





**THE
NOTARY'S MANUAL**
(NINTH EDITION)

BASED UPON

**THE SECTIONS OF THE CALIFORNIA
CODES RELATING TO NOTARIES
PUBLIC**

**WITH EXTRACTS FROM AND NOTES ON STATE
SUPREME COURT DECISIONS**

ALSO CONTAINS

**LEGAL FORMS FOR THE VARIOUS NOTARY'S
CERTIFICATES AND PROTEST**

PREPARED BY
A MEMBER OF THE SAN FRANCISCO BAR



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14-12-10. [Protesting bills and notes; notice.]

Each notary public when any bill of exchange, promissory note or other written instrument shall be by such notary protested for nonacceptance or nonpayment shall give notice in writing thereof to the maker and to each and every endorser of such bill of exchange, and to the maker of each security, or the endorsers of any promissory note or other written instrument, immediately after such protest shall have been made.

History: Laws 1909, ch. 55, § 8; Code 1915, § 3935; C.S. 1929, § 94-112; 1941 Comp., § 11-109; 1953 Comp., § 35-1-9.

Cross references. - For civil and criminal liability for false certificate as to protest, see 56-5-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 797

14-12-20. [Notary affiliated with bank or corporation; power restricted.]

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

14-12-1. Notaries; powers and duties.

The office of "notary public" is established. At any place within the state, a notary public may:

- A. administer oaths;
- B. take and certify acknowledgments of instruments in writing;
- C. take and certify depositions;
- D. make declarations and protests; and
- E. perform other duties as provided by law.

History: 1953 Comp., § 35-1-1, enacted by Laws 1969, ch. 168, § 1.

14-12-11. [Service of notice of protest.]

Each notary public may serve notice personally upon each person protested against by delivering to such person a notice in writing, or he may make such service by placing such notice in a sealed envelope with sufficient postage thereon addressed to the person to be charged, at his last place of residence, according to the best information that the person giving the notice may obtain, and by depositing such envelope containing such notice in the United States mail or post office.

History: Laws 1909, ch. 55, § 9; Code 1915, § 3936; C.S. 1929, § 94-113; 1941 Comp., § 11-110; 1953 Comp., § 35-1-10.

14-12-12. [Recording protest notices; use as evidence.]

Each notary public shall keep record of all protest notices and of the time and manner in which the same were served and of the names of all persons to whom the same were directed. Also the description and the amount of the instrument protested, which record, or a copy thereof certified by the notary public under seal, shall at all times be competent evidence to prove such notice in any court of this state.

History: Laws 1909, ch. 55, § 10; Code 1915, § 3937; C.S. 1929, § 94-114; 1941 Comp., § 11-111; 1953 Comp., § 35-1-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 798; 12 Am. Jur. 2d Bills and Notes § 1237.

P R E F A C E

This volume, as the name indicates, has been prepared especially for the use of notaries public. It is based upon the Codes of California and the decisions of the Supreme Court of this and other states so far as they relate to the law authorizing and governing the acts of these officers, and references to all sections and decisions are given. The chapters on deeds, mortgages and homesteads have been inserted for the purpose of giving general information on these subjects, and because the notary is frequently expected to draw as well as take the acknowledgment of these instruments. The contents of this volume on the subject of Bills and Notes is based upon the "Negotiable Instruments Law" adopted in California in 1917 and the amendments thereto. A thorough understanding of this important subject is, of course, necessary to the intelligent protesting of negotiable paper. Practical forms of certificates, notices, protests, etc., are appended.

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The Notary's Manual

NINTH EDITION

CHAPTER I.

NOTARIES PUBLIC.

- §1 Appointment.
- 2 Eligibility.
- 3-4 Qualification.
- 5 Duties.
- 6 Compensation.
- 7 Jurisdiction.
- 8 Term of office.
- 9-11 Records.
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Appointment.

SECTION 1. Notaries Public are public officers appointed by the governor, usually upon petition addressed to him setting forth the qualifications of the applicant and signed by citizens and residents requesting the appointment. There is no restriction upon the number that may be appointed for the several counties of the state—the governor having authority to appoint such number “as he shall deem necessary for the public convenience”—except that the number to be appointed in counties of the second class is limited to one hundred and fifty-five.

(1) Political Code, §791

Eligibility.

SECTION 2. The only qualifications required by statute are the following: The person must, at the time of appointment, be a citizen of the United States and of this state, twenty-one years of age, and must have resided in the county for which the appointment is made for six months prior thereto. Women having these qualifications may be appointed.²

Qualification.

SECTION 3. *Official Bond and Oath.* When the commission is granted the appointee is required to execute an official bond in the sum of five thousand dollars which bond must be approved by a judge of the superior court of the county in which such notary is commissioned to act, and after approval the bond must be recorded in the office of the county recorder and then filed and kept in the office of the county clerk. He must also take, subscribe and file his oath of office in the office of the county clerk. The time within which he must file his official bond and take, subscribe and file his oath of office in the office of the county clerk, is twenty days from the date of his commission.³

(2) Political Code, §792

(3) Political Code, §§799, 800

SECTION 4. *Certificate of Facts.* He is also required to transmit a certificate of the facts of his appointment under the hand and seal of the county clerk, together with a copy of his official oath signed by him with his own proper signature, to the office of the secretary of state, which certificate must be filed in the office of the secretary of state within thirty days from the date of his commission. He is then duly qualified to perform the duties of his office.

Duties.

