

HOW TO PASS CALIFORNIA'S NOTARY EXAM

CHAPTER 1

THE OFFICE OF THE NOTARY PUBLIC

Chapter Objective:

The goal of this chapter is to introduce the general duties of a notary public which will encompass new vocabularies for many students. Subsequent chapters will cover most of these duties in greater detail.

At the end of this chapter, the student will recognize the expected duties of a notary public and will be able to correctly answer general questions concerning these functions.

Part 1

What is a Notary Public?

Almost everyone needs the services of a notary sooner or later, yet the underlying purposes for the office of the Notary Public are not generally understood by much of the public whom we serve. Most people know that a notary is used when a document signer must be identified, but outside of that important role, the various additional duties of a notary are not generally known. Perhaps the best way of understanding the role of a notary public is to first examine the fundamental purpose for the office, and then expand to the duties involved in achieving that purpose.

So, what is a Notary Public?

The office of the Notary Public is critical to everyday business and personal transactions. For example, state laws require many documents to be notarized before recording with a County Clerk office. Quite often, state agencies or private companies require a signature on a document to be notarized prior to moving forward with

transactions or document requests. There are literally hundreds of types of documents in every state and even most countries that require the process of notarization.

A Notary Public is a **public servant** whose office exists in large part as a measure to **help protect the public from fraud and whose notary actions during the notary process guarantee that certain minimum required standards have been met.** What are these minimum required standards?

A **NOTARY PUBLIC** is someone commissioned by the state whose primary duties include certifying that:

- 1) The signer(s) personally appeared before the notary at the time of notarization.
- 2) The signer(s) were properly identified at the time of notarization.
- 3) That if the document required the signer to swear to the truthfulness of the statements within the document, that the signer did so in front of the notary.

As we will see later, this description does not cover 100% of the notary duties, but the underlying principle remains in that notaries are public servants whose important and careful actions provide an essential layer of protection for the general public. For example, suppose someone signed a Grant Deed transferring property from one person to another, but years later the signer granting the property claims that the signature on the Grant Deed is not his and the property was never legally transferred! How could the new owner prove that indeed the signature on the Grant Deed was legitimate? In situations such as these, requiring that such documents undergo notarial standards prior to recording, two important goals are accomplished: 1) such a procedure makes it more difficult to engage in fraudulent transactions since personal identifying information is gathered from the signer at the time of notarization and 2) since the notary retains a formal record of all notarized acts performed, the legal system has concrete evidence to offer should the need arise.

Furthermore, notaries act as an “impartial witness” to the signing of important documents; consequently, **the notary may never notarize a document in which they have a direct financial or beneficial interest.** In other words, if the notary is named within the document as a principal, or if the notary could directly benefit personally or financially from the signing of the document, that notary may not notarize that document.

Consequently, notarizing documents for a spouse or relative might even be illegal if the document notarized could have a direct beneficial or financial interest to the notary. Notaries in community property states such as California should exercise extreme caution when notarizing documents for a spouse. For instance, if the spouse is requiring a notarized signature on a pension benefit document, you can easily see that the notary would have a direct financial interest in the document being notarized, even though he or she is not named in the document.

Who Commissions the notary public?

In California, the Secretary of State commissions the notary for a term of 4 years after the applicant passes a written multiple-choice examination concerning notary law. Additionally, the notary must be able to pass a criminal background check. Since the

office of the notary plays such a vital role in ensuring that the general public has some minimum protections against fraud, it is important that the notary demonstrate to the state a background of legal integrity that is consistent with the values of the office itself. A commissioned notary usually holds office for a term of four years after which the notary must re-take the exam if he or she wishes to be re-commissioned as a Notary. Currently, the examination is administered by proctors from the Cooperative Personnel Services (CPS), which is a company contracted with the Secretary of State to administer notary exams. Since the CPS proctors administer the exam, they obviously are precluded from being able to take the examination themselves, and consequently are also not permitted to seek appointment as a notary public.

