

## REBA Title Standard No. 16 Acknowledgments

1. An acknowledgment dated before or after the date of execution appearing on the instrument (regardless of length of time) is not on that account defective.

### *Comment 1*

*See Dresel v. Jordan, 104 Mass. 407 (1870) and Ashkenazy v. R.M. Bradley & Co., 328 Mass. 242, 103 N.E.2d 251 (1952) as to prior dates. See Smith v. Porter, 76 Mass. (10 Gray) 66 (1857) as to later dates. See also M.G.L. c. 184, § 24 for acknowledgments over 10 years old.*

2. An acknowledgment

- (a) by either spouse alone to a deed of property held as tenants by the entirety, or
- (b) by one of the partners as an individual to a deed from a partnership, or
- (c) by an executing officer thereof, as an individual, to a deed from a corporation

is not on that account defective provided such person is not a grantee.

### *Comment 2*

*See M.G.L. c. 183, §§ 30 and 31, and M.G.L. c. 108A, §§ 9 and 10. But see Gordon v. Gordon, 8 Mass. App. Ct. 860, 865, 398 N.E.2d 497(1979), as to acknowledgment by wife on deed from husband and wife to wife.*

3. An acknowledgment taken in another state before a notary public without a notarial seal or stamp impressed or affixed to the instrument and without any certificate of authority is not on that account defective.

### *Comment 3*

*See M.G.L. c. 183, § 30; Farnum v. Buffum, 58 Mass. 260 (1849) and Ashkenazy v. R.M. Bradley & Co., 328 Mass. 242, 103 N.E.2d 251 (1952).*

4. An acknowledgment taken outside of the United States, may be made

- (a) before a notary public or justice of the peace provided that the identity and office of the notary public or justice of the peace are authenticated by a certificate described in M.G.L. c. 183, § 33, sometimes called an "apostille", issued by the competent authority of the country from which the document emanates. The apostille need not be in English,

or

(b) before a commissioner appointed by the governor of the Commonwealth of Massachusetts pursuant to M.G.L. c. 222,

or

(c) 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, provided that it is certified by him/her under his/her seal of office,

or

5. Members of the armed forces of the United States or other personnel as defined in 10 USC 1044a(a) may acknowledge any instrument before any person authorized in 10 USC 1044a(b) to exercise the general powers of a notary public and of a consul of the United States in the performance on any notarial act. As provided in 10 USC 1044a(d), the signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform the notarial act.

*Comment 4-5*

*See M.G.L. c. 222 § 11, which requires that any instrument acknowledged by a member of the armed forces of the United States or of the Commonwealth under this section must contain a statement concerning the rank and status of the person executing the instrument. This state statutory requirement is not a limitation on the general authority conferred in 10 USC 1044a, and should be considered to apply only where the notarial act has been performed by someone other than those persons listed in 10 USC 1044a(b).*

6. An acknowledgment or jurat, used in appropriate circumstance, the form of which substantially conforms with Chapter 289 of the Acts of 2016, with the forms set forth in M.G.L. c. 222, § 15 or M.G.L. c. 183, Appendix, Forms 13-15, and with applicable case law, but does not strictly conform with such statute, forms or case law, is not on that account defective.

*Comment 6*

*See Chapter 289 of the Acts of 2016; see also REBA Forms 36 (Notary Public – Acknowledgment) and 37 (Notary Public – Jurat) and comments thereto.*

Adopted November 11, 1974

Amended May 15, 2000 (to correct grammar in paragraph 2 and to delete apparent requirement of a seal for out-of-state notary in paragraph 3.)

Amended May 10, 2004 (to add paragraphs 4, 5 and 6 and related Comments)

Amended November 6, 2017 (to update paragraphs 5 and 6)