

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 1907

By: Representative Vines  
By: Senator J. Hutchinson

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE TITLE 18, CHAPTER 12,  
AND AMEND ARKANSAS CODE TITLE 16, CHAPTER 47,  
REGARDING DEFECTS IN ACKNOWLEDGEMENTS OF RECORDED  
INSTRUMENTS; TO CORRECT DISCREPANCIES AMONG TITLE 18,  
CHAPTER 12, SECTION 207, AND TITLE 16, CHAPTER 47,  
SECTION 107, AND TITLE 16, CHAPTER 47, SECTION 207;  
TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

REGARDING THE FORM OF ACKNOWLEDGEMENTS  
AND ADDRESSING DEFECTS IN  
ACKNOWLEDGEMENTS OF RECORDED INSTRUMENTS;  
AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §18-12-207 is repealed.

~~18-12-207. Acknowledgements by corporations.~~

~~For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by corporations, the form of acknowledgment shall be as follows:~~

~~“State of .....~~

~~County of .....~~



~~On this ..... day of ....., 20..., before me, ....., a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named ..... and ....., (being the person or persons authorized by said corporation to execute such instrument, stating their respective capacities in that behalf), to me personally well known, who stated that they were the ..... and ..... of the ....., a corporation, and were duly authorized in their respective capacities to execute the foregoing instruments for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.~~

~~"IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ..... day of ....., 20...."~~

~~"That all deeds or instruments affecting or purporting to affect the title to land executed in the above and foregoing form shall be good and sufficient."~~

SECTION 2. Arkansas Code § 16-47-207 is repealed.

~~16-47-207. Forms of certificates.~~

~~An officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in one (1) of the following forms:~~

~~(1) By Individuals:~~

~~"State of ....."~~

~~County of ....."~~

~~On this the .... day of ....., 19..., before me, ....., the undersigned officer, personally appeared ....., known to me (or satisfactorily proven) to be the person whose name ..... subscribed to the within instrument and~~

~~acknowledged that .....he ..... executed the same for the purposes therein contained.~~

~~In witness whereof I hereunto set my hand and official seal.~~

~~.....~~

~~.....~~

~~Title of Officer."~~

~~(2) By a Corporation:~~

~~"State of .....~~

~~County of .....~~

~~On this the ...day of ....., 19..., before me, ..... the undersigned officer, personally appeared ....., who acknowledged himself to be the ..... of ....., a corporation, and that he, as such....., being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as .....~~

~~In witness whereof I hereunto set my hand and official seal.~~

~~.....~~

~~.....~~

~~Title of Officer."~~

~~(3) By an Attorney in Fact:~~

~~"State of .....~~

~~County of .....~~

~~On this the .....day of ....., 19..., before me, ....., the undersigned officer, personally appeared ....., known to me (or satisfactorily proven) to be the person whose name is subscribed as attorney in fact for ....., and acknowledged that he executed the same as the act of his principal for the purposes therein contained.~~

~~In witness whereof I hereunto set my hand and official seal.~~

~~.....~~

~~.....~~

~~Title of Officer."~~

~~(4) By Any Public Officer or Deputy Thereof, or by Any Trustee, Administrator, Guardian, or Executor:~~

~~"State of .....~~

~~County of .....~~

~~On this the ..... day of ....., 19..., before me, ....., the undersigned officer, personally appeared ....., of the State (County or City as the case may be) of..., known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.~~

~~In witness whereof I hereunto set my hand and official seal.~~

~~.....~~

~~.....~~

~~Title of Officer."~~

SECTION 1. Arkansas Code § 16-47-107 is amended to read as follows:  
16-47-107. ~~Acknowledgment by corporations~~ Forms for acknowledgment.

(a) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by corporations, business trusts, estates, partnerships, limited liability companies, associations, joint ventures, or any other legal entities, ~~the form of acknowledgment shall be as follows~~ the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of.....

County of .....

