



**HANNALORE DIETRICH**

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# Now That You Are A Notary, What's Next?

HANNALORE DIETRICH – SUBMITTED BY SANTA CLARA COUNTY LPA

Once you have obtained the status of "Notary Public," it is important to (1) apply your knowledge, (2) learn the 10 Most-Asked Questions (National Notary Association, 2010, p. 9), and (3) continue your notary study.

In order to apply your knowledge, see if you can identify the authorized notarial acts with the descriptions listed below:

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|----------------------------|---------------------------------|-----------------|
| <b>Acknowledgements</b>    | <b>Oaths &amp; Affirmations</b> | <b>Jurats</b>   |
| <b>Proofs of Execution</b> | <b>Copy Certifications</b>      | <b>Protests</b> |

1. A Notary certifies that a copy of a document is true and accurate. This procedure may only be used for powers of attorney and Journal line entries.
2. A subscribing witness takes the acknowledgement of and an instrument was not received.
3. A written statement by a Notary that payment on an instrument was not received.
4. A Notary certifies that the signer personally appeared, was positively identified, signed in the Notary's presence and took an oath or affirmation.
5. A solemn, spoken promise of truthfulness made in the presence of the Notary.
6. A Notary certifies that the signer personally appeared, was positively identified and acknowledged signing the document (National Notary Association: Lesson 1: The Notary Public Office, 2010, p. 9).

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After applying your knowledge as mentioned about, you need to learn and commit to memory the 10 Most-Asked Questions (National Notary Association, 2010, p.9). Answer the 10 questions below, using the following answers:

- Yes      No      Usually      It Depends**

1. Can I notarize signatures on Faxes or photocopies of documents?
2. Can I notarize a Will?
3. May I notarize for customers only?
4. Can I notarize a photograph?
5. What if there is no room for my seal or if it smears?
6. Can I notarize for a family member?
7. Does a document need to be signed in my presence?
8. Can I notarize a document in a language I cannot read?
9. Can I notarize for a stranger with no identification?

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10. Can I certify a copy of a birth certificate? (National Notary Association: 10 Most-Asked Questions, 2010, pp. 9-13).

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**A BRIEF DISCUSSION OF THE 10 MOST-ASKED QUESTIONS (NATIONAL NOTARY ASSOCIATION, 2010, PP. 9-13) FOLLOWS:**

**1. Can I notarize a Will?** It depends. If clear instructions and a notarial certificate are provided, a Notary can notarize a Will. A Notary is not to give advice and should refer the signer to an attorney if questions arise.

A holographic (handwritten) Will may be voided if notarized, as courts have occasionally held that any writing on the document other than the testator's invalidates the Will. In addition, would-be testators who draft their own wills without legal advice may notarize them, thinking this will make the Will valid and legal. Yet the Wills may be worthless, as the would-be testators omit important information or fail to obtain the correct number of witnesses.

**2. Can I notarize for a stranger with no identification?** Yes. If a signer cannot be identified by identification documents, a Notary may rely upon the oath or affirmation of two credible identifying witnesses who are strangers to the Notary or of one personally known credible identifying witness. (Every credible witness must present a valid state-approved ID to the Notary—effective January 1, 2008.)

In a Proof of Execution, a subscribing witness may only be identified upon the oath or affirmation of one credible witness who presents the Notary with acceptable identification and who is personally known by the Notary.

A Notary should decline the request to notarize a document, when a credible identifying witness is unavailable to identify a stranger without identification.

**3. Can I notarize a photograph?** No. It is improper to sign and stamp a photograph. The Notary's signature and seal are to be placed only on a notarial certificate (i.e., acknowledgment, etc.), which accompanies a written statement signed by another person. Nevertheless, a written statement that refers to an accompanying/attached photograph may be notarized. (Note: A Notary should be suspicious always about notarizing a photo-bearing card/document that could be used as a fake "official" ID.)

