

ASSEMBLY BILL

No. 464

Introduced by Assembly Member Daly

February 19, 2013

An act to amend Sections 1188 and 1195 of the Civil Code, to amend Section 103526 of the Health and Safety Code, and to amend Section 210 of the Probate Code, relating to vital records.

LEGISLATIVE COUNSEL'S DIGEST

AB 464, as introduced, Daly. Vital records.

Under existing law, a certified copy of a birth, death, marriage or military service record may only be supplied by the State Registrar, local registrar, or county recorder to an authorized person, as defined, who submits a written or faxed request accompanied by a notarized statement sworn under penalty of perjury that the applicant is an authorized person.

This bill would additionally authorize the request and the notarized statement to be a digitized image, as defined. The bill would remove the application of these provisions to requests for certified copies of a military service record as requests for certified copies of those records are also subject to different provisions of existing law.

Existing law authorizes proof of the execution of an instrument by certain persons and prescribes the form for that proof. Existing law authorizes the use of a specified form as a certificate for proof of execution of an instrument.

This bill would instead require the specified form to be used as a certificate for proof of execution of an instrument, and would make several changes to the form.

Existing law authorizes, if title to real property is affected by the death of a person, any person to record evidence of the death in the county in which the property is located by providing specified documents, which may include, among other things, a certified copy of a record of the death, as specified.

This bill would provide that a certified copy of a record of death includes a certified copy or informational certified copy issued by the State Registrar, local registrar, or county recorder pursuant to specified provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1188 of the Civil Code is amended to
2 read:

3 1188. An officer taking the acknowledgment of an instrument
4 shall endorse thereon or attach thereto a certificate ~~substantially~~
5 ~~in the form prescribed in~~ pursuant to Section 1189.

6 SEC. 2. Section 1195 of the Civil Code is amended to read:

7 1195. (a) Proof of the execution of an instrument, when not
8 acknowledged, may be made by any of the following:

9 (1) By the party executing it, or either of them.

10 (2) By a subscribing witness.

11 (3) By other witnesses, in cases mentioned in Section 1198.

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

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

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

23
24 State of California }
25 County of _____ } ss.
26

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

13
 14 WITNESS my hand and official seal.
 15 Signature _____ (Notary public seal) (Seal)

16
 17 SEC. 3. Section 103526 of the Health and Safety Code is
 18 amended to read:

19 103526. (a) (1) If the State Registrar, local registrar, or county
 20 recorder receives a ~~written or faxed~~ *written, faxed, or digitized*
 21 *image of a* request for a certified copy of a birth, death, or marriage
 22 record pursuant to Section ~~103525~~, ~~or a military service record~~
 23 ~~pursuant to Section 6107 of the Government Code, 103525~~ that is
 24 accompanied by a notarized statement sworn under penalty of
 25 perjury, or a faxed copy *or digitized image* of a notarized statement
 26 sworn under penalty of perjury, that the requester is an authorized
 27 person, as defined in this section, that official may furnish a
 28 certified copy to the applicant ~~in accordance with~~ *pursuant to*
 29 ~~Section 103525 and in accordance with Section 6107 of the~~
 30 ~~Government Code. If a written request for a certified copy of a~~
 31 ~~military service record is submitted to a county recorder by fax,~~
 32 ~~the county recorder may furnish a certified copy of the military~~
 33 ~~record to the applicant in accordance with Section 103525.~~ A faxed
 34 *or digitized image of the* notary acknowledgment accompanying
 35 a faxed request received pursuant to this subdivision for a certified
 36 copy of a birth, death, or marriage record ~~or a military service~~
 37 ~~record~~ shall be legible and, if the notary's seal is not
 38 photographically reproducible, show the name of the notary, the
 39 county of the notary's principal place of business, the notary's
 40 telephone number, the notary's registration number, and the

1 notary's commission expiration date typed or printed in a manner
2 that is photographically reproducible below, or immediately
3 adjacent to, the notary's signature in the acknowledgment. If a
4 request for a certified copy of a birth, death, or marriage record is
5 made in person, the official shall take a statement sworn under
6 penalty of perjury that the requester is signing his or her own legal
7 name and is an authorized person, and that official may then furnish
8 a certified copy to the applicant.

