

January 2015



# California Secretary of State Notary News

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California notaries public perform valuable services for the legal, business, financial, and real estate communities. The California Secretary of State relies on notaries public to perform their duties with honesty and integrity on behalf of the people of California.

Thank you for your continued dedication and public service.

## New Laws

Two notary-related laws took effect January 1, 2015. Here is a brief overview of the new laws.

- California Government Code section 8214.15 was amended to add the willful violation of section 8214.1(d) as cause for discipline. The violation is punishable by a civil penalty up to one thousand five hundred dollars (\$1,500).
- California Civil Code sections 1189 and 1195 and California Government Code section 8202 requires a specific notice to be included at the top of every acknowledgment, proof of execution of an instrument, and affidavit sworn to before a notary public within California. See page 2 for the exact language and more details.

## **Certificates of Acknowledgment, Jurats, and Proof of Execution Certificates**

Effective January 1, 2015, every certificate of acknowledgment, jurat, and proof of execution by a subscribing witness must include the following disclaimer. The disclaimer must be legible in an enclosed box at the top of the certificate above the venue statement.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

All certificates of acknowledgment, jurats, and proofs of execution completed by a notary public must be worded exactly the same as required by California Civil Code section 1189 (certificate of acknowledgment), California Government Code section 8202 (jurat), and California Civil Code section 1195 (proof of execution by a subscribing witness certificate). It is not acceptable to affix a notary public seal and signature to a document without the correct notarial wording.

The Secretary of State continues to discover notaries public who have used outdated forms or have failed to establish signers' identities by satisfactory evidence. It is critical that you use the exact wording as prescribed in current law when completing a [certificate of acknowledgment](#) or [jurat](#). If you fail to do so, you may be subject to civil penalties. (California Government Code section 8214.15, California Civil Code section 1189.)

- The certificate of acknowledgment, including the signature of the notary public and impression of the notary public's official seal, must be completely on one page.
- A notary public may not stamp a document with the official seal and then sign, or sign and date the document without completing and attaching a notarial certificate.
- Neither an acknowledgment nor a jurat can be affixed to a document that has been mailed or otherwise delivered to a notary public where the signer did not personally appear before the notary public, even if the notary public knows the signer.
- A notary public cannot attach or complete a jurat if the signer of a document does not swear or affirm to the truth of the contents of the document. There is no prescribed wording for the oath, but an acceptable oath would be "Do you swear or affirm that the statements in this document are true?" When administering the oath, the signer and notary public traditionally each raise their right hand but this is not a legal requirement.
- A proof of execution by a subscribing witness cannot be used in conjunction with any power of attorney, quitclaim deed, grant deed (other than a trustee's deed or deed of reconveyance), mortgage, deed of trust, security agreement, any instrument affecting real property, or any document requiring a notary public to obtain a thumbprint from the party signing the document in the notary public's journal.

## **The First Line of Defense Against Fraud**

One of the most common types of fraud involves forged signatures on documents, giving a thief access to money or control over another person's property. Every notary public can help prevent fraud by inspecting the picture, description, signature, and serial number on the identification presented by the signer.

Most notarial acts relate to another person signing or certifying a document. A notary public must obtain satisfactory evidence of the signer's identity for every acknowledgment and jurat. (California Civil Code sections 1185 and 1189; California Government Code section 8202.)

Satisfactory evidence is the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the individual is not the individual he or she claims to be. The identity of the signer can be established by the notary public's reasonable reliance on the presentation of paper identification documents that meet the requirements of California Civil Code section 1185(b)(3) or (b)(4).

The notary public must always require the signer to present the required identification in person. The identification must contain a photograph and description of the person named on it, be signed by the person, and bear a serial number or other identifying number. The notary public should be confident that the person whose description and photograph on the identification is the person who is presenting the identification. A notary public cannot be expected or required to make a distinction between a fraudulent identification card and a legitimate one; however, the notary public can confirm that the photograph and the description indicated on the identification match the person appearing before them.

Notaries public should be as cautious as possible when inspecting identification and record all information required by law. A notary public who has evidence that a crime has been committed should contact the appropriate law enforcement agency.

### **A Notary Public's Application: Is It Public or Private?**

An applicant for notary public appointment and commission is required to complete an application form. Information on the application is confidential with the exception of the notary public's name and address. (California Government Code section 8201.5.)

