

CHAPTER 63. OATH, ACKNOWLEDGMENT, AND OTHER PROOF

Article

1. Oaths, Certifications, Notarizations, and Verifications. (§§ 09.63.010 - 09.63.040)
2. Uniform Recognition of Acknowledgments Act. (§§ 09.63.050 - 09.63.130)

Cross references. For provisions related to notaries public, see AS 44.50.

Article 1. OATHS, CERTIFICATIONS, NOTARIZATIONS, AND VERIFICATIONS

Section

- 10. Oath, affirmation, and acknowledgment.
- 20. Certification of documents.
- 30. Notarization.
- 40. Verification.

Legislative history reports. For governor's transmittal letter for ch. 60, SLA 2005 (HB 97), relating to the 2005 amendments of various sections in this article affecting relating to the taking of oaths, affirmations, and acknowledgements and to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments, see 2005 House Journal 131.

Sec. 09.63.010. Oath, affirmation, and acknowledgment.

The following persons may take an oath, affirmation, or acknowledgment in the state:

- (1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;
 - (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
 - (3) a notary public;
 - (4) a United States postmaster;
 - (5) a commissioned officer under AS 09.63.050(4);
 - (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380;
 - (7) the lieutenant governor when carrying out the lieutenant governor's duties under AS 24.05.160;
 - (8) the presiding officer of each legislative house when carrying out the officer's duties under AS 24.05.170.
- (§ 1 ch 37 SLA 1981; am § 1 ch 35 SLA 1989; am § 1 ch 60 SLA 2005)

Effect of amendments. The 2005 amendment, effective July 1, 2005, added paragraphs (7) and (8).

NOTES TO DECISIONS

Cited in Bennett v. Weimar, 975 P.2d 691 (Alaska 1999).

Collateral references. 58 Am. Jur. 2d, Oath and Affirmation, § 5 et seq.

67 C.J.S., Oaths and Affirmations, §§ 5-7.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Sec. 09.63.020. Certification of documents.

(a) A matter required or authorized to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established, or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following:

"I certify under penalty of perjury that the foregoing is true."

(b) A person who makes a false sworn certification which the person does not believe to be true under penalty of perjury is guilty of perjury.

(§ 1 ch 37 SLA 1981)

Cross references. For crime of perjury, see AS 11.41.200.

NOTES TO DECISIONS

"Sworn statement" construed. - A signed affidavit which declares that it was made under penalty of perjury pursuant to the provisions of this section implicitly if not technically complies with the requirements for certification and constitutes a sworn statement. Harrison v. State, 923 P.2d 107 (Alaska Ct. App. 1996).

Verification and notarization. - Verified and notarized documents satisfy the same basic requirements. Bennett v. Weimar, 975 P.2d 691 (Alaska 1999).

Non-notarized declaration. - A non-notarized declaration submitted in response to a summary judgment motion failed to meet the requirements of subsection (a) where it did not assert that a notary or other authorized official was unavailable, and such a declaration does not satisfy the requirements of Civil Rule 56. Bennett v. Weimar, 975 P.2d 691 (Alaska 1999).

Collateral references. 1 Am. Jur. 2d, Acknowledgments, §§ 26-66.

1A C.J.S., Acknowledgments, § 60 et seq.

Sec. 09.63.030. Notarization.

(a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer.

(b) The certificate required by this section may be in substantially the following form:

Subscribed and sworn to or affirmed before me at _____ on

(date)

Signature of Officer

Title of Officer

(c) If the document is sworn to or affirmed before a notary public of the state, the notary public shall

(1) affix on the document the

(A) notary public's official signature and official seal; and

(B) date of expiration of the notary public's commission; and

(2) comply with AS 44.50.060 - 44.50.065 and other applicable law.

(§ 1 ch 37 SLA 1981; am § 2 ch 60 SLA 2005)

Effect of amendments. The 2005 amendment, effective July 1, 2005, rewrote subsection (c).

NOTES TO DECISIONS

"Sworn statement." - Notarized statement was a "sworn statement" even without proof of the administration of a verbal oath, where the declarant showed his identification to the notary, knowingly signed the document in her presence, the document stated that the defendant was duly sworn, and the notary actually notarized it. *Gargan v. State*, 805 P.2d 998 (Alaska Ct. App. 1991), cert. denied, 501 U.S. 1209, 111 S. Ct. 2808, 115 L. Ed. 2d 981 (1991).

A statement signed by defendants in the presence of the notary qualified as a "sworn statement" for purposes of perjury, even though the notary never actually administered an oath or affirmation to defendants. *Knix v. State*, 922 P.2d 913 (Alaska Ct. App. 1996).

Verification and notarization. - Verified and notarized documents satisfy the same basic

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requirements. *Bennett v. Weimar*, 975 P.2d 691 (Alaska 1999).

