

ASSEMBLY BILL

No. 898

Introduced by Assembly Member Lieu

February 26, 2009

An act to amend Section 1195 of the Civil Code, to amend Section 3505 of the Commercial Code, to amend Sections 8205, 8208, 8211, and 27287 of, and to add Section 12181 to, the Government Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

AB 898, as introduced, Lieu. Notaries public.

(1) Existing law relating to the recording of transfers prohibits a proof of the execution of any of several types of specified instruments, including a grant deed, mortgage, deed of trust, quitclaim deed, or security agreement.

This bill would add a power of attorney to the types of instruments for which a proof of the execution is prohibited and would further prohibit a 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.

(2) Existing law provides that a protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs.

The bill would instead provide that a protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public during the course and scope of employment with a financial institution or other person authorized to administer oaths by the laws of any other state, government, or country in the place where dishonor occurs.

(3) Existing law prescribes the duties of a notary public, including the duty to demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance or nonpayment, and to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries.

The bill would limit this duty to notaries public employed by financial institutions.

(4) Existing law provides that the protest of a notary public, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, providing specified information, is prima facie evidence of the facts recited therein.

The bill would instead provide that the protest of a notary public employed by a financial institution, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, providing specified information, is prima facie evidence of the facts recited therein.

(5) Existing law prescribes the maximum fees a notary public may charge for specified services.

The bill would delete the prescribed maximum fees for every protest for the nonpayment of a promissory note or for the nonpayment or nonacceptance of a bill of exchange, draft, or check, for serving every notice of nonpayment of a promissory note or of nonpayment or nonacceptance of a bill of exchange, order, draft, or check, and for recording every protest.

(6) Existing law sets forth the fees the Secretary of State is authorized to charge for the provision of specified business services.

The bill would authorize the Secretary of State's office to refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for any of a number of specified improper purposes.

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 1195 of the Civil Code is amended to
- 2 read:
- 3 1195. (a) Proof of the execution of an instrument, when not
- 4 acknowledged, may be made any of the following:

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

4 (b) (1) Proof of the execution of a *power of attorney*, grant
5 deed, mortgage, deed of trust, quitclaim deed, or security agreement
6 is not permitted pursuant to Section 27287 of the Government
7 Code, though proof of the execution of a trustee's deed or deed of
8 reconveyance is permitted.

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

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

15
16 State of California)
17 County of _____) ss.
18

19 On ____ (date), before me, the undersigned, a notary public
20 for the state, personally appeared ____ (subscribing witness's
21 name), personally known to me (or proved to me on the oath of
22 ____ [credible witness's name], who is personally known to me)
23 to be the person whose name is subscribed to the within instrument,
24 as a witness thereto, who, being by me duly sworn, deposed and said
25 that he/she was present and saw ____ (name[s] of principal[s]),
26 the same person(s) described in and whose name(s) is/are
27 subscribed to the within and annexed instrument in his/her/their
28 authorized capacity(ies) as (a) party(ies) thereto, execute the same,
29 and that said affiant subscribed his/her name to the within
30 instrument as a witness at the request of ____ (name[s] of
31 principal[s]).
32

33 WITNESS my hand and official seal.

34 Signature _____ (Seal)
35

36 SEC. 2. Section 3505 of the Commercial Code is amended to
37 read:

38 3505. (a) The following are admissible as evidence and create
39 a presumption of dishonor and of any notice of dishonor stated:

1 (1) A document regular in form as provided in subdivision (b)
2 which purports to be a protest.

3 (2) A purported stamp or writing of the drawee, payor bank, or
4 presenting bank on or accompanying the instrument stating that
5 acceptance or payment has been refused unless reasons for the
6 refusal are stated and the reasons are not consistent with dishonor.

7 (3) A book or record of the drawee, payor bank, or collecting
8 bank, kept in the usual course of business—~~which~~ *that* shows
9 dishonor, even if there is no evidence of who made the entry.

10 (b) A protest is a certificate of dishonor made by a United States
11 consul or vice consul, or a notary public *during the course and*
12 *scope of employment with a financial institution* or other person
13 authorized to administer oaths by the ~~law of the place~~ *laws of any*
14 *other state, government, or country in the place* where dishonor
15 occurs. It may be made upon information satisfactory to that
16 person. The protest shall identify the instrument and certify either
17 that presentment has been made or, if not made, the reason why it
18 was not made, and that the instrument has been dishonored by
19 nonacceptance or nonpayment. The protest may also certify that
20 notice of dishonor has been given to some or all parties.

