be called to testify when deposition is offered. (c. 337, § 1)

Procedure

Upon petition to superior court any justice may appoint some suitable person as commissioner to take depositions outside state, for use in causes pending in said court. (c. 337, § 15)

Notice

Notice in writing, signed by notary, stating day, hour, and place of taking deposition, must be delivered to adverse party or left at his abode, a reasonable time before taking thereof. (c. 337, § 4)

Return

Depositions must be sealed up by officer taking same, directed to court in which they are to be used, with brief description of case, and must be so delivered into court. (c. 337, § 10)

Form of deposition

I, E F, of ———, in the County of ———, and State of New Hampshire, on oath depose and say in answer to the following interrogatories: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of New Hampshire, County of ———, ss.

Personally appeared before me, G H, a notary public, the within named E F, at the office of ———, in ——— in said county, on the ——— day of ———, 19—, and made solemn oath that the within deposition by him subscribed contains the truth, the whole truth and nothing but the truth, relative to the cause for which it was taken. The said deposition is taken at the request of C D, of ———, to be used at the ——— Court of the State of New Hampshire to be held at ——— in and for the County of

³⁹ References in parentheses are to Public Laws, 1926.

_____ on the _____ day of _____ next, in a plea wherein A B of _____ is plaintiff, and C D of _____ is defendant; and the taking of the same was begun at _____ o'clock in the forenoon, on the first mentioned day, and continued until the whole was completed.

The said A B, being duly notified was (*or, was not*) present, and did not object.

G H, Notary Public

Perpetuating testimony

Person desiring to perpetuate testimony must present petition to court or justices in writing, under oath, briefly setting forth his interest in subject, and facts to which desired testimony relates; names and residences of all interested persons, or that names and residences of such persons are unknown, and names of witnesses to be examined. (c. 338, § 2)

All such depositions must be written, signed and sworn to as provided in case of depositions in actions pending, with necessary variation in form of oath. Court, commissioner or justices before whom taken must annex to depositions a certificate of time and place of taking, name of person at whose request they were taken, and of all who were notified to attend and did attend, and copy of notice and evidence of service thereof. (c. 338, § 6)

§ 329. New Jersey.⁴⁰

Who may take

Deposition of witness within state may be taken de bene esse before any justice of supreme court, judge of court of common pleas, supreme court commissioner, or master in chancery. (Tit. 2, c. 100, § 10)

Deposition of witness residing out of state may be taken by any person authorized by commission issued by court. (Tit. 2, c. 100, § 16)

When taken

If any material witness in civil action pending in any court of state, is in state, but is aged, very infirm, or sick or is about to go out of state, deposition of such witness will be taken de bene esse. (Tit. 2, c. 100, § 10)

When used

Examination of any witness by commission or deposition shall be as competent evidence as if witness had been examined in open

⁴⁰ References in parentheses are to Revised Statutes, 1937.

court on trial, proof being first made to satisfaction of court that such witness resides, or is out of state, or is dead, or by reason of age, sickness, or bodily infirmity is unable to attend court. (Tit. 2, c. 100, § 1)

Procedure

If material witness resides out of state, court in which action is pending or judge, on affidavit or proof thereof, may issue commission authorizing person to take deposition de bene esse. (Tit. 2, c. 100, § 16)

Notice

When testimony of witness within state is to be taken, officer must cause notice to be given to adverse party immediately, to attend and be present and to put questions and cross examine. (Tit. 2, c. 100, § 11)

Party applying for commission to examine witness residing out of state must give eight days' notice of application, names of witnesses to be examined, place of their residence, and also name of person whom party applying intends to nominate as commissioner. Notice must be served on attorney or solicitor. (Tit. 2, c. 100, § 17)

Interrogatories

Party applying for commission to examine witness residing out of state must serve with notice a copy of interrogatories intended to be annexed to commission, in order that adverse party may examine same and submit cross-interrogatories. (Tit. 2, c. 100, § 17)

Return

Deposition of witness within state must be retained by officer taking same until he delivers it, together with certificate of reasons of its being taken, and of notice if any was given to adverse party, with his own hand to judge, or clerk of court for which it is taken, or deposition may, by officer taking it, be sealed up, directed and transmitted, either by mail or private messenger, to such judge or clerk. (Tit. 2, c. 100, § 14)

Commissioner must annex examination of witness residing out of state to commission, and close same up under hand and seal of commissioner, and direct and mail same to clerk of court out of which same issued. Commissioner must certify on wrapper time when and post office in which same may be so placed. (Tit. 2, c. 100, § 22)

If more convenient, party applying for commission, his attorney or agent, may receive commission and return, closed up, directly

from commissioner; he must thereupon deliver same to chancellor or one of judges or clerk of court out of which same issued, making oath that he received same sealed up from hands of commissioner, designating time and place when and where received and that same has not been opened or altered since he received it. (Tit. 2, c. 100, § 23)

Form of deposition

State of New Jersey, County of _____, ss.

Be it remembered, that on this _____ day of _____, in the year 19—, at _____, before G H (*title of officer*), (*or*, the commissioner named in the annexed commission), resident in said state, appeared E F and L M, produced before me as witnesses in a suit now pending in the _____ Court, of the State of New Jersey, wherein A B is plaintiff, and C D is defendant.

And I, R S, having first taken an oath fairly and impartially to take the depositions of witnesses in said cause, before G H, who is lawfully authorized to administer oaths and affirmations in this state and county, proceeded, pursuant to the notice, a copy whereof is hereto annexed, to take the testimony of said witnesses hereinafter named, upon interrogatories put by _____, who appeared on behalf of the plaintiff, and _____, who appeared on behalf of the defendant, and reduced such interrogatories and the answers thereto to writing, and caused each witness to subscribe his deposition in my presence, as follows.

R S, Stenographer

E F, a witness produced on the part of the _____, being duly sworn, deposes and says: (*Interrogatories and answers*).

E F, Witness

Form of officer's certificate

Examination taken, reduced to writing, subscribed and sworn to before me, this _____ day of _____, 19—.

G H, Commissioner

§ 330. New Mexico.⁴¹

Who may take

Notary public. (§ 45-108)

When taken

Depositions of witnesses to be used in any court in state, in all civil cases, may be taken: (1) When by reason of age, infirmity, sickness, or official duty, it is probable that witness will

⁴¹ References in parentheses are to Statutes, 1929.

be unable to attend court; (2) when witness resides without state or county in which suit is pending; (3) when witness has left, or is about to leave, state or county in which suit is pending, and will probably not be present at trial. (§ 45-101)

Notice

Party wishing to take deposition must file with clerk of court notice of his intention to apply for commission to take answers of witness to interrogatories attached to notice. Notice must state name and residence of witness, or place where he is to be found, and suit in which deposition is to be used, and copy thereof and of attached interrogatories must be served upon adverse party or his attorney five days before issuance of commission. (§ 45-104)

Interrogatories

Whenever one party may file interrogatories, opposite party may file cross-interrogatories at any time before commission issues, and copy of same must accompany direct interrogatories. (§ 45-106)

Return

Depositions may be returned to court either by mail, by a party interested in taking same, or by any other person. If sent by mail, postmaster or his deputy must endorse thereon that he received deposition from hands of officer taking same, and clerk taking it from postoffice must endorse thereon that he received same from postoffice. If sent otherwise than by mail, person delivering deposition into court must make affidavit, endorsed on envelope, that he received it from hands of officer before whom taken, that it has not been out of his possession since, and that it has undergone no alteration. (§ 45-115)

Form of officer's certificate

State of New Mexico, County of _____, ss.

I, G H, a notary public in and for said county, do hereby certify that the witness in the foregoing deposition, named E F, was by me duly sworn; that said deposition was then taken at the time and place mentioned in the annexed order, to wit, at my office, in the County of _____, State of New Mexico, and on the _____ day of _____, 19—, between the hours of _____ A.M. and _____ P.M., of that day; that said deposition was reduced to writing by me, and, when completed, was by me carefully read to said witness, and being by him corrected, was by him subscribed in my presence; that I personally know the witness to be the

person such witness purports to be (*or* that said witness has been identified to me by two responsible persons well known to me).

Witness my hand and official seal this _____ day of _____, 19__.

(SEAL)

G H, Notary Public

Perpetuating testimony

A commission shall be granted to take depositions of witnesses to perpetuate testimony, by the district judge on presentation of petition in writing of one or more parties, supported by affidavit, setting forth nature of his interest, right or claim, facts intended to be proved, names of individuals whose testimony is desired, and place of their residence. (§ 45-202)

Commission shall be directed to any notary public named by judge in judicial district where testimony is to be taken. (§ 45-203)

§ 331. New York.⁴²

Who may take

Notary public or commissioner of deeds, who must not be attorney for any party or prospective party, or disqualified by reason of affinity or consanguinity to a party, or interest in the result, from serving as a juror upon trial of action. (§ 301)

When taken

Any party to an action may cause to be taken by deposition his own testimony or that of any other party which is material in prosecution or defense of action. Party to action also may cause to be taken testimony of original owner of claim which constitutes cause of action acquired by adverse party set forth as counterclaim. Party also may cause to be taken testimony of any other person, where such person is about to depart from state, or is without the state, or resides at greater distance from place of trial than one hundred miles, or is too sick or infirm to attend, or other special circumstances render it proper that his deposition should be taken. (§ 288)

When used

A deposition may be read in evidence by either party, in action in which it is taken, at trial thereof or upon assessment of damages, or upon a motion. (§ 303)

⁴²References in parentheses are to Civil Practice Act, 1938.

Notice

Reasonable notice must be given to adverse party or his attorney stating: (1) Person before whom testimony is to be taken; (2) time and place at which it is to be taken; (3) name of person to be examined; (4) matters upon which such person is to be examined. (§ 290)

Party entitled to take deposition may obtain an order of court therefor in first instance, instead of proceeding by notice. The motion shall be upon notice to other parties who have appeared or answered. (§ 292)

Interrogatories

If testimony is taken within state, examination must be upon oral questions unless parties otherwise stipulate; but if testimony is to be taken without state, court upon motion may order taking of testimony wholly or partly upon written interrogatories. (§ 302)

Return

Officer before whom deposition is taken within state for use without state must annex thereto copies of all books and papers produced, and must certify and transmit it to court in which action is pending. (§ 312)

Form of officer's certificate

I, G H, a notary public, in and for the State of New York, duly designated by commission (stipulation *or* order), dated _____, hereto annexed, to take the deposition of E F, a witness for the defendant (*or* plaintiff), in the suit pending in the _____ Court of the State of New York, do hereby certify that the said witness was duly sworn, that the deposition hereto annexed was duly taken by me in the City of _____, in the State of New York, on the _____ day of _____, 19—; that the said deposition is a true record of the testimony of the witness and of all questions and answers required to be inserted; that I have subscribed my name to each single sheet thereof; that the exhibits (*or* copies of the exhibits) produced by the witness were subscribed by him and marked by me _____ and _____ respectively and subscribed by me; that the following were all the appearances by the parties and attorneys on said examination: _____, _____, and _____; that the said deposition when completed was read carefully by me to the witness who subscribed the same before me; and that the signature affixed to said deposition and any exhibit, or copy, attached thereto is genuine. I have hereto annexed the papers

authorizing me to proceed with the examination (together with the interrogatories, if any).

Dated, City of _____, State of New York, the _____ day of _____, 19—.

G H, Notary Public

Perpetuating testimony

Where a person has been for one year in possession of real property or an interest therein, claiming it in fee, or for life, or for a term of years not less than ten, he may apply to the supreme court, by petition, to take deposition of any person and to perpetuate such testimony. (§ 316)

Upon presentation of petition judge shall make order directing person to whom and manner in which notice shall be given of time and place at which application will be heard; court then appoints referee to take testimony. (§ 317)

§ 332. North Carolina.⁴³

Who may take

Notary public of state or any other state or foreign country without a commission. (§ 1809)

When taken

Any party in a civil action, upon giving notice to adverse party or his attorney, may take deposition of person whose evidence he may desire to use, without any special order therefor, unless witness is beyond limits of United States. (§ 1809)

When used

Deposition may be read on trial of actions only in following cases: (1) If witness is dead or has become insane since deposition was taken; (2) if witness is resident of a foreign country, or of another state, and is not present at trial; (3) if witness is confined in prison outside county in which trial takes place; (4) if witness is too old, sick, or infirm to attend court; (5) if witness is president of the United States, or head of any department of federal government, or judge, district attorney, or clerk of any United States court; (6) if witness is governor of state or head of any department of state government or president of university, or head of any other incorporated college, or superintendent or physician in state hospital for insane; (7) if witness is justice of supreme court, or judge, presiding officer, clerk, or

⁴³ References in parentheses are to Code, 1935.

solicitor of any court of record; (8) if witness is member of congress or member of general assembly, and trial takes place during session of either body; (9) if witness has been duly summoned, and at time of trial is out of state, or more than seventy-five miles from place where court is sitting, without consent of party offering his deposition. (§ 1821)

Procedure

Deposition shall be taken on commission, issued from court and under seal thereof, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk; or depositions may be taken by notary public of this or any other state without a commission issuing from court. (§ 1809)

Notice

Written notice of time and place of taking deposition, specifying name of witness, must be served by party at whose instance it is taken upon adverse party or his attorney. Time for serving: three entire days when party notified resides within ten miles of place where deposition is to be taken; in other cases where party resides in state, one day more for every additional twenty miles, except where deposition is to be taken within ten miles of a railway, when one day only shall be given for every hundred miles of railway to place where deposition is to be taken. When deposition is to be taken beyond state, ten days' notice must be given when person resides within ten miles of a railway connecting with a line of railway within twenty miles of place where person notified resides. In other cases, twenty days' notice must be given. (§ 1810)

When adverse party is nonresident and has no attorney of record, it shall be sufficient to publish notice to adverse party in some newspaper published in county where action is pending for three consecutive weeks. (§ 1811)

Return

Deposition must be subscribed and sealed up by notary public and returned to court, clerk whereof shall open and pass upon the same, after having first given parties or their attorneys no less than one day's notice. (§ 1809)

Form of deposition

State of North Carolina, County of _____, ss.

Pursuant to the annexed commission, directing the undersigned commissioner to take the deposition of E F to be read in evidence in a suit now pending in the Court of _____, wherein

A B is plaintiff and C D is defendant, at my office, ———, City of ———, State of North Carolina, on the ——— day of ———, 19—, at ——— o'clock A. M., the plaintiff and defendant being present (*or not present*), I proceeded to examine E F, who being by me first duly sworn deposes as follows, namely: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of North Carolina, County of ———, ss.

I, G H, commissioner named in annexed commission, do hereby certify that the evidence of the witness, E F, was taken down under oath and subscribed by me in my presence on the ——— day of ———, 19—, at my office ———, in the City of ———, State of North Carolina, and that I have personal knowledge of said witness (*or proof that has been made before me of the personal identity of said witness*) and I further certify that both (*or neither*) of the parties were present at the taking of said deposition (*and state if either or both parties are represented by counsel*); that I am not counsel to nor in the employment of either of the parties to this action, nor am I in any way related to or connected with either of said parties, nor am I in the employment of counsel of either of said parties, nor am I interested in the result of this action.

Witness my hand and seal this ——— day of ———, 19—. (SEAL) G H, Commissioner

Perpetuating testimony

A bill to perpetuate testimony may be obtained either by a special proceeding before the clerk of the superior court, or by a civil action brought to the superior court in term. (§ 1822 [2])

Evidence perpetuated is not competent against any person who was not served with notice provided by law for taking a deposition to be present and cross-examine said witness. (§ 1822 [3])

§ 333. North Dakota.⁴⁴

Who may take

Notary public in or out of the state. (§§ 7891, 7892)

Officer must not be relative or attorney of either party or otherwise interested in result of action. (§ 7893)

⁴⁴ References in parentheses are to Compiled Laws, 1913.

When taken

Either party may commence taking testimony by depositions at any time after service upon or appearance of defendant in action. (§ 7890)

When used

Deposition may be used only: (1) When witness does not reside in county where action or proceeding is pending, or is absent therefrom; (2) when from age, infirmity, or imprisonment witness is unable to attend court, or is dead; (3) when testimony is required upon motion or in any other case when oral examination of witness is not required. (§ 7889)

Procedure

Any court is authorized to grant a commission to take deposition within or without state upon application of either party upon five days' notice to other. Commission must be issued to person therein named by clerk under seal of court granting same. (§ 7894)

Notice

Prior to taking deposition, unless same is taken under commission, written notice entitled in action in which it is to be used, and specifying time and place for taking the same, must be served upon adverse party a sufficient time before day specified therein to allow adverse party time to attend and one day for preparation. (§ 7895)

When summons has been served upon all defendants and they are in default for answer, plaintiff may take deposition of any witness without notice. (§ 7896)

When party against whom deposition is to be read is absent from or not a resident of state and has no attorney upon whom service may be made, notice may be published three times, once in each week for three consecutive weeks in some newspaper printed in county where action is pending. (§ 7898)

Interrogatories

Deposition under commission must be taken upon written interrogatories, direct and cross, which shall be attached to commission by clerk issuing same. Unless parties agree as to form of interrogatories, same must be presented to court granting a commission for settlement upon five days' notice. (§ 7894)

Return

Deposition must be sealed up and endorsed with title of cause and name of officer taking same and by him addressed and trans-

mitted to clerk of district court of county in which action is pending; otherwise to court. (§ 7900)

Form of deposition

Deposition of E F, taken before me, G H, a notary public, within and for the County of ———, in the State of North Dakota, on the ——— day of ———, in the year 19—, pursuant to the annexed notice (stipulation *or* commission), in an action pending in the ——— Court, wherein A B is plaintiff and C D is defendant, on behalf of said plaintiff (*or*, defendant).

Said A B and C D were (*or*, were not) present, and were represented by ———, attorneys for A B, and ———, attorneys for C D.

E F, of the County of ———, being first duly sworn by me, as hereinafter certified, deposes and says: (*Questions and answers*).

E F, Witness

Officer's certificate

The certificate must show: (1) That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; (2) that the deposition was reduced to writing by some proper person, naming him; (3) that the deposition was written and subscribed in the presence of the officer certifying thereto; (4) that the deposition was taken at the time and place specified in the notice to take such deposition. (§ 7903)

Perpetuating testimony

Applicant must produce to judge of district court a petition verified by oath, stating: (1) That applicant expects to be a party to action in court in state and names of persons whom he expects will be adverse parties; or, (2) that proof of some fact is necessary to perfect title to certain property, though no action may at the time be anticipated; and (3) name of witness to be examined, his place of residence and a general outline of facts expected to be proved. Judge must make order allowing examination and designating officer before whom same shall be taken and prescribing notice to be given. (§ 7927)

§ 334. Ohio.⁴⁵

Who may take

Notary public. (§§ 11529, 11531)

⁴⁵ References in parentheses are to General Code (Page), 1939.

Officer must not be relative or attorney of either party, or otherwise interested in result of action or proceeding. (§ 11532)

When taken

Either party may commence taking testimony by deposition at any time after service on defendant. (§ 11526)

When used

Deposition may be used only when it appears to satisfaction of court that the witness does not reside in or is absent from the county where the action is pending; or that he is dead, or, from age, infirmity, or imprisonment is unable to attend court; or that testimony is required upon a motion, or where oral examination of witness is not required. (§ 11525)

Procedure

Any court of record or a judge thereof may grant a commission to take depositions within or without the state, which commission must be issued by clerk under seal of court granting it. Person to whom it is issued must be named therein. (§ 11533)

Notice

Written notice of intention to take deposition must be given to adverse party (except in cases in which it is to be taken under a special commission) and shall specify action, name of court and time when, and place where, it will be taken. (§ 11534)

Notice must be served upon adverse party or his attorney, or left at usual place of abode of such party, so as to allow adverse party time (exclusive of Sundays, day of service, and one day for preparation) to travel to place named in notice. (§ 11535)

When party against whom deposition is to be read is absent from or not a resident of state and has no attorney of record therein, he may be notified of its taking by publication for three consecutive weeks in newspaper in county where action is pending. (§ 11536)

Interrogatories

Depositions under a commission must be taken upon written interrogatories unless parties otherwise agree. (§ 11533)

Return

Deposition must be sealed in envelope, endorsed with title of cause, and name of officer before whom it was taken, who shall address and send it to clerk of court where action is pending. (§ 11538)

Form of deposition

Deposition of E F, taken before me, G H, a notary public within and for the County of _____, in the State of Ohio, pursuant to the annexed notice (*or* agreement, *or* commission), and at the time and place therein specified, to be read in evidence on behalf of the plaintiff (*or*, defendant) in an action pending in the _____ Court of _____, in which A B is plaintiff and C D is defendant; _____ being present on behalf of plaintiff, and _____ on behalf of defendant.

E F, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate (§ 11542)

State of Ohio, County of _____, ss.

I, G H, a notary public in and for the county and state above named, duly commissioned and qualified, do hereby certify that the above named E F was by me first sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by _____, and was subscribed by the said E F in my presence, and was continued from day to day, as above set forth; that said deposition was duly taken by me pursuant to and at the time and place and within the hours specified in the notice hereto attached, and that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit; and was at the time of so taking the said deposition a notary public.

In testimony whereof, I have hereunto set my hand and official seal, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must file verified petition in office of clerk of common pleas court, setting forth specifically subject matter relative to which testimony is to be taken, names of persons interested, if known to applicant, and if not known, a general description of them; stating also names of witnesses to be examined and interrogatories to be submitted to each; that applicant expects to be a party to action in court in this state; that such testimony will be material; and when applicant expects to be plaintiff, obstacles preventing immediate commencement of action. (§ 12217)

The court, or judge thereof, thereupon may make order allowing examination of witness, prescribing time and place of exam-

ination and manner in which interested parties shall be notified. (§ 12218)

Such depositions shall be taken before officer authorized by law to take depositions. (§ 12220)

§ 335. Oklahoma.⁴⁶

Who may take

Notary public. (§ 296)

Officer must not be relative or attorney of either party or otherwise interested in result of action. (§ 299)

When taken

Either party may commence taking testimony by deposition at any time after service of summons upon defendant. (§ 295)

When used

Deposition may be used only: (1) When witness does not reside in county where action is pending, or is absent therefrom; (2) when, from age, infirmity, or imprisonment, witness is unable to attend court, or is dead; (3) when testimony is required upon motion or in any other case where oral testimony of witness is not required. (§ 294)

Procedure

Any court of record, or any judge, is authorized to grant a commission to take depositions within or without the state. Commission must be issued to person therein named by clerk, under seal of court. (§ 300)

Notice

Prior to taking deposition, unless taken under special commission, written notice specifying action, name of court, and time and place of taking, must be served upon adverse party or his attorney, or left at his usual place of business or residence, so as to allow him sufficient time to travel, and one day for preparation. (§ 301)

When party against whom deposition is to be read is absent from or nonresident of state and has no attorney of record therein, notice must be published for three consecutive weeks in some newspaper printed in county where action is pending. (§ 302)

Interrogatories

Deposition under commission must be taken upon written interrogatories, unless parties otherwise agree. (§ 300)

⁴⁶ References in parentheses are to Statutes, 1931.

