

CHAPTER 5 PROPER IDENTIFICATION

Chapter Objective

This section explains the proper and acceptable forms of identification in addition to explaining proper procedure should a person not have identification available. The student will know what kinds of identification documents are acceptable for notarizing signatures and will know the proper procedures for obtaining acceptable identification when identification documents are not available.

Part 1

Satisfactory Evidence for Proving Identity

As you now know, identity must be proven to the notary for acknowledgments and jurats. There are four basic means of proving identity:

- **Personal Knowledge**
- **Proven identity through proper identification documents**
- **Credible witness or witnesses**
- **Subscribing Witness**

This, of course assumes that the you, the notary do not have any evidence or reason to believe that the person requesting the notarization is not the person he or she claims to be. In other words, if you know that someone is committing signature forgery, you obviously may not notarize the document.

Personal Knowledge

One way to identify someone is through personal knowledge but be careful that you truly know that person and have known him or her for a long while. Notarizing the signature of someone you only met a few days or even months ago on the basis of personal knowledge is not wise as that person may not really be who they have claimed to be. When in doubt, always rely on proven evidence.

Proven Identity

Assuming the notary does not have personal knowledge of the one requesting notarial services, the notary may satisfy the identification requirement by accepting one to the following:

1. An identification card or driver's license issued by the California Department of Motor Vehicles which is current or has been issued within the past 5 years.
2. A passport issued by the Department of State of the United States which is current or has been issued within the past 5 years.
3. The use of any one of the following, as long as the document is current or has been issued within five years and it contains a photograph and description of the person named on it, signed by the person, and **MUST**

bear a serial or other identifying number. If the document is a foreign passport, it must be stamped by the United States Citizenship and Immigration Services. (The USCIS stamp is adequate to meet this requirement).

- (A) A passport issued by a foreign government.
- (B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.
- (C) An identification card issued by a state other than California.
- (D) An identification card issued by any branch of the armed forces of the United States.
- (E) An inmate identification card issued on or after January 1, 1988, by the Department of Corrections, if the inmate is in custody. (Not an ID bracelet)

You should never accept an international driver's license as proof of identification. While there are legitimate international driver's licenses, these can also be obtained through the internet with no verification of identity. Also, you should note that social security cards cannot be used since they do not meet the above listed criteria nor should credit cards be used even if they do have a picture of the person.

It is important to again reiterate that a signer's identity document must contain at least as much information as contained in the signature. For example, when notarizing the signature, John Smith, Jr., the "Jr." must also appear on the identity document. The identity document can contain more information as the signature, but never less. If someone signs the document as Mary Ann Smith and her driver's license only has Mary Smith, you must use an alternate form of identification that has her name in the form of Mary Ann Smith. Similarly, John W. Jones, II must have an identity document with at least John W. Jones, II.

Alternative forms of identity

Credible Witness

If someone is requiring notarial services but lacks the proper identification, we can use a procedure called a **obtaining a credible witness**. A credible witness must personally know the signer and be personally known by the notary. In addition, the credible witness must swear the following oath or affirmation:

That the person making the acknowledgment is the person named within the document.

- (A) The person making the acknowledgment is personally known to the credible witness.
- (B) That it is the reasonable belief of the witness that the circumstances of the person making the acknowledgment are such that it would be very difficult or impossible for that person to obtain another form of identification.

- (C) The person making the acknowledgment does not possess any of the identification documents named above.
- (D) The witness does not have a financial interest in the document being acknowledged and is not named in the document.

If the Credible Witness does not know the signer or if the Notary does not know the Credible Witness, then two Credible Witnesses may be used whose identities are proven to the notary. **Please note again that** credible witnesses may **not** have any financial interest in the document, nor may they be named within the document!

The Credible Witness(s) do not sign the document but must sign the notary journal. Remember that a single credible witness must personally be known by the notary and must personally know the signer, so the notary will not use identification documents to verify identity, but with two credible witnesses, identity documents are used since the notary does not personally know either credible witness. Of course, if the notary knew either one of the credible witnesses, only one would be required.