Requirements of oath satisfied. - When the notary is present at the signing of a document which purports to be sworn, and when the notary then notarizes the document, the requirements of the oath have been satisfied; the document qualifies as a sworn statement. *Gargan v. State*, 805 P.2d 998 (Alaska Ct. App. 1991), cert. denied, 501 U.S. 1209, 111 S. Ct. 2808, 115 L. Ed. 2d 981 (1991).

Sec. 09.63.040. Verification.

(a) When a document is required by law to be verified, the person required to verify it shall certify under oath or affirmation that the person has read the document and believes its content to be true.

(b) The person who makes the verification shall sign it before a person authorized by law to take the person's oath or affirmation.

(c) A verification made under this section may be in substantially the following form:

I _____ say on oath or affirm that I have read the foregoing (or attached) document and believe all statements made in the document are true.

Signature
Subscribed and sworn to or affirmed before me at _____
_____ on _____.
(date)

Signature of Officer

Title of Officer

(d) If the verification is sworn to or affirmed before a notary public of the state, the notary public shall

(1) affix on the document the

(A) notary public's official signature and official seal; and

(B) date of expiration of the notary public's commission; and

(2) comply with AS 44.50.060 - 44.50.065 and other applicable law.

(§ 1 ch 37 SLA 1981; am § 17 ch 85 SLA 1988; am § 3 ch 60 SLA 2005)

Effect of amendments. The 2005 amendment, effective July 1, 2005, rewrote subsection (d).

NOTES TO DECISIONS

Verification and notarization. - Verified and notarized documents satisfy the same basic requirements. *Bennett v. Weimar*, 975 P.2d 691 (Alaska 1999).

Article 2. UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT

Section

- 50. Recognition of notarial acts performed outside the state.
- 60. Authentication of authority of officer.
- 70. Certificate of person taking acknowledgment.
- 80. Recognition of certificate of acknowledgment.
- 90. Certificate of acknowledgment.
- 100. Forms of acknowledgment.
- 110. Uniformity of interpretation.
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Sec. 09.63.050. Recognition of notarial acts performed outside the state.

Notarial acts may be performed outside the state for use in the state with the same effect as if performed by a notary public of the state by

- (1) a notary public authorized to perform notarial acts in the place in which the act is performed;
- (2) a justice, judge, magistrate, clerk, or deputy clerk of a court of record in the place in which the notarial act is performed;
- (3) an officer of the foreign service of the United States, a consular agent, or a person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;
- (4) a commissioned officer in active service with the armed forces of the United States or a person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for a merchant seaman of the United States, a member of the armed forces of the United States, a person serving with or accompanying the armed forces of the United States, or their dependents; or
- (5) a person authorized to perform notarial acts in the place in which the act is performed.

(§ 1 ch 37 SLA 1981)

NOTES TO DECISIONS

Applicability to administration of oath. - The Uniform Recognition of Acknowledgments Act does not apply to the administration of an oath to a witness at trial. *Gregg v. Gregg*, 776 P.2d 1041 (Alaska 1989).

Sec. 09.63.060. Authentication of authority of officer.

(a) If the notarial act is performed by a person described in AS 09.63.050(1) - (4) other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and, if appropriate, the serial number of the person are sufficient proof of the authority of a person to perform the act.

(b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if

(1) either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(2) the official seal of the person performing the notarial act is affixed to the document; or

(3) the title and indication of authority to perform notarial acts of the person appear either in a digest of foreign law or in a list customarily used as a source of that information.

(c) If the notarial act is performed by a person other than a person described in this section, there is sufficient proof of the authority of the person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of the person and to the person's authority to perform the notarial act.

(d) The signature and title of the person performing the act are prima facie evidence that the person has the designated title and that the signature is genuine.

(§ 1 ch 37 SLA 1981)

Sec. 09.63.070. Certificate of person taking acknowledgment.

The person taking an acknowledgment shall certify that

(1) the person acknowledging appeared before the person taking the acknowledgment and acknowledged that the person executed the instrument; and

(2) the person acknowledging was known to the person taking the acknowledgment or the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

(§ 1 ch 37 SLA 1981)

Opinions of attorney general. It is not necessary for recordation that an acknowledgment state the capacity in which the document was signed so long as the document itself, which is acknowledged, states the particular capacity in which it was signed. Sept. 2, 1982, Op. Att'y Gen.

Sec. 09.63.080. Recognition of certificate of acknowledgment.

The form of a certificate of acknowledgment used by a person whose authority is recognized under AS 09.63.010 or 09.63.050 shall be accepted in the state if

(1) the certificate is in a form prescribed by the laws or regulations of the state;

(2) the certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(3) the certificate contains the words "acknowledged before me" or their substantial equivalent.

(§ 1 ch 37 SLA 1981)

Opinions of attorney general. When reviewing conveyance documents that require an acknowledgment, it is the recorder's responsibility to determine that an acknowledgment statement is present; if an acknowledgment clause is present on the document the recorder has no responsibility to assess the acknowledgment clause's compliance with AS 09.63 or any other law. July 16, 1997 Op. Att'y Gen.