Return

Deposition must be sealed up and endorsed with title of cause and name of officer taking same, and by him addressed and transmitted to clerk of court where action is pending. (§ 304)

Form of deposition

A B, Plaintiff, vs. C D, Defendant.

In the ——— Court.

Deposition of E F taken to be used in an action pending in the ——— Court, within and for the County of ———, in the State of Oklahoma, wherein A B is plaintiff, and C D is defendant, in pursuance of the notice hereto attached and at the time and place therein stated. The said A B, plaintiff, appeared in ——— own behalf (*or by* ———, attorney) and the said ——— in ——— own behalf (*or by* ———, attorney).

E F, of lawful age, being first duly sworn, deposes and says: (*Questions and answers*).

E F, Witness

Form of officer's certificate

I, G H, notary public, within and for the County of ———, in the State of Oklahoma, do hereby certify that the above named E F, the witness whose name is subscribed to the foregoing deposition, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid, and that the deposition by him subscribed was reduced to writing by me (*or by the witness, or by some other person, whose name must be given as above*) and that the said deposition so reduced to writing was carefully read by (*or to*) the deponent and subscribed by the witness in my presence, and the same was taken on the ——— day of ———, 19—, between the hours of ——— A. M. and ——— P. M. of said day, and at the office of ———, in the City of ———, in the County of ———, and ——— of ———, as specified in the notice hereto attached, and that I am not attorney for either of said parties, or kin to any of the parties, or otherwise interested in the said action.

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of district court a petition, to be verified, setting forth subject matter relative to which testimony is to be taken, names of interested persons if known to applicant, and if not known, a general description of such persons; names of witness to be examined, interrogatories to be submitted to each; that applicant expects to be a party to an action in a

court of state, in which such testimony will be material, and obstacles preventing immediate commencement of action where applicant expects to be plaintiff. (§ 339)

Court or judge may make order allowing examination of witnesses, prescribing time and place of examination and manner in which interested persons shall be notified. (§ 340)

Such depositions must be taken before someone authorized to take depositions. (§ 342)

§ 336. Oregon.⁴⁷

Who may take

Person authorized to administer oaths may take testimony of witness in state by deposition. (§ 9-1701)

Notary public selected by officer issuing commission to take deposition of witness out of state. (§ 9-1602)

When taken

Deposition of witness in state may be taken at any time after service of summons or appearance of defendant: (1) When witness is party, or agent, officer, servant, or employe of a corporation which is a party; (2) when witness' residence is such that he is not obliged to attend in obedience to a subpoena; (3) when witness is about to leave the county and go more than twenty miles beyond place of trial; (4) when witness is too infirm to attend; (5) when testimony is required upon motion, or in any other case where oral examination of witness is not required. (§ 9-1503)

When used

If deposition is taken under (2), (3) or (4) above, before same can be used, proof must be made that witness did reside beyond service of subpoena, or that he still continues absent or infirm. (§ 9-1706)

Procedure

Either party may take deposition of witness in state on giving adverse party previous notice of time and place of examination. Either party may also take deposition of witness in state on written interrogatories attached to a commission. (§ 9-1701)

Deposition of witness out of state may be taken upon commission issued from court, or without commission before commissioner appointed by governor of state to take depositions in other states or countries. (§ 9-1601)

⁴⁷ References in parentheses are to Code, 1930.

Commission may be issued by clerk of court on application of either party, upon five days' previous notice to other; it shall be issued to person agreed upon by parties, or if they do not agree, to a notary public selected by officer issuing it. (§ 9-1602)

Notice

Deposition of witness in state may be taken by either party on giving adverse party previous notice of time and place of examination, name of officer and witness, at least three days, if distance of place of examination from residence of person to whom notice is given does not exceed twenty-five miles, and one day in addition for every additional twenty-five miles, unless court by order prescribes a shorter time. (§ 9-1701)

Interrogatories

Direct and cross-interrogatories may be annexed to commission, or when parties agree, examination may be without written interrogatories. (§ 9-1603)

Return

Officer must enclose deposition in sealed envelope directed to clerk of court and deliver or forward same by mail or other usual conveyance. (§ 9-1704)

Form of deposition

A B, Plaintiff, vs. C D, Defendant.

Be it remembered that, pursuant to the commission (*or* stipulation) hereto attached, the deposition of E F, a witness on behalf of the plaintiff (*or*, defendant) was taken before G H, a notary public in and for the State of Oregon on the _____ day of _____, 19—, in the City of _____, and State of Oregon, upon the written interrogatories and cross-interrogatories attached to the commission (*or*, upon oral interrogatories put by counsel for the respective parties), whereupon the following proceedings were had:

I, E F, of _____, in the County of _____, State of Oregon, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories annexed to the foregoing commission, depose and say as follows: To the first interrogatory, I answer: (*Answer*).

E F, Witness

Form of officer's certificate (§ 9-1702)

State of Oregon, County of _____, ss.

I, G H, a notary public, in the State of Oregon, do hereby certify that by virtue of the foregoing commission, to me directed, I

caused the above named E F to come before me in _____, in said county and state, on the _____ day of _____, 19—, and that the foregoing deposition was taken before me at _____, in said county, on the day last named, between the hours of _____ o'clock A. M. and _____ o'clock P. M. of said day; and the same was by me (*or*, by _____) reduced to writing; that before proceeding to examine the said deponent, he was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories annexed, and thereupon he made the foregoing answers; that the said deposition, when completed, was read by me to said deponent (*or*, by deponent) and the same was thereupon signed by him in my presence.

In witness whereof, I have hereunto set my hand and seal, this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Order for taking testimony may be made by any judge of circuit or supreme court upon application of party, when it appears from petition, verified as a complaint: (1) That applicant is party or expects to be party to an action in a court in state, or that he has an interest in real property about which a controversy may arise; (2) that testimony of witness, whose name and place of residence is stated, is material to prosecution or defense, and generally question involved therein, and facts expected to be proved by witness; (3) names and residence of adverse parties so far as known. Judge may make order allowing examination, prescribing place and manner of service of notice. (§ 9-1802)

Deposition may be taken by any officer designated in order of examination. (§ 9-1803)

§ 337. Pennsylvania.⁴⁸

Who may take

Person named in rule for taking deposition of witness within state, or any person authorized to administer oaths by laws of another state.

When taken

In any civil proceeding testimony of any competent witness may be taken by commission or deposition, in accordance with state laws and rules of court. (Tit. 28, § 5)

⁴⁸ References in parentheses are to Statutes (Purdon), 1938.

Procedure

When witness resides outside state but within United States his deposition may be taken upon a rule entered in office of prothonotary of court of common pleas of county where cause is pending, in like manner as rules are now entered for taking testimony of witnesses residing within state, and upon notice given to other side in like manner as now provided by existing law or rule of court; provided that such notice of time and place of taking testimony shall be given at least twenty days before time fixed in notice for taking testimony. (Tit. 28, § 6)

No rule to take testimony shall be entered in prothonotary's office unless permission so to do has been granted by court in which cause is pending. (Tit. 28, § 7)

Form of deposition

Deposition of E F, witness produced, sworn and examined, on the _____ day of _____, 19—, at the office of _____, _____ Street, in the City of _____, and State of Pennsylvania, under and by virtue of a commission issued out of the _____ Court, for _____ County, to me directed, for the examination of a witness in a certain cause pending in said court, wherein A B is plaintiff and C D is defendant.

E F, residing at _____, and whose occupation is _____, aged _____ years, being duly sworn and examined on the part of the plaintiff (*or* defendant) does depose and say as follows:

To the first interrogatory: (*Answer*). E F, Witness

Form of officer's certificate

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this _____ day of _____, 19—, before me. G H, Commissioner

§ 338. Rhode Island.⁴⁹

Who may take

Notary public, provided he is not interested nor attorney of either party. (c. 342, § 22)

When taken

Depositions may be taken at any time; provided, however, that no deposition to be used in a jury trial shall be taken during progress of trial, except upon order of presiding justice. (c. 342, § 31)

⁴⁹ References in parentheses are to General Laws, 1923.

When used

Deposition may be used as evidence in trial of any judicial proceeding in any court, or before commissioners, masters in chancery, referees or auditors. (c. 342, § 29)

Procedure

Previous to taking deposition within state, official authorized to take same shall cause adverse party or his attorney to be notified in writing of time and place appointed for taking deposition, so that he may attend and put interrogatories to deponent. If person to be notified can not be found and his residence be not known, and he has no attorney, party may make affidavit of such facts before justice of superior court at any time, and thereupon justice prescribes method in which notice shall be given. (c. 342, § 23)

Depositions may be taken without state to be used in courts of state, upon order obtained on motion from court in which case is pending, and shall be taken either by person and in manner required by law of state or country in which taken, or shall be taken before a commissioner appointed by governor of this state or before a notary public of such state. (c. 342, § 26)

Notice

Notification issued by officer taking deposition must be directed to any proper officer or disinterested person, and shall be served a reasonable time, not less than twenty-four hours before time of taking deposition. (c. 342, § 24)

Party causing deposition to be taken without state must notify adverse party of his attorney of time and place for taking same. (c. 342, § 26)

Return

Deposition must be retained by officer until he delivers same with his own hand to court for which it is taken, or it must be sealed up and directed to such court and delivered to the clerk thereof, together with a certificate of its having been duly taken. (c. 342, § 28)

Form of officer's certificate

State of Rhode Island, County of _____, ss.

Be it remembered, that in _____, at the place mentioned in the citation here annexed, in said county, on the _____ day of _____, 19____, at _____ o'clock _____ M., personally appeared before me E F, who, being by me first sworn to testify the truth, the whole

truth, and nothing but the truth, gave the foregoing deposition, which was by me reduced to writing in his presence (*or*, by him reduced to writing in my presence), and by him signed in my presence.

Taken at the request of ——— (by virtue of annexed commission), to be used in the trial of an action wherein A B is plaintiff, and C D defendant, pending in the ——— Court, within and for the County of ———, in the State of Rhode Island.

The adverse party was duly notified, as appears by return of the notification hereto annexed, and was present (*or*, was not present).

I further certify that I am not attorney, nor of counsel for either of said parties, nor interested in the result of said suit.

(SEAL)

G H, Notary Public

Perpetuating testimony

Any person desirous of perpetuating testimony concerning any matter which is or may be the subject of litigation, may present petition in writing to any justice of supreme or superior court or district court setting forth reasons for his application, name of witness, subject matter of controversy, and names of all persons known to be interested therein, and praying that deposition of witness may be taken; if justice is satisfied of reasonableness of petition he shall designate notary public to take deposition, to whom petition with order of designation shall be sent. (c. 342, § 33)

§ 339. South Carolina.⁵⁰

Who may take

Depositions de bene esse may be taken before any notary public. (§ 706)

Two or more commissioners may take depositions when authorized by court. (§ 693)

When taken

Deposition de bene esse may be taken where witness lives without county in which cause is to be tried, or at greater distance from place of trial than one hundred miles, or is bound on voyage to sea, or is about to go out of state or county in which cause is to be tried, or to a greater distance than one hundred miles from place of trial, or when he is aged or infirm. (§ 706)

⁵⁰ References in parentheses are to Code of Laws, 1932.

Any judge or clerk of the circuit court has power to grant commissions, under the seal of the court, directed to two or more commissioners, to take the depositions in writing of the witness or witnesses therein mentioned, where the witness resides without the state or county, or at a greater distance than one hundred miles from the court, or is about to go without the limits of the state before the next term of court or before trial, or when his presence can not be procured by attendance on some public official or professional duty as an attorney at such time, or by reason of sickness or infirmity. (§ 693)

Procedure

Ten days' notice of an application to examine a witness by commission, with a copy of interrogatories propounded, must be served upon opposite party or attorney, who shall have leave to resist such application, on cause shown; provided, that such application be accompanied by affidavit of party applying declaring his belief of materiality of witness proposed to be examined, together with facts which may entitle party to commission. (§ 694)

Notice

To take deposition de bene esse, reasonable notice, not less than ten days, must first be given in writing to opposite party, stating name of witness and time and place of taking deposition. (§ 706)

Return

Deposition de bene esse shall be retained by officer taking it until he delivers it with his own hand into court, or shall, together with certificate of reasons for taking it and of notice, if any, given to adverse party, be by such officer sealed up and directed to court and forwarded to court either by mail or express. (§ 708)

Form of deposition

A B, Plaintiff, vs. C D, Defendant.

Pursuant to notice (*or* order) hereto attached, I, G H, a notary public in and for the State of South Carolina, duly commissioned and qualified as such under the laws of the State of South Carolina, proceeded to take the testimony of E F, a material witness for the plaintiff (*or*, defendant) residing in the City of ———, County of ———, State of South Carolina, and consequently without the limits of the County of ———, State of South Carolina, being at my office, ——— on the ——— day

of _____, 19—, at the hour of _____, which testimony as so taken is as follows:

E F, being first by me duly cautioned and sworn, to tell the truth, the whole truth, and nothing but the truth, testifies on behalf of the plaintiff (*or*, defendant) as follows: (*Questions and answers*).

E F, Witness

Sworn to before me this _____ day of _____, 19—.

G H, Notary Public

Form of officer's certificate

State of South Carolina, County of _____, ss.

This is to certify that the foregoing is the deposition and testimony of E F, taken by me under and by virtue of the notice (*or* order) in the above case, and subscribed by him before me, G H, a notary public in and for the County of _____, State of _____, and commissioned and qualified as such. Taken on the _____ day of _____, 19—, at the hour of _____ o'clock _____ M. at my office, _____, in pursuance of the notice (*or* order) hereto annexed, and to be used as evidence on the trial of a certain cause pending in the County of _____, State of South Carolina, in the _____ Court, in which A B is plaintiff, and C D is defendant. The deposition is taken by me because the said E F lives without the County of _____, State of South Carolina, in which county and state said cause is to be tried, and he resides in the City of _____, County of _____, State of _____ (*or* here state other cause for taking deposition). I do further certify that the said deposition has been retained in my possession for the purpose of sealing up and directing the same, with the reasons aforesaid certified therein for taking the same and mailing the same in the post office in the City of _____, County of _____, State of _____, directed to the clerk of the Court of _____, South Carolina. I do further certify, that I am not of counsel or attorney for either of the parties in said deposition and notice named, nor in any way interested in said cause, and I further certify that the testimony of said witness was taken by a stenographer and after the same had been typewritten was read over to said witness, and was signed by him in my presence. Mr. _____, appearing for the plaintiff; and Mr. _____, appearing for the defendant.

In witness whereof, I have hereunto set my hand and seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

§ 340. South Dakota.⁵¹**Who may take**

Notary public. (§ 2758)

Officer must not be relative or attorney of either party or otherwise interested in result of action. (§ 2760)

When taken

Either party may commence taking the testimony by deposition at any time after service upon defendant. (§ 2756)

When used

Deposition may be used only: (1) When witness does not reside in or is absent from county where action is pending; (2) when from age, infirmity, or imprisonment witness is unable to attend court, or is dead; (3) when testimony is required upon motion, or in any other case where oral examination of witness is not required. (§ 2757)

Procedure

Any court of this state or judge is authorized to grant a commission to take deposition within or without the state. Commission must be issued to person therein named by clerk of court. (§ 2761)

Notice

Prior to taking deposition, unless taken under special commission, written notice specifying action, name of court, time and place of taking same, must be served upon adverse party, his attorney of record, or left at his usual place of abode. Notice shall be served so as to allow adverse party sufficient time to attend and one day for preparation. (§ 2762)

When party against whom deposition is to be read is absent from or nonresident of state, he may be notified of taking of deposition by publication for three consecutive weeks in county newspaper. (§ 2762)

Interrogatories

Deposition taken under commission must be upon written interrogatories unless parties otherwise agree. (§ 2761)

Return

Deposition must be enclosed, sealed and endorsed with title of cause and name of officer taking same, and by him addressed and transmitted to clerk of court where action is pending. (§ 2765)

⁵¹ References in parentheses are to Compiled Laws, 1929.

Form of deposition

Deposition of E F taken before me, G H, a notary public within and for the County of ———, in the State of South Dakota, on the day of ———, in the year 19—, pursuant to the annexed notice, in an action pending in the ——— Court of ——— County, South Dakota, wherein A B is plaintiff and C D is defendant; and for said plaintiff (*or*, defendant).

Mr. ——— appeared as attorney for plaintiff, and Mr. ——— for defendant.

E F, of the County of ———, of lawful age, being first duly sworn by me, as hereinafter certified, deposes and says: (*Interrogatories and answers*).

E F, Witness

Form of officer's certificate (§ 2768)

I, G H, a notary public, do hereby certify that the above named E F, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the above entitled cause, and that the foregoing deposition, by him subscribed, was reduced to writing by me (*or*, by ———, who is not interested in said action, in my presence), and was subscribed by said witness in my presence and was taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative, of either party, or interested in the result of said action; (*if there be adjournments, add:*) and said depositions were commenced at the time and place, in said notice specified, and continued by adjournment from day to day, at the same place, and between the same hours, as in the notice specified, and for the reasons above stated.

In testimony whereof, I have hereunto set my hand and affixed my official seal this ——— day of ———, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of court a verified petition setting forth specifically subject matter relative to which testimony is to be taken, names of interested persons, if known; if not known, a general description of such persons; names of witnesses to be examined, and interrogatories to be submitted to each; that applicant expects to be a party to an action in a court in state in which testimony will be material, and obstacles preventing immediate commencement of action, where applicant expects to be plaintiff. (§ 2755)

Circuit court or judge may forthwith make an order allowing examination of such witnesses, describing time and place of ex-

amination and manner in which interested parties shall be notified. (§ 2776)

Such depositions shall be taken before some one authorized by law to take depositions. (§ 2778)

§ 341. Tennessee.⁵²

Who may take

Notary public, or any other person properly commissioned or appointed by court or clerk, not being interested of counsel, or related to either of the parties within the sixth degree. (§ 9839)

When taken

Deposition of witness may be taken in civil actions, by either party: (1) When witness from age, bodily infirmity or other cause is incapable of attending, to give testimony at trial; (2) when he resides out of state; (3) when he resides in state but not within limits of county in which suit is pending; (4) when he is under necessity of leaving state before cause is tried; (5) when he is about to leave county in which suit is pending and will probably not return until after trial; (6) when he is only witness to a material fact; (7) when he is an officer of the United States, state or county in state, clerk of any court, member of general assembly, practicing physician or attorney or jailer; (8) when he is a notary public; (9) when suit is brought by a party in forma pauperis. (§ 9806)

Procedure

Any court before whom action is pending may make orders and issue commissions to take depositions, upon application of either party, whenever facts appear by oath or otherwise and an order or commission is necessary. (§ 9815)

But either party litigant may without any order or commission take depositions in all cases allowed by law, upon giving opposite party legal notice of time and place, or by filing interrogatories. (§ 9818)

Notice

A notice to take depositions must be served on opposite party at least five days beforehand, when they are to be taken in county in which suit is pending. (§ 9822)

When depositions are to be taken out of county, notice shall be: for fifty miles or under, five days; from fifty to one hundred miles,

⁵² References in parentheses are to Code (Williams), 1934.

ten days; over one hundred and not exceeding two hundred and fifty miles, fifteen days; if over two hundred and fifty, and not exceeding five hundred, twenty days; if over five hundred, thirty days. (§ 9823)

Interrogatories

When witnesses reside out of state, or over one hundred and fifty miles from place of trial, either party may take depositions by filing interrogatories with clerk, giving opposite party notice thereof, he shall have ten days thereafter to file cross-interrogatories. (§ 9827)

Return

Deposition, when complete, shall be enveloped, together with commission, if any, and all documents deposed to, sealed, with notary's name written across seal, and directed to clerk of court where cause is pending, with title of cause endorsed thereon, and may be sent by mail, express or private conveyance. (§ 9833)

Form of deposition (§ 9819)

A B, Plaintiff, }
 v. } In the _____ Court,
 C D, Defendant. } _____ County, State of Tennessee.

Deposition of E F, witness for plaintiff (*or*, defendant) in the above case, taken upon notice (*or*, interrogatories), on the _____ day of _____, 19—, at _____, in the presence of the plaintiff and defendant. The said witness, E F, aged _____, being duly sworn, deposed as follows: (*Questions and answers*).

E F, Witness

Form of stenographer's certificate (§ 9842)

I certify that, being a stenographer, I took the foregoing deposition in the exact language of the witness, and reduced it to type-writing. That it was then read over by the witness in my presence (*or*, was read over by me to the witness), and was approved and signed by him; and I also certify that I am not, in any capacity, in the regular employ of the party in whose behalf this deposition is taken, nor in the regular employ of his attorney; and I certify that I am not interested in the case, nor of kin or counsel to either of the parties, and that I sealed up said deposition and delivered it to _____ (*or*, to the express office, or post office) without its being out of my possession, or altered after it was taken.

J K

Form of officer's certificate (§ 9819)

The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me (*or*, by the witness). And I

certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and delivered it to _____ (or, to the express office, or put it in the post office), without being out of my possession, or altered after it was taken.

Given under my hand this _____ day of _____, 19—.

G H, Notary Public

Perpetuating testimony

To perpetuate testimony person must present a petition, in writing, to judge of circuit or chancery court, setting forth reasons for application, subject matter of controversy, names of parties interested, and names of witnesses, and praying that their depositions be taken and perpetuated. (§ 9855)

Thereupon the judge will make order appointing time and place for opposite party to appear and show cause why prayer of petition should not be granted, prescribing reasonable notice to party. (§ 9856)

If, after notice, no sufficient cause is shown to the contrary, deposition of witness shall be taken by judge, or some other person by him appointed, at such time and place as he may prescribe. (§ 9858)

§ 342. Texas.⁵³

Who may take

Notary public. (Art. 3746)

When taken

Depositions may be taken in all civil suits in state, whether witness resides in county where suit is brought or out of it; provided, failure to secure deposition of male witness residing in county in which suit is pending shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by service of subpoena or attachment, unless by reason of age, infirmity or sickness, or official duty, witness will be unable to attend court, or unless he is about to leave, or has left state or county in which suit is pending and will not probably be present at trial. (Art. 3738)

Procedure

Party wishing to take deposition must file with clerk a notice of his intention to apply for a commission to take answers of witness to interrogatories attached to notice. Notice must state name

⁵³ References in parentheses are to Statutes (Vernon), 1936.

and residence of witness or place where he is to be found, and suit in which deposition is to be used; copy thereof and of attached interrogatories shall be served upon adverse party or his attorney, five days before issuance of commission. (Art. 3739)

Where it is shown by affidavit that either party is beyond jurisdiction of court or can not be found or has died since commencement of suit, and such party has no attorney of record upon whom notice and copy of interrogatories can be served, party may file interrogatories in court where suit is pending and clerk shall cause notice to be published in newspaper for thirty days. (Art. 3740)

Interrogatories

Whenever one party may file interrogatories for purpose of taking deposition of witness, opposite party may file cross-interrogatories at any time before commission issues. (Art. 3743)

Return

Depositions may be returned to court either by mail, or by a party interested in taking same, or by any other person; if not sent by mail, person delivering them into court must make affidavit that he received them from hands of officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alterations. (Art. 3751)

Form of deposition

A B, Plaintiff,	}	In the _____ Court,
vs.		County of _____, State of Texas.
C D, Defendant.		

