



CALIFORNIA

LEGISLATION ALERT: CALIFORNIA NOTARY REQUIREMENTS CHANGING

By: Sonia Plesset

Among last summer's legislation impacting the real estate industry in California is the enactment of SB 1050. This bill amends existing California Civil Code Sections 1189, 1195, and Government Section 8202, which govern the form and content of Notices of Acknowledgment, proofs of execution and jurats. These are the forms utilized by California's notaries to authenticate the identity of individuals signing official documents, including recordable title and security instruments utilized in the state's real property transactions.

It was signed into law on August 15, 2014 and will come into effect on January 1, 2015. While the legislature characterized the bill as a "plain language notice requirement," the law can be best described as a new "warning label" requirement for notary certificates. According to the legislative comments and the analysis of the National Notary Association, the legislature felt a need for a stop-gap measure that would eliminate any doubts regarding the limited role of notaries and the equally limited significance of a notary's seal and signature on certain instruments.

Under the new law, each of these code sections will include new language setting forth a requirement that the affected instruments contain the following language to be placed in a box above the notary seal:

"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."

There is no font requirement, as the statutes

require only that the notice be "legible." There is also some flexibility with regard to the format of the boxed notice, since the legislature noted that the form of the notices built-into the statutes was there for "illustration purposes only." However, while the format of the box itself seems to be flexible, the language is not. Since the required language is uniform in all three statutes the language appears mandatory, or at least subject to a "substantial compliance test." As a result, the most prudent approach is to avoid this issue altogether and to adopt and incorporate the statutory language verbatim.

It should be noted that nothing in the amendment will affect older provisions of the statute. For instance, Section 1189 which governs certificates of acknowledgment still provides that certificates executed in other states will be recognized as valid, as long as they comply with the laws of that state. Likewise, a certificate issued in California by a California notary can be filed or recorded in another state as long as the form "does not require the notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law." CC Section 1189(c). The statutes also continue to include language stating that pre-1993 acknowledgments that complied with the law at the time of their execution, are enforceable and will be regarded as if they had been prepared under the new law.

In enacting SB 1050, the legislature expressed a need to dissuade the general public of what it perceived as a widespread misconception that a notary's seal is an attestation of the legitimacy and

enforceability of an instrument. The legislature noted that notary seals, in and of themselves can make instruments appear official, and consequently, legitimate. One reason is the fact that many people do not understand the function of notary publics, and specifically, the limited role they play in document execution.

Further, notary seals provide an aura of legitimacy simply because they visually appear as endorsements or stamps of approval. This false perception is, in turn, utilized by unscrupulous individuals to mislead uninformed victims. Given the rise in real estate fraud, this bill attempts to warn consumers against such misrepresentations. In its analysis of the new law, the National Notary Association also commented that since consumers have become accustomed to disclosures in contracts, insurance policies, mortgages, and other documents, there was nothing unusual about adding a similar warning to notary certificates.

The concerns of the legislature aside, the warning label appears redundant, and as such, unnecessary. The current version of the notary signature block provides only that the notary had the signer appear before him or her and has verified his or her identity. There is no language to suggest that the notary is vouching for anything other than identity. Accordingly, the new language requires an explanation or clarification of what is not there, or otherwise fill what the legislature perceives as a gap that can be used by third-parties to perpetuate fraud.

Proponents of the new law will see it as a welcome clarification of some long-standing misconceptions, while its critics will see it as an exercise in futility. Others may complain that this new law contributes to the infantilizing of our society. In a world in which there is a need to warn consumers that coffee is hot, this latest addition may seem far from surprising. Regardless of one's view on the issue, old notary forms should be discarded by December 31, 2014.