

THE HONOR-DISHONOR PROCESS

CAVEAT

Sic caveat emptor!

This manual is for educational purposes only and not to be construed as legal advice about what you should or should not do. The information herein is to assist you in performing your own due diligence before implementing any strategy or product. It is not copyrighted or protected in any form or fashion, however, donations to enable us to continue our work and to keep the information current and to address your specific issues are greatly appreciated.

**Education Provides the Answers
Perform Your Own Due Diligence
Learn to do your own Research
Verify Others' Research
Follow the Money
Blaze a Trail for Those Who Follow You
Be Honorable in All Your Affairs**

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1A FOREWORD

Living is a continual educational process. If you truly want to be free and free from debt, it is your responsibility – and yours alone – to educate yourself. No one can do it for you. This compilation is simply a guide. It is not set in concrete. It changes constantly as the realm of experience grows.

Remember that not too long ago it was a crime to teach American slaves to read and write, that the prevalent philosophy was to keep women barefoot and pregnant? Unfortunately, too many of us have been ignorant of how our world really works and we have not done much reading and writing, or much to change it. We have let others make our decisions for so long that we have forgotten how to make informed choices.

You've made a decision that you want to eliminate your debts. Well, it will require diligence on your part to educate yourself, to learn how to use the tools widely and openly available, to learn what is really law and how to conduct commerce - topics our schools have purposely omitted from the curriculum. Don't expect lawyers, bankers, accountants or teachers of this philosophy to bail you out. It is your job to step out of the box.

You'll find this process is a revisiting of English 101. Everyday usage of language is not commercial reality. Learn the real meaning of the words you speak. If you use words correctly, there will be no misunderstanding about their applicability.

In order to advance on any path, you must decide if the process to “get there” fits your philosophy and ability, decide if you really want to pursue the process, learn all that you can from many sources, weigh the validity of all information, decide if it will accomplish what you desire, personally verify the accuracy of the materials, do the research, learn the code sections and your State statutes, know who you are so you can adapt the correspondence to reflect your status*, and put your safety nets in place before you jump off the cliff. No one can do it for you.

You can learn from others' experience, but each of our experiences utilizing this information is different and the response we obtain from creditors will vary. You must have the knowledge internalized so you know how to respond to any situation, to be assured that what you are doing is right. If fear is still part of your psyche, then you have not educated yourself sufficiently and gained the confidence to move forward. Stop and step back if that is the case.

If you truly want to get rid of your debt instruments, you must protect yourself and your family first. If you own nothing, you have nothing to lose and no exposure. If an adverse credit report will affect how you earn a living, it would be wise to consider the ramifications of what is presented herein and how it may affect you.

A word of advice: Be sure to initiate a dialogue with the Credit Reporting Agencies (CRA series) before, or at least concurrently, with the Credit Card (CC) series. If you can afford to structure your belongings such that you own nothing, you will have little to risk. If you have a credit card associated with your bank account, it would be wise to lower that balance as much as possible before eliminating all other credit card debt. The goal here should be to no longer live

* Many of the letters have an option to be from the Secured Party. If you are not a Secured Party for your strawman, be sure to change your return address, the content and the signature to fit who you are.

on credit. Remember that old adage: neither a lender or a borrower be? Strive for it. Pay for your daily expenses with FRNs and stop using those credit cards. Checks and credit cards leave a trail for others to know what you spent, when and where. FRNs provide privacy.

1B TIPS

On your Desktop, set up a master folder - for the Honor-Dishonor Process with subfolders for tools and resource materials you gather, and an additional folder for your personal documents you have customized and scanned or faxed to yourself to be attachments to documents you mail. Later, after you have the documents just the way you want them, you can copy and paste them into folders for each credit card.

Next time you're at the Post Office, pick up lots of Priority Mail Envelopes, PS Form 3811 Green Return Receipt Postcards, and PS Form 3800 Certified Mail Receipts. A few extra is always a good idea. Many clerks will not want to let you have Registered Mail Labels.

When sending your mailings out with a PS Form 3811, to avoid the possibility that some "agent" will remove the Post Office's pre-printed numerical service label on the "2 Article Number" space, write your service number in the appropriate space and then place the service label number over it. Then, place a strip of transparent tape over the service label number.

Abbreviations are used throughout the writings:

CC=Credit Card	PoS=Proof of Service
CRA=Credit Reporting Agency	"Doe" is to be replaced with your name
DC=Debt Collector	ND=Notice of Dishonor
CA=Conditional Acceptance	NP=2 nd Notice of Dishonor
A=Affidavit	CD=Certificate of Dishonor

Green color print in sample letters is to bring your attention to some word or phrase which you must correct to fit your circumstances. **Highlighting** is to make you decide if the wording applies. If it does not, delete the words and the **highlighting**.

Sample letters are set up to accommodate **joint obligors**. If you are the only obligor, be sure to change all grammar and pronouns to reflect "me" and "I" instead of "we". Delete the word "collectively", in the return address reference as you are not more than one.

Remember that the law applies to the strawman, the fiction created from your birth certificate and social security number, and are not you – the living, breathing soul. Only the principles of the law apply to the you, living soul. You must determine who you are in order to accurately reflect your return address on the templates. They are set up to reflect a Secured Party. If you do not know what that means, you are likely not a Secured Party. To become a Secured Party, you would have already filed UCC-1's in the appropriate Secretary of State's Offices. If you are not a Secured Party, change the return address information and signature lines of each template to reflect the current status – your name and mailing address in standard format, but in all capital letters: e.g.:

JOHN DOE
123 MAIN STREET
ANYTOWN, USA 00000

IC WHO YOU ARE & PRIVACY

One of the first things you must determine in embarking on this process is who you are and who is writing the notices/letters: the strawman, living soul or secured party – and you have to be consistent throughout the process. If you have already recorded your copyright on the strawman and UCC-1 on your strawman, you may choose to have your documents reflect you are the secured party or you may wish to respond only as the true name (living soul) or even as the strawman. If you have not established your position as a secured party, be sure to delete all references to the secured party. The living soul has a name in Upper and Lower case letters. The strawman is in all UPPER CASE LETTERS. The living soul and secured party are always “right”, which means they sign on the right side of the page. The strawman is a debtor and is reflected on the left side of the page.

You must to customize the templates to match who is writing them.

The strawman is in the box and doesn't need registered mail. Registered mail comes from in the box to in the box. A living soul uses Registered Mail to traverse the border into the box. Due to the many multi-letter agencies trying to discourage and even intimidate living souls from regaining their rights, it is advisable that you send your first document (the CA/A, presentment, BoE) by private courier with signature guarantee rather than through the USPS. We have found that generally UPS and Airborne are less expensive than Federal Express.

Regardless of who you are, learn how to protect your privacy. Think about how completely different your life would be if they couldn't find you or take away the strawman's “stuff”, if they couldn't call and upset your family because they had no way to reach you directly. You need not ever be directly accessible to anyone unless you have intentionally given them your contact information. We believe in living your life Hidden In Plain Sight (HIPS). Ideally, neither you nor the strawman will ever own anything or have any income.

1. Learn the difference between “open” e-mail and “private” e-mail. Look at the form that appears on your computer screen when you want to send an email. First it has where you are sending from (your email address). Then it usually will have additional lines entitled “CC, BCC” and “Subject” or “RE”. If you are going to e-mail more than one person, always send e-mail to multiple people in the “**Bcc**” (blind carbon copy) line. Then you will not be the source of having passed out others' e-mail addresses to people they may not know, especially if you have not been given permission to share it. Only use the “**TO**” (open) address line when you definitely want to share everyone's e-mail addresses and have permission to do so.
2. Utilize an answering machine, voice mail, or a k7.net, J2.com or efax.com (the faxes and VM will be forwarded to your email) as your primary phone number which you put on applications, accounts and forms, and to give to people you don't know, people you may not wish to speak with, businesses and service providers. Audit all calls. Utilize the “delete” button. You can install a separate phone number, which you only give to friends, family and associates to contact you; it is well worth the installation price.

You can return phone calls to the people you wish to speak with. This means forming a new habit of giving VM number to: banks, creditors, government agencies, DMV, insurance companies, utility companies, hospitals, doctors, grocery stores, businesses,

magazines, newspapers, schools, et cetera. You will speak to them by returning phone calls when it is convenient to you.

3. What if you were starting a new website and did not want everyone in the world to know your physical address? Following the philosophy of #2 above, the same principle applies to your physical location. We suggest you establish a Private Mail Box (PMB) for all your mail and not have anything delivered to the street address you “inhabit”. If they don’t know the physical address, they won’t show up and knock at your door unless you give them the address! Yes, picking up mail at a PMB is a minor inconvenience, but it is a small price to pay to protect your privacy. All PMBs will sign for and accept package delivery for you and the entities you manage.
4. Notify everyone as appropriate - businesses, vendors, friends, and family - of your personal/business change of address. Update all your accounts and identifiers - driver’s license, voter registration, return address labels, checks and bank records, utilities, charge cards, magazine subscriptions, grocery store discount cards – of the appropriate PMB for your private business and for church business. Rome was not created in a day!
5. Change your return address labels to reflect “without prejudice” below your name and request that people send mail to you in the same manner. “Without prejudice” means that you do not necessarily agree to any undisclosed terms not on the face of the document and your right to come back and retract any such undisclosed rules is not prejudiced...it is without prejudice. It is likely that you are unfamiliar with the many postal regulations and rules, so how can you agree to them? Below is a sample address format:

True Name
Without prejudice
c/o mailing address
City, [93551]
State spelled out, non-domestic

“Without Prejudice” is a jurisdictional issue (see the article). The Constitution guarantees the Post Office and Postal roads, not home delivery. When you get home delivery, you contract with the state (U.S.) for a benefit. The benefits bind you to the national debt as a U.S. citizen and your use of the two-letter state abbreviations as well as the zip code are an adhesion contract to which you likely do not know the terms or even all the USPS regulations! Mail from Post Office to Post Office does not bind you. Post Office boxes are the same as home delivery. The only thing protected is General Delivery.

1D PREFACE

The world runs on the energy of commerce. Our country runs on commerce. Our courts run on the energy of commerce. You may not realize it, but your daily life is within the realm of the energy of commerce. As a result, it is imperative that you interact in the commercial world effectively and protect yourself from those who would take what is yours from you. This can only be accomplished through education. With education you will gain an understanding of the Honor-Dishonor process which runs the commercial world. Without this understanding and effective utilization of the process, you are doomed to constantly lose. The education will take

some time, but it will open your eyes to the commercial world you inhabit and enable you take the reins and direct your life in the manner you choose.

In every transaction – whether purchasing a car, using a credit card, receiving a bill for services you did not receive, paying taxes – you must always comport yourself honorably. Dishonor translates to loss of commercial energy, to loss in the transaction. Make no mistake, when you ignore a situation, when you are silent because you do not know what to do, you have lost your energy and therefore your commercial ability, you are in dishonor and subject to the whims of others who will take advantage of your silence and ignorance and take away your assets, place liens against you and your property – many times, without you even knowing that it has occurred.

Debtors always lose. Creditors always win. You always want to be a creditor. Utilizing the Honor-Dishonor process of Notarial Protest will change your status from a Debtor to a Creditor. First, you need an understanding of money. The Constitution defines money. House Joint Resolution 192 changed the manner in which Americans “think” of money and moved all of us into the Debtor position. Read both documents thoroughly.

In contract law, the general right of refusal is three days. You have three days (72 hours not including Sundays) to vitiate a contract...to respond to any “bill” you receive. A “bill” is an offer for you to do or pay something. You must have your tools set up in advance or be able to dedicate the time necessary to respond to all bills timely and appropriately.

Do a search on google.com for “exchequer”. Ignore all the sites you find dealing with games and people pretending to be old English. Do read the site of the Exchequer teaching his replacement how the world works. It will be extremely revealing.

The Notarial Protest can be used to prove the dishonor of a commercial transaction, one that involves a billing by a “corporate” entity. One cannot use a Notarial Protest for disputes that do not involve a commercial transaction. If you misuse or lure a notary into helping you with a dispute that is not commercial, you will be exposing the notary to enforcement proceedings from the state. If you are unsure about the type of process you have, read the notary law in the subsequent chapters.

1E RESOURCES

It is suggested that you set up a “favorite folders” for Legal Resources. Copy and paste the links into your browser below if they are not active. These are only a starting point. Have a Black’s and Blackstone’s readily available so you understand the meaning of words. Read Ed Griffin’s “*Creature From Jekyll Island*” and Jacques Jaikaran’s “*Debt Virus*”. It also may be helpful to read Tom Schauf’s books to get a background and, if you can, get a hold of a copy of the “*Banker’s Manual*” and Witkin’s “*Negotiable Instruments*”.

Also explore all the legal resources you have concerning notaries. Here’s an excerpt from the Arizona Statutes:

Article 5 - Uniform Recognition of Acknowledgments Act

ARS 33-501. [Recognition of notarial acts performed outside this state](#)

For the purposes of this article, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state...

<http://thomas.loc.gov/> after "Bill Number " enter 'H.R.2525'. After "Word/Phrase" enter 'CONGRESSIONAL FINDINGS.

Notary information:

The original 1909 Notary Handbook <http://www.nwflnotary.bizland.com/fpc.htm>

Notary Public Books

http://www.notarypubliclaw.com/Merchant2/merchant.mv?Screen=CTGY&Store_Code=NPL&Category_Code=P

Alfred Piombino, Notary Public expert <http://www.notarypubliclaw.com/>

Florida Statutes

http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0673/titl0673.htm&StatuteYear=2002&Title=%2D%3E2002%2D%3EChapter%20673

New York notary handbook, esp Chapter 12

http://www.notarypubliclaw.com/Merchant2/merchant.mv?Screen=PROD&Store_Code=NPL&Product_Code=50-4

Kentucky Notary statutes: <http://www.lrc.state.ky.us/KRS/423-00/CHAPTER.HTM>

evidence of dishonor Wash.:

<http://search.leg.wa.gov/pub/textsearch/ViewRoot.asp?Action=Html&Item=1&X=1025124628&p=1>

<http://search.leg.wa.gov/pub/textsearch/ViewRoot.asp?Action=Html&Item=9&X=1025124335&p=1>

<http://search.leg.wa.gov/pub/textsearch/ViewRoot.asp?Action=Html&Item=9&X=1025124335&p=1>

Arbitration clauses illegal: <http://www.atla.org/homepage/attcourt.aspx>

Debt, mortgage <http://www.ecclesia.org/truth/debt.html>

On credit reports: <http://www.ftc.gov/bcp/online/pubs/credit/crtdis.htm> - Sample%20Dispute%20Letter
<http://www.debtwizards.com/creditreports.html>

The law on Fair Credit Reporting: <http://www.ftc.gov/os/statutes/fcrajump.htm>

NOTICES OF RIGHTS AND DUTIES UNDER THE FAIR CREDIT REPORTING ACT

<http://www.ftc.gov/os/statutes/2-fedreg.htm>

THE FAIR CREDIT REPORTING ACT <http://www.ftc.gov/os/statutes/fcra.htm>

FTC EDUCATIONAL MATERIAL <http://www.ftc.gov/bcp/online/edcams/fcra/index.html>

FTC ONLINE COMPLAINT FORM [https://rn.ftc.gov/dod/wsolcq\\$.startup?Z_ORG_CODE=PU01](https://rn.ftc.gov/dod/wsolcq$.startup?Z_ORG_CODE=PU01)

Arizona's equivalent of the UCC: <http://www.azleg.state.az.us/ars/47/title47.htm>

Cornell Law School Library: <http://www.law.cornell.edu/>

Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580
202-326-2222 Toll Free (877) 382-4357 Web Site <http://www.ftc.gov>



FTC REGIONAL OFFICES (by State)

New Jersey, NYC.

150 William St. #1300
New York, NY 10038
(212)-264-1207

901 Market St. #570
San Francisco, CA 94103
(415) 356-5270

Delaware, Mich, Penn, Maryland, Ohio, and W VIRGINIA.

668 Euclid Ave. #520A
Cleveland, Ohio 44114
(216)-522-4207

Colorado, Kansas, Montana, Nebraska, N & S Dakota, Utah, and Wyoming.

1961 Stout St. #1523
Denver, Colorado 80294
(303)-844-2271

Alaska, Idaho, Oregon, Washington.

2806 Federal Building
Seattle, Washington 98174
(206)-442-465

Vermont, Rhode Island, Conn., Maine, and Mass, New Hampshire.

101 Merrimast #810
Boston, Mass 02114
(617)-424-5960

Texas

1999 Bryan St. #2150
DALLAS, TEXAS 75201
(214)-979-0213

California and, Arizona.

11000 Wilshire Blvd #13209
Los Angeles, Ca 90024
(310)-235-4000

Virginia, Tenn., So Carolina, No Carolina, Alabama, Fl, Ga., Miss.

60 Forsyth St. SW #5M35
Atlanta, GA 30303
(404)-656-1399

ILL, Indiana, Iowa, Minn., Missouri, Wisconsin, Kentucky.

55 E MONROE ST. #1860
CHICAGO, ILL 60604
(312)-353-4423

FTC Web Links

Nation's Big Three Consumer Reporting Agencies Agree To Pay \$2.5 Million To Settle FTC Charges of Violating Fair Credit Reporting Act <http://www.ftc.gov/opa/2000/01/busysignal.htm>

Cases and consents ruled by FTC

Equifax	
Case	http://www.ftc.gov/os/2000/01/equifaxcmp.htm
Consent	http://www.ftc.gov/os/2000/01/equifaxconsent.htm
Experian	
Case	http://www.ftc.gov/os/2000/01/experiancmp.htm
Consent	http://www.ftc.gov/os/2000/01/experianconsent.htm
Trans Union	
Case	http://www.ftc.gov/os/2000/01/transunioncmp.htm
Consent	http://www.ftc.gov/os/2000/01/transunionconsent.htm

2 DO IT RIGHT THE FIRST TIME

In order to perform the Honor-Dishonor process properly, you must have a notary willing and able to complete the process for you. 21 days after your CA/A (Conditional Acceptance/Affidavit) is sent, depending on whether or not you wish them to produce an accounting, the Notary will mail the Notice of Dishonor. If the Notary does not receive a response to the Notice of Dishonor, 10 days later the Notary will mail the Second Notice of Dishonor. If there is no response, five days later the Notary will send the Certificate of Dishonor/Breach and Non-Response to you. The Notary will enter each notarial act in the notary's journal. The Notary will also be creating a "Notary's File" which contains a duplicate original of each document. The Notary will send you a complete duplicate of the "Notary File" at the completion of the process.

You must provide the Notary with advance payment for services, written instructions, and signature-ready documents. When you determine this is a process you want to utilize, secure a knowledgeable notary's services in advance of sending your first document. Have your safety net firmly secured before you jump off the building.

Also, realize, as you proceed through this process, some creditors and reporting agencies will not be cooperative. In fact, they may be downright irritating and frustrating as well as trying to trick you into dishonor. They may assign the accounts to collectors who can be extremely aggressive and try to trick you into dishonor. Keep a spiral notebook by the phone and document the dates and times of any phone calls, as well as the name, phone number with extension (if you can get it), agency and address of callers. **Be prepared to state clearly,**

"I cannot verify who you are and I do not conduct any business on the phone. If you have something to say or want me to know, write it down, sign it and mail it,"

and then hang-up. Do not let them entice you into argument. If they continue to call and bother you, you may wish to turn the tables on them by asking them to hold on for a minute, set the phone down, simply walk away and hang the phone up after 10 or 15 minutes.

Be sure to inform all others who answer your phone that such calls may occur and not to let it upset them.

You may also receive correspondence or further billing that appears intimidating or threatening from the creditor as well as from collectors. Add to your spiral notebook list the date and type of contact, as well as the name of the sender of each piece of communication you receive. Remember that, each time they contact you after they have been notified not to contact you, may be worth \$1000 per communication, per your conditional acceptance, so smile and add the dollars up. Don't let it upset you or your household...but be sure to arm family members with the knowledge so they are not upset by unwanted phone calls.

Obviously, having already implemented privacy strategies will prevent unwanted phone calls from being inadvertently answered. Best to have a phone line you do not answer and only use that number to give to all creditors.

3 BACKGROUND

We live under Maritime Law. Maritime Law is contract law. There is a public side and a private side. The original contract is a private matter between two parties. The public side is where the government and the courts, the “people”, enter into the equation. Under Maritime Law, none of the standard “constitutional” or validity of the law arguments are applicable. The courts don’t rule on crimes. Courts can only hear controversy over damages. In order for the court to take jurisdiction, a litigant must give up their “energy” and enter into the public side.

Think about shipping in the 1700’s. Merchants and shippers purchased and posted bonds to cover losses if a ship was lost at sea.

Now consider what happens in a “criminal” setting. A defendant is served a “warrant”. What is a warrant? Have you ever received a tax refund check or a paycheck from state or local government? It says right on the face of it that it is a warrant. A warrant is a check, a payment. Who has the commercial “energy” when the defendant is served a warrant? What is one of the first things a defendant does?

The defendant is “charged”, arraigned, enters a plea and posts a bond. The “charge” is an “offer” to pay or perform. The arraignment is simply informing him of the offer. The court cannot rule on criminal activities, so the “defendant” is often enticed into dishonor by being tricked into making a plea or entering into a plea “bargain”. A plea is an “argument” and puts the defendant in dishonor. A bail bond is insurance, a contract to perform – to appear or forfeit the insurance. Entering into the bond contract is giving up the “energy”. Remember the 72-hour right of rescission? Well, if the “government” doesn’t post the bond in 72 hours, guess what? The defendant goes home. The government is bankrupt and cannot post a bond. Only the defendant can post the bond. Even signing a contract to be released on one’s own recognizance is a bond and the defendant gives up his “energy”.¹

The CA/A process is designed to help you respond honorably when you receive a “draft”. Remember that a “draft” is an offer, a presentment, whether it is a bill or a statement, an allegation, or an inquiry. You remain in honor when you timely respond with an acceptance (payment) or a Conditional Acceptance saying you will accept their draft if they “do” or “have” such-and-such. The components of writing a good CA are to break the offer down into its most minute components and address each individually, and NOT address issues not contained in their draft. Make no assumptions. The CA must contain very specific language and specifically address the issues - better yet, if it contains legal citations.

¹ Some accuseds are detained without arraignment and incommunicado, without even the opportunity to request an appearance bond posted by the accuser. We are not suggesting this legal strategy will always work because they have the biggest guns, so be sure to learn more about the process before attempting to implement this type of strategy.

4 OVERVIEW

Everything you do in life - whether a draft or a bill for services rendered, a request to do chores, or a letter asking why you did not file your taxes, is a draft (offer). Every time you are addressed by some person, company or agency, realize you may be lured into responding inappropriately. By law, you have 72 hours (three days) to change your mind on entering into any contract. When you do respond, you must analyze what you are really being asked to do or perform, or whether you are making assumptions about what is being requested. Every response you make falls into one of four categories. The first two leave you in honor and in control. The last two leave you in dishonor and you will lose:

- Conditionally Accept (CA) the offer
- Accept the offer;
- Argue; or,
- Ignore, be silent, acquiesce.

Consider the examples below and how you might respond in each circumstance using the four options above. Which have you utilized? Were you in honor or dishonor? Will you prevail or will you lose? Would you answer differently with your new-found knowledge if it happened today?

1. Your 17 year-old child says he wants to stay out until midnight. You respond, "You can stay out 'til midnight if you complete all your homework and you don't have school tomorrow."
2. Your significant other says, "After you take out the trash, we can have some quiet time," so you take out the trash.
3. You get double billing for the carpet you just had installed. You call the business and tell them you're not going to pay it.
4. You receive a bill for a new roof, which was on your neighbor's house. You throw the bill away and laugh since it wasn't your roof.
5. You receive an IRS CP515 inquiring why you didn't file for last tax year. You send a letter telling them that income tax is unconstitutional and you don't have to file.

Frequently, creditors will intentionally take advantage of your commercial ignorance in order to set you up or entice you into dishonor and cause you to lose. This is accomplished in many ways, such as

- They make an offer, demand or draft so outrageous that it entices you to argue.
- They lure you to respond in a manner which technically is argument.
- They give you a far-off "respond by date" so that you do not respond within 72 hours.
- They don't tell you how to cure a prior dishonor.
- They don't respond at all to you so you don't know what's happened.

On the other hand, you likely have responded many times “dishonorably”. Consider these responses and categorize them.

- a. You complain about a service and refuse to pay for it.
- b. You write a letter disputing a charge on your credit card statement.
- c. You call a vendor and chew them out for billing you for someone else’s work/purchases.
- d. You don’t respond at all to someone who angers you.
- e. You reply with an “untruthful” or “outrageous” response.
- f. You file a lawsuit or a complaint.

Remember, all facts are irrelevant and fly out the window when there is dishonor. A judge can only intercede if there is controversy. If there is stipulation, he has nothing to do and that’s the end of it. You have “energy” and control if you stay in honor.

There are two components to offers: public and private. Each issue is covered either procedurally or in substance. You must be able to determine whether it is an issue you want to address publicly or privately. The CA/A process is in the private sector. Litigation is the public sector. Substance can be handled in private by stipulation or agreement. Procedure is handled by the courts. Substance is establishing the facts. Courts do not deal with facts, they deal with rules. You can always go back and correct an error, but you should strive to not make any errors. If you were to draw a chart, it would look something like this:

PUBLIC

illusion
debtor
limited liability
irresponsible
opinion, presumption, testimony
cannot act
consumers
judge is immune
argument, dishonor
Procedure

PRIVATE

Real
Creditor
Full liability
Responsible
Facts and truth
Serves others
Creates asset goods
Judge in ministerial capacity
Stipulation, agreement
Substance

As an example, in court, attorneys present their “argument”, which is a presumption. Neither side can prove anything, so the judge has discretion as to who “wins”. As long as there is controversy, the judge has immunity. When there is stipulation and agreement, the judge is no longer immune if he intercedes. There are elements to a stipulation:

1. No party can argue or refute it.
2. No party can offer supporting evidence.
3. No judge can consider it or change it or it is reversible error.

The Notary Public's functions are:

- 1 to administer oaths;
- 2 to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions;
- 3 to take acknowledgments of deeds and other conveyances, and certify the same; and
- 4 to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in case of loss or damage.

5 DEFINITIONS

Black's Law Dictionary 4th Edition

Acceptance. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made...The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act...The exercise of power conferred by an offer by performance of some act. **Bills of Exchange.** An engagement to pay the bill in money when due...**Conditional.** An engagement to pay the bill on the happening of a condition...A "Conditional acceptance" is in effect a statement that the offered is willing to enter into a bargain differing in some respects from that proposed in the original offer. The conditional acceptance is, therefore, itself a counter offer.

Conditional. That which is dependent upon or granted subject to a condition.

Honor, v. To accept a bill of exchange, or to pay a note, check, or accepted bill, at maturity and according to its tenor.

Dishonor. In mercantile law and usage. To refuse or decline to accept a bill of exchange, or refuse or neglect to pay a bill or note at maturity. **Notice of Dishonor.** A notice given by the holder to the drawer of a bill, or to an indorser of a bill or note, that it has been dishonored by non-acceptance on presentment for acceptance, or by nonpayment at its maturity.

Bill. A formal declaration, complaint, or statement of particular things in writing. As a legal term, this word has many meanings (a writing).

Bill of exchange. A written order from A. to B., directing B. to pay C a certain sum of money therein named. (i.e., a **Conditional Acceptance and its attachments**)

Certificate of Protest - Oregon Revised Statutes 73.0505(2). "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 protest may be made upon information satisfactory to that person. The protest must identify the instrument and certify that either presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties."

Domestic bill of exchange. A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. It is the residence of the drawer and drawee which must determine whether a bill is domestic or foreign.

Foreign bill of exchange. A bill of exchange drawn in one state or country, upon a foreign state or country. A bill of exchange drawn in one country upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. A bill of exchange drawn in one of the United States upon a person residing in another state is a foreign bill.

Inland Bill of Exchange. One of which the drawer and drawee are residents of the same state or country.

Notary Public. A public officer whose function it is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same; **and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts,** and marine protest in cases of loss or damage.

Stamp. An impression made by public authority, in pursuance of law, upon paper or parchment, upon which certain legal proceedings, conveyances, or contracts are required to be written, and for which a tax or duty is exacted. (app. 2"x3" usually pre-inked stamp the notary places on a document.)

Seal. A particular sign, made to attest in the most formal manner, the execution of an instrument.

Public Seal. A seal belonging to and used by one of the bureaus or departments of government, for authenticating or attesting documents, process or records. An impression made of some device, by means of a piece of metal or other hard substance, kept and used by public authority.

Noting. (*Dictionary of Business, Oxford University Press, 1996*) The procedure adopted if a bill of exchange has been dishonoured by non-acceptance or by non-payment. Not later than the next business day after the day on which it was dishonored, the holder has to hand it to the notary public to be noted. The notary represents the bill; if it is still unaccepted or unpaid, the circumstances are noted in a register and also on a notarial ticket, which is attached to the bill. The noting can then, if necessary, be extended to a protest.

Noting. The act of a notary in minuting on a bill of exchange, after it has been presented for acceptance or payment, the initials of his name, date of the day, month and year when such presentment was made, and the reason, if any has been assigned, for non-acceptance or non-payment, together with his charge.

Ticket. In contracts. A slip of paper containing a certificate that the person to whom it is issued, or the holder, is entitled to some right or privilege therein mentioned or described.

Protest. A notarial act, being a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which it is declared that the bill or note described was on a certain day presented for payment (or acceptance) and that such payment or acceptance was refused, and stating the reasons, if any, given for such refusal, whereupon the notary *protests* against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor. It denotes also all the steps or acts accompanying the dishonor necessary to charge an indorser.

Protest. (*Dictionary of Business, Oxford University Press, 1996*) A procedure by which a notary provides formal evidence of the dishonour of a bill of exchange. When a foreign bill has been dishonoured by non-acceptance or nonpayment, it is handed to the notary, who usually presents it again. If it is still dishonoured, the notary attaches a slip showing the answer received and other particulars – a process called noting. The protest, in the form of a formal document, may then be drawn up at a later time.

Notice of Protest. A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance.

From **The Creature From Jekyll Island**, by G. Edward Griffith. Page 187:

“Directly from the St Louis Federal Reserve Bank, in the fine print of a footnote in a bulletin:

Modern monetary systems have a fiat base-literally money by decree-with depository institutions, acting as fiduciaries, creating obligations against themselves with the fiat base acting in part as reserves. The decree appears on the currency notes: 'this note is legal tender for all debts, public and private.' While no individual could refuse to accept such money (debt) for debt repayment, exchange contracts could easily be composed to thwart its everyday use in commerce.”

6 ANALYZING THEIR DRAFT/OFFER

When you receive a draft, a bill, an offer or a presentment, you must understand what it is they are asking from you, what it is they are asking you to do, what they really mean, and **NOT** what you assume they mean. It is imperative that you **NOT** make any assumptions or presumptions. Slowly read through their document and ask yourself the following questions:

- What claims are they making?
- What are you accepting?
- What would prove their claim?
- Does their proof exist?
- In what form would their proof exist?
- What do you want them to produce in order to prove their proof?
- What happens if they don't produce the proof of their claim?
- What is your foundation in law for requesting that they prove their claim?
- What laws do they have to follow?
- Are you following the laws you are required to follow?
- What would prove your position?
- What do you want to happen at the conclusion of the matter?
- Do you want some type of recompense at the end of the matter?
- Has it affected your credit in any way? Will it?
- How do you want to resolve any credit issues at the end?

It is always a good idea to take a pad of paper and list the answers. Then begin to construct your conditional or full acceptance.

7 AVOID PITFALLS AND ERRORS

As you construct your response, you must avoid the most frequent pitfalls in language that will place you in dishonor. Remember English-101:

- Waiting longer than 72 hours before responding.
- Giving the impression you agree with their offer.
- Conditionally accepting an offer they have not made.
- Requesting documents that do not apply to their offer.
- Requesting documents that support their claims
- Testifying.
- Arguing.
- Failing to specify a response date.
- Failing to specify a response address.
- Not giving reasonable time to respond to your CA/A.
- Not giving a reasonable time to respond with an accounting [UCC 9-210(4)(d) = 14 days].
- Setting unrealistic and unsubstantiated damage amounts.
- Failing to give notice to the court that you are handling this matter privately (if applicable).
- Failing for subsequent offers, traversing to their issue and leaving your CA behind.
- Starting the CA/A process before you are ready to finish it.
- Failing to understand the principles and law applicable to what you are doing.

Errors will place you into unintended dishonor. Remember that dishonor equals loss, equals the debtor. Errors generally fall into two types of categories:

- 1) Uncorrected errors in either procedure or substance.
- 2) Incorrect use of phrases and terms, or making statements of argument:
 - a) Unacceptable
 - b) No good
 - c) Fraudulent
 - d) Prima facie evidence
 - e) Non-meritorious
 - f) "I don't understand"
 - g) Makes no sense
 - h) Incomplete accounting
 - i) Incomplete records
 - j) Making a claim
 - k) Making a statement
 - l) Making a bluff

MOST IMPORTANTLY

Know who you are. If you are not a Secured Party, you must tailor the return addresses and the text to reflect your name in all upper case letters all the time. If you are a secured party for your strawman, you must ensure that the language in the documents reflects what things you are doing and what things the strawman name applies to. The documents that are templates are not customized for YOUR specific situation. It's your job to know what you're doing and read before you sign anything. You will determine how many additional duplicate originals from the Notary you will need of each Proof of Service and each of the Notices and Notary Notes.

8 THE CA CONSTRUCT

Every Conditional Acceptance must contain these essential components:

1. What it is you want them to produce.
2. When you want them to produce it.
3. What happens if they don't produce it.
4. What the penalties are.
5. What the remedy is.

It is just like a complaint. You most likely will want to ask for a statement of account, which requires 14 days instead of 10. If they don't have an initial transaction, they can't bill you. They have to have something where you signed at some time for them to have a valid claim

Further, it is important as you review samples provided, that you analyze each of the PoC's to see if they apply to your situation. You may not need all of the PoC's in the samples, or you may need to incorporate other PoC's not contained in the samples. You **MUST** customize every CA to meet your particular situation.

After the notarial protest, to complete the process, you send a letter of request to the clerk of the court asking the clerk to give the judge the courtesy copies of the acceptance and redraft, the affidavit, and the presentment which you have accepted and signed. All of your documents that accompany the letter should be stamped "copy" on each page. The letter of request to the clerk should specify that it is your intent to settle the account privately without resort to a tribunal. That is your remedy. You have a third party serve it with a Proof of Service, a Certificate of Service, showing the registered mail number.

A Conditional Acceptance may be a letter or a formal document. Either generally begins with wording stating:

“ I/We conditionally accept your offer to...”

followed by the conditional elements, such as *Upon proof of claim* or *Documentation verifying RESPONDENT's claim that* :

1. Jane Doe entered into a contract with you to perform to your demands;
2. all the terms of the contract were disclosed in the document;
3. the alleged loan account was ever validated or verified;
4. an attempt to collect upon a fraudulent debt, sent via the U.S. mail, is something other than a violation of the mail fraud statutes.

The CA must not request that the creditor prove a negative, that something did not exist or happen. It is an impossibility. One cannot prove a negative on a certain date and time. One can only prove that something did exist. It must also not speak in generalities or traverse (deny).

If you have phrased the language of the CA properly, you will be able to easily convert the proofs of claim into affidavit format for the Affidavit which accompanies the CA. The Affidavit (A) will simply restate the same information contained in the CA with slight revisions to form to make it an "A". Notice the change of language in italics below. The CA contains the Proof of Claim (PoC) language at the beginning of the sentence. The "A" language has replaced the PoC

with the words “*The affiant has not seen or been presented with...*” and ends with the “belief” statement. Each of the four statements below directly correlates to the four PoC’s above.

1. *Affiant has not seen or been presented with any documentation verifying that Jane Doe entered into a contract with you to perform to your demands; and believe that no such verified documentation exists;*
2. *Affiant has not seen or been presented with documentation verifying that all the terms of the contract were disclosed in the document, and believes that no such verified documentation exists;*
3. *Affiant has not seen or been presented with any documentation verifying that the alleged loan account was ever validated or verified, and believes that no such verified documentation exists;*
4. *Affiant has not seen or been presented with any documentation verifying that an attempt to collect upon a fraudulent debt, sent via the U.S. mail, is something other than a violation of the mail fraud statutes, and believes that no such verified documentation exists.*

Each numbered PoC should contain only one element to be provided or proven. Do not use compound sentences (sentences containing the word “and”) or sentences using an inferred “and”. Break each sentence “thing” down into its multiple components. As an example, you know that they don’t have your original promissory note because they sold it and the new lender only has a photocopy; not an original signature. Address each component separately. As an example:

- PoC that you have the original promissory note;
- PoC the original promissory note you have is still in its original, unaltered form.

Every CA should also contain your right to correct a previous dishonor or error. Below are some samples to address this issue, or it may be addressed in your opening paragraph:

- PoC that this conditional acceptance is a refusal to perform;
- PoC that this conditional acceptance is a refusal to perform, even AFTER a judgment or “Decision”, once proof of claim is delivered;
- PoC that this conditional acceptance is refusal to perform, even AFTER a judgment or “Decision”, once the mistaken “dishonor” of said “Decision” is corrected and the proof of claim is delivered;

The CA should contain reference to the UCC reference contained in your State statutes and the closing language should contain statements similar to this, as well as what you want to happen after the dishonor of your CA:

Your State law § (enter your state code # for UCC 9-210) requires you to provide me with a full and complete, accurate and not misleading accounting including, but not limited to, the initial deposit and all charge slips with relevant entries. Failure to accept this Conditional Acceptance, by producing the requested records and documentation, responding on a point by point basis in Affidavit form under your full commercial liability, including all related documents that verify you have authority to enforce an instrument including, without limitation, certified copies of documentation showing you are a bona fide creditor in a collection process, and a certified copy of your registered claim, pursuant to Title 15, Sections 1091, 1095, showing DOE as the debtor and you as the secured party creditor, and the security agreement supporting said registered claim with the DOE’s signatures, and stating that the facts contained therein are true, correct, complete and

not misleading, pursuant to STATE Statutes, within fourteen (14) days** plus mailing time, shall constitute your agreement with the facts stated in the attached Asseveration.

This is a private presentment to you in your individual capacity and is intended to effect an out-of-court settlement of this matter. Conduct yourself accordingly.

**Note: If you are requesting an accounting, you must give them $14 + 3 + 3 = 20$ days. If you are not requesting an accounting, it is only $3 + 3 + 3 = 9$ – however, the code specifies 14 minimum. You cannot count Sundays or holidays.

Look up your state equivalent to the UCC at <http://www.law.cornell.edu/uniform/ucc.html>. Search your state equivalent listing for the Uniform Commercial Code for a section that is similarly numbered. As an example UCC 9-210 is Arizona ARS 47-9210. Your state code will contain the same UCC section number in a different order with hyphens in different locations and possibly slightly different wording. It is easiest to search the state equivalent of the UCC for the Title of the particular statute. Once you find your state equivalent to the UCC, bookmark it for your future reference and it would be wise to print it out, three-hole punch it and place your state Commercial Code in a binder.

In the commercial world, the CA/A process works best for living men/women who have chosen to obtain control of their corporate entity “strawman” by filing their own UCC-1 on the strawman and taking the first lien-holder position on the strawman’s properties (see UCC Manual). Both living men/women and corporate entities can place liens on others for debts owed them. Think about a building contractor who liens the real estate owner for the materials utilized in constructing a new home. The contractor keeps that lien in place until he is paid and then releases the lien. Utilizing a UCC-1 against the creditor when they fail to honor both you and the Notary and therefore have stipulated to the facts contained in your affidavit and redraft enables you to place a lien, which has marketable value and can be sold to others or enforced; however, you must obtain the creditor’s stipulation in advance of placing any lien and the ideal time to obtain that stipulation is in your CA/A, which will likely be agreed to by their silence and dishonor.

When you have completed writing the CA/A documents, in order for this process to be effective, you must also include either a Bill of Exchange, a Promissory Note or a Bond which they are authorized to negotiate after having proved their claim and provided the documentation proving their claim.

NOTE: The “Final Attempt” CA/A are only for use by those who have utilized some other Administrative Remedy Process to try to discharge or settle an account before and were unsuccessful...you are allowed to correct a prior mistake. The “Final Attempt” corrects your prior errors. You must either use the CA/A or the Final Attempt CA/A – but not both for the same creditor! You will then follow the same documents order in the templates labeled CC-2, CC-3, CC-4, etc. in the Samples section to complete the notarial protest.

9 THE BILL OF EXCHANGE

In this process, you will create a Bill of Exchange. The “bill” which was presented to you, is now “exchanged” by you to “pay” or “discharge” the account and send back to them. There are many writings, essays and schools of thought on the bill of exchange process. Below are two commentaries to consider.

Bills of Exchange are an instruction to the payee to use their financial institution to facilitate your authorization to use your exemption to discharge a public debt. This is a setoff and adjustment - not a draw on the treasury. There are no funds to transfer in an exchange involving an exemption. It is a setoff and an adjustment to adjust the open public account using your exemption from having to pay for anything when there is no “specie” (*coined money, gold and silver*) in circulation outside the box. What could the man (who is outside the US box) possibly use to pay a debt? There is nothing outside the box to do that. That is why the strawman is so convenient. The strawman can use FRN's inside the box to pay the tax on not paying for the items. Great idea -- right????

EXCHANGE CONTRACTS – AN UNOFFICIAL BRIEF

Provisions for exchange contracts based on priority tax exemptions are scattered throughout various legislative acts, joint resolutions and executive orders in 1933 and in the Congressional Record based on HJR-192, confirmed by the U.S. Supreme Court in 1939 – Guarantee Trust of New York v. Henwood, et al (FN3) and codified in Public Law 73-10.

However, the exchange process must only be used as an “Accepted For Value” response. A written claim must be received. Only then can the Secured Party respond. Mr. Paul O’Neill recently made it clear to a Senator from Arkansas that when he is aware of and receives Bills of Exchange, he holds them, thus honoring them.

Private sector claims can be discharged using a negotiable instrument such as the Bill of Exchange, etc. and must be processed through a local financial institution that holds or has access to a Treasury Tax and Loan account. The TTL account is administered and controlled by the Technical Support Division of the IRS. This is a change under re-organization wherein these accounts were formerly administered by the Special Procedure Function Division of the IRS. All of these actions take time and must be based on written claims.

