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THE ABSENCE OF A SIGNATURE REQUIREMENT IN MISSISSIPPI NOTARY LAW: FRAUD WAITING TO HAPPEN

David W. Marcuse

I. INTRODUCTION

Imagine that an aluminum siding salesman has visited an elderly relative, Aunt Mattie. He tells your relative that he can arrange for the federal government to pay for half of the cost of installing rain gutters on her house. All she has to do is agree, and he will take care of the details. Aunt Mattie only has to sign an authorization for the work, which she does. Aunt Mattie is semi-literate, barely able to sign her name. What she has signed in reality is an authorization for the salesman's company to install new siding on her house. When payment is demanded, the authorization has been notarized. Additionally, a notarized promissory note, as well as a trust deed covering Aunt Mattie's house, have appeared, allegedly signed by her. The trust deed bears the certificate of acknowledgement of a notary public. The company then goes to court to enforce the obligation allegedly owed by Aunt Mattie.

Could this ever happen in Mississippi? It already has.¹ How can it happen? Simple: Mississippi does not require that a notary public take the elementary precaution of checking the identity of the signer before notarizing a document. This is a loophole in Mississippi notary law that allows the opportunity for fraud, of which some people have been quick to take advantage. Among the states in the southeastern United States, only Alabama is likewise without an identification requirement.² This comment will examine Mississippi notary law and identification requirements in other states and analyze possible solutions for correcting the problem in Mississippi.

II. BACKGROUND AND LAW

A. Statutory Law

1. Requirements of a Notary Public in Mississippi

Mississippi law on notaries public³ is based on the Mississippi Code of 1880.⁴ The governor is empowered to appoint notaries public for each county in the state or may appoint them to serve statewide for a term of four years.⁵ There is no mini-

1. See *Securities Inv. Co. v. Williams*, 193 So. 2d 719 (Miss. 1967).

2. ALA. CODE §§ 36-20-1 to -32 (1991).

3. MISS. CODE ANN. §§ 25-33-1 to -23 (1972). Other provisions relating to notaries public are scattered throughout the Mississippi Code of 1972, but, unless they are pertinent to this discussion, will not be cited.

4. MISS. CODE ANN. § 25-33-1 (1972).

5. *Id.*

mum educational requirement or test to pass. All notaries appointed after 1988 are required to post a bond in the amount of \$5000.⁶ Each notary is required to provide, at his or her own expense, "a suitable notarial seal."⁷ The seal is to contain the name of the state, the name of the notary's county of residence and the name of the notary.⁸ However, an official act or certificate of a notary is not invalidated due to failure of a seal to conform to these requirements.⁹

Each notary is to maintain a register of his or her official acts.¹⁰ A certified copy of this record is available upon request, subject to paying the required legal fees.¹¹

A notary public is empowered to administer official oaths in any matter incident to his or her office.¹² A notary public is also granted the power to administer oaths for the taking of oral testimony under oath within the state.¹³ Additionally, notaries public may "receive the proof or acknowledgement of all instruments of writing relating to commerce or navigation . . . and such other writings as are commonly proved or acknowledged before notaries"¹⁴

2. Identification Requirements Under Mississippi Notary Law

The only identification requirement mentioned in the statutory sections pertaining to notaries public concerns notarial acts by commissioned officers in the armed forces.¹⁵ The section states that when commissioned officers take acknowledgements or perform other notarial acts, the officer merely needs to attach a certificate that shows the date of the act and states that the person appearing before the officer acknowledged the act as his own or signed the instrument under oath.¹⁶ No requirement of proof of identification of the signer is mentioned.

3. Acknowledgments Under Mississippi Law

An acknowledgment is "a public declaration or formal statement of the person executing an instrument made to the official authorized to take the acknowledgment, that the execution of such instrument was his free deed and act."¹⁷ In the Mississippi Code sections on acknowledgments,¹⁸ which pertain only to written instruments for the sale of land,¹⁹ there is no explicit identification requirement in

6. *Id.*

7. MISS. CODE ANN. § 25-33-3 (1972).

8. *Id.*

9. *Id.*

10. MISS. CODE ANN. § 25-33-5 (1972).

11. *Id.*

12. MISS. CODE ANN. § 25-33-9 (1972).

13. *Id.*

14. MISS. CODE ANN. § 25-33-11 (1972).

15. MISS. CODE ANN. § 25-33-23 (1972).

16. *Id.*

17. 1 AM. JUR. 2D *Acknowledgments* § 1 (1962) (footnotes omitted).