In the past, qualified persons seeking appointment as a notary public in California were permitted to simply schedule an exam with the CPS and upon passing the exam and meeting the additional requirements we will discuss subsequently, were commissioned as notary publics. As the office of the notary has changed recently with new legislation, the State of California issued a new requirement effective in July, 2005 that all applicants whether re-commissioning or seeking a first term will be required to take an approved 6-hour notary course prior to testing. Subsequent commissioning will require a 3-hour refresher course prior to testing.

Once a notary receives a commission in California, the notary may notarize documents anywhere in the state of California but only within the state of California. You might imagine that a notary may see many kinds of documents during his or her tenure and many of these documents may originate outside of the state of California. This does not present a problem for the notary as long as the document does not require a notary to perform or state something that a notary is not allowed to comply with as a California notary public. A California notary is always subject to the laws and limitations of California regardless of the requirements of other states or countries. Hence it becomes imperative that a notary commissioned in California become very familiar with California legislation pertaining to his or her office. We will discuss this legislation throughout the course, but first, we need to understand what duties a notary may be called upon to perform as a California appointed notary.

The general duties of a notary public

As suggested in the opening section of this chapter, most people associate a notary with obtaining identification for the signer or executor of a document, but there are really a number of other duties of a notary that are not as well known. We will introduce eight specific duties of a notary which are often referred to as “notary acts” and then discuss several of these duties more thoroughly in subsequent chapters. That said, it is true that 90% of all notary duties actually performed include identifying the document signers and actually, most notaries find that almost all of their notary requests are one of two primary duties: **1) taking an acknowledgment and 2) administering a jurat.**

Taking Acknowledgments

The most common duty of a notary is to **take an acknowledgment.** Taking an **acknowledgment** means that the document signer personally appears before the notary at the time of notarization, either signs the document in front of the notary or, if signed prior to presentation to the

notary, acknowledges that the signature is indeed his or hers and acknowledges to the notary that he or she signed the document in his or her authorized capacity (i.e. CEO or company partner if applicable). Additionally, an acknowledgment requires that the notary has properly identified the document signer.

Administering a jurat (or taking an affidavit)

The second most often-completed notary act is when the notary must administer a jurat. A **jurat** is a specific notary act in which the signer **must personally appear** before the notary, **swear an oath or affirmation to the notary** regarding the truthfulness of the contents within the document, **and sign the document in front of the notary**. The document signer in this case is sometimes referred to as an affiant since he or she is making an affidavit that the contents of the document are true. Effective January 2005, the notary must also properly identify the signer of a jurat.

You should note that the notary is **never responsible** for the accuracy of the information within the document nor does the notary ever guarantee the document's veracity. This assumes, of course, that the notary is not aware of any fraudulent information contained within the document at the time of notarization. A notary who notarizes a document that contains information known by the notary to be false can be subject to criminal prosecution as a misdemeanor which carries the potential for incarceration and suspension or revocation of their commission. The notary may also be financially liable for any losses incurred as a result of his or her action.

If you are a new notary applicant, you undoubtedly have many questions regarding these two acts but be assured that we will cover both of these duties in great detail in Chapter 4. Our purpose now is simply providing an introduction to these terms. You will become very familiar with each of these notary acts before the end of this guide. Remember that as a notary, at least 90% of all documents you will notarize will fall into one of these two notary acts, however, there are six more notary acts with which you still need to become familiar.

Less common notary acts

Taking a Power of Attorney

A **Power of Attorney** is a document which grants the legal authority for someone to sign on behalf of another person. Quite often, for example, a spouse may execute a Power of Attorney to the other spouse in case documents must be signed during a period of time when the spouse granting the Power of Attorney cannot appear before a notary at the time of notarization.

Certifying a copy of a Power of Attorney

Other than a copy of recorded items in the Notary Journal, a copy of a **Power of Attorney** is the only document in California that a notary may **certify**. Certification means that the copy was examined and compared to the original by the notary and is an exact duplicate of the original. A

Certified Copy of a Power of Attorney has the same legal force and effect as the original document.