Furthermore, as near as I have been able to ascertain, all public debts are discharged with a simple ledger entry and computer transfer for credit and debit through the IRS Technical Support Division. However, certain individuals at the Department of the Treasury persist in misrouting many of the documents presented to the Secretary of the Treasury by labeling them as Treasury Securities (which they are not) sending them to the Bureau of Public Debt instead of to the UCC Contract Trust Department of the IRS.

Private sector debts are discharged through a slightly more involved process requiring Claimant’s bank to process the negotiable instrument through to the Secretary of the Treasury, the Federal Window, that officially became a bank at 1500 Pennsylvania Ave. NW in Washington, D.C. in 2001. Under Commercial Banking Codes the bank that processes the negotiable instrument through its TTL Department is required to issue a credit to the account and place a hold on the credit for a designated number of days, then Release the Order for credit to the designated account. Many bankers claim they are not familiar with the Bill of Exchange even though the details regarding it have been published in Witkin – Negotiable Instruments, Vol. III for well over 80 years and is considered to be the banking industry standard. Many banks hesitate to process this class of negotiable instrument. However, Federal Banking Regulations and a growing number of court decisions (*stare decisis*) make it clear that the banks

must accept and process these negotiable instruments. The IRS has indicated that regulations now require each Bill of Exchange presented into the private sector must also be attached to a 1099 OID that requires notification to the IRS of the transaction.

Major changes took place in the operation of the Federal Reserve beginning January 1, 2001. All public windows were closed at all Federal Reserve Banks. Only member banks of the Federal Reserve can do business with them. With one exception all Federal Reserve Banks no longer process non-electronic negotiable instruments. Pass-thru negotiable instruments such as the Bill of Exchange must be processed through a local financial institution sent directly to the Secretary of the Treasury via Certified Mail. All other non-cash commercial paper is now handled through the Depository Trust Corporation.

The Department of the Treasury Bank (DTB), the Federal Reserve and many local banks acknowledge the lawful Bill of Exchange. However, these documents directed to the Secretary of the Treasury must be presented through a financial institution, signed by them (bonded) as the agent for direct presentment. Upon honor of the document by the Secretary of the Treasury, the bank is authorized to release the hold and credit the Claimant's account. According to banking regulations, Within- Negotiable Instruments - and an increasing number of court decisions the Bill of Exchange is to be treated the same as a check except it must be sent directly to the Secretary via Certified Mail. Complete routing instructions must be included (Letter of Advice) in order for the Bill of Exchange to be processed and honored. Each Bill of Exchange set of documents is to be attached to an IRS 1099 OID form. Each set of documents must be delivered via Certified mail to the Secretary. Only the Secretary of the Treasury has the authority and jurisdiction to honor or dishonor these negotiable instruments. Some government agents attempt to usurp that authority and many such documents have been misdirected to the Bureau of Public Debt. Many banks attempt to reject these instruments even though the regulations and the courts direct them to process them as instructed.

We do not, at this time, advocate the use of a 1099 OID. Until one fully understands the import of sending and filing such a document, please do NOT use one.

As you go through this process, not only keep in mind what "money" really is, but also remember the Fair Debt Collections Practice Act (which applies to the strawman) and the UCC. Arizona Revised Statute (look it up in your state)

47-3603 reads: Tender of payment:

- A. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
- B. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- C. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

There is some disagreement as to the exact meaning of "B" above. One interpretation is that you are tendering payment and they are accepting by acquiescence or refusing it, therefore, the

debt is discharged. BoE's vary a little in their language, depending on the writer. Another interpretation might be that only the right of recourse is conferred. Depending on which is truly the correct interpretation, a BoE will resolve the matter if done properly. As we learn more about bonds of discharge, it may be the easiest way to settle the account, but will have to be accompanied with instructions. Always be sure of the course you chose to follow. Either way, all contain the value, the date, and your signature.

Remember, in this process you are offering to let them negotiate the BoE or Bond AFTER they have proven their claims, so please ensure you have specified in your conditional acceptance that they can only negotiate AFTER their production of the verified documents you have requested.

In some instances, you will not fill in the value in words and numbers because you cannot equate what the value is. In that instance, you will include instructions for them to fill in the value and notify you of the amount, *after* they have proven their claims and provided their proof. Yours may be an overlay you photocopy onto their bill. Your EIN is the SSN without the dashes. It must NOT be contained in a box, and is best if it is printed in red and signed by you in blue ink. It might look like this:

**Accepted for Value
Exempt from Levy**

I accept this Presentment for value or performance, including all related indorsements, front and back, for immediate release of the proceeds, products, accounts and fixtures, according to the Uniform Commercial Code 10-104 and UCC 1-104, as it has been adopted in this State, and House Joint Resolution 192, June 5, 1933,

Value \$_____ Date_____

Employer Identification # _____

(your signature)

Or

Accepted for assessed value and returned in
exchange for closure and settlement of this
accounting.

Date_____, 2003

Employer Identification # _____

(your signature)

10 THE AFFIDAVIT

The Affidavit in Support of Conditional Acceptance is much easier to assemble and write than the CA. This is your affidavit, in Negative Averment form, as to the facts: that you have not seen or been presented with the documentations or evidence you are asking them to produce in your Conditional Acceptance. It is standard format with the county and state heading, the title of the document, followed by the text of the document. The first statement must be your ability to make an affidavit. Thereafter, you simply copy and paste the facts. Do not create the Affidavit until after you are happy with the entirety of your CA. It is wise to take a duplicate original to the notary as you will be mailing one original to the respondent and you will want an original to photocopy for the rest of the process the Notary will send out for you and to keep one in your file records.

The Affidavit (“A”) must be signed and sworn to, under penalty of perjury, in front of a Notary. You must raise your right hand and swear or affirm the truth of the document. Many notaries will not know the difference between simply witnessing the signature, verifying the identity of the maker (an acknowledgement), and giving an oath witnessing the affidavit (jurat). Tell them it is an affidavit and speak the oath firmly out loud. Ensure the notary makes an entry in their notary book that this notarial service was an affidavit and they signed a jurat.

11 MAILING TOOLS

You will need to obtain the following mailing tools before you mail so you are not making numerous trips to the office supply store or the post office:

1. Either Priority Mail Envelopes or Manila envelopes large enough to accommodate your documents
2. Pre-inked stamps that say “copy” and “original”. They can be obtained from any office supply house
3. **Green** Receipts for Domestic Insured Parcel PS Form 3813
4. Registered Mail **red** and white label PS Form 200
5. Receipts for Registered Mail PS Form 3806
6. Certified Mail Receipts PS Form 3800
7. **Green** return receipt Postcards PS Form 3811
8. If you have multiple people you are mailing to, PS Form 3877 (comes in a book)
9. White USPS 3817 Certificate of Mailing forms for the Post Office to sign (Do not trim the downloadable forms!! Use a full page for each.)
10. Sufficient Priority Mail postage stamps to affix to the envelopes you are sending to the notary for the notary to mail. Be sure to include sufficient postage to cover the cost of certified mail return receipt, not just the priority mail price. The notary will need three sets of stamps for each “respondent” mailing, plus a set of stamps to send the package back to you containing the original Certificates of Dishonor, Notary Notes and Proofs of Service. (If you must use a postage meter, be sure the imprint date is not printed.)

12 WRITING THE DOCUMENTS

First you will write the CA, and then copy and paste to create the Affidavit (“A”). The following language is to be used as a guideline only. You must customize the documents to fit the presentments you have received. Each and every CA/A is different for every offer because rarely are two offers identical. Remember, you are NOT to argue, but only present statements for stipulation. You must never ask them to prove a negative, so phrase your “Proof of Claim” statements or “Production of Evidence” in proper language.

1. The CA, with bill of exchange, should include:
 - a. identity of parties
 - b. mailing location of parties
 - c. notice that it is a private communication
 - d. identity of the subject matter (respondents’ presentment)
 - e. notice of your acceptance
 - f. notice that you are returning the presentment after acceptance
 - g. notice that you do not intend to argue or dishonor
 - h. notice of what positive performance you are requesting
 - i. list of what documents you want to view to determine the validity of the obligation
 - j. caveat if respondent fails to provide his claim
 - k. instructions regarding required response and response time
 - l. **the original accepted for value or performance presentment attached to notice of the conditions of the acceptance.**

This is your **bill of exchange** (BoE). A “bill” is a “writing”. Your writing may be an offer to exchange your tax exemption for the discharge of the respondent’s charge or it may be private funds or any number of other “things”. The charge was fixed by the respondent when he elected to send you an offer in the form of a demand. When you write your “Accepted for Value” on the respondent’s presentment (offer or bill), you have authorized the respondent to negotiate the private exchange to settle the debt, but your authorization for him to do that can be conditional upon his ability to prove his claim. You may even authorize him to go ahead and negotiate the accepted presentment without proving his claim; in return (the other part of the exchange), he must send you a discharge notice for the value of his presentment. Send the original BoE to them. Keep a copy for your records.

2. At the same time, you may choose to also commence a public debt verification process using the Fair Debt Collections Practices Act (FDCPA). The FDCPA is “their” law and applies to their “fictions”, including the strawman. Their law does not apply to a secured party or a living soul – only the principles of their law apply. If you reference their law as a living soul or secured party, you are volunteering into their jurisdiction, so you must only reference the principles. If you elect to commence a public debt verification, be sure it is the STRAWMAN who is using the FDCPA or the secured party/living soul who references the PRINCIPLES of the FDCPA. You do not need or want benefits from statutes promulgated for US citizens (strawman). Always remember who you are. The sentient being can only request verification that comports with the principles of the FDCPA and not the FDCPA itself.

3. Write the Affidavit.
4. A friend (server) stuffs the envelope to mail to the respondent. (The reason for this is to avoid having to deal with a respondent who claims he received the envelope but it was empty when he got it.) Your friend will give you the original certificate of service. A photocopy is just fine to enclose with the documents.
 - a. Original Conditional Acceptance
 - b. Original Affidavit (make sure you have a duplicate original in your files!!)
 - c. Respondent's original presentment that has been accepted for value (BoE) and is now being returned
 - d. Unsigned certificate of service (so the respondent knows we are using a certificate which is unsigned because the envelope has not yet been mailed.

Your friend mails the envelope by registered mail with return receipt requested and gets the white PS Form 3806 Receipt stamped. Your friend must not be a relative and at least 18 years old. Sometimes, the Postal Clerk will ask for a value for the registered package. Your friend may value the package at \$100 just to get it mailed.
5. Make **three** (3) copies of everything – one for your records and two for the notary.
6. Your friend signs the Certificate of Service. Make a copy to enclose with the envelope and one for the notary. Keep the original in your file.
7. If appropriate, send a Statement of Account.
8. You should get the green card back about with a week to ten days. If you do not receive the green card, go to the Post Office and request a tracking printout of the registered package, which the Postal Clerk should date and cancel providing third-party witness to the package's delivery. Keep the original postal printout or green card and make a copies to provide to the notary.
9. On 21st day after your BoE and CA/A was mailed to the respondent, send the following for the notary to include with the notary's Notices:
 - a. Your original affidavit requesting the notary carry out a protest for you (it will not be included with the notices from the notary to the "creditor");
 - b. Four copies of your Local Notary Request for Notarial Process (one for the notary's file);
 - c. Four copies of your friend's Proof of Service of your CA/A (one for the notary's file);
 - d. Four copies of the CA with your BoE (one for the notary's file upon which the notary will write notes);
 - e. Four copies of your Affidavit (one for the notary's file which the notary will write her notes directly on), as well as a separate Notary Notes page.
 - f. Four copies of the respondent's presentments that you accepted for value and returned;
 - g. Four copies of your attachments to the CA (if you have any);
 - h. Four copies of the registered receipt and **green** card from mailing your CA/A;

- i. Four copies of the Notary's Proof of Service (PoS) for each notice she is sending out on your behalf, which the Notary will sign. One goes into the envelope to the respondent, one stays in the notary's files, and two will come back to you at the end.
- j. Two original Notices of Dishonor which the Notary will sign, stamp and seal, (one to send back to you later and one for the notary's file);
- k. Two original Second Notice of Dishonor (one to send back to you later and one for the notary's file);
- l. Four original Certificates of Dishonor. You get at least three originals back from the notary (in case you need extras to enter as evidence in a public forum). The notary should keep one in the notary's file. This does not need to go to the Respondent, but you may send a copy if you desire.
- m. Four original sets of Notary Notes to be attached to the Certificate of Dishonor stating the terms of the agreement (if applicable). The notary mails only a photocopy of the Certificate to the Respondent and mails several duplicate originals to you.

13 YOUR AFFIDAVIT TO THE NOTARY

You must create an affidavit requesting the protest by the Notary, which you present to the notary the day after the respondent has dishonored your CA/A along with all the documents and postage-prepaid envelopes for the notary to perform the protest on your behalf. You may prepare the affidavit in advance and fill in the remaining data just before you send it to the notary for protest. **DO NOT DELAY!** The actual affidavit may be notarized by any local notary – in fact, it is best if it is **not** notarized by the notary who is actually performing the protest for you. The affidavit requesting the services of the Notary must state the facts:

- a. The County and State at the top
- b. The title “Affidavit”
- c. Your name and address
- d. Your ability to make an affidavit
- e. What was mailed to the respondent;
- f. The identity of the respondent;
- g. The mailing address of the respondent
- h. When it was mailed;
- i. Who mailed it;
- j. What type of response was received, if any.

The affidavit must also request the services of the notary to evidence the dishonor through protest. The dishonor is one of non-payment (creditor’s lack of response), NOT one of non-acceptance. If the respondent did not refuse or return your bill of exchange, he accepted it. Once he accepts it, he has an obligation to pay it or perform. Paying it includes (this is a limiting word) withdrawal of his demand (offer) OR production of the requested documentation that proves his claim. If he does neither, he has not paid or performed; he has accepted.

The wording in the statute says “for non-acceptance OR non-payment”. It is important not to give them a way to get out of paying (also performing) by claiming later that you admitted your Bill of Exchange was not accepted by the respondent. If your previous process has the “non-acceptance” in the Notice of Dishonor, it is not a fatal error because they would have to join issues with you to bring that claim into the process and you could correct your error. In commerce, when you make an error, you correct it or start the process over. The typical respondents in the political system are seldom able to prove their claims.

MAKE A COPY FOR YOUR RECORDS.

THE ORIGINAL GOES TO THE NOTARY PERFORMING THE PROTEST.

14 THE NOTARY NOTES

You are to prepare four original sets of Notary Notes to be attached to the Certificate of Dishonor stating the terms of the agreement (if applicable).

You should prepare the Notary Notes ahead of time and the contents should be taken directly from your original CA/A. Ensure all the “agreements” are contained within the Notary Notes, but it should appear as though the notary wrote it. It is critical that you use precise and exact wording. The notary cannot add words or interpret law or intent, or clarify anything that is ambiguous in your original CA. The phrasing should not be changed other than to make it fit the format of the attachment; i.e., noun and verb tense may be changed since the presentment will usually have future tense verbs and the attachment will have present tense or past tense verbs.

The notary should take all due diligence to compare the wording on the attachment to the wording on your CA. Technically, the notary is not held liable for mistakes on a protest because it is one of her judicial duties, but you do not want to put the notary in a compromising situation that can be avoided by your being diligent.

The notary will also sign the attachment showing her findings of fact based upon your affidavit and their dishonor.

15 THE PROCESS IN DETAIL

1. Prepare the Conditional Acceptance (CA) first.
 - A. Ensure that you have entered the appropriate timeframe including mailing each way within which the Respondent is to respond (varies depending on whether you have requested an accounting).
 - B. If you have filed your UCC-1 on your strawman, you may wish to include a “proof of claim” that you have not been damaged, their agreement to your recordation of a UCC1 against them for the damages they have caused you. Make sure your damage claim is reasonable and can be substantiated. You will also amend the signature lines for the man’s signature instead of the strawman’s signature.
2. Create the Affidavit by copying and pasting the numbered “proofs of claim” from the CA.
 - A. Replace the phrase “Documentation verifying” phrasing with “Affiant has not seen or....”
 - B. If you have constructed each item separately, verify that the phrase and “believes no such evidence exists” is at the end of each separate item..
3. Verify that each document is properly addressed and contains the appropriate opening and closing paragraphs.
4. Change one of the respondent’s “bills” into a Bill of Exchange.
5. Attach copies of the creditor’s presentments to the CA.
 - A. At the bottom of each page of the creditor’s presentments, label them as Presentment 1A, 1B, 2, 3 etc.
6. Behind the Presentments, you may attach copies of your prior letters or notices and label them as Attachment A1, A2, B, etc.
7. Assemble a total of **six complete sets** (excluding the Notary Jurat): one for you, the original to send to the creditor, and four to send to the Notary.
8. Have a local Notary Public notarize your **BLUE** signature on the Affidavit (A) and make five good photocopies of the jurat and place them behind the Affidavit in the sets.
9. Either through the Notary Public or by a friend, use the Proof of Service and have the friend or Notary mail the original CA/A to the creditor with forms PS 3817 Certificate of Mailing or by Certified Mail Return Receipt Requested. Do NOT include a copy of the Proof of Service with the Mailing.
10. Optional: Insure the package for \$49 using a PS Form 3813 (cost=\$1.35).
11. Prepare the Notary’s package.

NOTE: YOU WILL HAVE TO CHOOSE EITHER CERTIFIED MAIL RETURN RECEIPT OR USPS CERTIFICATE OF MAILING. USPS WILL NOT DO BOTH. WE PREFER THE CERTIFIED MAIL.

16 WHAT THE NOTARY DOES

The Notary:

1. **Receives your Affidavit requesting the Notarial Protest.**
2. **Signs** each Notice and places their Notary **stamp** and **seal**¹ upon each.
3. Completes a Proof of Service for each Notice, which will later be sent to you.
4. Makes a duplicate original of each Notice to send to you later.
5. Takes the postage pre-paid envelopes to the USPS.
6. Has the USPS stamp the Certificates of Mailing and utilizes a separate Form 3877 for multiple mailings to the same Company.
7. Mail the duplicate notarized Notices, Proofs of Service, USPS 3817 and 3877, Certificates of Dishonor and green postcard originals to you in your SASE

Be sure to inform the Notary that, if any response is received by the Notary during the process, the Notary is to immediately fax it to you so that you may amend or correct the next Notice the Notary will send on your behalf. Be sure to recalculate the new mailing date for the Notary. The Notary is NOT to send the next Notice until you have reviewed the response and determined if there are issues to be addressed and subsequent documents to be amended or changed.

¹ If the Notary does not have an embossing tool (seal), the Notary, in blue ink, is to write their initials and then place their inked thumbprint half-way over the initials.

17 PREPARE THE DOCS FOR THE NOTARY

You are to:

1. Prepare everything ahead of time:
 - a. Fill in all the Notary information, including first name, middle initial, last name, mailing address, city and state (and county where appropriate).
 - b. Fill in the month and year of all the Notices and Certificates, leaving the calendar day for the Notary to fill in.
 - c. Pre-address the envelopes to the “respondent”.
 - d. Ensure each envelope has the Notary’s return address.
 - e. Complete the **green** postcards (PS form 3811) and receipts (PS 3800)
 - f. Ensure each envelope has the proper amount of postage stamps affixed.
 - g. Ensure each envelope has a completed PS Form 3817 Certificate of Mailing for the USPS to endorse. (Some USPS will not accept these if you are using Return Receipt Postcards.)
 - h. Ensure each envelope contains a complete copy of the CA, attachments, and “A”.
 - i. Ensure each envelope has paper clipped under the flap: the Proof of Service and the three copies of appropriate Notice for the Notary to sign, stamp and seal (one for respondent, one for you and one for the notary)
 - j. Ensure each envelope flap has a sticky-note indicating the date you anticipate the Notary will sign and mail the documents.
 - k. Prepare the **two original Notary Notes documents** (one for you and one for the Notary) which recaps the Notary’s findings.
2. Create a “Mailing Date List” showing each mailing date with the name of each Notice and each recipient for the Notary. Keep a copy for your records.
3. Include a 9”x12” Self-Addressed Stamped Envelope (SASE) for the Notary to return to you all of your documents the Notary signed, sealed and stamped and the correlating Certificates of Mailing, green postcards, and receipts, with the notary’s notes.

If you are mailing to more than one person of the same creditor, complete a PS Form 3877. You may list multiple recipients at the same creditor company, but do not mix creditor companies on the same Form 3877. Be sure to include completed Forms 3877 for the Notary.

18 THE NOTARY'S PROTEST FILE

The Notary must maintain a Protest file which must contain the:

1. **original** of your **affidavit** requesting the protest with the following enclosures:
 - A. Copy of the CA with presentments and bill of exchange;
 - B. Copy of the "A";
 - C. Copy of Proof of Service;
 - D. Copies of the green return receipt postcards.
2. **original Notary's Notes document** which recaps the Notary's findings.
3. duplicate original, signed and sealed, **Notice of Dishonor with** the green return receipt and postcard the Notary mailed, and an original sealed, stamped Proof of Service;
4. duplicate original, signed and sealed, **Second Notice of Dishonor with** the green return receipt and postcard the Notary mailed, and an original sealed, stamped Proof of Service;
5. duplicate original **Certificate of Dishonor with the green card** to you.
6. **copy** of the **attachment** to the Notary Notes stating the terms of the agreement.
7. **calendar** of events noting the applicable dates (past and future).

19 RECAP

Send the package to the Notary, which must contain the following:

- a. **Your Affidavit requesting the Notary Perform the Protest.**
- b. **Two original Notice of Dishonor and Certificate of Service** – dated 21 days after the CA/A (with one full copy of the CA/A, attachments, bill of exchange), which the Notary signs, stamps, seals, and mails one set to respondent with a mailing certificate.
 - i. If the Notary receives a response to the Notice of Dishonor, the Notary is to fax it immediately to you. The response may necessitate that you reply with a different Notice of Protest to incorporate information relative to the response. Ask the Notary to wait before mailing anything else as this may change the dates and contents of your subsequent notices.
- c. **Two original Second Notice of Dishonor and Certificate of Service**- dated 10 days after the Notice of Dishonor (with one full copy of the CA/A, attachments, bill of exchange), which the Notary signs stamps, seals, and mails one set to respondent with a mailing certificate.
 - i. If the Notary receives a response to the Protest Notice, the Notary is to fax it immediately to you. The response may necessitate that you reply with a different Notice of Protest to incorporate information relative to the response. Ask the Notary to wait before mailing anything else as this may change the dates and contents of your subsequent notices.
- d. **Three original Certificate of Dishonor and Certificate of Service** - dated at least 10 days after the Second Notice of Dishonor (with CA/A, attachments, BoE), which the Notary signs, stamps, seals, and mails to you with duplicate originals of all prior documents and the Notary Notes and Affidavit.
- e. **Two original Notary Notes documents** (one for you and one for the Notary) which recaps the Notary's findings.
- f. **SASE** for the Notary to send you the copies of the notarized Notices and Proofs of service, Certificates of Mailing, green cards and Notary Notes.

20. LETTERS DURING THE PROCESS

You must respond to every written document you receive, including subsequent statements from creditors, within 72 hours (three days, per contract law) or include the phrase: “this is my timely response to your..” You may send your acknowledgement of non-responsive letters by regular mail (with USPS Certificate of Mailing) and say something like:

Thank you for your 1/14/03 letter; however, it is non-responsive to my 1/2/03 conditional acceptance of your offer. I look forward to you verifying your claims as requested and speedy resolution of this matter.

Sincerely, with all rights reserved.

JANE DOE

By: Jane Doe, Secured party

Jane Doe

If you receive a bill or statement, you must also reply but may do so by simply printing the following text, in **red** ink, directly on the “offer”. Be sure to sign in red ink and mail the original by standard mail. Make a photocopy, after you have signed it, for your files.

DATE received, accepted and returned for assessed value, closure and settlement of this accounting. The debt has been discharged in full. Current Account Balance is Zero. Send me the voucher. You are using my exemption.

By: _____ EIN 123456789

If your account is sold to a “debt collector”, remember that they, too, must be able to validate their claim. The “DC-” series of letters will help you get rid of them. Also, keep the following in mind:

There is a maxim of law and you should be able to find it in every state's maxim of jurisprudence. California's is found at CC 3515. Consent as defense - he who consents to an act is not wronged by it. Latin: Scientia et volunti non fit injuria - A wrong is not done to one who knows and wills it.

Any third party debt collector who purchases a debt knowingly places themselves in harm's way in order to receive a potential benefit, cannot, by such act, validate a right of action to file or initiate a cause of action in a court of law of competent jurisdiction. It simply cannot happen.

Example: An attempt to commit an injury upon the person of another, if made with his consent, will not constitute an assault. Thus, no one can maintain an action for a wrong, where he has consented to the act which occasioned his loss. *Brown (Edward) & Sons v. San Francisco*, (1950) 36 C2d 53, 196 P2d 231.

Just a thought consistent with your premise concerning third party debt collectors. They surreptitiously attempt to induce novation by getting one to pay them the residue of a purported debt even though the third party was not signatory to original agreement. If common folk begin to wake up to the fact that you have NO contractual obligation to any third party interloper, the debt collection scam would soon die on the vine as it were."

Words worth committing to memory

21. CREDIT REPORTING AGENCIES

- When you begin this process, it is best to cut up or shred and return your credit cards with a letter that states you are voluntarily closing the account. Mail it certified with a proof of service that specifies what is in the envelope. Keep a copy of your letter for your records.
- Before you send your CA/A, obtain a copy of your credit report. If you are married, you must obtain separate reports for each of you, and individually you must each send correspondence to the CRA's.
- Once you have received your credit report, go through every detail and look for any minor inaccuracy. Then begin your written dialogue with the CRA's concurrently with sending your CA/A. This procedure will make it much easier, at the conclusion of the notarial protest, to demand removal of adverse entries by CRA's of the accounts you have settled. Below are general guidelines for CRA interaction.

Step One - Obtain Your Credit Report

Ordering from the Credit Bureaus Directly: You can order by mail, over the Internet, or possibly by phone.

The FCRA states that you are entitled to receive a credit report disclosure directly from the consumer credit reporting agency for FREE if:

- You certify in writing that you are unemployed and intend to apply for employment within 60 days.
- You are receiving public welfare assistance.
- You have reason to believe your consumer file contains inaccurate information due to fraud.
- You have been denied credit, insurance, or employment within the past 60 days

If any of the above applies to you then you may order directly from the credit reporting companies. You should receive your reports in 3 to 4 weeks. Oftentimes you will receive a letter asking for more information. To avoid this delay, include all of your relevant information.

1.	Full Name. Be sure to note if you are a JR or SR
2.	Birth Date
3.	Social Security Number and a Photocopy of your Social Security card.
4.	Your current address
5.	Your Previous addresses for the last five years.
6.	Drivers License Photo Copy with Current address on it (or other proof of address).

Contact Information for National Credit Agencies

Experian	Transunion	Equifax
http://www.experian.com/	http://www.transunion.com/	http://www.equifax.com/
(888) 397-3742	(800) 888-4213	(800) 997-2493

Step Two – Analyze Your Credit Report

If the credit report contains one or more of these indicators, then the report is negative. If the listing contains none of these indicators, then the listing is positive.

Experian	Trans Union	Equifax
Any item marked with dashes on either side of the number (example "--2--"). Any inquiry	ANY ITEM LISTED IN THE "ADVERSE" SECTION OF THE REPORT. WATCH FOR ANY INFORMATION WITH A ">" SYMBOL NEXT TO IT. Any inquiry	Any item rated any higher than I1, M1, or R1 (such as an R2 or I9). Any item preceded by a ">>>" icon. Any item listed as a repossession, foreclosure, profit and loss write off, charge off, paid profit and loss write-off, paid charge off, settled, settled for less than full balance, or included in bankruptcy. Any collection account whether paid or not. Any court account including a lien, judgment, bankruptcy chapters 11, 7, or 13, divorce, satisfied lien, or satisfied judgment. Any item showing one or more thirty, sixty, or ninety-day late payments under the body of the listing. Any inquiry

Once you've highlighted all *negative* items on your credit report, begin looking for the *inaccuracies and inconsistencies and highlight them* with a pink or orange highlighter.

An inaccuracy is something that you know is not true, such as a listing that doesn't belong to you or an incorrect balance. An inconsistency is when the same information on the credit report contradicts itself, such as showing 12 late payment notations when the report shows only 4 months reviewed. You can use these inaccuracies and inconsistencies to lend credibility to your challenge.

If you find that a substantial amount of the negative credit on your credit report does not belong to you, you may wish to *prepare a lawsuit* against the credit bureaus. You will not have an adequate cause of action against the credit bureaus unless you attempt to correct the mistakes with them and they willfully or negligently mishandle your case. The odds of the credit bureaus negligently mishandling your case are *excellent*, so you would be wise to proceed with a lawsuit in mind.

Inaccuracies to look for:

- Account not yours
- Account number wrong
- Date of account wrong
- Status wrong
- Balance wrong
- Late pay history wrong
- Account type wrong

Inconsistencies to look for:

- More late pays than months reviewed
- Item in BK but no BK listed
- Duplicate accounts
- Never lived in area of court record
- Account shows older than possible
- Past addresses wrong
- Personal information wrong

Document every correspondence and response in a "diary" or spread-sheet or calendar type book. If your recordation is complete and accurate, it is usually considered an acceptable court document. Be sure to copy and file *everything* and send all of your correspondence certified mail, return receipt requested.

Step Three – Organize your Notice

Review your credit report. Verify all aspects of its accuracy, including your:

1. Name
2. Delivery address
3. Contact phone number
4. Social security number
5. Date of birth
6. Former addresses
7. AKAs (also known as)
8. Employer
9. All accounts:
 - A. account number
 - B. type of account (i.e., revolving, line of credit, mortgage)
 - C. balance and most owed
 - D. open and closed dates and by whom
 - E. payment status (i.e., as agreed, never late, etc.)
 - F. credit limit
 - G. individual or joint account status
 - H. disputed status
 - I. Closed accounts

Step Four – Send your first Notice

As soon as you have verified all information on the report, for each individual person (*you cannot notify CRAs in a single letter for joint accounts; it must be done individually*), in separate letters mailed in separate envelopes, send the appropriate CRA-1 letter.

The first letter, which is friendly and just to tell them you've reviewed your report may, address various errors in the report such as misspellings and closed accounts and wrong addresses. All Notices to inform them to delete an account or it is in dispute **MUST BE SENT SEPARATELY FOR EACH CREDITOR ACCOUNT**

CERTIFIED MAIL TO EACH AGENCY WHERE CORRECTIONS ARE TO BE MADE.

Request proof that the corrections have been made. The agencies have 30 days under federal law to make any required changes.

You also have the choice to notify the CRAs that your information is private and they are to place a Security Freeze on your credit information. This will prohibit them from disclosing your information when they receive a simple inquiry. Be advised that you must notify them if you want information released when you want to apply for credit or employment.

California Civil Code, also found in
[www.witkin.com/pages/recent_dev_pages/ DEVELOPMENTS2002.htm](http://www.witkin.com/pages/recent_dev_pages/DEVELOPMENTS2002.htm):

Security Alerts: Civil Code Section 1785.11.1. Start date: July 1, 2002

A consumer may request the placement of a security alert on his or her credit report. Credit Reporting Agencies (CRA) must notify those requesting information of the existence of the alert. A "Security alert" typically states the consumer wants to be notified prior to the extension of credit. The consumer may customize the language of the alert including the addition of a phone number(s) where he or she may be contacted regarding the alert.

Security Freezes: Civil Code Section 1785.11.2 Start date: January 1, 2003

A consumer may elect to place a security freeze on his or her credit report by making a request in writing to a consumer credit reporting agency (CRA). "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the CRA from releasing the consumer's credit report or any information from it without the express authorization of the consumer.

Items included in this freeze include: name, address, birthdate, SSN and credit info. A freeze may always be lifted temporarily for the extension of credit and a unique personal identification number or password will be provided to the consumer for that purpose. The CRAs may charge a slight, reasonable fee for this service for non-victims. Certain groups will be allowed access without removing the freeze (employment, current credit issuers with established accounts, etc.) Consumers should be aware that a security freeze or security alert will affect their ability to be granted instant credit and will delay the extension of credit until the request is confirmed. It should not affect credit scores or prohibit the extension of credit to the true consumer.

Step Five – Follow-Up

AFTER SENDING THE CRA-1 LETTERS, if appropriate, send a CA/NA and then follow up to dispute the accounts and inform the credit reporting agencies that they are not to provide any inaccurate information which may impair your commercial ability.

After you receive your Certificate of Dishonor from the Notary, SEND VIA CERTIFIED MAIL CRA-3.

CR-4 and -5 are provided as sample responses should the CRA's not comply with the contract.

Step Six – Enforcement

After you receive your Certificates of Dishonor and Non-Performance or Breach of Contract and have billed the "Respondent" the amounts agreed to in the Conditional Acceptance self-executing contract by sending a minimum of three statements/bills at least ten days apart, if the CRAs still have not complied, then you have to make a decision as to whether or not you want to prosecute both the credit reporting agencies and the creditor. If the CRA's are continuing to ignore your evidence and take the verbal reporting of the creditor, follow up with letters to the Federal Enforcement Agencies, your state Attorney General, and local consumer advocates. You may wish to complete the process with notarial protest on the CRA's so that you can move it to

the Federal Court of Claims for enforcement of the judgment made of the evidence by the Notary, or for judicial review of your process to obtain a local Superior Court Order.

Step Seven – Credit Repair

If they do not delete the settled accounts from your credit report after you have sent all your notices and threats to proceed with legal remedy, and you want your credit report cleaned up, then you either have to proceed by filing a lawsuit or you can “bite the bullet” and simply contract with a credit repair company who has an attorney on staff. Check with us for a referral.

22. AFTER THE NOTARY PROTEST

There is one other document you should request from the Notary after the protest, and that is a printout from the Secretary of State's Office web site where the notary is commissioned which shows that the Notary is in good stand with a current commission. There may be a nominal fee for accessing the web site. You can also look for this information on your own. This is a preventative measure so that if you should come to a circumstance where the lender questions whether or not a notary with a proper commission performed the protest, you already have the apostilles in your "bag of evidence" to prove it was a viable notarial protest.

Perfecting the Process

Now that you have the original Certificate of Dishonor and Non-Response with Notary Notes from the Notary, if you wish, you can set the stage to enforce the contract they entered into with you. You have 90 days¹ in which to send three bills for the contractual amounts in your CA. The billing must be at least 10 days apart. Itemize the amounts. If they are continuing to send you "offers" or if a bill collector is still trying to "collect" on the account which has already been settled, you may wish to file a complaint with your local Attorney General and the appropriate Federal agencies, depending on whether it is against a credit card company or a credit reporting agency.

You have three avenues available to you:

- 1) The private administrative tribunal - The private administrative tribunal consists of at least three independent judges (private citizens with knowledge of notarial protest) review your documents and verify that you have followed all the procedural requirements. The private judges can then issue Findings of Fact and you now have a judicial finding; or
- 2) Getting Notarial Judicial Review – you must enter the documents for a superior court judge in your county, in his judicial capacity and not his "ministerial" capacity, to review the procedure, the time of the notices and your service of the notices by you and the notary, so that you can obtain a court order for enforcement and damages. You will need a local notary's certificate if you used an out-of-state notary for the process². The local notary will simply review the process and issue a certificate stating that the process was proper. After the judicial review and findings of fact, then you can obtain a Writ of Execution and obtain a "keeper" (marshal or sheriff) on their "toys" to either take them away for the amount of the court order or sell them at public auction; or

¹ If you wait longer than 90 days to do your billing, simply get a current Certificate of Dishonor from the Notary.

² We know that you may have difficulty finding a "res" state notary to review the documents if you had to use an out-of-state notary to perform the protest. There is no time limit on when you get a "res" state notary to review the process. We are accumulating the names, emails and phone numbers of notaries nationwide who are familiar with notarial protest. If you can add to the list, please forward the information to us to add to the "Notary List" in the files.

- 3) Obtain Judicial Review from the Appropriate Court. Depending on the “citizenship” or “res” of both you and the alleged lender, you can file an action for Judicial Review with the your state court, Federal District Court or the Federal Court of Claims. If the “res” of both you and the lender is in your state, you can file in your state court. If the lender is a foreign corporation, you can file at Federal District Court. You also have the option of The Federal Court of Claims, where “foreign judgments” are enforced. The private side is “foreign” to the public side. Your conditional acceptance and the notary protest was private. Remember that the notary process is outside the box so it is foreign to the maritime/admiralty courts. It is no different than having a judgment in France and trying to enforce here...it has to go thru the Federal Court of Claims for foreign judgments.

All three processes do not review the substance of the documents, but only weigh the procedure – the form – whether or not you and the notary met the notice and time requirements, etc. and not the components of the contract. You cannot argue or testify or address whether or not the instrument you offer in exchange was valid, whether the debt was valid or allow any topic other than the judicial review of the notarial protest to be addressed in any of the three processes. We will be adding forms for these processes soon.

After you have your court order, you may also wish to file a UCC-1 with your local county recorder with the entire packet attached, including your bill of exchange. And don’t forget about those credit reporting companies, they must adhere to the Fair Credit Reporting Act or you can turn them in for criminal prosecution by the Federal Trade Commission. Now that you have a contract, if you choose to force an involuntary bankruptcy to collect, it’s up to you!

P.S. - After you receive your Certificates of Dishonor and Non-Performance or Breach of Contract, you should bill the “Respondent” the amounts agreed to in the Conditional Acceptance self-executing contract. Send a minimum of three statements/bills. The case can now be filed in the appropriate court for enforcement of the judgment made of the evidence by the Notary.

If you did the Debt Validation Process with Notarial Protest and they didn't present the Original Note, the FTC has shown that this is a False and Deceptive Practice. The OCC and Office of Thrift Supervision have similar cites with Opinions and Case Law which defines this sort of activity. It'll take some time to pull the cases up on line, but you'll find that you can still sue them and cost them their license.

You might want to obtain Richard Cornforth's materials on Voiding Judgments. It's really an indepth look at the evil of the "Equity Court System." It's "Equal" all right but it's "More Equal" for the criminal Bankers!

23. THE LAW

NOTARY & DISHONOR CASES

ANNVILLE NAT. BANK V. KETTERING, 106 Pa. 531 Am. Rep. 536
BOSKE v. COMINGORE, 177 US 459, 44 L. Ed. 846, 20 S. Ct. 701 (1900)
CHENEY v. LIBBY, 134 US 68, 33 L. Ed. 818, 10 S. Ct. 498 (1890)
DE LIMA v BIDWELL, 182 US 1, 45 L. Ed. 1041, 21 S. Ct. 743 (1901)
DENNISTOUN v. STEWART, 17 How. 607, 15 L. Ed. 228
HITZ v. JENKS; SAME v. SAME, 123 US 297, 31 L. Ed. 156, 8 S. Ct. 143 (1887)
MAURY v. WINLOCK & TOLEDO, 148 Wash. 572, 269 p. 815, 817
PIEDMONT CAROLINA RY. CO. v. SHAW, CCANC, 223 F. 973, 977
TOWNSEND v. LORAIN BANK, 2 Ohio St. 345

USURY

BENEFICIAL NAT'L BANK v. ANDERSON, No. 02-306 (U.S.S.C. June 02, 2003) - An action filed in state court, to recover damages from a national bank for allegedly charging excessive interest in violation of both the "common law usury doctrine" and an Alabama usury statute, arose only under federal law and could therefore be removed under 28 U.S.C. section 1441.

To read the full text of this opinion, go to: <http://laws.lp.findlaw.com/us/000/02306.html>

Statutes regarding Notarial Protest:

original 1909 Notary docs: www.nwflnotary.bizland.com/fpc.htm

http://www.witkin.com/pages/recent_dev_pages/see DEVELOPMENTS2002

<http://www.notarypubliclaw.com/>

California: http://www.ss.ca.gov/business/notary/notary_2003hdbk.htm#ucc and
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=com&codebody=Notary&hits=20>

Florida: Florida Statutes:

http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0673/titl0673.htm&StatuteYear=2002&Title=%2D%3E2002%2D%3EChapter%20673

Kentucky: <http://www.lrc.state.ky.us/KRS/423-00/CHAPTER.HTM>

New York:

http://www.notarypubliclaw.com/Merchant2/merchant.mv?Screen=PROD&Store_Code=NPL&Product_Code=50-4

Texas: <http://nwflnotary.bizland.com/texas%20notary%20protest%201902.pdf>

FROM THE ARIZONA STATUTES ARTICLE 5. DISHONOR

Each State has adopted the Uniform Commercial Code. Many have correlating numbers with the UCC. Some states have reworded the adopted versions, so be sure to compare your State citations with the UCC and refer to the State or UCC where applicable.

§ 47-3501. Presentment

A. "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument:

1. To pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or
2. To accept a draft made to the drawee.

B. The following rules are subject to chapter 4 of this title, agreement of the parties, and clearing house rules and the like:

1. Presentment:

- (a) May be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States;
- (b) May be made by any commercially reasonable means, including an oral, written or electronic communication;
- (c) Is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and
- (d) Is effective if made to any one of two or more makers, acceptors, drawees or other payors.

2. Upon demand of the person to whom presentment is made, the person making presentment must:

- (a) Exhibit the instrument;
- (b) Give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and
- (c) Sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

3. Without dishonoring the instrument, the party to whom presentment is made may:

- (a) Return the instrument for lack of a necessary indorsement; or
- (b) Refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties or other applicable law or rule.

4. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

§ 47-3502. Dishonor

A. Dishonor of a note is governed by the following rules:

1. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
2. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.
3. If the note is not payable on demand and paragraph 2 of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.

B. Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

1. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 47-4301 or 47-4302 or becomes accountable for the amount of the check under section 47-4302.