By authority of the commission directed to me and interrogatories accompanying the same, which are hereto attached, from the clerk of the _____ Court of _____ County, Texas, in the case of A B vs. C D, now pending in said court, I caused to come before me, at my office, in the city and county of _____, aforesaid, the witness, E F, therein named, a resident of the County of _____, aged _____ years, who, being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories in said case propounded to him, proceeded to answer the same as follows:

In answer to interrogatory 1st, the witness says: (*Answer*).

Form of officer's certificate

E F, Witness

Which answers I caused to be reduced to writing, and they were sworn to and subscribed before me, at my office, in the City

of _____, and County of _____, aforesaid, on this _____ day of _____, 19____, by the said E F.

In witness of which I have hereto set my hand and official seal.
(SEAL) G H, Notary Public

Perpetuating testimony

Person anticipating institution of a suit may file written statement in proper court of county where such suit could be instituted, representing the facts and names and residences, if known, of persons supposed to be interested adversely to said person; a copy of which statement must be served on persons adversely interested. (Art. 3742)

§ 343. Utah.⁵⁴

Who may take

Notary public. (Tit. 104, c. 51, § 21)

When taken

Deposition of witness in state may be taken at any time after filing of complaint and service of summons or appearance of defendant: (1) When witness is a party or officer or agent of corporation which is a party to action; (2) when witness resides out of county in which testimony is to be used; (3) when witness is about to leave county where action is to be tried and will probably continue absent when testimony is required; (4) when witness is too infirm to attend; (5) when testimony is required upon a motion, or in any other case where oral examination of witness is not required. (Tit. 104, c. 51, § 7)

Testimony of witness out of state may be taken by deposition at any time after filing of complaint, and service of summons or appearance of defendant. (Tit. 104, c. 51, § 1)

Procedure

Either party may have deposition of witness in this state in any of the above mentioned cases, on serving upon adverse party previous notice of time and place of examination together with copy of affidavit showing that ground for taking depositions exists. (Tit. 104, c. 51, § 8)

Deposition of witness out of state may be taken upon commission issued from court under seal of court upon order of judge on application of either party, upon five days' previous notice to other. If issued to any place within United States, it may be

⁵⁴ References in parentheses are to Revised Statutes, 1933.

directed to any person agreed upon by parties, or if they do not agree, to any notary public. (Tit. 104, c. 51, § 2)

Notice

Notice to take deposition of witness in state must be served upon adverse party at least five days, adding also one day for every twenty-five miles of distance of place of examination from residence of person to whom notice is given unless judge by order prescribes shorter time. (Tit. 104, c. 51, § 8)

Interrogatories

When deposition of witness out of state is taken, such proper interrogatories, direct and cross, as respective parties may propose, may be annexed to the commission; or, when parties agree, examination may be without written interrogatories. (Tit. 104, c. 51, § 3)

Return

Deposition when completed must be subscribed by witness, certified by officer taking deposition, enclosed in envelope, sealed and directed to clerk of court in which action is pending, or to such person as parties in writing may agree upon, and either delivered by officer to clerk or such person, or transmitted through mail or by some safe private means of conveyance. (Tit. 104, c. 51, § 9)

Form of deposition

Deposition of witness taken in a cause pending in the _____ Court, wherein A B is plaintiff, and C D is defendant, and for said plaintiff (*or*, defendant) in pursuance of the notice (*or*, commission, *or*, stipulation) hereto attached.

A B and C D were (*or*, were not) present.

E F, of the County of _____, of lawful age, being first duly sworn by me, as hereinafter certified, deposes and says:

To the first interrogatory, he says: (*Answer*).

E F, Witness

Form of officer's certificate (Tit. 104, c. 51, § 24)

State of Utah, County of _____, ss.

I, G H, the commissioner (*or*, notary) named in said commission (*or*, notice, *or*, stipulation), do hereby certify that the above named E F appeared before me at _____, and was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the above entitled cause; that his evidence was then taken down, and his evidence was carefully read over and the same was

corrected by him, after which he subscribed the same in my presence on the _____ day of _____, 19—, at my office, in the City of _____, County of _____, and State of Utah. Said deposition was taken at the time and place mentioned in the annexed commission (*or*, notice; *or*, stipulation) specified, and continued by adjournment from day to day at the same place and between the same hours as in the said notice (*or*, commission; *or*, agreement) specified, and for the reasons above stated.

In testimony whereof I have hereunto set my hand and official seal this _____ day of _____, 19—.

(SEAL)

G H, Commissioner

Perpetuating testimony

Applicant must produce to district judge a petition verified by oath stating: (1) That applicant expects to be party to an action in a court of this state and names of persons who he expects will be adverse parties; or (2) that proof of some fact is necessary to perfect title to property in which he is interested though no suit may at the time be anticipated; and (3) name of witness to be examined, his place of residence and a general outline of facts expected to be proved. Judge must make order allowing examination and designating officer before whom same must be taken and prescribing notice to be given. (Tit. 104, c. 52, § 2)

§ 344. Vermont.⁵⁵

Who may take

Notary public. (§ 1721)

When taken

Deposition of witness or party may be taken: (1) When he resides more than thirty miles from place of trial; (2) when he is going out of state, not to return before time of trial; (3) when by reason of age, sickness, or other bodily infirmity he is rendered incapable of traveling and appearing in court; (4) when he resides out of state; (5) when he is confined in jail; (6) when he is justice of supreme court or superior judge and is going out of county in which he resides to perform official duties; (7) when she is a cloister sister of a religious community. (§ 1720)

Depositions may be taken at any reasonable time after cause commenced in whatever court cause is pending. (§ 1726)

⁵⁵ References in parentheses are to Public Laws, 1933.

Procedure

A superior judge or a chancellor may upon application of party in cause pending in county court or in court of chancery, on such notice to adverse party or his attorney as judge thinks reasonable, cause clerk of county court to issue commission to person designated by judge or chancellor to take testimony of person residing or being without state. (§ 1723)

Notice

Person wishing to take deposition shall cause personal notice thereof to be given to adverse party by officer taking deposition or by a citation signed by notary public, served like a writ of summons on adverse party; such notice must state time and place of taking deposition, name of officer before whom it is to be taken, and shall give party reasonable time after notice to be present at taking thereof. (§ 1727)

A party may, without notice, take deposition when adverse party is nonresident and has no attorney in state; but such deposition shall be filed in court where cause is pending at least twenty days before time of trial. (§ 1728)

Return

Officer taking deposition must certify same in form prescribed by law, and seal up and deliver same to person at whose request it was taken, superscribed in following words: "The within deposition of E F was taken and sealed up by G H, notary public." (§ 1733)

Form of deposition (F. 32, § 9111)

A B, Plaintiff, vs. C D, Defendant.

State of Vermont, ——— County, ss.

I, E F, of ———, County of ———, State of Vermont, of lawful age, being duly sworn, do depose, testify and say: (*Questions and answers, or narrative*).

E F, Witness

At ———, in the County of ———, this ——— day of ———, 19—, personally appeared E F, and made oath that the foregoing deposition, by him subscribed, contains the whole truth, and nothing but the truth.

Before me

G H, Notary Public

Form of officer's certificate (F. 32, § 9111)

The above deposition is taken at the request of A B, to be used in a cause to be heard and tried by ——— Court, in which cause

A B is plaintiff and C D is defendant. The deponent living more than thirty miles from place of trial (*or*, other cause of taking deposition) is the cause of taking this deposition; and the adverse party was notified and did (*or*, did not) attend.

Certified by

G H, Notary Public

Perpetuating testimony

Person desirous of perpetuating testimony of witness must file affidavit with justice of supreme court, superior judge or judge of county court, that he is a party in a pending action or that he expects to be made a party or that he has some title, claim or interest which he expects will be the subject of legal controversy; such affidavit must set forth his title and that testimony of witness is material; justice or judge shall make order requiring reasonable notice to be given to persons named in affidavit as parties of time and place of taking deposition of witness. (§ 1737)

§ 345. Virginia.⁵⁶

Who may take

Notary public. (§ 6225)

When taken

Deposition of witness, whether a party to suit or not, may be taken in state after declaration or bill has been filed. (§ 6225)

When used

A deposition may be read in a civil case at law if the witness be dead, or out of the state, or one of state judges or superintendent of hospital for insane distant more than thirty miles from place of trial, or in any public office or service, duties of which prevent his attending court, or be unable to attend it from sickness, or other infirmity, or be more than a hundred miles from place of trial. (§ 6231)

Procedure

No commission is necessary to take a deposition, whether within or without state. (§ 6227)

Notice

Reasonable notice in writing must be given to adverse party of time and place of taking every deposition. It need not be in any particular form nor served in any particular manner but is

⁵⁶ References in parentheses are to Code, 1936.

sufficient if it conveys needed information and is actually received a reasonable time before time fixed for taking. (§ 6228)

Return

A deposition, when completed, must be certified and returned by officer taking it, or sealed and sent to clerk of court wherein suit or other proceeding is pending. (§ 6232)

Form of deposition

A B, Plaintiff, vs. C D, Defendant

The depositions of E F and others, taken before me, G H, a notary public for the County of _____, pursuant to notice hereto annexed, at _____, in _____, on the _____ day of _____, 19____, between the hours of _____, —M. and _____, —M., to be read as evidence in behalf of A B, plaintiff (*or*, C D, defendant) in a certain action at law (*or*, suit in equity) pending in the _____ Court of _____ County of _____, wherein A B is plaintiff and C D is defendant.

Present: L M, attorney for plaintiff, and N O, attorney for defendant.

The witness, E F, being duly sworn, deposes and says, in answer to questions, as follows: (*Answers*).

E F, Witness

Form of officer's certificate

State of Virginia, County of _____, ss.

I, G H, a notary public in and for the County of _____, and State of Virginia (*or*, the person named in the commission hereto annexed), do hereby certify that the foregoing deposition was duly taken, reduced to writing, and signed by the witness before me, at the place and the times therein mentioned, pursuant to the annexed notice and commission.

In witness whereof, I have hereunto set my hand and affixed my official seal, at _____ aforesaid, this _____ day of _____, 19____.

(SEAL)

G H, Notary Public

Perpetuating testimony

A person desirous of perpetuating testimony of witness as to matter in respect to which there is no suit or action, may file with commissioner in chancery a petition stating such matter and what persons may be affected by testimony. Commissioner shall appoint a time and place for proceeding on petition, and reasonable notice shall be given to affected persons. (§ 6235, as amended 1938)

§ 346. Washington.⁵⁷**Who may take**

Notary public. (§ 1233)

When taken

Either party may commence taking testimony by deposition at any time after court has acquired jurisdiction over action, and persons of parties thereto against whom depositions are to be introduced. (§ 1232)

When used

Deposition may be read in evidence: (1) When witness resides out of county, or more than twenty miles from place of trial; (2) when witness is about to leave county, and go more than twenty miles from place of trial, and there is probability that he will continue absent when testimony is required; (3) when witness is sick, infirm, or aged so as to make him unable to attend trial; (4) when witness resides out of state; (5) when witness is (a) party to action or (b) officer, agent, partner, stockholder or employe of party or (c) next friend, guardian or infant party or party of unsound mind or (d) person for whose benefit action is prosecuted or defended. (§ 308-8)

Procedure

Any superior court is authorized to grant a commission to take depositions within or without state; commission must be issued to person therein named, by clerk, under seal of court granting same. (§ 1240)

Before any commission shall be granted, person intending to apply therefor must serve upon adverse party or his attorney a notice of his intention to make such application, stating time when and place where application will be made, action and name of court in which deposition is to be used, and name of witness to be examined; notice must be served so as to allow adverse party sufficient time to attend and three days for preparation. (§ 1240)

Notice

Deposition of witness may be taken in state after serving on adverse party or his attorney previous notice of time and place of examination, served so as to allow adverse party sufficient time to attend, and three days for preparation. Notice must

⁵⁷ References in parentheses are to Compiled Statutes (Remington). 1927.

specify action, name of court in which deposition is to be used, and time and place of taking deposition, and name of witness to be examined. (§ 1233)

Interrogatories

Depositions taken under commission may be upon written interrogatories or upon oral questions or partly upon oral and partly upon written interrogatories, in discretion of court granting commission. Clerk upon issuing commission must attach interrogatories thereto. (§ 1240)

Return

Deposition, whether taken upon notice or upon a commission, must be enclosed in a sealed envelope by officer taking same, and directed to clerk of court or to such persons as parties, in writing, may agree upon, and either delivered to clerk of court or other person, or transmitted through mail or by some private person. (§ 1243)

Form of officer's certificate (§ 1242)

State of Washington, County of _____, ss.

I, G H, notary public, in and for said county, do hereby certify that the above deposition was taken before me, and reduced to writing by myself (*or* witness), at _____ in said county, on the _____ day of _____, 19—, at _____ o'clock, in pursuance of notice hereto annexed; that E F, the above named witness, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (*or* by) said witness and then subscribed by him.

Dated at _____ this _____ day of _____, 19—.

G H, Notary Public

Perpetuating testimony

Person desirous of perpetuating testimony of any witness shall make statement in writing, setting forth briefly and substantially his title, claim or interest, in or to the subject concerning which he desires to perpetuate evidence, names of all persons interested, and also name of witness to be examined, which statement must be under oath and filed in superior court. (§ 1249)

Deposition of such witness, whether residing in state or not, shall be taken upon written interrogatories filed by applicant and cross-interrogatories filed by any party adversely interested, and it shall be taken and returned substantially in same manner as if taken upon commission. (§ 1252)

§ 347. West Virginia.⁵⁸

Who may take

Notary public. (§ 5734)

When used

Deposition may be read in case at law if deponent be dead, or out of the state, or a state judge, or in any public office or service, the duties of which prevent his attending court, or be unable to attend it from sickness or other infirmity, or be out of the county in which case is pending, or, because of lapse of time, or mental infirmity, be unable to remember any material part of what he had deposed to. (§ 5737)

Procedure

In any pending case deposition of a witness, whether a party to suit or not, may, without commission, be taken in or out of this state. (§ 5734)

Notice

Reasonable notice must be given to adverse party of time and place of taking every deposition. (§ 5736)

Form of deposition

A B, Plaintiff, vs. C D, Defendant.

Deposition of E F, taken before the undersigned authority in and for the County of ———, in the State of West Virginia, pursuant to the annexed notice, at ———, on this ——— day of ———, 19—, between the hours of ——— o'clock A. M. and ——— o'clock P. M. of that day, to be read in evidence on behalf of the plaintiff (*or*, defendant) in a certain suit pending in ——— Court of ———, West Virginia, in which suit A B is plaintiff and C D is defendant. Present: ——— for plaintiff and ——— for defendant.

E F, a witness of lawful age, being by me first duly sworn to speak the truth, the whole truth and nothing but the truth, answered and deposed as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

State of West Virginia, County of ———, ss.

I, G H, a notary public in and for the county and state aforesaid, do certify that the foregoing deposition of E F was taken, sworn to and subscribed before me at the time and place, and

⁵⁸ References in parentheses are to Code, 1937.

for the purpose, stated in the caption hereof (and the notices of adjournment therein mentioned). Given under my hand and official seal this _____ day of _____, 19__.

(SEAL)

G H, Notary Public

Perpetuating testimony

Person desirous of perpetuating testimony of witness as to a matter, whether a suit be pending in relation thereto or not, may file with a commissioner in chancery a petition stating such matter and what persons may be affected by the testimony. Commissioner must appoint for proceeding on petition a time and place, whereof reasonable notice shall be given to affected persons. (§ 5740)

§ 348. Wisconsin.⁶⁹

Who may take

Notary public who must not be attorney for any party or person interested or himself otherwise interested in action, except by written consent of parties. (§ 326.09)

When taken

Deposition may be taken at any time after action is commenced. (§ 326.09)

Deposition of witness may be taken when: (1) He lives more than thirty miles from place of trial or beyond reach of subpoena of court; (2) when he is about to go out of state, not intending to return in time for trial; (3) when he is too sick, infirm or aged to attend trial; (4) when he is a member of legislature while in session, provided he waive his privilege; (5) when his testimony is material to any motion or other similar proceeding in any court of record, and he has refused to make affidavit of facts within his knowledge. (§ 326.07)

Procedure

A commission may issue from any court of record to take deposition of any witness without the state. Party desiring commission must prepare interrogatories and state in caption thereof name of commissioner proposed by him, name of witness and residence, and shall serve copy thereof on opposite party with notice that at expiration of ten days from date of service, a commission will be issued to take deposition of witness, specifying reason for taking same. (§ 326.26)

⁶⁹ References in parentheses are to Statutes, 1937.

Notice

Notice in writing shall be given to adverse party or his attorney that deposition of witness named will be taken before named officer at time and place appointed, for a statutory cause; three days' notice must be given of taking of deposition, and additional time at rate of one day for each three hundred miles or fraction thereof after first thirty miles from place where notice is served. (§ 326.09)

Return

Deposition must be delivered or transmitted by officer by whom same is taken to clerk of court, securely sealed. (§ 326.10)

Form of deposition

A B, Plaintiff, vs. C D, Defendant.

Deposition of E F, taken before me, a notary public, in _____ County, State of Wisconsin, this _____ day of _____, 19____, pursuant to the annexed (*or* foregoing) stipulation (notice; *or*, agreement), on behalf of the plaintiff (*or*, defendant), to be used in an action (*or*, proceedings) wherein A B is plaintiff and C D is defendant, now pending in the _____ Court of _____ County, State of Wisconsin. Appearances: (*If any appearances by attorney are made, they should be noted*).

(*Questions and answers*).

E F, Witness

Form of officer's certificate (§ 326.22)

State of Wisconsin, County of _____, ss.

I, G H, a notary public in and for said county, do hereby certify that the above deposition was taken before me at my office in the City of _____ in said county on the _____ day of _____, 19____, at _____ o'clock _____ noon; that it was taken at the request of the plaintiff (*or* defendant), upon verbal (*or* written) interrogatories; that it was reduced to writing by myself (*or* by J K, a disinterested person, in my presence and under my direction, *or* was taken in shorthand by L M and by her reduced to long-hand); that it was taken to be used in the action of A B vs. C D, now pending in _____ Court, and that the reason for taking it was _____; that _____ attended at the taking of such deposition (*or* that a notice, of which the annexed is a copy, was served upon _____ on the _____ day of _____, 19____); that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause and that said deposition was carefully read to (*or* by) said

deponent and then subscribed by him. I further certify that I am not attorney or of counsel or related to any of the parties to this action, or in any manner interested in the result thereof.

G H, Notary Public

Perpetuating testimony

When any person desires to perpetuate testimony he must make written statement of his claim or interest in subject concerning which he desires to perpetuate evidence and names of all other persons interested, and name of witness proposed to be examined, and shall deliver statement to judge of court of record, requesting him to take deposition of witness. (§ 326.27)

§ 349. Wyoming.⁶⁰

Who may take

Notary public. (§ 89-1805)

Officer must not be relative or attorney of either party, or otherwise interested in result of action. (§ 89-1807)

When taken

Either party may commence taking testimony by deposition at any time after service upon defendant. (§ 89-1802)

When used

Deposition of a witness may be used only: (1) When witness does not reside in or is absent from county where action is pending; (2) when witness is dead, or, from age, infirmity or imprisonment is unable to attend court; (3) when testimony is required upon a motion, or when oral examination of witness is not required. (§ 89-1801)

Procedure

Any court of record of the state or judge may grant a commission to take depositions within or without the state, which commission must be issued by clerk and under seal of court; person to whom it is issued must be named therein. (§ 89-1808)

Notice

Written notice of intention to take deposition must be given to adverse party, except in cases in which it is taken under special commission, and shall specify action, name of court in which deposition is to be used, and time when and place where it will be taken. Notice must be served upon adverse party or his attorney, or left at his usual place of abode, so as to allow adverse party

⁶⁰ References in parentheses are to Revised Statutes, 1931.

sufficient time and one day of preparation to travel to place named in notice. (§ 89-1809)

When party against whom deposition is to be read is absent from or nonresident of state and has no attorney therein, he may be notified of taking of deposition by publication in county newspaper for three consecutive weeks. (§ 89-1810)

Interrogatories

Deposition under commission must be taken upon written interrogatories, unless parties otherwise agree. (§ 89-1808)

Return

Deposition must be sealed in envelope endorsed with title of cause and name of officer before whom it was taken, and such officer shall address and transmit same to clerk of court where action is pending. (§ 89-1812)

Form of deposition

Deposition of E F, taken before me, G H, a notary public within and for the County of _____, in the State of Wyoming on the _____ day of _____, in the year 19—, between the hours of _____ and _____, at _____ in said county, pursuant to the annexed notice (*or, agreement*) to be read in evidence in behalf of the plaintiff (*or, defendant*) in an action pending in _____ Court, in which A B is plaintiff and C D is defendant.

E F, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposes and says as follows: (*Questions and answers*).

E F, Witness

Form of officer's certificate

I, G H, a notary public, do hereby certify that E F was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition, by him subscribed as above set forth, was reduced to writing by myself (*or by _____, who is not interested in the suit, in my presence,*) and in the presence of the witness, and was subscribed by the said witness in my presence and was taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit; (*if there be adjournments, add:*) and said deposition was commenced at the time in said notice specified, and continued by adjournments from day to day as above stated.

In testimony whereof, I have hereunto set my hand and seal this _____ day of _____, 19—.

(SEAL)

G H, Notary Public

Perpetuating testimony

Applicant must file in office of clerk of district court a verified petition setting forth specifically subject matter relative to which testimony is to be taken and names of interested persons if known, and if not known a general description of such persons; names of witnesses to be examined and interrogatories to be submitted to each; that applicant expects to be party to action in court in this state, in which such testimony will be material; when applicant expects to be plaintiff, obstacles preventing immediate commencement of action. (§ 89-4302)

Court may then make order allowing examination of witness, prescribing time and place of examination and manner in which interested parties shall be notified. (§ 89-4303)

Deposition must be taken before some officer authorized by law to take depositions. (§ 89-4305)

CHAPTER VII: NEGOTIABLE INSTRUMENTS

ESSENTIAL REQUISITES

SECTION	SECTION
350. Definitions; negotiable instrument.	370. —Dispensed with.
351. —Promissory note.	371. Dishonor by nonpayment.
352. —Holder.	372. Protest.
353. —Bill of exchange.	373. —Time for making.
354. —Check.	374. —Place.
355. —Negotiation.	375. —Contents of certificate.
356. —Indorsement.	376. —Form.
357. —Accommodation party.	377. —Dispensed with.
358. —Acceptance.	378. —Record.
359. Presentment of bills for acceptance.	379. —National bank notes.
360. —Manner.	380. —Acceptance supra protest.
361. —Time.	381. Payment for honor.
362. —Excused.	382. Notice of dishonor.
363. Dishonor by nonacceptance.	383. —Given by agent.
364. Presentment for payment.	384. —Essentials.
365. —Time.	385. —Form.
366. —Sufficiency.	386. —To whom given.
367. —Place.	387. —Time of giving.
368. —To whom made.	388. —Place.
369. —Delay excused.	389. —Waiver.
	390. —Dispensed with.
	391. —Delay excused.

