

Please be aware of the following changes with the California Notary Laws which will go into effect on January 1st, 2008. Not knowing these changes will not eliminate your duty and responsibility as a Notary to understand these changes. Please read this information thoroughly.

Assembly Bill 886

Description: Institutes new reforms to both the Government and Civil Codes. The new changes affect how California Notaries apply for their commissions, identify document signers, keep journal entries and complete Notary certificates. AB 886 also institutes new tougher penalties for misconduct.

State: California **Effective:** January 1, 2008 **Signed:** October 10, 2007 **Chapter:** 399

Affects: Adds Government Code Sections 8214.21 and 8214.23; amends Sections Government Code Sections 6203, 8201.1, 8201.2, 8201.5, 8202, 8206, 8213.5, 8213.6, 8214.1, 8214.2, 8214.15, 8221, 8225, 8228 and 8228.1; and amends Civil Code Sections 1185 and 1189.

Changes:

Notary Public Commissioning

1. Prescribes new procedures to be followed by the Department of Justice and Secretary of State related to fingerprint images submitted by new Notary commission applicants and permits the Department of Justice to charge a fee sufficient to cover the new costs incurred.
2. Requires applicants for a Notary commission to submit a photograph of their person.
3. Prohibits a Notary applicant or Notary from using a commercial mail receiving agency or post office box as a principal business or residence address unless the applicant or Notary also provides a physical street address.

Identification of Signers

4. Repeals the law allowing a Notary to identify a document signer based upon personal knowledge for an acknowledgment and jurat. Note: The Notary now must use "satisfactory evidence (a state-approved ID that satisfies Civil Code 1185 or 1 or 2 credible witnesses) to positively identify a signer.
5. Requires a Notary to prove the identity of any credible witness personally known to the Notary used to identify a document signer by presentation of the witness' state-approved ID satisfying the requirements of Civil Code 1185.

Notary Certificates

6. Removes the words "personally known to me" from the statutory acknowledgment and jurat certificates. Note: Verbatim use of the statutory certificate of acknowledgment (for all acknowledgments filed within California) and jurat (for all jurats irrespective of where filed) is required.
7. Adds the words "I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct" to the statutory "all-purpose" acknowledgment certificate.

Notary Journal

8. Expands the journal thumbprint requirement to apply to all power of attorney documents in addition to deeds, deeds of trust and quitclaim deeds affecting real property.
9. Requires a Notary to permit access to the journal to a peace officer investigating a criminal offense who has "reasonable suspicion" that journal contains evidence of a crime immediately, or if the journal is unavailable, as soon as possible thereafter.
10. No longer requires a Notary to relinquish the journal upon presentation of a search warrant signed by a magistrate and served upon the Notary by a peace officer, but allows a peace officer to seize the journal for "probable cause."
11. Clarifies that all requirements of, or exceptions to, state and federal law apply with regard to a peace officer engaging in search or seizure of a Notary journal.

Commission Denial, Suspension, Revocation

12. Authorizes the Secretary of State to deny an application, or revoke or suspend the commission, of a Notary who (1) willfully fails to report the theft or loss of a journal; (2) makes or delivers as true any certificate or writing containing statements known by the Notary to be false (Gov't Code 6203); (3) knowingly and willfully with intent to defraud performs a notarization in relation to a deed of trust on real property involving a single-family residence of 1-4 units, with knowledge that the deed of trust contains any false statement or is forged (Gov't Code 8214.2); (4) solicits, coerces or influences a Notary to perform an improper notarial act knowing the act to be improper (Gov't Code 8225); (5) purports to act as a Notary while not commissioned in relation to a document affecting title to, placing an encumbrance on, or placing an interest secured by a mortgage or deed of trust on, real property of a single-family residence of 1-4 units (Gov't Code 8227.3); (6) knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office in California, which instrument, if genuine, might be filed or recorded (Penal Code 115); (7) forges or counterfeits the signature, seal or acknowledgment of a Notary, or a Notary who issues an acknowledgment knowing it is false with intent to defraud (Penal Code 470); (8) commits grand theft as defined under Penal Code Section 487; (9) Willfully and unlawfully obtains, retains, sells or uses the personal identifying information of another person to obtain goods or services or to commit a crime, or commits mail theft (Penal Code 530.5); and (10) willfully fails to provide access to the journal upon request by a peace officer.
13. Repeals a willful violation of Gov't Code Section 8214.1(d) – failure to fully and faithfully perform any duty of a Notary as grounds for denial, revocation or suspension of a Notary's commission.