2. If a draft is payable on demand and paragraph 1 of this subsection does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
 3. If a draft is payable on a date stated in the draft, the draft is dishonored if:
 - (a) Presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or
 - (b) Presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.
 4. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.
- C. Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection B, paragraphs 2, 3 and 4 of this section, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.
- D. Dishonor of an accepted draft is governed by the following rules:
1. If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
 2. If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
- E. In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 47-3504, dishonor occurs without presentment if the instrument is not duly accepted or paid.
- F. If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§ 47-3503. Notice of dishonor

- A. The obligation of an indorser stated in section 47-3415, subsection A and the obligation of a drawer stated in section 47-3414, subsection D may not be enforced unless:
1. The indorser or drawer is given notice of dishonor of the instrument complying with this section; or
 2. Notice of dishonor is excused under section 47-3504, subsection B.
- B. Notice of dishonor may be given by any person, may be given by any commercially reasonable means, including an oral, written or electronic communication, and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.
- C. Subject to section 47-3504, subsection C, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument or by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

§ 47-3504. Excused presentment and notice of dishonor

- A. Presentment for payment or acceptance of an instrument is excused if:
1. The person entitled to present the instrument cannot with reasonable diligence make presentment;
 2. The maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;
 3. By the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;
 4. The drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or
 5. The drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.
- B. Notice of dishonor is excused if by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

- C. Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§ 47-3505. Evidence of dishonor (UCC 3-505)

- A. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:
1. A document regular in form as provided in subsection B which purports to be a protest;
 2. A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and
 3. A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.
- B. A protest is a certificate of dishonor made by a United States consul or vice consul, a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

ARTICLE 6. DISCHARGE AND PAYMENT

§ 47-3601. Discharge and effect of discharge

- A. The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.
- B. Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§ 47-3602. Payment

- A. Subject to subsection B of this section, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 47-3306 by another person.
- B. The obligation of a party to pay the instrument is not discharged under subsection A of this section if:
1. A claim to the instrument under section 47-3306 is enforceable against the party receiving payment and:
 - (a) Payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or
 - (b) In the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or
 2. The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

§ 47-3603. Tender of payment

- A. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
- B. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- C. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§ 47-3604. Discharge by cancellation or renunciation

- A. A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:
 - 1. By an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation or cancellation of the instrument, cancellation or striking out of the party's signature or the addition of words to the instrument indicating discharge; or
 - 2. By agreeing not to sue or otherwise renouncing rights against the party by a signed writing.
- B. Cancellation or striking out of an indorsement pursuant to subsection A does not affect the status and rights of a party derived from the indorsement.

§ 47-3605. Discharge of indorsers and accommodation parties

- A. In this section, the term "indorser" includes a drawer having the obligation described in section 47-3414, subsection D.
- B. Discharge, under section 47-3604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.
- C. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.
- D. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.
- E. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.
- F. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection E of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.
- G. Under subsection E or F of this section, impairing value of an interest in collateral includes:
 - 1. Failure to obtain or maintain perfection or recordation of the interest in collateral;
 - 2. Release of collateral without substitution of collateral of equal value;
 - 3. Failure to perform a duty to preserve the value of collateral owed, under chapter 9 of this title or other law, to a debtor or surety or other person secondarily liable; or
 - 4. Failure to comply with applicable law in disposing of collateral.
- H. An accommodation party is not discharged under subsection C, D or E of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 47-3419, subsection C that the instrument was signed for accommodation.
- I. A party is not discharged under this section if:
 - 1. The party asserting discharge consents to the event or conduct that is the basis of the discharge; or
 - 2. The instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

USC

18 USC Section 1341 - **Frauds and swindles**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

FDCPA

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) **COMMUNICATION WITH THE CONSUMER GENERALLY.** Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

[TITLE 15](#) > [CHAPTER 41](#) > [SUBCHAPTER V](#) > **Sec. 1692g. - Validation of debts**

(a) Notice of debt; contents - Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing -

- (1)** the amount of the debt;
- (2)** the name of the creditor to whom the debt is owed;
- (3)** a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4)** a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5)** a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts - If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability - The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer

P O Z N A K L A W F I R M L T D
Fair Debt Collection Practices

Most of us have, at one time or another, disputed a bill sent to us by a vendor. Since 1977, a federal law known as the Fair Debt Collection Practices Act, has protected consumers from unscrupulous conduct committed by anyone attempting to collect the debt on the vendor's behalf.

First, it is important to note that the Act applies only to consumer debt. Under the Act, a consumer debt is any obligation to pay money for a transaction that was primarily for personal, family, or household purposes. Debts that are primarily for business purposes are not covered by the Act.

A person is a debt collector under the Act if they regularly use the U.S. mail or telephones to collect or attempt to collect a consumer debt owed to another (i.e., owed to a person other than the debt collector). Although the Act usually applies to debt collection firms, it could also apply to business owners. If you are attempting to collect a consumer debt for your incorporated business, you too could be a debt collector. This is because the debt is owed to your corporation, not to you personally. When collecting a debt for your corporation, you must make it clear to the debtor that you are acting on behalf of the corporation. One court ruled that a business which obtained only four percent of its revenue from debt collection was "regularly" using the mail for purposes of the Act. So, by spending four percent of your time collecting consumer debts for your business through the mail or by the telephone without disclosing that you are acting on behalf of your business, you might be "regularly" attempting to collect those debts.

The Act contains some fairly complicated rules governing collection of consumer debt. A debt collector cannot threaten to take any action that is illegal or which the collector does not actually intend to do. For example, if you cannot threaten to sue someone if you do not intend to do so. The Act also forbids a debt collector from attempting to collect any amount not authorized by the agreement creating the debt or not otherwise allowed by any applicable law.

The Act prohibits a debt collector from misrepresenting any of the following: (1) the character, amount, or status of the debt, (2) credit information pertaining to the consumer, (3) the debt collector's name, (4) or any other facts in order to obtain information about the debt. In addition, a debt collector may not falsely state that the debtor has committed a crime or similar wrongdoing and a debt collector may not use writings (such as letters or forms) that falsely appear to have some sort of official approval (such as a fake court seal).

The Act also bars a debt collector from engaging in conduct that harasses, oppresses, or abuses the debtor. Examples include profane language and repeated telephone calls. The Act expressly forbids calls to a debtor between 9:00 pm and 8:00 am (without the debtor's consent), calls to a debtor when the debt collector knows the debtor has an attorney and calls to a debtor's workplace if the debt collector reasonably should know that the debtor's employer forbids such calls. A debt collector must cease all communications after a debtor informs the debt collector in writing that the debtor refuses to pay or wants the debt collector to stop calling.

All communications by a debt collector to a debtor must contain disclosures prescribed by the Act. These are as follows: (1) the purpose of the communication is to collect a debt, (2) the amount of the debt, (3) the name of the current creditor, (4) a statement warning the debtor that the debt collector will assume that the debt is valid unless the debtor disputes the debt within 30 days, (5) a promise to mail the debtor verification of the debt if the debtor disputes the debt within 30 days, and (6) a promise to give the debtor the name of the previous creditor (if any) if the debtor disputes the debt within 30 days. Once a debtor disputes a debt, the debt collector must cease collection efforts until the debtor receives the verification of the debt.

The Act limits the communications that a debt collector may have with others regarding the debt. A debt collector may communicate only with the debtor's attorney, a credit reporting agency, the creditor, and the creditor's attorney. The only exceptions are when the debt collector is attempting to locate the debtor or to enforce a judgment.

The Act contains some harsh penalties that may be imposed on debt collectors who violate the Act.

statutory damages up to \$1,000, attorneys fees (which can be enormous), and court costs. The Act shows debt collectors some mercy, however. A debt collector might avoid the penalties if they can prove that the violation was unintentional and resulted from a bona fide error despite procedures that the debt collector has in place to avoid such errors...

Fair Debt Collection Practices Act (FDCPA) was enacted to eliminate unscrupulous debt collection practices of consumer debts. Consumer Credit Protection Act, § 802 et seq., as amended, [15 U.S.C.A. § 1692](#) et seq.

[\[1\] Consumer Protection](#) 10 [92Hk10](#)

Fair Debt Collection Practices Act (FDCPA) was enacted to eliminate unscrupulous debt collection practices of consumer debts. Consumer Credit Protection Act, § 802 et seq., as amended, [15 U.S.C.A. § 1692](#) et seq.

[\[2\] Consumer Protection](#) 10 [92Hk10](#)

In establishing the Fair Debt Collection Practices Act (FDCPA), Congress recognized the serious and widespread abuses in the debt collection area which made the legislation necessary and appropriate. Consumer Credit Protection Act, § 802 et seq., as amended, [15 U.S.C.A. § 1692](#) et seq.

[\[3\] Consumer Protection](#) 10 [92Hk10](#)

Fair Debt Collection Practices Act (FDCPA) obligates a debt collector, upon solicitation of payment on a consumer debt or within five days thereof, to provide a detailed validation notice to the consumer. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[\[4\] Consumer Protection](#) 10 [92Hk10](#)

Attorneys who regularly engage in consumer-debt-collection activity fall within the scope of the Fair Debt Collection Practices Act's (FDCPA's) definition of "debt collectors." Consumer Credit Protection Act, § 802 et seq., as amended, [15 U.S.C.A. § 1692](#) et seq.

[\[5\] Consumer Protection](#) 10 [92Hk10](#)

Validation notice sent by debt collector to consumer pursuant to the Fair Debt Collection Practices Act (FDCPA) must include, inter alia, a statement that debt's validity will be assumed unless it is disputed by consumer within 30 days of receipt of the notice and an offer by debt collector to provide information regarding the details and verification of the debt. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[\[6\] Consumer Protection](#) 10 [92Hk10](#)

Although, under the Fair Debt Collection Practices Act (FDCPA), a debt collector is obligated to cease collection efforts until information requested by a consumer is provided, the FDCPA's notice provisions do not require that any specific statement of this "cease and desist" obligation be provided to consumers. Consumer Credit Protection Act,

§ 809(b), as amended, [15 U.S.C.A. § 1692g\(b\)](#).

[7] Consumer Protection 10
[92Hk10](#)

Under the Fair Debt Collection Practices Act (FDCPA), a debt collector must ensure that notice of the right to dispute the debt is actually conveyed to the consumer, and that the notice is conveyed effectively. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[8] Consumer Protection 10
[92Hk10](#)

Effectiveness of a validation notice provided by a debt collector to a consumer pursuant to the Fair Debt Collection Practices Act (FDCPA) is based on an objective standard of the manner in which a "least sophisticated consumer" would interpret the notice. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[9] Consumer Protection 10
[92Hk10](#)

"Least sophisticated consumer" standard required of validation notices sent by debt collectors to consumers pursuant to the Fair Debt Collection Practices Act (FDCPA) allows for the protection of all consumers, the gullible and the shrewd. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[10] Consumer Protection 10
[92Hk10](#)

"Least sophisticated consumer" standard required of validation notices sent by debt collectors to consumers pursuant to the Fair Debt Collection Practices Act (FDCPA) presumes a level of sophistication that is low, close to the bottom of the sophistication meter. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[11] Consumer Protection 10
[92Hk10](#)

"Least sophisticated consumer" standard required of validation notices sent by debt collectors to consumers pursuant to the Fair Debt Collection Practices Act (FDCPA) contemplates a minimum level of sophistication which prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[12] Consumer Protection 10
[92Hk10](#)

In applying the objective "least sophisticated consumer" standard required of validation notices sent by debt collectors to consumers pursuant to the Fair Debt Collection Practices Act (FDCPA), courts assume that the entire content of the notice was read by the consumer. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[13] Consumer Protection 10
[92Hk10](#)

Although the applicable standard under the Fair Debt Collection Practices Act (FDCPA) is that of a consumer with a minimum level of sophistication, standard assumes that a validation notice is read in its entirety, carefully and with some elementary level of understanding. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[14] Consumer Protection  10
[92Hk10](#)

Contradictory or confusing language in a debt collector's validation notice to a consumer may give rise to liability under section of the Fair Debt Collection Practices Act (FDCPA) prohibiting debt collectors from committing a false, deceptive, or misleading representation or means in connection with the collection of any debt. Consumer Credit Protection Act, § 807, as amended, [15 U.S.C.A. § 1692e](#).

[15] Consumer Protection  10
[92Hk10](#)

Effective notice has not been conveyed under the Fair Debt Collection Practices Act (FDCPA) when, although information provided in a debt collector's validation notice may have been accurate and may have been sufficient under the FDCPA if independently conveyed, the validation notice was coupled with language which could confuse a least sophisticated consumer or render the consumer uncertain on how to proceed. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[16] Consumer Protection  36.1
[92Hk36.1](#)

Since the standard applied to a validation notice under the Fair Debt Collection Practices Act (FDCPA) is objective in nature, that is, a hypothetical least sophisticated consumer, the determination is a question of law, not a question of fact. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[17] Consumer Protection  10
[92Hk10](#)

Validation notice sent by debt collector would have caused a hypothetical least sophisticated consumer to be confused and uncertain of his rights, and so violated the Fair Debt Collection Practices Act (FDCPA); validation notice containing statutory language was on page eight of a 16-page packet that included a summons and complaint, dire consequences of not responding to the complaint were set out in bold on summons on the first page, which stated that "IF YOU DO NOT FILE YOUR RESPONSE ON TIME, YOU MAY LOSE THE CASE, AND YOUR WAGES, MONEY AND PROPERTY MAY THEREAFTER BE TAKEN WITHOUT FURTHER WARNING FROM THE COURT," summons and FDCPA notice described very different options and were conflicting, despite fact that both had 30-day return dates, and no reconciling language was included to explain the two seemingly contradictory or confusing provisions. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[18] Consumer Protection  10
[92Hk10](#)

When a debt collector has sent a consumer a Fair Debt Collection Practices Act (FDCPA) validation notice together with a summons and complaint, upon acting upon the validation notice by disputing the debt, consumer is under no obligation to respond to the complaint until, at the earliest, debt collector responds with the requested information. Consumer Credit Protection Act, § 809(b), as amended, [15 U.S.C.A. § 1692g\(b\)](#).

[19] Consumer Protection  10
[92Hk10](#)

Although the plain language of the Fair Debt Collection Practices Act (FDCPA) is controlling as to the substantive information that must be provided through a validation notice, the manner and sufficiency of the notice may still be set and weighed by the courts. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[20] Consumer Protection  10
[92Hk10](#)

It is implicit that a debt collector may not defeat the Fair Debt Collection Practices Act's (FDCPA's) purpose by making the required disclosures in a form or within a context in which they are unlikely to be understood by the unsophisticated debtors who are the particular objects of the statute's solicitude. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[21] Consumer Protection  10
[92Hk10](#)

To prevent confusion, a debt collector should provide clarity when inclusion of a Fair Debt Collection Practices Act (FDCPA) validation notice with other documents might lead a consumer to be uncertain or indefinite as to his rights; specifically, if two or more messages would deliver mixed guidance to a least sophisticated consumer as to his rights under the FDCPA, reconciling language ought to be utilized to provide effective notice. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[22] Consumer Protection  40
[92Hk40](#)

[22] Consumer Protection  42
[92Hk42](#)

Debt collector who violates the Fair Debt Collection Practices Act (FDCPA) is liable for actual damages sustained as a result of the violation, additional or "statutory" damages up to \$1,000.00, and consumer's costs and reasonable attorney fees. Consumer Credit Protection Act, § 813(a), as amended, [15 U.S.C.A. § 1692k\(a\)](#).

[23] Consumer Protection  40
[92Hk40](#)

Fair Debt Collection Practices Act (FDCPA) sets forth certain non-exhaustive factors for court to consider in determining the amount of liability for actual and statutory damages, namely (1) the frequency and persistence of noncompliance, (2) the nature of the noncompliance, and (3) the extent to which the noncompliance was intentional. Consumer Credit Protection Act, § 813(b), as amended, [15 U.S.C.A. § 1692k\(b\)](#).

[24] Consumer Protection  42
[92Hk42](#)

Factors set forth by the Fair Debt Collection Practices Act (FDCPA) for court to consider in determining the amount of liability for actual and statutory damages are not applicable to the award of costs and attorney fees. Consumer Credit Protection Act, § 813(b), as amended, [15 U.S.C.A. § 1692k\(b\)](#).

[25] Consumer Protection  42
[92Hk42](#)

Given the structure of the Fair Debt Collection Practices Act (FDCPA), attorney fees should not be construed as a special or discretionary remedy; rather, the FDCPA mandates an award of attorney fees as a means of fulfilling Congress's intent that the FDCPA should be enforced by debtors acting as private attorneys general. Consumer Credit Protection Act, § 813(a), as amended, [15 U.S.C.A. § 1692k\(a\)](#).

[26] Consumer Protection  40
[92Hk40](#)

[26] Consumer Protection  42
[92Hk42](#)

Law firm that violated the Fair Debt Collection Practices Act's (FDCPA's) notice provisions was liable for the maximum amount of statutory damages, \$1,000.00, as well as costs and reasonable attorney fees incurred by debtor

in prosecution of action; firm ordinarily and regularly violated the FDCPA by including in its initial communications with consumers a validation notice in the same form as that found defective in the instant case, nature of firm's noncompliance was moderate, in that firm provided the notice required by statute, but it failed to meet the hypothetical least sophisticated consumer standard because the notice was overshadowed by other information, and violation was, if not intentional, then measured, given abundance of case law clearly setting forth the standard upon which a debt collector must operate. Consumer Credit Protection Act, § 809, 813(a), as amended, [15 U.S.C.A. § 1692g, 1692k\(a\)](#).

[32] Consumer Protection  10
[92Hk10](#)

Fact that law firm, acting as debt collector in sending debtor a 16-page packet that included a summons and complaint as well as a Fair Debt Collection Practices Act (FDCPA) validation notice, used an approved form summons did not affect court's determination that summons, coupled with validation notice, was confusing and so violated the FDCPA. Consumer Credit Protection Act, § 809, as amended, [15 U.S.C.A. § 1692g](#).

[33] Consumer Protection  42
[92Hk42](#)

Consumer who is successful in a Fair Debt Collection Practices Act (FDCPA) action is entitled to an award of reasonable attorney fees and costs. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[34] Consumer Protection  42
[92Hk42](#)

Fee provision of the Fair Debt Collection Practices Act (FDCPA) is intended to encourage consumers and their attorneys to act as "private attorneys general" in order to enforce the FDCPA. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[35] Consumer Protection  42
[92Hk42](#)

In determining fees under the Fair Debt Collection Practices Act (FDCPA), court must look at the factors generally applicable to fee awards under federal statute, including (1) time and labor required, (2) novelty and difficulty of the legal questions, (3) skill required to perform the legal service properly, (4) preclusion of other employment by the attorney due to acceptance of the case, (5) customary fee for similar work in the community, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) amount involved and results obtained, (9) experience, reputation, and ability of the attorney, (10) undesirability of the case, (11) nature and length of the professional relationship with the client, and (12) awards in similar cases. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[41] Consumer Protection  42
[92Hk42](#)

In awarding fees under the Fair Debt Collection Practices Act (FDCPA), bankruptcy court rejected request of debtor's counsel for payment for hours expended which were not recorded. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[42] Bankruptcy  3196
[51k3196](#)

In awarding fees, a reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation.

[43] Bankruptcy  **3205**
[51k3205](#)

Party seeking attorney fees bears the burden of producing satisfactory evidence that the requested rate is in line with the prevailing market rates.

[45] Consumer Protection  **42**
[92Hk42](#)

For purposes of awarding fees under the Fair Debt Collection Practices Act (FDCPA), reasonable billing rate for debtor's attorney was \$200 per hour; debtor's expert opined that an hourly rate between \$250 and \$325 was reasonable, defendant's expert testified that FDCPA lawyers charged between \$195 and \$225 per hour, debtor's attorney had limited experience in FDCPA cases, a more experienced FDCPA attorney could have accomplished many of the billed-for tasks in less time, the law at issue was not excessively complex, and the standard business practice of debtor's attorney was to charge clients \$185 per hour. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[46] Consumer Protection  **42**
[92Hk42](#)

In awarding fees under the Fair Debt Collection Practices Act (FDCPA), bankruptcy court would disallow 39.1 hours in time included in debtor's motion for attorney fees, but not included in attorney's earlier letter to defendant which included an attachment detailing the hours spent by attorney through specified date. Consumer Credit Protection Act, § 813(a)(3), as amended, [15 U.S.C.A. § 1692k\(a\)\(3\)](#).

[48] Bankruptcy  **3194**
[51k3194](#)

Any fee enhancement award is within the sole discretion of the bankruptcy court.

Summary of the Law

[\[1\]\[2\]\[3\]\[4\]\[5\]\[6\]](#) The FDCPA was enacted to eliminate unscrupulous debt collection practices of consumer debts. See [15 U.S.C. § 1692](#); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir.1996); see generally O. Randolph Bragg, The Fair Debt Collection Practices Act, 1172 PLI/ Corp 917 (April, 2000). Quoting the applicable legislative history, the Eleventh Circuit has stated that in establishing the FDCPA, Congress recognized "the serious and widespread abuses in the [debt collection area] ... [which] make this legislation necessary and appropriate." *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1173 (11th Cir.1985) quoting S.Rep. No. 95-382, 95th Cong., 1st Sess., reprinted in 1977 U.S. Code Cong. & Ad. News 1695, 1697. Consistent with this goal, [§ 1692g](#) obligates a debt collector, upon solicitation of payment on a consumer debt or within five days thereof, to provide a detailed validation notice ("Validation Notice") to the consumer. See [15 U.S.C. § 1692g](#). [\[FN1\]](#) The Validation Notice must include, *inter alia*, a statement that the debt's validity will be assumed unless it is disputed by the consumer within 30 days of receipt of the notice and an offer by the debt collector to provide information regarding the details and verification of the debt. See *id.* The ease of obtaining this information allows a consumer to arm himself to challenge the claimed amount or entirety of the debt prior to making payment. The notice provisions of [§ 1692g](#) do not require any specific statement of the legal consequences of requesting such notice, namely, the obligation of a debt collector to cease collection efforts until the requested information is provided. This "cease and desist" charge is in the statute, but notice of the obligation is not explicitly required. See [15 U.S.C. § 1692g\(b\)](#).

[FN1](#). Although the FDCPA only applies to "debt collectors", the United States Supreme Court has ruled that attorneys who regularly "engage in consumer-debt-collection activity" fall within the scope of this

definition. [*Heintz v. Jenkins*, 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 \(1995\)](#).

[\[7\]\[8\]\[9\]\[10\]](#) A debt collector must ensure that notice of the right to dispute the debt is *actually* conveyed to the consumer, and that the notice is conveyed *effectively*. See [*Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 \(3d Cir.2000\)](#); [*Russell*, 74 F.3d at 35](#); [*Graziano v. Harrison*, 950 F.2d 107, 111 \(3d Cir.1991\)](#); [*Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222, 1225 \(9th Cir.1988\)](#); [*Rabideau v. Management Adjustment Bureau*, 805 F.Supp. 1086, 1093 \(W.D.N.Y.1992\)](#). The effectiveness of the notice is based on an objective standard of the manner in which a "least sophisticated consumer" would interpret the notice. See [*Jeter*, 760 F.2d at 1175](#); [*Russell*, 74 F.3d at 34](#) ("[T]he test is how the least sophisticated consumer--one not having the astuteness of a 'Philadelphia lawyer' or even the sophistication of the *532 average, everyday, common consumer--understands the notice he or she receives."). This standard allows for the protection of all consumers, the gullible and the shrewd. See [*Wilson v. Quadramed Corp.*, 225 F.3d at 354](#). As described by the Seventh Circuit, this standard presumes a level of sophistication that "is low, close to the bottom of the sophistication meter." [*Avila v. Rubin*, 84 F.3d 222, 226 \(7th Cir.1996\)](#).

[\[11\]\[12\]\[13\]](#) The least sophisticated consumer standard does contemplate a minimum level of sophistication which "prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care." [*Wilson*, 225 F.3d at 354-55](#) (internal quotation marks and citations omitted); see also [*Jang v. A.M. Miller & Assoc.*, 122 F.3d 480, 483-84 \(7th Cir.1997\)](#). Moreover, in applying this objective standard, courts assume that the entire content of the notice was read by the consumer. See [*Cavallaro v. Law Office of Shapiro & Kreisman*, 933 F.Supp. 1148, 1153 \(E.D.N.Y.1996\)](#); [*Clomon v. Jackson*, 988 F.2d 1314, 1319 \(2d Cir.1993\)](#) (A least sophisticated consumer "can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care."). Therefore, although the applicable standard is that of a consumer with a minimum level of sophistication, it assumes that a Validation Notice is read in its entirety, carefully and with some elementary level of understanding.

[\[14\]](#) Numerous courts in various circuits have held that the mere inclusion of a Validation Notice within the first communication between a debt collector and a consumer does not necessarily satisfy the notice requirement of [§ 1692g](#). See [*Rabideau*, 805 F.Supp. 1086](#); see also [*Bartlett v. Heibl*, 128 F.3d 497, 500 \(7th Cir.1997\)](#); [*Graziano*, 950 F.2d at 111](#); [*Miller v. Payco-General American Credits, Inc.*, 943 F.2d 482 \(4th Cir.1991\)](#); [*Swanson*, 869 F.2d at 1225](#). These courts have reasoned that even where the bare bones of the required notice is present, [§ 1692g](#) is nonetheless violated where the notice is "overshadowed or contradicted by accompanying messages from the debt collector." [*Graziano*, 950 F.2d at 111](#); [*Bartlett*, 128 F.3d at 500](#) (citing cases). [\[FN2\]](#)

[FN2](#). Contradictory or confusing language may also give rise to liability under [§ 1692e](#), which prohibits debt collectors from committing a "false, deceptive or misleading representation or means in connection with the collection of any debt." See [15 U.S.C. 1692e](#); see also [*Russell*, 74 F.3d at 35](#) ("[A] collection notice is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate."). Plaintiff did not allege a [§ 1692e](#) violation, and therefore, that subsection is not at issue here.

[\[15\]](#) In many cases, the conflicting or confusing message which results in a violation of the FDCPA is a payment demand that could influence the consumer to forego the statutory rights contained in the Validation Notice. See generally [Bragg, The Fair Debt Collection Practices Act, 1172 PLI/ Corp 917](#) (citing and discussing cases). In cases involving such overlapping statements, the information provided in the Validation Notice may be accurate, and if it had been independently conveyed, would have been sufficient to inform a least sophisticated consumer of his rights. However, when coupled with language which could confuse a least sophisticated consumer or render the consumer uncertain on how to proceed, effective notice has not been conveyed. See [*Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 \(7th Cir.2000\)](#) ("The key consideration is that the unsophisticated *533 consumer is to be protected against confusion whatever form it takes.") (internal quotation marks omitted); see also [*Russell*, 74 F.3d at 35](#). It is the confusion based on the context of the notice which would lead the hypothetical least sophisticated consumer to be uncertain as to his statutory rights to dispute the debt and therefore eliminate the effectiveness of the statutory notice.

[\[16\]](#) There is a split in the circuits as to whether the effectiveness of a Validation Notice is an issue of law or fact. See [*Wilson*, 225 F.3d at 353 fn. 2](#) (noting conflicting circuit decisions). This Court agrees with the Second, Third

and Ninth circuits, and finds that since the standard applied is objective in nature, i.e., a hypothetical least sophisticated consumer, the determination is a question of law. See *id.*; [Terran v. Kaplan](#), 109 F.3d 1428, 1432-33 (9th Cir.1997); [Russell](#), 74 F.3d at 35; but see [Walker v. National Recovery, Inc.](#), 200 F.3d 500, 503 (7th Cir.1999). The parties here agree that this is an issue of law and that there are no genuine issues of material fact to be decided.

Analysis

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See [Fed.R.Civ.P. 56\(c\)](#) made applicable by [Fed.R.Bankr.P. 7056; Trucks, Inc. v. United States of America](#), 234 F.3d 1340 (11th Cir.2000).

[17] Upon careful consideration of the FDCPA Notice in the instant case, as viewed from the perspective of a hypothetical least sophisticated consumer, the Court finds that Plaintiff's motion for summary judgment should be granted. The Initial Communication in this case was a 16 page package which included a summons and complaint. The FDCPA Notice was on page eight, while the dire consequences of not responding to the complaint were set out in bold on the summons on the first page. Viewed in its entirety, the Court finds that a hypothetical least sophisticated consumer would have been confused and uncertain of his rights. As such, the FDCPA Notice did not provide effective notice and therefore violated [§ 1692g](#).

In [Graziano](#), the Third Circuit held that the notice of the right to dispute the debt was not effectively conveyed to the debtor where a ten day demand for payment and the threat of a lawsuit if payment was not made accompanied the Validation Notice. See [950 F.2d at 111](#). The court found that it was a reasonable possibility that "the least sophisticated debtor, faced with a demand for payment within ten days and a threat of immediate legal action if payment is not made in that time, would be induced to overlook his statutory right to dispute the debt within thirty days." *Id.* at 111.

Although in the instant case the return date on the summons was set for thirty days following receipt, presumably to coincide with the thirty day period to dispute the debt under [§ 1692g](#), the confusion and uncertainty arising from the conflict between the summons and the FDCPA Notice is similar to the conflicts which created liability in [Graziano](#). The summons, which was the first page of the Initial Communication, required a response to the complaint and set forth dire consequences for failure to comply. The Validation Notice on the eighth page described a very different option, namely, the right to dispute the debt and request verification. As a matter of law, exercise of this latter right requires a debt collector to cease collection efforts until the verification is provided to the consumer. As described by the Third *534 Circuit, "the juxtaposition of two inconsistent statements ... rendered the statutory notice invalid under [section 1692g](#)." *Id.* at 111; see also [Bartlett](#), 128 F.3d at 500 ("In the typical case, the letter both demands payment within thirty days and explains the consumer's right to demand verification within thirty days. These rights are not inconsistent, but ... the letter confuses."). The same is true here. Even though the summons and the FDCPA Notice both had 30 day return dates, the conflicting statements rendered the FDCPA Notice ineffective.

In another sense, the facts here are more compelling than in [Graziano](#). In [Graziano](#), the letter which accompanied the Validation Notice merely threatened legal action unless the debt was resolved. See [950 F.2d at 111](#). Here, we have not the threat of a lawsuit, but the actual commencement of a legal action. Simple *a fortiori* logic suggests that a least sophisticated consumer would be more compelled to obey the fulfillment of a threat than the threat itself.

The Court's conclusion that the Defendant violated [§ 1692g](#) is also supported by [Adams v. Law Offices of Stuckert & Yates](#), 926 F.Supp. 521 (E.D.Pa.1996). Like the Defendant here, the defendant law firm in [Adams](#) provided the consumer with the statutorily mandated Validation Notice. However, strong language preceded such notice, including statements that failure to make "prompt" or immediate payment on the debt might result in a lawsuit, and payment was the only way for the consumer to "avoid trouble". See *id.* at 524-25. Citing [Graziano](#) and [Russell](#), the court explained that "extraneous language is considered overshadowing or contradictory if it would cause the least sophisticated debtor to become confused or uncertain as to his rights under the FDCPA." *Id.* at 527. In granting summary judgment in favor of the consumer, the court held that the harsh language, from the perspective of a least sophisticated consumer, overshadowed the included Validation Notice in violation of [§ 1692g](#). See *id.* at 527.

Here, the FDCPA Notice was in a package that began with a summons containing language even more blistering

than that in [Adams](#). The ominous sentence, "IF YOU DO NOT FILE YOUR RESPONSE ON TIME, YOU MAY LOSE THE CASE, AND YOUR WAGES, MONEY AND PROPERTY MAY THEREAFTER BE TAKEN WITHOUT FURTHER WARNING FROM THE COURT" on the first page of the Initial Communication would cause a least sophisticated consumer to heed the warning and choose to answer the complaint. This threatened consequence set out in bold language leads the Court to the inescapable conclusion that a least sophisticated consumer would not fully understand or appreciate the FDCPA Notice. The language in the summons would induce the consumer to answer the complaint to prevent the harsh result threatened therein. Therefore, no effective notice was provided.

The confusion created by the Initial Communication was evident during oral argument on the summary judgment motions. During the January 8th hearing, the Court asked Defendant's counsel what the effect would have been on the time frame to file a responsive pleading to the complaint if the Debtor had requested validation of the debt pursuant to the FDCPA Notice. Notably, even after caucusing with co-counsel, Defendant's lead attorney was unable to define the Debtor's rights and obligations upon receipt of a single enclosure which included both a Validation Notice and a foreclosure complaint. It would be difficult to find that the Initial Communication conveyed effective notice to a hypothetical least sophisticated consumer *535 when both the Court and Defendant's counsel had difficulty harmonizing the compounded effect of a summons and Validation Notice. See [Bartlett, 128 F.3d at 501](#) ("nor as an original matter could we doubt that the letter to [the debtor] was confusing-- we found it so, and do not like to think of ourselves as your average unsophisticated consumer.").

At the February 12th hearing, the Court once again questioned Defendant's counsel what a hypothetical least sophisticated consumer ought to have done upon receipt of the Initial Communication. Counsel's response to the Court's inquiry was that since the Initial Communication demanded an answer to the complaint within thirty days and also gave notice of the right to dispute the debt within the same time period, the consumer can simply do both. This response is virtually an admission that the Initial Communication is confusing.

[18] Upon acting upon a Validation Notice by disputing the debt, a consumer is under no obligation to respond to the complaint until, at the earliest, the debt collector responds with the requested information. See [15 U.S.C. § 1692g\(b\)](#). It mischaracterizes the law to suggest that it is satisfactory for a least sophisticated consumer to be induced to respond to a complaint within the time set forth in the summons, when, as a matter of law, that time is statutorily extended if there is a request for the validation of his debt. Only a consumer at best uncertain as to his rights would come to this conclusion. See [Bartlett, 128 F.3d at 500-01](#) ("A contradiction is just one means of inducing confusion.").

This result would also run contrary to the stated goals of the FDCPA. By filing a signed responsive pleading with a court, the consumer is bound to the statements of law or facts contained therein. A consumer is statutorily provided with an opportunity to learn many of the details surrounding the applicable debt *prior* to responding to the debt collector, and filing a sworn answer unnecessarily limits such a right.

Defendant's counsel's final argument is that despite any potential confusion based on context, the Defendant complied with the FDCPA because the Initial Communication contained the substantive notice required by the plain language of [§ 1692g](#). The legislature did not require a debt collector to do more than provide the specifically enumerated information to a consumer upon the attempted collection of a debt. See [United States v. Lewis, 67 F.3d 225, 228 \(9th Cir.1995\)](#) ("[C]anons of statutory construction dictate that if the language of a statute is clear, we look no further than that language in determining the statute's meaning."). Therefore, according to the Defendant, the FDCPA notice requirements are satisfied by the simple enclosure of the specific rights enumerated in the statute.

[19][20] The Court rejects the Defendant's position. Although the plain language of the statute is controlling as to the substantive information that must be provided through the notice, the manner and sufficiency of the notice may still be set and weighed by the courts. As stated above, the long standing rule in this Circuit and others is that the FDCPA requires effective notice to be conveyed pursuant to the least sophisticated consumer standard. See [Jeter, 760 F.2d at 1175](#); [Wilson, 225 F.3d at 354](#). As Judge Posner explained in [Bartlett](#),

[I]t is implicit that the debt collector may not defeat the statute's purpose by making the required disclosures in a form or within a context in which they are unlikely to be understood by the *536 unsophisticated debtors who are the particular objects of the statute's solicitude.

[128 F.3d at 500](#).

[21] For the reasons discussed, the Defendant's FDCPA Notice violated [§ 1692g](#) since it did not provide effective notice consistent with the applicable least sophisticated consumer standard. For guidance, the Court offers the following simple suggestion for satisfying the statute where inclusion of a Validation Notice with other documents might lead a consumer to be uncertain or indefinite as to his rights: to prevent confusion, a debt collector should provide clarity. Specifically, if two or more messages would deliver mixed guidance to a least sophisticated consumer as to his rights under the FDCPA, reconciling language ought to be utilized to provide effective notice.

Other courts have found it appropriate to provide some direction to practitioners in analyzing what constitutes effective notice under the FDCPA, including, in particular, the Seventh Circuit's comprehensive discussion in [Bartlett](#). See [128 F.3d 497](#). There, Judge Posner proposed that reconciling language between two seemingly contradictory or confusing provisions setting deadlines for a debtor to act could remedy the overshadowing. See [id. at 501-02](#). In fact, the [Bartlett](#) opinion set forth a hypothetical letter which would act as a safe harbor if a debt collector chose to include the FDCPA notice provision and a seven day demand for payment of the amount owed in the same document. See [id.](#) The hypothetical letter ends with the following statement:

The law does not require me [the debt collector] to wait until the end of the thirty-day period before suing you [the consumer] to collect this debt. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period which begins with your receipt of this letter, the law requires me to suspend my efforts (through litigation or otherwise) to collect the debt until I mail the requested information to you.

[Id. at 502.](#)

This Court affirmatively approves the Seventh Circuit's safe harbor in [Bartlett](#). Similar reconciling language included on page eight of the Initial Communication could have avoided the statutory violation in this proceeding, providing the required notice without sacrificing efficiency. [FN3] Such language would harmonize and explain the consumer's obligations in responding to the lawsuit when, in the same communication, the consumer is advised of his statutory rights under the FDCPA.

[FN3] Once again, it should be noted that as stated in fn. 1, there are other statutory considerations applicable to a debt collector under [§ 1692](#), and the instant discussion is limited to [§ 1692g](#).

In sum, the Court finds that the notice provided by the Defendant in the Initial Communication was not effective in light of the applicable hypothetical least sophisticated consumer standard. In coming to this result, the Court is guided by the United States Supreme Court's admonition in [FTC v. Colgate- Palmolive Co.](#), where in a case also involving consumer protection issues, the Supreme Court stated:

[I]t does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.

[380 U.S. 374, 393, 85 S.Ct. 1035, 13 L.Ed.2d 904 \(1965\)](#) (internal quotation marks omitted) quoting [Boyce Motor Lines, Inc. v. United States](#), [342 U.S. 337, 340, 72 S.Ct. 329, 96 L.Ed. 367 \(1952\)](#). *537 The Defendant took the risk, crossed the line and violated federal law.

Damages

[22][23] A debt collector who violates the FDCPA is liable for actual damages sustained as a result of the violation ([§ 1692k\(a\)\(1\)](#)), additional damages (the "Statutory Damages") up to \$1,000.00 ([§ 1692k\(a\)\(2\)\(A\)](#)) and the plaintiff's costs and reasonable attorney's fees ([§ 1692k\(a\)\(3\)](#)). The statute sets forth certain non-exhaustive factors for a court to consider in determining the amount of liability for actual and statutory damages, namely (1) the frequency and persistence of noncompliance; (2) the nature of the noncompliance; and (3) the extent to which the noncompliance was intentional. See [§ 1692k\(b\)](#).

[24][25] These factors are not applicable to the award of costs and attorney's fees. As summarized by the Third Circuit in [Graziano](#).

Given the structure of [\[§ 1692k\]](#), attorney's fees should *not* be construed as a special or discretionary remedy; rather the [FDCPA] *mandates* an award of attorney's fees as a means of fulfilling Congress's intent that the [FDCPA] should be enforced by debtors acting as private attorneys general. [950 F.2d at 113](#) (emphasis added).

[26] In determining the amount of damages in the instant proceeding, the Court first finds that the Plaintiff neither

alleged nor submitted proof of any actual damages. In applying the factors to determine whether to award Statutory Damages, the Court finds that the Defendant ordinarily and regularly violated the statutory requirements of [§ 1692g](#). In fact, the Defendant emphasized that it regularly included a Validation Notice in the same form of the Initial Communication served on the Plaintiff in this case. Indeed, the Defendant stressed the hardship which would fall on collection attorneys if they were required to change the form and manner in which they must convey effective notice. Next, the Court finds that the nature of the noncompliance was moderate. The Defendant provided the notice required by the statute, but failed to meet the hypothetical least sophisticated standard because the notice was overshadowed by other information in the Initial Communication.

Finally, the Court finds that the violation was, if not intentional, then measured. As stated earlier, the Defendant in this action is a law firm and the abundant case law, including numerous opinions from federal circuit courts, clearly sets forth the standard upon which a debt collector must operate. Moreover, while it is on opinion from another circuit, Defendant could easily have looked to Judge Posner's "safe haven" language in [Bartlett](#), see [128 F.3d at 501](#), and included similar language adequately explaining the Debtor's rights upon receipt of both a summons and the Validation Notice. It chose not to do so and must now face the consequences.

The Court concludes that the Defendant is liable for the 1,000.00 maximum amount of Statutory Damages and further liable for the costs and attorney's fees incurred in the prosecution of this proceeding.

Having concluded that Defendant violated [15 U.S.C. § 1692g](#), it is

ORDERED as follows:

1. The Debtor's Motion for Summary Judgment is **GRANTED**.
2. The Defendant's Motion for Summary Judgment is **DENIED**.
3. The debtor is awarded statutory damages in the amount of \$1,000.00 plus the costs of the action, together with a reasonable attorney's fee to be determined *538 by the Court. No later than June 18, 2001, Plaintiff's counsel shall file a motion to award fees and costs together with an exhibit detailing the time expended and costs incurred in prosecuting the complaint in this proceeding. The Defendant shall have until July 3, 2001 to file an objection and request for hearing, failing which the Plaintiff may submit an order awarding the fees and costs sought in the motion.
4. The Court will enter a separate Judgment after it fixes the amount of fees and costs to be awarded.

ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

On January 8, 2001 and February 12, 2001, the Court conducted hearings on the Debtor's Motion for Summary Judgment and the Defendant's Cross-Motion for Summary Judgment and took the matter under advisement. After fully considering the parties' briefs and the relevant case law, on May 30, 2001, the Court entered a Memorandum Opinion and Order Granting the Debtor's Motion for Summary Judgment and Denying the Defendant's Cross Motion for Summary Judgment (the "Memorandum Opinion"). On June 11, 2001, the Defendant filed a Motion to Alter or Amend Judgment (the "Motion for Rehearing"). After reviewing the findings of fact and the conclusions of law in the Memorandum Opinion, the relevant legal standards for rehearing and the grounds for relief set forth in the Motion for Rehearing, the Court finds that the Motion for Rehearing should be denied.

[\[27\]\[28\]\[29\]](#) "A motion for reconsideration should raise new issues, not merely address issues litigated previously." [Socialist Workers Party v. Leahy](#), 957 F.Supp. 1262, 1263 (S.D.Fla.1997) (citing [Government Personnel Services, Inc. v. Government Personnel Mutual Life Ins. Co.](#), 759 F.Supp. 792, 793 (M.D.Fla.1991)).

The motion should also demonstrate why the court should reconsider its prior decisions, and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. The Court will not reconsider its decision when a motion does not raise new issues, but only relitigates what has already [been] found to be lacking. [Gelles v. Skrotsky](#), 15 F.Supp.2d. 1293, 1294 (M.D.Fla.1998) (citations omitted).

