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NEW LAWS AFFECTING NOTARIES PUBLIC

BEGINNING JANUARY 1, 2008

Notaries Public in California must be aware of the new changes effective beginning January 1, 2008. This document explains the changes that will substantially impact the notary public procedure as well as the office. We have taken the summary of changes published and distributed by the Secretary of State and re-organized the format and provided easy-to-understand commentaries which should adequately prepare any notary in California to fully comply with 2008 notary law.

As you will soon discover, all notaries public will need to obtain new Acknowledgment forms and Jurat forms beginning January 1, 2008. NotaryClasses.com has these forms available for free for the Notary community in a PDF format. Log on to www.NotaryClasses.com and select **2008 Notary Acknowledgments** and **2008 Jurats**. In order to make this transition as easy as possible for all California notaries, we are making these forms free for both downloading and distribution.

We hope that you find this summary to be very useful. We are still awaiting final decisions regarding a few of the practical applications of these new laws so please re-download this summary document in January, 2008 to ensure you have the latest updated version.

Changes regarding Acknowledgments and Jurats

1. **Civil Code section 1185 – Acknowledgment; requisites.** The identity of the person making an acknowledgment may no longer be established by personal knowledge alone. Under the new law, the identity of the person making the acknowledgment must be established by specified documents or a credible witness who is personally known to the notary public and proves their identity by specified documents. Violation of the section subjects a notary public to a civil penalty of up to \$10,000 in an administrative action brought by the Secretary of State or a public prosecutor.
2. **Government Code section 8202 – Execution of jurat.** The identity of the affiant may no longer be established by personal knowledge alone. “Personal knowledge” as a basis for identifying the affiant when executing a jurat has been deleted. “Satisfactory evidence” must be used to identify an affiant in accordance with Civil Code section 1185 (see above).

Commentary:

Prior to 2008, the notary was permitted to use personal knowledge alone in identifying the document signer when completing acknowledgments and jurats. After January 1, 2008, the notary must require acceptable identification from the principal even if he or she is personally known by the notary. The person making an acknowledgment or executing a jurat must present an acceptable form of identification such as a driver’s license, passport, *etc.*. Laws regarding what may be used as acceptable identification did not change. The listing of acceptable identification documents are still as follows:

1. An identification card or driver’s license issued by the California Department of Motor Vehicles which is current or has been issued within the past 5 years.

2. A passport issued by the Department of State of the United States which is current or has been issued within the past 5 years.
3. The use of any one of the following, as long as the document is current or has been issued within five years and it contains a photograph and description of the person named on it, signed by the person, and MUST bear a serial or other identifying number. If the document is a foreign passport, it must be stamped by the United States Citizenship and Immigration Services. (The USCIS stamp is adequate to meet this requirement).
 - (A) A passport issued by a foreign government.
 - (B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.
 - (C) An identification card issued by a state other than California.
 - (D) An identification card issued by any branch of the armed forces of the United States.
 - (E) An inmate identification card issued on or after January 1, 1988, by the Department of Corrections, if the inmate is in custody. (Not an ID bracelet) identification documents are not available documents or credible witness(es).

If the person making the acknowledgment or completing the jurat (document signer) does not have an acceptable identification document available, and circumstances make it very difficult or impossible to obtain an acceptable identification document, the notary may still use the credible witness procedure to verify his or her identity. The notary may use one credible witness if the credible witness is known by the notary or the notary may use two credible witnesses if neither is personally known by the notary.

Beginning 2008, when using one credible witness who is personally known by the notary, the credible witness must also prove his or her identity with an acceptable identification document as listed above. Prior to 2008, a single credible witness, personally known by the notary did not prove his or her identity to the notary with identification documents. The new law in effect January 1, 2008, still requires that the notary personally know the credible witness if the notary uses a single credible witness to establish the identity of the document signer, but identification documents must also be presented by that credible witness to the notary. Of course, two credible witnesses who know the document signer but are not known personally by the notary may still be used and they will both prove their identity to the notary with acceptable identification documents.

3. **Civil Code section 1189 – Certificate of Acknowledgment.** The certificate of acknowledgment is now executed under penalty of perjury. A notary public who willfully states as true any material fact known to be false can be subject to a civil penalty of up to \$10,000.