Penalties and Civil Fines

14. Classifies a willful failure to notify the Secretary of State of a change of address as an infraction punishable by a fine of not more than \$500.
15. Classifies a willful failure to notify the Secretary of State of a change of name as an infraction punishable by a fine of not more than \$500.
16. Subjects a Notary to a civil penalty of up to \$2,500 for a willful failure to provide access to the Notary's journal when requested by a peace officer when requested, which may be imposed by the Secretary of State in an administrative hearing or a public prosecutor in superior court.
17. Subjects a Notary to a civil penalty of up to \$2,500 for failing to obtain a journal thumbprint for the documents required by Gov't Code Section 8207, which may be imposed by the Secretary of State in an administrative hearing or a public prosecutor in superior court.
18. Subjects a Notary to a civil penalty of up to \$10,000 for failing to require a personally known credible witness to present an ID card satisfying Section 1185 of the Civil Code establishing the witness' identity, which may be imposed by the Secretary of State in an administrative hearing or a public prosecutor in superior court.
19. Subjects a Notary to a civil penalty of up to \$10,000 for willfully stating as true any material fact in an acknowledgment certificate which he or she knows to be false, which may be imposed by the Secretary of State in an administrative hearing or a public prosecutor in superior court.

Prosecution and Enforcement

20. Stipulates that prosecution of a violation of Gov't Code Sections 6203, 8214.23, 8221, 8225 and 8228.1 must be commenced within 4 years after discovery of the commission of the offense or completion of the offense, whichever is later.
21. Provides that the penalties for a violation of Gov't Code Sections 6203, 8214.2 and 8221 are not an exclusive remedy and does not affect any other relief or remedy available under the law.
22. Authorizes a peace officer possessing reasonable suspicion to enforce any of the provisions of California's Notary laws in the Government Code through the examination of the Notary's books, records, letters, contracts and other pertinent documents.
23. Requires a public prosecutor to notify the Secretary of State of the imposition of civil penalties for a violation of California's Notary laws.

Miscellaneous

24. States it is the intent of the Legislature that any moneys raised by penalties collected from Notaries shall be made available to the Secretary of State's office to defray its costs for pursuing monetary remedies for violations of the Notary Public law.
25. Makes technical and conforming changes.

Analysis:

Assembly Bill 886 was initiated by the Los Angeles County District Attorneys Office. Chief among the concerns which led the DA's office to bring this legislation were:

- (1) Since 2001, over three dozen criminal reports and requests for hearing had been submitted to the Secretary of State and not one hearing had taken place. The DA notes this is not a criticism of the Secretary's office, but recognition that the Secretary's office is severely understaffed. Thus, Assembly Bill 886 gives law enforcement greater authority to pursue misconduct committed by Notaries. It allows a public prosecutor to impose civil penalties for certain acts of Notary misconduct.
- (2) There is a pressing need for law enforcement to obtain Notary journals in an investigation of a criminal offense more quickly. Under current law, a search order must be obtained in order for an officer to seize the Notary's journal. By the time the search warrant is obtained, predictably the journal had been "lost" or "stolen." Assembly Bill 886 now allows a peace officer to request the journal upon reasonable suspicion that the journal contains information related to a criminal act, allows an officer to seize the journal upon probable cause and imposes strict penalties upon Notaries who do not provide the journal to a peace officer.
- (3) Several Notary-specific crimes classified currently as misdemeanors should be converted to "wobblers" — crimes that could be prosecuted either as a misdemeanor or felony, giving law enforcement up to four years to investigate and file charges.

While these were the chief concerns which formed the basis for many of the new reforms brought under AB 886, there are other concerns as well, such as a desire to remove the option of a Notary identifying document signers based upon personal knowledge of identity, thus making potential fraud perpetrators present a state-approved ID card for recordation in the Notary's journal.

While most of the provisions in AB 886 will assist law enforcement in pursuing "rogue" Notaries who knowingly perpetrate crimes, some provisions are controversial, including the elimination of personal knowledge as a method of identity (the NNA has long espoused personal knowledge as the highest and most reliable method of identification and the NNA believes the removal of personal knowledge as a method of ID will impose a burden on employee-Notaries who notarize for the same person day in and day out at work) and the declaration under penalty of perjury in the statutory acknowledgment (redundant in light of the very clear California laws on penalties for false certification as a public officer).

It is clear that this new law was drafted hastily and may require follow-up legislation in 2008 to clarify certain matters or to fill certain glaring omissions. For example, under this new law, if two credible witnesses are relied on by the Notary, then their ID must be described in the journal; but no such journal description is required for one credible witness. Another example: the new law neglected to remove mention of "personal knowledge" from the subscribing witness sections of the law. Undoubtedly these imperfections will raise practical questions, resulting in the NNA issuing best practice recommendations on how to apply the new law.

2007 CA A 434**AUTHOR:** Silva**VERSION:** Chaptered **VERSION DATE:** 10/11/2007**An act to add Section 8206.5 to the Government Code, relating to notaries public.**

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8206.5 is added to the Government Code, to read:

8206.5. Upon receiving a request for a copy of a transaction pursuant to subdivision (c) of Section 8206, the notary shall respond to the request within 15 business days after receipt of the request and either supply the photostatic copy requested or acknowledge that no such line item exists. In a disciplinary proceeding for noncompliance with subdivision (c) of Section 8206 or this section, a notary may defend his or her delayed action on the basis of unavoidable, exigent business or personal circumstances.