

ASSEMBLY BILL

No. 442

Introduced by Assembly Member Arambula

February 24, 2009

An act to amend Section 1185 of the Civil Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

AB 442, as introduced, Arambula. Notaries public.

Existing law prohibits an officer from taking acknowledgment of an instrument regarding the transfer of title to property unless the officer has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument.

Existing law provides that satisfactory evidence for purposes of that provision may include reasonable reliance on the presentation of any one of certain documents, including a driver's license, passport, or identification card, as specified.

This bill would add a Matricula Consular, a form of identification card issued by the Mexican government, to that list of documents.

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

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

- 1 SECTION 1. Section 1185 of the Civil Code is amended to
- 2 read:
- 3 1185. (a) The acknowledgment of an instrument shall not be
- 4 taken unless the officer taking it has satisfactory evidence that the

1 person making the acknowledgment is the individual who is
2 described in and who executed the instrument.

3 (b) For the purposes of this section “satisfactory evidence”
4 means the absence of any information, evidence, or other
5 circumstances that would lead a reasonable person to believe that
6 the person making the acknowledgment is not the individual he
7 or she claims to be and any one of the following:

8 (1) (A) The oath or affirmation of a credible witness personally
9 known to the officer, whose identity is proven to the officer upon
10 presentation of any document satisfying the requirements of
11 paragraph (3) or (4), that the person making the acknowledgment
12 is personally known to the witness and that each of the following
13 are true:

14 (i) The person making the acknowledgment is the person named
15 in the document.

16 (ii) The person making the acknowledgment is personally known
17 to the witness.

18 (iii) That it is the reasonable belief of the witness that the
19 circumstances of the person making the acknowledgment are such
20 that it would be very difficult or impossible for that person to
21 obtain another form of identification.

22 (iv) The person making the acknowledgment does not possess
23 any of the identification documents named in paragraphs (3) and
24 (4).

25 (v) The witness does not have a financial interest in the
26 document being acknowledged and is not named in the document.

27 (B) A notary public who violates this section by failing to obtain
28 the satisfactory evidence required by subparagraph (A) shall be
29 subject to a civil penalty not exceeding ten thousand dollars
30 (\$10,000). An action to impose this civil penalty may be brought
31 by the Secretary of State in an administrative proceeding or any
32 public prosecutor in superior court, and shall be enforced as a civil
33 judgment. A public prosecutor shall inform the secretary of any
34 civil penalty imposed under this subparagraph.

35 (2) The oath or affirmation under penalty of perjury of two
36 credible witnesses, whose identities are proven to the officer upon
37 the presentation of any document satisfying the requirements of
38 paragraph (3) or (4), that each statement in paragraph (1) of this
39 subdivision is true.

1 (3) Reasonable reliance on the presentation to the officer of any
2 one of the following, if the document is current or has been issued
3 within five years:

4 (A) An identification card or driver's license issued by the
5 California Department of Motor Vehicles.

6 (B) A passport issued by the Department of State of the United
7 States.

8 (4) Reasonable reliance on the presentation of any one of the
9 following, provided that a document specified in subparagraphs
10 (A) to (F), inclusive, shall either be current or have been issued
11 within five years and shall contain a photograph and description
12 of the person named on it, shall be signed by the person, shall bear
13 a serial or other identifying number, and, in the event that the
14 document is a passport, shall have been stamped by the United
15 States Immigration and Naturalization Service:

16 (A) A passport issued by a foreign government.

17 (B) A driver's license issued by a state other than California or
18 by a Canadian or Mexican public agency authorized to issue
19 drivers' licenses.

20 (C) An identification card issued by a state other than California.

21 (D) An identification card issued by any branch of the Armed
22 Forces of the United States.

23 (E) An inmate identification card issued on or after January 1,
24 1988, by the Department of Corrections and Rehabilitation, if the
25 inmate is in custody.

26 (F) An employee identification card issued by an agency or
27 office of the State of California, or by an agency or office of a city,
28 county, or city and county in this state.

29 (G) An inmate identification card issued prior to January 1,
30 1988, by the Department of Corrections and Rehabilitation, if the
31 inmate is in custody.

32 (H) *A Matricula Consular.*

33 (c) An officer who has taken an acknowledgment pursuant to
34 this section shall be presumed to have operated in accordance with
35 the provisions of law.

36 (d) Any party who files an action for damages based on the
37 failure of the officer to establish the proper identity of the person
38 making the acknowledgment shall have the burden of proof in
39 establishing the negligence or misconduct of the officer.

- 1 (e) Any person convicted of perjury under this section shall
- 2 forfeit any financial interest in the document.

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