

## CHAPTER 9

### VIOLATIONS AND PENALTIES

1. Violation of Notary laws can result in serious consequences which can include:
  - a. Administrative actions levied by the Secretary of State
  - b. Civil penalties levied by local and state prosecutors
  - c. Criminal prosecution
    - i. Felonies
    - ii. Misdemeanors

#### **Administrative Penalties**

2. The Secretary of State may levy penalties of up to \$1,500 for notarial misconduct. **These penalties may be in addition to suspension or revocation of the notary commission** (*Government Code* § 8214.15(a)). The penalties of up to \$1,500 may apply in the following circumstances:

#### **\$1,500 Penalties**

- a. The **willful** failure to discharge fully and faithfully any of the duties required of a notary public (*Government Code* § 8214.1(d));
- d. The use of false or misleading advertising wherein the notary public has represented that he or she has duties, rights, or privileges that he or she does not possess (*Government Code* § 8214.1(f));
- e. Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another (*Government Code* § 8214.1(i));
- f. Execution of any certificate as a notary public containing a statement known to the notary public to be false (*Government Code* § 8214.1(l));
- g. Violating the prohibition against a notary public who holds himself or herself out as an immigration specialist or consultant advertising that he or she is a notary or violating the restrictions on charging to assist in the completion of immigration forms (*Government Code* § 8214.1(m));
- h. Violating the restrictions on advertising notarial services in a foreign language or literally translating the phrase “notary public” into Spanish (*Government Code* § 8214.1(p)).

### **\$750 Penalties**

The Secretary of State may levy penalties of up to \$750 for notarial misconduct. **These penalties may be in addition to suspension or revocation of the notary commission** (*Government Code* § 8214.15(b)). The penalties of up to \$750 may apply in the following circumstances:

- a. The **negligent** failure to discharge fully and faithfully any of the duties required of a notary public (*Government Code* § 8214.1(d));
- e. Charging more than the fees prescribed by law (*Government Code* § 8214.1(h));
- f. Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document (*Government Code* § 8214.1(j));
- g. Failure to administer the oath or affirmation as required by law (*Government Code* § 8214.1(k)).

Note: For the purposes of remembering the penalties for the exam, please note that there are 4 violations listed which carry a penalty of up to \$750 whereas the rest carry a penalty of up to \$1,500.

### **Civil Penalties**

3. A separate provision of the law permits local and state prosecutors to recover up to \$1,500 in a civil action from:
  - a. Violators of the provisions relating to the unauthorized manufacture, duplication, sale and related offenses concerning the notary seal,
  - b. Including a failure to notify the Secretary of State that a notary seal is lost, stolen, etc. (*Government Code* §§ 8207.4, 8207.1, 8207.2, and 8207.3).

### **Criminal Violations**

4. **Aside from civil penalties and administrative actions by the Secretary of State, notary misconduct can result in criminal prosecution.**

**Felonies** – Some notary misconduct is serious enough to qualify for prosecution as a felony. Other than committing perjury, which is a felony for everyone, not just notaries, felonies are limited to dishonest or fraudulent actions with respect to encumbering someone into property.

- a. **Any notary act performed with the intent to defraud in relation to a Deed of Trust.**
- b. Any person acting as a notary without being duly commissioned and their action places an encumbrance on a party affecting title to real property (such as with a Deed of Trust).
- c. Anyone who knowingly makes a false sworn statement to a notary for a document which affects transfer of property title or places an encumbrance on a party is guilty of a felony. Any person filing with the county recorder false or forged documents of this nature is guilty of a felony and the fine on this action can be up to \$75,000.

- d. **Any notary who commits perjury (punishable by state imprisonment of 2, 3 or 4 years.)**

**Misdemeanors-** Some notarial violations are classified as misdemeanors; however, even these violations can carry a possible fine as well as possible incarceration in a city or county jail.

- a. It is **misdemeanor** for a notary to notarize any document, other than documents relating to a Deed of Trust (see felonies) that contains information known by the notary to be false.
- b. Any person acting as a notary without being duly commissioned
- c. Destruction, concealment or defacing notary records.
- d. Soliciting or coercing a notary to perform an illegal or an improper act.
- e. Making false statements to a notary.
- f. Failing to submit notarial journals to the County Clerk within 30 days after a notary commission is no longer valid and the notary does not obtain reappointment.

**5. Additional misconduct resulting in possible commission suspension or revocation**

- a. Failure to secure or misuse of the notary stamp (seal)
- b. Failure to secure the notary journal
- c. Failure to remit court ordered judgments
- d. Failure to submit a payment demanded by the Secretary of State
- e. **Dishonored checks:** The notary's commission may be cancelled for failing to satisfactorily pay for the examination or associated fees.

**6. The person affected will have a right to a hearing** prior to a revocation or suspension or after a denial of a commission, or prior to the imposition of a civil penalty.

7. The person will **not** have a right to a hearing after a denial of an application for a notary public commission in either of the following cases:

- a. The Secretary of State has, within one year previous to the application denied or revoked the applicant's application or commission.
- b. The Secretary of State finds that the applicant has committed or omitted acts constituting grounds for suspension or revocation of a notary public's commission.