Comments:

The Certificate of Acknowledgment and Jurat have both changed to reflect this new law. Essentially, the modification has been to remove “personally known to me” from the acknowledgment wording. In addition, a new statement which requires the notary to sign under

PENALTY OF PERJURY is added to acknowledgment wording. The new wording now reads as follows:

STATE OF _____

COUNTY OF _____

On _____ before me, _____
(Name of notary and title)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct..

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

The notary's failure to obtain proper identification when completing an acknowledgment can subject the notary to a fine of up to \$10,000 since the notary must sign UNDER PENALTY OF PERJURY that the document signer PROVED his or her identity to the notary.

At this point, we are assuming that using a previous version of an acknowledgment and striking through "personally known" and adding the "PENALTY OF PERJURY..." section immediately prior to the Notary's signature will not be acceptable but we do not have confirmation of this from the Secretary of State. Our suggestion is to download the free 2008 acknowledgment form from NotaryClasses.com to ensure compliance with this law. Acknowledgments completed without this wording will be incorrectly completed and will most likely be rejected for filing with the County Clerk or upon legal review! Be sure to describe the document in the optional section of the acknowledgment you download from us since you will be attaching the acknowledgment as a loose certificate. This procedure will help to ensure that it is not inappropriately re-attached to another document.

Should the Secretary of State make a ruling on whether or not old acknowledgment wording can be modified, we will amend this document and re-post.

As you should already know, current notary law allows Notaries Public in California to use acknowledgment wording from other states only if the document is to be recorded in that other state so long as the acknowledgment wording does not require the notary to do something which is illegal for a notary in California to do (i.e. guaranteeing the authorized capacity of the signer is illegal for a notary in California).

If a property is in the state of Tennessee, for example, since any Deed regarding this property would be filed in Tennessee, the notary is permitted to use the acknowledgment wording from Tennessee. An obvious question arises from this new 2008 California notary acknowledgment law requiring the "PENALTY OF PERJURY..." clause. Most states will not have this on their acknowledgments. We suggest that for now, use the new wording for California's acknowledgment until we receive clarification from the Secretary of State regarding this issue. Once again, re-download this document in January to ensure the latest revision.

Changes to the Jurat

Jurat wording is also modified under these new laws to remove “personally known” and now reads as follows:

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____ by _____, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature

While there is no wording on the Jurat form regarding the notary signing under PENALTY OF PERJURY, the notary should realize that under the new **Civil Code section 1189**, since a notary public who willfully states as true any material fact known to be false can be subject to a civil penalty of up to \$10,000, the accountability for the notary will probably be the same as with acknowledgments.

As with the acknowledgment form, we suggest that you use the proper jurat wording instead of striking through “personally known...” for jurats completed after January 1, 2008. We are still waiting for a determination from the Secretary of State as to whether or not striking out the “personal known...” wording from a jurat will be acceptable.

Changes regarding Journals and Journal entries

4. **Government Code section 8206 – Sequential journal.** A statement about the identity of a person making an acknowledgment, or taking an oath or affirmation must be based on “satisfactory evidence” in conformity with Civil Code section 1185 (see above). Also, a power of attorney is added to the list of notarized documents that require a thumbprint. Further, when requested by a peace officer investigating a criminal offense, a notary public must surrender his or her journal immediately or as soon as possible if the journal is not present. The peace officer must have probable cause to believe the journal contains evidence of a criminal offense. The peace officer who seizes a journal must notify the Secretary of State within 24 hours or as soon as possible of the name of the notary public whose journal was seized.

Comments

When completing the journal entry, the notary should no longer indicate simply “personal knowledge” regarding the identity of a document signer. The notary must specify the type of identification document used, the serial number of the identification document and either the date of issuance or expiration of the identification document.

Prior to January 1, 2008, the notary was required to obtain a right thumbprint in the journal when that document in general either transfers property (Deed) or encumbers someone’s property (Deed of Trust). The new law adds a Power of Attorney to the list of documents for which a notary must require a right thumbprint.

5. **Government Code section 8214.23 (New Section) – Failure to obtain thumbprint, penalty.** A notary public who fails to obtain a thumbprint as required by Government Code

section 8206 is subject to a civil penalty up to \$2,500. Either the Secretary of State or a public prosecutor may seek this penalty.