18. See generally MISS. CODE ANN. §§ 89-3-1 to -15 (1972 & Supp. 1992).

19. MISS. CODE ANN. § 89-3-1 (1972).

the specific forms of acknowledgment listed in the code.²⁰ These forms require the notary to sign a statement that the acknowledger personally appeared before the notary.²¹ In these instances, the notary is required to sign a statement declaring that "[p]ersonally appeared before me, the undersigned authority . . . the within named . . . who acknowledged that (he)(she)(they) executed the above and foregoing instrument."²² However, the statute does not state that the notary must ascertain the identity of the signer of the instrument.

B. Mississippi Common Law

The absence of an identification requirement has drawn the attention of the Mississippi Supreme Court over the years. In *Securities Investment Co. v. Williams*,²³ O. C. and Annie Lee Williams sought the cancellation of a trust deed upon

20. See Miss. CODE ANN. § 89-3-7 (Supp. 1992).

21. Miss. CODE ANN. § 89-3-7 (Supp. 1992). The pertinent portions of the text of the section read as follows: § 89-3-7. Forms of acknowledgment.

The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate or personal property; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law:

(a) In the case of natural persons acting in their own right:

* * *

Personally appeared before me, the undersigned authority in and for the said county and state . . . within my jurisdiction, the within named [acknowledger's name], who acknowledged that (he)(she)(they) executed the above and foregoing instrument.

* * *

(b) In the case of corporations:

* * *

Personally appeared before me, the undersigned authority in and for the said county and state . . . within my jurisdiction, the within named [acknowledger's name] who acknowledged that (he)(she) . . . executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

* * *

(c) In the case of persons acting in representative capacities:

* * *

Personally appeared before me, the undersigned authority in and for the said county and state . . . within my jurisdiction, the within named [acknowledger's name], who acknowledged that (he)(she) . . . executed the above and foregoing instrument, after first having been duly authorized so to do.

* * *

(d) In the case of proof of execution of the instrument made by a subscribing witness:

* * *

Personally appeared before me, the undersigned authority in and for the said county and state . . . within my jurisdiction, CD, one of the subscribing witnesses to the above and foregoing instrument, who, being first duly sworn, states that (he)(she) saw the within (or above) named AB, whose name is subscribed thereto, sign and deliver the same to EF (or that (he)(she) heard AB acknowledge that (he)(she) signed and delivered the same to EF); and that the affiant subscribed (his)(her) name as witness thereto in the presence of AB.

Id. The language of (d) also has a shortcoming in that it does not require the alleged signatory to be present at the proof of execution. Miss. CODE ANN. § 89-3-7(d) (Supp. 1992).

22. Miss. CODE ANN. § 89-3-7 (Supp. 1992). See *supra* note 21.

23. 193 So. 2d 719 (Miss. 1967).

their land held by Securities Investment as assignee of K. V. Builders.²⁴ The Williams, who were illiterate, alleged that agents of K. V. Builders induced them to sign what the Williams thought was a contract for the repair of their home for \$400.00.²⁵ In reality, the Williams had signed a contract in which K. V. Builders agreed to make certain repairs to the Williams home in return for a “‘cash’ price of \$2200, or for a ‘credit price’ of \$3311.40, to be paid in sixty monthly installments of \$55.19 each.”²⁶ In addition to the contract, a promissory note and a deed of trust that secured the note by pledging the house as collateral were produced at trial.²⁷ Both bore a certificate of acknowledgment from a Hinds County notary public.²⁸ The trust deed bore the alleged signatures of both of the Williams, as well as the signatures of four purported witnesses.²⁹ The Williams denied signing either the note or the deed of trust.³⁰ The notary public testified at the trial, stating that two people who were represented to him to be the Williams had appeared at his office and acknowledged the execution of the deed of trust.³¹ The Williams denied signing the instruments or being in Jackson at the time the acknowledgment was made.³² The notary was unable to remember the identity of the four alleged witnesses who also signed the trust deed.³³ None of the four were produced or testified at the trial.³⁴

In commenting upon the evidence in the trial record, the Mississippi Supreme Court noted that “[t]he Notary Public made no attempt to identify appellees [the Williams] as the persons who had come to his office in Jackson to acknowledge a document”³⁵ The supreme court upheld the chancellor’s finding that the trust deed was the result of a fraud perpetrated upon the Williams by the agents of K. V. Builders and the chancellor’s subsequent cancellation of that trust deed as a cloud upon the Williams’ title to their land.³⁶ The court further commented that “[t]he sordid facts of this case fall within a category and pattern that is becoming increasingly familiar.”³⁷

By “category and pattern,” the court refers to unscrupulous agents who forge fraudulent debt instruments and sell them to innocent third parties to collect.³⁸ The agents then disappear when the third party is forced to go to court to enforce collec-

24. *Id.* at 719.