Sec. 09.63.090. Certificate of acknowledgment.

The words "acknowledged before me" mean that

(1) the person acknowledging

(A) appeared before the person taking the acknowledgment;

(B) acknowledged that the person executed the instrument;

(C) in the case of

(i) a natural person, acknowledged that the person executed the instrument for the purposes stated in it;

(ii) an officer or agent of a corporation, acknowledged that the person held the position or title set out in the instrument and certificate, acknowledged that the person signed the instrument on behalf of the corporation by proper authority, and acknowledged that the instrument was the act of the corporation for the purposes stated in it;

(iii) a member or manager of a limited liability company, acknowledged that the individual signed the instrument on behalf of the limited liability company by proper authority and executed the instrument as the act of the limited liability company for the purposes stated in it;

(iv) a partner or agent of a partnership, limited partnership, or limited liability partnership, acknowledged that the person signed the instrument on behalf of the partnership by proper authority and executed the instrument as the act of the partnership for the purposes stated in it;

(v) a person acknowledging as a principal by an attorney in fact, acknowledged that the person executed the instrument by proper authority as the act of the principal for the purposes stated in it;

(vi) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative, acknowledged that the person signed the instrument in the capacity and for the purposes stated in it; and

(2) the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging is the person named in the instrument or certificate.

(§ 1 ch 37 SLA 1981; am § 4 ch 60 SLA 2005)

Effect of amendments. The 2005 amendment, effective July 1, 2005, rewrote paragraph (1).

Opinions of attorney general. Department of Natural Resources firefighters probably have a duty to rescue which removes them from the protection of this section. Thus, the state is liable through them for any negligence in the performance of that duty. May 22, 1980, Op. Att'y Gen.

It is not necessary for recordation that an acknowledgment state the capacity in which the document was signed so long as the document itself, which is acknowledged, states the particular capacity in which it was signed. Sept. 2, 1982, Op. Att'y Gen.

When an official of a land title company seeking to file a warranty deed in Alaska, in the presence of the recorder altered a California notary clause to change the name and the title of the person that the California notary public swore had appeared before her, the alteration destroyed the intended statutory effects of the acknowledgment clause as those effects are stated in this section, and the recorder's office should have rejected the document for recording. December 22, 1987, Op. Att'y Gen.

Sec. 09.63.100. Forms of acknowledgment.

(a) The forms of acknowledgment set out in this subsection may be used and are sufficient for their respective purposes under a law of the state. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in the individual's own right:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(2) For a corporation:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(3) For a limited liability company:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name of member or manager), member (or manager) of (name of limited liability company acknowledging) a (state or place of organization) limited liability company, on behalf of the limited liability company.

Signature of Person Taking
Acknowledgment

Member (or Manager)

Serial Number, if any

(4) For a partnership:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name of

acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a (partnership, limited partnership, or limited liability partnership).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(5) For an individual acting as principal by an attorney in fact:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(6) By a public officer, trustee, or personal representative:

State of _____

_____ Judicial District (or County of _____ or Municipality of _____)

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(b) If a document is acknowledged before a notary public of the state, the notary public shall

(1) affix on the document the

(A) notary public's official signature and official seal; and

(B) date of expiration of the notary public's commission; and

(2) comply with AS 44.50.060 - 44.50.065 and other law.

(§ 1 ch 37 SLA 1981; am § 5 ch 60 SLA 2005)

Effect of amendments. The 2005 amendment, effective July 1, 2005, rewrote this section.

Opinions of attorney general. It is not necessary for recordation that an acknowledgment state the capacity in which the document was signed so long as the document itself, which is acknowledged, states the particular capacity in which it was signed. Sept. 2, 1982, Op. Att'y Gen.

Sec. 09.63.110. Uniformity of interpretation.

AS 09.63.050 - 09.63.130 shall be interpreted as to make uniform the laws of those states which enact them.

(§ 1 ch 37 SLA 1981)

Revisor's notes. In 1994, "AS 09.63.050 - 09.63.130" was substituted for "AS 09.63.050 - 09.63.110" to correct a manifest error in ch. 37, SLA 1981.

Sec. 09.63.120. Definition.

In AS 09.63.010 - 09.63.130, "notarial acts" means acts that the laws and regulations of the state authorize notaries public of the state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents.

(§ 1 ch 37 SLA 1981)

Sec. 09.63.130. Short title.

AS 09.63.050 - 09.63.130 may be cited as the Uniform Recognition of Acknowledgments Act.

(§ 1 ch 37 SLA 1981)

Revisor's notes. In 1994, "AS 09.63.050 - 09.63.130" was substituted for "AS 09.63.050 - 09.63.110" to correct a manifest error in ch. 37, SLA 1981.