Subscribing Witness (Also known as Proofs of Execution)

When a person has signed or wishes to sign a document but cannot personally appear before a notary, the signer can request another person to sign the document as a witness to the principal signer's signature and have the document notarized. That person is called a **subscribing witness**. **The subscribing witness must** either witness the document signer signing the document or have the document signer acknowledge that he or she did sign the document. The subscribing witness must personally know the identity of the document signer and the subscribing witness must be personally known by the notary public, or if the notary does not personally know the subscribing witness, then his or her identity must be established, or proved, by a third party. That third party must personally know the subscribing witness and be personally known by the notary public. That third party is called a credible witness.

Since the subscribing witness must be personally known by the notary public, or by one credible witness, paper identification cannot be used in establishing the subscribing witness' identity."

The subscribing witness must swear under oath that:

- The subscribing witness either saw the principal sign the document or heard the signer acknowledge that he or she signed the document.
- The principal requested that the subscribing witness sign the document as a witness

The subscribing witness must **sign the document as well as the notary's official journal**. In addition, if the identity of the subscribing witness was established by a third party, or credible witness, then the credible witness must also sign the notary's official journal.

Notice that the credible witnesses only signs the journal and not the document whereas the subscribing witness must sign both.

A document called a **Subscribing Witness Jurat**, also referred to as a "Proof of Execution" must then be filled out and stamped to complete the notarization act. See page A-4 for an example of a Proof of Execution. You will notice that it is a special kind of jurat since the signer must swear that he or she either witnessed the signing of the

document or that the signer acknowledged his or her signature to the Subscribing Witness.

Example Please!

You may be wondering when would you ever see this request come knocking at your door? Suppose a boss needs to sign a contract prior to leaving, so the boss asks the secretary to witness the signing, sign the document as a witness, and then have it taken to you, the notary (whom you know personally). You will follow the procedures for proof of execution and notarize the document.

A proof by a subscribing witness **cannot be used in conjunction with any Deed of Trust, Mortgage, Security Agreement, Quitclaim Deed, or Grant Deed** document. This makes sense since with these documents the notary is required to obtain a right thumbprint for these types of documents. As in the case of right thumbprints, a Proof by Subscribing witness may indeed be used for a Deed of Reconveyance and a Trustee's Deed if the property is in foreclosure. These two documents are singled out because while they do contain the word "Deed" in them, they do not require thumbprints and they may be used with a subscribing witness.

If you would like to see diagrams which illustrate the usage of Credible Witnesses or Subscribing Witnesses, look ahead to the chapter summary beginning with point number 5.

Part 2 Related Procedures

Signature by Mark

If the signer of an instrument cannot write (sign) his or her name, that person may sign by mark (x). The requirements for signature by mark are as follows:

The signer's mark must be witnessed by two persons who must subscribe their own names as witnesses on the document. One witness should write the person's name next to the person's mark and then the witness should sign his or her name as a witness. The witnesses are only verifying that they witnessed the individual make his or her mark on the signature line of the document. A notary public is not required to identify the two persons who witnessed the signing by mark or to have the two witnesses sign the notary's journal.

Exception

If the witnesses were acting in the capacity of credible witnesses in establishing the *identity* of the person signing by mark, then the witnesses' signatures must be entered in the notary's journal.

Example of signature by mark

Date: August 18, 2003 Name: x John Smith by: Mary Jones (Witness #1)
Peter R. Roberts (Witness #2)

You can easily see here that Mary Jones signed John Smith after Mr. Smith placed his mark (x) on the document. Peter R. Roberts signs as a witness but does not need to resign Mr. Smith's name.

It is important to note that when you perform a notarization for a person who is signing by mark, you must still verify the identity of the person signing by mark! In addition, you must have that person also sign the journal with his or her mark. That person must also sign under his or her own power. It may be acceptable for someone to support his or her arm during the signing, but the notary cannot allow the person helping to make the mark or signature for the person by guiding the signer's hand.