Taking an Advance Health Care Directive

When someone in California desires to formalize their wishes regarding their own health care, they can complete a document called an “Advance Health Care Directive”. A notary is quite often called upon to notarize this document which often includes completing an acknowledgment.

Certifying Copies of Journal Entries

Another duty of a notary is to furnish certified copies of journal entries to the Secretary of State upon request or to otherwise respond within 30 days upon written request from the Secretary of State regarding any notarial issue.

Demand Debts or Protest Non-Payment

Another duty of a notary in California is to “**demand payments of bills of exchange and to protest them in the event of non-payment**”. This duty is really a carry-over from duties of a notary during the 19th century. Briefly, a Bill of Exchange is a document drawn between parties which one of the parties uses as evidence of money owed. It was a convenient and popular substitute for carrying cash usually from one county to another. If the party to whom the Bill of Exchange is presented decides not to honor the payment, it was a notary’s duty to formally “demand payment” or “certify the protest” as to why the payment would not be made. It is rather unlikely that a notary today would be requested to provide such a service and if presented with such a request, the notary should not proceed unless under the direction of an attorney.

Some common documents requiring notarization

There are hundreds if not thousands of different forms to be notarized which would be impractical for us to attempt a complete listing; however, a few of the most common are listed below for your review.

- **Grant Deeds**
Grant Deeds are used to transfer property from the Grantor(s) to the Grantee(s).
- **Quitclaim Deeds**
Quitclaim Deeds are a type of Grand Deed. This document also transfers property.
- **Affidavit of Death of Joint Tenant or Trustees**
If property is being vested (held) in joint tenancy or in a trust, and one of the joint tenants or trustees dies, California allows someone to file an Affidavit of Death or Joint Tenant or Trustee which essentially removes the person from the property.
- **Power of Attorney**
A Power of Attorney grants permission for someone to legally sign documents for someone else.
- **Note**

A Note is essentially a promise to pay back a loan. The borrower signs the note in agreement with a lender who will place certain conditions and limitations on the disposition of the note. Typical maturation terms for notes regarding property are 10 years, 15 years, 20 years and 30 years.

- **Deed of Trust, Security Agreement or Mortgage Agreement**

These documents are used to encumber by agreement the borrower by placing the property into collateral until the note or promise to pay is completely satisfied.

- **Deed of Reconveyance**

Once the borrower has satisfied the note (paid off the amount owed through re-finance, sales or complete satisfaction), a Deed of Reconveyance is issued indicating that the property is no longer held in collateral.

Chapter Summary

The Office of the Notary Public

Introduction

WHAT IS A NOTARY PUBLIC?

A Notary Public is essentially a public servant whose office exists primarily as a measure to help protect the public against fraud and whose notary actions guarantee that certain minimum required standards have been met during the signing of documents.

1. A **NOTARY PUBLIC** is someone commissioned by the state whose primary duties include certifying that:

- 1) The signer(s) personally appeared before the notary at the time of notarization in the county and on the date indicated within the notarized document.
- 2) The signer(s) were properly identified.
- 3) That if the document required the signer to swear to the truthfulness of the statements within the document, that the signer did so in front of the notary.

2. It is important that the notary always remains an **IMPARTIAL WITNESS** to the signing of documents which they notarize. As an impartial witness, a notary may never notarize documents for his or her own signature or any document which has a direct financial or beneficial interest to the notary.

3. In California, a notary **may** notarize documents for a spouse or relative, but that document **may not have a direct beneficial or financial interest** to the notary. Notaries should be very careful in what documents they notarize for spouses in California because of the community property laws.

4. The **California Secretary of State** commissions notaries for **4-year** terms after which the notary must retake the exam in order to be re-commissioned.

5. Notaries who are commissioned in California may notarize documents **anywhere** within the state of California.

6. Notaries are **governed by the laws of California**. If notarizing documents originating from other states or countries which require the notary to engage in any act which is illegal in California, the notary must not comply with that request.