25. *Id.* at 720.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 721.

36. *Id.*

37. *Id.* at 721-22.

38. *Id.* at 722.

tion of the note.³⁹ The third party, although innocent of wrongdoing, acquires no title because of the forgery, and loses the amount paid for the instrument.⁴⁰

A similar situation occurred in *Haynes v. Avco Security Corp.*⁴¹ Eugene Haynes, a seventy-four year old uneducated man, sought to have a deed of trust held by Avco Security canceled as a cloud on his title.⁴² The deed of trust had been executed to secure a promissory note assigned to Avco Security by Parish Contractors of New Orleans.⁴³ The deed of trust had allegedly been signed by Haynes, making his mark, and his niece Bernice Bethea.⁴⁴ It was witnessed by Jerry Corley and Eugene Lewis, agents of Parish Contractors.⁴⁵ Corley then acknowledged the document as a witness before a Hinds County notary public, but neither Haynes nor Bethea were present.⁴⁶

Testimony at trial showed that Corley and Lewis had come to Haynes' home and told Haynes that they were going to repair his house.⁴⁷ Haynes agreed to the repairs, but at no time did he, nor anyone as his agent, sign any papers authorizing the work.⁴⁸ Haynes also testified that he could sign his name and never signed by making a mark.⁴⁹ He presented several other deeds of trust, along with their acknowledgments, that he had previously executed to evidence his signature.⁵⁰ The only paper Haynes testified to signing in connection with the work was a document showing that he was happy with the siding that had been put on his house.⁵¹

Bethea testified that her uncle's mark was not on the document she had signed.⁵² Neither Corley nor Lewis, the two alleged witnesses to Haynes' mark, were produced at trial to testify.⁵³ The supreme court reversed the chancery court and canceled the deed of trust.⁵⁴ The court noted that it was strange that neither of the two alleged witnesses were produced at trial, with no explanation as to their absence and "that if appellant [Haynes] signed the deed of trust, he was not required to acknowledge it before a notary or some other official in his home county where he was known."⁵⁵

39. *Id.*

40. *Id.*

41. 299 So. 2d 198 (Miss. 1974).

42. *Id.* at 199.

43. *Id.*

44. *Id.*

45. *Id.* Bethea lived with Haynes, but owned no interest in the property. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 200.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 202.

55. *Id.*

Both *Securities Investment*⁵⁶ and *Haynes*⁵⁷ involved fraudulently obtained deeds of trust. In neither case was the grantor present when the notary public notarized the acknowledgment. Yet in both instances, no proof of identification of the grantor was required, or even proof that the grantor had actually signed the document to be notarized. The supreme court in *Securities Investment*⁵⁸ commented that this was becoming an increasingly familiar situation.⁵⁹ In neither instance, however, did the court seek to rectify the problem by imposing a judicial requirement that notaries seek proof of identification before notarizing a document. The court was correct in choosing to abstain from this type of action, since notary law is a statutory creation and any deficiencies should be corrected by the legislature.

A different situation arose in *Rhoads v. Borden*.⁶⁰ The transferrors of certain property, W. R. and Evelyn Rhoads, admitted signing the deed in question but alleged that the transferee, J. Loyd Borden, altered the document before having it notarized.⁶¹ The Mayor of Corinth notarized the deed.⁶² He did not, however, witness the Rhoads' signatures and failed to verify that the Rhoads had signed the document.⁶³ The Rhoads alleged that they had intended to transfer two lots in Perdido Beach, Alabama, to Borden in exchange for Borden's services as pilot of the Rhoads' private jets.⁶⁴ The Rhoads admitted signing a deed to that effect.⁶⁵ However, when Borden took the deed to have it notarized, the document had been altered to include twelve lots, along with a 3000 square foot house.⁶⁶

Testimony at the trial showed that the deed in question had indeed been altered as the Rhoads alleged.⁶⁷ Testimony also showed that the notary public had not seen the Rhoads sign the deed, nor did he speak with either of the Rhoads to confirm that they had signed the deed or to receive their acknowledgment of the deed.⁶⁸ Other facts brought out at trial showed that fraud had probably been perpetrated by Borden.⁶⁹ The supreme court accordingly canceled the deed.⁷⁰

56. 193 So. 2d 719 (Miss. 1967).

57. 299 So. 2d 198 (Miss. 1974).

58. *Securities Inv.*, 193 So. 2d at 719.

59. *Id.* at 721-22.

60. 584 So. 2d 409 (Miss. 1991).

61. *Id.* at 411.

62. *Id.*

63. *Id.*

64. *Id.* at 410-11.

65. *Id.* at 411.

66. *Id.*

67. *Id.* at 412.

68. *Id.* at 413.