Chapter Summary

PROPER IDENTIFICATION

1. The methods for proving identity include
 - a. **Personal knowledge**
 - b. **Using acceptable identification documents**
 - c. **Using credible witnesses**

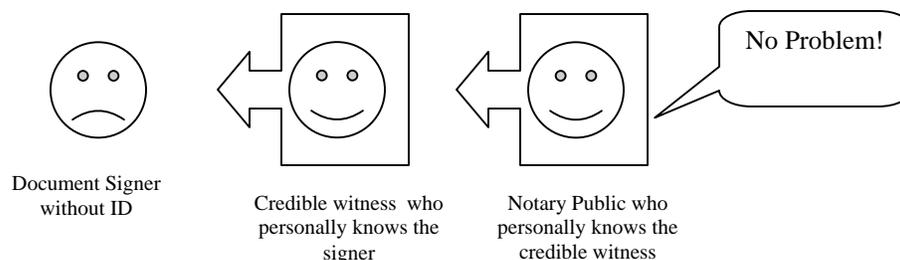
2. **Personal knowledge between the document signer and the notary** is acceptable identification, however; notarizing a signature of someone you only met a few days or even months ago on the basis of personal knowledge is not wise as that person may not really be who they have claimed to be.

3. **Acceptable identification documents:** Any one of the following, as long as the document is **current or has been issued within five years** and contains a **photograph and description of the person** named on it, is **signed** by the person, and **MUST bear a serial** or other identifying number.
 - a. **An identification card or driver's license** issued by the California Department of Motor Vehicles or any other State DMV or similar office (such as Bureau of Motor Vehicles).
 - b. **An identification card issued by any branch of the armed forces of the United States.**
 - c. A passport issued by the Department of State of the United States. (U.S. Passports do not require a physical description).
 - d. A passport issued by a foreign government which must be stamped by the United States Citizenship and Immigration Services. (The USCIS stamp is adequate to meet this requirement).
 - e. **A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.**

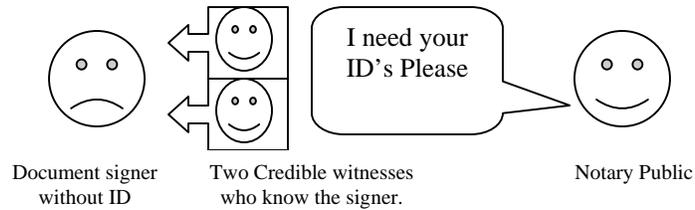
- f. **An inmate identification card** issued on or after January 1, 1988, by the Department of Corrections, if the inmate is in custody.
4. The signature on the document should match the name as it is referred to within the document. The identification document (for example Driver's license) used for signature verification can contain **more** information than the signature, but never less. For example, if a document is signed with the name of *John S. Smith, Sr.*, the identification can include John S. Smith, Sr., or even John Stanley Smith, Sr. If, however, the identification document does not have the "Sr." indication, the notary may not use that document for identification purposes. **Again, the identification document can contain more information than the signature, but never less.**

<p>Document Signature:</p> <p><i>Daniel C. Jones , III</i></p> <p><u>Daniel C. Jones, III</u></p>
<p>Driver's License has:</p> <p>Daniel C. Jones</p> <p>Signed as:</p> <p><i>Daniel C. Jones</i></p>
<p>We must not use this Driver's License for documents signed as Daniel C. Jones, III since the name on the approved identification MUST contain the same or more information as the document signature, but never less. This driver's license does not include the "III", so we do not really know if this is Daniel C. Jones, III, II or even the Ist!</p>

5. **The use of a credible witness as identification-** If someone is requiring a notary but lacks the proper identification, we can use a procedure called a obtaining a credible witness. A credible witness must **personally know the signer and must be personally known by the notary.**



6. If the notary does not personally know the credible witness, then **two credible witnesses** may be used whose identities are **proven** to the notary upon the presentation of satisfactory evidence.



7. Credible witnesses may **not** have any financial interest in the document, nor may they be named within the document!
8. The credible witness(es) **do not** sign the document but must sign the notary journal. Credible witnesses must swear to the notary that they personally know the document signer. This verbal oath is acceptable identification to the notary for the document signer. When two credible witnesses are used, be sure to enter their identifying information in the journal properly.

SIGNATURE BY MARK AND IDENTIFICATION OF THE SIGNER ONLY

9. If the signer of an instrument cannot write (sign) his or her name, that person may **sign by mark (x)**.
10. The signer's mark must be witnessed by **two persons** who must subscribe their own names as witnesses on the document.

