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Effective January 2008, the California laws affecting notaries public were changed. Most notably, the form of acknowledgments and jurats were modified and now notaries are required to establish from satisfactory evidence the identify of the signer. This reader alert briefly discusses these changes and provides a copy of the "approved" forms for transactions notarized in California.

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READER ALERT: Changes to CA Notary Acknowledgment and Jurat Forms and Requirements

By Dena M. Cruz & Scott D. Rogers

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I. INTRODUCTION

Considered one of the oldest continuing branches of the legal profession[1], there are currently over 116,000 notaries' commissioned in California alone.[2] And, while technological advances such as the copier, shorthand, and the court reporter's stenograph have eliminated the need for the California notary to function as a "scribe" or a "copyist," these same technological advances have also created a need for new rules and regulations governing document fraud and electronic recordation.

In 2003, in an effort to control against increased financial losses resulting from reliance on inaccurate notary certifications of authenticity, the California legislature passed Assembly Bill 1210. This bill required applicants for a notary commission, or a commissioned notary applying for a renewed appointment, to pass a Secretary of State approved course of study on the duties, as well as the functions, of a notary public, in addition to taking a written exam. Last year, effective January 1, 2008, the legislature has passed two new bills that again seek to combat losses resulting from document fraud and inaccurate notary certifications.

Assembly Bill 886 enacted as Chapter 399, Statutes of 2007,[3] makes several major changes to laws affecting California notaries public. The bill changes the form of acknowledgments and jurats used in transactions being notarized in California, requires a notary to establish from satisfactory evidence the identity of the signer, increases the type of documents that thumbprints are required for, and establishes new rules and regulations for insuring compliance with the laws pertaining to notarizing documents in California.

While existing law required a notary to keep a sequential journal and to provide a copy upon request, there was no time requirement, absent a disciplinary hearing, to respond to a request for production. Assembly Bill 434 enacted as Chapter 496, Statutes of 2007[4], imposes a time requirement of 15 business days to respond to a request to produce a line item in a journal.

This article briefly discusses a few of the changes in the laws affecting notaries in California and provides a copy of the "approved" acknowledgment and jurat for transactions notarized within the state.

II. GENERAL REQUIREMENTS FOR ACKNOWLEDGING A DOCUMENT IN CALIFORNIA

The majority of the law governing the powers and duties of a California notary public can be found at Civ. Code §§ 1180 et seq. and Gov. Code §§ 8200 et. seq. The forms most frequently executed by a California notary public are a certificate of acknowledgment and a jurat.

Existing law allows a California notary to execute a certificate of acknowledgement, and provide other notarial services, throughout California despite the fact that the oath and bond is, respectively, taken and filed in a particular county.[5] Certificates of acknowledgment taken in another state or country by an authorized non-California notary are also acceptable in California provided the acknowledgment is taken in accordance with the laws of the place where the acknowledgment is made.[6] A California notary may also notarize documents to be recorded in another state, and may complete any form required by another state or jurisdiction, provided the form does not require the notary to determine or certify that the signer holds a particular representative capacity or makes determinations and certifications not allowed under California law.[7] Lastly, California law allows notaries to execute a jurat, after administering an oath or affirmation to the affiant, and after determining by satisfactory evidence that the affiant is the person executing the document.[8]

Under new rules, effective January 1, 2008, a notary public certifies in the certificate of acknowledgement that (i) the signer personally appeared before the notary public on the date and in the county specified in the acknowledgment; (ii) that the notary used paper identification to identify the signer; and (iii) that the signer acknowledged executing the subject document.[9] A notary certifies in a jurat that (i) the notary administered an oath or affirmation; (ii) that the notary used paper identification to identify the signer; and (iii) that the signer signed the document in the presence of the notary.[10]

