

## **Model Notary Act 2010**

### **Section 2-5 Credible Witness.**

“Credible witness” means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual’s identity.

#### **Comment**

Section 2-5 defines the term “credible witness.” Consistent with the public interest goal of deterring fraud and creating reliable documents, the Act takes the step of removing any doubt as to who can qualify to act in this capacity. Particularly noteworthy is the impartiality requirement. This means that the witness neither has an interest in nor is affected by the transaction for which he or she is proving the identity of the principal in a notarization. Although not specifically required by the Act, witness impartiality may be measured by the same standards used to disqualify notaries from acting. (See Section 5-5 and Comment.)

The definition does not address whether a credible witness must be personally known to the notary or whether instead the witness may be identified through reliable identification documents. This matter, however, is resolved by the definition of “satisfactory evidence of identity” (see Section 2-20), which dictates that only in instances where two credible witnesses are vouching for the identity of a principal may the notary use identification documents to confirm the identity of a credible witness.

### **Section 2-16 Personal Knowledge of Identity.**

“Personal knowledge of identity” and “personally knows” mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

#### **Comment**

Section 2-16 provides guidance on the critical concept of personal knowledge of identity. Although most notarizations will be based upon identification through evidentiary means (see Section 2-20), sometimes identity will be determined based on a notary’s personal familiarity with another individual. Personal knowledge is a necessary element of the chain of proof when a sole credible witness is used. (See Subparagraph 2-20(2).)

The Act provides a rule of reason for determining personal knowledge. (See *Anderson v. Aronsohn*, 63 CAL. APP. 737 (1923), which deals with the nature of personal knowledge of identity, stating that “the degree of acquaintance which would authorize a notary to certify that he had personal knowledge involves something more than mere casual meetings, and must be based upon a chain of circumstances surrounding the person tending to show that he is the party he purports to be.”)

The definition does not quantify the number of interactions nor the period of time of acquaintance sufficient to convince a notary that an individual has a claimed identity. This is left to the notary’s best judgment. However, the drafters firmly believed that any reasonable doubt on the part of the notary about whether a signer is “personally known” must result in reliance instead on acceptable identification documents or on at least one qualified credible witness.