

# Attorney General

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Robert R. Corbin

January 4, 1991

Mr. Jim Shumway  
Secretary of State  
1700 W. Washington, 7th Floor  
Phoenix, Arizona 85007

Re: I91-007 (R90-154)

Dear Mr. Shumway:

You have asked if a notary public who is not physically impaired may use a signature stamp in lieu of an original handwritten signature when notarizing or acknowledging documents to be filed in the Office of the Secretary of State.<sup>1/</sup> We conclude that your office has the authority to determine whether the manner in which certificates of acknowledgment or other "notarial acts" have been executed satisfy the statutory requirements of genuineness. Thus, your office may determine whether a notary who is not physically impaired<sup>2/</sup> may use a signature stamp to perform notarial acts.

The notarization or acknowledgment of documents allows for some certainty regarding the authentication of documents or signatures. Absent a means of eliminating the need to have the signators of a document personally appear to authenticate their signatures, the business and personal affairs which are the core of our commercial society would be seriously hampered. To further this certainty, and to minimize evidentiary problems and questions associated with authentication of documents and signatures, the legislature has provided that "the signature

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<sup>1/</sup> Although you have asked specifically about the notarization of documents to be filed in your office, the conclusions contained in this opinion are equally applicable to the notarization of all documents.

<sup>2/</sup> This opinion addresses only the use of signature stamps by a person who is not physically impaired.

and title of the person performing the [notarial] act are prima facie evidence that he is a person with the designated title and that the signature is genuine." A.R.S. § 33-502(D); see also Rule 902(8), Arizona Rules of Evidence (providing that additional proof of authenticity is not required for documents acknowledged "in the manner provided by law . . .").

Responsibility for the appointment of notaries public has been given to the Secretary of State by the legislature. A.R.S. § 41-311(1). Included within the scope of the Secretary of State's authority over notarial acts is the authority to determine the proper form for signatures contained in certificates of acknowledgment. A.R.S. §§ 33-501, 33-504. This responsibility begins with the consideration of a person's request for appointment as a notary. A.R.S. § 41-311(1). Your responsibility for notaries culminates with your duty to police the acts and conduct of those who hold notary commissions as required by law. See Ariz. Atty. Gen. Op. Nos. 179-164, 179-305 (discussing the Secretary of State's authority and obligations with respect to reviewing notary commission applications, and revoking notary commissions).

Among the duties performed by notaries is the authentication or acknowledgment of documents. A.R.S. §§ 41-311(2), (6). Both the taking of acknowledgments and the authentication of documents requires the notary whom you have appointed to issue a certification in connection with the execution of documents. See A.R.S. § 33-503 (prescribing the information which a notary must have before issuing a certificate of acknowledgment). Central to the execution of certificates of acknowledgments and the authentication of documents is the notary's signature on the appropriate certificate. A.R.S. §§ 41-311(2), (6); see A.R.S. § 33-506 (prescribing forms of acknowledgment).

"Signature" generally means "the name of a person written with his own hand . . ." Webster's Third New International Dictionary, 2116 (1976). This understood definition has been supplemented by the legislature to also mean a "mark, when a person cannot write, with his name written near it and witnessed by a person who writes his own name as witness." A.R.S. § 1-215(31). These definitions have been further modified with respect to notarial acts with the requirement that a notary's certificate of acknowledgment must be accompanied by the genuine signature of the notary public. A.R.S. § 33-502(D). In the context of the notary statutes, a signature is "genuine" if it was "actually produced by or proceeding from the alleged source or author: not faked or counterfeit: authentic." Webster's Third New International Dictionary, 948.

In our opinion, whether a stamped signature meets the statutory genuineness requirement must be determined by the Secretary of State using the same factors which you rely upon

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in evaluating notary commission applications, including the signature which necessarily accompanies each application.<sup>3/</sup> You have the authority to allow notary application and notarial acts to be stamped by a person who is not physically impaired. You also have the authority to conclude that the demand for certainty with respect to the acknowledgment and authentication of documents requires that the signature placed on a document as a part of the certificate of acknowledgment be the actual, handwritten signature, rather than a rubber stamp of a signature.

Sincerely,



BOB CORBIN  
Attorney General

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<sup>3/</sup> The uniform commercial code separately defines "signed" and "signature". In our opinion, neither of these statutes control the manner in which a notary must execute certificates of acknowledgment or other notarial acts. See A.R.S. §§ 47-1201(39) and 47-3401(B).