69. *Id.*

70. *Id.* at 414.

III. THE LAW IN OTHER STATES

A. *No Statutory Identification Requirement*

Surprisingly, Mississippi is not the only state without a statutory identification requirement of some sort in its notary law. Those states without such a requirement are, however, in the vast minority and include Alabama, Hawaii, New Jersey, Pennsylvania and Rhode Island.⁷¹ New York, Vermont and Wyoming do not have an explicit statutory identification requirement, but under their laws, a notary public is liable for all damages to any injured parties for any misconduct in executing his or her duties.⁷² This requirement would seem to serve as an inducement to the notary to obtain identification from those seeking to have documents notarized. New York courts have additionally interpreted their common law to find an implicit identification requirement so that notaries who fail to ascertain the identity of a signer may be held liable for monetary damages.⁷³

B. *Certificate of Verification*

Three states, Idaho, Louisiana and Missouri, have an identification requirement in the certificate of verification that the notary is required to place on acknowledgments.⁷⁴ The certificate of verification for each state generally requires the signer of the acknowledgment to personally appear before the notary and that the notary know the identity of the signer.⁷⁵

C. *Journals*

Two states, California and Texas, require that the notary keep a record book of official acts.⁷⁶ Both states require that in this record book the notary keep a record of how the identity of the signer, grantor, or maker of the document was proven, the date of the notarization; and the name of the signer, grantor, or maker.⁷⁷ California additionally requires the person whose signature is being notarized to sign the record book.⁷⁸

71. See ALA. CODE §§ 36-20-1 to -32 (1991); HAW. REV. STAT. §§ 456-1 to -18 (1985 & Supp. 1992); N.J. STAT. ANN. §§ 52:7-1 to -21 (West 1986 & Supp. 1992); 57 PA. CONS. STAT. ANN. §§ 147-169 (1964 & Supp. 1992); R.I. GEN. LAWS §§ 42-30-1 to -15 (1988 & Supp. 1992).

72. See N. Y. EXEC. LAW § 135 (McKinney 1982); VT. STAT. ANN. tit. 24, § 446 (1992); WYO. STAT. § 32-1-108 (1977).

73. *Independence Leasing Corp. v. Aquino*, 506 N.Y.S.2d 1003 (1986).

74. IDAHO CODE §§ 55-710 to -715 (1988); LA. REV. STAT. ANN. § 35:511 (West 1985); MO. REV. STAT. § 486.330 (1987).

75. IDAHO CODE §§ 55-710 to -715 (1988); LA. REV. STAT. ANN. § 35:511 (West 1985); MO. REV. STAT. § 486.330 (1987). The certificate in Idaho must state "before me . . . personally appeared . . . known or identified to me (or proved to me on the oath of . . .)." IDAHO CODE §§ 55-710 to -715 (1988). In Louisiana the certificate must read "before me personally appeared . . . to me known to be the person . . . described in and who executed the foregoing instrument . . ." LA. REV. STAT. ANN. § 35:511 (West 1985). Missouri requires that the certificate must state "before me . . . personally appeared . . . known to me to be the person who executed the within [document] . . ." MO. REV. STAT. § 486.330 (1987).

76. CAL. GOV'T CODE § 8206 (West Supp. 1993); TEX. GOV'T CODE ANN. § 406.014 (West 1990).

77. See *supra* note 76.

78. CAL. GOV'T CODE § 8206 (West Supp. 1993).

D. Prohibition

Seven states have a prohibition against notarizing or acknowledging an instrument without first ascertaining the identity of the signer. These states are Arkansas,⁷⁹ Florida,⁸⁰ Indiana,⁸¹ Montana,⁸² New Mexico,⁸³ North Carolina⁸⁴ and South Dakota.⁸⁵

In four of these states, a criminal penalty is imposed for violation of the prohibition. In Arkansas it is a misdemeanor to notarize an instrument unless: (1) the notary witnesses the signing and either personally knows the signer, or receives proof of the signer's identity; or (2) the notary is familiar enough with the signature to recognize it.⁸⁶ If a notary public in New Mexico notarizes a document without the executing party appearing personally, it is a misdemeanor.⁸⁷ In North Carolina, it is a misdemeanor punishable by a fine, jail term, or both, for a notary to take an acknowledgment or issue a verification⁸⁸ without either personal knowledge or satisfactory evidence of the signer's identity.⁸⁹ A notary public in South Dakota commits a misdemeanor by notarizing any document if the parties involved do not personally appear before the notary.⁹⁰

The other three states simply prohibit a notary public from taking action without verifying identification.⁹¹ Florida and Montana do not allow an acknowledgment to be taken by a notary public unless the notary personally knows the individual making the acknowledgment or has satisfactory evidence that the per-

79. ARK. CODE ANN. § 21-14-111 (Michie Supp. 1991).

80. FLA. STAT. ANN. § 117.05 (West Supp. 1992).

81. IND. CODE ANN. § 33-16-2-2 (Burns 1992).

82. MONT. CODE ANN. § 1-5-201 (1991).

83. N.M. STAT. ANN. § 14-12-18 (Michie 1978).

84. N.C. GEN. STAT. § 10A-12 (1991).

85. S.D. CODIFIED LAWS ANN. § 18-1-11 (1987).

86. ARK. CODE ANN. § 21-14-111 (Michie Supp. 1991). Arkansas enacted this statute in 1989 and did not define when a signature would be familiar enough for a notary to recognize it; evidently this is being left up to the courts in Arkansas to define, but there have been no cases in this area yet.

87. N.M. STAT. ANN. § 14-12-18 (Michie 1978).

88. A verification under North Carolina law is an affidavit for verifying pleadings. N.C. GEN. STAT. § 1-148 (1983). The party or attorney of record must verify the accuracy and truthfulness of certain pleadings, as required by statute. N.C. GEN. STAT. § 1A-1, Rule 11 (1990). This requirement is found primarily in divorce proceedings. N.C. GEN. STAT. § 50-8 (1987).

89. N.C. GEN. STAT. § 10A-12 (1991).

90. S.D. CODIFIED LAWS ANN. § 18-1-11 (1987).

91. FLA. STAT. ANN. § 117.05(5) (West Supp. 1993); IND. CODE ANN. § 33-16-2-2 (Burns 1992); MONT. CODE ANN. § 1-5-201 (1991).

son making the acknowledgment is the person who executed the instrument.⁹² Florida also requires that the notary specify in his certificate that the signer personally appeared at the time of notarization.⁹³ Indiana prohibits a notary public from acknowledging the execution of an instrument unless the executor signed the document before the notary or affirmed the signature on the document as his own.⁹⁴

E. Requirement of Identity

Four states, Georgia, Maryland, Nevada and Washington, require confirmation of identity.⁹⁵ Georgia and Maryland require the confirmation of identity by the notary public on the basis of personal knowledge or satisfactory evidence.⁹⁶ In Nevada, a notary public must determine from either personal knowledge or satisfactory evidence that the person making the acknowledgment or verification is the person who executed the instrument.⁹⁷ The same identification requirement is also present for witnessing or attesting a signature.⁹⁸ Washington requires that a notary public "determine and certify, either from personal knowledge or satisfactory evidence" that the person acknowledging or witnessing the instrument is the executor

92. FLA. STAT. ANN. § 117.05(5) (West Supp. 1993); MONT. CODE ANN. § 1-5-201 (1991). Florida defines "satisfactory evidence" as

the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person making the acknowledgment is not the person he claims to be and any one of the following:

1. The sworn written statement of a credible witness personally known to the notary public that the person making the acknowledgment is personally known to the witness; or
2. Reasonable reliance on the presentation to the notary public of one of the following forms of identification, if the document is current or has been issued within the past 5 years:

- a. An identification card or driver's license issued by the Department of Highway Safety and Motor Vehicles;
- b. A passport issued by the Department of State of the United States; or
- c. Reasonable reliance on the presentation of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number, and, if the document is a passport, the document is stamped by the United States Immigration and Naturalization Service:

- (I) A passport issued by a foreign government;
- (II) A driver's license issued by a state other than Florida or by a Canadian or Mexican public agency authorized to issue drivers' licenses;
- (III) An identification card issued by a state other than Florida;
- (IV) An identification card issued by any branch of the armed forces of the United States; or
- (V) An inmate identification card issued on or after January 1, 1991, by the Department of Corrections for an inmate who is in the custody of the department.

FLA. STAT. ANN. § 117.05(5)(b) (West Supp. 1993). Montana does not have a statutory definition of "satisfactory evidence."

93. FLA. STAT. ANN. § 117.05(4) (West Supp. 1993).

94. IND. CODE ANN. § 33-16-2-2(6)(B) (Burns 1992).

95. GA. CODE ANN. § 45-17-8 (1990); MD. ANN. CODE art. 18, § 5 (1990); NEV. REV. STAT. ANN. § 240.071 (Michie 1992); WASH. REV. CODE ANN. § 42.44.080 (West 1991).

96. GA. CODE ANN. § 45-17-8 (1990); MD. ANN. CODE art. 18, § 5 (1990). Neither state statutorily defines "satisfactory evidence."

