

Assembly Bill No. 2326

Passed the Assembly May 3, 2012

Chief Clerk of the Assembly

Passed the Senate August 9, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1195 of the Civil Code, and to amend Section 8206 of, and to amend and repeal Section 27287 of, the Government Code, relating to execution of documents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2326, Wagner. Execution of documents.

Existing law requires a notary public to keep one active sequential journal at a time, of all official acts performed as a notary public. Existing law requires a notary public to require a party signing a deed, quitclaim deed, deed of trust affecting real property, or a power of attorney document, if the document is to be notarized, to place his or her fingerprint in the journal, as specified. Under existing law, a notary public that willfully fails to satisfy these requirements is guilty of a crime.

This bill would expand those provisions to require a notary public to require a party signing any other document affecting real property to place his or her fingerprint in the journal, if the document is to be notarized. Because a willful failure of a notary public to satisfy these requirements would be a crime, the bill would impose a state-mandated local program. The bill would make other conforming changes regarding what manner of proof of execution is permitted for specified documents. The bill would repeal obsolete provisions of law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1195 of the Civil Code is amended to read:

1195. (a) Proof of the execution of an instrument, when not acknowledged, may be made by any of the following:

- (1) By the party executing it, or either of them.
- (2) By a subscribing witness.
- (3) By other witnesses, in cases mentioned in Section 1198.

(b) (1) Proof of the execution of a power of attorney, grant deed, mortgage, deed of trust, quitclaim deed, security agreement, or any instrument affecting real property is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee’s deed or deed of reconveyance is permitted.

(2) Proof of the execution for any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public’s journal is not permitted.

(c) Any certificate for proof of execution taken within this state may be in the following form, although the use of other, substantially similar forms is not precluded:

State of California)
 County of _____) ss.

On ____ (date), before me, the undersigned, a notary public for the state, personally appeared ____ (name of subscribing witness), proved to me to be the person whose name is subscribed to the within instrument, as a witness thereto, on the oath of ____ (name of credible witness), a credible witness who is known to me and provided a satisfactory identifying document. ____ (name of subscribing witness), being by me duly sworn, said that he/she was present and saw/heard ____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within or attached instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her name to the within or attached instrument as a witness at the request of ____ (name[s] of principal[s]).

WITNESS my hand and official seal.

Signature _____ (Notary public seal)

SEC. 2. Section 8206 of the Government Code is amended to read:

8206. (a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the

journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

(2) The journal shall be in addition to, and apart from, any copies of notarized documents that may be in the possession of the notary public and shall include all of the following:

(A) Date, time, and type of each official act.

(B) Character of every instrument sworn to, affirmed, acknowledged, or proved before the notary.

(C) The signature of each person whose signature is being notarized.

(D) A statement as to whether the identity of a person making an acknowledgment or taking an oath or affirmation was based on satisfactory evidence. If identity was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.

(E) If the identity of the person making the acknowledgment or taking the oath or affirmation was established by the oaths or affirmations of two credible witnesses whose identities are proven to the notary public by presentation of any document satisfying the requirements of paragraph (3) or (4) of subdivision (b) of Section 1185 of the Civil Code, the notary public shall record in the journal the type of documents identifying the witnesses, the identifying numbers on the documents identifying the witnesses, and the dates of issuance or expiration of the documents identifying the witnesses.

(F) The fee charged for the notarial service.

(G) If the document to be notarized is a deed, quitclaim deed, deed of trust, or other document affecting real property, or a power of attorney document, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate in the journal and shall also

provide an explanation of that physical condition. This paragraph shall not apply to a trustee's deed resulting from a decree of foreclosure or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, nor to a deed of reconveyance.

(b) If a sequential journal of official acts performed by a notary public is stolen, lost, misplaced, destroyed, damaged, or otherwise rendered unusable as a record of notarial acts and information, the notary public shall immediately notify the Secretary of State by certified or registered mail. The notification shall include the period of the journal entries, the notary public commission number, and the expiration date of the commission, and when applicable, a photocopy of any police report that specifies the theft of the sequential journal of official acts.

(c) Upon written request of any member of the public, which request shall include the name of the parties, the type of document, and the month and year in which notarized, the notary shall supply a photostatic copy of the line item representing the requested transaction at a cost of not more than thirty cents (\$0.30) per page.

(d) The journal of notarial acts of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon termination of employment, whether or not the employer paid for the journal, or at any other time. The notary public shall not surrender the journal to any other person, except the county clerk, pursuant to Section 8209, or immediately, or if the journal is not present then as soon as possible, upon request to a peace officer investigating a criminal offense who has reasonable suspicion to believe the journal contains evidence of a criminal offense, as defined in Sections 830.1, 830.2, and 830.3 of the Penal Code, acting in his or her official capacity and within his or her authority. If the peace officer seizes the notary journal, he or she must have probable cause as required by the laws of this state and the United States. A peace officer or law enforcement agency that seizes a notary journal shall notify the Secretary of State by facsimile within 24 hours, or as soon as possible thereafter, of the name of the notary public whose journal has been seized. The notary public shall obtain a receipt for the journal, and shall notify the Secretary of State by certified mail within 10 days that the journal was relinquished to a peace officer. The notification shall include the period of the journal entries, the commission number of the notary public, the expiration date of the commission, and a

photocopy of the receipt. The notary public shall obtain a new sequential journal. If the journal relinquished to a peace officer is returned to the notary public and a new journal has been obtained, the notary public shall make no new entries in the returned journal. A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public, upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.

(e) The notary public shall provide the journal for examination and copying in the presence of the notary public upon receipt of a subpoena duces tecum or a court order, and shall certify those copies if requested.

(f) Any applicable requirements of, or exceptions to, state and federal law shall apply to a peace officer engaged in the search or seizure of a sequential journal.

SEC. 3. Section 27287 of the Government Code, as amended by Section 10 of Chapter 269 of the Statutes of 2011, is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Section 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Section 2952 or 2963 of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien under Section 8416 of the Civil Code or a notice of completion under Section 8182 or 9204 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any power of attorney, quitclaim deed, grant deed, mortgage, deed of trust, security agreement, or other document affecting real property, proved by subscribing witness or as provided in Sections 1198 and 1199 of

the Civil Code, and the acknowledgment or proof certified as prescribed by law. This section shall not apply to a trustee's deed resulting from a decree of foreclosure, or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, or to a deed of reconveyance.

SEC. 4. Section 27287 of the Government Code, as amended by Section 9 of Chapter 269 of the Statutes of 2011, is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor