

AMENDED IN ASSEMBLY APRIL 1, 2009
AMENDED IN ASSEMBLY MARCH 25, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 442

Introduced by Assembly Member Arambula
(Principal coauthor: Senator Correa)
(Coauthor: Assembly Member Jones)

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~~ *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:

SECTION 1. Section 1185 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (E) An inmate identification card issued on or after January 1,
29 1988, by the Department of Corrections and Rehabilitation, if the
30 inmate is in custody.

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

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

36 *(G) Matricula consular issued by the government of the United*
37 *States of Mexico.*

38 (H) An inmate identification card issued prior to January 1,
39 1988, by the Department of Corrections and Rehabilitation, if the
40 inmate is in custody.

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

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

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