[\[30\]\[31\]](#) Courts generally consider only three grounds that may justify granting reconsideration of an order: "1) an

intervening change in controlling law; 2) the availability of new evidence; and 3) the need to correct clear error or manifest injustice." [*Securities and Exchange Commission v. Seahawk Deep Ocean Technology*, 74 F.Supp.2d 1188, 1192 \(M.D.Fla.1999\)](#) (citations omitted). Furthermore, "[i]n the interests of finality and conservation of scarce judicial resources, reconsideration of a previous order is an extraordinary remedy to be employed sparingly." *Id.*

[32] The Defendant makes three arguments, each of which fail to warrant modification of the Memorandum Opinion under the foregoing legal standard. First, the Defendant argues that it should not be held responsible for the strong language included in the summons for it is the exact language approved by the Florida Supreme Court for use in a summons. See [Form 1.902, Florida Rules of Civil Procedure](#). The Court rejects this contention, finding that it overlooks the focus of the Memorandum Opinion. Set alone, this Court finds no problem with the language approved by the Florida Supreme Court for use in a summons. The problem arose in the instant case because the summons was included in a single enclosure which *539 also contained a validation notice required under [§ 1692g](#) of the Fair Debt Collection Practices Act (the "FDCPA"). Case law has determined that only effective notice pursuant to a least sophisticated consumer standard may satisfy the notice requirements of [§ 1692g](#). See [*Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1173 \(11th Cir.1985\)](#); [*Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 \(2d Cir.1996\)](#). Derived therefrom, courts have ruled that language which would confuse a least sophisticated consumer or render the consumer uncertain on how to proceed would obviate such notice, thus violating the statute. See [*Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 \(7th Cir.2000\)](#); [Russell, 74 F.3d at 35](#). In short, the fact that the Defendant used an approved form summons does not affect the Court's decision. It is not the specific language in the summons that renders the notice ineffective; it is its coupling with the validation notice which created liability in the instant case.

Second, the Defendant argues that the Court did not consider [*Ferree v. Marianos*, 1997 WL 687693 \(10th Cir.1997\)](#). In fact, the Court did review [Ferree](#) prior to issuing the Memorandum opinion. In [Ferree](#), there is a dearth of information relating to the specifics of the makeup of the enclosure received by the consumer. The only provided facts are that both the validation notice and the foreclosure pleadings arrived to the consumer in the same envelope. See [Ferree, 1997 WL 687693, at *2](#). Moreover, as stated in the opinion, the plaintiff in [Ferree](#) conceded that the 20 day response date on the summons and 30 day period to dispute the debt were not mutually exclusive. There are numerous facts which distinguish the instant case from [Ferree](#), including the harsh language on the first page of the summons and the fact that the FDCPA Notice was on the eighth page of a sixteen page enclosure. These factual differences, along with the weight of the other circuit cases cited in the Memorandum Opinion resulted in the Court considering [Ferree](#), but not deeming it sufficiently persuasive to sustain the Defendant's position.

This Court's decision not to cite to or discuss [Ferree](#) in the Memorandum Opinion was not an oversight. [Ferree](#) is an unpublished decision which contained the following language on p. 1, f.n.* of the opinion:

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The Court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir.R. 36.3

[Tenth Circuit Rule 36.3](#) provides in pertinent part:

- (B) Citation of an unpublished decision is disfavored. But an unpublished decision may be cited if:
 - (1) it has persuasive value with respect to a material issue that has not been in a published opinion; and
 - (2) it would assist the court in its disposition.

Given the very limited discussion of the relevant issue in [Ferree](#) and in light of the several published decisions from other circuit courts of appeal, this Court did not find it necessary or appropriate under the 10th Circuit rules to cite [Ferree](#) in the Memorandum Opinion.

Third, the Defendant argues that the Court misinterpreted the law in stating that the time period to respond to the complaint is "statutorily extended" upon a request by a consumer for the validation of his debt. The Defendant argues that the statute does not specifically extend the *540 Debtor's time to answer, but rather precludes the debt collector from seeking a default. This appears to be the Defendant's third interpretation of how a validation request would have affected the Debtor's obligation to answer the complaint. As noted in the Memorandum Opinion, at the January 8, 2001 hearing, the Defendant's attorney could not state with certainty when the Debtor would have been required to answer the Complaint if he exercised his rights under the validation notice. At the February 12th hearing, counsel suggested that if uncertain, the Debtor could file an answer on the 30th day. Now, the Defendant

appears to be arguing that the Defendant was *required* to answer in 30 days, arguing that the statute affected only the Defendant's right to proceed with collection if a validation letter was sent, not the Debtor's obligation to answer.

Rather than supporting a request for reconsideration, the Court finds this argument to be yet a further indication of the problem created by the Defendant's decision to include the FDCPA validation notice with the summons and complaint without any language reconciling the potential confusion. Whether the Defendant's interpretation of 1692g(b) is correct or not, it does not change the result. Even if (which is not conceded) the Court was incorrect in stating in its Memorandum Opinion that "as a matter of law, [the time to answer] is statutorily extended if there is a request for the validation of his debt," the Court's conclusion is unaffected. The notice provided by the Defendant in the Initial Communication was not effective. See [Lamar Advertising of Mobile, Inc. v. City of Lakeland, Florida, 189 F.R.D. 480, 488 \(M.D.Fla.1999\)](#) (A motion to reconsider must "set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.") (internal citations omitted.)

In sum, the Plaintiff has raised nothing new in the Motion for Rehearing. There has been no intervening change in the law, nor the presentation of new evidence. *Williamson* and *Alton* are directly on point and binding on this Court. There has been no manifest injustice. Therefore, it is--

ORDERED that the Defendant's Motion for Rehearing is denied.

Bank Deposits—How They Expand or Contract

Let us assume that expansion in the money stock is desired by the Federal Reserve to achieve its policy objectives. One way the central bank can initiate such an expansion is through purchases of securities in the open market. Payment for the securities adds to bank reserves. Such purchases (and sales) are called "open market operations."

How do open market purchases add to bank reserves and deposits? Suppose the Federal Reserve System, through its trading desk at the Federal Reserve Bank of New York, buys \$10,000 of Treasury bills from a dealer in U.S. government securities.³ In today's world of computerized financial transactions, the Federal Reserve Bank pays for the securities with an "electronic" check drawn on itself.⁴ Via its "Fedwire" transfer network, the Federal Reserve notifies the dealer's designated bank (Bank A) that payment for the securities should be credited to (deposited in) the dealer's account at Bank A. At the same time, Bank A's reserve account at the Federal Reserve is credited for the amount of the securities purchase. The Federal Reserve System has added \$10,000 of securities to its assets, which it has paid for, in effect, by creating a liability on itself in the form of bank reserve balances. These reserves on Bank A's books are matched by \$10,000 of the dealer's deposits that did not exist before. See illustration 1.

How the Multiple Expansion Process Works

If the process ended here, there would be no "multiple" expansion, i.e., deposits and bank reserves would have changed by the same amount. However, banks are required to maintain reserves equal to only a fraction of their deposits. Reserves in excess of this amount may be used to increase earning assets — loans and investments. Unused or excess reserves earn no interest. Under current regulations, the reserve requirement against most transaction accounts is 10 percent.⁵ Assuming, for simplicity, a uniform 10 percent reserve requirement against all transaction deposits, and further assuming that all banks attempt to remain fully invested, we can now trace the process of expansion in deposits which can take place on the basis of the additional reserves provided by the Federal Reserve System's purchase of U.S. government securities.

The expansion process may or may not begin with Bank A, depending on what the dealer does with the money received from the sale of securities. If the dealer immediately writes checks for \$10,000 and all of them are deposited in other banks, Bank A loses both deposits and reserves and shows no net change as a result of the System's open market purchase. However, other banks have received them. Most likely, a part of the initial deposit will remain with Bank A, and a part will be shifted to other banks as the dealer's checks clear.

It does not really matter where this money is at any given time. The important fact is that these deposits do not disappear. They are in some deposit accounts at all times. All banks together have \$10,000 of deposits and reserves that they did not have before. However, they are not required to keep \$10,000 of reserves against the \$10,000 of deposits. All they need to retain, under a 10 percent reserve requirement, is \$1,000. The remaining \$9,000 is "excess reserves." This amount can be loaned or invested. See illustration 2.

If business is active, the banks with excess reserves probably will have opportunities to loan the \$9,000. Of course, they do not really pay out loans from the money they receive as deposits. If they did this, no additional money would be created. What they do when they make loans is to accept promissory notes in exchange for credits to the borrowers' transaction accounts. Loans (assets) and deposits (liabilities) both rise by \$9,000. Reserves are unchanged by the loan transactions. But the deposit credits constitute new additions to the total deposits of the banking system. See illustration 3.

³Dollar amounts used in the various illustrations do not necessarily bear any resemblance to actual transactions. For example, open market operations typically are conducted with many dealers and in amounts totaling several billion dollars.

⁴Indeed, many transactions today are accomplished through an electronic transfer of funds between accounts rather than through issuance of a paper check. Apart from the timing of posting, the accounting entries are the same whether a transfer is made with a paper check or electronically. The term "check," therefore, is used for both types of transfers.

⁵For each bank, the reserve requirement is 3 percent on a specified base amount of transaction accounts and 10 percent on the amount above this base. Initially, the Monetary Control Act set this base amount — called the "low reserve tranche" — at \$25 million, and provided for it to change annually in line with the growth in transaction deposits nationally. The low reserve tranche was \$41.1 million in 1991 and \$42.2 million in 1992. The Garn-St Germain Act of 1982 further modified these requirements by exempting the first \$2 million of reservable liabilities from reserve requirements. Like the low reserve tranche, the exempt level is adjusted each year to reflect growth in reservable liabilities. The exempt level was \$3.4 million in 1991 and \$3.6 million in 1992.

Two Faces of Debt

Debt provides

... a transfer function

The continuing production of more and better goods and services is characteristic of an expanding economy. A great amount of investment in new equipment and facilities is required for this expansion. People also invest when they purchase houses and other durable goods, and governments invest on behalf of the public in such facilities as highways, water systems, and schools. The funds for this new investment come mainly from savings.

Sometimes the saver and investor are the same—as when a person uses his or her savings to pay for construction of a house or a company finances plant and equipment with retained earnings. Often, however, businesses and individuals buying long-lived goods use credit to cover at least part of their purchases. Because the accumulation of personal savings and the expenditure of these funds are largely separate processes performed by different people or groups, a convenient way of transferring funds from savers to users is necessary.

While some people use their savings to buy real estate, durable goods, or corporate stock, most people use at least part of their savings to acquire debt assets of one kind or another. They may lend directly to other individuals or they may purchase government or business securities, but a large part of personal savings finds its way into productive investment through financial institutions.

Since both individual savers and financial intermediaries show strong preferences for debt assets, people who need funds often find it easier and cheaper to acquire them by borrowing than by issuing capital stock. The growth in debt, therefore, is an essential part of economic growth, and a large part of savings is put to productive use through the lender-borrower channel.

There are never enough savings to satisfy everyone who would like to use credit. The available supply is rationed through interest rates—the price of credit. With allowance for the differences in interest rates due to varying degrees of risk, increased competition for funds can raise interest rates beyond the levels that conservative borrowers will pay or inefficient producers can afford to pay (in the long run). This tends to direct savings and the real resources they can command into their most productive uses.

The flow of savings and the way these funds return to the income stream through creation of debt are shown in the diagram on page 18. If any channel is cut off, future income is reduced.

... a money creation function

Debt does more than simply transfer idle funds to where they can be put to use—merely reshuffling existing funds in the form of credit. It

Let us all
be happy and
live within
our means,
even if we
have to
borrow the
money to
do it.

Artemus
Ward

Debt is
the prolific
mother of
folly and
crime

Benjamin
Disraeli

also provides a means of creating entirely new funds—funds needed to finance the greater volume of new projects and spending that contribute to economic growth.

Again, checkable deposits in commercial banks and savings institutions are debts—liabilities of these depository institutions to their depositors. But checkable deposits are also the money used for most expenditures. How do these deposit liabilities arise?

For an individual institution, they arise typically when a depositor brings in currency or checks drawn on other institutions. The depositor's balance rises, but the currency he or she holds or the deposits someone else holds are reduced a corresponding amount. The public's total money supply is not changed.

But a depositor's balance also rises when the depository institution extends credit—either by granting a loan to or buying securities from the depositor. In exchange for the note or security, the lending or investing institution credits the depositor's account or gives a check that can be deposited at yet another depository institution. In this case, no one else loses a deposit. The total of currency and checkable deposits—the money supply—is increased. New money has been brought into existence by expansion of depository institution credit. Such newly created funds are in addition to funds that all financial institutions provide in their operations as intermediaries between savers and users of savings.

But individual depository institutions cannot expand credit and create deposits without limit. Furthermore, most of the deposits they create are soon transferred to other institutions. A deposit created through lending is a debt that has to be paid on demand of the depositor, just the same as the debt arising from a customer's deposit of checks or currency in a bank. By writing checks, the borrower can spend the deposit acquired by borrowing. The recipients of these checks deposit them in their depository institutions. In turn, these checks are presented for payment to the institution on which they are drawn. As a result, the newly created deposit can be shifted out of the originating institution, but it remains part of the money supply until the debt is repaid.

No effort is made here to give a detailed explanation of the creation of money through the expansion of deposits and depository institution credit.³ For present purposes, it is enough to point out that institutions can make additional loans and investments, and thus increase checkable deposit money, to the extent that they have required amount of reserves against the increased deposits. The amount of reserves, in turn, is controlled by the Federal Reserve System—the central bank of the United States.

A national
debt, if it
is not
excessive,
will be to us
a national
blessing.

Alexander
Hamilton

At the heart
of our national
finances is
a simple,
inescapable
fact . . . that our
government—
any government—
like individuals
and families—
cannot spend
and continue
to spend more
than they take
in without
inviting disaster.

Clarence
Cannon

³ For a description of this process, see *Modern Money Mechanics: A Workbook on Bank Reserves and Deposit Expansion*, available on request from the Public Information Center, Federal Reserve Bank of Chicago.

24 ADDITIONAL LAW

Fair Credit Billing from <http://www.ftc.gov/bcp/conline/pubs/credit/fcb.htm>

Have you ever been billed for merchandise you returned or never received? Has your credit card company ever charged you twice for the same item or failed to credit a payment to your account? While frustrating, these errors can be corrected. It takes a little patience and knowledge of the dispute settlement procedures provided by the Fair Credit Billing Act (FCBA).

The law applies to "open end" credit accounts, such as credit cards, and revolving charge accounts - such as department store accounts. It does not cover installment contracts - loans or extensions of credit you repay on a fixed schedule. Consumers often buy cars, furniture and major appliances on an installment basis, and repay personal loans in installments as well.

What types of disputes are covered?

The FCBA settlement procedures apply only to disputes about "billing errors." For example:

- unauthorized charges. Federal law limits your responsibility for unauthorized charges to \$50;
- charges that list the wrong date or amount;
- charges for goods and services you didn't accept or weren't delivered as agreed;
- math errors;
- failure to post payments and other credits, such as returns;
- failure to send bills to your current address - provided the creditor receives your change of address, in writing, at least 20 days before the billing period ends; and
- charges for which you ask for an explanation or written proof of purchase along with a claimed error or request for clarification.

To take advantage of the law's consumer protections, you must:

- write to the creditor at the address given for "billing inquiries," not the address for sending your payments, and include your name, address, account number and a description of the billing error.
- send your letter so that it reaches the creditor within 60 days after the first bill containing the error was mailed to you.

Send your letter by certified mail, return receipt requested, so you have proof of what the creditor received. Include copies (not originals) of sales slips or other documents that support your position. Keep a copy of your dispute letter.

The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving your letter.

Date

Your Name

Your Address

Your City, State, Zip Code

Your Account Number

Name of Creditor

Billing Inquiries

Address

City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute a billing error in the amount of \$_____ on my account. The amount is inaccurate because (describe the problem). I am requesting that the error be corrected, that any finance and other charges related to the disputed amount be credited as well, and that I receive an accurate statement.

Enclosed are copies of (use this sentence to describe any enclosed information, such as sales slips, payment records) supporting my position. Please investigate this matter and correct the billing error as soon as possible.

Sincerely,
Your name
Enclosures: (List what you are enclosing.)

What happens while my bill is in dispute?

You may withhold payment on the disputed amount (and related charges), during the investigation. You must pay any part of the bill not in question, including finance charges on the undisputed amount.

The creditor may not take any legal or other action to collect the disputed amount and related charges (including finance charges) during the investigation. While your account cannot be closed or restricted, the disputed amount may be applied against your credit limit.

Will my credit rating be affected?

The creditor may not threaten your credit rating or report you as delinquent while your bill is in dispute. However, the creditor may report that you are challenging your bill. In addition, the Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants who exercise their rights, in good faith, under the FCBA. Simply put, you cannot be denied credit simply because you've disputed a bill.

What if...**...the bill is incorrect?**

If your bill contains an error, the creditor must explain to you - in writing - the corrections that will be made to your account. In addition to crediting your account, the creditor must remove all finance charges, late fees or other charges related to the error.

If the creditor determines that you owe a portion of the disputed amount, you must get a written explanation. You may request copies of documents proving you owe the money.

...the bill is correct?

If the creditor's investigation determines the bill is correct, you must be told promptly and in writing how much you owe and why. You may ask for copies of relevant documents. At this point, you'll owe the disputed amount, plus any finance charges that accumulated while the amount was in dispute. You also may have to pay the minimum amount you missed paying because of the dispute.

If you disagree with the results of the investigation, you may write to the creditor, but you must act within 10 days after receiving the explanation, and you may indicate that you refuse to pay the disputed amount. At this point, the creditor may begin collection procedures. However, if the creditor reports you to a credit bureau as delinquent, the report also must state that you don't think you owe the money. The creditor must tell you who gets these reports.

...the creditor fails to follow the procedure?

Any creditor who fails to follow the settlement procedure may not collect the amount in dispute, or any related finance charges, up to \$50, even if the bill turns out to be correct. For example, if a creditor acknowledges your complaint in 45 days - 15 days too late - or takes more than two billing cycles to resolve a dispute, the penalty applies. The penalty also applies if a creditor threatens to report - or improperly reports - your failure to pay to anyone during the dispute period.

An important caveat

Disputes about the quality of goods and services are not "billing errors," so the dispute procedure does not apply. However, if you buy unsatisfactory goods or services with a credit or charge card, you can take the same legal actions against the card issuer as you can take under state law against the seller.

To take advantage of this protection regarding the quality of goods or services, you must:

- have made the purchase (it must be for more than \$50) in your home state or within 100 miles of your current billing address;
- make a good faith effort to resolve the dispute with the seller first.

The dollar and distance limitations don't apply if the seller also is the card issuer - or if a special business relationship exists between the seller and the card issuer.

Other billing rights

Businesses that offer "open end" credit also must:

- give you a written notice when you open a new account - and at certain other times - that describes your right to dispute billing errors;
- provide a statement for each billing period in which you owe - or they owe you - more than one dollar;
- send your bill at least 14 days before the payment is due - if you have a period within which to pay the bill without incurring additional charges;
- credit all payments to your account on the date they're received, unless no extra charges would result if they failed to do so. Creditors are permitted to set some reasonable rules for making payments, say setting a reasonable deadline for payment to be received to be credited on the same date; and
- promptly credit or refund overpayments and other amounts owed to your account. This applies to instances where your account is owed more than one dollar. Your account must be credited promptly with the amount owed. If you prefer a refund, it must be sent within seven business days after the creditor receives your written request. The creditor must also make a good faith effort to refund a credit balance that has remained on your account for more than six months.

Suing the creditor

You can sue a creditor who violates the FCBA. If you win, you may be awarded damages, plus twice the amount of any finance charge - as long as it's between \$100 and \$1,000. The court also may order the creditor to pay your attorney's fees and costs.

If possible, hire a lawyer who is willing to accept the amount awarded to you by the court as the entire fee for representing you. Some lawyers may not take your case unless you agree to pay their fee - win or lose - or add to the court-awarded amount if they think it's too low.

Reporting FCBA violations

The Federal Trade Commission (FTC) enforces the FCBA for most creditors except banks. The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at www.ftc.gov. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FAIR DEBT COLLECTION PRACTICES ACT UPDATE -- 1999 *

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September 25, 1999

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I. INTRODUCTION

This article provides an overview of recent developments concerning the application of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA") (the full text is in an appendix). The statute regulates the conduct of "debt collectors" in collecting "debts" owed or allegedly owed by "consumers." It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

In enacting the FDCPA, Congress recognized the "universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is minuscule [sic] ... [T]he vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce."

The FDCPA is liberally construed in favor of the consumer to effectuate its purposes.

Statutory damages are recoverable for violations, whether or not the consumer proves actual damages.

II. STATUTORY COVERAGE AND DEFINITIONS

WHAT IS A "DEBT"

"Debt" is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. §1692a(5) (emphasis added). Business and agricultural loans are therefore not "debts" covered by the FDCPA. A personal guaranty of a business loan is also not covered.

The following are areas of recent litigation activity concerning what is a "debt":

DISHONORED CHECKS

In recent years there has been a substantial amount of litigation concerning whether dishonored checks are "debts" within the meaning of the FDCPA. The statutory definitions clearly encompass dishonored checks, in that liability on such a check is an "alleged obligation . . . to pay money arising out of a transaction", subject to the FDCPA if the "property . . . which [is] the subject of the transaction" was "primarily for personal, family, or household purposes."

The only appellate courts to have addressed the issue have held that dishonored checks are debts. In Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., a divided Seventh Circuit held:

Resorting to legislative history is unnecessary here, however, because the language in the statute's definition of "debt" is plain.

A "debt," the collection of which is governed by the FDCPA, is defined in the Act as:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. §1692a(5). Appellants would have us read into this definition the additional requirement that the debt flow from a specific type of consumer transaction -- one involving the offer or extension of credit. However, we see no language in the Act's definition of "debt" (or any other section of the Act) that mentions, let alone requires, that the debt arise from an extension of credit. Nor do we find patent ambiguity in the definition of "debt." The definition is not "beset with internal inconsistencies [or] . . . burdened with vocabulary that escapes common understanding." [citation] In the absence of ambiguity, our inquiry is at an end, and we must enforce the congressional intent embodied in the plain wording of the statute. [citation]

On the contrary, the plain language of the Act defines "debt" quite broadly as "any obligation to pay arising out of a [consumer] transaction." In examining this definition, we first focus on the clear and absolute language in the phrase, "any obligation to pay." Such absolute language may not be alternatively read to reference only a limited set of obligations as appellants suggest. [citation] As long as the transaction creates an obligation to pay, a debt is created. We harbor no doubt that a check evidences the drawer's obligation to pay for the purchases made with the check, and should the check be dishonored, the payment obligation remains. [citation]

Bass was followed by a later Seventh Circuit decision, Ryan v. Wexler & Wexler, by the Ninth Circuit, in Charles v. Lundgren & Associates, P.C. by the Eighth Circuit, in Duffy v. Landber, and by the Tenth Circuit in Snow v. Riddle. The Sixth Circuit and the Ohio Court of Appeals, in two related cases, also held that a dishonored check is covered. Remarkably, the Sixth Circuit decision was marked not for publication.

Finally, an Eleventh Circuit decision addressing whether obligations arising from an auto rental are "debts" approved the reasoning of Bass and held that an extension of credit is not required under the FDCPA. A subsequent Eleventh Circuit decision states in dicta that a check is a debt.

The overwhelming majority of lower court decisions either hold that dishonored checks issued by the debtor for consumer goods or services fall within the FDCPA or apply the FDCPA to such debts. The legislative history of the FDCPA clearly states that dishonored checks are covered. The Report of the House Banking Committee accompanying H.R. 5294 states:

Opponents of this legislation claim that, regardless of the amount of consumer harassment or deception, there should be no legislation because the number of unpaid bills and bad checks keeps increasing. This reasoning is misleading. The issue is not one of uncollected debts, but rather whether or not consumers must lose their civil rights and be terrorized and abused by unethical debt collectors.

The House Report also stated that "the committee intends that the term 'debt' include consumer obligations paid by check or other non-credit consumer obligations."

Similarly, the hearings on the FDCPA contain discussion of the effect of the proposed legislation on checks. Indeed, the American Collectors Association representative submitted a statement which complained that the proposed legislation "would make it more difficult for financial collection services to collect or attempt to collect bad checks."

The Federal Trade Commission has also consistently held that checks are subject to the FDCPA. The FTC Staff Commentary on the FDCPA illustrates the definition of "debt" with the example of an NSF check used to purchase goods or services intended for household or personal use. The Commission itself has adopted this position in a ruling denying a petition to quash a subpoena served on a debt collector

specializing in dishonored checks. The FTC has also brought several civil actions against debt collectors based on attempts to collect dishonored checks.

However, debt collectors persistently claim that a dishonored check is not a "debt," and occasional cases have agreed with them. Their basic argument is that the definition of "credit" in the Truth in Lending Act ("TILA") should be used to limit the definition of "debt" in the FDCPA. They rely on Zimmerman v. HBO Affiliate Group, for this proposition. In Zimmerman, the Third Circuit affirmed dismissal of plaintiff's FDCPA complaint based on a demand letter sent to persons who allegedly intercepted cable signals. The court found that the illegal interception of signals was not a consensual "transaction" and therefore was not covered by the FDCPA's definition of debt.

We find that the type of transaction which may give rise to a "debt" as defined in the FDCPA, is the same type of transaction as it dealt with in all other subchapters of the Consumer Credit Protection Act, i.e., one involving the offer or extension of credit to a consumer. Specifically it is a transaction in which a consumer is offered or extended to acquire "money property, insurance, or services" which are "primarily for household purposes" and to defer payment.

There was no issue as to whether issuance of a check to pay for goods or services is an FDCPA "transaction."

The Zimmerman dicta regarding the extension of credit is wrong. While the Zimmerman court referred generally to FDCPA "transactions" as involving the same sort of circumstances as other matters regulated by the Consumer Credit Protection Act, the CCPA includes far more than just TILA and clearly encompasses consensual "transactions" that do not involve loans or credit sales. The FDCPA definition of "creditor" is clearly broader than the TILA definition, in that it includes not only someone who "offers or extends credit" but anyone to "whom a debt is owed." For this reason, four other Courts of Appeals have disapproved the implementation of the above-quoted language in Zimmerman.

Check guaranty companies are statutory "debt collectors" because the check was in default at the time it was acquired by the guaranty company.

The statutory liability of a prior endorser on a check which is deposited or cashed and returned for insufficient funds may not be a "debt," if there is no purchase of goods or services for consumer purposes.

RENT, CONDOMINIUM ASSESSMENTS

An issue closely analogous to the dishonored check issue is presented by attempts to collect rent and condominium assessments. There is no extension of credit in the sense of incurring an obligation and repaying it over time with interest. Nevertheless, the consumer incurs an obligation to pay money in the future as part of a consensual transaction.

In Newman v. Boehm, Pearlstein & Bright, the Seventh Circuit had no difficulty in concluding that condominium assessments were FDCPA "debts:"

By paying the purchase price and accepting title to their home, the Ritters became bound by the Declaration of Covenants, Conditions, and Restrictions of their homeowners association, which required the payment of regular and special assessments imposed by the association. . . . It is therefore clear that the obligation to pay in these circumstances arose in connection with the purchase of the homes themselves, even if the timing and amount of particular assessments was yet to be determined. . . . Because the statute's definition of a "debt" focuses on the transaction creating the obligation to pay (Bass, 111 F.3d at 1325), it would seem to make little difference under that definition that unit owners generally are required to pay their assessments first, before any goods or services are provided by the association. That would only be important if the statute required a credit obligation, which Bass says it does not. 111 F.3d at 1326. Regardless of whether the assessment or the service comes first, the obligation to pay is derived from the purchase transaction itself. The assessments at issue in this case therefore qualify as "obligations of a consumer to pay money arising out of a transaction." 15 U.S.C. §1692a(5).

Other recent decisions reach the same conclusion.

Other claims for money pursuant to a lease are also covered. In Brown v. Budget Rent-A-Car Systems, Inc., the Eleventh Circuit held that a claim by a car rental company against a consumer renter for property damage to the rented vehicle was covered by the FDCPA, even though no extension of credit was involved:

Does a "debt" require the extension of credit? We start with the plain language of the statute. See Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996). The only relevant reference to an extension of credit in the Act is in the definition of "creditor." The Act defines "creditor" in the disjunctive. As "a general rule, the use of a disjunctive in a statute indicates alternatives and requires that those alternatives be treated separately. Hence, language in a clause following a disjunctive is considered inapplicable to the subject matter of the preceding clause." Quindlen v. Prudential Ins. Co. of America, 482 F.2d 876, 878 (5th Cir. 1973).

The Seventh Circuit recently provided a thorough analysis of the definition of debt as used in the FDCPA. In Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., 111 F.3d 1322 (7th Cir. 1997), the parties disputed whether a dishonored check created debt that would invoke the protections of the FDCPA. The Bass court found that the payment obligation which arose from a dishonored check constitutes a debt as defined in the Act. Id. at 1325. The court commented on the broad definition of debt in the Act and reasoned that "as long as the transaction creates an obligation to pay, a debt is created." Id. We agree with that reading of the statute. Extension of credit is not a prerequisite to the existence of a debt covered by the FDCPA. Budget's assertion that Brown is obligated as a result of consumer transaction suffices to bring the obligation within the ambit of the FDCPA. See 15 U.S.C. §1692a(5)

It should be noted that the claim was against the renter: claims against tortfeasors who have no contractual relationship with the creditor are generally not thought to be covered by the FDCPA.

In Romea v. Heiberger & Associates, the court held that unpaid apartment rentals were a "debt," no extension of credit being necessary under Bass. The court further held that a statutory eviction notice is subject to the Act:

Defendant argues also that the Section 711 notice was not a communication to collect a debt within the meaning of the statute. Section 1692a(11) defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium. In view of the fact that the Section 711 notice demanded payment on pain of the commencement of eviction proceedings, there is no colorable argument that it does not satisfy the FDCPA's sweeping definition of communication.

In Travieso v. Gutman, Judge Weinstein of the Eastern District of New York likewise held that apartment rent was a "debt" to which the FDCPA applied. "[R]ent clearly fits the definition of debt embodied in the FDCPA." However, there are several district court decisions and a Florida appellate decision to the contrary.

http://www.law.cornell.edu/topics/consumer_credit.html

Federal Material

Federal Statutes

- Consumer Credit Protection Act - [15 U.S. Code, Chapter 41](#)
- Truth In Lending Act - [15 U.S.C. § 1601](#)
- Fair Credit Reporting Act - [15 U.S.C. §§ 1681](#)
- Fair Credit Billing Act - [15 U.S.C. § 1637](#)
- Equal Credit Opportunity Act - [15 U.S.C. §§ 1691 - 1691e](#)
- The Fair Credit Debt Collection Act - [15 U.S.C. §§ 1692 - 1692o](#)

Federal Agency Regulations

- Code of Federal Regulations: [12 C.F.R.](#) - Banks and Banking

Federal Judicial Decisions

- U.S. Supreme Court: [Recent Decisions on Consumer Credit](#)
- U.S. Circuit Courts of Appeals: [Recent Decisions on Consumer Credit](#)

State Material

State Statutes

- [Uniform Commercial Code](#) - ([As Adopted by Particular States](#))
- [Uniform Consumer Credit Code](#)
- New York law governing Unauthorized or Improper Use of Credit Cards and Debit Cards - [New York General Business Law §§ 511 et seq.](#)
- New York law governing Debt Collection Procedures - [New York General Business Law §§ 600 et seq.](#)
- New York law governing Consumer Credit Balances - [New York General Business Law §§ 710 et seq.](#)
- California law governing credit cards and various other aspects of consumer credit - [California Civil Code §§ 1747 et seq.](#)
- California law governing fees in consumer credit agreements and related consumer protections - [California Financial Code §§ 4000 et seq.](#)
- California law governing credit cards - [California Civil Code §§ 1747 et seq.](#)

State Judicial Decisions

- N.Y. Court of Appeals:
 - [Decisions on Consumer Credit](#)
 - [Commentary from liibulletin-ny](#)
- [Appellate Decisions from Other States](#)

Other References

Key Internet Sources

- [Consumer Law Page](#)
 - [U.S. Federal Trade Commission](#)
 - [Consumer Handbook to Credit Protection Laws](#) (on-line pamphlet from the Federal Reserve)
 - [Nolo Legal Encyclopedia](#)
 - freeadvice.com: [Credit Problems and Lawyers](#), [Creditors' Rights](#)
 - [It's Legal!](#)
 - [National Foundation for Consumer Credit](#)
 - [Consumer Credit Guide](#)
 - [House Committee on Banking and Financial Services](#) (includes information from Subcommittee on Financial Institutions and Consumer Credit)
 - ILRG Legal Forms Archive: [Credit and Collection](#), [Loans and Borrowing](#)
- Useful Offnet (or Subscription - \$) Sources*
- Good Starting Point in Print: Dee Pridgen, *Consumer Credit and the Law*, Clark Boardman Callaghan, [West Group](#) (1986, looseleaf, updated annually)

25 GEN ED

The following two postings, while containing material that may already be familiar to many of our readers, will be "Eye-opening" for others. While we don't necessarily agree with or endorse all of the views of Pastor Sheldon Emry, the author of this item, or his ministry, we do feel that the research upon which he based this pamphlet was meticulous, useful and worthy of being widely shared.

John Whitley, Editor
NEW WORLD ORDER INTELLIGENCE UPDATE

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TRANSCRIBER'S FOREWORD

The following pamphlet was written in 1989 by a minister (now deceased) who had the courage and inspiration to explain in very simple and uncluttered language -- how it is that we are presently being ENSLAVED and IMPOVERISHED by the current "debt-usury banking system" that we have.

It was written for a predominately Christian audience (which may or may not be your cup of tea), and some of the information

may be a little dated (the figures for the debt, for example, have increased astronomically since it was penned) but regardless of that -- it is a clear and URGENT message that needs to be listened to by the American people.

Keep in mind, also, that according to William Cooper ("Behold a Pale Horse" p. 80-81) -- in the year 1952, an alliance was formed between all the various groups that are working for total financial enslavement of the worlds' peoples: The Illuminati, Knights of Malta, Freemasons, European and Continental Banking Families, etc.. Thus, it is NOT any one group or subgroup of this alliance (referred to as the "Bankers" in the text) that is doing it to us.

[There is no copyright to this information. Print out a copy and share it with your friends!](#)

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BILLIONS FOR THE BANKERS AND DEBTS FOR THE PEOPLE

[Part 1 of 2]

A Study By

Pastor Sheldon Emry

"For the love of money is the root of all evil..."

1 Timothy 6:10

[There is NO COPYRIGHT on this information. Please re-post it freely and widely. It needs to be in the hands of every American citizen!]

INTRODUCTION

"The love of money is the root of all evil": (1 Timothy 6:10)

"If thou lend money to any of my people that is poor by thee, thou shalt not be to him an usurer, neither shalt thou lay upon him usury." Exodus 22:25

"Take no usury of him, or increase thou shalt not give him thy money upon usury." Leviticus 25:36-37

"Unto thy brother thou shalt not lend upon usury: That the Lord thy God bless thee." Deut. 23:20

In the early Church, any interest on debt was considered usury. Read below to see what interest (usury) on debts, a violation of God's Law, is doing to America.

--o0o--

THE NEWS Lynchburg, Va., Sat., March 26, 1977

THE NATIONAL DEBT

In 1901 the national debt of the United States was less than \$1 billion. It stayed at less than \$1 billion until we got into World War I. Then, it jumped to \$25 billion.

Between 1918 and 1941, on the eve of World War II, the national debt just about doubled -- from \$25 to \$49 billion. Between 1942 and 1952, the debt went from \$72 billion to \$265 billion. In 1962 it was \$303 billion. Eight years later, in 1970, it was \$383 billion.

Between 1971 and 1976 it rose from \$409 billion to \$631 billion. The estimated debt at the end of this year [1977] is \$727 billion, and next year it is expected to top \$800 billion -- having nearly doubled in the past eight years.

If the present trend continues, and there is no evidence whatsoever that it will not continue, we can expect the national debt to nearly double again within the next six to eight years. By then, the INTEREST in the debt alone should be in the \$400 billion a year range.

[Transcriber's note: As of 1996, the official debt about 5 TRILLION].

Eventually, the government will own nothing, the people will own nothing, the banks will own everything.

BILLIONS FOR THE BANKERS

DEBTS FOR THE PEOPLE

[Top of page: A cartoon showing two bankers sitting on top of a private bank tower -- one banker sitting contentedly in a chair smoking a cigar; the other banker throwing a money windfall up in the air and saying to the first banker, "IT IS EASY TO ROB THE PEOPLE AND GET RICH. WE JUST LEND THEM THEIR OWN CREDIT ON PAPER AND CHARGE THEM USURY (INTEREST)."

Beneath the bankers is a door called "loans" showing a \$50,000 paper credit "loan" going out of the bank to a residential home. From the home are \$250,000 in payments (30 year payments) flying back to land on the "tongue" of the voracious "open mouth" of the bank.]

"If the American people ever allow private banks to control the issue of their money, first by inflation and then by deflation, the banks and corporations that will grow up around them [around the banks], will deprive the people of their property until their children will wake up homeless on the continent their fathers conquered." -- Thomas Jefferson

THREE TYPES OF CONQUEST

History reveals nations can be conquered by the use of one or more of three methods.

The most common is conquest by war. In time, though, this method usually fails, because the captives hate the captors and rise up and drive them out if they can. Much force is needed to maintain control, making it expensive for the conquering nation.

A second method is by religion, where men are convinced they must give their captors part of their earnings as "obedience to God." Such a captivity is vulnerable to philosophical exposure or by overthrow by armed force, since religion by its nature lacks military force to regain control, once its captives become "disillusioned."

The third method can be called economic conquest. It takes place when nations are placed under "tribute" without the use of visible force or coercion, so that the victims do not realise they have been conquered.

"Tribute" is collected from them in the form of "legal" debts and taxes, and they believe they are paying it for their own good, for the good of others, or to protect all from some enemy. Their captors become their "benefactors" and "protectors".

Although this is the slowest to impose, it is often quite long lasting, as the captives do not see any military force arrayed against them, their religion is left more or less intact, they have freedom to speak and to travel, and they participate in "elections" for their rulers. Without realising it, they are conquered, and the instruments of their own society are used to transfer their wealth to their captors and make the conquest complete.

In 1900 the average American worker paid few taxes and had little debt. Last year payments on debts and taxes took more than half of what he earned. Is it possible a form of conquest has been imposed on our people? Read the following pages and decide for yourself. And may God have mercy on this once debt-free and great nation, in Christ, -- The Author

BILLIONS FOR THE BANKERS

DEBTS FOR THE PEOPLE

THE REAL STORY OF THE MONEY-CONTROL OVER AMERICA

By Pastor Sheldon Emry

[Cartoon showing a mother standing in front of a judge in divorce court, holding the hand of her small boy and girl -- with her husband sitting in the witness chair, holding his head in gloom.

The mother says to the judge, "AND JUDGE, WE WERE ALWAYS IN DEBT!"]

* * *

Americans, living in what is called the richest nation on earth, seem always to be short of money. Wives are working in unprecedented numbers, husbands hope for overtime hours to earn more, or take part-time jobs evenings and weekends, children look for odd jobs for spending money, the family debt climbs higher, and psychologists say one of the biggest causes of family quarrels and break-ups is "arguments over money." Much of this trouble can be traced to our present "debt-money" system.

Too few Americans realise why Christian Statesmen wrote into Article I of the U.S. Constitution:

"Congress shall have the Power to Coin Money and Regulate the Value Thereof."

They did this, as we will show, in prayerful hope that it would prevent "love of money" from destroying the republic they had founded. We shall see how subversion of Article I has brought on us the "evil" of which God's Word had warned.

MONEY IS MAN'S ONLY "CREATION"

Economists use the term "create" when speaking of the process by which money comes into existence. Now, "creation" means making something which did not exist before. Lumbermen make boards from trees, workers build houses from lumber, and factories manufacture automobiles from metal, glass and other materials. But in all these they did not "create," They only changed existing materials into a more usable and, therefore, more valuable form. This is not so with money. Here, and here alone, man actually "creates" something out of nothing.

A piece of paper of little value is printed so that it is worth a piece of lumber. With different figures it can buy the automobile or even the house. Its value has been "created" in the true meaning of the word.

"CREATING" MONEY IS VERY PROFITABLE!

As is seen by the above, money is very cheap to make, and whoever does the "creating" of money in a nation can make a tremendous profit! Builders work hard to make a profit of 5% above their cost to build a house.

Auto makers sell their cars for 1% to 2% above the cost of manufacture and it is considered good business. But money "manufactures" have no limit on their profits, since a few cents will print a \$1 bill or a \$10,000 bill.

That profit is part of our story, but first let's consider another unique characteristic of the thing -- money, the love of which is the "root of all evil".

ADEQUATE MONEY SUPPLY NEEDED

An adequate supply of money is indispensable to civilised society. We could forego many other things but without money industry would grind to a halt, farms would become only self-sustaining units, surplus food would disappear, jobs requiring the work of more than one man or one family would remain undone, shipping and large movement of goods would cease, hungry people would plunder and kill to remain alive, and all government except family or tribe would cease to function.

An overstatement, you say? Not at all. Money is the blood of civilised society, the means of all commercial trade except simple barter. It is the measure and the instrument by which one product is sold and another purchased. Remove money or even reduce the supply below that which is necessary to carry on current levels of trade, and the results are catastrophic. For an example, we need only look at America's Depression of the early 1930's.

THE BANKER'S DEPRESSION OF THE 1930'S

In 1930 America did not lack industrial capacity, fertile farmland, skilled and willing workers or industrious farm families. It had an extensive and efficient transportation system in railroads, road networks, and inland and ocean waterways.

Communications between regions and localities were the best in the world, utilising telephone, teletype, radio, and a well-operated government mail system. No war had ravaged the cities or the countryside, no pestilence weakened the population, nor had famine stalked the land. The United States of America in 1930 lacked only one thing: an adequate supply of money to carry on trade and commerce.

In the early 1930s, Bankers, the only source of new money and credit, deliberately refused loans to industries, stores and farms. Payments on existing loans were required however, and money rapidly disappeared from circulation. Goods were available to be purchased, jobs waiting to be done, but the lack of money brought the nation to a standstill.

By this simple ploy America was put in a "depression" and the greedy Bankers took possession of hundreds of thousands of farms, homes, and business properties. The people were told, "times are hard" and "money is short." Not understanding the system, they were cruelly robbed of their earnings, their savings, and their property.

MONEY FOR PEACE? NO! MONEY FOR WAR? YES!

World War II ended the "depression." The same Bankers who in the early 30's had no loans for peacetime houses, food and clothing, suddenly had unlimited billions to lend for Army barracks, K-rations and uniforms! A nation that in 1934 couldn't produce food for sale, suddenly could produce bombs to send free to Germany and Japan! (More on this riddle later).

