

Valtech News and Reviews

Section 309-b Amended

As a result of an initiative by the New York State Land Title Association, a further refinement was made to § 309-b, which governs the notarial certificates of acknowledgments taken outside New York. This amendment was part of the ongoing effort to streamline the process of recording instruments in New York State.

When NYSLTA first drafted and supported revision to §§ 309-a and 309-b, the goal was to help eliminate recording delays by providing the county recording officers of the state with simplified and standardized forms of acknowledgments. Previously, there was only one statutorily prescribed form of acknowledgment, the form provided under NY Real Property Law §309 applicable to acknowledgments taken for the execution of instruments by officers of corporations. There were no standardized forms for executions by partners in partnerships, members of a limited liability company, attorneys in fact, executors and other fiduciaries or agents. As a result, the standard form of individual acknowledgment was adapted on an ad hoc basis to accommodate executions by these representative parties.

When drafting the forms of acknowledgment, the basic language was used for both certificates taken within and without New York state except that an additional requirement was added that the certificate of acknowledgment also states the "and that such individual made such appearance before the undersigned in the [blank] (insert the city or other political subdivision and the state or country for other place the acknowledgment was taken)." Adding additional language was to provide the location of the notary's act. While there is nothing inherently harmful in this language, it defeated the greater intention to have one standard form of acknowledgment. When instruments are sent out of state for execution, however, on occasions numerous enough to take note of, the form of acknowledgment used was the standard form for acknowledgments taken within New York. The result is that the form of the notary's certificate of acknowledgment does not conform to § 309-b and the instrument may be rejected or recorded, but is subject to doubt whether the recording of the document was proper. Many of us in the industry believed that this dichotomy defeated the laudable purposes for which the original amendments to the acknowledgment forms were first proposed and enacted. As a result, the NYSLTA supported the current revision to make optional the inclusion of the additional recitation of location.

On Oct. 2, 2002, the legislature approved bill S6368-B which effectively dropped the last sentence of § 309-b, making it permissive so as not to invalidate acknowledgments taken on forms still containing the deleted language. Gov. George Pataki signed the bill and it took effect Jan. 2, 2003 as Chapter 609 of the laws of 2002.

It should be noted that we are considering a final amendment which will make the statutory form of the venue portion of the acknowledgment certificate descriptive of the location of the notarial act sufficient to capture the important location information provided in all such forms but without overburdening the notarial process.