

CHAPTER 6

ADDITIONAL PROHIBITED ACTS AS A NOTARY

Chapter Objective

This section outlines some illegal notarial acts or practices. Students will be able to correctly identify improper notary procedures.

Quite often, clients appear before the notary public wishing for legal advice or assistance. This may be because of unfamiliarity with the office of the Notary in general or sometimes is a result of confusing the office of the Notary Public in California with notaries in other countries. For example, in Mexico, and many Latin American countries or even some European countries, notaries are attorneys who specialize in the legal area of Notary work. When the public goes to a notary in any one of these countries, they are expecting that the notary will be able to assist them with specific types of legal questions or problems.

In the United States; however, most notaries are not attorneys and the scope of notary duties in the United States and particularly California is very limited. **A non-attorney notary in the United States may never represent himself or herself as an attorney nor may they perform any service which would be considered to be the practice law.** In fact, we must be very careful as notaries not to mislead the public regarding this issue either in our advertising or services which we provide.

You already know that you cannot notarize your own document and that while you may notarize documents for a spouse or relatives, you should be very careful that the documents could not have a beneficial or financial interest to you. You also know that it is illegal for a non-attorney notary to give legal advice or provide legal assistance. Let's look at a few more prohibitions.

Notarizing Wills

A notary should not notarize a will unless an attorney recommended that the will should be notarized. There are some wills that will be nullified simply by the notarization. If a client comes in and request that a will be notarized, you should decline unless the client informs you that an attorney requested the will to be notarized. You might want to request the name and phone number of the attorney for verification and be sure to record all of that information in your journal.

Certification of documents

A notary may not certify copies of birth, death, marriage records, etc. Remember from our earlier discussion that the only document a notary may certify is a copy of a power of attorney and a copy of record(s) from his or her notary journal.

We **do not notarize photographs or copies of documents** such as academic records, birth certificates or any document which does not have a place for a person to sign.. If the photograph or academic record is attached to a statement indicating, for example, that the attached document is a true and correct copy of the original, the notary can notarize that statement upon the oath and signature of the declarant. In such an example, the notary is not notarizing the photograph or the document reproduction.

Translation of Notary Public into Spanish

A notary may not translate the term “Notary Public” into the following Spanish terms: *notario público* or *notario*. In addition, if a notary advertises their services in another language other than English, the notary must also post along with that advertisement, the following statement in English and the other language:

“I am not an attorney and, therefore, cannot give legal advice about immigration matters or any other legal matters”.

The notary must also post their fees which cannot exceed the legal fees for their services. See the next chapter for a discussion of fees.

Violation of this requirement may be cause for the Secretary of State to suspend the Notary commission for not less than **1 year** on the first offense and the commission will be revoked permanently on the second offence.

You can see that the reason for this law is so your Spanish-speaking clients will not presume that you carry the same legal authority as notaries in their mother county.

Immigration Specialists or Consultant

A notary may not advertise in any manner whatsoever that he or she is a notary if the notary promotes himself or herself as an immigration specialist or consultant. This again is to help eliminate confusion concerning the differences between the limited duties of a notary public in California versus duties of a notary public in other countries.

Another point about immigration consultants is that while a notary may notarize immigration forms, **only a person who is qualified and bonded as an immigration consultant under the Business and Professions Code may assist the client in completing immigration forms.**

Certifying Translations

As a notary, you may receive requests from the public to certify a translation. A notary is not allowed to certify a translation; however, a notary may notarize the signature statement of the translator indicating that the translation was performed accurately, but be very careful that you do not give the impression that you are certifying the translation.

Falsifying Information

A notary may not falsify any information including dates on the document to be notarized. Sometimes a client will ask you to backdate an acknowledgment or jurat but it is illegal to comply with this request. A notary may never notarize a document containing information known to the notary to be false. Doing so may result in a charge of a misdemeanor and if the document is a Deed of Trust or any other document which encumbers the signer into the property, you may be guilty of a felony.

Confidential Marriages

Unlike some other states, California notaries **do not perform marriages**. However, when a couple wishes to be married through a Confidential Marriage, a notary, under the following conditions may **authorize the confidential marriage**. A

Confidential Marriage is most often issued for persons who do not wish their record of marriage to be public knowledge. These records are sealed to everyone except the bride and groom or upon court order. If a notary wishes to authorize a confidential marriage, he or she must contact the County Clerk and request approval. As a condition of approval, the notary must attend a class offered upon arrangement with the County Clerk and any license issued for this reason is **valid for 90 days and may only be used in the county in which it was issued which also must be the county in which the notary resides**. The notary would complete a **jurat** in this case indicating that the parties personally appeared before the notary, signed before the notary and that the notary administered an oath or affirmation to the signers. The notary authorizing the confidential marriage is not necessarily the official who performs the marriage. A notary wishing to perform the marriage must be a member of the clergy or other official normally permitted to officiate marriages. Approval may be revoked by the County Clerk if the notary does not follow required procedures or otherwise violates notary law.