With the sudden increase in money, people were hired, farms sold their produce, factories went to two shifts, mines re-opened, and "The Great Depression" was over! Some politicians were blamed for it and

others took credit for ending it. The truth is the lack of money (caused by the Bankers) brought on the depression, and adequate money ended it.

The people were never told that simple truth and in this article we will endeavour to show how these same Bankers who control our money and credit have used their control to plunder America and place us in bondage.

POWER TO COIN AND REGULATE MONEY

When we can see the disastrous results of an artificially created shortage of money, we can better understand why our Founding Fathers, who understood both money and God's Laws, insisted on placing the power to "create" money and the power to control it ONLY in the hands of the Federal Congress.

They believed that ALL Citizens should share in the profits of its "creation" and therefore the Federal government must be the ONLY creator of money. They further believed that ALL citizens, of whatever State or Territory, or station in life, would benefit by an adequate and stable currency, and therefore, the national government must also be, by law, the ONLY controller of the value of money.

Since the Federal Congress was the only legislative body subject to all the citizens at the ballot box, it was, to their minds, the only safe depository of so much profit and so much power. They wrote it out in the simple, but all inclusive:

"Congress shall have the Power to Coin Money and Regulate the Value Thereof."

HOW THE PEOPLE LOST CONTROL TO THE FEDERAL RESERVE

Instead of the Constitutional method of creating our money and putting it into circulation, we now have an entirely unconstitutional system. This has brought our country to the brink of disaster, as we shall see.

Since our money was handled both legally and illegally before 1913, we shall consider only the years following 1913, since from that year on, ALL of our money had been created and issued by an illegal method that will eventually destroy the United States if it is not changed. Prior to 1913, America was a prosperous, powerful, and growing nation, at peace with its neighbours and the envy of the world. But -- in December of 1913, Congress,

with many members away for the Christmas holidays, passed what has since been known as the FEDERAL RESERVE ACT. (For the full story of how this infamous legislation was forced through our Congress, read "Conquest or Consent", by W. D. Vennard).

Omitting the burdensome details, it simply authorised the establishment of a Federal Reserve Corporation, with a Board of Directors (The Federal Reserve Board) to run it, and the United States was divided into 12 Federal Reserve "Districts."

This simple, but terrible, law completely removed from Congress the right to "create" money or to have any control over its "creation", and gave that function to The Federal Reserve Corporation. This was done with appropriate fanfare and propaganda that this would "remove money from politics" (they didn't say "and therefore from the people's control") and prevent "Boom and Bust" from hurting our citizens.

The people were not told then, and most still do not know today, that the Federal Reserve Corporation is a private corporation controlled by bankers and therefore is operated for the financial gain of the bankers over the people rather than for the good of the people. The word "Federal" was used only to deceive the people.

MORE DISASTROUS THAN PEARL HARBOR

Since that "day of infamy", more disastrous to us than Pearl Harbor, the small group of "privileged" people who lend us "our" money have accrued to themselves all of the profits of printing our money --

and more! Since 1913 they have "created" tens of billions of dollars in money and credit, which, as their own personal property, they then lend to our government and our people at interest.

"The rich get richer and the poor get poorer" had become the secret policy of the Federal government. An example of the process of "creation" and its conversion to peoples "debt" will aid our understanding.

THEY PRINT IT -- WE BORROW IT AND PAY THEM INTEREST

We shall start with the need for money. The Federal Government, having spent more than it has taken from its citizens in taxes, needs, for the sake of illustration, \$1,000,000,000. Since it does not have the money, and Congress has given away its authority to "create" it, the Government must go to the "creators" for the \$1 billion.

But, the Federal Reserve, a private corporation, doesn't just give its money away! The Bankers are willing to deliver \$1,000,000,000 in money or credit to the Federal Government in exchange for the Government's agreement to pay it back -- with interest. So Congress authorises the Treasury Department to print \$1,000,000,000 in U.S. Bonds, which are then delivered to the Federal Reserve Bankers.

The Federal Reserve then pays the cost of printing the \$1 billion (about \$1,000) and makes the exchange. The government then uses the money to pay its obligations. What are the results of this fantastic transaction? Well, \$1 billion in Government bills are paid all right, but the Government has now indebted the people to the Bankers for \$1 billion on which the people must pay interest!

Tens of thousands of such transactions have taken place since 1913 so that by the 1980s, the U.S. Government is indebted to the Bankers for over \$1,000,000,000,000 (trillion), on which the people pay over \$100 billion a year in interest alone with no hope of ever paying off the principal. Supposedly, our children and following generations will pay forever and forever! (Since this book was printed in 1984, the national debt has grown to today's 1989 total of approximately 3 trillion dollars.)

[Transcriber's note: As of 1996, it is approximately 5 trillion dollars].

AND THERE'S MORE

You say, "This is terrible!" Yes, it is, but we have shown only part of the sordid story. Under this unholy system, those United States Bonds have now become "assets" of the Banks in the Reserve System, which they then use as "reserves" to "create" more "credit" to lend. Current "reserve" requirements allow them to use that \$1 billion in bonds to "create" as much as \$15 billion in new "credit" to lend to States, municipalities, to individuals and businesses.

Added to the original \$1 billion, they could have \$16 billion of "created credit" out in loans paying them interest with their only cost being \$1,000 for printing the original \$1 billion! Since the U.S. Congress has not issued Constitutional money since 1863 (over 100 years), in order for the people to have money to carry on trade and commerce they are forced to borrow the "created Credit" of the Monopoly bankers and pay them usury-interest!

AND THERE'S STILL MORE

In addition to the vast wealth drawn to them through this almost unlimited usury, the Bankers who control the money at the top are able to approve or disapprove large loans to large and successful corporations to the extent that refusal of a loan will bring about a reduction in the price that that Corporation's stock sells for on the market.

After depressing the price, the Bankers' agents buy large blocks of the company's stock, after which the sometimes multi-million dollar loan is approved, the stock rises, and is then sold for a profit. In this manner billions of dollars are made with which to buy more stock. This practice is so refined today that the Federal Reserve Board need only announce to the newspapers an increase or decrease in their "discount rate" to send stocks up and down as they wish.

Using this method since 1913, the Bankers and their agents have purchased secret or open control of almost every large corporation in America. Using that control, they then force the corporations to borrow huge sums from their banks so that corporate earnings are siphoned off in the form of interest to the banks. This leaves little as actual "profits" which can be paid as dividends and explains why stock prices are so depressed, while the banks reap billions in interest from corporate loans. In effect, the bankers get almost all of the profits, while individual stockholders are left holding the bag.

The millions of working families of America are now indebted to the few thousand Banking families for twice the assessed value of the entire United States. And these Banking families obtained that debt against us for the cost of paper, ink, and bookkeeping!

THE INTEREST AMOUNT IS NEVER CREATED

The only way new money (which is not true money, but is "credit" representing a debt), goes into circulation in America is when it is borrowed from Bankers. When the State and people borrow large sums, we seem to prosper. However, the bankers "create" only the amount of the principal of each loan, never the extra amount needed to pay the interest.

Therefore, the new money never equals the new debt added. The amounts needed to pay the interest on loans is not "created," and therefore does not exist!

Under this kind of a system, where new debt always exceeds the new money no matter how much or how little is borrowed, the total debt increasingly outstrips the amount of money available to pay the debt. The people can never, ever get out of debt!

An example will show the viciousness of this usury-debt system with its "built in" shortage of money.

IF \$60,000 IS BORROWED, \$255,931.20 MUST BE PAID BACK

When a citizen goes to a banker to borrow \$60,000 to purchase a home or a farm, the Bank clerk has the borrower agree to pay back the loan plus interest. At 14% interest for 30 years, the borrower must agree to pay \$710.92 per month for a total of \$255,931.20.

The clerk then requires the citizen to assign to the banker the right of ownership of the property if the borrower does not make the required payments. The bank clerk then gives the borrower a \$60,000 check or a \$60,000 deposit slip, crediting the borrower's checking account with \$60,000.

The borrower then writes checks to the builder, subcontractors, etc., who in turn write checks. \$60,000 of new "chequebook" money is thereby added to the "money in circulation."

However, and this is the fatal flaw in a usury system, the only new money created and put into circulation is the amount of the loan, \$60,000. The money to pay the interest is NOT created, and therefore was NOT added to "money in circulation."

Even so, this borrower (and those who follow him in ownership of the property) must earn and TAKE OUT OF CIRCULATION \$255,931, almost \$200,000 MORE than he put IN CIRCULATION when he borrowed the original \$60,000!

(By the way, it is this interest which cheats all families out of nicer homes. It is not that they cannot afford them; it is because the Bankers' usury forces them to pay for FOUR homes to get ONE!)

Every new loan puts the same process in operation. Each borrower adds a small sum to the total money supply when he borrows, but the payments on the loan (because of interest) then deduct a much LARGER sum from the total money supply.

There is therefore no way all debtors can pay off the money-lenders. As they pay the principal and interest, the money in circulation disappears.

All they can do is struggle against each other, borrowing more and more from the money-lenders each generation. The money lenders (Bankers), who produce nothing of value, slowly, then more rapidly, gain a death grip on the land, building, and present and future earnings of the whole working population. Proverbs 22:7 has come to pass in America. The borrowers have become the servants to the lenders. No wonder God Almighty forbids interest on loans. (See cover again).

SMALL LOANS DO THE SAME THING

If you haven't quite grasped the impact of the above, let us consider a small auto loan for 3 years at 18% interest. Step 1: Citizen borrows \$5,000 and pays it into circulation (it goes to the dealer, factory, miner, etc.) and signs a note agreeing to pay the Bankers \$6,500. Step 2: Citizen pays \$180 per month of his earnings to the Banker. In three years, he will take OUT of circulation \$1,500 more than he put IN circulation.

Every loan of Banker "created" money (credit) causes the same thing to happen. Since this has happened millions of times since 1913 (and continues today), you can see why America has gone from a prosperous, debt-free nation to a debt-ridden nation where practically every home, farm and business is paying usury-tribute to some Banker.

The usury-tribute to the Bankers on personal, local, State and Federal debt totals more than the combined earnings of 25% of the working people. Soon it will be 50% and continue upward.

THIS IS WHY BANKERS PROSPER IN GOOD TIMES OR BAD

In the millions of transactions made each year like those above, little actual currency changes hands, nor is it necessary that it do so. 95% of all "cash" transactions in the U. S. are executed by check, so the Banker is perfectly safe in "creating" that so-called "loan" by writing the check or deposit slip, not against actual money, but AGAINST YOUR PROMISE TO PAY IT BACK! The cost to him is paper, ink and a few dollars in salaries and office costs for each transaction. It is "check kiting" on an enormous scale. The profits increase rapidly, year after year, as shown below.

* * *

[Article from a newspaper:]

"Valley Bank Posts 49% Gain in Profits"

"Gains of 49 percent in net income and 51 percent in operating income were posted last year by Valley National bank. Those gains brought net income to \$33,959,000 in the year ended Dec. 31 and operating income to \$34,459,000. The year before those totals were \$22,836,000 and \$22,807,000 respectively."

"Bank's Profit Rise 21%"

"Arizona Bank announced on Monday it had achieved a 21.2 percent increase in net income in 1978 over 1977. On the basis of operating income, excluding the 1977 sale of the Arizona Bank Building for \$1,336,368, the bank said the increase was 43.9 percent. Tostenrud said loans and deposits increased in the last year. Deposits 18.8 percent to \$1,353 billion and loans 21.9 percent to \$951 million."

* * *

THE COST TO YOU? EVENTUALLY, EVERYTHING!

In 1910 the U. S. Federal debt was only \$1 billion, or \$12.40 per citizen. State and local debts were practically non-existent.

By 1920, after only six years of Federal Reserve shenanigans, the Federal debt had jumped to \$24 billion, or \$228 per person, and State and local debts were mushrooming.

By 1981 the Federal debt passed \$1 trillion and was growing exponentially as the Bankers tripled the interest rates. State and local debts are now MORE than the Federal, and with businesses and personal debts totalled over \$6 trillion, three times the value of all land and buildings in America.

If we signed over to the money-lenders of all of America we would still owe them more two more Americas (plus their usury, or course!).

However, they are too cunning to take the title to everything. They instead leave you with some "illusion of ownership" so you and your children will continue to work and pay the Bankers more of your earnings on ever increasing debts. The "establishment" has captured our people with their ungodly system of usury and debt as certainly as if they had marched in with an uniformed army.

To understand that it really is a "conquest," go back to the front and read the "Three Types of Conquest" again.

The borrower must pay back MORE than he borrowed, so bankers ALWAYS get more than they lend!

FOR THE GAMBLERS AMONG MY READERS

To grasp the truth that periodic withdrawal or money through interest payments will inexorably transfer all wealth in the nation to the receiver of interest, imagine yourself in a poker or dice game where everyone must buy the chips (the medium of exchange) from a "banker" who does not risk chips in the game, but watches the table and every hour reaches in and takes 10% to 15% of all the chips on the table. As the game goes on, the amount of chips in the possession of each player will go up and down with his luck. However, the TOTAL number of chips available to play the game (carry on trade and business) will decrease rapidly.

The game will get low on chips, and some will run out. If they want to continue to play, they must buy or borrow them from the "banker". The "banker" will sell (lend) them ONLY if the player signs a "mortgage" agreeing to give the "banker" some real property (car, home, farm, business, etc.) if he cannot make periodic payments to pay back all the chips plus some EXTRA ones (interest). The payments must be made on time, whether he wins (makes a profit) or not.

It is easy to see that no matter how skilfully they play, eventually the "banker" will end up with all of his original chips back, and except for the very best players, the rest, if they stay in long enough, will lose to the "banker" their homes, their farms, their businesses, perhaps even their cars, watches, rings, and the shirts off their backs!

Our real life situation is MUCH WORSE than any poker game. In a poker game none is forced to go into debt, and anyone can quit at any time and keep whatever he still has. But in real life, even if we borrow little ourselves from the "bankers," the local, State and Federal governments borrow billions in our name, squander it, then confiscate our earnings from us and pay it back to the Bankers with interest.

We are forced to play the game, and none can leave except by death. We pay as long as we live, and our children pay after we die. If we cannot pay, the same government sends the police to take our property and give it to the Bankers. The bankers risk nothing in the game; they just collect their percentage and "win it all." In Las Vegas and at other gambling centers, all games are "rigged" to pay the owner a percentage, and they rake in millions...The Federal Reserve Bankers' "game" is also rigged, and it pays off in billions!

In recent years, Bankers have added real "cards" to their game. "Credit" cards are promoted as a convenience and a great boon to trade. Actually, they are ingenious devices by which Bankers collect 2% to 5% of every retail sale from the seller and 18% interest from buyers. A real "stacked" deck!

[End of Part 1 of 2]

BILLIONS FOR THE BANKERS AND DEBTS FOR THE PEOPLE

[Part 2 of 2]

A Study by Pastor Sheldon Emry

YES, IT'S POLITICAL, TOO!

Democrat, Republican, and independent voters who have wondered why politicians always spend more tax money than they take in should now see the reason. When they begin to study our "debt-money" system, they soon realise that these politicians are not the agents of the people but are the agents of the Bankers, for whom they plan ways to place the people further in debt.

It takes only a little imagination to see that if Congress had been "creating," spending and issuing into circulation the necessary increase in the money supply, THERE WOULD BE NO NATIONAL DEBT and the over \$4 Trillion of other debts would be practically non-existent. Since there would be no ORIGINAL cost of money except printing, and no continuing costs such as interest, Federal taxes would be almost nil. Money, once in circulation, would remain there and go on serving its purpose as a medium of exchange for generation after generation and century after century, with no payments to the Bankers whatsoever!

MOUNTING DEBTS AND WARS

But instead of peace and debt-free prosperity, we have ever-mounting debt periodic wars. We as a people are now ruled by a system of Banker-owned Mammon that has usurped the mantle of government, disguised itself as our legitimate government, and set about to pauperize and control our people.

It is now a centralised, all-powerful political apparatus whose main purposes are promoting war, confiscating the people's money, and propagandising to perpetuate itself in power. Our two large political parties have become its servants, the various departments of government its spending agencies, and the Internal Revenue Service is its collection agency.

Unknown to the people, it operates in close co-operation with similar apparatuses in other nations, which are also disguised as "governments."

Some, we are told, are friends. Some, we are told, are enemies. "Enemies" are built up through international manipulations and used to frighten the American people into going billions of dollars more into debt to the bankers for "military preparedness," "foreign aid to stop communism," "minority rights" etc.

Citizens, deliberately confused by brainwashing propaganda, watch helplessly while our politicians give food, goods, and money to Banker-controlled alien governments under the guise of "better relations" and "easing tensions." Our Banker-controlled government takes our finest and bravest sons and sends them into foreign wars with obsolete equipment and inadequate training, where tens of thousands are murdered, and hundreds of thousands are crippled. Other thousands are morally corrupted, addicted to drugs, and infected with venereal and other diseases, which they bring back to the United States.

When the "war" is over, we have gained nothing, but we are scores of billions of dollars more in debt to the bankers, which was the reason for the "war" in the first place!

AND THERE'S MORE

The profits from these massive debts have been used to erect a complete and almost hidden economic and political colossus over our nation. They keep telling us they are trying to do us "good," when in truth they work to bring harm and injury to our people. These would-be despots know it is easier to control and rob an ill, poorly-educated and confused people than it is a healthy and intelligent population, so they deliberately prevent real cures for diseases, they degrade our educational systems, and they stir up social and racial unrest. For the same reason they favour drug use, alcohol, sexual promiscuity, abortion, pornography, and crime. Everything which debilitates the minds and bodies of the people is secretly encouraged, as it makes the people less able to oppose them or even to understand what is being done to

them. Family, morals, love of Country, the Christian religion, all that is honourable is being swept away, while they try to build their new, subservient man.

Our new "rulers" are trying to change our whole cultural, social, religious, and political order, but they will not change the debt- money economic system by which they run and rule. Our people have become tenants and "debt-slaves" to the Bankers and their agents in the land our fathers conquered. It is conquest through the most gigantic fraud and swindle in the history of mankind.

And we need to remind you again: The key to their wealth and power over us is their ability to create "money" out of nothing and lend it to us at interest. If they had not been allowed to do that, they would never would have gained secret control of our nation. How true Solomon's words are:

"The rich rule over the poor, and the borrower is
servant to the lender." Proverbs 22.7

Let us now consider the correct method of providing the medium of exchange (money) needed by our people.

THE CONSTITUTIONAL WAY -- EVERY CITIZEN A STOCKHOLDER

If we would have used the Constitutional way of "creating" the money needed in the nation, the Federal Congress would spend most of its time and study on the issuance and control of an adequate supply of stable money for the people.

If an increase of population and production required an increase in the medium of exchange, Congress would authorise the "coining," (i.e., printing) of the determined amount. Some could be used to pay current legitimate expenses of the Federal Government, with the balance paid directly to the citizens. Records for payment would be similar to Social Security records, except a citizen would be recorded at birth, instead of when he first goes to work. Each person on the records as of the date of the Congressional authorisation would receive an equal amount just as of he were a stockholder holding one share. Just think -- a payment of only \$20 to each citizen would put \$4 billion of debt-free and interest-free money into circulation.

Such a suggestion always scares the Bankers. Their propagandists will immediately cry "printing press money," and warn that it would soon be "worthless" and would cause "inflation."

The truth is their immense usury charges on their "created" credit (our debt) is the sole cause of "inflation." All prices on all industry, trade and labour must be realised periodically to pay the ever increasing usury charges. That is the ONLY cause of higher prices, and the money-changers spend millions in propaganda to keep you from realising that.

The money-creators (Bankers) know that if we ever tried a Constitutional issue of debt-free, interest-free currency, even a limited issue, the benefits would be apparent immediately. That they must prevent. Abraham Lincoln was the last President to issue such debt-free and interest-free currency (in 1863) and he was assassinated shortly thereafter.

[Transcriber's note: JFK also made an issue of some
interest-free U.S. Treasury currency notes in 1963,
and he quickly met the same fate as Lincoln].

NO BANKS PLUNDER

Under the Constitutional system, no private banks would exist to rob the people. Government banks under the control of the people's representatives would issue and control all money and credit. They would issue not only actual currency, but could lend limited credit at no interest for the purchase of capital goods, such as homes.

A \$60,000 loan would require only \$60,000 repayment, not \$255,931 as it is now. Everyone who supplied materials and labour for the home would get paid just as they do today, but the bankers would NOT get \$195,931 in interest. AND THAT IS WHY THEY RIDICULE AND DESTROY ANYONE SUGGESTING GOVERNMENT (CITIZENS') MONEY WITHOUT INTEREST AND WITHOUT DEBT.

History tells us of debt-free and interest-free money issued by governments. The American colonies did it through colonial script in the 1700's and their wealth soon rivalled that of England and brought restrictions from Parliament, which led to the Revolutionary War.

Abraham Lincoln did it in 1863 to help finance the Civil War. He was later assassinated by an agent of the Rothschild Bank. No debt-free or interest-free money has been issued in America since then. Several Arab nations issue interest free loans to their citizens today.

The Saracen Empire forbade interest on money 1,000 years ago and its wealth outshone even Saxon Europe. Mandarin China issued its own money, interest-free and debt-free and historians and collectors of art today consider those centuries to be China's time of greatest wealth, culture, and peace.

Germany issued debt-free and interest-free money from 1935 on, accounting for its startling rise from the depression to a world power in 5 years. Germany financed its entire government and war operation from 1935 to 1945 without gold and without debt, and it took the whole Capitalist and Communist world to destroy the German power over Europe and bring Europe back under the heel of the bankers. Such history of money does not even appear in the textbooks of public (government) schools today. [This is not intended to convey any approval of the repugnant policies of Nazi Germany or its leadership, but merely to cite an historical example of a nation which, for a short time, escaped from the debt system and repudiated it.]

Issuing money which does not have to be paid back in interest leaves the money available to use in the exchange of goods and services and services, and its only continuing cost is replacement as the paper wears out. Money is the paper ticket by which transfers are made and should always be in sufficient quantity to transfer all possible production of the nation to the ultimate consumers.

It is as ridiculous for a nation to say to its citizens, "You must consume less because we are short of money," as it would be for an airline to say, "Our planes are flying, but we cannot take you because we are short of tickets."

STABLE MONEY

Money, issued in such a way, would derive its value in exchange from the fact that it had come from the highest legal source in the nation and would be declared legal to pay all public and private debts.

Issued by a sovereign nation, not in danger of collapse, it would need no gold or silver or other so-called "precious" metals to back it.

As history shows, the stability and responsibility of government issuing it is the deciding factor in the acceptance of that government's currency -- not gold, silver, or iron buried in some hole in the ground. Proof is America's currency today. Our gold and silver are practically gone, but our currency is accepted. But if the government was about to collapse our currency would be worthless.

Also, money issued through the people's legitimate government would not be under the control of a privately owned corporation whose individual owners benefit by causing the money amount and value to fluctuate and the people to go into debt.

Under the present debt-usury system, the extra burden of usury forces workers and businesses to demand more money for the work and goods to pay their ever-increasing debts and taxes. This increase in prices and wages is called "inflation." Bankers, politicians and "economists" blame it on everything but the real cause, which is the usury levied on money and debt by the Bankers.

This "inflation" benefits the money-lenders, since it wipes out savings of one generation so they can not finance or help the next generation, who must then borrow from the money-lenders, and pay a large part of their life's labour to the usurer.

With an adequate supply of interest-free money, little borrowing would be required and prices would be established by people and goods, not by debts and usury.

CITIZEN CONTROL

If Federal Congress failed to act, or acted wrongly, in the supply of money, the citizens would use the ballot or recall petitions to replace those who prevented correct action with others whom the people believe would pursue a better money policy. Since the creation of money and its issuance in sufficient quantity would be one of the few functions of Congress, the voter could decide on a candidate by his stand on money instead of the hundreds of lesser issues which are presented to us today.

And since money is, and would remain, a national function, local differences or local factions would not be able to sway the people from the nation's (citizens') interest. All other problems, except the nation's defence, would be taken care of in the State, County, or City governments where they are best handled and most easily corrected.

An adequate national defence would be provided by the same citizen-controlled Congress, and there would be no Bankers behind the scenes, bribing politicians to give \$220 billions of American military equipment to other nations, disarming us, while alien nations prepare to attack and invade the United States of America.

A DEBT-FREE AMERICA

With debt-free and interest-free money, there would be no high and confiscatory taxation, and our homes would be mortgage-free with no \$10,000-per-year payments to the Bankers, nor would they get \$1,000 to \$2,500 per year from every automobile on our roads.

We would need no "easy payment" plans, "revolving" charge accounts, loans to pay medical or hospital bills, loans to pay taxes, loans to pay for burials, loans to pay loans, nor any of the thousand and one usury-bearing loans which now suck the life-blood of American families.

There would be no unemployment, divorces caused by debt, destitute old people, or mounting crime, and even the so-called "depraved" classes would be deprived of neither job nor money to buy the necessities of life.

Criminals could not become politicians, nor would politicians become criminals in the pay of the Money-lenders. Our officials, at all government levels, would be working for the people instead of devising more money to place us further in debt to the Bankers.

We would get out of the entangling foreign alliances that have engulfed us in four major wars and scores of minor wars since the Federal Reserve Act was passed, alliances which are now used to prevent America from preparing her own defence in the face of mounting danger from alien powers.

A debt-free America would mean mothers would not have to work. With mothers at home, juvenile delinquency would decrease rapidly. The elimination of the usury and debt would be the equivalent of a 50% raise in the purchasing power of every worker. With this cancellation of all debts, the return to the people of all the property and wealth the parasitic Bankers and their quasi-legal agents have stolen by usury and fraud, and then ending of their theft of \$300 Billion (or more) every year from the people. America would be prosperous and powerful beyond the wildest dreams of the citizens today. And we would be at peace! (For a Bible example of cancellation of debts to money lenders and restoration of property and money to the people, read Nehemiah 5:1-13.)

WHY YOU HAVEN'T KNOWN

We realise that this small, and necessarily incomplete, article on money may be charged with oversimplification. Some may say that if it is that simple the people would have known about it, and it could not have happened.

But this MONEY LENDER'S conspiracy is as old as Babylon, and even in America it dates far back before the year 1913.

Actually, 1913 may be considered the year in which their previous plans came to fruition, and the way opened for complete economic conquest of our people. The conspiracy is old enough in America so that to its agents have been, for many years, in positions of influence such as newspaper publishers, editors, columnists, church ministers, university presidents, professors, textbook writers, labour union leaders, movie makers, radio and TV commentators, politicians, and from school board members to U.S. presidents, and many others.

CONTROLLED NEWS AND INFORMATION

These agents control the information available to our people. They manipulate public opinion, elect whom they will locally and nationally, and never expose the crooked money system. They promote school bonds, municipal bonds, expensive and detrimental farm programs, "urban renewal," foreign aid, and many other schemes which put the people more deeply into debt to the Bankers.

Thoughtful citizens wonder why billions are spent on one program and billions on another which may duplicate it or even nullify it, such as paying some farmers not to raise crops, while at the same time building dams or canals to irrigate more farm land. Crazy or stupid?

Neither. The goal is more debt. Thousands of government-sponsored ways of wasting money go on continually. Most make no sense, but they are never exposed for what they really are, builders of "billions for the bankers and debts for the people."

So-called "economic experts" write syndicated columns in hundreds of newspapers, craftily designed to prevent the people from learning the simple truth about our money system. Commentators on radio and TV, preachers, educators, and politicians blame the people as wasteful, lazy or spend-thrift, and blame the workers and consumers for the increase in debts and the inflation of prices, when they know the cause is the debt-money system itself.

Our people are literally drowned in charges and counter-charges designed to confuse them and keep them from understanding the unconstitutional and evil money-system that is so efficiently and silently robbing the farmers, the workers, and the businessmen of the fruits of their labour and of their freedoms.

When some few Patriotic people or organisations who know the truth begin to expose them or try to stop any of their mad schemes, they are ridiculed and smeared as "right-wing extremists," "super-patriots," "ultra-rightists," "bigots," "fascists," etc. Any name is used which will cause them to shut up or will at least stop other people from listening to the warning they are giving. Articles and books such as you are now reading are kept out of schools, libraries, and book stores.

Some, who are especially vocal in their exposure of the treason against our people, are harassed by government agencies such as the EPA, the OSHA, the IRS, and others, causing them financial loss and bankruptcy. Using the above methods, they have been completely successful in preventing most Americans from learning the truth.

Therefore, to prevent violence or armed resistance to their plunder of America, they plan to register all firearms and eventually to disarm all citizens. They have to eliminate most guns, except those in the hands of their government, police and army.

TELL THE PEOPLE

The "almost hidden" conspirators in politics, religion, education, entertainment, and the news media are working for A Banker-owned United States, in a Banker-owned world under a Banker-owned World Government! [NOTE: Read Prof. Carroll Quigley's TRAGEDY AND HOPE for an Insider's own confession of this! Prof. Quigley, a member of these elite groups and thoroughly in sympathy with their goal of a World Government controlled by the financial elite, has been referred to by President Clinton (who was one of his students) as the man most responsible for shaping his view of the world!]

Love of Country, compassion for your fellow citizens, and concern for your children should make you deeply interested in this, America's greatest problem, for our generation has not suffered under the "yoke" as the coming generations will. Usury and taxes will continue to take a larger and larger part of the annual earning of the people and put them into the pockets of the Bankers and their political Agents. Increasing "government" regulations will prevent citizen protest and opposition to their control.

It is possible that your grandchildren will own neither home nor car, but will live in "government-owned" apartments and ride to work in "government-owned" buses (both paying interest to the bankers), AND BE ALLOWED TO KEEP JUST ENOUGH OF THEIR EARNINGS TO BUY A MINIMUM OF FOOD AND CLOTHING while in luxury? In Asia and eastern Europe it is called "communism;" in America it is called "Democracy" and "Capitalism."

America will not shake off her Banker-controlled dictatorship as long as the people are ignorant of the hidden controllers. International financiers, who control most of the governments of the nations, and most sources of information, seem to have us completely within their grasp.

They are afraid of only one thing: an awakened Patriotic Citizenry, armed with the truth, and with a trust in Almighty God for deliverance. This pamphlet has given you the truth about their iniquitous system. What you do with it is in your hands, as in the hands of Divine Providence. "The fear of man bringeth a snare: but who so putteth his trust in the Lord shall be safe." Proverbs 29:25

[Chart at bottom of page shows "Principal Assets of All Commercial Banks: 1950 to 1980" -- shows an exponentially increasing upward spike. Source: Statistical Abstract of United States. A note below the chart states: "1982: Since 1950 the Bankers "assets" (obtained by fraud) have risen from \$160 billion to almost \$2,000 billion. They are stealing America with their debt-usury system!] [Note alongside the chart: "Bankers produce no usable product or any "wealth," yet their usury robbery almost doubles their net assets (wealth) every ten years! Is it possible another generation under their "System" will make them "legal" owners of the entire United States and 200 million citizens will be their bond-slaves on the continent our fathers colonised and developed?"]

AUDIT THE FEDERAL RESERVE SYSTEM?

The Federal Reserve has never been audited by the government since it took over our money and credit in 1913. In 1975, a bill, H.R. 4316, to require an audit, was introduced in Congress.

During the April, 1975, hearings, this author submitted a statement favouring the audit, as did many others. It is reprinted on the next two pages, from pages 306-308 of the 739 pages of testimony given during those hearings before the Subcommittee on Domestic Monetary Policy of the Committee on Banking, Currency, and Housing, House of Representatives. Due to pressure from the money-controllers, it was not passed. No audit has ever been made.

NOTEABLE MONEY QUOTES

PRESIDENT JAMES A. GARFIELD: "whoever controls the volume of money in any country is absolute master of all industry and commerce."

HORACE GREELRY: "While boasting of our noble deeds, we are careful to conceal the ugly fact that by an iniquitous money system we have nationalised a system of oppression which, though more refined, is not less cruel than the old system of chattel slavery."

THOMAS A. EDISON: "People who will not turn a shovel full of dirt on project (Muscle Shoals Dam) nor contribute a pound of material, will collect more money from the United States than will the People who supply all the material and do all the work."

This is the terrible thing about interest...But here is the point: If the Nation can issue a dollar bond it can issue a dollar bill. The element that makes the bond good makes the bill good also.

The difference between the bond and the bill is that the bond lets the money broker collect twice the amount of the bond at an additional 20%. Whereas the currency, the honest sort provided by the Constitution, pays nobody but those who contribute in some useful way. It is absurd to say our Country can issue bonds and cannot issue currency. Both are promises to pay, but one fattens the usurer and the other helps the People. If the currency issued by the People were no good, then the bonds would be no good, either. It is a terrible situation when the Government, to insure the National Wealth, must go in debt and submit to ruinous interest charges at the hands of men who control the fictitious value of gold. Interest is the invention of Satan."

PRESIDENT WOODROW WILSON: "A great industrial Nation is controlled by its system of credit. Our system of credit is concentrated. The growth of the Nation and all our activities are in the hands of a few men. We have come to be one of the worst ruled, one of the most completely controlled and dominated Governments in the world -- no longer a Government of free opinion, no longer a Government by conviction and vote of the majority, but a Government by the opinion and duress of small groups of dominant men."

(Just before he died, Wilson is reported to have stated to friends that he had been "deceived" and that "I have betrayed my Country." He referred to the Federal Reserve Act, passed during his Presidency) [<-- note by the author, Emry.]

SIR JOSIAH STAMP: (President of the Bank of England in the 1920's, the second richest man in Britain): "Banking was conceived in iniquity and was born in sin. The Bankers own the earth. Take it away from them, but leave them the power to create deposits, and with the flick of the pen they create enough deposits to buy it back again. However, take it away from them, and all the great fortunes like mine will disappear, and they ought to disappear, for this would be a happier and better world to live in. But, if you wish to remain the slaves of the Bankers and pay the cost of your own slavery, let them continue to create deposits."

MAJOR L.L.B. ANGAS: "The modern Banking system manufactures money out of nothing. The process is perhaps the most astounding piece of sleight of hand that was ever invented. Banks can in fact inflate, mint, and unmint the modern ledger-entry currency."

RALPH M. HAWTREY (Former Secretary of the British Treasury): "Banks lend by creating credit. They create the means of payment out of nothing."

ROBERT H. HEMPHILL (Credit Manager of Federal Reserve Bank, Atlanta, Ga.): "This is a staggering thought. We are completely dependent on the commercial Banks. Someone has to borrow every dollar we have in circulation, cash or credit. If the Banks create ample synthetic money, we are prosperous; if not, we starve. We are absolutely without a permanent money system. When one gets a complete grasp of the picture, the tragic absurdity of our hopeless position is almost incredible, but there it is. It is the most important subject intelligent persons can investigate and reflect upon. It is so important that our present civilisation may collapse unless it becomes widely understood and the defects remedied very soon."

CONGRESSMEN LOUIS T. MCFADDEN: The Federal Reserve (Banks) are one of the most corrupt institutions the world has ever seen. There is not a man within the sound of my voice who does not know that this Nation is run by the International Bankers."

JOHN C. CALHOUN (Speech in the Senate, May 26, 1836): "A power has risen up in the government greater than the people themselves, consisting of many and various powerful interests combined in one mass, and held together by the cohesive power of the vast surplus in the banks."

LYOF N. TOLSTOY (In What Shall We Do?, 1891): "Money is a new form of slavery, and distinguishable from the old simply by the fact that it is impersonal -- that there is no human relation between master and slave."

THOMAS JEFFERSON (Letter to Elbridge Gerry, Jan. 26, 1779): "Banking establishments are more dangerous than standing armies."

WILLIAM CORBETT: (In Advice to Young Men, 1, 1829): "The power which money gives is that of brute force; It is the power of the bludgeon and the bayonet."

SOPHOCLES (Atigone, c. 450 B.C.): "Money lays waste cities; It sets men to roaming from home. It seduces and corrupts honest men and turns virtue to baseness; It teaches villany and impiety."

IS YOUR LOCAL BANKER INVOLVED IN CHECK KITING? MAIL FRAUD? RACKETEERING?

By Conrad LeBeau

Read this shocking expose of a nationwide scandal involving over
Two trillion dollars worth of bad checks circulating as “money!”
Believe it or not!

CHECK KITING A NATIONAL SCANDAL

The story you are about to read is true. This is not a story about bank robbers like Jesse James, or a holdup at your local bank or the Great Train Robbery. It is a story about banks robbing people through one of the cleverest schemes ever contrived in the history of civilization. Officially, it is known as “fractional reserve banking”. In reality, it is nothing more than a check writing scheme: The writing and circulating of bad checks as “money”. The extent of this check kiting scheme is now estimated to exceed well over two trillion dollars, and involved all 12 Federal Reserve Banks as well as over 14,000 commercial banks throughout the United States.

Not only is there massive check kiting, but also a carefully planned conspiracy to overthrow the Constitution of the United States, and set up a world government and world monetary system with a cashless society. The ultimate plan is a debt dictatorship where there will be but two classes of people the “haves” and the “have nots”. The “haves” will own it all and the “have nots” will pay interest to the banks and taxes to the government. The United States will no longer be a Republic, but an Economic Oligarchy—owned and controlled by an elite few who, through fraudulent methods and contracts have turned us from a nation of free men and women into a nation of slaves.

WHAT IS CHECK KITING?

Check kiting is a term applied to a method of floating checks between various bank accounts in a never ending circle. Here is how it works:

Suppose Tom, Dick, and Harry each had a checking account at three different banks: Bank A, Bank B, and Bank C. Tom writes a check for \$3,500 from his account at Bank A to Dick. Dick writes a check for \$3,500 from his account at Bank B to Harry. And Harry writes a check for \$3,500 from his account at Bank C to Tom—thus finishing the circle. Together, they have written checks totaling three times \$3,500, or \$10,500. Yet, between the three of them, there is less than \$00 in all three checking accounts.

E.F. HUTTON

Will any of the three checks bounce? The answer is “No”, unless the banker figures out the scheme. If any of them withdraw the checks for cash, they can be charged with fraud and, just for writing them, they can be charged with check kiting, which is a federal crime. Some check kiting schemes involve millions of dollars of bad checks floating between various accounts, which the depositors suddenly cash in before vanishing with their ill-gotten gains.

In the summer of 1985, E.F. Hutton gained national notoriety for floating up to \$270 million dollars worth of checks each day in what was, up until now, the largest check kiting scheme ever

perpetuated in this country. E. F. Hutton never cashed the checks, but instead collected an estimated \$25 million dollars in interest each year on the checking accounts through which all the bad checks were floating. The Department of Justice, even after a thorough investigation, could find no one to indict. Incredible, but true—believe it or not.

THE GAMES PEOPLE PLAY

If a group of people sits down to play a Monopoly game, and only one person (the “banker”) has the power to create money, there can be little doubt who will win the Monopoly game. Here’s the strategy. The “banker” lends money to the people who want to stay in the game, AND he gets mortgage and security liens against all their personal and real property. The interest he charges for the money he creates and lends out is all gravy—virtually all profit and no overhead. Once everyone is in debt to him, he just cuts off their credit and calls in his loans. Because the interest on the loans creates a debt greater than the supply of money to repay it, all the lender does to foreclose on everyone is to stop making new loans. When the existing loans are paid off, the money supply dries up, and prices of land, buildings, and commodities fall. Then, the lender forecloses. All this is done very smoothly as lenders deprive people of property under color of law.

Taking the Monopoly game from the parlor into today’s real life is simple. What is happening is merely a repeat of a script written long ago. We, the People, have been conned into a trap, tempted by the lure of money, and have signed our land and freedoms away with contract that have made us perpetual economic slaves to the lenders. Under our right to contract, we have signed notes, entering ourselves “voluntarily” into a debt dictatorship—although few, if any, of us realize the trap we were led into.

WHO CREATES THE MONEY?

Under the U.S. Constitution in Article 1, Section 8, Congress shall have the power “to coin Money, and regulate the Value thereof”. Today, money is defined by 31 USCA, Section 5103 which says, “United States coins and currency...are legal tender for all debts, public charges, taxes and dues.” It is quite clear that the U.S. Government has exclusive power to coin money, and this power has not been delegated by the Constitution to private individuals or corporations. It is important to realize here that evidences of debt are not money, and are not legal tender. Such evidences of debt include, checks, credit cards, lines of credit, demand deposits, credit, letters of credit, and checkbook money. These latter instruments pass as money only as long as people have confidence in them.

DO BANKS CREATE MONEY?

In their own publications, the banks claim they create money. Because money is defined by law as coins or currency, we must look at the evidence to see if they create coins or currency. A close examination of evidence shows that the banks neither create coins nor currency, as these are exclusive functions of the U.S. Government. What, then, do they create? They create something that passes as money, yet isn’t real money.

OR DID HE MERELY WRITE A BAD CHECK?

DID THE LENDER CREATE THE MONEY?

When we looked at what the E. F. Hutton people did, we saw that in a sense they created money and benefited by it. They wrote bad checks, which passed as money because Hutton always backed its bad checks with more bad checks in a never-ending check kiting scheme. Yet, what

difference is there between what E. F. Hutton did and what a commercial bank does on a regular basis?

Consider this, “Modern Money Mechanics,” published by the Federal Reserve Bank of Chicago, says:

“The actual process of money creation takes place in commercial banks.”

“Deposits are merely book entries.”

“Banks can build up deposits by increasing loans...”

“...bankers discovered that they could, merely by giving borrowers their promises to pay (bank notes) in this way, banks began to create money.”

Demand deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries to the credit of borrowers which the borrowers, in turn, could spend by writing checks.”

A publication by the Federal Reserve Bank of Boston, called “Putting It Simply,” says

“When the Federal Reserve writes a check, it is creating money.

Another publication by the Federal Reserve Bank of New York, called “I Bet You Thought,” says:

“This checkbook money is bookkeeping money created mainly by the nation’s commercial banks.”

Now, you may want to buy the story that the bankers are creating money, but I will not. The courts have clearly decided that checks and evidences of debt are not money. (See *Hegeman v. Moon*, 131 NY 462, 30 NE 487 and/or *State v. Nedon*, 73 Pac 321, 43 Ore 158) IF YOU OR I WRITE A CHECK WITHOUT HAVING THE FULL VALUE IN CASH TO BACK IT UP, YOU OR I HAVE WRITTEN A BAD CHECK. IF A BANK WRITES A CHECK WITHOUT THE FULL VALUE IN CASH TO BACK IT UP. THEN THE BANK, TOO, HAS WRITTEN A BAD CHECK. The bank, however, is in a unique position to circulate its bad checks as “money” by stamping them “PAID” and crediting the depositor’s checking or savings account with some book entries. The banks are getting away with this fraudulent activity because most of us don’t cash our checks because we use checks and credit cards as substitutes for cash (money). As a result, many banks are making loans up to 33 times the amount of actual money (cash) they have to loan. This technique is known as “fractional reserve banking.”