97. NEV. REV. STAT. ANN. § 240.071 (Michie 1992). "Satisfactory evidence" is not statutorily defined.

98. *Id.*

of the instrument.⁹⁹ Personal knowledge or satisfactory evidence is also required for witnessing or attesting a signature.¹⁰⁰

F. Other Methods

Tennessee has a unique method of dealing with an identification requirement.¹⁰¹ If the notary public does not know or does not have satisfactory evidence of the individual making the acknowledgment, the party is given twenty days to produce witnesses before the notary to prove the individual's identity.¹⁰² Utah, on the other hand, merely defines an acknowledgment as "a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily for its stated purpose."¹⁰³

G. Uniform Recognition of Acknowledgments Act States

A plurality of states has chosen to enact the Uniform Recognition of Acknowledgments Act.¹⁰⁴ These states include Alaska,¹⁰⁵ Arizona,¹⁰⁶ Colorado,¹⁰⁷ Connecticut,¹⁰⁸ Illinois,¹⁰⁹ Kentucky,¹¹⁰ Maine,¹¹¹ Michigan,¹¹² Nebraska,¹¹³ New Hampshire,¹¹⁴ North Dakota,¹¹⁵ Ohio,¹¹⁶ South Carolina,¹¹⁷ Virginia¹¹⁸ and West Virginia.¹¹⁹ This Act is a product of the National Conference of Commissioners on Uniform State Laws and was promulgated in 1968.¹²⁰ The purpose behind the Act is to provide uniformity in the notarization of documents in the several states.¹²¹

The current section three of this Act requires that a notary public taking an acknowledgment certify that the individual executing the acknowledgment appeared

99. WASH. REV. CODE ANN. § 42.44.080(1) (West 1991). "Satisfactory evidence" is not statutorily defined.

100. WASH. REV. CODE ANN. § 42.44.080 (West 1991).

101. See TENN. CODE ANN. § 66-22-106 (Supp. 1992).

102. *Id.* "Satisfactory evidence" is not statutorily defined.

103. UTAH CODE ANN. § 46-1-2 (Supp. 1992). "Satisfactory evidence" is not statutorily defined.

104. 14 U.L.A. 233 (1988).

105. ALASKA STAT. §§ 09.63.050-.130 (1983).

106. ARIZ. REV. STAT. ANN. §§ 33-501 to -508 (1990).

107. COLO. REV. STAT. ANN. §§ 12-55-201 to -210 (West 1991).

108. CONN. GEN. STAT. ANN. §§ 1-57 to -65 (West 1988).

109. ILL. ANN. STAT. ch. 30, paras. 221-230 (Smith-Hurd Supp. 1992).

110. KY. REV. STAT. ANN. §§ 423.110-.190 (Baldwin 1988).

111. ME. REV. STAT. ANN. tit. 4, §§ 1011-1019 (West 1989).

112. MICH. COMP. LAWS ANN. §§ 565.261-.270 (West 1988).

113. NEB. REV. STAT. §§ 64-201 to -215 (1990).

114. N.H. REV. STAT. ANN. §§ 456-A:1 to -A:9 (1992).

115. N.D. CENT. CODE §§ 47-19-14.1 to -14.8 (1978 & Supp. 1991).

116. OHIO REV. CODE ANN. §§ 147.51-.58 (Baldwin 1992).

117. S.C. CODE ANN. §§ 26-3-10 to -90 (Law. Co-op. 1991).

118. VA. CODE ANN. §§ 55-118.1 to .9 (Michie 1986).

119. W. VA. CODE §§ 39-1A-1 to -9 (1982).

120. 14 U.L.A. 233 (1988). Previous versions of this Act were promulgated in 1914, 1939, 1942, 1949, and 1960. *Id.*

121. UNIF. RECOGNITION OF ACKNOWLEDGMENTS ACT Prefatory Note, 14 U.L.A. 233 (1988).

before the notary.¹²² Additionally, the individual must be either personally known by the notary or present satisfactory evidence that he is the individual who executed the instrument he is seeking to acknowledge.¹²³ However, the Act fails to define what constitutes satisfactory evidence.

H. Uniform Law on Notarial Acts States

Seven states, Delaware,¹²⁴ Iowa,¹²⁵ Kansas,¹²⁶ Minnesota,¹²⁷ Oklahoma,¹²⁸ Oregon,¹²⁹ and Wisconsin¹³⁰ and the District of Columbia,¹³¹ have enacted the Uniform Law on Notarial Acts.¹³² The National Conference of Commissioners on Uniform State Laws also formulated this Act.¹³³ It was approved in 1982 with the intention that it replace the Uniform Recognition of Acknowledgments Act.¹³⁴ The purpose of the Act is to "define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions."¹³⁵ It applies to administering oaths and affirmations, taking verifications upon oaths and affirmations, witnessing or attesting signatures, certifying or attesting copies, and noting protests of negotiable instruments, in addition to taking acknowledgments.¹³⁶ The Act defines each of these tasks.¹³⁷ Provisions on who may perform notarial acts,¹³⁸ the effect of notarial acts performed in other jurisdictions,¹³⁹ the effect of notarial acts performed under federal authority,¹⁴⁰ the effect of foreign notarial acts,¹⁴¹ and a description of the certificate of the notarial act¹⁴² are included in the Act.