SECTION 5. It is the duty of notaries public,—

1. — When requested, to demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as 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. (See Bills and Notes, Secs. 155-253, *post.*)

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing exe-

(4) Political Code, §800

cuted by any person, and to give a certificate of such proof or acknowledgment, indorsed on or attached to the instrument. (See Acknowledgment and Proof of Instruments, Secs. 15-45, *post.*)

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 in this state. (See Affidavits, Secs. 128-135, *post.*; Depositions, Secs. 136-154, *post.*)

4. To keep a record of all official acts done by them.

5. To keep a record of the parties to, date, and character of every instrument acknowledged or proved before them. (See Records, Secs. 9-12, *post.*)

6. When requested, and upon payment of their fees therefor, to make and give a certified copy of any record in their office.

7. To provide and keep official seals, upon which must be engraved the arms of this state, the words "notary public," and the name of the county for which they are commissioned.

8. To authenticate with their official seals all official acts.⁵ (See Seal, Sec. 12, *post.*)

(5) Political Code, §794

Compensation.

SECTION 6. The fees of notaries are fixed by law and are as follows:

For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, thirty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents.

For administering an oath or affirmation, fifty cents.

For every certificate, to include writing the same, and the seal, one dollar.

Jurisdiction.

SECTION 7. A notary can only transact official business in the county for which he was appointed and in which he resides. His authority is confined to the county for which he was appointed and commissioned.

In the case of *Fairbanks, Morse & Co. v. Getchell*, 13 Cal. App. 458, a notary public in and for the County of Kern had taken the oath of an affiant in Los Angeles to an affidavit for attachment over the telephone. The evidence showed that the affiant had related the facts contained in the affidavit to the notary and stated they were true, and that the notary was familiar with his voice and recognized it over the telephone. The act of administering the oath was declared to be a nullity, and the purported affidavit upon which the attachment was issued, was declared to be void and of no effect. It was contended in that case that an oath administered by communication had between notary and affiant over the telephone, was for that reason alone void and of no effect. This point, however, was not determined, the court saying:

“Such contention finds direct support in the case of *Sullivan v. First Nat. Bank*, 37 Tex. Civ. App. 228 (83 S. W. 421). According to our view, however, it is unnecessary to determine this point. Assuming, but not deciding, that an oath may

be administered and the obligations thereof assumed by communication had over the telephone, the validity of such act must be held to apply to those cases only where both notary and affiant are within the territorial limits for which the notary has been appointed and commissioned.”

Term of Office.

SECTION 8. The term of office is four years from and after the date of the commission.⁷

People v. Edleman, 152 Cal. 317, is an important case relating to the term of office of notaries public. In the city and county of San Francisco where the number is limited, the question arose as to whether, upon the death of a notary, the new appointee was appointed for the balance of the unexpired term, or for the full term of four years. It was there held that the office comes into full being only when and as the governor names specific men for the places; that as to his term and office, no notary is the legal successor of another, and each is appointed for the specified term; and that since, under the law, the term of a notary is made a full term of four years from the date of his commission, and as the death of a notary does not create a vacancy, each notary when appointed is appointed, not for an unexpired

(7) Political Code, §793

term, but for the full term of four years.

Resignations must be in writing and made to the governor,⁸ and in case the office becomes vacant before the expiration of the term, the notary's records must be delivered to the county clerk of his county as set forth in the following section.

Records.

SECTION 9. *On Death or Resignation.* Exact and particular records are required to be kept of all official acts (see Duties, Sec. 5, subs. 4-5, *supra*), and if any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the clerk of the county, who must deliver them to the notary's successor when qualified.⁹ (See Term of Office, Sec. 8, *supra*.)

SECTION 10. *Of Predecessor.* It is further provided that every notary having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers in like manner and with the same effect as such predecessor could have done.¹⁰

SECTION 11. *Open to Public Inspection.* The records in the office of a notary are public records,

(8) Political Code, §995

(9) Political Code, §796

(10) Political Code, §797

and are at all times during office hours open to the inspection of any citizen of this state.¹¹

Seal.

SECTION 12. Seal of officer taking acknowledgment must be annexed, and his certificate cannot be used in evidence unless so authenticated.

In the absence of a statute requiring it, the name of the notary need not appear on his seal; but in view of the illegibility of signatures in general, it is quite important that the seal show the official name of the notary.

Liability.

SECTION 13. *On Bond.* For the official misconduct, or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.¹² (See Liability on bond for failure to comply with statute, Secs. 21-25, *post.*)

SECTION 14. *Criminal responsibility.* He is also criminally responsible under Section 167 of the Penal Code, which provides that every public officer authorized by law to make or give any certificate or other writing who makes and delivers as true any such certificate or writing containing statements which he knows to be false, is guilty of a misdemeanor.

(11) Political Code, §1032

(12) Political Code, §801

CHAPTER II.

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS.

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- 16 Nature of proof.
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- 35-40 Proof of execution when not acknowledged.
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- 42-45 Defective certificates.

Nature of Acknowledgment.

SECTION 15. The acknowledgment of an instrument is the declaration or admission made by the party executing it to an officer having authority to take acknowledgments, that the instrument was executed by him and the same is his act and deed. It is then the duty of the officer to indorse on or attach to the instrument his certificate of acknowledgment. (See Certificate of Acknowledgment, Secs. 27-34, *post.*) The acknowledgment adds nothing to the validity or effect of the instrument as between the parties. It "is only the mode provided by law for authenticating the act of the parties so as to entitle the