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PLAIN ENGLISH NOTARY FORMS

House Bill 4025 as introduced First Analysis (2-27-97)

Sponsor: Rep. Nick Ciaramitaro
Committee: Consumer Protection

THE APPARENT PROBLEM:

A notary public is a public official who is authorized to administer oaths, witness signatures, and "acknowledge" documents (such as deeds, mortgages, and liens) recorded with county registers of deeds. An "acknowledgment" is the act by which someone goes before a notary public and acknowledges (states) that he or she has signed a document. The notary then signs what officially is called a "Certificate of Acknowledgment," referred to simply as an "acknowledgment." An affidavit is a sworn statement taken under oath. A person who is giving a sworn statement takes an oath to tell the truth and makes his or her statement, and the notary public attests that the individual did in fact take the oath and attests to the accuracy of the recording of the statement. The notary does not attest to the accuracy of the statement itself, but merely that it was made under oath and accurately recorded.

Currently, there are no statutorily approved forms for the completion of acknowledgments and affidavits by notaries public. Nationally, there has been some movement toward encouraging uniformity of formats for documents used by notaries public. Further, it has been suggested that some notaries have difficulty drafting their own forms for acknowledgments and affidavits and as a result would prefer to have a standard form that can be completed by filling in the appropriate blanks. It is also suggested that standard forms that are written in plain English would increase the comprehension of the purpose and effect of the notary public's action. Legislation has been introduced to provide plain English forms for acknowledgments and affidavits.

THE CONTENT OF THE BILL:

House Bill 4025 would amend the act entitled "Of county officers" by adding language allowing for the use of so-called plain English notary forms. The bill would not require that the plain English forms be used to the exclusion of other notary forms. The plain English forms, if properly executed, would be as effective and serve their stated purpose in the same fashion as do the other notary forms.

The bill would also provide several examples of these forms for different purposes. Specifically, the bill contains examples of plain English acknowledgments for: individuals acting on their own behalf, co-partnerships, limited partnerships, corporations, limited liability corporations, limited liability companies, public officers, trustees, and personal representatives, as well as a plain English sworn statement or affidavit.

MCL 55.107 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no state or local fiscal impact. (2-26-97)

ARGUMENTS:

For:

The bill would provide standard plain English forms for a number of situations commonly faced by notaries. These forms would provide a consistent format for dealing with these situations and, if properly executed, would be fully effective for their stated purpose. This will help notaries by simplifying the process and reducing the possibility that an drafting error on the part of the notary could invalidate an acknowledgment or affidavit. Furthermore, the fact that the forms are in plain English will make it easier for both the notary and the person seeking the notarization to understand the effect of the acknowledgment or affidavit.

Against:

Although the provision of forms is generally helpful, the forms provided in the bill are not wholly adequate. Notaries are required by law to certify that a person acknowledging a document or instrument (for example, a contract) appeared in person before them and that they had "satisfactory evidence" that the person before them was the one described in and who had executed the document. The forms for acknowledgments do not contain sufficient provision for the notary to record the manner by which he or she identified the person seeking

House Bill 4025 (2-27-97)

the acknowledgment. Since an acknowledgment is intended to serve as a verification that the person did indeed sign the document in question, information concerning how the person who signed the document was identified by the notary could be helpful if at a later date the acknowledgment comes under question.

POSITIONS:

The Department of State supports the bill. (2-27-97)

The National Notary Association supports the bill, but would encourage the expansion of standardized forms to include a notation of how the notary identified the person signing the document. (2-27-97)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.