STATUTORY PROVISIONS

392. The Negotiable Instruments Law with statutory variations.	393. Chart of legal holidays.
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ESSENTIAL REQUISITES

§ 350. **Definitions; negotiable instrument.**—An instrument is said to be negotiable when the legal title to the instrument itself, and to the whole amount of money expressed upon its face, may be transferred from one person to another by indorsement and delivery by the holder, or by delivery only. The instrument to be negotiable must conform to the following requirements: (1) it must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand or at a fixed or determinable future time;

(4) must be payable to order or to bearer; (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.¹

§ 351. —Promissory note.—A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.² The person who signs such unconditional written promise is called the maker and the person to whom the order is payable, the payee. If the payee transfers it to a third person by indorsement, the payee is the indorser and the third person, the indorsee. The following is an ordinary form of a promissory note:

————(City) ———(State) ———(Date)
 On ———(date) (*or*, ——— days, *or*, months, *or*, years, after date; *or*, on demand), I promise to pay to the order of C D (*or*, bearer) the sum of ——— Dollars, with interest at ———%, payable quarterly (*or*, semi-annually, *or*, annually) from date (*or*, maturity) at the ——— Bank. Value received. A B

§ 352. —Holder.—The holder is the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.³

A holder in due course is a holder who has taken the instrument under the following conditions: (1) that it is complete and regular upon its face; (2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such

¹ See Negotiable Instruments Law, § 1. The entire law is given in § 392 of this text.

² See Negotiable Instruments Law, § 184.

³ See Negotiable Instruments Law, § 191.

same state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.⁸

§ 354. —**Check.**—A check is a bill of exchange drawn on a bank, payable on demand.⁹ A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.¹⁰ Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.¹¹ A check must be presented for payment within a reasonable time after it is issued or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.¹²

§ 355. —**Negotiation.**—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery.¹³

§ 356. —**Indorsement.**—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.¹⁴ An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the

⁸ See Negotiable Instruments Law, § 129.

⁹ See Negotiable Instruments Law, § 185.

¹⁰ See Negotiable Instruments Law, § 189.

¹¹ See Negotiable Instruments Law, § 187.

¹² See Negotiable Instruments Law, § 186.

¹³ See Negotiable Instruments Law, § 30.

¹⁴ See Negotiable Instruments Law, § 31.

indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.¹⁵

An indorsement is restrictive which either: (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser, or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.¹⁶

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.¹⁷

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally.¹⁸

A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser unless he clearly indicates, by appropriate words, his intention to be bound in some other capacity.¹⁹

§ 357. —**Accommodation party.**—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving

¹⁵ See Negotiable Instruments Law, § 34.

¹⁶ See Negotiable Instruments Law, § 36.

¹⁷ See Negotiable Instruments Law, § 38.

¹⁸ See Negotiable Instruments Law, § 39.

¹⁹ See Negotiable Instruments Law, § 63.

value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.²⁰

§ 358. —**Acceptance.**—Accepting a bill is usually done by the drawee writing across its face: “Accepted,” and signing his name below. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee.²¹ An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.²² An acceptance is qualified which is: (1) conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees but not of all.²³

§ 359. **Presentment of bills for acceptance.**—Presentment for acceptance must be made: (1) where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill

²⁰ See Negotiable Instruments Law, § 29.

²¹ See Negotiable Instruments Law, § 132.

²² See Negotiable Instruments Law, § 140.

²³ See Negotiable Instruments Law, § 141.

expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.²⁴

§ 360. —**Manner.**—The holder of the bill or his agent, generally a notary public, must call upon the drawee, exhibit the bill to him and ask whether the drawee will pay it at its maturity.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and: (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead, presentment may be made to his personal representative; (3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.²⁵

§ 361. —**Time.**—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of the Negotiable Instruments Act. When Saturday is not otherwise a holiday,²⁶ presentment for acceptance may be made before twelve o'clock noon on that day.²⁷

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the

²⁴ See Negotiable Instruments Law, § 143.

²⁵ See Negotiable Instruments Law, § 145.

²⁶ For chart of legal holidays, see § 393 of this text.

²⁷ See Negotiable Instruments Law, § 146.

drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.²⁸

§ 362. —**Excused.**—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases: (1) where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment can not be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground.²⁹

§ 363. **Dishonor by nonacceptance.**—A bill is dishonored by nonacceptance: (1) when it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or can not be obtained; or (2) when presentment for acceptance is excused and the bill is not accepted.³⁰

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.³¹

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.³²

²⁸ See Negotiable Instruments Law, § 147.

²⁹ See Negotiable Instruments Law, § 148.

³⁰ See Negotiable Instruments Law, § 149.

³¹ See Negotiable Instruments Law, § 150.

³² See Negotiable Instruments Law, § 151.

§ 364. **Presentment for payment.**—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. Except as otherwise provided in the Negotiable Instruments Law, presentment for payment is necessary in order to charge the drawer and indorsers.³³

§ 365. —**Time.**—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.³⁴

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.³⁵

§ 366. —**Sufficiency.**—Presentment for payment, to be sufficient, must be made: (1) by the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.³⁶

³³ See Negotiable Instruments Law, § 70.

³⁴ See Negotiable Instruments Law, § 71.

³⁵ See Negotiable Instruments Law, § 85.

³⁶ See Negotiable Instruments Law, § 72.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.³⁷

§ 367. —Place.—Presentment for payment is made at the proper place: (1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.³⁸

§ 368. —To whom made.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.³⁹

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.⁴⁰

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.⁴¹

³⁷ See Negotiable Instruments Law, § 75.

³⁸ See Negotiable Instruments Law, § 73.

³⁹ See Negotiable Instruments Law, § 74.

⁴⁰ See Negotiable Instruments Law, § 76.

⁴¹ See Negotiable Instruments Law, § 77.

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.⁴²

§ 369. —**Delay excused.**—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.⁴³

§ 370. —**Dispensed with.**—Presentment for payment is dispensed with: (1) where after the exercise of reasonable diligence presentment as required by the Negotiable Instruments Act can not be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.⁴⁴

§ 371. **Dishonor by nonpayment.**—The instrument is dishonored by nonpayment when: (1) it is duly presented for payment and payment is refused or can not be obtained; or (2) presentment is excused and the instrument is overdue and unpaid.⁴⁵

§ 372. **Protest.**—A notarial protest is a declaration in writing made by a notary public on behalf of the holder of a bill or note, that acceptance or payment has been refused. This written declaration itself is also properly called the certificate of protest, which is only the evidence of the fact of protest. Although in a technical sense, the term “protest” means only the formal declaration drawn up and signed by the notary, yet in commercial usage, it includes all the steps necessary to charge the indorser.

⁴² See Negotiable Instruments Law, § 78.

⁴³ See Negotiable Instruments Law, § 81.

⁴⁴ See Negotiable Instruments Law, § 82.

⁴⁵ See Negotiable Instruments Law, § 83.

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.⁴⁶

§ 373. —**Time for making.**—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.⁴⁷

§ 374. —**Place.**—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.⁴⁸

§ 375. —**Contents of certificate.**—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify: (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.⁴⁹

⁴⁶ See Negotiable Instruments Law, § 152.

⁴⁷ See Negotiable Instruments Law, § 155.

⁴⁸ See Negotiable Instruments Law, § 156.

⁴⁹ See Negotiable Instruments Law, § 153.

A complete certificate of protest should ordinarily include the following items: (1) the notary's venue or locality within which he is authorized to act; (2) his name and title; (3) for whom he acted, or the holder's name; (4) a copy of the instrument presented; (5) the fact and manner of presentment and demand; (6) the time; (7) the place; (8) to whom presented, and of whom demand was made; (9) the fact of dishonor; (10) the fact of protest; (11) the reason assigned for refusal to honor; (12) who was notified; (13) manner of notification; and (14) the notary's official seal and signature.

§ 376. —Form.—This certificate follows a copy of the bill or note protested:

United States of America, State of _____, _____
County, ss.

Be it known by this Instrument of Protest, that at the close of banking hours on _____ the _____ day of _____, 19—, I, G H, a notary public within and for said county of _____, did, at the request of _____, holder of the original _____ hereto attached and copies above, present the same to _____ at _____ in the city of _____, _____, and demanded payment (*or*, acceptance) thereof, which was refused for the following assigned reason: _____.

Whereupon I protested the same for nonpayment (*or*, nonacceptance) and notified the following named drawer and indorsers thereof of said presentment and protest, by a separate notice to each, inclosed in (the same, or separate) envelope— and addressed as follows: _____; and deposited the same in the post office of _____ in said county, the same day, postage paid; and the following named drawer and indorsers thereof, by delivering to each of them such notices personally on the same or the next day _____.

Whereupon, I, the said notary, upon the authority aforesaid, have protested and do hereby solemnly protest as well against the drawer and indorsers of the said _____ as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, suffered or to be suffered, for the want of payment (*or*, acceptance) thereof, and I certify that I have no interest in the above-protested instrument.

Witness my hand and notarial seal this _____ day of _____, 19—.

Protest fees, \$——.

G H, Notary Public.

(SEAL)

§ 377. — **Dispensed with.**—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.⁵⁰

§ 378. — **Record.**—A well established custom permits the notary to make a minute on the dishonored instrument, or in his register, of the presentment, refusal to accept or pay, the month, day and year, and his charges of protest. This is called *noting*, and must be done, if not at the very time, at least not later than the day of the dishonor. The protest may be written out in full at any convenient time afterward.

Because the notary may be called upon to testify in relation to his acts as notary by deposition or orally, it is important that he should keep a register or record containing detailed information with regard to the protesting of commercial paper.

⁵⁰ See Negotiable Instruments Law, § 159.

§ 379. —**National bank notes.**—Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable, offers to waive demand and notice of the protest and, in pursuance of such offer, makes, signs and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest or upon receiving such admission, shall forthwith forward such admission or notice of protest to the comptroller of the currency, retaining a copy thereof. If any satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.⁵¹

§ 380. —**Acceptance supra protest.**—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill

⁵¹ See U.S.C., Title 12, § 131.

is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.⁵² An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.⁵³ Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.⁵⁴ The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.⁵⁵ The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.⁵⁶

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.⁵⁷ Presentment for payment to the acceptor for honor must be made as follows: (1) if it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104 of the Negotiable Instruments Law.⁵⁸ When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.⁵⁹

⁵² See Negotiable Instruments Law, § 161.

⁵³ See Negotiable Instruments Law, § 162.

⁵⁴ See Negotiable Instruments Law, § 163.

⁵⁵ See Negotiable Instruments Law, § 164.

⁵⁶ See Negotiable Instruments Law, § 165.

⁵⁷ See Negotiable Instruments Law, § 167.

⁵⁸ See Negotiable Instruments Law, § 168.

⁵⁹ See Negotiable Instruments Law, § 170.

§ 381. **Payment for honor.**—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.⁶⁰ The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.⁶¹ The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.⁶² Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.⁶³

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.⁶⁴ The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.⁶⁵

§ 382. **Notice of dishonor.**—Except as otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.⁶⁶

⁶⁰ See Negotiable Instruments Law, § 171.

⁶¹ See Negotiable Instruments Law, § 172.

⁶² See Negotiable Instruments Law, § 173.

⁶³ See Negotiable Instruments Law, § 175.

⁶⁴ See Negotiable Instruments Law, § 176.

⁶⁵ See Negotiable Instruments Law, § 177.

⁶⁶ See Negotiable Instruments Law, § 89.

§ 383. —**Given by agent.**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up would have a right to reimbursement from the party to whom the notice is given.⁶⁷ Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.⁶⁸ Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.⁶⁹

§ 384. —**Essentials.**—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.⁷⁰ A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.⁷¹

§ 385. —**Form.**—

—————(Place) —————(Date)

Take notice, that a bill of exchange (*or*, promissory note) for ————— Dollars dated —————, drawn by —————.

⁶⁷ See Negotiable Instruments Law, § 90.

⁶⁸ See Negotiable Instruments Law, § 91.

⁶⁹ See Negotiable Instruments Law, § 94.

⁷⁰ See Negotiable Instruments Law, § 96.

⁷¹ See Negotiable Instruments Law, § 95.

in favor of _____, on _____ Bank, accepted by _____, indorsed by _____, payable _____, was this day presented for acceptance (*or*, payment), which was refused, and therefore was this day protested, by the undersigned notary public, for nonacceptance (*or*, nonpayment).

The holder therefore looks to you for payment thereof, together with interest, damages, costs, you being indorser (*or*, drawer) thereof.

To: _____

G H, Notary Public

§ 386. —**To whom given.**—Notice of dishonor may be given either to the party himself or to his agent in that behalf.⁷² When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.⁷³ Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.⁷⁴ Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.⁷⁵ Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.⁷⁶

§ 387. —**Time of giving.**—Notice may be given as soon as the instrument is dishonored.⁷⁷ Where the person giving and the person to receive notice reside in the same

⁷² See Negotiable Instruments Law, § 97.

⁷³ See Negotiable Instruments Law, § 98.

⁷⁴ See Negotiable Instruments Law, § 99.

⁷⁵ See Negotiable Instruments Law, § 100.

⁷⁶ See Negotiable Instruments Law, § 101.

⁷⁷ See Negotiable Instruments Law, § 102.

place, notice must be given within the following times: (1) if given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.⁷⁸ Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) if sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.⁷⁹

§ 388. —Place.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is so sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section of the Negotiable Instruments Law.⁸⁰

⁷⁸ See Negotiable Instruments Law, § 103.

⁷⁹ See Negotiable Instruments Law, § 104.

⁸⁰ See Negotiable Instruments Law, § 108.

§ 389. —**Waiver.**—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.⁸¹ Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.⁸² A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.⁸³

§ 390. —**Dispensed with.**—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.⁸⁴

Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.⁸⁵

Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is

⁸¹ See Negotiable Instruments Law, § 109.

⁸² See Negotiable Instruments Law, § 110.

⁸³ See Negotiable Instruments Law, § 111.

⁸⁴ See Negotiable Instruments Law, § 112.

⁸⁵ See Negotiable Instruments Law, § 114.

presented for payment; (3) where the instrument was made or accepted for his accommodation.⁸⁶

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.⁸⁷

§ 391. —**Delay excused.**—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.⁸⁸

⁸⁶ See Negotiable Instruments Law, § 115.

⁸⁷ See Negotiable Instruments Law, § 116.

⁸⁸ See Negotiable Instruments Law, § 113.

STATUTORY PROVISIONS

§ 392. The Negotiable Instruments Law¹ with Statutory Variations.—

TITLE I

NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I

FORM AND INTERPRETATION

Sec. 1. Form of Negotiable Instrument.

An instrument to be negotiable must conform to the following requirements:—

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and,
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

STATUTORY VARIATIONS

The *Arizona, Idaho, Illinois, Iowa, Kentucky, North Carolina, West Virginia, and Wyoming* Acts read, in subsec. 4: "Must be payable to the order of a specified person, or to bearer," but "specified person" is surplusage. See sec. 8. *West Virginia* in 1931 returned to the uniform act.

The *Georgia* Act adds to subsec. 2, "provided that a promissory note may be made payable in cotton or other articles of value." See the form of sec. 184.

The *Illinois* Act interpolates "payable in money" after "instrument" because in that state instruments payable in goods had previously been negotiable.

The *Michigan* Act uses "certain sum" instead of "sum certain."

The following *Minnesota* law (Laws 1927, ch. 416) although not expressly an amendment to the Act, is an amendment in fact: "Any bond, note, debenture or promise to pay, which shall be secured by a mortgage, deed of trust, indenture, or lien upon any property, real, personal or mixed, and which shall have been authenticated, certified or approved by the authorized signature of a duly authorized mortgagee, trustee, registrar, or fiscal agent, when otherwise so drawn as to fall under and within the provisions of the uniform Negotiable Instruments Act (chapter 272, General Laws of 1913), shall be deemed to be a 'negotiable instrument' as defined by law and shall be held and construed to be such 'negotiable instrument' notwithstanding the fact that it shall refer to or recite that it is issued

¹ For annotations of decisions, see Brannan's Negotiable Instruments Law

under, in connection with, or secured by such mortgage, deed of trust, indenture, or other lien of any kind or nature, and whether or not the terms of said mortgage, deed of trust, indenture, or lien purport to be incorporated therein or made a part thereof, or otherwise."

New York and *California* also make bonds negotiable.

Wisconsin (Laws, 1921, c. 286) has repealed its former additional subsection, relating to the non-negotiability of municipal orders not expressly made negotiable by law, and the negotiability of warehouse receipts, bills of lading, and railroad receipts, unless plainly stamped "non-negotiable."

Sec. 2. Certainty as to Sum—What Constitutes.

The sum payable is a sum certain within the meaning of this act, although it is to be paid:

- (1) With interest; or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon the default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

STATUTORY VARIATIONS

The *Connecticut* Act was amended in 1927 (Pub. Acts, ch. 240) to read as follows: "The sum payable, in the case of a negotiable instrument, is a sum certain within the meaning of chapter 225 * * * although it is to be paid * * * (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity or upon default, or (6) with provision for payment by the maker of taxes levied or assessed upon the instrument or the indebtedness evidenced thereby."

The original *Idaho* Act omitted the words "or of interest" in subsec. 3. In the Compiled Statutes of 1919, however, these words are restored.

The *Iowa*, *Kentucky*, *North Carolina*, and *Wyoming* Acts omit, "Or of interest," in subsec. 3.

This omission in the *Iowa* statute was held to be immaterial in *Commercial Sav. Bank v. Schaffer*, 190 Ia. 1088, 181 N. W. 492.

Kansas has a special statute (Gen. Stat. 1915, sec. 6475) which provides that a stipulation for payment of attorney fees in negotiable instruments and mortgages shall be null and void.

Minnesota adds "on or at a given place" after "current rate" in subsec. 4.

The *Nebraska* Act adds: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not allowable in other cases."

The *North Carolina* Act adds to subsec. 5: "But a provision incorporated in the instrument to pay counsel fees for collection is not enforceable, but does not affect the other terms of the instrument or the negotiability thereof." (Rev., ss. 2152, 2346; 1899, c. 733, ss. 2, 197; 1905, c. 327.)

North Dakota has a special code provision similar to the *North Carolina* variation, as follows (Sec. 7791, C. L. 1913): "Any provision contained in any note, bond, mortgage or other evidence of debt for the payment of an attorney fee in case of default in payment or of proceedings had to collect such note, bond, or evidence of debt or to foreclose such mortgage is hereby declared to be against public policy and void."

In *South Dakota* the following is substituted for subsec. 5: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment or instrument made in this state any sum for attorney's fees, or other costs not now taxable by law."

In *Sharpe v. Schoenberger*, 44 S. D. 402, 184 N. W. 209, a provision for attorney's fees was held a nullity, which did not impair negotiability; a provision for a higher interest rate after maturity or default was held not to render the note uncertain in amount.

Sec. 3. When Promise is Unconditional.

An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
- (2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

STATUTORY VARIATIONS

Massachusetts inserts the words "except as otherwise expressly provided by law," between "But" and "an" in the last sentence in this section.

The *North Dakota* Act, by evident error, changes the last word in the section to "conditional." This error is corrected in the 1925 Supplement.

Sec. 4. Determinable Future Time—What Constitutes.

An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

STATUTORY VARIATIONS

North Carolina (Laws, 1923, c. 72) adds: "An instrument is payable at a determinable future time, within the meaning of this chapter, notwithstanding the fact that it contains a provision waiving notice of protest, notice of dishonor, and an agreement to be bound notwithstanding any extension of time which may be granted. Or if collaterals have been deposited as security for the payment thereof and the instrument contains a provision that if the value of the securities so deposited has so decreased or declined as to render the holder insecure, the holder may require the maker to deposit other and further collaterals to secure the same, and, upon failure to comply with such demand, to declare the instrument due at once. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, but an instrument payable

at a determinable future time is negotiable, even though it may mature or be declared due upon a contingency happening before such future time." The *Rhode Island* Act changes subdivision (1) to read: "At a fixed period after date or sight; or at sight."

The *South Carolina* Act was amended in 1926 so as to further define the expression "determinable future time" (Laws 1926, No. 574):

"But an instrument payable at a determinable future time is negotiable, even though it may mature or be declared due upon a contingency happening before such future time. An instrument is payable at a determinable future time within the meaning of this chapter, notwithstanding the fact that it contains a provision waiving notice of protest, notice of dishonor, and an agreement to be bound even though an extension of time may be granted. An instrument is payable at a determinable future time when collateral has been deposited as security for the payment thereof and the instrument contains a provision that if the value of the security deposited has so decreased or declined as to render the holder insecure, the holder may require the maker to deposit other and further collaterals to secure the same, and, upon failure to comply with such demand, may declare the instrument due at once."

Virginia, in 1934, added the first sentence of the *South Carolina* amendment as stated above, but omitted the rest.

The *Wisconsin* Act substitutes, for the last paragraph, the following: "4. At a fixed period after the date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided."

Sec. 5. Additional Provisions Not Affecting Negotiability.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

STATUTORY VARIATIONS

The *Georgia* Act omits subsec. 2.

Idaho (Laws, 1925, c. 67) has amended this section by adding subsec. 5: "An instrument otherwise negotiable in character is not affected by the fact that it was at the time of the execution or subsequently secured by mortgage on real or personal property."

The *Illinois* Act adds the words "under this Act," at the end of the first sentence, and omits the words "if the instrument be not paid at maturity," in subsec. 2.

The *Illinois* and *Wisconsin* Acts add to the last paragraph: "Or authorize the waiver of exemptions from execution."

Kansas Laws, 1917, c. 244, adds to subsec. 1 the following: "Or in case the security should depreciate in value, or in case the holder for reasonable cause deems himself insecure." A new subsec. 5 is also added, as follows: "Provisions or agreements in concurrent writings or mortgages given to secure payment of such instruments."

This *Kansas* subsection was interpreted in *Commerce Trust Co. v. Guarantee Title & T. Co.*, 113 Kans. 311, 214 Pac. 610.

The *Kentucky* Act omits subsec. 3.

The *Montana* laws of 1923, ch. 143, add the following amendment: "(5) An instrument otherwise negotiable in character is not affected by the fact that it was at the time of the execution or subsequently secured by mortgage on real or personal property."

North Carolina adds at the end of this section: "nor authorize the enforcement of an authorization to confess judgment of a waiver of homestead and personal property exemptions."

The *South Dakota* Act omits subdivisions (2) and (3).

Utah Laws, 1925, c. 2, make no reference to the N. I. L., but provide: "The negotiability of a promissory note otherwise negotiable in form, secured by mortgage or deed of trust upon real or personal property shall not be affected or abridged by reason of a statement therein that it is so secured nor by reason of the fact that said instrument is so secured, nor by reason of any conditions contained in the mortgage or deed of trust securing the same."