Date: August 18, 2003 **Name:** x John Smith by: Mary Jones (Witness #1)

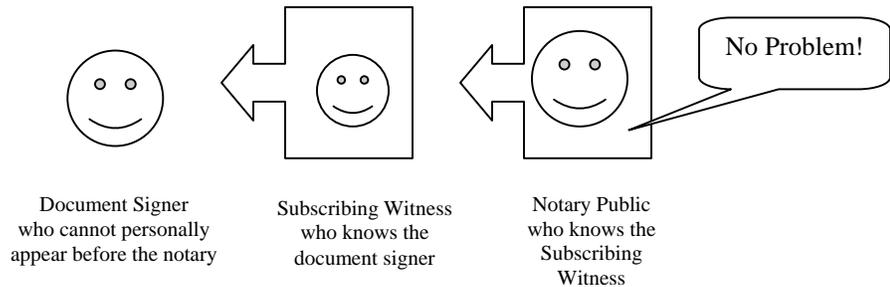
Peter R. Roberts (Witness #2)

You should note **that only one witness** is required to subscribe the document signer's name, but both witnesses sign the document. The witnesses are only verifying that they witnessed the individual make his or her mark on the document.

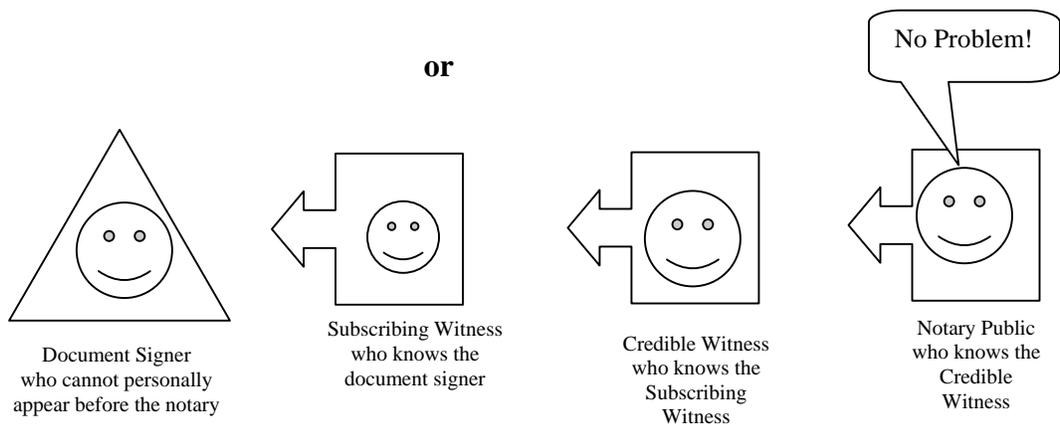
11. A notary public is **not required** to identify the two persons who witnessed the signing by mark or to have the two witnesses sign the notary's journal.
12. When a notary completes a notarization for a person who is signing by mark, he or she must **still verify the identity of the person signing by mark**. In addition, that person must also sign the journal with his or her mark.
13. All persons signing a document must be able to sign under his or her own power.

Special circumstance for document signers who cannot appear before the notary at the time of notarization: use of a SUBSCRIBING WITNESS

14. **Subscribing witness** – When a document principal has signed or wishes to sign a document but **cannot personally appear before a notary**, the principal may request that a person sign the document as a witness to the principal signer’s signature and ask a notary to notarize the document. That person is used to prove the execution by the document principal (signer) and is called a **subscribing witness**. (You should remember that a document signer can also be referred to as the document executor or the signing document principal).
15. The subscribing witness must **swear under oath** that he or she either saw the principal sign the document or heard the signer acknowledge that he or she signed the document.
16. The subscribing witness must **know** the document signer and the notary public must personally know the subscribing witness. If the notary does not know the subscribing witness, then the subscribing witness must bring another person along whom the notary knows personally. **That third party is called a credible witness since he or she is verifying the identity of the subscribing witness through personal knowledge.**



or



17. Since the subscribing witness must be personally known by the notary public, or by one credible witness, paper identification such as a driver's license **is not used to verify** the subscribing witness' identity.