Fees

A notary may not charge more than the prescribed fees for their services. These fees are discussed in the next chapter.

Chapter Summary

This section outlines some illegal notarial acts or practices.

1. A non-attorney notary **may not** give legal advice in any manner. This includes situations when the document signer requires notary services but does not know whether to complete an acknowledgment or jurat. In these instances, the notary is to refer the client to the originator of the document for advice as to which one to complete.
2. A notary **should not notarize a will** unless an attorney recommended that the will should be notarized.
3. A notary may **NEVER** notarize any documents containing statements known by the notary to be false. A notary found guilty of doing so will be charged with a **misdemeanor** and depending on the document and circumstances, a felony. Any misdemeanor or felony charge is punishable with criminal prosecution, possible jail time and/or suspension or revocation of the notary's commission.
4. There are many differences between notaries in other countries and the United States which often lead to a **misunderstanding of the role of a notary** in the United States by clients from these other countries. Hence, a notary may not translate the term "Notary Public" into the following Spanish terms: ***notario público* or *notario***.

5. If a notary advertises their services in another language other than English, the notary must also post along with that advertisement, the following statement in English and the other language: ***“I am not an attorney and, therefore, cannot give legal advice about immigration matters or any other legal matters”***. The notary must also post their fees which cannot exceed the legal fees for their services.

6. **Violation of these two requirements (see numbers 4 & 5) shall be cause for the Secretary of State to revoke or suspend the notary commission for not less than 1 year on the first offense and the commission will be revoked permanently on the second offense.**

7. A notary **may not** advertise in any manner whatsoever that he or she is a notary if the notary promotes himself or herself as an immigration specialist or consultant. While a notary may notarize immigration forms, only a person who is **qualified and bonded as an immigration consultant** under the Business and Professions Code may assist the client in completing immigration forms.

8. We **do not notarize photographs or copies of documents** such as academic records, birth certificates or any document which does not have a place for a person to sign. However, if the photograph or academic record is attached to a statement such as the one below which indicates that the attached document is a true and correct copy of the original, the notary can notarize that statement upon the oath and signature of the declarant. In such an example, the notary is not notarizing the photograph or the document reproduction, only the statement regarding such documents.

COPY CERTIFICATION BY DOCUMENT CUSTODIAN
I, _____, of legal age, being first duly sworn, hereby
<small>Name of document custodian</small>
Swear (or affirm) that the attached reproduction of

<small>Description of documents</small>
Is a true and exact copy of the correct and complete original document.

<small>Signature of document custodian (affiant)</small>

This is an example of a statement which might be attached to a copy of a document should a client want to certify his or her own copy and request that their signature be notarized.

9. **Confidential Marriages** – Unlike some other states, California notaries **do not perform marriages**. However, when a couple wishes to be married through a Confidential Marriage, a notary, under the following conditions may **authorize the confidential marriage**. A Confidential Marriage is most often issued for persons who do not wish their record of marriage to be public knowledge. These records are sealed to everyone except the bride and groom or upon court order. If a notary wishes to **authorize** a confidential marriage, he or she must contact the County Clerk and request approval. As a condition of approval, the notary must attend a class offered upon arrangement with the County Clerk and any license issued for this reason is **valid for 90 days and may only be used in the county in which it was issued which also must be the county in which the notary resides**.
10. The notary would complete a **jurat** in this case indicating that the parties personally appeared before the notary, signed before the notary and that the notary administered an oath or affirmation to the signers. **The notary authorizing the confidential marriage is not necessarily the official who performs the marriage**. A notary wishing to **perform** the marriage must be a member of the clergy or other official normally permitted to officiate marriages. The County Clerk may revoke approval if the notary does not follow required procedures or otherwise violates notary law.
11. The notary may **never** use the notary seal or the title for anything other than the rendering of notarial services.
12. The notary must not affix his or her seal to a document without the accompanying required **notarial verbiage** on the document.
13. It is illegal for a notary to notarize a **blank or an obviously incomplete document**.

Check your knowledge

1. Giving legal advice to a client is _____ unless the notary is an attorney.
2. You should _____ to notarize a will unless the client has been directed by an attorney to have the will notarized.
3. A notary may not translate the term “notary public” directly into the following Spanish terms: _____ or _____.
4. Only a person who is _____ and bonded as an _____ may assist the client in completing immigration forms.

5. Violation of direct translation into notario público or notario or failing to post fees in this instance is punishable by revocation or suspension of the notary's commission for at least _____ year on the first offense .
6. A notary may not notarize photographs, or academic _____ and diplomas, birth certificates or other documents which have no indication for place where a signer would execute the document or swear to the truthfulness of the document.

Answers: 1. illegal, 2. refuse 3. notario público, notario 4. qualified; immigration consultant 5. one 6. records