On this ..... day of ....., 20 19..., before me, ....., a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments), duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named ..... and ....., (being the person or persons authorized by said corporation, [business trust, estate, partnership, limited liability company, association, joint venture, or other legal entity] to execute such instrument, stating their respective capacities in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that [he, she, or they] was [were] the ..... [and .....]. of the ....., a corporation [business trust, estate, partnership, limited liability company, association, joint venture, or other legal entity], and was [were] duly authorized in [his, her, or their] respective capacity [capacities] to execute the foregoing ~~instrument~~ instrument(s) for and in the name and behalf of said corporation [business trust, estate, partnership, limited liability company, association, joint venture or other legal entity], and further stated and acknowledged that [he, she, or they] had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

“IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ..... day of ....., 20 19....

.....

(Notary Public)”

(b) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by individuals, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of.....

County of .....

On this ..... day of ....., 20..., before me, a Notary Public, (or before any officer within this State or without the State now qualified under existing law to take acknowledgments,) appeared the within named ..... [and .....], to me personally well known (or satisfactorily proven to be such person), who stated and acknowledged that [he, she or they] had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ..... day of ....., 20....

.....  
(Notary Public)”

(c) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by attorneys in fact, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of .....

County of .....

On this the .....day of ....., 20..., before me, ....., the undersigned

officer, personally appeared ....., known to me (or satisfactorily proven) to be the person whose name is subscribed as attorney in fact for ....., and acknowledged that he executed the same as the act of his principal for the consideration, uses, and purposes therein contained.

IN TESTIMONY WHEREOF I hereunto set my hand and official seal.

.....

.....

Title of Officer.”

(d) ~~(b)~~ All deeds or instruments affecting or purporting to affect the title to land executed in the above and foregoing form listed in subsections (a), (b), or (c) of this section as applicable, shall be good and sufficient.

(e) The bracketed language listed in subsections (a), (b), and (c) above, suggests alternate language and is not required to be in an acknowledgment when the alternate language is not applicable.

(f) The use of the present or past tense in the form of acknowledgment shall not affect the validity of the acknowledgement.

(g) The heading of the acknowledgment may list either:

(1) The county where the officer executing the acknowledgment resides; or

(2) The county where the acknowledgment occurred.

SECTION 4. Arkansas Code § 18-12-208 is amended to read as follows:  
18-12-208. Defects.

(a) All deeds, conveyances, deeds of trust, mortgages, marriage contracts, and other instruments in writing affecting or purporting to affect the title to any real estate or personal property situated in this state, which have been recorded and which are defective or ineffectual because:

(1) Of failure to comply with § 18-12-403;

(2) The officer who certified the acknowledgment or acknowledgments to such instruments omitted any words required by law to be in the certificate or acknowledgments;

(3) The officer failed or omitted to attach his or her seal to the certificate;

(4) The officer attached to any such certificate a seal not bearing the words and devices required by law;

(5) The officer was a mayor of a city or an incorporated town in the state of Arkansas and as such was not authorized to certify to executions and acknowledgments to such instruments, or was the deputy of an official duly authorized by law to take acknowledgments but whose deputy was not so authorized;

(6) The notary public failed to state the date of the expiration of his or her commission on the certificate of acknowledgment, or incorrectly stated it thereon;

(7) The officer incorrectly dated the certificate of acknowledgment or failed to state the county wherein the acknowledgment was taken; or

(8) The acknowledgment was certified in any county of the State of Arkansas by any person holding an unexpired commission as notary public under the laws of the state who had, at the time of the certification, ceased to be a resident of the county within and for which he or she was commissioned, shall be as binding and effectual as though the certificate of acknowledgment or proof of execution was in due form, bore the proper seal, and was certified to by a duly authorized officer.