DUTIES OF A NOTARY

Taking Acknowledgments

7. The most common duty of a notary is to **take an acknowledgment**. Taking an **acknowledgment** means that the document signer **personally appears before the notary at the time of notarization**, either signs the document in front of the notary or, if signed prior to presentation to the notary, **acknowledges that the signature is indeed his or hers** and **acknowledges to the notary that he or she signed the document in his or her authorized capacity** (i.e. CEO or company partner if applicable). Additionally, the notary is required to properly identify the document signer.

Administering a Jurat (or taking an Affidavit)

8. The second most often-completed notary act is when the notary must administer a jurat. A **jurat** is a specific notary act in which the signer **must personally appear before the notary at the time of notarization**, **swear an oath or affirmation to the notary regarding the truthfulness of the contents within the document**, and **sign the document in front of the notary**. The document signer in this case can be referred to as an *affiant* since he or she is making an affidavit. Additionally, the notary is required to properly identify the document signer.
9. The notary is **never responsible** for the accuracy of the information within the document nor does the notary ever guarantee the document's veracity. This assumes, of course, that the notary is not aware of any fraudulent information contained within the document at the time of notarization. A notary who notarizes a document which contains information known by the notary to be false can be convicted of a misdemeanor which carries the potential for criminal prosecution, jail time and suspension or revocation of their commission.

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10. A **Power of Attorney** is a document which grants the legal authority for someone else to sign on behalf of another person. Quite often, for example, a spouse may execute a Power of Attorney to the other spouse in case documents must be signed during a period of time when the spouse granting the Power of Attorney cannot appear before a notary at the time of notarization.

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11. Other than a copy of recorded items in the Notary Journal, a copy of a **Power of Attorney** is the only document in California that a notary may **certify**. Certification means that the copy was examined and compared to the original by the notary and is an exact duplicate of the original. A

Certified Copy of a Power of Attorney will have the same force and effect as the original.

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Certifying Copies of Journal Entries

13. A notary is required to furnish certified copies of journal entries to the Secretary of State upon request or to otherwise respond within 30 days upon written request from the Secretary of State regarding any notarial issue.

Demand Debts or Protest Non-Payment

14. Another duty of a notary in California is to “**demand payments of bills of exchange and to protest them in the event of non-payment**”. This duty is almost never requested of a notary today because of technological advances in such transactions. It is recommended that “protests” be issued only under direction of an attorney.

Check your knowledge

1. A notary public’s duties include certifying that the signer personally _____ before the notary and at the time of _____ and in the county indicated on the notarized document.
2. A notary must also certify that the signer presented proper _____ at the time of notarization.
3. In taking an acknowledgment, the document signer acknowledges to the notary that he or she is signing in his or her _____ capacity.
4. Notaries in California receive their commissions from the California _____ of _____ and are governed by the laws of _____ regardless of the notary requirements in other states.
5. An Acknowledgment is a specific notary act which guarantees the signer personally _____ before the notary at the time of notarization, proved their _____ to the notary and acknowledged that they intended to _____ the document .

6. A jurat is a notary act which certifies that the signer personally _____ before the notary, _____ the document before the notary and took an _____ or _____ as to the truthfulness of the statements within the document. Additionally, the notary is required to properly identify the document signer.
7. An affiant is one who makes an _____ which is a sworn statement pertaining to the truthfulness of the contents within a document.
8. A certified copy of a power of attorney has the same force and _____ as the original.
9. A notary is required to furnish certified copies of journal entries to the Secretary of State upon request or to otherwise respond within _____ days upon written request from the Secretary of State regarding any notarial issue.
10. The only document that a notary may certify in the State of California is a copy of a _____ and a copy of their journal.

Answers: 1. appeared, notarization 2. identification , 3. authorized, 4. Secretary of State, California 5. appeared, identification, execute 6. appeared, signed, oath, affirmation 7. affidavit 8. effect 9. thirty 10. Power of Attorney