21 SEC. 3. Section 8205 of the Government Code is amended to
22 read:

23 8205. (a) It is the duty of a notary public, when requested:

24 (1) To demand acceptance and payment of foreign and inland
25 bills of exchange, or promissory notes, to protest them for
26 nonacceptance and nonpayment, and, with regard only to the
27 nonacceptance or nonpayment of bills and notes, to exercise any
28 other powers and duties that by the law of nations and according
29 to commercial usages, or by the laws of any other state,
30 government, or country, may be performed by notaries. *This*
31 *paragraph applies only to notaries public employed by financial*
32 *institutions.*

33 (2) To take the acknowledgment or proof of advance health care
34 directives, powers of attorney, mortgages, deeds, grants, transfers,
35 and other instruments of writing executed by any person, and to
36 give a certificate of that proof or acknowledgment, endorsed on
37 or attached to the instrument. The certificate shall be signed by
38 the notary public in the notary public's own handwriting. A notary
39 public may not accept any acknowledgment or proof of any
40 instrument that is incomplete.

(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath, or affirmation shall be signed by the notary public in the notary public's own handwriting.

(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.

(b) It shall further be the duty of a notary public, upon written request:

(1) To furnish to the Secretary of State certified copies of the notary's journal.

(2) To respond within 30 days of receiving written requests sent by certified mail from the Secretary of State's office for information relating to official acts performed by the notary.

SEC. 4. Section 8208 of the Government Code is amended to read:

8208. The protest of a notary public *employed by a financial institution*, under his or her hand and official seal, of a bill of exchange or promissory note for nonacceptance or nonpayment, specifying any of the following is prima facie evidence of the facts recited therein:

(a) The time and place of presentment.

(b) The fact that presentment was made and the manner thereof.

(c) The cause or reason for protesting the bill.

(d) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

SEC. 5. Section 8211 of the Government Code is amended to read:

8211. Fees charged by a notary public for the following services shall not exceed the fees prescribed by this section.

(a) For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, the sum of ten dollars (\$10) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the seal, the sum of ten dollars (\$10).

(c) For all services rendered in connection with the taking of any deposition, the sum of twenty dollars (\$20), and in addition thereto, the sum of five dollars (\$5) for administering the oath to

1 the witness and the sum of five dollars (\$5) for the certificate to
2 the deposition.

3 ~~(d) For every protest for the nonpayment of a promissory note~~
4 ~~or for the nonpayment or nonacceptance of a bill of exchange,~~
5 ~~draft, or check, the sum of ten dollars (\$10).~~

6 ~~(e) For serving every notice of nonpayment of a promissory~~
7 ~~note or of nonpayment or nonacceptance of a bill of exchange,~~
8 ~~order, draft, or check, the sum of five dollars (\$5).~~

9 ~~(f) For recording every protest, the sum of five dollars (\$5).~~

10 ~~(g)~~

11 ~~(d)~~ No fee may be charged to notarize signatures on vote by
12 mail ballot identification envelopes or other voting materials.

13 ~~(h)~~

14 ~~(e)~~ For certifying a copy of a power of attorney under Section
15 4307 of the Probate Code the sum of ten dollars (\$10).

16 ~~(i)~~

17 ~~(f)~~ In accordance with Section 6107, no fee may be charged to
18 a United States military veteran for notarization of an application
19 or a claim for a pension, allotment, allowance, compensation,
20 insurance, or any other veteran's benefit.

21 SEC. 6. Section 12181 is added to the Government Code, to
22 read:

23 12181. The Secretary of State's office may refuse to perform
24 a service or refuse a filing based on a reasonable belief that the
25 service or filing is being requested for an unlawful, false, or
26 fraudulent purpose, to promote or conduct an illegitimate object
27 or purpose, or is being requested or submitted in bad faith or for
28 the purpose of harassing or defrauding a person or entity.

29 SEC. 7. Section 27287 of the Government Code is amended
30 to read:

31 27287. Unless it belongs to the class provided for in either
32 Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of
33 the Civil Code, or is a fictitious mortgage or deed of trust as
34 provided in Sections 2952, or 2963, of the Civil Code, or is a
35 fictitious oil and gas lease as provided in Section 1219 of the Civil
36 Code, or is a claim of lien, as provided in Section 3084 of the Civil
37 Code, or a notice of completion, as provided in Section 3093 of
38 the Civil Code, before an instrument can be recorded its execution
39 shall be acknowledged by the person executing it, or if executed
40 by a corporation, by its president or secretary or other person

1 executing it on behalf of the corporation, or, except for any *power*
2 *of attorney*, quitclaim deed, or grant deed other than a trustee's
3 deed or a deed of reconveyance, mortgage, deed of trust, or security
4 agreement, proved by subscribing witness or as provided in
5 Sections 1198 and 1199 of the Civil Code, and the acknowledgment
6 or proof certified as prescribed by law.

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