Today, the American people have become a party to the check kiting scheme of the bankers by accepting checks and depositing them, and then writing checks against those book entry deposits. We unwittingly help the banks pass on bad checks as “money.”

WHAT IS FRACTIONAL RESERVE BANKING?

Fractional reserve banking is based on the trade secrets of the goldsmiths. During the Middle Ages, the goldsmiths would store real money—gold and silver coins—brought to them for safekeeping. The goldsmiths would then issue notes promising the “Bearer on Demand” that amount in either gold or silver coins. Eventually, the goldsmiths found that the people preferred using notes to buy goods and services from each other and would leave their heavy and cumbersome coins in the vaults.

Conceiving a plan to get rich quick, the goldsmiths issued up to ten times the value that they had gold or silver coins in their vaults in notes—promises to pay. They then lent out these notes—worthless paper!—and collected interest on them! The precious metal coins stayed in the vaults backing the bad notes they circulated as “money” at a fraction (1/10) of the coins’ actual value (hence, the term “fractional reserve.”)

The goldsmiths said they created money. We say, “NONSENSE!” To create real money, they would have mined and refined real gold or silver metals and formed them into coins. While their notes seemingly benefited the public, the actual monopoly of issuing these notes placed goldsmiths in positions of great wealth and power over people and nations. Or at least, that is, as long as their fraudulent activities were not discovered. The goldsmith’s power became awesome, and he could, at his discretion, lead a nation into either a war or a depression, if it furthered his ends.

THE HARD EVIDENCE

First of all, no banker in the United States can cite any law that gives him the right to create money by lending “promises to pay money” which are called by many names, such as: demand deposits, credit, or checkbook money. Look at it this way: If any of these items are cashed in, no money is created. Instead, a promise to pay money is exchanged for the money promised. That’s like writing an IOU for an IOU. Now, if the money promised doesn’t exist, then we are talking about bad demand deposits, bad credit, and bad checks. The fact that the bank stamps the check “PAID” when, in fact, no cash is paid out, and there exists only a transfer of book entries, is evidence in itself of check kiting. An ingenious con, really, to swindle millions of people every day, with no one being the wiser because they actually think their paychecks have value.

FEDERAL RESERVE BULLETIN CONFIRMS FRAUD

A MONTHLY PUBLICATION BY THE FEDERAL RESERVE BOARD, CALLED THE “FEDERAL RESERVE BULLETIN,” HAS IN IT INFORMATION TO DOCUMENT MASSIVE FRAUD AND CHECK KITING GOING ON IN THE NATION’S BANKING SYSTEM. IN THE MAY EDITION OF THE FRB, IT STATES THE RESERVE REQUIREMENTS EFFECTIVE ON JANUARY 1, 1985 ARE 3% FOR NET ACCOUNTS UNDER \$29.8 MILLION AND 0% FOR ACCOUNTS OF CORPORATIONS ON TIME DEPOSITS OF EIGHTEEN MONTHS OR MORE.

As of February, 1985, the total amount of Federal Reserve Notes in circulation is listed at \$162.9 billion. Yet the total loans and securities of all commercial banks are listed at \$1.8 trillion—ELEVEN TIMES GREATER than the money supply (cash). This \$1.8 trillion figure does not include the over \$2 trillion worth of stock in American industry held by bank trust departments. Total mortgage loans are over \$2 trillion, and the total amount of the Federal Government’s debt is over \$1.7 trillion. In fact, the entire public and private debt is over \$6 trillion. Yet the actual amount of money (cash) in the country is \$162.9 billion or less than 3% of the total debt.

If the banks and other financial institutions had actually been lending the money, then the total national debt would be less than \$200 billion, yet we find it to be 30 TIMES this amount. This can only mean one thing: that there are over \$5 trillion worth of bad checks written which created over \$5 trillion worth of unlawful debts. THE LEGAL BASIS TO CANCEL MOST OF

THE PUBLIC AND PRIVATE DEBT OF THE NATION IS SET FORTH IN THE FEDERAL RESERVE'S OWN BULLETINS!

MAIL FRAUD AND RACKETEERING

The use of the U.S. Postal Service to collect on any unlawful debt is considered mail fraud under federal statutes (18 G.S.C. 1341), and the use of the U.S. Mails more than once in any 10-year period constitutes a pattern of racketeering activity under statute 18 U.S.C. 1961.

Any bank loan in this country where checks or credit cards were used and no actual cash was received should be considered an act of fraud to circulate a bad check as money as part of a check kiting operation that involves the Federal Reserve Banks, which are also privately owned banks. No person should receive any check without going to the bank and demanding actual cash. We must stop using bank credit cards and demand proof from the bank that it actually lends lawful money. We must pray and call of God almighty to help expose and drive the check kitters (The Money Changers) from America.

WHAT CAN YOU DO?

First, you can write to your congressman and demand a congressional investigation into the massive check kiting, fraud and conspiracy charges raised in this flyer. Send your Congressman, Senator, Governor, State legislators, mayor, and local sheriff and judges a copy of this flyer and ask them to conduct an investigation. Or better yet, impanel a Grand Jury to investigate these allegations.

We need to determine what portion of the national and private debt was actually paid for with lawful money. That portion of the public and private debt that was “paid for” with bad checks designed to circulate as money should be immediately repudiated, and those who illegally acquired government securities and bonds should be indicted.

We need a complete investigation and audit of all 12 Federal Reserve Banks, and over 14,000 member banks.

We need an immediate investigation of all mortgage loans, and loans made through the Farm Credit System, to determine the event of the check kiting operation and which farm debts should be canceled. In the meantime, we need an immediate moratorium to stop all foreclosures.

Your help is needed to reprint this flyer and pass it on to your friends and neighbors. Yours prayers for the success of those efforts will bring God’s blessings upon us as we strive to attain economic and social justice for all. **This publication is not copyrighted. Reprint and pass on.**

This is one of the many reasons that people are in such a state of turmoil with debt.....This is why we have to act today!!!!

[Click here: BBCOA.com>http://www.bbcoa.com/articles/evidence.shtml](http://www.bbcoa.com/articles/evidence.shtml)

Claim 1: The United States is not Country; it is a Corporation

The United States of America is a corporation endowed with the capacity to sue and be sued, to convey and receive property. 1 Marsh. Dec. 177, 181. But it is proper to observe that no suit can be brought against the United States without authority of law." *Bouviere's Law*, 5th definition of "United States" "It is an established fact that the United States Federal Government has been dissolved by the Emergency Banking Act, March 9, 1933, 48 Stat. 1, Public Law 89-719; declared by President Roosevelt, being bankrupt and insolvent. H.J.R. 192, 73rd Congress in session June 5, 1933 - Joint Resolution To Suspend The Gold Standard and Abrogate The Gold Clause dissolved the Sovereign Authority of the United States and the official capacities of all United States Governmental Offices, Officers, and Departments and is further evidence that the United States Federal Government exists today in name only." United States Congressional Record, March 17, 1993 Vol. 33 Proof A: United States Defined Few Americans realize that there are three definitions for the "United States." Most have been misled to believe that the term "United States" has a single meaning and is a generic term referring to the country as a whole The Second definition states "United States" (D.C.) has its own citizens (see *United States v. Cruikshank*, 92 U.S. 542) who are generally referred to as United States citizens. The yellow fringed flag signifying this jurisdiction is not for decorative purposes. It signifies the jurisdiction of the District, also known as CORPORATE U.S. FEDERAL that has been extended into the Union states by the 14th Amendment. Proof B: The Legislative Act of February 21, 1871, Forty-first Congress, Session III, Chapter 62, page 419, Congress chartered a Federal Company entitled "United States," a/k/a "US Inc.," a "Commercial Agency" originally designated as "Washington, D.C.," in accordance with the 14th Amendment which the record indicates was never ratified (see *Utah Supreme Court Cases*, *Dyett v Turner*, (1968) 439 P2d 266, 267; *State v Phillips*, (1975) 540 P 2d 936; as well as *Coleman v. Miller*, 307 U.S. 448, 59 S. Ct. 972; 28 *Tulane Law Review*, 22; 11 *South Carolina Law Quarterly* 484; *Congressional Record*, June 13, 1967, pp. 15641-15646). A "citizen of the United States" is a civilly dead entity operating as a co-trustee and co-beneficiary of the PCT, the private constructive, cestui que trust of US Inc. under the 14th Amendment, which upholds the debt of the USA and US Inc. in Section 4. Proof C: There are no Judicial courts in America and there have not been since 1789. Judges do not enforce Statutes and Codes. Executive Administrators enforce Statutes and Codes. (*FRC v. GE* 281 US 464, *Keller v. PE* 261 US 428, 1 Stat. 138-178) - Factoids #8

Claim 2: The United States is Bankrupt. Speaker-Rep. James Traficant, Jr. (Ohio) addressing the House: "Mr. Speaker, we are here now in chapter 11. Members of Congress are official trustees presiding over the greatest reorganization of any Bankrupt entity in world history, the U.S. Government." *United States Congressional Record*, March 17, 1993 Vol. 33, page H-1303

Proof A: Bankruptcy of U.S in 1933 & State of Emergency, War Powers & Trading with the Enemy Act of 1917 The United States went "bankrupt" in 1933. [President Roosevelt Executive Order 6073, 6102, 6111, 6260; Senate Report 93-549, pgs. 187 & 594, 1973]. In 1950, declared "bankruptcy and reorganization." Secretary of Treasury appointer receiver in the bankruptcy [Reorganization Plan, No. 26, 5 U.S.C.A. 903; Public Law 94-564; Legislative History, Pg. 5967

Proof B: Law And Antilaw, 1995 - Perhaps the most important was the Emergency Banking Act of March 9, 1933, and particularly its amendment to the Trading with the Enemy Act of October 6, 1917, and its ratification of such executive orders as the Proclamation 2040 by President Roosevelt issued on March 6, 1933, sometimes called the Emergency and War Powers order. This act, codified as 12 USC 95(b), effectively declared the Constitution suspended and conferred dictatorial powers on the President, a situation which continues to this day. Sec. 95b. - Ratification

of acts of President and Secretary of the Treasury under section 95a - "The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by section 95a of this title, are approved and confirmed."

Proof C: The Us. Bankruptcy Story This article by Aware provides the proof that America has become completely bankrupt and the people have become subject to undeclared economic war, bankruptcy, and economic slavery of the most corrupt order.

Proof D: THE U. S. DEBT PYRAMID SCAM by Boudewijn Wegerif - March 2000 The Nobel laureate scientist Frederick Soddy in the 1920's - "The whole profit of the issuance of money has provided the capital of the great banking business as it exists today. Starting with nothing whatever of their own, they have got the whole world into their debt irredeemably, by a trick. This money comes into existence every time the banks 'lend' and disappears every time the debt is repaid to them. So that if industry tries to repay, the money of the nation disappears."

Proof E: Presidential Determination No. 92 - 45 -- Memorandum on Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act August 28, 1992 Memorandum for the Secretary of State, the Secretary of the Treasury Subject: Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act - Bush Library

Proof F: U.S. NATIONAL DEBT - We are \$Trillions in debt. If that's not bankrupt, what is? This clock gives you the debt to the day. The National Debt has continued to increase an average of \$843 million per day since September 28, 2001.

Proof G: Money Facts - The text of this Congressional document is reproduced in whole but without index. It must be remembered that it was published in 1964 and facts have changed due to changes in laws. Particularly, both gold and silver have been de-monetized and currencies have changed accordingly; and, especially, statistical references are out of date. It incorporates economic dogmas of that era. In some places, the doublespeak has an "Alice in Wonderland" quality. What it does do is leave no doubt about who runs the U. S. economy and how money is created.

Proof H: How Americans Lost Their Right To Own Gold And Became Criminals in the Process - Most Americans are unaware of the existence of these harsh criminal sanctions. Fewer still, including the legal community, are aware of how and why Americans lost their right to own gold in the first place. The facts, which should startle layman and lawyer alike, expose the shaky legal foundation on which the gold prohibition rests: an unconstitutional arrogation of congressional power and the improper delegation of that power to the President, leading to what can be called the "endless emergency rationale."

Proof I THE BALANCED BUDGET SCAM - "Consistently, the federal government defaulted to banks the de facto power to create the nation's money supply until 1913. In 1913 the Federal Reserve Banking System was created and assigned monetary policy authority de jure Since 1913, the Congress has continued to give more authority and control of the money supply to a private banking monopoly which it mislabeled Federal Reserve."

Claim 3: Your life's labor and everything you've created, have become the legal, commercial collateral of the bankrupt U.S. Inc. .

Our government was created to serve us, We the People. It has grown into a greedy, arrogant monster claiming ultimate ownership of virtually everything, including us. The Truth about Money, by Steven A. Reid, M.D.

"[E]very State possesses exclusive jurisdiction and sovereignty over persons and property within its territory." - Pennoyer v. Neff, 95 U.S. 714, 733 -35 (1878)

Proof A America's Constitutional Dictatorship - First published in July, 1996 by the North Bridge News "Since March the 9th, 1933, the United States has been in a state of declared national emergency. Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and... control the lives of all American citizens...."

Proof B Martial Law, by Dr. Gene Schroder - For years, we have heard that the United States was in bankruptcy, that we are under Martial Law. For years, we could only suppose this to be true. Dr. Gene Schroder, has done extensive research into the matter. The results of his research prove that these claims are absolutely true. Since March 9, 1933, the United States has been operating under a declared National Emergency as a result of that bankruptcy.

Proof C: Emergency Powers Fraud, by William T. Holmes : FDR issued Proclamation 2040: under the authority of the amended Trading with the Enemy Act, "[I]n view of such continuing national emergency... all terms and provisions of said Proclamation of March 6, 1933... are... in full force and effect until further proclamation by the President." 48 Stat. 1691. The New Deal was not to be temporary. People and their property became as chattels for unlimited obligations of the United States.

Proof D: Excellent article on how your All-Capital-Letter name is used to bind your living body and soul to the corporate bankruptcy. Anytime you see "your name" in all capital letters, IT IS NOT YOUR NAME!! It is the name of a separate entity, a legal fiction, the Straw Man representing you in commercial transactions and for which you are presumed to be the SURETY. - Source - Aware Group Site

Proof E: The Reconstruction Acts, Articles of War Against the American People, and Usurpation of States Rights "Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both." - James Madison, August 4, 1822.

Proof F: Federal Reserve System's Funny Money Explained Today's paper currency has "THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE" inscribed on the note. But the note doesn't tell you who, or what is backing the bill. Find out.

Proof G: HJR-192 superseded Public Law (what passes as law today is only "color of law"), replacing it with public policy. This eliminated our ability to PAY our debts, allowing only for their DISCHARGE. When we use any commercial paper (checks, drafts, warrants, federal reserve notes, etc.), and accept it as money, we simply pass the unpaid debt attached to the paper on to others, by way of our purchases and transactions. This unpaid debt, under public policy, now carries a public liability for its collection. In other words, all debt is now public. The United States government, in order to provide necessary goods and services, created a commercial bond (promissory note - Source: Commerce Games Exposed

Proof H: The Truth about Money - The issuance of paper as a "legal tender" and circulating medium of exchange did not occur until 1862 during the Civil War. The Congress authorized the emission of non-interest bearing Treasury notes and declared the bills of credit to be legal tender for all debts, public and private, with the exception of taxes on imports. The notes were deemed necessary to "float the debt of the United States" for the war effort. In short, the paper "green backs" were "printed" under pretext of "war powers."

Proof I: You Think You Own Your Own Home, Car, Etc.? - Think Again It is an established fact that the United States Federal Government has been dissolved by the Emergency Banking Act, March 9, 1933, 48 stat. 1, Public Law 89-719; declared by President Roosevelt, being bankrupt and insolvent. H.J.R. 192, 73rd Congress m session June 5, 1933 - Joint Resolution To Suspend The Gold Standard and Abrogate The Gold Clause dissolved the Sovereign Authority of the United States and the official capacities of all United States Governmental Offices, Officers, and Departments and is further evidence that the United States Federal Government exists today in name only.

Proof J: THE REAL LAW OF THE LAND IN THE UNITED STATES OF AMERICA - When the Southern states walked out of Congress on March 27, 1861, the quorum to conduct business under the Constitution was lost. The only votes that Congress could lawfully take, under Parliamentary Law, were those to set the time to reconvene, take a vote to get a quorum, and vote to adjourn and set a date, time, and place to reconvene at a later time, but instead, Congress abandoned the House and Senate without setting a date to reconvene. Under the parliamentary law of Congress, when this happened, Congress became sine die (pronounced see-na dee-a; literally "without day") and thus when Congress adjourned sine die, it ceased to exist as a lawful deliberative body.

Proof K: The Real Story of the Money-Control Over America, By Sheldon Emry Additional point of interest: The 14th Amendment to the Constitution for the United States is Null and Void: 1. as Senator John P. Stockton's "Negative Vote" on H.J.R. 127 caused the United States Senate to fail in obtaining a 2/3rd vote majority needed to pass the Resolution out of the Senate. 2. as five absent Senators failed/refused to cast "proxy votes" on H.J.R. 127, the Resolution failed for not being acted upon in accordance to Article V of the Constitution for the United States as 32 members of the House of Congress refused to cast a vote on H.J.R. 127, the Resolution failed for not being acted upon in accordance to Article V for the Constitution for the United States.

The Bankruptcy of The United States

United States Congressional Record, **March 17, 1993** Vol. 33, page H-1303
Speaker-Rep. James Traficant, Jr. (Ohio) addressing the House:

"Mr. Speaker, we are here now in chapter 11.. Members of Congress are official trustees presiding over the greatest reorganization of any Bankrupt entity in world history, the U.S. Government. We are setting forth hopefully, a blueprint for our future. There are some who say it is a coroner's report that will lead to our demise.

It is an established fact that the United States Federal Government has been dissolved by the Emergency Banking Act, March 9, 1933, 48 Stat. 1, Public Law 89-719; declared by President Roosevelt, being bankrupt and insolvent. H.J.R. 192, 73rd Congress m session June 5, 1933 - Joint Resolution To Suspend The Gold Standard and Abrogate The Gold Clause dissolved the Sovereign Authority of the United States and the official capacities of all United States Governmental Offices, Officers, and Departments and is further evidence that the **United** States Federal Government exists today in name only.

The receivers of the United States Bankruptcy are the International Bankers, via the United Nations, the World Bank and the International Monetary Fund. All United States Offices, Officials, and Departments are now operating within a de facto status in name only under Emergency War Powers. With the Constitutional Republican form of Government now dissolved, the receivers of the Bankruptcy have adopted a new form of government for the United States. This new form of government is known as a Democracy, being an established Socialist/Communist order under a new governor for America. This act was instituted and established by transferring and/or placing the Office of the Secretary of Treasury to that of the Governor of the International Monetary Fund. Public Law 94-564, page 8, Section H.R. 13955 reads in part: "The U.S. Secretary of Treasury receives no compensation for representing the United States?"

Gold and silver were such a powerful money during the founding of the united states of America, that the founding fathers declared that only gold or silver coins can be "money" in America. Since gold and silver coinage were heavy and inconvenient for a lot of transactions, they were stored in banks and a claim check was issued as a money substitute. People traded their coupons as money, or "currency." Currency is not money, but a money substitute. Redeemable currency must promise to pay a dollar equivalent in gold or silver money. Federal Reserve Notes (FRNs) make no such promises, and are not "money." A Federal Reserve Note is a debt obligation of the federal United States government, not "money?" The federal United States government and the U.S. Congress *were not* and *have never* been authorized by the Constitution for the united states of America to issue currency of any kind, but only lawful money, -gold and silver coin.

It is essential that we comprehend the distinction between real money and paper money substitute. One cannot get rich by accumulating money substitutes, one can only get deeper into debt. We the People no longer have any "money." Most Americans have not been paid any "money" for a very long time, perhaps not in their entire life. Now do you comprehend why you feel broke? Now, do you understand why you are "bankrupt," along with the rest of the country?

Federal Reserve Notes (FRNs) are unsigned checks written on a closed account. FRNs are an inflatable paper system designed to create debt through inflation (devaluation of currency). when ever there is an increase of the supply of a money substitute in the economy without a corresponding increase in the gold and silver backing, inflation occurs.

Inflation is an *invisible form of taxation* that *irresponsible* governments inflict on their citizens. The Federal Reserve Bank who controls the supply and movement of FRNs has everybody fooled. They have access to an unlimited supply of FRNs, paying only for the printing costs of what they need. FRNs are nothing more than promissory notes for U.S. Treasury securities (T-Bills) - a promise to pay the debt to

the Federal Reserve Bank.

There is a fundamental difference between "paying" and "discharging" a debt. To pay a debt, you must pay with value or substance (i.e. gold, silver, barter or a commodity). With FRNs, you can only discharge a debt. *You cannot pay a debt with a debt currency system* _You cannot service a debt with a currency that has no backing in value or substance. No contract in Common law is valid unless it involves an exchange of "good & valuable consideration."

Unpayable debt transfers power and control to the sovereign power structure that has no interest in money, law, equity or justice because they have so much wealth already.

Their lust is for power and control. Since the inception of central banking, they have controlled the fates of nations.

The Federal Reserve System is based on the Canon law and the principles of sovereignty protected in the Constitution and the Bill of Rights. In fact, the international bankers used a "Canon Law Trust" as their model, adding stock and naming it a "*Joint Stock Trust*."

The U.S. Congress had passed a law making it illegal for any legal "person" to duplicate a "Joint Stock Trust" in 1873. The Federal Reserve Act was legislated post-facto (to 1870), although post-facto laws are strictly forbidden by the Constitution. [1:9:3]

The Federal Reserve System is a sovereign power structure separate and distinct from the *federal United States government*. The Federal Reserve is a *maritime lender*, and/or maritime insurance underwriter to the federal United States operating exclusively under Admiralty/Maritime law. The lender or underwriter bears the risks, and the Maritime law compelling specific performance in paying the interest, or premiums are the same.

Assets of the debtor can also be hypothecated (to pledge something as a security without taking possession of it.) as security by the lender or underwriter. The Federal Reserve Act stipulated that the interest on the debt was to be paid in gold.

There was no stipulation in the Federal Reserve Act for ever paying the principle.

Prior to 1913, most Americans owned clear, allodial title to property, free and clear of any liens or mortgages until the Federal Reserve Act (1913) "Hypothecated" all property within the federal United States to the Board of Governors of the Federal Reserve, -in which the Trustees (stockholders) held legal title. The U.S. citizen (tenant, franchisee) was registered as a "beneficiary" of the trust via his/her birth certificate.

In 1933, the federal United States hypothecated all of the present and future properties, assets and labor of their "subjects," the 14th Amendment U.S. citizen, to the Federal Reserve System.

In return, the Federal Reserve System agreed to extend the federal United States corporation all the credit "*money substitute*" it needed. Like any other debtor, the federal United States government had to assign collateral and security to their creditors as a condition of the loan.

Since the federal United States didn't have any assets, they assigned the private property of their "economic slaves", the U.S. citizens as collateral against the unpayable federal debt. They also pledged the unincorporated federal territories, national parks forests, birth certificates, and nonprofit organizations, as collateral against the federal debt.

All has already been transferred as payment to the international bankers.

Unwittingly, America has returned *to its* pre-American Revolution, feudal *roots* whereby all land is held by a sovereign and the common people had no rights to hold allodial title to property. Once again, We the People are the tenants and sharecroppers renting our own property from a Sovereign in the guise of the

Federal Reserve Bank. We the people have exchanged one master for another.

This has been going on for over eighty years without the "informed knowledge" of the American people, without a voice protesting loud enough. Now it's easy to grasp why America is fundamentally bankrupt. Why don't more people own their properties outright? Why are 90% of Americans mortgaged to the hilt and have little or no assets after all debts and liabilities have been paid? Why does it feel like you are working harder and harder and getting less and less? We are reaping what has been sown, and the results of our harvest is a painful bankruptcy, and a foreclosure on American property, precious liberties, and a way of life. Few of our elected representatives in Washington, D.C. have dared to tell the truth.

The federal United States is bankrupt. Our children will inherit this unpayable debt, and the tyranny to enforce paying it. America has become completely bankrupt in world leadership, financial credit and its reputation for courage, vision and human rights. This is an undeclared economic war, bankruptcy, and economic slavery of the most corrupt order! Wake up America! Take back your Country."

26. CREDIT REPAIR

At some point, you may wish to clean up your credit reports. This is much easier when you have the Notary's Certificate of Dishonor and Non-Response, and easier yet after you have obtained a judicial finding that your process was perfect so that you can execute against the creditor. Remember, the costs of any credit repair which is to remove a creditor's report which was taken care of during the notarial protest is an item you can back-charge the creditor for, per your contract.

Below is a link to information on credit repair you may be interested in learning:
The agency is required to verify any disputed information. See the FREE INFO at <http://www.creditinsiders.com/credit-repair.html> .

Below are several agencies who seem to be quite reputable and their fee schedules as of August 2003

CCS Financial, Steve Paige

Draper UT. The founder is Steve Paige, stevezpaige@comcast.net. 801-553-0134. Please use Dennis Styles as the referring person.

19 year history.

\$194 set-up fee, holds \$150 in reserve, so \$34 is for the first credit reports

\$19.95 monthly fee

Only charges for results (once something has been removed). Here are the fees for removing things: \$50 per bad item deleted, \$75 per collection item removed, \$99 per judgment or bankruptcy item (this includes IRS liens).

Most cases take 90 days to see definitive results from the clean up efforts.

- referral Dennis Styles

Credit Attorney, Rich Horne 1.800.788.0447 x202
Colorado

Arbitration

What is it and how does it apply to my situation?

Arbitration is a means of coming to an agreement over a disputed matter without involving the courts. An arbitrator hears both sides and then makes a decision based on the information.

There are rules for arbitration, including:

- Both parties must agree to do the arbitration
- Both parties must agree on the arbitrator
- In most cases, both parties must be present

Banks will sometimes add an arbitration clause in their contracts. If you have received a notice of arbitration, either the bank already had it in the account contract or they notified you later and sent you a notice with an opt-out provision. So because of your billing dispute, the banks are trying to force you into arbitration to resolve the dispute.

The problem with arbitration is that banks and the arbitration forum have a vested interest in helping each other. Arbitrations are done in bulk and often end in the same results (bank gets the award). Arbitration is rarely fair, and in most cases the bank/attorneys do not follow the rules of arbitration correctly. First, they are basically forcing you to arbitrate which is a violation of the first point listed above (both parties must agree...). Next, it denies your right to due process. You should always have the right to have a judge hear your case, and not just some third party who has a vested interest.

If you receive an arbitration notice from your bank that gives you the opt-out option, you should do so. This requires you to write up a little letter to the bank saying that you wish to opt out of arbitration, and it should be sent with proof of service and the USPS certificate of mailing or by certified mail. However, if you do this, in most cases, they will close your account.

If you get an arbitration notice from the bank, you will want to file a motion to dismiss the arbitration based on a number of reasons, which likely will be denied. After that, the bank will still force the arbitration and you may see requests for more information, or notices, or even a settlement offer. At this point, you no longer send in anything, because you do not want it to appear as though you are participating willingly in the arbitration. Your motion to dismiss should have already covered all the legal reasons you declined to participate in arbitration.

Eventually you will receive a notice from the arbitration forum that they have given an "Award" to the bank and you now owe the full balance and then you should get some sort of collection letter, which you must respond to. Now the collection game begins again, and you pick up where you left off.

Tidbits:

- Arbitration adds anywhere from 60-90 more days on to your termination process for that particular card

- The bank has 12 months to enforce the arbitration award. That means, they must submit to the courts (much like a lawsuit) and get the judge to approve it, and then you must be served with a notice. This rarely occurs. Usually, they just keep sending you collection notices and the year goes by and then they go away.
- Remember, an “Award” means nothing unless the bank can take it to the courts, get it turned in to a judgment, and then try and find assets to collect from you. You would know all of this WELL in advance, and it would be a long process. So there are no surprises here.

Below are some citations for you to research and would be cited in your opposition to the arbitration.

Title 5 Sec. 575. - Authorization of arbitration

(a)

(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to -

(A)

submit only certain issues in controversy to arbitration; or

(B)

arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

"The arbitration agreement in a credit cardholder agreement is unconscionable and unenforceable, to the extent it prohibits class treatment of small individual claims, where presented as a 'take it or leave it' clause with no opportunity for negotiation" *Szetela v. Discover Bank*, No. G029323 (Cal. 4th App. Dist. April 22, 2002)

The arbitration forum chosen by the claimant is too closely aligned with the consumer finance industry. The purported arbitration clause fails to establish that the arbitration service chosen by claimant is neutral, inexpensive or an efficient forum for resolving this particular claim or dispute. *Baron v. Best Buy Co., Inc. et al.*, 75 F.Supp.2d 1368 (S.D. Fla. 1999)

The purported arbitration clause is not enforceable because it unconscionably requires the respondent to arbitrate in a distant state under an organization and rules designed to favor the purported lender. *Patterson v ITT Consumer Financial Corp.*, 14 Cal. App. 4th 1659, 18 Cal Rptr 2d 563 (Cal App. 1993).

January 20, 1999

The Honorable Ronald George, Chief Justice
and the Honorable Associate Justices of the
California Supreme Court
303 Second Street
South Tower, 8th Floor
San Francisco, California 94107

***Re: Badie v. Bank of America, No. S055552 – Opposition to Request
For Depublication***

To the Honorable Chief Justice and the Associate Justices:

The American Bankers Association, the American Financial Services Association, the Consumer Bankers Association, MasterCard International Incorporated and Visa U.S.A. Inc. (collectively “the Bankers”), and the California Employment Law Council (“the Management Lawyers”), have asked this Court to order depublication of the California Court of Appeal’s opinion in *Badie v. Bank of America*. We are writing to ask that this request be denied. The Court of Appeal’s decision in *Badie* addresses an issue – the enforceability of mandatory, pre-dispute arbitration clauses – that is currently pending before numerous courts throughout the nation. Those courts should be permitted to know about – and consider – the Court of Appeal’s decision.

As set further in further detail below, depublication should be denied for two reasons. First, there is no serious dispute that the *Badie* decision meets the publication criteria of California Rule 976(a). Among other things, this case plainly involves “a legal issue of continuing public interest” -- *i.e.*, the enforceability of mandatory arbitration clauses that are imposed on consumers without any real knowledge and consent. This brings the decision squarely within the terms of Rule 976(a), which properly seeks to ensure that important and precedent-setting legal decisions are published for all the world to see. For that reason, the request for depublication should be denied.

Nor should publication be granted on the basis of the Bankers and Management Lawyers’ claim that the Court of Appeal’s opinion is wrong. On this point, the Bankers and Management Lawyers attack the decision on the ground that it unfairly discriminates against arbitration clauses (as opposed to other, similar contractual provisions) and would unfairly prevent their clients from imposing mandatory arbitration through clauses that are “ambiguous” and “equivocal.” This amounts to the astonishing -- and legally unsupported claim -- that their clients should be permitted to ensnare unsuspecting consumers into arbitration schemes without their true knowledge or consent. They further abuse the Court of Appeal for applying the standard contract law doctrine that waivers of constitutional rights must be voluntary, knowing and intelligent, thus the Bankers and Management Lawyers make the unusual case for waivers that are *involuntary*, *unknowing*, and *unintelligent*. Because the law decidedly does *not* enshrine a right for banks to “involuntarily” impose mandatory arbitration upon their “unknowing” customers through “ambiguous” and “equivocal” clauses, the Bankers’ and Management Lawyers’ request for depublication should be denied.

Interest of *Amicus Curiae*

Trial Lawyers for Public Justice (“TLPJ”) is a national public interest law firm that specializes in precedent-setting and socially significant civil litigation and is dedicated to pursuing justice for the victims of corporate and governmental abuses. Litigating throughout the federal and state courts, TLPJ prosecutes cases designed to advance consumers' and victims' rights, environmental protection and safety, civil rights and civil liberties, occupational health and employees' rights, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless.

Over the past year, TLPJ has been contacted by a large number of consumer attorneys around the nation who were faced with mandatory arbitration schemes that threatened to deprive their clients of their day in court. In each case, the attorney's consumer clients wished to pursue their claims through the civil justice system, and to have their cases heard by a jury of their peers, but the corporate defendant sought to force the consumers to submit these claims to an arbitrator. As a result of our investigations and research, TLPJ has become convinced that, in many cases, mandatory arbitration poses a significant threat to both consumers and our system of justice. In this case, TLPJ is particularly concerned about the Bankers' and Management Lawyers' suggestion that mandatory arbitration may be imposed in circumstances where the consumers did not meaningfully consent to such arbitration. Not only is this result contrary to the U.S. Supreme Court's jurisprudence relating to arbitration, but it is fundamentally unfair and unwise public policy. TLPJ therefore urges this Court to reject the depublication request.

ARGUMENT

I. *BADIE* FALLS SQUARELY WITHIN THE PUBLICATION CRITERIA OF CALIFORNIA RULE OF COURT 976(A).

The first problem with the depublication request is that it ignores the rule actually governing publication of legal decisions in this state. California Rule of Court 976(a) sets the standards for publication of opinions by the lower courts. The Court of Appeals certified that the decision in *Badie* satisfies these standards. Neither the Bankers nor the Management Lawyers claim otherwise. That fact, alone, should preclude depublication.

Rule 976(a) provides that Courts of Appeal decisions should be published when any one of four specific disjunctive criteria are met:

- (1) the opinion sets forth a new rule of law or applies an existing rule to new facts;
- (2) the opinion creates an apparent conflict with a decision by another Court of Appeal;
- (3) the opinion involves a legal issue of continuing public interest; or
- (4) the opinion makes a contribution to legal literature by reviewing development of common law rule.

Rule 979, providing for the depublication of certain Court of Appeals decisions, by contrast, sets forth no criteria for the depublication of those decisions. Thus, the clear implication of Rule 976(a) is that decisions of the Courts of Appeal should only be depublished when **none** of these four publication criteria are met.

The Bankers and the Management Lawyers effectively concede that the Court of Appeal's decision meets the publication criteria of Rule 976(a). The Bankers and the Management Lawyers make no effort to deny, for example, that the Court of Appeal's opinion in *Badie* involves a "legal issue of continuing public interest;" to the contrary, they explicitly state that the decision "raises issues of exceptional importance" Letter of American Bankers Association, *et al.*, at 2. Nor is there any suggestion (as there could not seriously be) that the centrality of the consent requirement to the imposition of mandatory arbitration is a crucial legal issue of continuing public interest. (Indeed, the United States Supreme Court decided an important decision on this topic just a few months ago. *See Wright v. Universal Maritime Service Corp.* (1998) __ U.S. __, 119 S. Ct. 391.) Similarly, the Bankers and the Management Lawyers make no effort to deny that the *Badie* opinion makes a contribution to the legal literature by reviewing the development of the common law rule. Indeed, the Court of Appeal's decision includes a careful and thorough discussion of California precedents relating to these issues. And there is no serious effort to dispute that *Badie* is the first California decision to apply the rule prohibiting imposition of mandatory arbitration absent voluntary consent of both parties to the specific but very important field of credit card agreements.

Instead of basing their arguments on the actual California rule governing depublication, the Bankers and the Management Lawyers contend solely that *Badie* is wrong. They do not deny that it deals with an important area of law, or applies that law in a new area; rather, they merely stress that they disagree with its conclusion. Even if this Court were inclined to accept that contention, *Badie* should not be depublished. Courts and counsel in other cases should be free to rely on *Badie* to the extent they find it persuasive – and the Bankers and the Management Lawyers should be free to attack *Badie*'s analysis in legal briefs to other courts, as they do in their letters to this Court. The solution to controversial speech is more speech, not mandated secrecy.

II. THE COURT OF APPEAL'S DECISION IS IN ACCORD WITH THE WEIGHT OF AUTHORITY.

Putting aside the publication criteria of Rule 976(a), there is an even more basic flaw in the Banker's and the Management Lawyers' position: *Badie* is right. This Court, numerous California Courts of Appeal, the United States Supreme Court and other courts throughout the United States have repeatedly held that arbitration may not be imposed upon any party unless that party has meaningfully consented to it. In addition, California's general law of contracts holds that *any* contract obligating one party to waive a constitutional right (whether involving free speech, the right to notice and a hearing, or, as here, the right to a jury trial) is only valid if the waiver is voluntary, knowing and intelligent.

A. BADIE IS FULLY CONSISTENT WITH MYRIAD LEGAL DECISIONS HOLDING THAT MANDATORY ARBITRATION MAY NOT BE IMPOSED WITHOUT THE MEANINGFUL CONSENT OF BOTH PARTIES.

The United States Supreme Court has repeatedly stressed that "arbitration under the [Federal Arbitration Act ("F.A.A.")] is a matter of consent, not coercion." *Allied-Bruce Terminex Co. v. Dobson* (1995) 513 U.S. 265, 270; *First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944; *Mastrobuono v. Shearson Lehman Hutton, Inc.* (1995) 514 U.S. 52, 55-56; *Volt Info. Sciences, Inc. v. Board of Trustees* (1989) 489 U.S. 468, 478. *See also AT&T Tech., Inc. v.*

Communications Workers (1986) 475 U.S. 643, 648 (“[a] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit....”) (citation omitted).

The Bankers and the Management Lawyers both tout the general policy favoring the use of arbitration. But the Court of Appeal was plainly correct in *Badie* when it held that the F.A.A. does *not* establish a presumption that a valid arbitration agreement exists – it only favors arbitration *after* that fact has been established. See *First Options of Chicago v. Kaplan* (1995) 514 U.S. at 943-44 (“arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes – but only those disputes – that the parties have agreed to submit to arbitration.”) In fact, the party seeking to compel arbitration bears the burden of showing that the other party waived their right to go to court. See *Gibson v. Neighborhood Health Clinics, Inc.* (7th Cir. 1997) 121 F.3d 1126, 1126 (applying Indiana law).

The courts of California have also forcefully rejected efforts to compel the arbitration of disputes that parties have not agreed to arbitrate. See *Victoria v. Superior Court* (1985) 40 Cal. 3d 734, 744 [222 Cal. Rptr. 1, 6, 710 P.2d 833, 838] (“there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate...” (citations omitted). Federal and state policies favoring arbitration cannot supplant the requisite agreement of the parties to arbitrate disputes. *Victoria*, 40 Cal. 3d at 739 (“the policy favoring arbitration cannot displace the necessity for a voluntary agreement to arbitrate”) (citations omitted). In particular, where consent is lacking, an agreement to arbitrate does not exist. *El Camino Community College v. Superior Court* (1985) 173 Cal. App. 3d 606, 617 [219 Cal. Rptr. 236, 242] (holding that one party’s “addition of an arbitration clause to the terms of a contract...is a significant alteration of the rights of each party to the contract, and goes to the heart of the parties’ agreement” requiring consent of the other contracting party).

B. BADIE IS IN ACCORD WITH THE GENERAL LAW OF CONTRACTS FOR ANY CONTRACT REQUIRING THE WAIVER OF A CONSTITUTIONAL RIGHT.

The Bankers and the Management Lawyers effectively disregard the consent requirement by attacking the Court of Appeal’s holding that “a contractual waiver of the right to a jury trial ‘must be clearly apparent in the context and its language must be unambiguous and unequivocal, leaving no room for doubt as to the intention of the parties.’” This amounts to a claim that this Court should depublish the Court of Appeals’ decision in *Badie* to insure that *ambiguous* and *unequivocal* arbitration agreements may be imposed upon consumers in adhesive contracts.

The Bankers and Management Lawyers support this remarkable plea by arguing that the Court of Appeals’ decision supposedly discriminates against arbitration agreements by treating them differently from other types of contracts. In fact, however, the Court of Appeal’s holding treats arbitration contracts precisely as all courts treat other contracts of their type. It is the Bankers and Management Lawyers who propose unusual treatment for arbitration contracts, asking this Court to prefer them and favor them over all other *similar* contracts.

As the Court of Appeals recognized – and the Bankers and Management Lawyers do not dispute – *any contract* that purports to waive a constitutional right (such as the right to trial by jury) must be unambiguous and unequivocal, and must provide for a voluntary, knowing and intelligent waiver. See *In re Hannie* (1970) 3 Cal. 3d 520, 526 [90 Cal. Rptr. 742, , 476 P.2d 110, 113] (“A trial by jury may be waived Waivers of constitutional and statutory rights must be voluntary . . . , and ‘knowing, intelligent acts done with sufficient awareness of the relevant

circumstances and likely consequences”) (citations omitted); *In re Laura H.* (1992) 8 Cal. App. 4th 1689, 1695 [11 Cal. Rptr. 2d 285, 288] (“While any constitutional right can be waived, mere acquiescence is not a waiver; a waiver must be knowing and intelligent.”); *Trizec Properties v. Superior Court* (1991) 229 Cal. App. 3d 1616, 1619 [280 Cal. Rptr. 885, 887] (“The right to trial by jury in a civil case is a substantial one not lightly to be deemed waived. . . . Of course, to be enforceable, the waiver provision must be clearly apparent in the contract and its language must be unambiguous and unequivocal, leaving no room for doubt as to the intention of the parties.”); *Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal. App. 3d 1122, 1129 [211 Cal. Rptr. 62, 66] (“In light of the importance of the jury trial in our system of jurisprudence, any waiver thereof should appear in clear and unmistakable form”); *In re Thomas S.* (1981) 124 Cal. App. 3d 934, 939 [177 Cal. Rptr. 742, 744] (“It is firmly established that the first requirement of any waiver of a statutory, constitutional, or here, a hybrid, judicially promulgated contractual right is that it be knowingly and intelligently made....”).

Indeed, the principal that waivers of fundamental rights must be unambiguous and unequivocal has been recognized not only in California, but in a large body of judicial decisions around the United States. This is a standard rule of contract law, and is not some sort of “discrimination” against arbitration clauses. *See Erie Telecommunications, Inc. v. City of Erie* (3rd Cir. 1988) 853 F.2d 1084, 1096 (“constitutional rights, like rights and privileges of lesser importance, may be contractually waived where the facts and circumstances surrounding the waiver make it clear that the party foregoing its rights has done so of its own volition, with full understanding of the consequences of its waiver.”); *K.M.C. Co. v. Irving Trust Co.* (6th Cir. 1985) 757 F.2d 752, 756 (“Those cases in which the validity of a contractual waiver of jury trial has been in issue have overwhelmingly applied the knowing and voluntary standard.”)