Sec. 6. Omissions—Seal; Particular Money.

The validity and negotiable character of an instrument are not affected by the fact that:

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or
- (4) Bears a seal; or
- (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

STATUTORY VARIATIONS

The *Illinois* Act begins subsec. 5 with the words, "is payable in currency or current funds: or." and omits the last paragraph of this section.

In the *Massachusetts* Act the last sentence reads: "But subdivision two shall not apply in cases where by statute the nature of the consideration is required to be stated in the instrument."

The *South Dakota* Act changes the last paragraph to read: "But nothing in this section shall be so construed as to alter or impair any provision requiring in certain cases the nature of the consideration to be stated in the instrument or to make negotiable in character a note which shows on its face that it is given for a consideration to be received in the future."

Sec. 7. When Payable on Demand.

An instrument is payable on demand:

- (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or
- (2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

STATUTORY VARIATIONS

The *Nebraska* Act omits "accepted" in the last sentence of this section. The *Rhode Island* Act changes subsection (1) by inserting the words "with grace" after "at sight."

Sec. 8. When Payable to Order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or some of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

STATUTORY VARIATIONS

The *Illinois* Act interpolates after subsec. 6 the following: "7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate." This state also has "more" for "some" in subsec. 5.

The *Minnesota* Act was amended in 1929 (Laws, ch. 353) to include the following addition: "An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate."

The *South Dakota* Act substitutes "a specified person" for "him" in the first sentence and "more" for "some," in subsec. 5.

Sec. 9. When Payable to Bearer.

The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein or bearer; or
- (3) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

- (4) When the name of the payee does not purport to be the name of any person; or
- (5) When the only or last indorsement is an indorsement in blank.

STATUTORY VARIATIONS

In *Idaho*, *Illinois* and *Montana* subsec. 3 was amended to add after "nonexisting," "or living person, not intended to have any interest in it," and the following clause at the end: "or known to his employee or other agent who supplies the name of such payee."

The *Illinois* Act substitutes for subsec. 5, the following: "5. When, although originally payable to order, it is indorsed in blank by the payee or a subsequent indorsee." See *Continental Nat. Bank of Chicago v. Olney Nat. Bank*, 33 F. (2d) 437 (Ill. C. C. A.); see also *Swift & Co. v. Chemical Bank & Trust Co.*, 299 N. Y. Supp. 165, 47 Yale L. J. 282.

Sec. 10. Terms, When Sufficient.

The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

STATUTORY VARIATIONS

Alabama, *Illinois*, *Iowa*, *North Carolina*, *Utah*, *West Virginia* and *Wyoming* Acts insert the word "negotiable" between the words "The" and "instrument."

The original *Idaho* Act made the same insertion, but in the Compiled Statutes of 1919, the insertion does not appear.

The *Wisconsin* Act (No. 1675-10) adds "Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument and parol evidence is admissible to show the circumstances under which they were made."

Sec. 11. Date, Presumption As To.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

STATUTORY VARIATIONS

The *Arizona* 1928 Act omits the words "deemed" and "to be," and substitutes the word "thereof" for the last phrase of the section beginning with "of the making, etc."

Sec. 12. Antedated and Postdated.

The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

STATUTORY VARIATIONS

The *Arizona* Act of 1928 substitutes the word "if" for the words "provided this is."

Sec. 13. When Date May Be Inserted.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

STATUTORY VARIATIONS

The *Arizona* Act substitutes the word "invalidate" for "avoid" in the second sentence, and the 1928 *Arizona* Act omits the words "to be regarded as" in the last clause.

The *South Carolina* Act omits "of issue" after "true date"; this seems a clerical error.

Sec. 14. Blanks—When May Be Filled.

Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

STATUTORY VARIATIONS

The *Arkansas* Act concludes the second sentence "to fill up for any amount," and in the third sentence "becomes" is substituted for "became."

The *Illinois* Act interpolates the words "issued or" before "negotiated" in the last sentence.

The *Kentucky* Act uses "negotiable" in the last paragraph instead of "negotiated," an evident clerical error.

The *South Dakota* Act substitutes for this section the following: "One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form." See *McCardell v. Davis*, 49 S. D. 554, 207 N. W. 662.

The *Wisconsin* Act inserts "prior to negotiation" before the words "by filling," and omits the words "*prima facie*" in the sixth line of the section.

Sec. 15. Incomplete Instrument Not Delivered.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

STATUTORY VARIATIONS

In *Wisconsin* "negotiation" is substituted for "delivery" at the end of the section.

Sec. 16. Delivery—When Effectual—When Presumed.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

STATUTORY VARIATIONS

The *Kansas* Act omits the third sentence.

The *North Carolina* Act omits the word "accepting" in the second sentence.

In *South Dakota* the third paragraph beginning with the word "but" and ending with word "presumed" is omitted, and the following sentence substituted: "An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable and notwithstanding any defect in the title of the person from whom he acquired it." See *McCardle v. Davis*, 49 S. D. 554, 207 N. W. 662.

Sec. 17. Construction Where Instrument is Ambiguous.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

- (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

- (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;
- (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
- (4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
- (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;
- (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;
- (7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits entirely subsec. 4, and omits the words "deemed to be" in subsec. 7.

The *Wisconsin* Act adds: "8. Where several writings are executed at or about the same time, as parts of the same transactions, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof."

Sec. 18. Liability of Person Signing in Trade or Assumed Name.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

STATUTORY VARIATIONS

The *Wyoming* Act omits the word "expressly" in the first sentence.

Sec. 19. Signature by Agent—Authority—How Shown.

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

STATUTORY VARIATIONS

The *Kentucky* Act substitutes: "The signature of any party may be made by an agent duly authorized in writing." See *Finley v. Smith*, 165

Ky. 445, 177 S. W. 262, L. R. A. 1915F, 777; *Commercial Bank v. Arden*, 177 Ky. 520, 197 S. W. 951, L. R. A. 1918B, 320; *Selma Sav. Bank v. Webster Cty. Bank*, 182 Ky. 604, 206 S. W. 870, 2 A. L. R. 1136; *Pierson v. Union Bank & Trust Co.*, 181 Ky. 749, 205 S. W. 906, 2 A. L. R. 172, with note, "Effect of verbal order with respect to payment of checks or transfer of bank deposits"; *Clinton v. Hibbs*, 202 Ky. 304, 259 S. W. 356, 35 A. L. R. 462, with note on the application of general powers of attorney to accommodation paper; *Kentucky Title Sav. Bank & T. Co. v. Dunavan*, 205 Ky. 801, 266 S. W. 667; and see *Hartford Accident & Indemnity Co. v. Bear Butte Valley Bank*, 63 S. D. 262, 257 N. W. 642.

The *South Dakota* Act is like Kentucky in the first sentence, and also substitutes "written" before "appointment" in the second sentence. All the words after "purpose" are omitted. See *State Bank v. Weeks*, 45 S. D. 639, 189 N. W. 941, 190 N. W. 806; *First Nat. Bank v. Montgomery (S. D.)*, 196 N. W. 95. See also *Security Holding Co. of Beresford v. Christensen*, 53 S. D. 37, 219 N. W. 949, 60 A. L. R. 1173.

Sec. 20. Liability of Person Signing as Agent, Etc.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

STATUTORY VARIATIONS

The *South Dakota* Act reads "the principal" instead of "a principal."

The original *Virginia* Act inserted after "capacity" in line three, the words "without disclosing his principal," but this section was amended in 1928 (Acts, ch. 90) so as to conform exactly with the Uniform Act. See 14 Va. L. Rev. 405.

Sec. 21. Signature of Procuration—Effect of.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

STATUTORY VARIATIONS

In *Illinois* the word "only" in the second line is omitted.

Sec. 22. Effect of Indorsement by Infant or Corporation.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

STATUTORY VARIATIONS

In *North Carolina*, after its original adoption in 1899 as sec. 22 and in the above form, the words "or married woman" were inserted after "infant" in both places, and this section was transferred to the article entitled "In-

dorsements" ("Negotiation" in the original statute), and became sec. 2180, Pell's Revisal of 1908. This is now sec. 3012 in Michie's 1935 Code in revised form.

The *South Dakota* Act omits from this section all reference to infants, and adds a new section, § 1726, A, on corporations.

Sec. 23. Forged Signature—Effect of.

Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts omit the words "of the person whose signature it purports to be."

ARTICLE II

CONSIDERATION

Sec. 24. Presumption of Consideration.

Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Consideration—What Constitutes.

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

STATUTORY VARIATIONS

In *Illinois* the second sentence reads, "An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor and is deemed such, whether the instrument is payable on demand or at a future time."

Sec. 26. What Constitutes Holder for Value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. When Lien on Instrument Constitutes Holder for Value.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

STATUTORY VARIATIONS

The *Alabama* Act inserts "whether" for "where."

The *South Dakota* Act inserts "whether" for "where" and "operation" for "implication."

Sec. 28. Effect of Want of Consideration.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the last clause to read: "and partial failure of consideration is a defense to the extent of the failure, whether ascertained and liquidated or otherwise."

Sec. 29. Liability of Accommodation Party.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

STATUTORY VARIATIONS

The *Illinois* Act omits the words "without receiving value therefor" in line two and adds at the end of the section "and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity."

This section of the *Massachusetts* Act was amended in 1918 by substituting "holder in due course" for "holder for value" in the second sentence (Gen. Laws 1918, ch. 257, § 282).

ARTICLE III**NEGOTIATION****Sec. 30. What Constitutes Negotiation.**

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. Indorsement—How Made.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

STATUTORY VARIATIONS

The *Illinois* Act adds "and the addition of words of assignment or guaranty shall not negative the additional effect of the signature as an indorsement, unless otherwise expressly stated." *Chance v. Hudson*, 233 Ill. App. 542.

Sec. 32. Indorsement Must Be of Entire Instrument.

The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. Kinds of Indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

STATUTORY VARIATIONS

The *Arkansas* Act has "instrument" instead of "indorsement" in the first line, an evident clerical error.

Sec. 34. Special Indorsement—Indorsement in Blank.

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

STATUTORY VARIATIONS

In *Massachusetts*, the words "does not specify any indorsee" are substituted for the words "specifies no indorsee."

In *Wyoming* the word "made" is inserted between the words "be" and "payable."

Sec. 35. Blank Indorsement—How Changed to Special Indorsement.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

STATUTORY VARIATIONS

The original *Vermont* Statute contained this section in terms of the Uniform Act. However, the compilations of 1917 and 1933 omit this section entirely.

Sec. 36. When Indorsement Restrictive.

An indorsement is restrictive, which either:

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the indorsee the agent of the indorser; or
- (3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

STATUTORY VARIATIONS

The *Montana* Act substitutes "future" for "further" in subsec. 1.
North Carolina omits "other" in subsec. 3.

Sec. 37. Effect of Restrictive Indorsement—Right of Indorsee.

A restrictive indorsement confers upon the indorsee the right:

- (1) To receive payment of the instrument;
- (2) To bring any action thereon that the indorser could bring;
- (3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

STATUTORY VARIATIONS

The *Illinois* Act adds to subsec. 2, "or except in the case of a restrictive indorsement specified in sec. 36—subsec. 2—any action against the indorser or any prior party that a special indorsee would be entitled to bring," and substitutes for the words "his rights as such indorsee" in subsec. 3 the words "the instrument," and adds to the end of subsec. 3 the words, "specified in sec. 36—subsec. 1—and as against the principal or *cestui que trust* only the title of the first indorsee under the restrictive indorsement specified in sec. 36—subsecs. 2 and 3 respectively."

Sec. 38. Qualified Indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

STATUTORY VARIATIONS

The *Michigan* Act reads: "Such an instrument" instead of "such an indorsement," an evident error.

Sec. 39. Conditional Indorsement.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Sec. 40. Indorsement of Instrument Payable to Bearer.

Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

STATUTORY VARIATIONS

The *Alabama* Act substitutes "take" for "make."
The *Illinois* Act substitutes for "payable to bearer," in line 1, the words "originally payable to or indorsed specially to bearer."
The *West Virginia* Code of 1931 repeals this section.

Sec. 41. Indorsement Where Payable to Two or More Persons.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

STATUTORY VARIATIONS

The *Wisconsin* Act inserts "joint" before "indorsees" in line two.
The *Wyoming* Act erroneously substitutes "indorsers" for "indorsees."

Sec. 42. Effect of Instrument Drawn or Indorsed to a Person as Cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or the indorsement of the officer.

STATUTORY VARIATIONS

In the 1928 *Arizona* Act, there is no reference to indorsement to a bank.
In *South Dakota* the words "the indorsement of" are omitted before the words "the bank" in the last part of the section.

Sec. 43. Indorsement Where Name is Misspelled, etc.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

STATUTORY VARIATIONS

Arkansas has "indorser" for "indorsee."

Sec. 44. Indorsement in Representative Capacity.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Time of Indorsement—Presumption.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Sec. 46. Place of Indorsement—Presumption.

Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Sec. 47. Continuation of Negotiable Character.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

STATUTORY VARIATIONS

The *Illinois* Act, doubtless by error, substitutes "respectively" for "restrictively."

The *South Dakota* Act adds: "but a purchaser of the instrument after maturity is not a holder in due course."

Sec. 48. Striking Out Indorsement.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

STATUTORY VARIATIONS

In *Indiana, Iowa, Kentucky* and *South Dakota* the word "owner" is substituted for "holder" in the first line, probably by an oversight.

Massachusetts omits the words "at any time" in the first sentence of this section.

Sec. 49. Transfer Without Indorsement—Effect of.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

STATUTORY VARIATIONS

In *Alabama* the words "said holder" are substituted for "transferor" in the first paragraph, and the words "for the purpose of transferring title only" are added at the end of said paragraph. Laws 1909, p. 134.

The *Colorado* Act inserts after "transferor," at the end of the first sentence, "if omitted by mistake, accident or fraud."

The *Illinois* Act has "transferer vests" instead of "transfer vests," in the first sentence.

The *Illinois* and *Missouri* Acts, after the word "right" in the first sentence read as follows: "to enforce the instrument against one who signed for the accommodation of his transferor, and the right to have the indorsement of the transferor, if omitted by accident or mistake. But for the purpose," etc.

Sec. 50. When Prior Party May Negotiate Instrument.

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

STATUTORY VARIATIONS

The 1928 *Arizona* Act substitutes the word "may not" for "is not entitled to."

ARTICLE IV

RIGHTS OF THE HOLDER

Sec. 51. Right of Holder to Sue—Payment.

The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 52. What Constitutes a Holder in Due Course.

A holder in due course is a holder who has taken the instrument under the following conditions:

- (1) That it is complete and regular upon its face;
- (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (3) That he took it in good faith and for value;
- (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

STATUTORY VARIATIONS

The *Wisconsin* Act adds: "5. That he took it in the usual course of business."

The *West Virginia* Act inserts after the second "holder" in the first sentence "including a payee."

Sec. 53. When Person Not Deemed Holder in Due Course.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

STATUTORY VARIATIONS

See *infra*, sec. 193, for special provision in *South Dakota* fixing the maturity of demand instruments.

This section of the *Virginia* Act was changed in the Code of 1919 by adding the amendment as to bank notes and certificate of deposit as suggested by Professor J. D. Brannan.

Sec. 54. Notice Before Full Amount Paid.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. When Title Defective.

The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

STATUTORY VARIATIONS

The *Minnesota* Act has the following additional section:

"6015. Instrument obtained by fraud.—No person, nor the heirs of personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury."

See *Stevens v. Pearson*, 138 Minn. 72, 163 N. W. 769.

The *Wisconsin* Act (sec. 1676-25) adds the following: "And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care." See the comment by Professor Clifton Williams, 9 Marq. L. Rev. 258; *Muscoda State Bank v. Kolar*, 187 Wis. 39, 203 N. W. 915.

Under this *Wisconsin* amendment an accommodation note signed by defendant, when so intoxicated as wholly to destroy the rational faculties of his mind, is absolutely void. And negligence in getting drunk does not

estop defendant. Signing a note is not a usual or probable result of drunkenness, though bodily harm or death may be. *Green v. Gunster*, 154 Wis. 69, 142 N. W. 261; reviewed in 27 *Harvard Law Rev.* 164, also in 20 *Case and Comment*, 477.

In a case covered by this clause the note is void not only as to the maker so defrauded, but also as to all the other makers. *Aukland v. Arnold*, 131 Wis. 64, 111 N. W. 212; *Klosterhuber v. Wisconsin State Bank*, 218 Wis. 191, 260 N. W. 644. Cf. *Arnd v. Sjoblom*, 131 Wis. 642, 111 N. W. 666, 10 L. R. A. (N.S.) 842; *Stevens v. Freund*, 169 Wis. 68, 171 N. W. 300.

Sec. 56. What Constitutes Notice of Defect.

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

STATUTORY VARIATIONS

The *New York* Act was amended in 1927 (Laws 1927, ch. 473) so as to add a provision that the drawing or making of a negotiable instrument by an officer or agent of a corporation against the account of the corporation to himself as payee, or the indorsement of such instrument to himself or the deposit thereof to his own account shall not be sufficient to put the bank or trust company on inquiry as to the agent's authority, provided such bank or trust company has on file an authorization from the corporation showing the agent's authority.

In *Rhode Island* this section was amended by the addition of a provision based on sections 4, 5 and 6 of the Uniform Fiduciaries Act. See Laws 1930, ch. 1561, sec. 2.

Sec. 57. Rights of Holder in Due Course.

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

STATUTORY VARIATIONS

The *Georgia* Act, by evident clerical error, changes "title of prior parties" in the first clause of this section to "title to prior parties."

The *Illinois* Act after the word "themselves" interpolates a clause excepting the defenses of fraud and circumvention and gaming, which are, by statutes referred to in said clause, made real defenses.

See *Weir & Craig Co. v. Bonus*, 177 Ill. App. 626. But cf. *Delfosse v. Kendall*, 283 Ill. 301, 119 N. E. 346.

The unauthorized detachment of a contract from a note written on the same sheet of paper is fraud and circumvention within this section. *Stevens v. Lagerquist*, 210 Ill. App. 496, where other detachment cases are collected.

The *Illinois* amendment applies only to gaming, and not to other illegal considerations such as the settlement of a criminal charge. And a plea of illegal consideration does not raise the defense of fraud and circumvention. *Peru State Bank v. Waggett*, 230 Ill. App. 522.

The *Wisconsin* Act adds the words "except as provided in cases where the title of the person negotiating such instrument is void under the provisions of section 116.60 (N. I. L., section 55) of this Act." See *Aukland v. Arnold*, *supra*, sec. 55; *Arnd v. Sjoblom*, 131 Wis. 642, 111 N. W. 666, 10 L. R. A. (N.S.) 842.

Sec. 58. When Subject to Original Defenses.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

STATUTORY VARIATIONS

The *Illinois* and *Wisconsin* Acts insert "duress" after "fraud" and substitute "such holder" for "the latter."

The *South Dakota* Act omits the second sentence of this section.

The *West Virginia* Act substitutes for the words: "has all the rights of such former holder in respect of all parties prior to the latter," "or had not previously been a holder with notice and subject to the defense of such fraud or illegality, has all the rights of such holder in due course in respect to all parties liable to the latter."

Sec. 59. Who Deemed Holder in Due Course.

Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

STATUTORY VARIATIONS

The *South Dakota* Act omits the words "or some other person under whom he claims" before the word "acquired" in the first sentence.

ARTICLE V

LIABILITIES OF PARTIES

Sec. 60. Liability of Maker.

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by making it."

The *District of Columbia* Act inserts a provision providing that in case bills of exchange are lost the drawer is required to give new bills and the person to whom they are given shall give security therefor. *District of Columbia Code of 1929, Title 22, sec. 81.*

Sec. 61. Liability of Drawer.

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by drawing the instrument."

The *Colorado* and *Illinois* Acts omit the word "subsequent" before "indorser." The *District of Columbia*, *North Dakota*, *Ohio* and *New York* Acts read "accepted and paid."

Sec. 62. Liability of Acceptor.

The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

- (1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (2) The existence of the payee and his then capacity to indorse.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by accepting the instrument."

The *Oregon* Banking Law provides that a certifying bank is not liable on an altered instrument except to a holder in due course, and then only for the original tenor. 2 Ore. Code Ann., § 22-1402 (1930).

The *Missouri* Act omits "then" before "capacity" in subsec. 2.

Sec. 63. When Person Deemed Indorser.

A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

STATUTORY VARIATIONS

Section 38-509 of the Code of *Georgia* of 1933 permits the introduction of parol evidence to explain a blank indorsement as between immediate parties or a transferee with notice. See *Pickett v. Bank of Ellijay*, 182 Ga. 540, 186 S. E. 426, 53 Ga. App. 607, 186 S. E. 746.

Sec. 64. Liability of Irregular Indorser.

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

- (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
- (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
- (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

STATUTORY VARIATIONS

The *Georgia* Act substitutes "delivering" for "delivery" in the first clause of the section.

The *Illinois* and *Virginia* Acts substitute for subsections 1 and 2 the changes advised by Dean James Barr Ames.

The *Virginia* and *West Virginia* Acts adopt the amendments suggested by Dean Ames.

Sec. 65. Warranty Where Negotiation By Delivery, Etc.

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

- (1) That the instrument is genuine and in all respects what it purports to be;
- (2) That he has a good title to it;
- (3) That all prior parties had capacity to contract;
- (4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

STATUTORY VARIATIONS

The *Alaska* Act, in subsec. 3, reads "have" for "had."

The 1928 *Arizona* Act changes the words "the provisions of subdivision three, etc. * * * do not apply" to "the warranty of capacity to contract does not apply" in the last paragraph of the section.

The *Illinois* Act omits the phrase "or render it valueless" at the end of subsec. 4.

Sec. 66. Liability of General Indorser.

Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

- (1) The matters and things mentioned in subdivisions one, two and three of the next preceding section; and
- (2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its

tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts interpolate after "indorser" in line one, the words "not an accommodating party" and after "three" in subsec. 1, the words "and four." The *Illinois* Act substitutes "every indorser" for "he" in the first line of the last sentence, and the *South Dakota* Act substitutes "every indorser who indorses without qualification" for said word "he."

In *West Virginia* the words "except an accommodation indorser" are inserted after "indorser" in the first line. Subsec. (1) is amended to include also subsec. (4) of sec. 65, and "he" is replaced by "every indorser" in the last sentence.

Sec. 67. Liability of Indorser Where Paper Negotiable By Delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. Order in Which Indorsers Are Liable.

As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

STATUTORY VARIATIONS

Illinois substitutes, "All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable," for the last sentence.

This provision did not change the previous law in *Illinois*, that the obligation of a firm could not be set off against an individual claim of one of the partners. *Hochschild v. Goddard Tool Co.*, 233 Ill. App. 56.