9 (2) *For purposes of this subdivision, "digitized image" means*
10 *an image of an original paper request for a certified copy of a*
11 *birth, death, or marriage record.*

12 (b) (1) If the person requesting a certified copy of a birth, death,
13 or nonconfidential marriage record is not an authorized person or
14 is an authorized person who is otherwise unable to satisfy the
15 requirements of subdivision (a), the certified copy provided to the
16 applicant shall be an informational certified copy and shall display
17 a legend that states "INFORMATIONAL, NOT A VALID
18 DOCUMENT TO ESTABLISH IDENTITY." The legend shall
19 be placed on the certificate in a manner that will not conceal
20 information.

21 (2) If the person requesting a certified copy of a confidential
22 marriage record is not an authorized person or is an authorized
23 person who is otherwise unable to satisfy the requirements of
24 subdivision (a), the official shall not release a certified copy of the
25 confidential marriage record unless otherwise authorized by law.

26 (c) For purposes of this section, an "authorized person" means:

27 (1) For purposes of requests for certified copies of confidential
28 marriage records, only a party to the confidential marriage.

29 (2) For purposes of requests for certified copies of birth, death,
30 or nonconfidential marriage records, a person who is any of the
31 following:

32 (A) The registrant or a parent or legal guardian of the registrant.

33 (B) A party entitled to receive the record as a result of a court
34 order, or an attorney or a licensed adoption agency seeking the
35 birth record in order to comply with the requirements of Section
36 3140 or 7603 of the Family Code.

37 (C) A member of a law enforcement agency or a representative
38 of another governmental agency, as provided by law, who is
39 conducting official business.

1 (D) A child, grandparent, grandchild, sibling, spouse, or
2 domestic partner of the registrant.

3 (E) An attorney representing the registrant or the registrant's
4 estate, or any person or agency empowered by statute or appointed
5 by a court to act on behalf of the registrant or the registrant's estate.

6 (F) An agent or employee of a funeral establishment who acts
7 within the course and scope of his or her employment and who
8 orders certified copies of a death certificate on behalf of any
9 individual specified in paragraphs (1) to (5), inclusive, of
10 subdivision (a) of Section 7100.

11 (d) A person who asks the agent or employee of a funeral
12 establishment to request a death certificate on his or her behalf
13 warrants the truthfulness of his or her relationship to the decedent,
14 and is personally liable for all damages occasioned by, or resulting
15 from, a breach of that warranty.

16 (e) Notwithstanding any other law:

17 (1) A member of a law enforcement agency or a representative
18 of a state or local government agency, as provided by law, who
19 orders a copy of a record to which subdivision (a) applies in
20 conducting official business shall not be required to provide the
21 notarized statement required by subdivision (a).

22 (2) An agent or employee of a funeral establishment who acts
23 within the course and scope of his or her employment and who
24 orders death certificates on behalf of individuals specified in
25 paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100
26 shall not be required to provide the notarized statement required
27 by subdivision (a).

28 (f) Informational certified copies of birth and death certificates
29 issued pursuant to subdivision (b) shall only be printed from the
30 single statewide database prepared by the State Registrar and shall
31 be electronically redacted to remove any signatures for purposes
32 of compliance with this section. Local registrars and county
33 recorders shall not issue informational certified copies of birth and
34 death certificates from a source other than the statewide database
35 prepared by the State Registrar. This subdivision shall become
36 operative on July 1, 2007, but only after the statewide database
37 becomes operational and the full calendar year of the birth and
38 death indices and images is entered into the statewide database
39 and is available for the respective year of the birth or death
40 certificate for which an informational copy is requested. The State

1 Registrar shall provide written notification to local registrars and
2 county recorders as soon as a year becomes available for issuance
3 from the statewide database.

4 SEC. 4. Section 210 of the Probate Code is amended to read:

5 210. If title to real property is affected by the death of a person,
6 any person may record in the county in which the property is
7 located any of the following documents establishing the fact of
8 the death:

9 (a) An affidavit of death executed by a person having knowledge
10 of the facts. The affidavit shall include a particular description of
11 the real property and an attested or certified copy of a record of
12 the death made and filed in a designated public office as required
13 by law. *For purposes of this subdivision, a certified copy issued*
14 *in this state shall include any copy issued pursuant to Section*
15 *103525 of, subdivision (a) of Section 103526 of, or paragraph (1)*
16 *of subdivision (b) of Section 103526 of, the Health and Safety*
17 *Code.*

18 (b) A certified copy of a court order that determines the fact of
19 death made pursuant to Chapter 1 (commencing with Section 200)
20 or pursuant to another statute that provides for a determination of
21 the fact of death.