Section two of this Act requires that in taking an acknowledgment a notary public must either have personal knowledge of the identity of the individual seeking the acknowledgment or satisfactory evidence that the individual executed the document he is seeking to have acknowledged.¹⁴³ The same identification require-

122. UNIF. RECOGNITION OF ACKNOWLEDGMENTS ACT § 3, 14 U.L.A. 233 (1988).

123. *Id.*

124. DEL. CODE ANN. tit. 29, §§ 4321-4328 (1991).

125. IOWA CODE ANN. §§ 77A.1-.12 (West 1989).

126. KAN. STAT. ANN. §§ 53-501 to -511 (Supp. 1992).

127. MINN. STAT. ANN. §§ 358.41-.50 (West 1991 & Supp. 1993).

128. OKLA. STAT. ANN. tit. 49, §§ 111-121 (West 1988 & Supp. 1993).

129. OR. REV. STAT. §§ 194.505-.595 (1991).

130. WIS. STAT. ANN. § 706.07 (West Supp. 1992).

131. D.C. CODE ANN. §§ 45-621 to -628 (Supp. 1992).

132. 14 U.L.A. 125 (1988).

133. *Id.*

134. *Id.*

135. UNIF. LAW ON NOTARIAL ACTS Prefatory Note, 14 U.L.A. 125 (1988).

136. UNIF. LAW ON NOTARIAL ACTS § 1, 14 U.L.A. 127 (1988).

137. *Id.*

138. UNIF. LAW ON NOTARIAL ACTS § 3, 14 U.L.A. 130 (1988).

139. UNIF. LAW ON NOTARIAL ACTS § 4, 14 U.L.A. 132 (1988).

140. UNIF. LAW ON NOTARIAL ACTS § 5, 14 U.L.A. 133 (1988).

141. UNIF. LAW ON NOTARIAL ACTS § 6, 14 U.L.A. 134 (1988).

142. UNIF. LAW ON NOTARIAL ACTS § 7, 14 U.L.A. 136 (1988).

143. UNIF. LAW ON NOTARIAL ACTS § 2, 14 U.L.A. 129 (1988).

ment is present for a verification upon oath or affirmation or for witnessing or attesting a signature.¹⁴⁴ Satisfactory evidence is defined as (1) personal knowledge of the individual, (2) the oath or affirmation of a credible witness of whom a notary has personal knowledge, or (3) identification documents.¹⁴⁵

IV. ANALYSIS

Mississippi notary public law is fairly straightforward, simple and specific. However, Mississippi has a problem in its law on notaries public, because it does not require a simple identity check before an instrument is notarized. Forty states and the District of Columbia have taken at least elementary steps to require notaries to check identities of signers before notarizing a document. Mississippi, unfortunately, has chosen not to enact such a simple precaution. However, there is a remedy readily available. Mississippi merely needs to enact an identification requirement, preferably of the type found in either the Uniform Recognition of Acknowledgments Act¹⁴⁶ or the Uniform Law on Notarial Acts.¹⁴⁷

Of the two Acts, the Uniform Law on Notarial Acts is more comprehensive than the Uniform Recognition of Acknowledgments Act. The Uniform Law on Notarial Acts covers a much broader spectrum of actions that a notary might perform than does the Uniform Recognition of Acknowledgments Act, which covers only acknowledgments performed by notaries.

A comparison of the provisions of current Mississippi notary law¹⁴⁸ with the Uniform Act on Notarial Acts reveals that the two are compatible. If the Act were to be adopted, the only additions to current Mississippi law would be the identification requirement and a short form certificate of notarial acts that the notary must complete for each notarial act performed.¹⁴⁹ The certificate merely states that the instrument was acknowledged before the notary on the date specified; the notary must then sign it and give his or her title and the commission expiration date.¹⁵⁰ This is not a major change, however, because Mississippi currently requires a recital containing the notary's official seal, signature, and date of the expiration of the commission to be affixed to each certificate of acknowledgment that is notarized.¹⁵¹ The only difference is that Mississippi does not have a specified form that the notary is to use, while the Uniform Law on Notarial Acts does.

The Uniform Recognition of Acknowledgments Act, while it would be an improvement over current Mississippi law, should not be adopted because, quite simply, it is outdated. This Act was first promulgated in 1892 as the Uniform Ac-

144. *Id.*

145. *Id.*

146. 14 U.L.A. 233 (1988). *See supra* notes 122-23 and accompanying text.

147. 14 U.L.A. 125 (1988). *See supra* notes 143-45 and accompanying text.

148. MISS. CODE ANN. §§ 25-33-1 to -23 (1972).

149. UNIF. LAW ON NOTARIAL ACTS § 8, 14 U.L.A. 137 (1988).

150. *Id.*

151. MISS. CODE ANN. § 25-33-13 (1972).

knowledge Act¹⁵² and last revised in 1960.¹⁵³ No state has enacted it since 1981.¹⁵⁴ The Act covers only acknowledgments, which in Mississippi apply only to the sale of lands.¹⁵⁵ If enacted, therefore, it would not apply to any other situation. Additionally, there is no statutory definition of what constitutes satisfactory evidence of the identity of the signer of the document. Such a definition is necessary to avoid confusion among both notaries public and the courts.

The Uniform Law on Notarial Acts, on the other hand, was promulgated in 1982 to replace the Uniform Recognition of Acknowledgments Act.¹⁵⁶ If adopted, it would apply to all situations in which a document is notarized. The Act avoids the potential confusion of both the courts and notaries by statutorily defining what constitutes satisfactory evidence of the identity of the signer.¹⁵⁷ If Mississippi replaced its current notary law with the Uniform Law on Notarial Acts, it would certainly be an improvement upon the current situation, with its opportunity for fraud.

Mississippi need not enact the entire Uniform Law on Notarial Acts to correct the problem currently in its law. The legislature need only enact some form of an identification requirement for notaries public to follow. Ideally, a Mississippi requirement would be similar in form to the identity requirement of section two of the Uniform Law on Notarial Acts, which defines satisfactory evidence of identity.¹⁵⁸ However, Mississippi may want to use a different scheme of identification requirement. It could be as simple as requiring the signer to show his or her driver's license or other picture identification. On the other hand, it could be as complex as Florida's listing of what constitutes acceptable proof.¹⁵⁹ Mississippi might enact a criminal penalty for failure to check identification. The state could even hold notaries liable in civil actions for any damages resulting from a failure to ascertain the identity of the signer. Another potential solution is for Mississippi to require the notary to keep in a register of official acts¹⁶⁰ including the means by which the signer proved his or her identity.

Ideally, the identity check would be combined with a penalty, either civil or criminal, to ensure compliance. It is clear, though, that some form of identification is necessary to end the opportunity for fraud that currently exists. A myriad of possibilities is available. The legislature needs merely to enact one.

152. UNIF. RECOGNITION OF ACKNOWLEDGMENTS ACT Prefatory Note, 14 U.L.A. 233 (1988).

153. *Id.*

154. UNIF. RECOGNITION OF ACKNOWLEDGMENTS ACT Table of Jurisdictions Wherein Act Has Been Adopted, 14 U.L.A. 233 (1988).

155. See MISS. CODE ANN. §§ 89-3-1 to -15 (1972 & Supp. 1992).

156. UNIF. LAW ON NOTARIAL ACTS Historical Note, 14 U.L.A. 125 (1988).

157. UNIF. LAW ON NOTARIAL ACTS § 2, 14 U.L.A. 129 (1988).

158. *Id.*

159. See FLA. STAT. ANN. § 117.05 (West Supp. 1992).

160. See MISS. CODE ANN. § 25-33-5 (1972).

V. CONCLUSION

Mississippi law on notaries public and acknowledgments is generally in conformity with that in other states, with one glaring omission. That omission is the lack of an identification requirement. Although a search of Mississippi case law does not reveal a plethora of cases involving this specific situation, it is evident from the comments of Justice Smith in *Securities Investment*¹⁶¹ that the Mississippi Supreme Court is aware of the problem.¹⁶² Justice Smith noted that the notarization of forged signatures was "becoming increasingly familiar."¹⁶³ The court, however, has rightfully refrained from creating a judicial remedy for the problem.

Notary public law is a legislative creation. As such, it is clearly within the province of the Mississippi legislature to solve, not the Mississippi Supreme Court. The problem is that the legislature has not remedied the situation. Until the legislature devises a solution, the opportunity for fraud will remain alive and well in Mississippi. Mississippi finally has a chance to be in the group of states that advances the law, rather than in the group of states that lags far behind. Mississippi should not pass up this opportunity.

161. 193 So. 2d 719 (Miss. 1967).

162. *Id.* at 721-22.

163. *Id.*