The last sentence reads, "joint indorsers" in *Delaware*, *Nebraska*, *Ohio*, *Oklahoma*, *South Carolina*, *West Virginia*. *Colorado* has the same form in the revisions of 1908 and later, although the original law followed the uniform draft. See *Owens v. Greenlee*, 68 Colo. 114, 188 Pac. 721, 9 A. L. R. 1184. *Kentucky* had this form in *Russell's Statutes* (1909), although the uniform draft was followed in the original law and in other revisions, including the most recent. See *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350. This special form is discussed with a list of the statutes in *Case v. McKinnis*, 107 Ore. 223, 231 Pac. 422, 32 A. L. R. 167. This opinion cites *North Carolina* as having the special form, but the original law and 1 *McIntosh*, *Consolidated Statutes of North Carolina* (1919), sec. 3049, follow the uniform draft.

The *Kentucky* Act was amended by adding a section providing for rights and duties of collecting banks. See *Laws of 1930*, ch. 13. *New York* has a similar act; see *Laws of 1929*, ch. 589.

The *Nebraska*, *South Carolina*, and *West Virginia* Acts, by evident error, substitute "indorsers" for "indorsees" in the last sentence.

The *West Virginia* Act was amended in 1931 to read: "As respects one another, indorsers are liable *prima facie* in the order in which they indorse

except that accommodation or irregular indorsers, indorsing for the same party, are *prima facie* equally liable; but in any case evidence is admissible to show that as between or among themselves they have agreed otherwise. All parties jointly bound on negotiable instruments are deemed to be jointly and severally liable."

Sec. 69. Liability of an Agent or Broker.

Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "prescribed by section sixty-five of this Act" to "of a person negotiating an instrument by delivery or by a qualified indorsement." The *Florida* Act has a similar variation.

The *California* and *South Carolina* Acts, by evident error, refer to the wrong section instead of to section 65.

The *Illinois* Act adds the following:

"Sec. 69a. Whenever any bill of exchange, drawn or indorsed within this state and payable without this state, is duly protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon, and on bills payable without the United States with or without suit, five per cent. damages in addition."

ARTICLE VI

PRESENTMENT FOR PAYMENT

Sec. 70. Effect of Want of Demand on Principal Debtor.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

STATUTORY VARIATIONS

The *Illinois* Act interpolates "except in the case of bank notes" after "instrument" in line two.

The *Kansas*, *New York* and *Ohio* Acts interpolate "and has funds there available for that purpose" after "maturity" in line four.

The *Virginia* Act as incorporated in the Code of 1930 contains the amendment suggested by Professor Ames.

The *West Virginia* Code of 1931 omits all the first sentence after "instrument" and adds, "The statute of limitations shall not begin to run

against the holder of a certificate of deposit or a bank note until after presentment and demand for payment."

The *Wisconsin* Act omits all of the first sentence after the words "on the instrument."

Sec. 71. Presentment Where Instrument is not Payable on Demand and Where Payable on Demand.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

STATUTORY VARIATIONS

Florida Compiled Laws 1927, sec. 6834, practically repeals all diligence between bank and bank depositor other than that mentioned in section 6834; see *Cunningham v. Bunker*, 45 F. (2d) 458 (C. C. A. 5th 1930).

The *Massachusetts* and *Nebraska* Acts omit all of the section after the words "reasonable time after its issue."

The *New Hampshire* Act adds the following: "Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect or other thing, which by the provisions of this act is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within the sixty days, shall be a dishonor thereof, and shall authorize the holder of the note to give notice of the dishonor to the indorser as upon a presentment to the promisor, and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand for payment shall charge the indorser unless made on or before the last day of the sixty days."

In *South Dakota* the maturity of demand instruments is fixed by a new section, see *infra*, sec. 193.

In *Vermont* the words, "the last negotiation thereof," are omitted and the words, "its issue in order to charge the drawer," are substituted. And see *Foundry Mfg. Co. v. Farr*, 96 Vt. 382, 119 Atl. 885.

Sec. 72. What Constitutes a Sufficient Presentment.

Presentment for payment, to be sufficient, must be made:

- (1) By the holder, or by some person authorized to receive payment on his behalf;
- (2) At a reasonable hour on a business day;
- (3) At a proper place as herein defined;
- (4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

STATUTORY VARIATIONS

The *West Virginia* Code of 1931 adds, "If the party primarily liable be a corporation, to the president, treasurer, cashier, secretary or manager or, if neither is present, to any person found at the place where presentment is made."

Sec. 73. Place of Presentment.

Presentment for payment is made at the proper place:

- (1) Where a place of payment is specified in the instrument and it is there presented;
- (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
- (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

STATUTORY VARIATIONS

Arkansas says "presentation" for "presentment."

Sec. 74. Instrument Must Be Exhibited.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Presentment Where Instrument Payable at Bank.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

STATUTORY VARIATIONS

The *Montana* Act was amended by Laws, 1909, ch. 82, to read as follows: "Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only." It is obvious that the intention was to amend section 87 instead of section 75, the reference to section 75 being a mistake.

The *Nebraska* Act omits everything after the words "banking hours" in line two.

Sec. 76. Presentment Where Principal Debtor is Dead.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Sec. 77. Presentment to Persons Liable as Partners.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Sec. 78. Presentment to Joint Debtors.

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. When Presentment Not Required to Charge the Drawer.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Sec. 80. When Presentment Not Required to Charge the Indorser.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

STATUTORY VARIATIONS

The *Illinois* Act and *West Virginia* Code of 1931 omit everything after the words "for his accommodation."

Sec. 81. When Delay in Making Presentment is Excused.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. When Presentment May Be Dispensed With.

Presentment for payment is dispensed with:

- (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
- (2) Where the drawee is a fictitious person;
- (3) By waiver of presentment, express or implied.

STATUTORY VARIATIONS

In the *Missouri* Act, subsec. 2 reads, "Where the drawee is a fictitious person, by waiver of presentment, express or implied," and subsec. 3 is omitted.

Sec. 83. When Instrument Dishonored by Nonpayment.

The instrument is dishonored by nonpayment when:

- (1) It is duly presented for payment and payment is refused or cannot be obtained; or
- (2) Presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Liability of Person Secondarily Liable—When Instrument Dishonored.

Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. Time of Maturity.

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

STATUTORY VARIATIONS

The *Arizona*, *Kentucky*, and *Wisconsin* Acts omit altogether the third sentence beginning "Instruments falling due." In *Vermont* all of the third sentence before the words "instruments payable on demand" was formerly omitted, but has been restored by the amendment of 1919.

The words "or becoming payable" have been interpolated after the words, "Instruments falling due," in the third sentence in some cases in the Act as originally adopted, in others by subsequent amendment in *Arkansas*, *Delaware*, *Idaho*, *Indiana*, *Kansas*, *Maine*, *Massachusetts*, *Minnesota*, *Missouri*, *New Hampshire*, *New Jersey*, *New York*, *Rhode Island*, *Texas* and *Vermont*. The Uniform Laws Commission now prints this as an alternate form.

The insertion of the words "becoming payable" or "or payable," seems unnecessary and to make no difference in the legal effect of the provision.

In the *Colorado* Act the following words are substituted: "Instruments falling due on any day, in any place where any part of such day is a holiday, are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment during reasonable hours of the part of such day which is not a holiday."

The *District of Columbia* Act inserts a list of legal holidays and the provision that bills mature on the next secular day. *District of Columbia Code of 1929*, Title 22, sec. 126.

The *Illinois* Act was amended in 1921 by adding a provision that the payment, certification or acceptance of a negotiable instrument or any other transaction by a bank is not rendered invalid because effected on Saturday between twelve o'clock noon and midnight if these acts would be valid

if performed before noon on such Saturday; but no bank which is permitted by law to close on Saturday afternoons is compelled to keep open for business except at its option.

Missouri has the same amendment; see Acts of 1921, p. 161.

The *Iowa* Act adopts sec. 85, but also by a subsequent section makes this additional provision:

"Section 198. Days of Grace—*demand made on*. A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this Act, and the provisions of this Act as to notice of nonpayment, nonacceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this Act; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face."

The title of this section is a misnomer, for it simply permits the holder to make demand not only on the day of maturity, but on any of the three following days except a Sunday or a holiday. The "grace" is to the holder, not to the acceptor or maker. And the same ambiguities and uncertainties arise here as under sec. 85; namely, whether if an instrument payable at a special place where the acceptor or maker is able and willing to pay, is not presented on the day of maturity, the acceptor or maker will be liable for interest for the three following so-called days of grace. Also whether an agent for collection of such an instrument failing to make presentment on the day of maturity, whereby loss results, will not be chargeable with negligence, although presentment is made within three days following the day of maturity.

The *Kansas* Act omits the last sentence, and also adds: "No provisions of the act relating to negotiable instruments, being ch. 310 of the Laws of 1905, or of any law of this state, shall be construed as to prevent banks from paying checks, drafts or other bills of exchange upon Saturday afternoon, or upon any legal holiday: *Provided*, such payments would be legal if made at other times."

This section of the *Louisiana* Act was amended in 1926 (Act No. 89) so as to read:

"When the day of maturity falls upon Saturday, Sunday, or a holiday, the instrument is payable on the next succeeding business day which is not a Saturday. Instruments payable on demand may at the option of the holder be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday; provided, however, that no person receiving any check, draft, bill of exchange, or promissory note payable on demand shall be deemed guilty of any neglect or omission of duty or incur any liability for not presenting for payment or acceptance or collection such check, draft, bill of exchange or promissory note on a Saturday; provided, also that the same shall be duly presented for payment or acceptance or collection on the next succeeding business day."

In the *Massachusetts* Act this section reads: "Every negotiable instrument is payable at the time fixed therein without grace, except that three days of grace shall be allowed upon a draft or bill of exchange made payable within the commonwealth at sight, unless there is an express stipulation to the contrary. When the day of maturity falls upon Saturday, Sunday or a holiday, the instrument is payable on the next succeeding business day which is not a Saturday. Instruments payable on demand may at the option of the holder be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday; provided, that no person receiving any check, draft, bill of exchange, or promissory note payable on demand shall be charged with any neglect or omission of duty or incur any liability for not presenting it for payment or collection on a Saturday;

provided, also, that it shall be duly presented for payment or collection on the next succeeding business day."

The first sentence of the *New Hampshire* Act reads like the first sentence of the *Massachusetts* Act.

In *Minnesota*, by amendment in 1917, ch. 204, sec. 1, the following clause was added to the section, "and if presented after 12 o'clock noon on Saturday, when that entire day is not a holiday, may at the option of the payer be then paid."

Mississippi Laws, 1920, c. 190, amended this section by omitting the third sentence, and adding, "Provided that three days of grace shall be allowed upon a draft or bill of exchange made payable within this state at sight, unless there is an express stipulation to the contrary."

The section thus amended does not seem to correspond to the statutory head-note, "Negotiable instruments—when due on Sunday, may be presented on Saturday."

In *North Carolina*, the third sentence was stricken out by amendment, Laws, 1909, c. 800, and it was enacted that "there shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

The *North Carolina* Act (Revisal of 1908, secs. 2234, 2235), provides that every negotiable instrument is payable at the time fixed therein without grace except that "all bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, and not otherwise, shall be entitled to days of grace as the same are allowed by the customs of merchants in foreign bills of exchange, payable at the expiration of a certain period after date on sight; provided, that no days of grace shall be allowed on any bill of exchange, promissory note or draft payable on demand."

The *Oregon* and *Pennsylvania* Acts were in fact (though not expressly) amended by special laws (*Oregon* Acts 1925, ch. 124; *Pa.* Laws 1927, No. 81) by adding a provision that when a legal holiday falls on Sunday, the following Monday shall be a legal holiday and such Mondays shall be regarded as Sundays for all purposes as regards the presenting for payment or acceptance, or protesting or giving notice of dishonor of negotiable instruments.

Oregon also has an act validating payment and certification of acceptances on Saturday afternoon. *Oregon* Laws, 1931, ch. 137. Other states have similar statutes.

In *Rhode Island*, by amendment in 1917, the first sentence now reads (*Gen. Laws*, 1921, sec. 3096): "Every negotiable instrument is payable at the time fixed therein without grace, except that three days of grace shall be allowed upon a draft or bill of exchange made payable within this state at sight, unless there is an express stipulation to the contrary." This supersedes the amendment of 1909, which interpolated "except sight drafts" after "every negotiable instrument."

Vermont by amendment (*Laws*, 1919, No. 82) has "following" instead of "succeeding" in the second sentence.

Vermont Laws, 1923, No. 49, which is not stated to be part of the N. I. L., enacts that nothing in any law of this state shall affect the validity of the payment, certification, or acceptance of a negotiable instrument or any other transaction of a bank or trust company between Saturday noon and midnight, if it would be valid when performed before noon.

Virginia (*Gen. Laws*, 1923, sec. 5647) embodies an amendment of 1906, so that the language of sec. 85 is like the *Massachusetts* section as far as "when that entire day is not a holiday," but does not have the *Massachusetts* proviso.

In *Washington*, by amendment in 1915, everything is omitted after the second sentence.

Sec. 86. Time—How Computed.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. Rule Where Instrument Payable at Bank.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

STATUTORY VARIATIONS

Arkansas, Laws, 1923, Act 627, sec. 13, amended sec. 87 to read: "Where the instrument, being one payable at a determinable future time and not on demand, is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon, but only in case he has funds there sufficient to meet it in full on the day it falls due."

The *Idaho* Act was amended in 1929 (Laws, ch. 220) by eliminating the word "for" in the second line and inserting in its place the words "at its option and to charge the same to."

The *Illinois*, *Kansas*, *Nebraska* and *South Dakota* Acts omit this section. *North Dakota* repealed it by Laws, 1921, c. 90.

In *Minnesota* and *Georgia* the words "shall not be" are substituted for "is."

In *Missouri*, by an amendment in 1909, and in *New Jersey*, by amendment in 1909, the following was added at the end of the section: "But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only."

Montana, see *supra*, sec. 75.

The *West Virginia* Code of 1931 inserts "not" between "is equivalent."

In regard to this section of the *Montana* Act, see notes under section 75, *supra*.

The *New Jersey* Act adds: "But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day on which the instrument is payable."

The *Virginia* Act was amended in 1928 (Acts, ch. 162) so as to add this provision: "upon presentment at any time during banking hours on the day of maturity of such instrument."

Sec. 88. What Constitutes Payment in Due Course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

STATUTORY VARIATIONS

In *Rhode Island* this section was amended by Laws of 1930, ch. 1561, adding provisions based on secs. 78 and 89 of the Uniform Fiduciaries Act

ARTICLE VII
NOTICE OF DISHONOR

Sec. 89. To Whom Notice of Dishonor Must Be Given.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. By Whom Given.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up would have a right to reimbursement from the party to whom the notice is given.

STATUTORY VARIATIONS

The *South Carolina* Act omits the words "by or" before "on behalf of any party."

Sec. 91. Notice Given By Agent.

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

STATUTORY VARIATIONS

The *Arkansas* Act reads "any agent" instead of "an agent."
The *Delaware* Act omits the word "entitled" from this section.

Sec. 92. Effect of Notice Given on Behalf of Holder.

Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. Effect Where Notice is Given By Party Entitled Thereto.

Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. When Agent May Give Notice.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice

to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

STATUTORY VARIATIONS

In *Arkansas* after the words "receipt of said notice" in the second paragraph, the rest of the section reads as follows: "himself must do so within the same time for giving notice as if the agent had been an independent holder."

Sec. 95. When Notice Sufficient.

A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

STATUTORY VARIATIONS

In *Alabama, Illinois, Kentucky, North Carolina, South Dakota* and *Wyoming* the words "the notice" are omitted after the word "vitate" in the last sentence.

The *Iowa* Act was amended in 1929 by inserting the words "the notice." (Acts, ch. 237.)

The *North Carolina* Act substitutes "it" for "the notice" in the last sentence.

The *Kentucky* Act omits the word "not" in the first line, and substitutes "written" for "verbal" in the third line.

Under the *Kentucky* Act the indorser is released unless the notice is in writing. *Grayson Co. Bank v. Elbert*, 143 Ky. 750, 137 S. W. 782.

Sec. 96. Form of Notice.

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "in all cases."

The words "or merely oral" are omitted in the *Kentucky* Act.

Sec. 97. To Whom Notice May Be Given.

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. Notice Where Party is Dead.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found.

If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

STATUTORY VARIATIONS

In *Arkansas* the words "must be sent by mail" are substituted for "may be sent" in the last paragraph.

Sec. 99. Notice to Partners.

Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Sec. 100. Notice to Persons Jointly Liable.

Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.

Sec. 101. Notice to Bankrupt.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Time Within Which Notice Must Be Given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

Sec. 103. Where Parties Reside in Same Place.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

- (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;
- (2) If given at his residence, it must be given before the usual hours of rest on the day following;
- (3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

STATUTORY VARIATIONS

Subsection 2 in the *Rhode Island* Act reads as follows: "If given at his residence it must be given before ten o'clock in the evening of the day following."

Sec. 104. Where Parties Reside in Different Places.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

- (1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.
- (2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

STATUTORY VARIATIONS

In *Kansas*, *Nebraska* and *Ohio* the words "next preceding paragraph of this section" are substituted for the words "last subdivision."

Sec. 105. When Sender Deemed to Have Given Due Notice.

Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Deposit in Post Office—What Constitutes.

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post office department.

STATUTORY VARIATIONS

The *Alabama* Act, as re-enacted in 1909, adds the clause "with proper postage affixed."

In *Arkansas* the words "when deposited," in the second line, are omitted, probably by mistake.

Sec. 107. Notice to Subsequent Party—Time of.

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. Where Notice Must Be Sent.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

- (1) Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or

- (2) If he live in one place, and have his place of business in another, notice may be sent to either place; or
- (3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. Waiver of Notice.

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Who Affected By Waiver.

Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. Waiver of Protest.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "deemed to be."
The *Montana* Act has "former" for "formal."

Sec. 112. When Notice is Dispensed With.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in Giving Notice—How Excused.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

STATUTORY VARIATIONS

This section of the *Virginia* Act is changed in the Code of 1919 by inserting the words "or other person seeking to give notice under section 5652 (section 90 of Uniform Act)" after "holder" in the first sentence.

The *West Virginia* Code of 1931 inserts "or other person entitled to give notice."

Sec. 114. When Notice Need Not Be Given to Drawer.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

- (1) Where the drawer and drawee are the same person;
- (2) Where the drawee is a fictitious person or a person not having capacity to contract;
- (3) Where the drawer is the person to whom the instrument is presented for payment;
- (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
- (5) Where the drawer has countermanded payment.

STATUTORY VARIATIONS

In subsec. 4 the *South Carolina* Act has "expect to" for "expect or."

The act as originally recommended by the commissioners used "when" in subssecs. 2 and 3, but most states have substituted "where." Variations of "when" and "where" in this section will be found in *Arizona, California, Delaware, Indiana, Maine, Minnesota, Mississippi, Montana, Nevada, New Mexico, Pennsylvania, Texas* and *Washington*.

Sec. 115. When Notice Need Not Be Given to Indorser.

Notice of dishonor is not required to be given to an indorser in either of the following cases:

- (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
- (2) Where the indorser is the person to whom the instrument is presented for payment;
- (3) Where the instrument was made or accepted for his accommodation.

Sec. 116. Notice of Nonpayment Where Acceptance Refused.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. Effect of Omission to Give Notice of Nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

STATUTORY VARIATIONS

The *Florida* Act, by evident error, omits the words "of dishonor" after "notice."

The *Wisconsin* Act adds this inconsistent provision, "but this shall not be construed to revive any liability discharged by such omission." (See *Dunn v. O'Keefe*, 5 M. & S. 282.)

Sec. 118. When Protest Need Not Be Made—When Must Be Made.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

STATUTORY VARIATIONS

This section has been amended in the *District of Columbia*, in 1920, 41 Stat. at L. 569, by the addition of a provision making the original protest of a notary public *prima facie* evidence of the facts therein contained.

In *Vermont* the following words are added to the section: "But the provisions of this section shall not be held to dispense with demand and notice of dishonor as provided by secs. 71 and 90."

The *Virginia* Act is changed in the Code of 1919 by the addition of a clause giving *prima facie* effect to the notary's certificate of protest.

The *West Virginia* Act contains a similar addition to this section.

ARTICLE VIII

DISCHARGE OF NEGOTIABLE INSTRUMENTS

Sec. 119. Instrument—How Discharged.

A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By any other act which will discharge a simple contract for the payment of money;
- (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

STATUTORY VARIATIONS

Illinois omits subsec. 4. Nevertheless, in *Gorin v. Wiley*, 215 Ill. App. 541, it was stated that parties primarily liable on a negotiable instrument were discharged by any act which would discharge a simple contract for the payment of money such as payment, release or the like, and a maker was held to be discharged by a novation.

North Dakota Laws, 1921, c. 91, which is not stated to be part of the N. I. L., make a renewal note illegal and invalid, unless the renewed note is returned or the words "Renewed note," are written or printed across it.

The *South Carolina* Act substitutes "the other" for "any other" in subsec. 4.

The *Virginia* Act is changed in the Code of 1919 by omitting subsec. 4.

The *West Virginia* Code of 1931 omits subsec. 4.

Sec. 120. When Persons Secondarily Liable on—Discharged.

A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

STATUTORY VARIATIONS

The *Arkansas* Act substitutes "money" for "payment" in subsec. 4.

The *Georgia* Act substitutes "an" for "any" in subsec. 1.

The *Illinois* Act omits subsec. 3.

The *Illinois* Act adds to subsec. 5 (Illinois subsec. 4) the words "or unless the principal debtor be an accommodating party."

The *Illinois* Act substitutes in line one of subsec. 6 (Illinois subsec. 5) the word "an" for "any" and interpolates "in favor of the principal debtor" after "agreement" in line one and interpolates "prior or subsequent" after "assent" in line three and adds "or unless the principal debtor be an accommodating party" at the end of the subsection.

The *Kentucky* Act adds the words "in the original instrument" at the end of subsec. 6.

The *Maryland*, *New York* and *Oklahoma* Acts omit the words "unless made with the assent of the party secondarily liable, or" in subsec. 6. But the *Maryland* Act was amended in 1927 (Laws, ch. 490) so as to make this section conform exactly with Uniform Act.

The *Missouri* Act adds to subsec. 3, "except when such discharge is had in bankruptcy proceedings." See the discussion of *Highleyman v. McDowell Motor Co.*, 202 Mo. App. 221, 216 S. W. 52.

The *Wisconsin* Act interpolates a new subsection as follows: "4a. By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes."

The *Wisconsin* Act interpolates the words "prior or subsequent" after "assent" in line three of subsec. 6 and adds the words "or unless he is fully indemnified" to the subsection; and also adds a new subsec. 4a, providing for discharge when collateral is applied by the holder to other purposes.

The *West Virginia* Code of 1931 omits subssecs. 3, 5, and 6, and adds, "This section does not include the rules governing the discharge of a surety or party secondarily liable because of such secondary liability," and substitutes "party to" for "person secondarily liable on." See *Marshall County Bank v. Fonner*, 113 W. Va. 451, 168 S. E. 375; *McDonald v. Stewart*, 110 W. Va. 280, 158 S. E. 177.

Sec. 121. Right of Party Who Discharges Instrument.

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

- (1) Where it is payable to the order of a third person, and has been paid by the drawer; and
- (2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

STATUTORY VARIATIONS

In the *Arkansas* Act, the last word of the section reads "accommodater," an evident misprint.

