

## News from our Real Estate Group

# AB 886—New Form of California Acknowledgment and Jurat

## When Simple Things Change, it Affects Everything

When complicated things change, only those that do transactions in the niche area are affected, and those people generally have counsel that guide them through the impact of the change. When basic things change—such as the form of Acknowledgment, also known as a notary certificate, everything changes, and confusion often reigns. Such is the case now that California has changed the form of notary certificate, which is most often used in acknowledging a signature of a party executing any document that is to be recorded in the records of the County Recorder.

The new law changes California's form of acknowledgment, found in Civil Code Section 1189, and the new form is required for all documents notarized on or after January 1, 2008. The new law requires that the notary obtain satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the document (eliminating the ability of a notary to notarize a document based on his or her personal knowledge of the person signing a document), and expands the thumb print requirement for notaries to also apply to all power of attorney documents. Finally, the form of acknowledgment that a California notary can use has changed in another important way – the form now contains a certification under *penalty of perjury* that the person signing the document proved to the notary,

on the basis of satisfactory evidence, to be the signer of the document.

The law was authored by assemblywoman Sharon Runner (Republican, Lancaster) in an attempt to fight real estate fraud, and was based on reports from many district attorneys that rogue notaries aided and abetted the recordation of fraudulent documents by notarizing them without all parties present or by failing to properly confirm the identity of the signer of the document.

For brokerage and real estate companies that have employees that are notaries, these employees will need to familiarize themselves with the new law, as the law will require a more painstaking attention to detail for employee notaries who notarize the same person day in and day out (a strict adherence to the law will require that the signer present an approved identification card each time). To back this up, the new law 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 and imposes other penalties for failing to adhere to proper procedures in connection with the execution of an acknowledgment.

The new approved form of California acknowledgment can be found at: [www.cooley.com/files/tbl\\_s5SiteRepository/FileUpload21/1311/2008\\_California\\_Form\\_of\\_Acknowledgment.DOC](http://www.cooley.com/files/tbl_s5SiteRepository/FileUpload21/1311/2008_California_Form_of_Acknowledgment.DOC).

The new law is likely to cause some confusion because it affects almost every document that is to be recorded (and other documents that are sworn to or before a

notary for purposes unrelated to recordation—generally known as a jurat).

Here are some answers to some frequently asked questions:

**Does the new law identify what is “satisfactory evidence” that the person whose name appears on the document actually executed the document?** Yes. Satisfactory evidence is identified in Civil Code Sections 1185(b)(3) and (4) as being either a current California driver's license or a U.S. passport, or various other forms of identification issued by another state, the U.S. armed forces or a foreign country, provided that the identification has been issued within the last 5 years, contains a photograph and meets other requirements (so, for example, a driver's license from another state that does not contain a photograph or was issued more than 5 years ago is not a valid form of satisfactory evidence).

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**Are there any other ways for a notary to satisfy the requirements of the new law that he or she obtained “satisfactory evidence” that the person is the signer of the document?** Yes. However, these other methods have been significantly restricted and they still require the witness to have a satisfactory form of identification and to make certain statements. Given the new civil penalties that allow imposition of a \$10,000 fine for willfully violating the requirements of the new notary law, there is a clear intent to dissuade notarization of documents other than by the presentation of a valid identification card.

**Can a certificate of acknowledgment from another state still be used in California?**

Yes. Any certificate of acknowledgment taken in another state is sufficient in California if it is taken in accordance with the laws of the place where the acknowledgment is made.

**Can a law enforcement officer seize a notary journal?** Yes. The new law specifically provides that a law enforcement official can seize a notary’s journal if the officer has “probable cause as required by the laws of [California] and the United

States.” This is a new requirement that supports the law’s intent of fighting fraudulent real estate transactions. If a notary’s journal is seized, the notary must obtain a new sequential journal and may not make new entries in the prior journal even if it is returned by the law enforcement agency.

**When I leave my employment do I need to surrender my journal to my former employer?** No. The notary public should not surrender the journal to any person (including a former employer) even if that employer paid for the journal.

**Does the person signing the document have to sign the document in the presence of the notary?** No, not for the notary to acknowledge the signature, but “Yes” if the notary is signing a jurat.

For a fuller discussion of this new law, you can log onto the National Notary Association online library at [www.nationalnotary.org/library](http://www.nationalnotary.org/library). The NNA believes that the new law will require follow up legislation in 2008 to clarify various matters and to fill in certain omissions. Notaries should stay abreast of future developments in this area. ■