(b) A deed, conveyance, deed of trust, mortgage, marriage contract, and other instrument in writing, affecting or purporting to affect the title to any real estate or personal property situated in this state, which is executed after August 13, 1993, shall not be deemed defective or ineffectual because:

(1) The officer failed or omitted to attach his or her seal to the certificate;

(2) The officer attached to any such certificate a seal not bearing the words and devices required by law;

(3) The notary public failed to state the date of the expiration of his or her commission on the certificate of acknowledgment, or incorrectly stated it thereon;

(4) The officer incorrectly dated the certificate of acknowledgment or failed to state the county wherein the acknowledgment was

taken; or

(5) The acknowledgment was certified in any county of the State of Arkansas by any person holding an unexpired commission as notary public under the laws of the state who had, at the time of the certification, ceased to be a resident of the county within and for which he or she was commissioned.

(c) A deed, conveyance, deed of trust, mortgage, marriage contract, and any other instrument in writing, affecting or purporting to affect the title to any real estate or personal property situated in this state, whether executed before, on, or after the effective date of this subsection, shall not be found insufficient to satisfy the requirements of § 18-12-202:

(1) Because the acknowledgment thereof does not strictly comply with the form contained in § 16-47-107 or omits the words "for the consideration, uses, and purposes therein mentioned or set forth" or uses similar words;

(2) Because the gender listed in the acknowledgment thereof does not match the gender of the person acknowledging the instrument;

(3) Because the acknowledgment thereof does not identify the title or position of the person acknowledging the instrument on behalf of a corporation, partnership, company, trust, association or other entity; or

(4) Where a good faith attempt at material compliance with 16-47-107(a), (b), or (c), as applicable, has been made and there is no factual dispute as to the authenticity of the signature of the person making acknowledgement thereof.

(d) Notwithstanding an acknowledgment to a deed or other instrument which may contain one or more of the defects set forth in this section, if a deed or other instrument is recorded, it shall:

(1) Provide constructive notice thereafter to all parties of the matters contained in the deed or other instrument; and

(2) Be treated as any other deed or instrument in writing under §16-47-110, and may be read into evidence in any court in this state without further proof of execution.

(e) A valid jurat may act as a substitute for a certificate of acknowledgment for instruments recorded on or after the effective date of this subsection.

SECTION 5. Arkansas Code § 14-15-402 is amended to read as follows:  
14-15-402. Instruments to be recorded.

(a) It shall be the duty of each recorder to record in the books provided for his or her office all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, affidavits, powers of attorney, assignments, contracts, agreements, leases, or other instruments of writing of, or writing concerning, any lands and tenements or goods and chattels, which shall be proved or acknowledged according to law, that are authorized to be recorded in his or her office.

(b)(1) To be accepted by the county recorder for recording purposes, all documents shall:

(A) Be on eight and one-half inch (8.5<sup>2</sup>) by eleven inch (11<sup>2</sup>) paper;

(B) Have a two and one-half inch (2.5<sup>2</sup>) margin at the right top of the first page, one-half inch (0.5<sup>2</sup>) margin on the sides and bottoms of all pages, and a two and one-half inch (2.5<sup>2</sup>) margin at the bottom of the last page;

(C) Have an area reserved on the top right of the first page for the file mark of the recorder;

(D) Contain the following information:

(i) The title of the document; and

(ii) The name of the grantor and grantee, when applicable;

(E) Be acknowledged ~~in accordance with § 16-47-207~~ or otherwise executed as permitted by § 16-47-107 or § 18-12-208; and

(F) Be legible.

(2)(A) The county recorder shall have the discretion to waive the requirements of subdivision (b)(1) of this section for:

(i) Good cause; and

(ii) Any document that complies with the Uniform Real Property Electronic Recording Act, § 14-2-301 et seq.

(B) All documents and instruments executed before January 1, 2004, shall be exempt from the requirements of subdivision (b)(1) of this section.

(C) All surveys and plats shall be exempt from the requirements of subdivision (b)(1) of this section.

(3) A county recorder shall not refuse to record a document that has been executed in a manner permitted by § 16-47-107 or § 18-12-208.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that many instruments affecting title to real estate are being found to not provide constructive notice because of defects in the certificates of acknowledgment; and that this act is immediately necessary to protect property rights and interests. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.