Sec. 122. Renunciation By Holder.

The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. Cancellation—Unintentional—Burden of Proof.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Sec. 124. Alteration of Instrument—Effect of.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

STATUTORY VARIATIONS

The *Illinois* Act interpolates "fraudulently or" (probably "and" was intended) before "materially" in line one and interpolates "by the holder" after "altered" in the same line.

In *South Dakota* the words "by the holder" are interpolated after "altered" in the first paragraph.

The *West Virginia* Code of 1931 inserts after "altered" in the first line, "by the holder or by some one acting with the authority or consent of the holder."

The *Wisconsin* Act interpolates "orally or in writing" after "assented," in the third line.

Sec. 125. What Constitutes a Material Alteration.

Any alteration which changes:

- (1) The date;
- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relations of the parties;
- (5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.

STATUTORY VARIATIONS

The *South Dakota* Act changes subsec. 4 of this section to read: "The number and the relations of the parties."

The *Texas* Act has "of" instead of "or" in the fifth subsection.

TITLE II

BILLS OF EXCHANGE

ARTICLE I

FORM AND INTERPRETATION

Sec. 126. Bill of Exchange Defined.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 127. Bill Not An Assignment of Funds in Hands of Drawee.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. Bill Addressed to More Than One Drawee.

A bill may be addressed to two or more drawees jointly whether they are partners or not; but not to two or more drawees in the alternative or in succession.

STATUTORY VARIATIONS

The *Wisconsin* Act omits the words "or in succession."

Sec. 129. Inland and Foreign Bills of Exchange.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Sec. 130. When Bill May Be Treated as Promissory Note.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

STATUTORY VARIATIONS

The *Wisconsin* Act omits the words "or a person" in line two.

Sec. 131. Referee in Case of Need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

STATUTORY VARIATIONS

The *Montana* Act has "drawee" for "drawer" in the first line of this section.

ARTICLE II

ACCEPTANCE

Sec. 132. Acceptance—How Made, Etc.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

STATUTORY VARIATIONS

The *Indiana* Act omits "any" in the third sentence.

Sec. 133. Holder Entitled to Acceptance on Face of Bill.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Sec. 134. Acceptance by Separate Instrument.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

STATUTORY VARIATIONS

The *Illinois*, *South Dakota* and *Wisconsin* Acts omit the words "to whom it is shown and" in the third line.

The *West Virginia* Code of 1931 omits "to whom it is shown and."

Sec. 135. Promise to Accept—When Equivalent to Acceptance.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts insert "or after" after "before" in the first line.

Sec. 136. Time Allowed Drawee to Accept.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

Sec. 137. Liability of Drawee Retaining or Destroying Bill.

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts omit the provisions of this section. See *Mitchell Livestock Auction Co. v. Bryant State Bank* (S. D.), 275 N. W. 262.

The *Pennsylvania* amendment to this section (Laws of 1909, Act 169, April 27, 1909) adds: "Provided, That the mere retention of such bill by the drawee, unless its return has been demanded, will not amount to an acceptance: And provided further, That the provisions of this section shall not apply to checks."

This amendment restores the former rule of construction put upon the old statutes from which sec. 137 is copied and makes a demand for the return of the bill and a refusal necessary in order to constitute an acceptance.

In *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080, it was held under the Pennsylvania Amendment of 1909 that a bank which has paid a check drawn upon it without accepting it is not an acceptor in the sense that it is precluded by sec. 62 from disputing the genuineness of the drawer's signature. See the later case of *U. S. Nat. Bank v. Union Nat. Bank*, 268 Pa. 147, 110 Atl. 792. See also *Wisner v. First Nat. Bank of Gallitzin*, 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N.S.) 1266.

The *West Virginia* Code of 1931 adopted the amendment suggested by Professor J. D. Brannan in the fourth edition of his book, p. 843.

The *Wisconsin* Act adds "Mere retention of the bill is not an acceptance." See *Westberg v. Chicago Lumber Co.*, 117 Wis. 589, 94 N. W. 572.

Sec. 138. Acceptance of Incomplete Bill.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is over-due, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

STATUTORY VARIATIONS

In *Illinois* the word "payable" is inserted between "bill" and "accepted" in the last clause, an evident error.

The *Texas* Act has "drawee" instead of "drawer" in the first line, an obvious misprint.

Sec. 139. Kinds of Acceptances.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

STATUTORY VARIATIONS

The *Indiana* Act begins "an acceptor," an evident error.

Sec. 140. What Constitutes a General Acceptance.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. Qualified Acceptance.

An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, an acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

STATUTORY VARIATIONS

Arkansas omits the word "not" in the last line, an obvious error in engrossing.

The *Louisiana* Act has "condition" for "conditional" in subsec. 1; an obvious misprint.

Sec. 142. Rights of Parties as to Qualified Acceptance.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

ARTICLE III

PRESENTMENT FOR ACCEPTANCE

Sec. 143. When Presentment for Acceptance Must Be Made.

Presentment for acceptance must be made:

- (1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (2) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "in any other case" in subsec. 1.

The *South Dakota* Act adds the words "other than the drawee" at the end of the section.

The *District of Columbia* Act inserts after this section a provision attempting to regulate negotiable instruments as payment of debts. District of Columbia Code of 1929, Title 22, sec. 223.

Sec. 144. When Failure to Present Releases Drawer and Indorser.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

STATUTORY VARIATIONS

The *Alabama* Act has "drawee" for "drawer," an obvious clerical error.

Sec. 145. Presentment—How Made.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

- (1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
- (2) Where the drawee is dead, presentment may be made to his personal representative;
- (3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

STATUTORY VARIATIONS

The *Alabama* Act has "drawer" for "drawee," an obvious clerical error. *New Mexico* has "drawer" for "drawee" in the third line of this section.

Sec. 146. On What Days Presentment May Be Made.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the portion of the first sentence beginning with the words "under the provisions" to the end of the section.

The *Arizona*, *Kentucky* and *Wisconsin* Acts omit the last sentence.

The *Colorado* Act substitutes for the last sentence the following: "When any day is in part a holiday, presentment for acceptance may be made during reasonable hours of the part of such day which is not a holiday."

This section of the *Massachusetts* Act, as incorporated in the General Laws of 1921, omits the second sentence of the section and substitutes the following: "And no person receiving any draft or bill of exchange payable on demand shall be charged with any neglect or omission of duty or incur any liability for not presenting it for acceptance on a Saturday, provided that it shall be duly presented for acceptance on the next succeeding business day."

In *Mississippi* the last sentence was stricken out by Laws, 1920, c. 191. The amendment does not seem to correspond to the statutory headnote, "Bills due on Sunday may be presented on Saturday." See *Mississippi* amendment to sec. 85, *supra*.

In *North Carolina* the last sentence was stricken out by amendment, Laws, 1909, c. 800, and it was enacted that "there shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

In *Washington* the last sentence was stricken out by Laws, 1915, c. 173.

Sec. 147. Presentment Where Time is Insufficient.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

STATUTORY VARIATIONS

Alabama reads, "presenting the bill of acceptance" for "presenting the bill for acceptance." It also has "discharge the drawees" for "discharge the drawers," an obvious misprint.

Sec. 148. Where Presentment is Excused.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

- (1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;
- (2) Where, after the exercise of reasonable diligence, presentment cannot be made;
- (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

STATUTORY VARIATIONS

This section of the *Iowa* Act was amended in 1929 (Acts, ch. 237) by inserting the word "other" before the final word "ground."

The *Kentucky*, *North Carolina* and *South Dakota* Acts omit the word "other" in subsec. 3.

Louisiana in subsec. 1 has "drawer" for "drawee."

Sec. 149. When Dishonored By Nonacceptance.

A bill is dishonored by nonacceptance:

- (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or
- (2) When presentment for acceptance is excused and the bill is not accepted.

STATUTORY VARIATIONS

The *North Carolina* Act, by evident error, substitutes "executed" for "excused" in subsec. 2.

Sec. 150. Duty of Holder Where Bill Not Accepted.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

STATUTORY VARIATIONS

The *South Dakota* Act, by evident error, changes the word "accepted" in the first clause to "presented."

Sec. 151. Rights of Holder Where Bill Not Accepted.

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

STATUTORY VARIATIONS

The *South Dakota* Act inserts a new section, § 1835-A, providing it is due diligence for a collecting bank to forward items directly to the drawee.

ARTICLE IV**PROTEST****Sec. 152. In What Cases Protest Necessary.**

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

STATUTORY VARIATIONS

North Dakota by amendment, Laws, 1923, c. 259, adds at the end of the last sentence, "and if the same is protested no charge therefor shall be made to any party to the instrument."

This section of the *Wisconsin* Act was amended in 1901 (ch. 41) by adding a provision that every notary protesting any bill or note shall give notice in writing to the drawer, maker and each indorser, and shall make a certificate of the presentment, demand, refusal and protest and the names and addresses of the parties notified, and shall keep a record of the certificate, the certificate or record to be presumptive evidence of facts stated therein; but want of certificate or record, or both, shall not invalidate the protest or notice which may be proved by other competent evidence.

Sec. 153. Protest—How Made.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

- (1) The time and place of presentment;
- (2) The fact that presentment was made and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

STATUTORY VARIATIONS

The *Alabama* Act in subsec. 3 reads "reason of protesting the bill."

Sec. 154. Protest—By Whom Made.

Protest may be made by:

- (1) A notary public; or
- (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

STATUTORY VARIATIONS

Alabama in subsec. 2 inserts "or" before "in."

In *Arkansas* and in *Washington*, "responsible" was substituted for "respectable" in subsec. 2, but later in *Washington*, Remington's Comp. Statutes of 1915 and 1922, "respectable" was used with "responsible" following it in parentheses.

In the *Iowa* Act the word "reputable" is substituted for "respectable."

This section of the *Vermont* Act has been amended by eliminating subsec. 2 (Gen. Laws 1917, par. 3023).

Some of the states have "creditable" for "credible."

Sec. 155. Protest—When to Be Made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. Protest—Where Made.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or

residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

STATUTORY VARIATIONS

Alabama substitutes "other" for "further."

Sec. 157. Protest Both for Nonacceptance and Nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Sec. 158. Protest Before Maturity Where Acceptor Insolvent.

Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. When Protest Dispensed With.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. Protest Where Bill is Lost, Etc.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V

ACCEPTANCE FOR HONOR

Sec. 161. When Bill May Be Accepted for Honor.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn;

and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. Acceptance for Honor—How Made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. When Deemed to Be An Acceptance for Honor of the Drawer.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. Liability of the Acceptor for Honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

STATUTORY VARIATIONS

Alabama has "acceptance" for "acceptor."

Sec. 165. Agreement of Acceptor for Honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

STATUTORY VARIATIONS

Alabama has "acceptance" for "acceptor."

The 1928 *Arizona* Act changes "shall not have" and "shall have" to "has not" and "has" respectively.

Arkansas omits the word "to" in the last line.

Texas has "presentation" instead of "presentment."

Sec. 166. Maturity of Bill Payable After Sight—Accepted for Honor.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

Sec. 167. Protest of Bill Accepted for Honor, Etc.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be pro-

tested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

STATUTORY VARIATIONS

Alabama reads "accepted in honor" for "accepted for honor."

In the *Kentucky* Act the word "or" is used instead of "for" after "accepted"; an evident misprint.

Sec. 168. Presentment for Payment to Acceptor for Honor —How Made.

Presentment for payment to the acceptor for honor must be made as follows:

- (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity;
- (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "in section 104" to "herein for the giving of notice of dishonor for a negotiable instrument."

The *Arkansas* Act refers to section 102 instead of section 104.

In *North Carolina* the words "in this chapter specified" are substituted for "section one hundred and four" in subsec. 2.

Sec. 169. When Delay in Making Presentment is Excused.

The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "of section 81" to "of this chapter excusing delay in presentment for payment."

The *Florida* Act contains this section changed to read as follows: "Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence."

In *Ohio* this section is worded exactly like section 81. There is no reference to the acceptor for honor, or referee in case of need.

Sec. 170. Dishonor of Bill by Acceptor for Honor.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

ARTICLE VI

PAYMENT FOR HONOR

Sec. 171. Who May Make Payment for Honor.

Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any per-

son liable thereon or for the honor of the person for whose account it was drawn.

STATUTORY VARIATIONS

The *Illinois* Act has "accepted" for "protested" in the first line.

Sec. 172. Payment for Honor—How Made.

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Sec. 173. Declaration Before Payment for Honor.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

STATUTORY VARIATIONS

The *North Dakota* Act erroneously substitutes "payee" for "payer."

Sec. 174. Preference of Parties Offering to Pay for Honor.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Effect on Subsequent Parties Where Bill is Paid for Honor.

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where Holder Refuses to Receive Payment Supra Protest.

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. Rights of Payer for Honor.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII
BILLS IN A SET

Sec. 178. Bills in Sets Constitute One Bill.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

Sec. 179. Right of Holders Where Different Parts Are Negotiated.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. Liability of Holder Who Indorses Two or More Parts of a Set to Different Persons.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. Acceptance of Bills Drawn in Sets.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. Payment By Acceptor of Bills Drawn in Sets.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Effect of Discharging One of a Set.

Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

STATUTORY VARIATIONS

The *Wisconsin* Act here inserts two sections, entitled "Damages on Bills," as follows:

"Sec. 118-59. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly

protested for nonacceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent. upon the contents thereof, together with interest on the said contents to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

"Sec. 118-60. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay said bill with legal interest, according to its tenor and five per cent. damages, together with costs and charges of protest."

TITLE III

PROMISSORY NOTES AND CHECKS

ARTICLE I

Sec. 184. Promissory Note Defined.

A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

STATUTORY VARIATIONS

California, Laws, 1923, c. 98, amends this section by inserting after the first sentence: "but the negotiability of a promissory note otherwise negotiable in form, secured by a mortgage or deed of trust upon real or personal property shall not be affected or abridged by reason of a statement therein that it is so secured, nor by reason of the fact that said instrument is so secured nor by any conditions contained in the mortgage or deed of trust securing the same."

The amended section is constitutional. *Bank of Balboa v. Benneson*, 122 Cal. App. 121, 9 P. (2d) 540.

The *Nevada* Act was amended in 1933 to read as the *California* does.

The *Georgia* Act inserts "made" after "note" in the first line, and inserts the words "or in cotton or other articles of value" after the words "a sum certain in money," and adds to this section: "If it is made payable in articles of value other than money, and payment is not punctually made, the holder may recover the value of such articles at the time the note was due, at the place where it was payable, if a specific place is mentioned, otherwise at the place where it was made, with lawful interest thereon." See the *Georgia* form of sec. 1(2).

Wisconsin omits this section.

Sec. 185. Check Defined.

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of

this act applicable to a bill of exchange payable on demand apply to a check.

STATUTORY VARIATIONS

The *Arizona* Act substitutes "relating" for "of this act applicable."

The *Illinois* Act inserts "are" between "act" and "applicable" in the second sentence.

Sec. 186. Within What Time a Check Must Be Presented.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts interpolate "and notice of dishonor given to the drawer as provided for in the case of bills of exchange" after the word "issue" in line two.

In *Maine* and *Montana* independent statutes were adopted in 1923 providing that a bank may refuse payment of a check not presented for payment within a year from its date (Me. Laws 1923, ch. 150, § 2; Mont. Laws 1923, ch. 106).

This section of the *Virginia* Act is changed in the Code of 1919 by adding provisions taken from Laws 1908, ch. 275, to the effect that the death of the drawer shall not operate as a revocation of the authority of the bank upon which it is drawn to pay the check if it be presented within two weeks from the date of drawer's death; that the bank shall retain any deposits of the deceased for two weeks after knowledge of his death and after paying checks presented within said two weeks, shall pay the residue to persons entitled to it by law.

The *West Virginia* Code of 1931 adds, "Failure of the holder to give the drawer due notice of dishonor will discharge him from liability thereon only to the extent of the loss caused by the delay."

Sec. 187. Certification of Check—Effect of.

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

STATUTORY VARIATIONS

This section of the *Virginia* Act is changed in the Code of 1919 by adding thereto the following clause taken from Laws 1910, ch. 346: "and the check shall be charged to the drawer's account."

Sec. 188. Effect Where the Holder of Check Procures it to Be Certified.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. When Check Operates as An Assignment.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

TITLE IV

GENERAL PROVISIONS

ARTICLE I

Sec. 190. Short Title.

This act shall be known as the Uniform Negotiable Instruments Law.

STATUTORY VARIATIONS

In the original act the word Uniform was omitted but this form is now recommended by the Commission on Uniform Laws and has been adopted in the following states: *Arkansas, Delaware, Idaho, Indiana, Maine, Minnesota, Mississippi, Tennessee and Texas.*

In *Arizona, California, Connecticut, District of Columbia, Kentucky, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia and Wisconsin*, this section is omitted either in the original act or in revisions. In some states "may be cited" is used for "shall be known."

Sec. 191. Definitions and Meaning of Term.

In this act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the last definition, of "written."
Arkansas substitutes "all" for "an" in the definition of "Acceptance," an obvious clerical error.

The *Georgia* Act substitutes "of" for "or," in the definition of "Acceptance," an obvious clerical error.

The *Massachusetts* Act changes the definition of "bank" by omitting the words "or association of persons." It also changes the definition of "instrument" to read as follows: "'Instrument' and 'negotiable instrument' shall have the same meaning and shall not include a bill of lading, warehouse receipt or certificate of stock."

In *Rhode Island* this section was amended by Laws 1930, ch. 1561, adding definition of "person" as follows: "'person' includes a corporation, partnership or other association or two or more persons having a joint or common interest."

It also adds a definition of "Fiduciary" and "Principal."

The *South Dakota* Act omits from the definition of "bank" the words "whether incorporated or not." The definitions of "person" and "written" are omitted in the *South Dakota Revised Code of 1919*.

Sec. 192. Person Primarily Liable on Instrument.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

STATUTORY VARIATIONS

The *Kansas* Act omits the last sentence.

Sec. 193. Reasonable Time—What Constitutes.

In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

STATUTORY VARIATIONS

The *New Hampshire* Act adds the following exception: "except as otherwise specifically provided by section 71 of this chapter."

The *South Dakota* Act makes an additional provision as follows:

"Section 1895. A. The apparent maturity of a bill of exchange, payable at sight, or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Section 1896. B. The apparent maturity of a promissory note, payable at sight, or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date."

Sec. 194. Time—How Computed—When Last Day Falls on Holiday.

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

STATUTORY VARIATIONS

Massachusetts prefixes the words, "Unless otherwise provided."

In *North Carolina* the Revisal of 1908 omits this section from the Act, but it is to be found as sec. 2839 in the chapter entitled, "Sunday and Holidays."

South Dakota omits this section.

Sec. 195. Application of Act.

The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.

STATUTORY VARIATIONS

The *Alaska, Arizona, District of Columbia, Georgia, Idaho, Massachusetts, Nebraska* and *West Virginia* Acts omit this section.

As the Act was originally adopted in *Florida, Laws, 1897*, chapter 4524, this section was included, but in the General Statutes of 1906 and in the Compiled Laws of 1914 and in Rev. Gen. Stat., 1920, it was omitted.

Tennessee and *Michigan* omit this section in their latest compilations.

In *Minnesota* the following words were added to the end of the section: "Nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of sec. 2747, Revised Laws, 1905 (sec. 6015, General Statutes, 1913)."

South Dakota adds at the end of the Act the following: "Nothing in this Act contained shall be construed in any manner repealing chapters 128, 140 and 141 of the Laws of 1905 and chapter 74 of the Laws of 1907." These chapters refer to notes given for insurance premiums or assessments, for lightning rods, patent rights and the like, for medical services or as to what shall be considered due diligence in the collection of a check or draft.

Sec. 196. Cases Not Provided for in Act.

In any case not provided for in this act the rules of the law merchant shall govern.

STATUTORY VARIATIONS

The *Kentucky* and *South Dakota* Acts omit this section.

In the following states this section reads: "The rules of law and equity including the law merchant": *Arkansas, Delaware, Idaho, Maine, Minnesota, Mississippi, Tennessee, Texas, Vermont* and *West Virginia*.

The *California Act*, as originally enacted, contained the words "law and equity including." But by amendment in 1921, these words were eliminated (Laws 1921, ch. 94).

Sec. 197. Repeals.

Of the laws enumerated in the schedules hereto annexed that portion specified in the last column is repealed.

STATUTORY VARIATIONS

The form of this section differs in the various states.

Sec. 198. Time When Act Takes Effect.

This chapter shall take effect on * * *.

STATUTORY VARIATIONS

A number of the states add sections defining public holidays; making provisions as to notes given for a patent right; authorizing a bank to send a collection item direct to the drawee, and to receive the drawee's draft in payment; fixing the damages on protested bills; and regulating the liability of a bank to a depositor for mistakenly dishonoring checks.

New York, by amendment, adds the following section, number 326 (Laws, 1904, c. 287): "No bank shall be liable to a depositor for the payment by it of a forged or raised check, unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or raised."

Similar provisions have been adopted in some other states, but not as amendments to the Negotiable Instruments Law.

§ 393. **Chart of legal holidays.**—In the chart on the following page are listed the legal holidays for the various states. This information is important to the notary public in connection with his duties under the Negotiable Instruments Law. Under Section 85 of the act, when the day of maturity falls on a holiday, the instrument becomes payable on the next succeeding business day. The fact that in some states Saturday afternoon is a half-holiday is recognized in both Sections 85 and 146 of the Negotiable Instruments Law; and Section 194 is a general provision that when the day, or the last day for doing any act falls on a holiday, the act may be done on the next succeeding business day.

CHAPTER VIII: COMMISSIONER OF DEEDS

APPOINTMENT AND POWERS

SECTION

- 394. Appointment.
- 395. Oath and seal.

SECTION

- 396. Powers.

STATUTORY PROVISIONS

- | | |
|---------------------|----------------------|
| 397. Alabama. | 421. Nebraska. |
| 398. Arizona. | 422. Nevada. |
| 399. Arkansas. | 423. New Hampshire. |
| 400. California. | 424. New Jersey. |
| 401. Colorado. | 425. New Mexico. |
| 402. Connecticut. | 426. New York. |
| 403. Delaware. | 427. North Carolina. |
| 404. Florida. | 428. North Dakota. |
| 405. Georgia. | 429. Ohio. |
| 406. Idaho. | 430. Oklahoma. |
| 407. Illinois. | 431. Oregon. |
| 408. Indiana. | 432. Pennsylvania. |
| 409. Iowa. | 433. Rhode Island. |
| 410. Kansas. | 434. South Carolina. |
| 411. Kentucky. | 435. South Dakota. |
| 412. Louisiana. | 436. Tennessee. |
| 413. Maine. | 437. Texas. |
| 414. Maryland. | 438. Utah. |
| 415. Massachusetts. | 439. Vermont. |
| 416. Michigan. | 440. Virginia. |
| 417. Minnesota. | 441. Washington. |
| 418. Mississippi. | 442. West Virginia. |
| 419. Missouri. | 443. Wisconsin. |
| 420. Montana. | 444. Wyoming. |

APPOINTMENT AND POWERS

§ 394. **Appointment.**—A commissioner of deeds is a person authorized by the laws of a foreign state to perform certain duties in the state or country where he resides.¹ The statutes of most of the states expressly provide for such officers. They are appointed by the governor of the state for which they are to act, though in a few of the states the appointment of such commissioners must be by and with the advice and consent of the senate or the governor's council. The number to be appointed is generally left to the discretion of the governor.