III. PERSONAL KNOWLEDGE OF THE IDENTITY OF THE SIGNER IS NO LONGER SUFFICIENT

Under prior California law, a California notary could notarize a document without reviewing identification documents if the notary had personal knowledge of the identity of the signer. Effective January 1, 2008, personal knowledge of the signer is irrelevant and a notary public must establish the identity of the signer through "satisfactory evidence." "Satisfactory evidence" is a two-tiered test. First, there must be an absence of any information, evidence or other circumstances that would lead a reasonable person to believe that the individual is not the individual he or she claims to be. Second, there must be affirmative evidence of the identity of the signer through any of the following: (i) prescribed oath or affirmation as to the identity of the signer of one credible witness personally known to the notary whose identity is proven through documentation sufficient under (iii) or (iv) below; (ii) oath or affirmation under penalty of perjury of two credible witnesses not personally known to the notary whose identities are proven through documentation sufficient under (iii) or (iv) below; (iii) presentation of a United States passport or a California driver's license or identification card; or (iv) presentation of certain other official identification documents issued within the last five years containing a photograph and description of the signer and bearing a serial or other iden-

tifying number (e.g., a passport issued by a foreign government, a driver's license issued by another state, Canada or Mexico, an identification card issued by another state or any branch of the US Armed Forces, or an inmate identification card issued by the California Department of Corrections and Rehabilitation).[11]

Consistent with the changes in the law regarding legally adequate identification, California revised the statutory acknowledgment and jurat forms.[12] Copies of the new forms are set forth at the end of this article. Note that there is no phase in period or other grace period for use of the new forms. Any instrument executed on or after January 1, 2008 must comply with the new requirements. The only limited exception is that documents executed and acknowledged prior to January 1, 2008 in accordance with the prior requirements will be accepted for recording after January 1, 2008.

Also worthy of note is that under California law, a certificate of acknowledgment or jurat that substantially complies with the statutory form will not be deemed invalid.[13] The authors strongly advise, however, against deviating from the prescribed forms, since any deviation is likely to result in the recorder initially refusing to record the document thereby delaying closing of the transaction for which the rejected document was presented.

IV. ADDITIONAL RECORDKEEPING REQUIREMENTS

In addition to the changes noted above, California notaries now must obtain a fingerprint from the signer if the document being notarized is a Power of Attorney.[14] Also, the notary will now be required to surrender his or her journal to a peace officer investigating a criminal offence who has reasonable suspicion that the journal contains evidence of a criminal offense.[15] A.B. 886 contains numerous other technical revisions and additions. As a consequence, it is highly recommended that all notaries review the bill in detail as soon as possible.

V. STIFF NEW PENALTIES APPLY

Effective January 1, 2008, the following additional penalties may be imposed for the notary's failure to comply with the new rules:

- If a notary public fails to obtain satisfactory evidence as to the identity of the signer, the notary public is subject to a civil penalty not exceeding $10,000.00.[16] The Government Code was also amended to make the willful giving of a false certificate or writing a misdemeanor.[17]

- Failure to obtain thumbprints as required, or failure to indicate in the journal why a thumbprint can not be obtained, in connection with the signing of certain documents subjects a notary public to a civil penalty of up to $2,500.[18]

- Willful failure to surrender a journal to a peace officer upon request may subject a notary to a civil penalty not exceeding $2,500.00, the prosecution of which may be brought within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.[19]

A.B. 886 allows any action to impose a civil penalty to be brought by the Secretary of State in an administrative proceeding or by any public prosecutor in superior court. Any such judgment may be enforced as a civil judgment.[20]

V. CONCLUSION

Unlike notaries in most of the world whose practices require extensive legal education and/or apprenticeship, and where the number of licenses are limited, most notaries in the United States have little education or training. California's recent changes in the law requiring additional education, and the changes effective in January of 2008 (which appear to be designed to combat document fraud), should go a long way in erasing the impression that the notary's role in a real estate transaction is ministerial, at best. We should anticipate additional rules and or a new specialty designed especially for electronic signatures as more and more transactions close electronically.



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