This rule is particularly pronounced in all cases involving contracts of adhesion, such as the credit card agreements in this case. *See Isbell v. County of Sonoma* (1978) 21 Cal. 3d 61, 69 [145 Cal. Rptr. 368, , 577 P.2d 188, 193] (“the debtor’s assent to a contract of adhesion with a cognovit clause, or to a confession of judgment form presented by the creditor, cannot operate as a valid waiver of constitutional rights.”), *cert. denied*, 439 U.S. 996 (1978); *Commercial National Bank of Peoria v. Kermeen* (1990) 225 Cal. App. 3d 396, 401 [275 Cal. Rptr. 122, 125] (finding that preprinted form note used by bank “suggests overreaching rather than free waiver of rights, and we cannot conclude that the waiver was voluntary”). The Supreme Court has also highlighted this factor. In *D.H. Overmyer Co. v. Frick Co.* (1972) 405 U.S. 174, the Supreme Court held that a company had lost its due process right to a notice and a hearing to dispute a debt by voluntarily, intelligently and knowingly entering into a contract to waive those rights. But the Court went on to state:

Our holding, of course, is not controlling precedent for other facts of other cases. For example, where the contract is one of adhesion, where there is great disparity in bargaining power, and where the debtor receives nothing for the cognovit provision, other legal consequences may ensue.

Overmyer, 405 U.S. at 188.

A simple hypothetical helps illustrate the universal nature of these contractual rules. The law in California, as elsewhere, is that an individual can waive her or his constitutional right to free speech. *E.g., ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal. App. 3d 307, 319 [262 Cal. Rptr. 773, 780]. And indeed, individuals often contract away certain speech rights, such as

in settlement agreements where one or both parties agree not to publicly criticize the other party. Imagine if Bank of America's form contract here had not provided for the waiver of cardholder's rights to a jury trial, but had instead provided that all cardholders were contractually bound never to publicly criticize Bank of America or banks generally. Before any court would enforce such a provision, the general law of contracts and constitutional law (as amply set forth above) would require that this provision be unambiguous and unequivocal, and that such a waiver must be voluntary, intelligent and knowing on the part of the cardholders.

There be no serious question that these principles are squarely applicable to mandatory arbitration clauses. First, neither the Bankers nor the Management Lawyers deny (as they could not) that all arbitration contracts represent a waiver of a fundamental right – the right to trial by jury. Indeed, the whole point of arbitration is to displace the civil justice system, in favor of a privately-managed system. The Bankers and Management Lawyers want to ensure that their clients' disputes with their customers and employees *not* be brought before judges or juries, under the rules of evidence, in a system where decisions are made public and are published. Instead, the Bankers and Management Lawyers and their clients want these decisions to be made by hired arbitrators. This is all fair enough and legal, **if** the customers and employees meaningfully consent to this change. But it cannot be denied that such consent constitutes a waiver of the right to trial by jury.

Second, neither the Bankers nor the Management Lawyers deny that the right to trial by jury is fundamental. Not only is this right enshrined in the Seventh Amendment to the United States Constitution, but it is also recognized as fundamental by the California Constitution. Cal. Const. art. I, § 16. The courts of California have recognized that the right to jury trial is basic and fundamental. See *Titan Group, Inc.* (1985) 164 Cal. App. 3d at 1127-28; *Ramirez v. Superior Court of Santa Clara County* (1980) 103 Cal. App. 3d 746, 756 [163 Cal. Rptr. 223, 228] ("The right to have a trial by jury is a fundamental right in our democratic judicial system.... It is a right which is justly dear...[and] should be jealously guarded by the courts. Any seeming curtailment of this right should be scrutinized with the utmost care."); *Byram v. Superior Court* (1977) 74 Cal. App. 3d 648, 654 [141 Cal. Rptr. 604, 607] ("right to trial by jury is a basic and fundamental part of our system of jurisprudence...doubt [regarding procedural waiver of that right] should be resolved in favor of preserving a litigant's right to trial by jury").

Thus, far from being aberrant, the Court of Appeals' insistence that arbitration clauses cannot be enforced against parties who did not voluntarily, knowingly and intelligently agree to waive their rights is in keeping with a broad body of law from around the nation. See, e.g., *Hooters of America, Inc. v. Phillips* (D.S.C. March 12, 1998) 1998 U.S. Dist. LEXIS 3962, *83 ("Here, enforcement of the [arbitration agreement] effects a drastic change to several of Phillips' substantive statutory rights, and therefore, assuming Phillips could waive such rights, at a minimum Hooters had the burden of proving [the employee's] knowing and voluntary agreement to each of those terms."); *Sosa v. Paulos* (Utah 1996) 924 P. 2d 357, 363 ("Under these circumstances, we cannot conclude that the arbitration agreement was negotiated in a fair manner and that the parties had a real and voluntary meeting of the minds. Nor can we conclude that Ms. Sosa had a meaningful choice with respect to signing the agreement"); *Broemer v. Abortion Services of Phoenix, Ltd.* (Ariz. 1992) 840 P.2d 1013, 1017 (arbitration clause was not enforced where "[T]here was no conspicuous or explicit waiver of the fundamental right to a jury trial or any evidence that such rights were knowingly, voluntarily and intelligently waived."); *Lawrence v. Walzer & Gabrielson* (1989) 207 Cal. App. 3d 1501, 1507 [256 Cal. Rptr. 6, 9]

("The law ought not to decree a forfeiture of such a valuable right where the [client] has not been made aware of the existence of an arbitration provision or its implications. Absent notification and at least some explanation, the [client] cannot be said to have exercised a 'real choice' in selecting arbitration over litigation."), *review denied*, 1989 Cal. LEXIS 4710 (May 17, 1989); *Obstetrics and Gynecologists Wixted, Flanagan and Robinson v. Pepper* (Nev. 1985) 693 P.2d 1259, 1261 (an arbitration clause was not enforced where the plaintiff had not given "informed consent to the agreement and . . . no meeting of the minds occurred." The plaintiff "did not remember receiving any information regarding the terms of the arbitration agreement," and that since the defendant only explained those terms if a question was asked, it appeared that "the agreement was never explained to respondent."); *Sanchez v. Sirmons* (N.Y. Sup. Ct. 1983) 467 N.Y.S.2d 757, 759-60 (an arbitration clause was not enforced where "it has not been demonstrated that the petitioner made an informed and knowledgeable waiver of her constitutional right to trial by jury. . . . Absent notification and at least some explanation, the patient cannot be said to have exercised a 'real choice' in selecting arbitration over litigation." (citations omitted).)

Conclusion

For the foregoing reasons, the request for depublication should be denied.

Respectfully submitted,

F. Paul Bland, Jr.
Victoria Nugent
Trial Lawyers for Public Justice

PROOF OF SERVICE BY MAIL

I, Paula Athey, declare as follows:

I am employed with the law firm of Trial Lawyers for Public Justice, 1717 Massachusetts Avenue, Suite 800, Washington, D.C. 20036. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing with the United States Postal Service; I am over the age of eighteen years and not a party to this action.

On January 20, 1999, I served the following:

LETTER OF THE TRIAL LAWYERS FOR PUBLIC JUSTICE IN OPPOSITION TO THE REQUEST FOR DEPUBLICATION

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I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct.

Executed at Washington, D.C. on January 20, 1999.

Paula Athey

MANUAL FOR NOTARIES PUBLIC OF NEW JERSEY

SECOND EDITION

By
EUGENE E. HINES



P.O. Box 21008
Washington, D. C.

AMERICAN SOCIETY OF NOTARIES

1978

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§7.1 Introduction.

The protesting of commercial paper is one of a notary's most important functions and one which must be done with extreme care. However, the necessity for protesting the dishonor of drafts was greatly diminished by the Uniform Commercial Code (UCC) which became effective in New Jersey on January 1, 1963, and is now the law in the District of Columbia, the Virgin Islands and all States except Louisiana.

Prior to the adoption of the UCC a protest was required when a draft (bill of exchange) of which the drawer and the drawee were residents of different States or different countries was dishonored. Under the UCC a protest is required only in case a draft drawn or payable outside the United States is dishonored. However, other drafts and other instruments may be protested and it is sometimes advisable to do so.

§7.2 Definitions.

Any writing to be a negotiable instrument must:

- (a) be signed by the maker or drawer, and
- (b) contain an unconditional promise or order to pay a certain sum in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by law, and
- (c) be payable on demand or at a definite time, and
- (d) be payable to order or to bearer.¹

A writing which complies with the requirements of the preceding paragraph is:

- (a) a draft (bill of exchange) if it is an order;
- (b) a check if it is a draft drawn on a bank and payable on demand;
- (c) a note if it is a promise other than a certificate of deposit.²

Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.³

Holder means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.⁴

Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.⁵

Acceptance is the drawee's signed engagement to honor a draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.⁶ Certification of a check is acceptance.⁷

An instrument is *dishonored* when (a) necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is reasonably returned by the midnight deadline, or (b) presentment is excused and the instrument is not duly accepted or paid.⁸

A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs.⁹

Midnight deadline with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which time the time for taking action commences to run, whichever is later.¹⁰

§7.3 Necessity for Presentment.

Unless excused (as provided in section 7.21) presentment is necessary to charge secondary parties as follows:

- (a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere

than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 7.22 (1) (b).¹¹

§7.4 Time of Presentment.

Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.¹²

A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an indorser, seven days after his indorsement.¹³

Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full

business day for both parties. Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.¹⁴

§7.5 How Presentment is Made.

Presentment may be made (a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or (b) through a clearing house; or (c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.¹⁵

A draft or note made payable at a bank in the United States must be presented at such bank.¹⁶

§7.6 To Whom Presentment is Made.

Presentment may be made (a) to any one of two or more makers, acceptors, drawees or other payors, or (b) to any person who has authority to make or refuse the acceptance or payment.¹⁷

§7.7 Noting for Protest.

Noting for protest or noting the dishonor is the act of a notary in making a memorandum on the instrument which has been dishonored of the essential facts relating to the dishonor along with his signature or initials. This is the first step toward protest. The purpose of the noting is to give the notary a record from which to prepare his certificate of protest without having to rely on his memory. This note or minute of protest can later be extended into the certificate of protest.

When an instrument is noted for protest before the protest is due, the actual certificate of protest may be made at any time thereafter as of the date of noting.¹⁸

The noting should show the date of dishonor or the date notice of dishonor was received, the fact that acceptance (or payment) was demanded and refused and any reason given therefor, and the notary's signature or initials.

§7.8 Protest.

It is no longer necessary that the notary or other officer who is to make

protest must also make presentment of the instrument. A protest may be made upon information satisfactory to the notary.¹⁹

There is no prescribed form of protest. However, it must:

- (a) identify the instrument,
- (b) certify that due presentment has been made (or the reason why it is excused), and,
- (c) certify that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to all parties or to specified parties.²⁰

§7.9 Form of Protest.

CERTIFICATE OF PROTEST

United States of America)

State of New Jersey)

Date _____

County of _____)

* * * * * Description of Instrument Protested * * * * *

I, _____, a notary public in and for the State of New Jersey, hereby certify that on _____, 19____, due presentment was made on _____, by _____ of a (draft or note), a true copy of which is set forth above, (or, of which the annexed is a copy) and acceptance (or payment) demanded and that upon the making of such presentment the (draft or note), was dishonored by nonacceptance (or nonpayment); and I hereby certify that on the same day I gave due notice to the (drawer or maker) and indorsers thereof by depositing in the Post Office at (city and State) postage prepaid, notices thereof, directed to the parties to be charged, as follows:
One for (name) directed to (address)
Etc.,

Each notice being directed to the reputed place of residence of the person for whom it was intended.

In Witness Whereof, I have hereunto set my hand and affixed my

seal of office at _____, this _____ day of _____, 19 _____.
 (Notarial Seal) /s/ _____

Notary Public

My commission expires _____

Fees \$ _____ Postage \$ _____ Travel \$ _____ Total \$ _____

§7.10 Necessity for Protest.

Unless excused (as provided in section 7.21) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside the States and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.²¹

Neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.²²

§7.11 Who May Make Protest.

Protest may be made by a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs.²³

Any notary public who is a stockholder, director, officer, employee or agent of a bank or other corporation may 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 bank or other corporation, unless such notary is individually a party to such instrument.²⁴

§7.12 Time of Making Protest.

Protest is due by the time that notice of dishonor is due. However, if before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.²⁵

§7.13 Notary's Record of Protest.

Every notary public, upon protesting any draft or promissory note, must record in a book to be kept for that purpose the time when, place

where and upon whom, demand of payment was made, with a copy of the notice of nonpayment, how and when served; or if sent, in what manner and the time when, and if sent by post, to whom the same was directed, at what place, and when the same was put into such post office, to which record he must sign his name.²⁶

§7.14 Certificate of Record of Protest.

Any notary who protests any draft or promissory note must furnish to the person paying the costs and expenses of such protest a certificate under his hand and official seal of the matters and things required by section 7.13 to be recorded by him.²⁷

§7.15 Death or Removal of Notary – Deposit of Record.

Upon the death or removal out of the State of a notary, the record mentioned in section 7.13 must be deposited in the office of the clerk of the county in which he last resided.²⁸

§7.16 How Notice of Dishonor is Given.

The following rules are provided regarding notice of dishonor.²⁹

Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

Written notice is given when sent although it is not received. Notice to one partner is notice to each although the firm has been dissolved.

When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

Notice operates for the benefit of all parties who have rights on the instrument against the party noticed.

§7.17 Forms of Notice of Dishonor.

The following forms illustrate the way in which written notice of dishonor may be given:

(1) To drawer of a draft.

City/State/Date

To _____

Please take notice that a draft for \$_____ dated _____ drawn by _____ in favor of _____, or order on the _____ Bank, and payable _____, was presented for acceptance on _____ which was refused, and the said draft having been dishonored by nonacceptance, the holder therefore looks to you for payment thereof. _____

(2) To indorser of promissory note.

City/State/Date

To _____

Please take notice that a promissory note made by _____, for \$_____, dated _____, payable _____ after date to _____ and indorsed by you, was presented for payment on _____ which was refused, and the said note having been dishonored by nonpayment, the holder therefore looks to you for payment thereof. _____

§7.18 Time of Giving Notice of Dishonor.

Any necessary notice must be given by a bank before the midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.³⁰

§7.19 Necessity of Notice of Dishonor.

Unless excused as provided in section 7.21: (a) notice of dishonor is necessary to charge any indorser; (b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 7.22 (1) (b).³¹

§7.20 To Whom Notice of Dishonor is Given.

Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition, an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.³²

§7.21 Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.

The law provides the following rules regarding presentment, protest and notice of dishonor.³³

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

- (a) the party to be charged has waived it expressly or by implication either before or after it is due; or
- (b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or
- (c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

- (a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or
- (b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

§7.22 Unexcused Delay—Discharge.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.³⁴

FOOTNOTES

¹ R.S. 12A:3-104(1).

² R.S. 12A:3-104(2).

³ R.S. 12A:3-202(1).

⁴ R.S. 12A:1-201(20).

⁵ R.S. 12A:3-504(1).

⁶ R.S. 12A:3-410(1).

⁷ R.S. 12A:3-411(1).

⁸ R.S. 12A:3-507(1).

⁹ R.S. 12A:3-509(1).

¹⁰ R.S. 12A:4-104.

¹¹ R.S. 12A:3-501(1).

¹² R.S. 12A:3-503(1).

¹³ R.S. 12A:3-503(2).

¹⁴ R.S. 12A:3-503(3) & (4).

¹⁵ R.S. 12A:3-504(1) & (2).

¹⁶ R.S. 12A:3-504(4).

¹⁷ R.S. 12A:3-504(3).

¹⁸ R.S. 12A:3-509(5).

¹⁹ R.S. 12A:3-509(1).

²⁰ R.S. 12A:3-509(2) & (3).

²¹ R.S. 12A:3-501(3).

²² R.S. 12A:3-501(4).

²³ R.S. 12A:3-509(1).

²⁴ R.S. 7:5-6.

²⁵ R.S. 12A:3-509(4) & (5).

²⁶ R.S. 7:5-3.

²⁷ R.S. 7:5-4.

²⁸ R.S. 7:5-5.

²⁹ R.S. 12A:3-508(3)-(8).

³⁰ R.S. 12A:3-508(2).

³¹ R.S. 12A:3-501(2).

³² R.S. 12A:3-508(1).

³³ R.S. 12A:3-511.

³⁴ R.S. 12A:3-502.

NOTARY PUBLIC HANDBOOK



Published by

Bruce McPherson
Secretary of State
Notary Public Section
2006



Secretary of State

State of California

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Dear Californian:

Welcome to the official source of laws relating to notaries public in California. You have demonstrated an interest in becoming part of a growing profession of more than 260,000 public officials who perform invaluable services to the legal, business, financial, and real estate communities.

This *Notary Public Handbook* has been designed for you to supplement your course of study, which will prepare you for the notary public examination. It is strongly recommended that, once commissioned, you keep your *Notary Public Handbook* to use as a ready reference to assist you in the performance of your duties as a notary public.

New legislation adopted and effective January 1, 2006, amended Civil Code section 1189, Government Code section 8225, Penal Code section 470, and Family Code section 9003; and added Government Code sections 8214.8 and 8228.1. These amendments and new laws standardize the certificate of acknowledgment, which is the most common form used by notaries public; and apply strict penalties to persons who willfully violate notary laws with regard to the notary public journal and the notary public seal. Although not previously included in the *Notary Public Handbook*, new legislation amended Family Code section 9003 to authorize, in a stepparent adoption, the consent of either or both birth parents to be signed in the presence of a notary public.

Look for a summary of the amendments and new laws in the section entitled, *AMENDMENTS AND NEW LAWS EFFECTIVE JANUARY 1, 2006*, which is new to the *Notary Public Handbook* this year. Information concerning the amendments and new laws listed above are addressed in this section for your convenience. The text of the amendments and new laws is included in the appropriate code portion of the handbook. As you know, keeping up-to-date with changes in the law enables you to perform your duties with confidence. In addition, the General Information portion has been expanded to include detailed information about identification, conflicts of interest, and subscribing witnesses.

A copy of the *Notary Public Handbook*, as well as additional information regarding the qualifications and procedures you must follow to become a notary public, are available on the Secretary of State's website at www.ss.ca.gov/business/notary/notary.htm.

On behalf of the people of California, thank you for your interest in performing an important public service as a notary public.

Sincerely,

Notary Public & Special Filings Section
Business Programs Division

Correspondence should be addressed to:

Mailing address: Business Programs Division
Notary Public & Special Filings Section
P.O. Box 942877
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Sacramento, California 95814
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AMENDMENTS AND NEW LAWS EFFECTIVE JANUARY 1, 2006

The Governor signed the following bills, which became effective January 1, 2006:

- Assembly Bill 361, chaptered as Statutes of 2005, Chapter 295, makes several significant changes in current notarial law as described below:
 - Under the new law, the California certificate of acknowledgment must be in the form set forth in the statute, rather than “substantially” in the form. The form set forth in the statute did not change, but variations in the California form are no longer permitted. (The law regarding acknowledgments to be used with documents filed in other states was not changed.) (Civil Code section 1189)
 - If a notary public is convicted of a crime related to notarial misconduct, including the completion of a false notarial certificate, or of any felony, the court must revoke the notary public’s commission and require the notary public to surrender to the court the notary public seal. The court will then forward the notary public’s seal to the Secretary of State. (Government Code section 8214.8)
 - Any person who solicits, coerces, or in any manner influences a notary public to improperly maintain the notary public’s journal is guilty of a misdemeanor. (Government Code section 8225)
 - A notary public is guilty of a misdemeanor if the notary public does any of the following (Government Code section 8228.1):
 - Willfully fails to properly maintain the notary public’s journal; or
 - Willfully fails to notify the Secretary of State if the notary public’s journal is lost, stolen, rendered unusable or surrendered to a peace officer; or
 - Willfully fails to permit a lawful inspection or copying of the notary public’s journal; or
 - Willfully fails to keep the notary public’s seal under the notary public’s direct and exclusive control; or
 - Willfully surrenders the notary public seal to any person not authorized to possess it.
 - A notary public may be guilty of forgery if the notary public issues an acknowledgment knowing it to be false. A person who falsifies the acknowledgment of a notary public may also be guilty of forgery. (Penal Code section 470(d)) Forgery is punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year. (Penal Code section 473)
- Senate Bill 302 was chaptered as Statutes of 2005, Chapter 627, and authorizes, in a stepparent adoption, the consent of either or both birth parents to be signed in the presence of a notary public. (Family Code section 9003)

APPOINTMENT AND QUALIFICATIONS

In order to qualify to become a notary public you must meet all of the following requirements: (Government Code section 8201)

1. Be a resident of the State of California;
2. Be at least 18 years of age;
3. Satisfactorily complete a course of study approved by the Secretary of State;
4. Pass a written examination prescribed by the Secretary of State;
5. Be able to read, write, and understand English; and
6. Pass a background check.

To determine if a person meets the requirements to fulfill the responsibilities of the position, a completed application shall be submitted at the examination site, then forwarded to the Office of the Secretary of State and reviewed by Secretary of State staff for qualifying information.

To assist the Secretary of State in determining the identity of an applicant and whether the applicant has been convicted of a disqualifying crime, state law requires all applicants to be fingerprinted as part of a thorough background check **prior** to being granted an appointment as a notary public. (Government Code section 8201.1) Information concerning the fingerprinting requirements will be mailed to candidates who pass the examination. Commissioned notaries seeking reappointment with less than a six-month break in service are not required to have their fingerprints retaken. Those applicants who have held a notary public commission in the past, but have had a break in their commission of more than six months, are required to have their fingerprints submitted via live scan.

Convictions

Applicants are required to disclose arrests for which trials are pending and **all** convictions on their applications, including convictions dismissed under Penal Code section 1203.4 or 1203.4a. If you have any questions concerning the **disclosure** of convictions or arrests, contact the Secretary of State prior to signing the application. If you do not recall the specifics about your arrest(s) and/or conviction(s), you can contact the **California Department of Justice** at (916) 227-3849.

The Secretary of State may deny an application for the following reasons: (Government Code section 8214.1 and the *Notary Public Disciplinary Guidelines (2001)*)

- Failure to disclose any conviction;
- Conviction of a felony; or
- Conviction of a disqualifying misdemeanor when less than 10 years have passed since the completion of probation.

The applicant has the right to appeal the denial through the administrative hearing process. (Government Code section 8214.3)

Please refer to the Secretary of State's *Notary Public Disciplinary Guidelines (2001)*, for a list of the most common disqualifying convictions. The disciplinary guidelines are available on the Secretary of State's website or can be mailed to you upon request. Please refer to the inside front cover of this handbook for our website and mailing addresses.

Notary Public Education

All persons appointed on or after July 1, 2005, are required to take and satisfactorily complete a six-hour course of study approved by the Secretary of State prior to appointment as a notary public. Please note that all persons being appointed, no matter how many commission terms that person has held in the past, are required to take the initial six-hour course of study. (Government Code section 8201(a)(3) and (b)) In addition, the Secretary of State reviews and

approves any course of study that includes all material that a person is expected to know to satisfactorily complete the written examination. The Secretary of State compiles a list of all persons offering an approved course of study and provides this list with the *Notary Public Handbook* and on the Secretary of State's website. (Government Code section 8201.2)

REQUIREMENTS AND TIME LIMIT FOR QUALIFYING

Once the commission has been issued, a person has 30 calendar days to take, subscribe, and file an oath of office and file a \$15,000 surety bond with the **county clerk's office**. The commission does not take effect until the oath and bond are filed with the county clerk's office. The filing must take place in the county where the notary public maintains a principal place of business as shown in the application on file with the Secretary of State. If the oath and bond are not filed within the 30-calendar-day time period, the commission will not be valid, and the person commissioned may not act as a notary public until a new appointment is obtained and the person has properly qualified within the 30-calendar-day time limit. Government Code section 8213(a) permits the mailing of completed oaths and bonds to the applicable county clerk for filing of the initial oath and bond. It should be noted that **exceptions** to the 30-day filing requirement **are not made** due to mail service or county clerk mail processing delays or for any other reason. If mailing an oath and bond to the county clerk, sufficient time must be allowed by the newly appointed notary public to ensure timely filing. (Government Code sections 8212 and 8213)

NOTARY PUBLIC BONDS

In order to provide some protection to the public, California law requires every notary public to file an official bond in the amount of \$15,000. It is important to note that the notary public bond is not an insurance policy for the notary public. It is designed only to provide a limited fund for paying claims against the notary public. The notary public remains personally liable to the full extent of the damage sustained and may be required to reimburse the bonding company for sums paid by the company because of misconduct or negligence of the notary public. (Government Code sections 8212 to 8214)

GEOGRAPHIC JURISDICTION

A notary public can provide notarial services throughout the State of California. A notary public is not limited to providing services only in the county where the oath and bond are on file. In virtually all of the certificates the notary public is called on to complete, there will be a venue heading such as "State of California, County of _____." The county named in the heading is the county where the signer personally appeared before the notary public and acknowledged signing the document or where the signer swore to (or affirmed) and signed the document before the notary public in the case of a jurat. (Government Code section 8200)

ACTS CONSTITUTING THE PRACTICE OF LAW

California notaries are prohibited from performing any duties which may be construed as the unlawful practice of law. Among the acts which constitute the practice of law are the preparation, drafting, or selection or determination of the kind of any legal document, or giving advice with relation to any legal documents or matters. If asked to perform such tasks, a California notary public should decline and refer the requester to an attorney.

NOTARY PUBLIC SEAL

Each notary public is required to have and to use a seal. The seal must be kept in a locked and secured area, under the direct and exclusive control of the notary public and must not be

surrendered to an employer upon termination of employment, whether or not the employer paid for the seal, or to any other person.

Because of the legal requirement that the seal be photographically reproducible, the rubber stamp seal has become all but universal; however, notaries may also use an embosser seal in addition to the rubber stamp. The legal requirements for a seal are shown below. (Government Code section 8207)

1. It is photographically reproducible when it is affixed to a document.
2. It contains the State Seal and the words "Notary Public."
3. It contains the name of the notary public as shown on the commission.
4. It contains the name of the county where the oath of office and notary public bond are on file.
5. It contains the expiration date of the notary public commission.
6. It contains the sequential identification number (commission number) assigned to the notary public as well as the identification number assigned to the manufacturer or vendor.
7. It may be circular not over two inches in diameter, or may be a rectangular form of not more than one inch in width by two and one-half inches in length, with a serrated or milled edged border.

Many documents that are acknowledged may later be recorded. A document may not be accepted by the recorder if the notary public seal is illegible. Notaries are cautioned to take care that the notary public stamp leaves a clear impression. All the elements must be easily discernible. The seal should not be placed over signatures or any printed matter on the document. An illegible or improperly placed seal may result in rejection of the document for recordation and result in inconveniences and extra expenses for all those involved.

The law allows a condition under which a notary public may authenticate an official act without using an official notary public seal. Because subdivision maps are usually drawn on a material that will not accept standard stamp pad ink and other acceptable inks are not as readily available, acknowledgments for California subdivision map certificates may be notarized without the official seal. The notary public's name, the county of the notary public's principal place of business, and the commission expiration date must be typed or printed below or immediately adjacent to the notary public's signature on the acknowledgment. (Government Code section 66436(c))

A NOTARY PUBLIC SHALL NOT USE THE OFFICIAL SEAL OR THE TITLE NOTARY PUBLIC FOR ANY PURPOSE OTHER THAN THE RENDERING OF NOTARIAL SERVICE. (Government Code section 8207)

A notary public is guilty of a misdemeanor if the notary public willfully fails to keep his or her notary public seal under the notary public's direct and exclusive control or if the notary public willfully surrenders the notary public's seal to any person not authorized to possess it. (Government Code section 8228.1)

When the notary public commission is no longer valid, the notary public seal must be destroyed to protect the notary public from possible fraudulent use by another. (Government Code section 8207)

IDENTIFICATION

When completing a certificate of acknowledgment or a jurat, a notary public is required to certify to the identity of the signer of the document (Civil Code sections 1185(a), 1189, Government Code section 8202). Identity is established if the notary **personally knows** the signer **or** if the notary public is presented with **satisfactory evidence** of the signer's identity. (Civil Code section 1185(a)).

Personally Knows – "Personally Knows" means having an acquaintance, derived from

association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity with at least reasonable certainty (Civil Code section 1185(b)).

Satisfactory Evidence – “Satisfactory Evidence” means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the individual is not the individual he or she claims to be **and** (A) Paper Identification Documents **or** (B) the oath of a single credible witness **or** (C) the oaths of two credible witnesses, as specified below:

A. Paper Identification Documents – Identity of the signer can be established by the notary public's reasonable reliance on the presentation of any one of the following documents, provided that the identification document is **current or has been issued within five years** (Civil Code section 1185(c)(3) & (4)):

1. An identification card or driver's license issued by the California Department of Motor Vehicles;

2. A United States passport;

3. Other State-approved identification card, consisting of any one of the following, provided that it also contains **a photograph, description of the person, signature of the person, and an identifying number** –

(a) A passport issued by a foreign government, provided that it has been stamped by the U.S. Immigration or Naturalization Service or the U.S. Citizenship and Immigration Services;

(b) A driver's license issued by another state or by a Canadian or Mexican public agency authorized to issue drivers' licenses;

(c) An identification card issued by another state;

(d) A military identification card;

(e) An inmate identification card issued by California Department of Corrections, if the inmate is in custody.

NOTE: The notary public must include in his or her journal the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document that was used to establish the identity of the signer (Government Code section 8206(a)(2)(D)).

B. Oath of a Single Credible Witness – The identity of the signer can be established by the **oath of a single credible witness** whom the notary public **personally knows** (Civil Code section 1185(c)(1)). Under oath, the credible witness must swear or affirm under penalty of perjury that each of the following is true (Civil Code section 1185(c)(1)(A)-(E)):

1. The individual appearing before the notary as the signer of the document is the person named in the document;

2. The credible witness personally knows the signer;

3. The credible witness reasonably believes that the circumstances of the signer are such that it would be very difficult or impossible for the signer to obtain another form of identification;

4. The signer does not possess any of the identification documents authorized by law to establish the signer's identity;

5. The credible witness does not have a financial interest and is not named in the document signed.

NOTE: The single credible witness must sign the notary public's journal (Government Code section 8206(a)(2)(D)). No paper identification document is used since the notary personally knows the single credible witness (Civil Code section 1185(c)(1)).

C. Oaths of Two Credible Witnesses – The identity of the signer can be established by the **oaths of two credible witnesses** whom the notary public **does not personally know** (Civil Code section 1185(c)(2)). However, in such a case, the notary public must first establish the identities of the two credible witnesses by the presentation of paper identification documents

as set forth above. Under oath, the credible witnesses must then swear or affirm under penalty of perjury to each of the things sworn to or affirmed by a single credible witness, as set forth above. (Civil Code sections 1185(c)(2) and 1185(c)(1)(A)-(E)).

NOTE: The credible witnesses must sign the notary public's journal and the notary public must indicate in his or her journal the type of identifying documents, the identifying numbers of the documents and the dates of issuance or expiration of the documents presented by the witnesses to establish their identities (Government Code section 8206(a)(2)(E)).

NOTARY PUBLIC JOURNAL

A notary public is required to keep one active sequential journal at a time of all acts performed as a notary public. The journal must be kept in a locked and secured area (such as a lock box or locked desk drawer), under the direct and exclusive control of the notary public. The journal shall include the items shown below. (Government Code section 8206(a))

1. Date, time and type of each official act (e.g. acknowledgment, jurat).
2. Character of every instrument sworn to, affirmed, acknowledged or proved before the notary public (e.g. deed of trust)
3. The signature of each person whose signature is being notarized.
4. A statement as to whether the identity of a person making an acknowledgment or taking an oath or affirmation was based on personal knowledge or satisfactory evidence. If identity was established by satisfactory evidence pursuant to Civil Code section 1185, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document. (e.g., driver's license, [State] Department of Motor Vehicles, #X00000, 00/00/00.)
5. If the identity of the person making the acknowledgment or taking the oath or affirmation was established by the oaths or affirmations of two credible witnesses whose identities are proven upon the presentation of satisfactory evidence, the type of identifying documents, the identifying numbers of the documents and the dates of issuance or expiration of the documents presented by the witnesses to establish their identity. (e.g., driver's license, [State] Department of Motor Vehicles, #X00000, 00/00/00.)
6. The fee charged for the notarial service.
7. If the document to be notarized is a deed, quitclaim deed, or deed of trust affecting real property, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary public shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumb or fingerprint, the notary public shall so indicate in the journal and shall also provide an explanation of that physical condition.

If the sequential journal is stolen, lost, misplaced, destroyed, damaged, or otherwise rendered unusable, the notary public must **immediately** notify the **Secretary of State** by certified or registered mail. The notification must include the periods of journal entries, the notary public commission number, the commission expiration date, and, when applicable, a photocopy of the police report that lists the journal. (Government Code section 8206(b))

A notary public must provide a photo static copy of a line item from his or her journal when provided with a written request from any member of the public. The written request shall include the name of the parties, the type of document, and the month and year in which the document was notarized. The cost must not exceed thirty cents (\$0.30) per page. (Government Code section 8206(c))

The sequential journal is the exclusive property of the notary public and shall not be surrendered to an employer upon termination of employment, whether or not the employer paid for the journal, or at any other time. The circumstances in which the notary public must relinquish the journal or permit inspection and copying of journal transactions and the procedures the notary public must follow are specified in Government Code section 8206(d).

A notary public is guilty of a misdemeanor if the notary public willfully fails to properly maintain the notary public's journal. (Government Code section 8228.1)

Within 30 days from the date the notary public commission is no longer valid, the notary public must deliver all notarial journals, records and papers to the **county clerk's office** where the oath is on file. If the notary public willfully fails or refuses to do so, the notary public is guilty of a misdemeanor, and shall be personally liable for damages to any person injured by that action or inaction. (Government Code section 8209) Any notarial journals, records and papers delivered to the Secretary of State will be returned to the sender.

CONFLICT OF INTEREST

A notary public is not prohibited from notarizing for relatives or others, unless doing so would provide a direct financial or beneficial interest to the notary public. With California's community property law, care should be exercised if notarizing for a spouse or a domestic partner.

A notary public would have a direct financial or beneficial interest to a transaction in the following situations: (Government Code section 8224)

- If a notary public is named, individually, as a principal to a financial transaction.
- If a notary public is named, individually, as any of the following to a real property transaction: beneficiary, grantor, grantee, mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, or lessee.

A notary public does not have a direct financial or beneficial interest in a transaction if a notary is acting in the capacity of an agent, employee, insurer, attorney, escrow, or lender for a person having a direct financial or beneficial interest in the transaction.

If in doubt as to whether or not to notarize, it is recommended that you seek the advice of an attorney.

ACKNOWLEDGMENT

The form most frequently completed by the notary public is the certificate of acknowledgment. The certificate of acknowledgment must be in the form set forth in Civil Code section 1189. In the certificate of acknowledgment, the notary public certifies:

1. That the signer **personally appeared** before the notary public on the date indicated in the county indicated.
2. To the identity of the signer.
3. That the signer acknowledged executing the document.

The notary public sequential journal *must* contain a statement as to whether the identity of a person making the acknowledgment or taking the oath or affirmation was based on personal knowledge or satisfactory evidence. If identity was established based on satisfactory evidence, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document used to establish the person's identity, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document. If the identity of the person making the acknowledgment or taking the oath or affirmation was established by the oaths or affirmations of two credible witnesses whose identities are proven upon the presentation of satisfactory evidence, then the journal shall contain the type of identifying documents, the

identifying numbers of the documents and the dates of issuance or expiration of the documents presented by the witnesses to establish their identity.

The certificate of acknowledgment must be completely filled out at the time the notary public's signature and seal are affixed.

The completion of a certificate of acknowledgment that contains statements that the notary public knows to be false not only may cause the notary public to be liable for civil penalties and administrative action, but is also a criminal offense.

A notary public may complete a certificate of acknowledgment required in another state or jurisdiction of the United States on documents to be filed in that other state or jurisdiction, provided the form does not require the notary public to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law.

Any certificate of acknowledgment taken within this state shall be in the following form:

State of California County of _____	}	On _____ before me, (here insert name and title of the officer), personally appeared _____ _____ _____ _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.
<u>NOTARY PUBLIC SIGNATURE</u>		NOTARY PUBLIC SEAL

NOTE: Key wording of an acknowledgment is “personally appeared.” It is not acceptable to affix an acknowledgment to a document mailed or otherwise delivered to a notary public whereby the signer did NOT personally appear before the notary public, even if the signer is known by the notary public. Also, it is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

JURAT

The second form most frequently completed by a notary public is the jurat. (Government Code section 8202) The jurat is identified by the wording “Subscribed and sworn to (or affirmed)” contained in the form. In the jurat, the notary public certifies:

1. That the signer **personally appeared** before the notary public on the date indicated and in the county indicated.
2. That the signer signed the document in the presence of the notary public.
3. That the notary public administered the oath or affirmation.*
4. To the identity of the signer.

Any jurat taken within this state shall be in the following form:

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

NOTARY PUBLIC SIGNATURE

NOTARY PUBLIC SEAL

NOTE: Key wording of a jurat is “subscribed and sworn to (or affirmed) before me.” It is not acceptable to affix a jurat to a document mailed or otherwise delivered to a notary public whereby the signer did NOT personally appear, take an oath, and sign in the presence of the notary public, even if the signer is known by the notary public. Also, it is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

**There is no prescribed wording for the oath, but an acceptable oath would be “Do you swear or affirm that the statements in this document are true?” When administering the oath, the signer and notary public traditionally each raise their right hand but this is not a legal requirement.*

PROOF OF EXECUTION BY A SUBSCRIBING WITNESS

If a person, called the principal, has signed a document, but cannot personally appear before a notary public, another individual can appear on that principal’s behalf to prove the execution by the principal. That person is called a subscribing witness. (Civil Code section 1195)

NOTE: A proof of execution by a subscribing witness cannot be used in conjunction with any quitclaim deed, grant deed document (other than a trustee’s deed or a deed of reconveyance), mortgage, deed of trust or security agreement. (Government Code section 27287)

The requirements for proof of execution by a subscribing witness are as follows:

1. The subscribing witness must say, under oath, that he or she personally knows the principal (Civil Code section 1197); and
2. The subscribing witness must say, under oath, that he or she either saw the principal sign the document or heard the principal acknowledge that he or she signed the document. (Code of Civil Procedure section 1935; Civil Code section 1195); and
3. The subscribing witness must say, under oath, that he or she was requested by the principal to sign the document as a witness and that he or she did so (Code of Civil Procedure section 1935, Civil Code section 1195); and
4. The notary public must identify the subscribing witness based on personal knowledge or the identity of the subscribing witness must be proven to the notary public by the oath of a third person (credible witness) who personally knows the subscribing witness. The credible witness must be personally known by the notary public (Civil Code sections 1195, 1196); and
5. The subscribing witness must sign the notary public’s official journal. (Government Code section 8206(a)(2)(C)) In addition, if the identity of the subscribing witness was established by a credible witness, then the credible witness must also sign the notary public’s official journal. (Government Code section 8206(a)(2)(D))

NOTE: Paper identification cannot be used to establish the identity of the principal, subscribing witness or credible witness. This is because the identity of the principal is established by the oath of the subscribing witness who personally knows the principal. The identity of the subscribing witness is established by the notary public's personal knowledge of the subscribing witness or the oath of a credible witness who personally knows the subscribing witness. The identity of the credible witness is based on the personal knowledge of the notary public.

The following scenario provides an example of how proof by a subscribing witness may be used:

The *principal*, Wayne, needs to have his signature on a document notarized.

Wayne is in the hospital and, therefore, cannot appear before Sally, the *Notary Public*, in order to get his signature notarized.

Brian, a longtime friend of Wayne, is at the hospital visiting Wayne. Wayne asks Brian to sign the document as a Subscribing Witness and Brian does so. Wayne could have either signed the document in Brian's presence or have signed it prior to Brian's arrival. If the document was signed prior to Brian's arrival, Wayne would need to acknowledge to Brian that he, Wayne, had signed the document. Wayne gives the document to Brian to take to Sally, who personally knows Brian.

Sally places Brian under oath. Under oath, Brian swears or affirms that he personally knows Wayne, he saw Wayne sign the document (or heard Wayne acknowledge signing the document), Wayne requested that he, Brian, sign as a witness and he, Brian, did so. Brian signs Sally's notary public journal as the subscribing witness. Sally completes the Proof of Execution Certificate and attaches it to the document. She then completes her notary journal entry. (Sally must identify Brian through personal knowledge. No paper identification is permitted.) Brian takes the document back to Wayne.

Shown below is a suggested format for proof of execution by a subscribing witness (Civil Code section 1195). Other formats with similar wording may also be acceptable.

State of California } ss.
County of _____

On _____ (date), before me, the undersigned, a notary public for the state, personally appeared _____ (subscribing witness's name), personally known to me (or proved to me on the oath of _____ [credible witness's name], who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he/she was present and saw/heard _____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as (a) party (ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of _____ (name[s] of principal[s]).

WITNESS my hand and official seal.

NOTARY PUBLIC SIGNATURE

NOTARY PUBLIC SEAL

NOTE: It is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

SIGNATURE BY MARK

When the signer of an instrument cannot write (sign) his or her name, that person may sign the document by mark. (Civil Code section 14) The requirements for notarizing a signature by mark are as follows:

1. The person signing the document by mark must be identified by the notary public by either personal knowledge or satisfactory evidence. (Civil Code section 1185)
2. The signer's mark must be witnessed by two persons who must subscribe their own names as witnesses on the document. One witness should write the person's name next to the person's mark and then the witness should sign his or her name as a witness. The witnesses are only verifying that they witnessed the individual make his or her mark on the document. A notary public is not required to identify the two persons who witnessed the signing by mark or to have the two witnesses sign the notary public's journal.
EXCEPTION: If the witnesses were acting in the capacity of credible witnesses in establishing the *identity* of the person signing by mark, then the witnesses' signatures must be entered in the notary public's journal.

Following is an example of a document executed by Signature by Mark:

I, Bob Smith, give my power of attorney to Jane Brown to act as my Attorney on all matters pertaining to the handling of my estate, finances, and investments. This Power of Attorney is to remain in effect until another document revoking this instrument has been filed of record thereby rendering this instrument null and void.

Date: Feb. 5, 1998 Name: X Bob Smith By: Vicki Jones
 Witness #1 Steve Wilson
 Witness #2

State of California }
 County of Orange } ss.