¹ Thus, a resident of Ohio may be appointed by the governor of Illinois to take an acknowledgment, administer an oath, or perform some other duty in Ohio, for use in Illinois.

Commissioners are appointed ordinarily for a term of years, varying from two to seven; and in a few states, during the pleasure of the governor. In North Dakota and Vermont, a bond in the amount of \$500.00 is required. A commissioner usually is required to pay to the secretary of state issuing the commission a fee prescribed by the law of that state. The amount of such fees ranges from \$1.00 to \$15.00.²

§ 395. **Oath and seal.**—Many of the states require commissioners of deeds to take an oath of office, for the faithful performance of their duties. They also are required to procure an official seal in some states. The form of such seal, as prescribed by statutes, frequently consists of the following: the words “Commissioner of Deeds for the State of ——” (the state appointing him), the name of the commissioner, and the name of the state in which he has authority to act. Before entering upon the duties of his office, the commissioner must send to the secretary of state for which he is appointed his oath of office, an impression of his seal, and his signature.

§ 396. **Powers.**—Commissioners are expressly authorized by the statutes of the several states to administer oaths, take depositions and affidavits, take acknowledgments or proofs of the execution of deeds, leases, mortgages, or other written instruments, to be used in evidence or recorded in the state from which the commission has been issued. If appointed for a foreign country, a commissioner may certify to the existence of a patent, record or other document recorded in a public office or under official custody in such country, and to the correctness of a copy thereof.

Frequently there are statutory provisions regulating the fees which commissioners may charge for their ser-

² See statutory provisions for each state, § 397 et seq.

vices in connection with administering oaths or taking depositions or acknowledgments.

All acts of a commissioner in the state for which he is appointed should be authenticated by his official seal and signature.

In each of the following sections, there is a brief summary of the statutory provisions in the several states relating to commissioners of deeds. Specific references to the state laws will be found in the table at the end of this chapter.

STATUTORY PROVISIONS

§ 397. *Alabama.*—*Term:* four years. *Commission fee:* \$1.00. *Powers:* to take and certify depositions, acknowledgments, proof of conveyance, and affidavits, for record in this state by persons outside. Must take oath of office. *Seal:* must be procured to authenticate official acts. (Code, 1928, § 153)

§ 398. *Arizona.*—*Term:* four years. *Commission fee:* \$2.50. *Fees:* same as allowed a notary public of the state. *Powers:* to administer oaths, take depositions and acknowledgments or proofs of instruments relating to real estate, proofs of heirship to property, contracts and letters of attorney. *Seal:* "Commissioner of Deeds for the State of Arizona," and name of state and county or district of commissioner's residence. Oath of office must be filed with secretary of state. (Revised Code, 1928, § 2485)

§ 399. *Arkansas.*—*Term:* pleasure of governor. *Commission fee:* \$5.00. *Fees:* same as notary public. *Powers:* to administer oaths, take depositions and affidavits; take proof and acknowledgment of deeds or other instruments of writing, under seal, to be used or recorded in the state. *Seal:* no device prescribed. Oath of office must be filed with secretary of state. (Statutes, 1937, §§ 1671 to 1673)

§ 400. **California.**—*Term:* four years. *Commission fee:* \$5.00. *Fees:* acknowledgments or proofs of deeds, first signature, \$1.00; each additional signature, 50¢; certificate and seal, \$1.00; drawing affidavit, 30¢ per folio; fees same as notary public. *Powers:* to administer oaths, take depositions, take acknowledgments or proofs of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record. *Seal:* state arms, "Commissioner of Deeds for the State of California," and name of state for which commissioned. (Political Code, §§ 811 to 817)

§ 401. **Colorado.**—*Term:* pleasure of governor. *Commission fee:* \$5.00. *Powers:* may take acknowledgments of all deeds, contracts, and papers of any kind needing acknowledgment; may administer oaths; may take and certify depositions to be used in any court in Colorado. If residing in foreign country, can certify the official character, signature, or seal of any officer within his district who is authorized to take acknowledgments or declarations under oath. *Fees:* same as are allowed to notaries public of Colorado, for like services. Oath must be filed with secretary of state. (Code [Courtright], 1933, §§ 4894 to 4898)

§ 402. **Connecticut.**—*Term:* five years. *Commission fee:* \$6.00. *Fees:* same as state of residence (not prescribed). *Powers:* to take acknowledgments of deeds, mortgages, etc., or of any instruments required by the laws of the state to be acknowledged; to administer oaths, take depositions, and to examine witnesses relating to any case pending or to be brought in any court of the state. Affidavit must be filed with the governor's secretary. (General Statutes, 1930, §§ 59 to 61)

§ 403. **Delaware.**—*Term:* seven years. *Commission fee:* \$10.00. *Fees:* same as notaries. *Powers:* to admin-

ister oaths, take depositions and affidavits, and to take acknowledgments and proofs of deeds and other instruments to be recorded in the state, and take private examination of any married woman, party to a deed. *Seal:* must show name, official title, date of appointment. (Revised Code, 1935, §§ 1140 to 1143)

§ 404. **Florida.**—*Term:* four years. *Commission fee:* \$1.00. *Fees:* certificate and seal, \$1.00. *Powers:* to take acknowledgments or proofs of deeds, mortgages, and other writings relating to lands, etc.; contracts, letters of attorney, and other writing under seal, to be used or recorded in the state; to administer oaths and take affidavits. Oath must be filed with secretary of state. (Compiled General Laws, 1927, §§ 486 to 489)

§ 405. **Georgia.**—*Commission fee:* \$5.00. *Powers:* to take acknowledgments or proofs of deeds or other conveyances of property, of depositions, of powers of attorney, of wills of persons devising or bequeathing property in the state, and of other instruments in writing required to be attested, and to administer oaths. (Code, 1933, §§ 71 to 301)

§ 406. **Idaho.**—*Term:* four years. *Commission fee:* \$5.00. *Fees:* each acknowledgment and seal, 50¢; same fees as allowed to a notary public in Idaho. *Powers:* can administer oaths, take depositions and affidavits to be used in Idaho, and take acknowledgments of deeds to be recorded in same, and authenticate with his seal and certify all his official acts. *Seal:* "Commissioner for State of Idaho" and name of commissioner. Oath must be filed with secretary of state. (Code, 1932, §§ 50-201 to 50-207)

§ 407. **Illinois.**—*Term:* four years. *Commission fee:* \$5.00. *Powers:* to take relinquishments of dower of married women, acknowledgment or proof of the execution

of any deed or other conveyance or lease of any land in the state, any contract, assignment, transfer, letter of attorney, satisfaction of judgment or mortgage, or of any other instrument or writing, under seal or not, to be used or recorded in the state; to administer oaths, take depositions, and, when appointed in a foreign country, to certify to the official character, signature, or seal of any officer in his district who is authorized to take acknowledgments or declarations under oath. *City or county seal*: "A Commissioner for the State of Illinois," commissioner's name, name of state or territory, and city or county. *Fees*: same as notaries. (Revised Statutes, 1937, c. 26, §§ 1 to 9)

§ 408. **Indiana**.—*Term*: four years. *Commission fee*: \$5.00. *Fees*: certificate and seal, 50¢; taking depositions, etc., per 100 words, 25¢; administering oaths, 25¢; each protest, 50¢; each notice of same, 25¢; each 100 words in copying or recording same, 10¢; acknowledgments and seal, 25¢. *Powers*: to take depositions and affidavits, acknowledgments of deeds and other instruments proper to be recorded in this state. (Statutes [Burns], 1933, §§ 49-3601 to 49-3604)

§ 409. **Iowa**.—*Term*: three years. *Commission fee*: \$15.00. *Fees*: same as prescribed for notary public. *Powers*: to administer oaths, take depositions and affidavits; to take acknowledgments or proofs of deeds and other instruments to be recorded and used in the state. *Seal*: commissioner's name, "Commissioner for Iowa," and name of state of commissioner's residence in full. (Code, 1935, §§ 1180 to 1196)

§ 410. **Kansas**.—*Term*: pleasure of governor. *Commission fee*: \$1.00. *Fees*: same as state of residence (not prescribed). *Powers*: to administer oaths, take acknowledgments of deeds and other instruments, depositions and affidavits. (General Statutes, 1935, §§ 53-201 to 53-203)

§ 411. **Kentucky.**—*Term:* two years. *Commission fee:* \$5.00. *Fees:* same as state of residence (not prescribed). *Powers:* to take acknowledgments or proofs of any instrument of writing (except wills) required by law to be recorded; to take acknowledgments of married women, administer oaths, and take depositions. (Statutes [Carroll], 1938, §§ 389 to 391)

§ 412. **Louisiana.**—*Fees:* not prescribed; following are charged, and not objected to by state authorities: acknowledging any instrument of writing, with seal, \$5.00; depositions, including proces verbal and seal, for each witness, \$5.00; swearing each witness, \$1.00. *Powers:* to administer oaths, take depositions and affidavits, acknowledgments and proofs of deeds or other instruments of writing of persons residing in same state as commissioner, except when taking testimony under a commission; and to authenticate and attest signatures, official capacity and official acts of any judge, justice, or other public officer of the state of the commissioner's residence. (General Statutes [Dart], 1932, §§ 2012 to 2023)

§ 413. **Maine.**—*Term:* during pleasure of the governor. *Commission fee:* \$5.00. *Fees:* not prescribed. *Powers:* may take acknowledgments of all deeds, papers, etc., to be used or recorded in Maine; may administer oaths; take and certify depositions to be used in any court of the state. (Revised Statutes, 1930, c. 87, §§ 24 to 27)

§ 414. **Maryland.**—*Term:* two years. *Commission fee:* \$10.00. *Powers:* to take acknowledgment and proof of deed or other conveyance or lease of any lands, tenements, or hereditaments in the state, or any contract, letter of attorney, or any other writing under seal, to be used and recorded in the state, and to administer oaths. (Code [Bagby], 1924, Art. 18, §§ 1 to 9)

§ 415. **Massachusetts.**—*Term:* three years. *Commission fee:* \$5.00. *Fees:* administering oaths and certifying same under seal, \$1.00; acknowledgments and certifying same under seal, \$1.00; depositions, etc., for each written page, 50¢; administering oath, \$1.00; authenticating, sealing up, and directing each deposition, \$1.00; further allowance in the discretion of court; other fees same as justice of the peace. *Powers:* to administer oaths, take depositions, affidavits, acknowledgments of deeds and other instruments to be used in the state, and the proof of deeds, when the grantor refuses to acknowledge the same. (Annotated Laws, 1933, c. 222, §§ 4 to 6)

§ 416. **Michigan.**—*Term:* five years. *Commission fee:* \$3.00. *Powers:* to take depositions, to take acknowledgments and proof of deeds and other instruments in writing under seal, and to administer oaths, to be used or recorded in the state. (Compiled Laws, 1929, §§ 13339 to 13341)

§ 417. **Minnesota.**—*Term:* pleasure of governor. *Fees:* not prescribed; reasonable compensation. *Powers:* to administer oaths, take depositions, and the acknowledgments and proofs of deeds or other conveyances or lease of any lands in the state, or of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in the state. (Statutes [Mason], 1927, §§ 6977, 6979)

§ 418. **Mississippi.**—*Term:* four years. *Commission fee:* \$10.00. *Powers:* to administer oaths, take depositions and affidavits, and acknowledgment of any deed or other instrument to be recorded in the state. *Fees:* not prescribed. (Code, 1930, §§ 2138, 2139)

§ 419. **Missouri.**—*Term:* pleasure of governor. *Commission fee:* \$7.50. *Fees:* same as to clerk of courts of

record; acknowledgments or certificates, 50¢. *Powers*: to take relinquishment of dower of married women, acknowledgment or proof of deeds or other conveyance or lease of any lands in the state, or of any contract, letters of attorney, or any other writing, under seal or not, to be used and recorded in the state; to administer oaths; when appointed in a foreign country, to certify to the official character, signature, or seal of any officer in his district who is authorized to take acknowledgments or declarations under oath; to take depositions. (Revised Statutes, 1929, §§ 11760 to 11764)

§ 420. **Montana.**—*Term*: five years. *Commission fee*: \$5.00. *Fees*: same as for notary public. *Powers*: to administer oaths and take depositions and proofs and acknowledgments of deeds and other instruments to be used or recorded in Montana. *Official seal*: must contain commissioner's name, the words "Commissioner of Deeds for the State of Montana," and name of state for which appointed. (Revised Code, 1935, §§ 402 to 408)

§ 421. **Nebraska.**—*Term*: four years. *Commission fee*: \$1.00. *Powers*: to take acknowledgments and proofs of any instrument in writing conveying real estate, or any interest therein, or affecting the same, in the state; or of any assignment, transfer, power of attorney, satisfaction of judgment or of mortgage, or of any other writing to be used or recorded in the state; and to administer oaths. *Seal*: name, "A Commissioner for Nebraska," and state, city and county, of commissioner's residence. (Compiled Statutes, 1929, §§ 76-238 to 76-245)

§ 422. **Nevada.**—*Term*: four years. *Commission fee*: \$10.00. *Fees*: drawing affidavit, deposition or other paper, 30¢ for each folio; administering oath, 25¢; affixing seal, 50¢; taking acknowledgment, or proof of deed or

other instrument, to include seal and writing of certificate, \$1.00 for first signature, 50¢ for each additional signature. *Powers:* to administer oaths, take depositions and affidavits, and acknowledgments or proofs of deeds or other instruments to be recorded in the state. *Seal:* "Nevada," must be engraved. (Compiled Laws, 1929, §§ 1465 to 1469)

§ 423. **New Hampshire.**—*Term:* five years. *Commission fee:* \$1.00. *Fees:* not prescribed; same as state of residence. *Powers:* to administer oaths, take depositions, acknowledgment or proof of any deed, contract, letter of attorney, or any other writing to be used or recorded in the state, in the same manner and to same effect as a justice of the peace of the state where done may do within his state. (Public Laws, 1926, c. 17, §§ 12 to 15)

§ 424. **New Jersey.**—*Term:* three years. *Commission fee:* \$10.00 and \$1.00. *Fees:* same as for notaries. Each certificate of acknowledgment, \$1.00; administering oath, 25¢; proofs of instruments, same as acknowledgments. *Powers:* to take acknowledgment or proof of any deed or conveyance, mortgage, defeasible deed, or other conveyance in the nature of a mortgage, of any lands, tenements, or hereditaments in the state, or of any other instrument of writing, under hand and seal, required by the laws of the state to be acknowledged or proved, and to administer oaths and take affidavits. *Seal:* name, "A Commissioner of Deeds for the State of New Jersey," and name of state or territory of commissioner's residence. (Revised Statutes, 1937, §§ 52:6-12 to 52:6-22)

§ 425. **New Mexico.**—*Term:* pleasure of governor. *Commission fee:* \$5.00. *Fees:* Same as for other officers in state where commissioner resides. *Powers:* to admin-

ister oaths, take depositions and affidavits, acknowledgments and proofs of deeds or other instruments to be recorded in this state. (Statutes, 1929, §§ 28-101 to 28-106)

§ 426. **New York.**—Appointed by Secretary of State. *Term:* four years. *Commission fee:* \$5.00. *Fees:* not to exceed four times the fees allowed in state of residence, and for administering oath, or taking proof or acknowledgment of deeds or other instrument, not to exceed \$1.00. *Powers:* to take the acknowledgment or proof of the execution of a written instrument, except a bill of exchange, promissory note or will, to be read in evidence or recorded in this state; to administer oaths; if appointed for a foreign country, to certify to existence of a patent, record or other document recorded in a public office or under official custody in such country, and to the correctness of a copy thereof. *Seal:* name, "A Commissioner of Deeds for the State of New York," name of state, and of city or county of residence. (Executive Law, §§ 107 to 109)

§ 427. **North Carolina.**—*Term:* two years. *Fees:* taking affidavit and certificate, 40¢; affixing official seal, 25¢. *Powers:* to take acknowledgment and proof of deeds, mortgages, etc., or any other writing to be used in the state; to take private examination of married women; to administer oaths and take depositions. (Code, 1935, §§ 963 to 969)

§ 428. **North Dakota.**—*Term:* six years. *Commission fee:* \$10.00. *Fees:* same as are allowed a notary public in state for which he is appointed. *Powers:* to administer oaths; take depositions and affidavits to be used in this state; take acknowledgments of any deed or other instrument to be used or recorded in this state. *Seal:* Commissioner's name and state, "Commissioner of

Deeds for the State of North Dakota," and date when commission expires. *Bond*: \$500.00. (Compiled Laws, 1913, §§ 608 to 610)

§ 429. **Ohio.**—*Term*: three years. *Commission fee*: \$3.00. *Fees*: swearing witness, 25¢; depositions or affidavits, per 100 words, 10¢; for authenticating, sealing, and directing each deposition, \$1.00; for authenticating each affidavit, \$1.00; acknowledgment or proof of deed, or other conveyance, lease, contract, letter or power of attorney, or other written instrument, \$2.00. *Powers*: to take affidavits and depositions, acknowledgments and proofs of deeds, and of any lease, contract, letter of attorney, or other written instrument to be recorded or used in the state. (General Code [Page], 1939, §§ 132 to 136)

§ 430. **Oklahoma.**—The law authorizing appointment of commissioners has been eliminated as obsolete.

§ 431. **Oregon.**—*Term*: four years. *Commission fee*: \$2.00. *Fees*: not prescribed; usually same as notaries in state of residence. *Powers*: to take proof or acknowledgment of a conveyance of real estate in the state, or of any written instrument to be used or to operate therein; take the acknowledgment of satisfaction of any judgments or decree of a court of this state; take and certify affidavits or depositions; and exercise any other duties prescribed by the laws of the state. *Seal*: state arms in center, surrounded by "Commissioner for Oregon," and name of state, territory, or district of commissioner. (Code, 1930, §§ 30-501, 30-502)

§ 432. **Pennsylvania.**—*Term*: five years. *Commission fee*: \$5.00. *Fees*: acknowledgments, \$1.00 each. *Powers*: to take acknowledgment and proof of any deed, mortgage, or other conveyance of any land, tenements,

or hereditaments, in the state, or any other writing under seal to be used or recorded in the state; to administer oaths, take depositions, and to examine witnesses under any commission from any of the courts of the state relating to any cause pending or to be brought in any of said courts. *Seal*: "For Pennsylvania," must appear. (Statutes [Purdon], 1938, Tit. 21, §§ 971 to 982)

§ 433. **Rhode Island.**—*Term*: five years. *Fees*: not prescribed; same as in state of residence. *Powers*: to administer oaths, take depositions and affidavits, and take acknowledgment of any deed or other instrument to be used or recorded in the state. (General Laws, 1938, c. 492)

§ 434. **South Carolina.**—*Term*: pleasure of governor. *Commission fee*: \$3.25. *Fees*: same as in state of residence by notaries. *Powers*: to take acknowledgment or proof of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments in the state, or of any contract, letter of attorney; or any other writing, under seal, to be used or recorded in the state; to administer oaths; to take and certify renunciations of dower of any lands in the state. (Code of Laws, 1932, §§ 3467 to 3472)

§ 435. **South Dakota.**—*Term*: pleasure of governor. *Commission fee*: \$10.00. *Powers*: to take acknowledgment or proof of any deed, mortgage, or other conveyance of lands lying in the state, or of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in the state; to administer oaths; take and certify depositions. *Seal*: "Commissioner of South Dakota," commissioner's name, and state in which he can act. (Compiled Laws, 1929, §§ 5229 to 5233)

§ 436. **Tennessee.**—*Term*: four years. *Commission fee*: \$10.00. *Fees*: not prescribed; same as in state of

residence. *Powers*: to administer oaths, take depositions and affidavits, and to take acknowledgments of deeds, powers of attorney, and other instruments to be recorded in the state. (Code [Williams], 1934, § 179)

§ 437. **Texas.**—*Term*: two years. *Commission fee*: \$1.00. *Fees*: not specified. *Powers*: to take acknowledgment of deeds, depositions, and other instruments of writing for use or record in the state; to take the separate examination, acknowledgment, and declaration of married women to such instruments; to take oaths and affirmations. *Seal*: a star of five points and “Commissioner of the State of Texas.” (Statutes [Vernon], 1936, Arts. 1270 to 1273)

§ 438. **Utah.**—*Term*: four years. *Commission fee*: \$5.00. *Fees*: same as those provided for a notary public. *Powers*: to administer oaths, take depositions, affidavits, and acknowledgments, and proofs of deeds and other written instruments to be used or recorded in the state. (Revised Statutes, 1933, §§ 63-2-1 to 63-2-9)

§ 439. **Vermont.**—*Term*: five years. *Commission fee*: \$5.00. *Fees*: not prescribed. *Powers*: to administer oaths, take depositions, affidavits, and acknowledgments and proofs of deeds and other written instruments to be used or recorded in the state. Bond, \$500.00. (Public Laws, 1933, §§ 440, 441)

§ 440. **Virginia.**—*Term*: two years. *Commission fee*: \$5.00. *Powers*: to administer oaths, take depositions and acknowledgments.. (Code, 1936, § 2853)

§ 441. **Washington.**—*Term*: four years. *Commission fee*: \$5.00. *Fees*: not prescribed. *Powers*: to administer oaths, take depositions or affidavits, and acknowledgments of deeds or other instruments to be used or recorded in the state. *Seal*: name of commissioner, “Com-

missioner of Deeds for State of Washington," name of state for which appointed, and date his commission expires. (Compiled Statutes [Remington], 1927, §§ 9910, 9911)

§ 442. **West Virginia.**—*Term:* four years. *Commission fee:* \$5.00. *Fees:* not specified. *Powers:* to take acknowledgment and proof of deeds and contracts relating to lands in the state, of all contracts, powers of attorney, and other writings; to administer oaths, and take depositions. *Seal:* name and residence, "Commissioner for West Virginia, in (state for which he is appointed)." (Code, 1937, §§ 2825 to 2829)

§ 443. **Wisconsin.**—*Term:* four years. *Commission fee:* \$5.00. *Fees:* same fees as justices of the peace. *Powers:* to take acknowledgment and proof of deeds, conveyances, and leases of lands in the state, or written instruments relating thereto, or of any contract or any other writing, sealed or unsealed, to be used or recorded in the state; to administer oaths, and take depositions. (Statutes, 1937, c. 137.02)

§ 444. **Wyoming.**—*Term:* pleasure of governor. *Commission fee:* \$5.00. *Fees:* not prescribed. *Powers:* to administer oaths, take depositions and affidavits, acknowledgments of deeds, powers of attorney, or other instruments to be recorded in this state. (Revised Statutes, 1931, §§ 25-101 to 25-105)

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