6. Finally, with regard to notary journals, a peace officer no longer needs to provide a subpoena or warrant for a journal. The new law reads:
When requested by a peace officer investigating a criminal offense, a notary public must surrender his or her journal immediately or as soon as possible if the journal is not present. The peace officer must have probable cause to believe the journal contains evidence of a criminal offense. The peace officer who seizes a journal must notify the Secretary of State within 24 hours or as soon as possible of the name of the notary public whose journal was seized.
7. **Government Code section 8228 – Enforcement of chapter.** In addition to the Secretary of State, a peace officer, acting within his or her authority may also enforce this Chapter 3 of Division 1 of Title 2 of the Government Code relating to notaries public by examining a notary public’s pertinent records.

Comments

Notice that the Secretary of State or a peace officer acting within his or her authority may examine a journal entry or the specific journal.

8. **Government Code section 8214.21 (New Section) – Failure to provide journal, penalty.** Willful failure of a notary public to provide a peace officer with a journal when requested is punishable by a civil penalty of up to \$2,500. The Secretary of State or a public prosecutor may seek such a penalty.
9. **Government Code section 8206.5 (New Section) – Response time for a request.** A notary public must respond to a request for a transaction in the notary public journal within 15 business days after the receipt of the request and must supply either a photostatic copy of the line item or acknowledge that no such line item exists. In a disciplinary proceeding for failing to comply with this section, the notary public may raise a defense of unavoidable, exigent business or personal circumstances.
10. **Government Code section 8214.1 – Grounds for refusal.** Willful failure to report the theft or loss of a journal is now expressly stated as grounds for revocation or suspension of a notary public. New grounds for denial of an application or revocation or suspension have been added for crimes connected to notarial acts: making a false writing, fraud relating to a deed of trust, improper notarial acts, unlawfully acting as a notary public, filing false or forged documents, forgery, embezzlement, and falsely obtaining personal information. Also, willful failure to provide access to a journal when requested by a police officer is now grounds for revocation or suspension.

Additional miscellaneous changes in Notary law

11. **Government Code section 8201.1 – Additional qualifications; fingerprints.** Notary public applicants shall submit fingerprints to the Department of Justice for the purpose of a background check. Under the new law, the fingerprints will also be submitted to the Federal Bureau of Investigation and the Secretary of State will be informed of any results as well as

any subsequent arrests.

Comments:

All notaries seeking a commission (new or renewing) January 1, 2008 or later must submit fingerprints for a background check. Under current legislation, notaries public seeking recommission with less than 6-months after the expiration of their current commission do not have to submit fingerprints. The 2008 laws change this so be prepared to submit fingerprints for each commission term.

12. **Government Code section 8201.5 – Application form.** A notary public applicant must submit a photograph of himself/herself to the Secretary of State along with the application.
13. **Government Code section 8213.5 – Change in location.** A notary public may not use a commercial mail receiving agency or post office box as his or her principal place of business or residence unless the notary public provides the Secretary of State with a physical street address as the principal place of residence. Willful failure to notify the Secretary of State of a change of address is now punishable as an infraction by a fine of up to \$500.
14. **Government Code section 8213.6 – Name changes; application; filing.** Willful failure to notify the Secretary of State of a name change is now punishable as an infraction by a fine of up to \$500.
15. **Government Code section 8214.2 – Fraud deed of trust.** In addition to being guilty of a felony, a notary public who defrauds in relation to a deed of trust on real property single-family residence by means of forgery may be subject to other relief or remedies provided to the parties by law.
16. **Government Code section 8221 – Destruction, defacement, concealment of records.** Willfully destroying, defacing, or concealing records belonging to a notary public now has a four-year statute of limitations. The criminal penalty is not the exclusive relief or remedy provided by law.
17. **Government Code section 8225 – Improper notarial acts.** The misdemeanor crime of soliciting, coercing, or influencing a notary public to perform an improper notarial act, knowing it to be improper, now has a four-year statute of limitations.
18. **Government Code section 8228.1 – Willful failure to control seal.** A four-year statute of limitations is added to the misdemeanor crime of a notary public willfully failing to perform his or her required duties or failing to keep the notary public seal under his or her direct and exclusive control.

If you become aware of any omission or error with respect to this document, please contact us. We have purposely omitted some of the increases in the statutes of limitations as we believe these laws will have very minimal impact on most notaries public.