18. The **subscribing witness must sign the document as well as the notary's official journal**. In addition, if the identity of the subscribing witness was established by a third party, or credible witness, then the credible witness must also sign the notary's official journal.

19. A **Proof of Execution**, also called a Subscribing Witness Jurat, must be filled out and stamped to complete the notarization act. (See A-4).

20. A proof by a subscribing witness **may not** be used in conjunction with any **Quitclaim Deed, Grant Deed, Deed of Trust, Security Agreement or Mortgage Agreements**.

21. If the wording of a document purports to identify an affiant (signer of a written affidavit), and the document **includes** the birth date or age of the person and a photograph or thumbprint of the person, the notary **must require**:
 - a. A certified copy of the person's birth certificate or
 - b. An identification card or DMV issued license. If the form is required for immigration purposes, the notary may accept identification documents acceptable to the United States Citizenship and Immigration Services.

Check your knowledge

1. Some acceptable forms of identification include: a _____
 _____ or _____
 _____ issued by California or any other state, a passport issued by the _____, to name a only a few .

2. The rule of thumb when using identification documents is that they should have a photograph of the person, a physical description of the person and shall be _____ by the person. The document should also bear a _____ or other identifying number.

3. Foreign government passports, a driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses, an identification card issued by a state other than California, a United States Military ID card, and an inmate identification card if the inmate is in custody, are all acceptable forms of ID as long as they are either current or have been issued within _____ years and contain the aforementioned information.

4. If the document is a foreign passport, it _____be stamped by the United States Immigration and Naturalization Service or the United States Citizenship and Immigration Services.
5. Proving identity on the basis of a credible witness requires that the credible witness knows the signer and that the credible witness be known by the _____.
6. If the notary does not personally know the credible witness, two _____ may be used as long as both have proven their identity to the notary.
7. A _____ may be used when a person has signed a document but cannot personally appear before a notary. The _____ must personally know the subscribing witness or his or her identity must be established, or proven, by a third party called a credible witness who is known by the notary.
8. Since the subscribing witness must be personally known by the notary public, or by one credible witness, paper identification _____ be used in establishing the subscribing witness' identity.
9. A proof by a subscribing witness cannot be used in conjunction with any _____, _____, _____, _____, _____, or _____.
10. If a signer is using Signature by Mark, that mark must be witnessed by _____ witnesses who must sign their name on the document. A notary is _____ required to identify the two persons who witnessed the signing by mark unless they are acting in the capacity of credible witnesses.
11. A credible witness may _____ have a financial interest in the document and may _____ be named within the document.
12. When notarizing a signature by mark, the notary must still verify the _____ of the one signing by mark.

answers: 1. driver's license, identification card, Department of State 2. signed; serial number 3. five 4. must 5. notary 6. credible witnesses 7. subscribing witness; notary 8. cannot 9. Quitclaim Deed, Grant Deed, Deed of Trust, Security Agreement, Mortgage 10. two; not 11. not; not 12. identity

SUBSCRIBING WITNESS JURAT

State of _____ }
County of _____ } ss.

**This form is used for a
Subscribing Witness. The
notary act is known as a
“Proof of Execution.”**

On _____ before me, the undersigned, a notary public for the state, personally
(date)

appeared _____ personally known to me or proved to me
(subscribing witness’s name)

(on the oath of _____, who is personally known to me) to be the person
[credible witness’s name]

whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn,
deposed and said that he/she was present and saw/heard acknowledged

(name[s] of principal[s])

the same person(s) described in and whose name(s) is/are subscribed to the within and annexed
instrument in his/her/their authorized capacity(ies) as (a) party (ies) thereto, execute the same, and that
said affiant subscribed his/her name to the within instrument as a witness at the request of

(name[s] of principal[s]).

WITNESS my hand and official seal.

**Optional but strongly
recommended!**

Notary Signature

Stamp clear impression of notary seal above.

OPTIONAL INFORMATION

While law does not require the following information, completing relevant portions may minimize the potential of this document being fraudulently attached to another document subsequent to signing.

Name of document

Date of document

Number of pages

Other information