**8. Resignation or expiration of commission will not stop investigation or disciplinary proceedings.**

**Hopefully, you will find the following table beneficial in recalling the fines and penalties for the exam. You are encouraged to study this chapter well before taking the exam!**

<b>Violation</b>	<b>Civil Penalties</b>	<b>Criminal Prosecution (F)elony (M)isdemeanor</b>	<b>Administrative Penalties (up to \$) (S)uspension (R)evocation</b>
Unauthorized manufacture, duplication or sale of the Notary Seal	\$1,500		
Failure to notify the Secretary of State of a lost or stolen Notary Seal	\$1,500		S or R
The <b>willful failure</b> to discharge fully and faithfully any Notary duty			\$1,500 R
The use of false or misleading advertising wherein the notary public has represented that he or she has duties, rights, or privileges that he or she does not possess			\$1,500 S or R
Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another			\$1,500 R
Execution of any certificate as a notary public containing a statement known to the notary public to be false			\$1,500 R
Violating the prohibition against a notary public who holds himself or herself out as an immigration specialist or consultant advertising that he or she is a notary or violating the restrictions on charging to assist in the completion of immigration forms			\$1,500 S or R
Violating the restrictions on advertising notarial services in a foreign language or literally translating the phrase "notary public" into Spanish			\$1,500 S or R
The <b>negligent failure</b> to discharge fully and faithfully any of the duties required of a notary public			\$750 S or R
Charging more than the fees prescribed by law			\$750 S or R
Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document			\$750 S or R
Failure to administer the oath or affirmation as required by law			\$750 S or R
Any notary act performed with the intent to defraud in relation to a Deed of Trust		F	
Any person acting as a notary without being duly commissioned and their action places an encumbrance on a party affecting title to real property (such as with a Deed of Trust)		F	
Anyone who knowingly makes a false sworn statement to a notary for a document which affects transfer of property title or places an encumbrance on a party is guilty of a felony		F	
Any notary who commits perjury (Punishable by prison 2,3,4 years)		F	
Notarizing any document, other than documents relating to a Deed of Trust (see felony) that contains information known by the notary to be false		M	
Any person acting as a notary without being duly commissioned		M	
Destruction, concealment or defacing notary records		M	
Soliciting or coercing a notary to perform an illegal or an improper act		M	
Making false statements to a notary		M	

Anyone making false statements to a notary or who solicits, coerces, or influences a notary public to improperly maintain the notary public's journal		M	
Failing to submit notarial journals to the County Clerk within 30 days after a notary commission is no longer valid and the notary does not obtain reappointment		M	
Misuse or willful failure to secure the notary stamp or willful surrender of the notary stamp to an unauthorized person		M	R
Willful failure to properly maintain the notary journal		M	R
Failure to secure the notary journal			R
Failure to remit court ordered judgments			R
Failure to submit a payment demanded by the Secretary of State			R
Unauthorized practice of law			R
A notary who falsifies an acknowledgment may be guilty of forgery. Forgery is punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than 1 year.		M or F	R
Literal translation of the phrase "notary public" into Spanish, hereby defined as "notario público" or "notario".			S or R (minimum suspension 1 yr)**
Improper advertising procedures in foreign languages if the notary is not an attorney			S or R (minimum suspension 1 yr)**

**Memorization notes: 1) There are fewer \$750 fines than \$1,500 fines. It may be easier to remember these few rather than all of the \$1,500 fines. 2) Perjury and violations concerning Deeds of Trust or Property Transfer documents are considered felonies.**

**\*\* Second offence results in permanent revocation**

### **New violations and penalties laws effective January 1, 2006**

1. **Government Code § 8228.1 (New Section) — Notarial Journal/Seal** — The new law makes a notary public **guilty of a misdemeanor** if the notary public:
  - a. Willfully fails to properly maintain his or her notarial journal; OR
  - b. Willfully fails to notify the Secretary of State if his or her notarial journal is lost, stolen, rendered unusable or surrendered to a peace officer; OR
  - c. Willfully fails to permit a lawful inspection or copying of his or her notarial journal; OR
  - d. Willfully fails to keep his or her notarial seal under direct and exclusive control; OR
  - e. Willfully surrenders his or her notarial seal to any person not authorized to possess it.
  
2. **Government Code § 8225 (Amendment to Section) — Notarial Journal** — Any person who solicits, coerces, or influences a notary public to improperly maintain the notary public's journal is guilty of a misdemeanor.

3. ***Penal Code § 470 (Amendment to Section) — False Acknowledgments/Forgery*** — The new law may make a notary public **guilty of forgery** if he or she issues an acknowledgment knowing it to be false. A person who falsifies the acknowledgment of a notary public may also be guilty of forgery. Forgery is punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year. (False certification by a notary public may also be a misdemeanor pursuant to *Government Code § 6203*.)
  
4. ***Government Code § 8214.8 (New Section) — Criminal Convictions/Court Revocation of Commission*** — If a notary public is convicted of a crime related to notarial misconduct, including the false completion of a notarial certificate (*Government Code § 6203*), or of **any felony**, the **court** must revoke the notary public's commission and require the notary public to surrender to the court the notary seal. The court will then forward the notary public's seal to the Secretary of State.