

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 *through its consular offices*, 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:

1 1185. (a) The acknowledgment of an instrument shall not be
2 taken unless the officer taking it has satisfactory evidence that the
3 person making the acknowledgment is the individual who is
4 described in and who executed the instrument.

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

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

16 (i) The person making the acknowledgment is the person named
17 in the document.

18 (ii) The person making the acknowledgment is personally known
19 to the witness.

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

24 (iv) The person making the acknowledgment does not possess
25 any of the identification documents named in paragraphs (3) and
26 (4).

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

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

37 (2) The oath or affirmation under penalty of perjury of two
38 credible witnesses, whose identities are proven to the officer upon
39 the presentation of any document satisfying the requirements of

paragraph (3) or (4), that each statement in paragraph (1) of this subdivision is true.

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

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

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

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

(A) A passport issued by a foreign government.

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

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

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

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

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

(G) *A Matricula Consular issued by the Mexican government through its consular offices.*

~~(G)~~

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

~~(H) A Matricula Consular.~~

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

- 1 (d) Any party who files an action for damages based on the
- 2 failure of the officer to establish the proper identity of the person
- 3 making the acknowledgment shall have the burden of proof in
- 4 establishing the negligence or misconduct of the officer.
- 5 (e) Any person convicted of perjury under this section shall
- 6 forfeit any financial interest in the document.