**4. What if there is no room for my seal or if it smears?** A loose certificate may be filled out and attached if notarial printing on a document leaves no room for a seal. When an initial seal impression cannot be read and there is enough space on the document, another impression may be affixed close to the first impression. The Notary should record in the journal that a second impression was affixed.

Do not try to fix an imperfect seal impression with correction fluid, ink or pen, as doing so might be seen as evidence of tampering, and the document may be rejected by the receiving agency.

**5. Can I notarize signatures on faxes or photocopies of documents?** Yes. If a signature bears an original signature, a photocopy may be notarized. (Do not notarize a photocopied signature.)

If a faxed document is on thermal paper, it should be photocopied to avoid future fading, to allow for signature and affixing of the Notary's seal. Of note, some public recorders might not accept notarized signatures on documents that are photocopied, as they do not adequately reproduce when microfilming.

**6. May I notarize for customers only?** No. A Notary should notarize for anyone who presents a lawful request. However, under California law, an employer and a Notary may agree that during business hours, the Notary's services may be limited to those transactions directly related to the employer's business. This means that there shall be no discrimination between customers and non-customers but between business-related and nonbusiness-related documents.

**7. Can I notarize a document in a language I cannot read?** Yes. California Notaries are allowed to notarize documents in languages that they cannot read, if the document signature and notarial certificate are in a readable language.

It may be dangerous, however, in notarizing unreadable documents, because it may be difficult to make an accurate journal description or the document may be a fraud. If the Notary cannot communicate in the same language, the notarization should not be performed.

**8. Can I certify a copy of a birth certificate?** No. The only two documents a California Notary is authorized to certify are: (1) copies of Powers of Attorney, and (2) entries in their journals of notarial acts (if requested by the Secretary of State).

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## ***Now That You Are A Notary, What's Next? Continued from page 27***

Certifying copies of vital records is prohibited by Notaries, but a Notary may certify an affidavit of a person requesting a certified copy of a birth or death certificate. (Only a Bureau of Vital Statistics officer should certify a birth certificate or other vital public record, and only a county recording official should certify a recordable instrument or a copy of a deed.)

**9. Does a document need to be signed in my presence?** It depends. For Acknowledgement certificates, the documents do not have to be signed in the Notary's presence. Yet, an Acknowledgement certificate indicates that the signer has personally appeared before the Notary and acknowledged that the document was freely signed.

Jurat certificates, on the other hand, require a signer to personally appear before the Notary, to be identified by the Notary and sign the document in the Notary's presence, and that the Notary gave the signer the oath or affirmation.

**10. Can I notarize for a family member?** It depends. California law does not explicitly prohibit notarizing a document for family members. However, one must be very careful not to violate statutes where there is a direct beneficial interest, i.e., notarizing for spouses in states with community property laws. In addition, a Notary must avoid notarizing a document when emotional interests are at stake, whereby the Notary might act impartially.

Although a Notary has no direct beneficial interest in the document to be notarized, notarizing for a relative could subject the document to a legal challenge. This would occur if the other parties in the transaction alleged that the Notary acted impartially.

Lastly, it is important to continue to study and learn the duties of a notary public. Several ways include joining the National Notary Association (Tel: 1-800-876-6827, [www.NationalNotary.org](http://www.NationalNotary.org)) (National Notary Association: California Notary Public Practices and Procedures, p. 2), joining a local notary association, and keeping in contact with other California notaries.

Thus, after becoming a notary public, it is important to (1) apply your knowledge, (2) learn the 10 Most-Asked Questions (National Notary Association, 2010, pp. 9-13), and (3) continue your notary study.

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### REFERENCES

National Notary Association (2010). 10 Most-Asked Questions. *The 2011 California Notary Law Primer* (3rd ed.). Chatsworth, CA: National Notary Association.

National Notary Association (2010). Lesson 1: The Notary Public Office. *California Notary Public Practices and Procedures*. Chatsworth, CA: National Notary Association.

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