

## Department of State

## § 92.38

### § 92.34 Fastening certificate to instrument.

The proper place for the certificate of acknowledgment is after the signature of the parties to the instrument. If the instrument is a printed form, the certificate will almost invariably be a part of the form. When Form FS-88 is used or when the certificate must be prepared on a sheet separate from the instrument, it should be fastened to the instrument as the last sheet. The method of fastening notarial certificates is prescribed in § 92.17.

### § 92.35 Errors in certificate of acknowledgment.

A notarizing officer having taken an acknowledgment of an instrument and made a certificate of that fact cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can be done only by the parties reacknowledging the instrument. However, typographical errors may be corrected by striking out the erroneous characters and inserting the correct ones above. Such changes should be initiated by the parties who executed the instrument and by the notarizing officer.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

### § 92.36 Authentication defined.

An authentication is a certification of the genuineness of the official character, *i.e.*, signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers.

### § 92.37 Authentication procedure.

(a) The consular officer must compare the foreign official's seal and signature on the document he is asked to authenticate with a specimen of the same official's seal and signature on file either in the Foreign Service office or in a foreign public office to which he

has access. If no specimen is available to the consular officer, he should require that each signature and seal be authenticated by some higher official or officials of the foreign government until there appears on the document a seal and signature which he can compare with a specimen available to him. However, this procedure of having a document authenticated by a series of foreign officials should be followed only where unusual circumstances, or the laws or regulations of the foreign country require it.

(b) Where the State law requires the consular officer's certificate of authentication to show that the foreign official is empowered to perform a particular act, such as administering an oath or taking an acknowledgment, the consular officer must verify the fact that the foreign official is so empowered.

(c) When the consular officer has satisfactorily identified the foreign seal and signature (and, where required, has verified the authority of the foreign official to perform a particular act), he may then execute a certificate of authentication, either placing this certificate on the document itself if space is available, or appending it to the document on a separate sheet (see § 92.17 on the fastening of notarial certificates).

### § 92.38 Forms of certificate of authentication.

The form of a certificate of authentication depends on the statutory requirements of the jurisdiction where the authenticated document will be used (see § 92.39 regarding the provisions of Federal law). Before authenticating a document for use in a State or Territory of the United States, a consular officer should consult the pertinent law digest to ascertain what specific requirements must be met, or he should be guided by any special information he may receive from the attorney or other person requesting the document with regard to the applicable statutory requirements. (See § 92.41(e) regarding material which should not be in the certificate of authentication.) If no provisions relating to authentications can be found in a particular State

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or Territorial law digest, and in the absence of any special information from the attorney or other person requesting the document, the officer should prepare the certificate of authentication in the form which seems best suited to the needs of the case. When in his opinion the circumstances seem to warrant, and always in connection with certificates of marriage or divorce decrees, a consular officer should include in the body of his certificate of authentication a qualifying statement reading as follows: "For the contents of the annexed document I assume no responsibility."

### § 92.39 Authenticating foreign public documents (Federal procedures).

(a) A copy of a foreign public document intended to be used as evidence within the jurisdiction of the Federal Government of the United States must be authenticated in accordance with the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 948, sec. 92(b), 63 Stat. 103; 28 U.S.C. 1741). This provision of Federal law provides that a copy of any foreign document of record, or on file in a public office of a foreign country or political subdivision thereof, if certified, by the lawful custodian thereof, may be admitted in evidence when authenticated by a certificate of a United States consular officer resident in the foreign country, under the seal of his office.

(b) The consular officer's certificate should indicate that the copy has been certified by the lawful custodian.

(c) In the absence of a consular officer of the United States as an officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document may be authenticated by a consular officer of the United States resident in Rome, Italy (22 U.S.C. 1204).

### § 92.40 Authentication of foreign extradition papers.

Foreign extradition papers are authenticated by chiefs of mission.

## 22 CFR Ch. I (4-1-10 Edition)

### § 92.41 Limitations to be observed in authenticating documents.

(a) *Unknown seals and signatures.* A consular officer should not authenticate a seal and signature not known to him. See § 92.37(a) regarding the necessity for making a comparison with a specimen seal and signature.

(b) *Foreign officials outside consular district.* A consular officer should not authenticate the seals and signatures of foreign officials outside his consular district.

(c) *Officials in the United States.* Consular officers are not competent to authenticate the seals and signatures of notaries public or other officials in the United States. However, diplomatic and consular officers stationed at a United States diplomatic mission may certify to the seal of the Department of State (not the signature of the Secretary of State) if this is requested or required in particular cases by the national authorities of the foreign country.

(d) *Photostat copies.* Consular officers should not authenticate facsimiles of signatures and seals on photographic reproductions of documents. They may, however, authenticate original signatures and seals on such photographic reproductions.

(e) *Matters outside consular officer's knowledge.* A consular officer should not include in his certificate of authentication statements which are not within his power or knowledge to make. Since consular officers are not expected to be familiar with the provisions of foreign law, except in a general sense, they are especially cautioned not to certify that a document has been executed or certified in accordance with foreign law, nor to certify that a document is a valid document in a foreign country.

(f) *United States officials in foreign countries.* An authentication by a United States consular officer is performed primarily to cause the official characters and positions of foreign officials to be known and recognized in the United States. Consular officers should not, therefore, undertake to authenticate the seals and signatures of other United States officials who may be residing in their consular districts.