Your address is public information because any person has the right to request a line item from a notary public's journal and must be able to contact you to make such a request. (California Government Code section 8206(c).)

### **Incomplete Documents**

A notary public must refuse to notarize a signature on a document the notary public can see is incomplete or that the notary public knows from experience is incomplete. (California Government Code section 8205.) A notary public must visually scan the document for completeness to ensure there are no blank lines or spaces for data to be entered at some later date.

## **Your Seal, Your Responsibility**

A notary public must use the official seal or the title “notary public” solely for the purpose of carrying out the duties and responsibilities of a notary public. (California Government Code section 8207.)

A notary public may not stamp with the official seal any pages other than the page with a completed notarial certificate. Do not place an impression of the seal on every page of a document or fan the pages of the document and place an impression of the seal across all pages.

Remember: like the notary journal, no one else except the notary public can have access to the seal. An office safe or file cabinet that is accessible by others, even if locked, is not acceptable, nor is a locked desk at home if other family members have access to the contents of the desk.

Failure to secure the seal may result in suspension or revocation of the commission, as well as civil and criminal penalties. (California Government Code sections 8214.1(d) and (o), 8214.15(a) or (b), and 8228.1(a).)

If your official seal is lost, misplaced, destroyed, broken, damaged, or is rendered otherwise unworkable, you must immediately mail or deliver written notice to the California Secretary of State. A new certificate of authorization for a seal may be requested, which may be used to obtain a replacement seal. (California Government Code section 8207.3(e).)

The notary public, or his or her representative, must destroy or deface the seal upon termination, resignation, or revocation of the notary public’s commission or death of the notary public.

It’s your seal and your responsibility. Remember to lock your seal in a secure area to avoid misuse by someone else.

## **No Longer a Notary Public?**

If a notary public resigns, is disqualified, or is removed from office, the notary journal and all other notarial records must be delivered to the county clerk in which the notary public’s current oath is on file within 30 days.

If a notary public’s commission expires and the notary public has not obtained reappointment within 30 days after the expiration of the commission, then the notary journal and other notarial records must be delivered to the county clerk within the next 30 days, even if a notary public has applied for reappointment.

Willful failure to deliver the notary journal and other notarial records to the county clerk within the appropriate time is a misdemeanor, and the notary public is personally liable for damages to any person injured by the non-delivery. (California Government Code section 8209(a).)

## Correcting a Notarial Act

There are no provisions in the law that allow for the correction of a completed notarial act. If you discover an error in a notarial act after completing the act, then notarize the signature on the document again. All requirements for notarization are required for the new notarial act, including completing and attaching a new certificate containing the date of the new notarial act and completing a new journal entry.

## Reference Information

The California Secretary of State offers a [Sample Workbook](#) with all the information a person is expected to know to pass the written notary public examination, including references to applicable laws. The Sample Workbook can also be used later as a reference tool for all notarial acts and procedures.

## 2015 Handbook

The [2015 Notary Public Handbook](#) soon will be available online and in hard copy at no charge. Request a copy of the 2015 Notary Public Handbook by sending a self-addressed envelope (at least 6" by 9" in size) to the California Secretary of State, Notary Public & Special Filings Section, P.O. Box 942877, Sacramento, CA 94277-0001.

## Address Changes

California Government Code section 8213.5 requires you to notify the California Secretary of State of changes in business or residence addresses. Complete an [address change form](#) and send it by certified mail within 30 days of the change. A notification of address change cannot be accepted by fax or email.

## Name Changes

If you change your name, California Government Code section 8213.6 requires you to complete a [name change application](#) and file it with the California Secretary of State.

## No Notarial Acts Via Webcam

You must refuse to perform a notarial act via online camera because it does not meet the "personal appearance" requirements in California. The signer must physically be in the room with the notary public during a notarial act.

## Processing Times

Check the Secretary of State website for regularly updated [processing times](#) for notary public applications and authentication requests (apostille or certification).

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*Notary News* is designed to advise California's notaries public of changes in the law, current state policies and procedures, and other information of interest.

**Secretary of State  
Notary Public & Special Filings Section**  
1500 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814  
Phone: (916) 653-3595

**Email Address**  
[notaries@sos.ca.gov](mailto:notaries@sos.ca.gov)

**Web Address**  
[www.sos.ca.gov/notary](http://www.sos.ca.gov/notary)

**Mailing Address**  
P.O. Box 942877  
Sacramento, CA 94277-0001

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