On February 5, 1998, before me, John Doe, a notary public for the State of California, personally appeared Bob Smith, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC SIGNATURE

NOTARY PUBLIC SEAL

NOTE: It is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

POWERS OF ATTORNEY - CERTIFYING

A notary public can certify copies of powers of attorney. A certified copy of a power of attorney that has been certified by a notary public has the same force and effect as the original power of attorney. (Probate Code section 4307)

A suggested format for the certification is shown below. Other formats with similar wording may also be acceptable.

State of California County of _____	}	ss.
I <u> (name of notary public) </u> , Notary Public, certify that on <u> (date) </u> , I examined the original power of attorney and the copy of the power of attorney. I further certify that the copy is a true and correct copy of the original power of attorney.		
<u>NOTARY PUBLIC SIGNATURE</u>	NOTARY PUBLIC SEAL	

NOTE: It is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

NOTARIZATION OF INCOMPLETE DOCUMENTS

A notary public may not notarize a document which is incomplete. If presented with a document for notarization, which the notary public knows from his or her experience to be incomplete or is without doubt on its face incomplete, the notary public must refuse to notarize the document. (Government Code section 8205)

CERTIFIED COPIES

California statute specifies that a notary public may only certify copies of powers of attorney under Probate Code section 4307, and copies of his or her notary public journal. (Government Code sections 8205(a)(4) and 8205(b)(1))

Certified copies of birth, fetal death, death, and marriage records may be made only by the State Registrar, by duly appointed and acting local registrars during their term of office, and by county recorders. (Health & Safety Code section 103545)

ILLEGAL ADVERTISING

California law requires any non-attorney notary public who advertises notarial services in a language other than English to post a prescribed notice, in English and the other language, that the notary public is not an attorney and cannot give legal advice about immigration or any other legal matters. The notary public must also list the fees set by statute which a notary public may charge for notarial services. In any event, a notary public may not translate the term "Notary Public," defined as "notario publico" or "notario," into Spanish, even if the prescribed notice is also posted. A first offense of this law is grounds for the suspension or revocation of a notary public's commission. A second offense shall be grounds for the permanent revocation of a notary public's commission. (Government Code section 8219.5)

A notary public is legally barred from advertising in any manner whatsoever that he or she is a notary public if the notary public promotes himself or herself as an immigration specialist or consultant. (Government Code section 8223)

IMMIGRATION DOCUMENTS

Contrary to popular belief, there is no prohibition against notarizing immigration documents. However, several laws specifically outline what a notary public can and cannot do. Only a person who is qualified and bonded as an immigration consultant under the Business and Professions Code may assist a client in completing immigration forms. A notary public may not charge any individual more than \$10 for each set of forms, unless the notary public is also an attorney who is rendering professional services as an attorney. (Government Code section 8223)

CONFIDENTIAL MARRIAGE LICENSES

A notary public who is interested in authorizing confidential marriages may apply for approval to the county clerk in the county in which the notary public resides. A notary public *shall not* authorize a confidential marriage unless he or she is approved by the county clerk having jurisdiction. The county clerk offers a course of instruction, which a notary public must complete before authorization will be granted. Additionally, in order for a notary public to *perform* the marriage, he/she must be one of the persons authorized under Family Code sections 400 to 402, e.g., priest, minister, or rabbi. The county clerk in the county where the notary public resides may or may not approve the authorizing of confidential marriages. It is best to check with the county clerk if interested in obtaining approval.

GROUND FOR DENIAL, REVOCATION, OR SUSPENSION OF APPOINTMENT AND COMMISSION

The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of a notary public for specific reasons. These reasons include but are not limited to: a substantial misstatement or omission in the application; conviction of a felony or a disqualifying criminal conviction; failure to furnish the Secretary of State with certified copies of the notary public journal when requested to do so or to provide information relating to official acts performed by the notary public; charging more than the fee prescribed by law; failure to complete the acknowledgment at the time the notary public's seal and signature are attached to the document; executing a false certificate; failure to submit to the Secretary of State any court ordered money judgment, including restitution; failure to secure the sequential journal or the official seal; illegal advertising. (Government Code sections 8205, 8214.1, 8219.5 and 8223)

In addition, the Secretary of State may deny the notary public application or suspend the notary public commission of a person who has not complied with child or family support obligations. (Family Code section 17520)

DISCIPLINARY GUIDELINES

The Secretary of State has instituted disciplinary guidelines in order to facilitate due process and to maintain consistency in reviewing applications, investigating alleged violations, and implementing administrative actions. (Government Code section 8220)

The disciplinary guidelines are designed to assist administrative law judges, in addition to assisting attorneys, notaries public, applicants, and others involved in the disciplinary process. The disciplinary guidelines are used to determine what disciplinary action will be taken for violations of notary public law. The disciplinary guidelines are available on the Secretary of State's website or can be mailed to you upon request. Please refer to the inside front cover of this handbook for our website and mailing addresses.

FEES

Government Code section 8211 specifies the maximum fees that may be charged for notary public services; however, a notary public may elect to charge no fee or an amount that is less than the maximum amount prescribed by law. The charging of a fee and the amount of the fee charged is at the discretion of the notary public or the notary public's employer provided it does not exceed the maximum fees. The notary public is required to make an entry in the notary public journal even if no fee was charged, such as "no fee" or "0." (Government Code section 8206)

EXCEPTIONS: 1) Pursuant to Government Code section 8203.6, no fees shall be collected by notaries appointed to military and naval reservations in accordance with 8203.1; 2) pursuant to Elections Code section 8080, no fee shall be collected by notaries for verifying any nomination document or circulator's affidavit; and 3) pursuant to Government Code section 6107, no fee may be charged to a United States military veteran for notarization of an application or a claim for a pension, allotment, allowance, compensation, insurance, or any other veteran's benefit. In addition, Government Code section 6100 requires any notary public who is appointed to act for and on behalf of certain public agencies, pursuant to Government Code section 8202.5, to charge for all services and remit the fees received to the employing agency. The fee charged must still be entered in the journal.

CHANGE OF ADDRESS

A notary public is required to notify the Secretary of State in writing, by certified mail, within 30 days of any change of business, mailing and/or residence address. (Government Code section 8213.5) Upon the change of a business address to a new county, a notary public may elect to file a new oath of office and bond in the new county. However, this is optional. Once commissioned, a notary public may perform notary public services anywhere in the state. The original oath and bond must be filed in the county where the notary public maintains their principal place of business as shown in the application filed with the Secretary of State. It is permissive as to whether or not a county transfer is filed with the new county after the original oath and bond have been filed in the original county should the notary public move. (Government Code section 8213) There is no fee for the processing of address change notifications with the Secretary of State.

NOTE: To ensure proper processing, please include the following when submitting an address change notification:

- name of the notary public exactly as it appears on the commission certificate;
- commission number and expiration date of the commission;
- whether the address change is for the business, residence, and/or for mailing purposes; and
- new business, including business name; residence; and/or mailing address.

Please be sure the request is signed and dated by the notary public. The change of address can be submitted in letter form or, for your convenience, an address change form is available on the Secretary of State's website or can be mailed to you upon request. Please refer to the inside front cover of this handbook for our website and mailing addresses.

FOREIGN LANGUAGE

A notary public can notarize a signature on a document in a **foreign language** with which they are not familiar, as a notary public is not responsible for the contents of the document. The notary public should be able to identify the type of document being notarized for entry in the notary public's journal. If unable to identify the type of document, the notary public must make an entry to that effect in their journal, e.g. "a document in a foreign language." The

notary public should be mindful of the completeness of the document and must not notarize the signature on the document if the document appears to be incomplete. The notary public is responsible for completing the acknowledgment or jurat form. When notarizing a signature on a document, a notary public must be able to communicate with their customer in order for the signer to either swear to or affirm the contents of the affidavit or to acknowledge the execution of the document. An interpreter should not be used, as vital information could be lost in the translation. If a notary public is unable to communicate with a customer, the customer should be referred to a notary public who speaks the customer's language.

COMMON QUESTIONS AND ANSWERS

- Q. If a person was convicted of a DUI, petty theft, trespass, etc., will that person be disqualified from becoming a notary public?
- A. The Secretary of State cannot make a determination as to whether or not a person meets the qualifications to become a notary public until a thorough background check has been completed. If you are concerned as to whether you may be disqualified from becoming a notary public based upon past conviction information, please refer to the *Notary Public Disciplinary Guidelines (2001)*, which also includes a list of the most common disqualifying convictions. The disciplinary guidelines are available on the Secretary of State's website or can be mailed to you upon request. Please refer to the inside front cover of this handbook for our website and mailing addresses.
- Q. I had a conviction over 25 years ago. Do I still need to disclose this conviction on my application?
- A. There is no time limit for disclosure of convictions. If you have *ever* been convicted, including being convicted for a DUI, you must disclose this on your application.
- Q. How soon can I take the test for reappointment if I currently hold a notary public commission?
- A. It is recommended that you take the exam at least six months prior to the expiration date of your current commission if you do not want to have a break in commission terms. Keep in mind that the test results are only valid for one year from the date of the examination. (California Code of Regulations section 20803)
- Q. I have been a notary public for over 20 years. Will I still be required to take the initial six-hour approved course of study?
- A. Yes, initially everyone, including those notaries who have held previous commission terms, will be required to satisfactorily complete a six-hour course of study from an approved vendor prior to reappointment as a notary public. A list of approved vendors is available on the Secretary of State's website or can be mailed to you upon request. (Government Code section 8201(a)(3))
- Q. Will I be required to take an approved course of study each time I apply for reappointment?
- A. Yes, an applicant for notary public who holds a California notary public commission and who has completed the initial six-hour course of study from an approved vendor will be required to satisfactorily complete a three-hour refresher course of study prior to reappointment as a notary public for all subsequent terms. (Government Code section 8201(b)(2))
- Q. I have taken courses in the past prior to taking the exam. Will I still be required to take the six-hour course?
- A. Yes, because in the past, you were not required to take these courses prior to being appointed as a notary public and those courses were not "approved" by the Secretary of State. However, now that mandatory education is one of the qualifications you must meet in order to become a notary public, you are required to complete the approved course of study in order to qualify. (Government Code section 8201(a)(3))

- Q. I have passed every notary public exam I have taken in the past. I even scored 100% on my last exam. Is there any way to skip the six-hour course and take the three-hour course instead?
- A. No, the law specifically states that for appointments made on or after July 1, 2005, you must complete a six-hour course of study approved by the Secretary of State to qualify to become a notary public. (Government Code section 8201(a)(3))
- Q. I have completed my approved six-hour course of study and received my Proof of Completion. What do I do with it?
- A. Once you have completed your six-hour course of study from an approved vendor, staple your Proof of Completion to the application and take both with you to the exam.
- Q. I have changed my business, mailing or home address, what do I do?
- A. Send the Secretary of State a letter or a change of address form by certified mail within 30 days of the change. (Government Code section 8213.5)
- Q. I have changed my business from one county to another, what do I do?
- A. Your commission allows you to notarize throughout the State of California, regardless of where your oath and bond are on file. If the location of your business has changed, you are required to send the Secretary of State an address change via certified mail within 30 days of the change. If the address change is for your business, please include the business name in your notification. If the address change includes a change of county, you may choose to transfer your county, however a county transfer is not required. To file a county change, you must request an oath of office form from the Secretary of State. The oath will have the name of your original county, however, you will take and file your oath of office in the new county, checking the county transfer box at the bottom of the oath form. You must also take a new bond or a duplicate of the original bond and file it together with your oath of office in the new county. A certificate of authorization to manufacture a notary public seal will be sent to you once the Secretary of State has received and processed your oath of office filed in the new county. Your stamp must reflect the county where your most recent oath and bond are filed. (Government Code sections 8213 and 8213.5)
- Q. Am I required to see the person sign the document at the time I perform the notarization?
- A. If you are preparing a certificate of acknowledgment, then “no.” The document can be executed before the person brings it to you for notarization. In an acknowledgment, the signer must personally appear before you and acknowledge that he/she executed the document, not that they executed the document in your presence. However, when preparing a jurat, then “yes.” The person requesting the jurat must appear before you, take an oath, and sign the document in your presence. In addition, for both an acknowledgment and a jurat, the notary public must certify to the identity of the signer. (Civil Code section 1189 and Government Code section 8202)
- Q. I lost my stamp or journal, what do I do?
- A. Send a letter immediately by certified mail to the Secretary of State explaining what happened and, if applicable, a photocopy of a police report. Upon written request, the Secretary of State will send an authorization so you can have a new stamp made. (Government Code sections 8206 and 8207.3(e))
- Q. I have changed my name. What do I do?
- A. Send a completed name change form to the Secretary of State and, once approved, you will be issued an amended commission that reflects your new name. You will then need to file a new oath of office and an amendment to your bond with the county clerk within 30 days from the date the amended commission was issued in order for the name change to take effect. Within 30 days of the filing, you should obtain a new seal that reflects the new name. Once the amended oath and bond are filed, you may no longer use the

commission, including the stamp, that was issued in your previous name. If you fail to file your amended oath and bond within the 30-day time limit, the name change will become void and your commission will revert back to the previous name and you will be required to submit another name change application. (Government Code sections 8213 and 8213.6)

- Q. I need to request a new certificate of authorization to have a new stamp made. Is there a fee?
- A. No; however, you must send the Secretary of State a written request for a certificate of authorization. (Government Code section 8207.3(e))
- Q. How do I resign my commission?
- A. If you want to resign your commission, send a letter to our office and deliver all of your notarial journals, records and papers to the **county clerk** in which your current oath of office is on file within 30 days and destroy the seal. (Government Code section 8209)
- Q. I did not file my oath and bond on time, what do I do?
- A. If you failed to file your oath and bond within the prescribed time, your commission is **void**. (Government Code section 8213(a)) If you wish to reapply, you must complete a new application, attach your Proof of Completion to the application and send it to our office with a check for \$20.00. If you do not have your Proof of Completion, contact the vendor who provided the education to obtain a duplicate of your Proof of Completion. Keep in mind that the test results are only valid for one year from the date of the examination; and that the Proof of Completion of an approved course of study is valid for two years from the date of issuance. (California Code of Regulations sections 20803 and 20800.5)
- Q. Where can I get a live scan fingerprint form?
- A. You will be sent a live scan fingerprint form with instructions once you have passed the examination.
- Q. I have completed the education and taken the exam, but my current commission doesn't expire until another four months. When will I receive my new commission?
- A. Although you have already completed the education and taken the test, your commission for reappointment will not be issued until 30 days prior to the expiration date of your current commission.

GOVERNMENT CODE

Notaries Public

(Chapter 3, Division 1, Title 2)

§ 8200. Appointment and commission; number; jurisdiction

The Secretary of State may appoint and commission notaries public in such number as the Secretary of State deems necessary for the public convenience. Notaries public may act as such notaries in any part of this state.

§ 8201. Qualifications to be a notary public; proof of course completion; reappointment

(a) Every person appointed as notary public shall meet all of the following requirements:

(1) Be at the time of appointment a legal resident of this state, except as otherwise provided in Section 8203.1.

(2) Be not less than 18 years of age.

(3) For appointments made on or after July 1, 2005, have satisfactorily completed a six-hour course of study approved by the Secretary of State pursuant to Section 8201.2 concerning the functions and duties of a notary public.

(4) Have satisfactorily completed a written examination prescribed by the Secretary of State to determine the fitness of the person to exercise the functions and duties of the office of notary public. All questions shall be based on the law of this state as set forth in the booklet of the laws of California relating to notaries public distributed by the Secretary of State.

(b) (1) Commencing July 1, 2005, each applicant for notary public shall provide satisfactory proof that he or she has completed the course of study required pursuant to paragraph (3) of subdivision (a) prior to approval of his or her appointment as a notary public by the Secretary of State.

(2) Commencing July 1, 2005, an applicant for notary public who holds a California notary public commission, and who has satisfactorily completed the six-hour course of study required pursuant to paragraph (1) at least one time, shall provide satisfactory proof when applying for reappointment as a notary public that he or she has satisfactorily completed a three-hour refresher course of study prior to reappointment as a notary public by the Secretary of State.

§ 8201.1. Additional qualifications; determination; identification; fingerprints

Prior to granting an appointment as a notary public, the Secretary of State shall determine that the applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. To assist in determining the identity of the applicant and whether the applicant has been convicted of a disqualifying crime specified in subdivision (b) of Section 8214.1, the Secretary of State shall require that applicants be fingerprinted.

§ 8201.2. Review of course of study and refresher courses for notary public; approval of education course of study, violation of regulations; civil penalties

(a) Commencing January 1, 2005, the Secretary of State shall review the course of study and any refresher course proposed by any vendor to be offered pursuant to paragraph (3) of subdivision (a) and paragraph (2) of subdivision (b) of Section 8201. If the course of study includes all material that a person is expected to know to satisfactorily complete the written examination required pursuant to paragraph (4) of subdivision (a) of Section 8201, the Secretary of State shall approve the course of study.

(b) (1) The Secretary of State shall, by regulation, prescribe an application form and adopt a certificate of approval for the notary public education course of study proposed by a vendor.

(2) The Secretary of State may also provide a notary public education course of study.

(c) The Secretary of State shall compile a list of all persons offering an approved course of study pursuant to subdivision (a) and shall provide the list with every booklet of the laws of California relating to notaries public distributed by the Secretary of State.

(d) (1) A person who provides notary public education and violates any of the regulations adopted by the Secretary of State for approved vendors is subject to a civil penalty not to exceed one thousand dollars (\$1,000) for each violation and shall be required to pay restitution where appropriate.

(2) The local district attorney, city attorney, or the Attorney General may bring a civil action to recover the civil penalty prescribed pursuant to this subdivision.

§ 8201.5. Application form; confidential nature; use of information

The Secretary of State shall require an applicant for appointment and commission as a notary public to complete an application form prescribed by the Secretary of State. Information on this form filed by an applicant with the Secretary of State, except for his name and address, is confidential and no individual record shall be divulged by an official or employee having access to it to any person other than the applicant, his authorized representative, or an employee or officer of the federal government, the state government, or a local agency, as defined in subdivision (b) of Section 6252 of the Government Code, acting in his official capacity. Such information shall be used by the Secretary of State for the sole purpose of carrying out the duties of this chapter.

§ 8202. Execution of jurat; administration of oath or affirmation to affiant; attachment to affidavit

(a) When executing a jurat, a notary shall administer an oath or affirmation to the affiant and shall determine, from personal knowledge or satisfactory evidence as described in Section 1185 of the Civil Code, that the affiant is the person executing the document. The affiant shall sign the document in the presence of the notary.

(b) To any affidavit subscribed and sworn to before a notary, there shall be attached a jurat in the following form:

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal _____

Signature _____

§ 8202.5. State, county and school district employees; certificates; expenses

The Secretary of State may appoint and commission the number of state, city, county, and public school district employees as notaries public to act for and on behalf of the governmental entity for which appointed which the Secretary of State deems proper. Whenever a notary is appointed and commissioned, a duly authorized representative of the employing governmental entity shall execute a certificate that the appointment is made for the purposes of the employing governmental entity, and whenever the certificate is filed with any state or county officer, no fees shall be charged by the officer for the filing or issuance of any document in connection with the appointment.

The state or any city, county, or school district for which the notary public is appointed and commissioned pursuant to this section may pay from any funds available for its support the premiums on any bond and the cost of any stamps, seals, or other supplies required in connection with the appointment, commission, or performance of the duties of the notary public.

Any fees collected or obtained by any notary public whose documents have been filed without charge and for whom bond premiums have been paid by the employer of the notary public shall be remitted by the notary public to the employing agency which shall deposit the funds to the credit of the fund from which the salary of the notary public is paid.

§ 8202.7. Private employers; agreement to pay premium on bonds and costs of supplies; remission of fees to employer

A private employer, pursuant to an agreement with an employee who is a notary public, may pay the premiums on any bond and the cost of any stamps, seals, or other supplies required in connection with the appointment, commission, or performance of the duties of such notary public. Such agreement may also provide for the remission of fees collected by such notary public to the employer, in which case any fees collected or obtained by such notary public while such agreement is in effect shall be remitted by such notary public to the employer which shall deposit such funds to the credit of the fund from which the compensation of the notary public is paid.

§ 8202.8. Private employers; limitation on provision of notarial services

Notwithstanding any other provision of law, a private employer of a notary public who has entered into an agreement with his or her employee pursuant to Section 8202.7 may limit, during the employee's ordinary course of employment, the providing of notarial services by the employee solely to transactions directly associated with the business purposes of the employer.

§ 8203.1. Military and naval reservations; appointment and commission of notaries; qualifications

The Secretary of State may appoint and commission notaries public for the military and naval reservations of the Army, Navy, Coast Guard, Air Force, and Marine Corps of the United States, wherever located in the state; provided, however, that the appointee shall be a citizen of the United States, not less than 18 years of age, and must meet the requirements set forth in paragraphs (3) and (4) of subdivision (a) of Section 8201.

§ 8203.2. Military and naval reservations, recommendation of commanding officer; jurisdiction of notary

Such notaries public shall be appointed only upon the recommendation of the commanding officer of the reservation in which they are to act, and they shall be authorized to act only within the boundaries of this reservation.

§ 8203.3. Military and naval reservations, qualifications of notaries

In addition to the qualifications established in Section 8203.1, appointment will be made only from among those persons who are federal civil service employees at the reservation in which they will act as notaries public.

§ 8203.4. Military and naval reservations; term of office; termination; resignation

The term of office shall be as set forth in Section 8204, except that the appointment shall terminate if the person shall cease to be employed as a federal civil service employee at the reservation for which appointed. The commanding officer of the reservation shall notify the Secretary of State of termination of employment at the reservation for which appointed within 30 days of such termination. A notary public whose appointment terminates pursuant to this section will have such termination treated as a resignation.

§ 8203.5. Military and naval reservations, jurat

In addition to the name of the State, the jurat shall also contain the name of the reservation in which the instrument is executed.

§ 8203.6. Military and naval reservations, fees

No fees shall be collected by such notaries public for service rendered within the reservation in the capacity of a notary public.

§ 8204. Term of office

The term of office of a notary public is for four years commencing with the date specified in the commission.

§ 8204.1. Cancellation of Commission; failure to pay; notice

The Secretary of State may cancel the commission of a notary public if a check or other remittance accepted as payment for the examination, application, commission, and fingerprint fee is not paid upon presentation to the financial institution upon which the check or other remittance was drawn. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall first give a written notice of the applicability of this section to the notary public or the person submitting the instrument. Thereafter, if the amount is not paid by a cashier's check or the equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. This second notice shall be given at least 20 days after the first notice, and no more than 90 days after the commencement date of the commission.

§ 8205. Duties

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

(1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and, with regard only to the nonacceptance or nonpayment of bills and notes, 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.

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

§ 8206. Sequential journal; contents; thumbprint; loss of journal; copies of pages; exclusive property of notary public; limitations on surrender

(a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

(2) The journal shall be in addition to and apart from any copies of notarized documents that may be in the possession of the notary public and shall include all of the following:

(A) Date, time, and type of each official act.

(B) Character of every instrument sworn to, affirmed, acknowledged or proved before the notary.

(C) The signature of each person whose signature is being notarized.

(D) A statement as to whether the identity of a person making an acknowledgment or taking an oath or affirmation was based on personal knowledge or satisfactory evidence. If identity

was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.

(E) If the identity of the person making the acknowledgment or taking the oath or affirmation was established by the oaths or affirmations of two credible witnesses whose identities are proven upon the presentation of satisfactory evidence, the type of identifying documents, the identifying numbers of the documents and the dates of issuance or expiration of the documents presented by the witnesses to establish their identity.

(F) The fee charged for the notarial service.

(G) If the document to be notarized is a deed, quitclaim deed, or deed of trust affecting real property, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate in the journal and shall also provide an explanation of that physical condition. This paragraph shall not apply to a trustee's deed resulting from a decree of foreclosure or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, nor to a deed of reconveyance.

(b) If a sequential journal of official acts performed by a notary public is stolen, lost, misplaced, destroyed, damaged, or otherwise rendered unusable as a record of notarial acts and information, the notary public shall immediately notify the Secretary of State by certified or registered mail. The notification shall include the period of the journal entries, the notary public commission number, and the expiration date of the commission, and when applicable, a photocopy of any police report that specifies the theft of the sequential journal of official acts.

(c) Upon written request of any member of the public, which request shall include the name of the parties, the type of document, and the month and year in which notarized, the notary shall supply a photostatic copy of the line item representing the requested transaction at a cost of not more than thirty cents (\$0.30) per page.

(d) The journal of notarial acts of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon termination of employment, whether or not the employer paid for the journal, or at any other time. The notary public shall not surrender the journal to any other person, except the county clerk, pursuant to Section 8209, or to a peace officer, as defined in Sections 830.1, 830.2, and 830.3 of the Penal Code, acting in his or her official capacity and within his or her authority, in response to a criminal search warrant signed by a magistrate and served upon the notary public by the peace officer. The notary public shall obtain a receipt for the journal, and shall notify the Secretary of State by certified mail within 10 days that the journal was relinquished to a peace officer. The notification shall include the period of the journal entries, the commission number of the notary public, the expiration date of the commission, and a photocopy of the receipt. The notary public shall obtain a new sequential journal. If the journal relinquished to a peace officer is returned to the notary public and a new journal has been obtained, the notary public shall make no new entries in the returned journal. A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public, upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required

to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.

(e) The notary public shall provide the journal for examination and copying in the presence of the notary public upon receipt of a subpoena duces tecum or a court order, and shall certify those copies if requested.

§ 8207. Seal

A notary public shall provide and keep an official seal, which shall clearly show, when embossed, stamped, impressed or affixed to a document, the name of the notary, the State Seal, the words "Notary Public," and the name of the county wherein the bond and oath of office are filed, and the date the notary public's commission expires. The seal of every notary public commissioned on or after January 1, 1992, shall contain the sequential identification number assigned to the notary and the sequential identification number assigned to the manufacturer or vendor. The notary public shall authenticate with the official seal all official acts.

A notary public shall not use the official notarial seal except for the purpose of carrying out the duties and responsibilities as set forth in this chapter. A notary public shall not use the title "notary public" except for the purpose of rendering notarial service.

The seal of every notary public shall be affixed by a seal press or stamp that will print or emboss a seal which legibly reproduces under photographic methods the required elements of the seal. The seal may be circular not over two inches in diameter, or may be a rectangular form of not more than one inch in width by two and one-half inches in length, with a serrated or milled edged border, and shall contain the information required by this section.

The seal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the seal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

The official seal of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon the termination of employment, whether or not the employer paid for the seal, or to any other person. The notary, or his or her representative, shall destroy or deface the seal upon termination, resignation, or revocation of the notary's commission.

This section shall become operative on January 1, 1992.

§ 8207.1. Identification number

The Secretary of State shall assign a sequential identification number to each notary which shall appear on the notary commission.

This section shall become operative on January 1, 1992.

§ 8207.2. Manufacture, duplication, and sale of seal or stamp; procedures and guidelines for issuance of seals; certificate of authorization

(a) No notary seal or press stamp shall be manufactured, duplicated, sold, or offered for sale unless authorized by the Secretary of State.

(b) The Secretary of State shall develop and implement procedures and guidelines for the issuance of notary seals on or before January 1, 1992.

(c) The Secretary of State shall issue a permit with a sequential identification number to each manufacturer or vendor authorized to issue notary seals. The Secretary of State may establish a fee for the issuance of the permit which shall not exceed the actual costs of issuing the permit.

(d) The Secretary of State shall develop a certificate of authorization to purchase a notary stamp from an authorized vendor.

(e) The certificate of authorization shall be designed to prevent forgeries and shall contain a sequential identification number.

(f) This section shall become operative on January 1, 1992.

§ 8207.3. Certificates of authorization; authorization to provide seal; lost, misplaced, damaged or otherwise unworkable seal

(a) The Secretary of State shall issue certificates of authorization with which a notary public can obtain an official notary seal.

(b) A vendor or manufacturer is authorized to provide a notary with an official seal only upon presentation by the notary public of a certificate of authorization.

(c) A vendor of official seals shall note the receipt of certificates of authorization and sequential identification numbers of certificates presented by a notary public upon a certificate of authorization.

(d) A copy of a certificate of authorization shall be retained by a vendor and the original, which shall contain a sample impression of the seal issued to the notary public, shall be submitted to the Secretary of State for verification and recordkeeping. The Secretary of State shall develop guidelines for submitting certificates of authorization by vendors.

(e) Any notary whose official seal is lost, misplaced, destroyed, broken, damaged, or is rendered otherwise unworkable shall immediately mail or deliver written notice of that fact to the Secretary of State. The Secretary of State, within five working days after receipt of the notice, if requested by a notary, shall issue a certificate of authorization which a notary may use to obtain a replacement seal.

(f) This section shall become operative on January 1, 1992.

§ 8207.4. Violations; penalties

(a) Any person who willfully violates any part of Section 8207.1, 8207.2, 8207.3, or 8207.4 shall be subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation, which may be recovered in a civil action brought by the Attorney General or the district attorney or city attorney, or by a city prosecutor in any city and county.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

(c) This section shall become operative on January 1, 1992.

§ 8208. Protest of bill or note for nonacceptance or nonpayment

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, 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.

§ 8209. Resignation, disqualification or removal of notary; records delivered to clerk; misdemeanor; death; destruction of records

(a) If any notary public resigns, is disqualified, removed from office, or allows his or her appointment to expire without obtaining reappointment within 30 days, all notarial records and papers shall be delivered within 30 days to the clerk of the county in which the notary public's current official oath of office is on file. If the notary public willfully fails or refuses to deliver all notarial records and papers to the county clerk within 30 days, the person is guilty of a misdemeanor and shall be personally liable for damages to any person injured by that action or inaction.

(b) In the case of the death of a notary public, the personal representative of the deceased shall promptly notify the Secretary of State of the death of the notary public and shall deliver

all notarial records and papers of the deceased to the clerk of the county in which the notary public's official oath of office is on file.

(c) After 10 years from the date of deposit with the county clerk, if no request for, or reference to such records has been made, they may be destroyed upon order of court.

§ 8211. Fees

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

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

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

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

(g) No fee may be charged to notarize signatures on absentee ballot identification envelopes or other voting materials.

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

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

§ 8212. Bond; amount; form

Every person appointed a notary public shall execute an official bond in the sum of fifteen thousand dollars (\$15,000). The bond shall be in the form of a bond executed by an admitted surety insurer and not a deposit in lieu of bond.

§ 8213. Bonds and oaths; filing; certificate; copy of oath as evidence; transfer to new county; name changes; fees

(a) No later than 30 days after the beginning of the term prescribed in the commission, every person appointed a notary public shall file an official bond, and an oath of office in the office of the county clerk of the county within which the person maintains a principal place of business as shown in the application submitted to the Secretary of State, and the commission shall not take effect unless this is done within the 30-day period. A person appointed to be a notary public shall take and subscribe the oath of office either in the office of that county clerk or before another notary public in that county. If the oath of office is taken and subscribed before a notary public, the oath and bond may be filed with the county clerk by certified mail. Upon the filing of the oath and bond, the county clerk shall immediately transmit to the Secretary of State a certificate setting forth the fact of the filing and containing a copy of the official oath, personally signed by the notary public in the form set forth in the commission and shall immediately deliver the bond to the county recorder for recording. The county clerk shall retain the oath of office for one year following the expiration of the term of the commission for which the oath was taken, after which the oath may be destroyed or otherwise disposed of. The copy of the oath, personally signed by the notary public, on file with the Secretary of State may at any time be read in evidence with like effect as the original oath, without further proof.

(b) If a notary public transfers the principal place of business from one county to another, the notary public may file a new oath of office and bond, or a duplicate of the original bond with

the county clerk to which the principal place of business was transferred. If the notary public elects to make a new filing, the notary public shall, within 30 days of the filing, obtain an official seal which shall include the name of the county to which the notary public has transferred. In a case where the notary public elects to make a new filing, the same filing and recording fees are applicable as in the case of the original filing and recording of the bond.

(c) If a notary public submits an application for a name change to the Secretary of State, the notary public shall, within 30 days from the date an amended commission is issued, file a new oath of office and an amendment to the bond with the county clerk in which the principal place of business is located. The amended commission with the name change shall not take effect unless the filing is completed within the 30-day period. The amended commission with the name change takes effect the date the oath and amendment to the bond is filed with the county clerk. If the principal place of business address was changed in the application for name change, either a new or duplicate of the original bond shall be filed with the county clerk with the amendment to the bond. The notary public shall, within 30 days of the filing, obtain an official seal that includes the name of the notary public and the name of the county to which the notary public has transferred, if applicable.

(d) The recording fee specified in Section 27361 of the Government Code shall be paid by the person appointed a notary public. The fee may be paid to the county clerk who shall transmit it to the county recorder.

(e) The county recorder shall record the bond and shall thereafter mail, unless specified to the contrary, it to the person named in the instrument and, if no person is named, to the party leaving it for recording.

§ 8213.5. Change in location or address of business or residence; notice

A notary public shall notify the Secretary of State by certified mail within 30 days as to any change in the location or address of the principal place of business or residence.

§ 8213.6. Name changes; application; filing

If a notary public changes his or her name, the notary public shall complete an application for name change form and file that application with the Secretary of State. Information on this form shall be subject to the confidentiality provisions described in Section 8201.5. Upon approval of the name change form, the Secretary of State shall issue a commission that reflects the new name of the notary public. The term of the commission and commission number shall remain the same.

§ 8214. Misconduct or neglect

For the official misconduct or neglect of a notary public, the notary public and the sureties on the notary public's official bond are liable in a civil action to the persons injured thereby for all the damages sustained.

§ 8214.1. Grounds for refusal, revocation or suspension of commission

The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

(a) Substantial and material misstatement or omission in the application submitted to the Secretary of State.

(b) Conviction of a felony, a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a notary public. A conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this subdivision.

(c) Revocation, suspension, restriction, or denial of a professional license, if the revocation, suspension, restriction, or denial was for misconduct, for dishonesty, or for any cause substantially relating to the duties or responsibilities of a notary public.

(d) Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.

(e) When adjudged liable for damages in any suit grounded in fraud, misrepresentation, or violation of the state regulatory laws or in any suit based upon a failure to discharge fully and faithfully the duties as a notary public.

(f) The use of false or misleading advertising wherein the notary public has represented that the notary public has duties, rights, or privileges that he or she does not possess by law.

(g) The practice of law in violation of Section 6125 of the Business and Professions Code.

(h) Charging more than the fees prescribed by this chapter.

(i) Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another.

(j) Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document.

(k) Failure to administer the oath or affirmation as required by paragraph (3) of subdivision (a) of Section 8205.

(l) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(m) Violation of Section 8223.

(n) Failure to submit any remittance payable upon demand by the Secretary of State under this chapter or failure to satisfy any court-ordered money judgment, including restitution.

(o) Failure to secure the sequential journal of official acts, pursuant to Section 8206, or the official seal, pursuant to Section 8207.

(p) Violation of Section 8219.5.

§ 8214.15. Civil penalties

(a) In addition to any commissioning or disciplinary sanction, a violation of subdivision (f), (i), (l), (m), or (p) of Section 8214.1, or a willful violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed one thousand five hundred dollars (\$1,500).

(b) In addition to any commissioning or disciplinary sanction, a violation of subdivision (h), (j), or (k) of Section 8214.1, or a negligent violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed seven hundred fifty dollars (\$750).

(c) The civil penalty may be imposed by the Secretary of State if a hearing is not requested pursuant to Section 8214.3. If a hearing is requested, the hearing officer shall make the determination.

(d) Any civil penalties collected pursuant to this section shall be transferred to the General Fund. It is the intent of the Legislature that to the extent General Fund moneys are raised by penalties collected pursuant to this section, that money should be made available to the Secretary of State's office to defray its costs of investigating and pursuing commissioning and monetary remedies for violations of the notary public law.

§ 8214.2. Fraud relating to deed of trust; single-family residence; felony

A notary public who knowingly and willfully with intent to defraud performs any notarial act in relation to a deed of trust on real property consisting of a single-family residence containing not more than four dwelling units, with knowledge that the deed of trust contains any false statements or is forged in whole or in part, is guilty of a felony.

§ 8214.3. Hearing prior to denial or revocation of commission or imposition of civil penalties; law governing; exceptions

Prior to a revocation or suspension pursuant to this chapter or after a denial of a commission, or prior to the imposition of a civil penalty, the person affected shall have a right to a hearing on the matter and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, except that a person shall not have a right to a hearing after a denial of an application for a notary public commission in either of the following cases:

(a) The Secretary of State has, within one year previous to the application, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, denied or revoked the applicant's application or commission.

(b) The Secretary of State has entered an order pursuant to Section 8214.4 finding that the applicant has committed or omitted acts constituting grounds for suspension or revocation of a notary public's commission.

§ 8214.4. Resignation or expiration of commission not a bar to investigation or disciplinary proceedings

Notwithstanding this chapter or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, if the Secretary of State determines, after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, that any notary public has committed or omitted acts constituting grounds for suspension or revocation of a notary public's commission, the resignation or expiration of the notary public's commission shall not bar the Secretary of State from instituting or continuing an investigation or instituting disciplinary proceedings. Upon completion of the disciplinary proceedings, the Secretary of State shall enter an order finding the facts and stating the conclusion that the facts would or would not have constituted grounds for suspension or revocation of the commission if the commission had still been in effect.

§ 8214.5. Revocation of commission; filing copy with county clerk

Whenever the Secretary of State revokes the commission of any notary public, the Secretary of State shall file with the county clerk of the county in which the notary public's principal place of business is located a copy of the revocation. The county clerk shall note such revocation and its date upon the original record of such certificate.

§ 8214.8. Revocation upon certain convictions

Upon conviction of any offense in this chapter, or of Section 6203, or of any felony, of a person commissioned as a notary public, in addition to any other penalty, the court shall revoke the commission of the notary public, and shall require the notary public to surrender to the court the seal of the notary public. The court shall forward the seal, together with a certified copy of the judgment of conviction, to the Secretary of State.

§ 8216. Release of surety

When a surety of a notary desires to be released from responsibility on account of future acts, the release shall be pursuant to Article 11 (commencing with Section 996.110), and not by cancellation or withdrawal pursuant to Article 13 (commencing with Section 996.310), of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure. For this purpose the surety shall make application to the superior court of the county in which the notary public's principal place of business is located and the copy of the application and notice of hearing shall be served on the Secretary of State as the beneficiary.

§ 8219.5. Advertising in language other than English; posting of notice relating to legal advice and fees; translation of notary public into Spanish; suspension

(a) Every notary public who is not an attorney who advertises the services of a notary public in a language other than English by signs or other means of written communication, with the exception of a single desk plaque, shall post with that advertisement a notice in English and in the other language which sets forth the following:

(1) This statement: I am not an attorney and, therefore, cannot give legal advice about immigration or any other legal matters.

(2) The fees set by statute which a notary public may charge.

(b) The notice required by subdivision (a) shall be printed and posted as prescribed by the Secretary of State.

(c) Literal translation of the phrase "notary public" into Spanish, hereby defined as "notario publico" or "notario," is prohibited. For purposes of this subdivision, "literal translation" of a

word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The Secretary of State shall suspend for a period of not less than one year or revoke the commission of any notary public who fails to comply with subdivision (a) or (c). However, on the second offense the commission of such notary public shall be revoked permanently.

§ 8220. Rules and regulations

The Secretary of State may adopt rules and regulations to carry out the provisions of this chapter.

The regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3).

§ 8221. Destruction, defacement or concealment of records or papers; misdemeanor; liability for damages

If any person shall knowingly destroy, deface, or conceal any records or papers belonging to the office of a notary public, such person shall be guilty of a misdemeanor and be liable in a civil action for damages to any person injured as a result of such destruction, defacing, or concealment.

§ 8222. Injunction; reimbursement for expenses

(a) Whenever it appears to the Secretary of State that any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter or any rule or regulation prescribed under the authority thereof, the Secretary of State may apply for an injunction, and upon a proper showing, any court of competent jurisdiction has power to issue a permanent or temporary injunction or restraining order to enforce the provisions of this chapter, and any party to the action has the right to prosecute an appeal from the order or judgment of the court.

(b) The court may order a person subject to an injunction or restraining order provided for in this section to reimburse the Secretary of State for expenses incurred in the investigation related to the petition. The Secretary of State shall refund any amount received as reimbursement should the injunction or restraining order be dissolved by an appellate court.

§ 8223. Notary public with expertise in immigration matters; advertising status as notary public; entry of information on forms; fee limitations

(a) No notary public who holds himself or herself out as being an immigration specialist, immigration consultant or any other title or description reflecting an expertise in immigration matters shall advertise in any manner whatsoever that he or she is a notary public.

(b) A notary public qualified and bonded as an immigration consultant under Chapter 19.5 (commencing with Section 22440) of Division 8 of the Business and Professions Code may enter data, provided by the client, on immigration forms provided by a federal or state agency. The fee for this service shall not exceed ten dollars (\$10) per individual for each set of forms. If notary services are performed in relation to the set of immigration forms, additional fees may be collected pursuant to Section 8211. This fee limitation shall not apply to an attorney, who is also a notary public, who is rendering professional services regarding immigration matters.

(c) Nothing in this section shall be construed to exempt a notary public who enters data on an immigration form at the direction of a client, or otherwise performs the services of an immigration consultant, as defined by Section 22441 of the Business and Professions Code, from the requirements of Chapter 19.5 (commencing with Section 22440) of Division 8 of the Business and Professions Code. A notary public who is not qualified and bonded as an immigration consultant under Chapter 19.5 (commencing with Section 22440) of Division 8 of the Business and Professions Code may not enter data provided by a client on immigration forms nor otherwise perform the services of an immigration consultant.

§ 8224. Conflict of interest; financial or beneficial interest in transaction; exceptions

A notary public who has a direct financial or beneficial interest in a transaction shall not perform any notarial act in connection with such transaction.

For purposes of this section, a notary public has a direct financial or beneficial interest in a transaction if the notary public:

(a) With respect to a financial transaction, is named, individually, as a principal to the transaction.

(b) With respect to real property, is named, individually, as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee, to the transaction.

For purposes of this section, a notary public has no direct financial or beneficial interest in a transaction where the notary public acts in the capacity of an agent, employee, insurer, attorney, escrow, or lender for a person having a direct financial or beneficial interest in the transaction.

§ 8224.1. Writings, depositions or affidavits of notary public; prohibitions against proof or taking by that notary public

A notary public shall not take the acknowledgment or proof of instruments of writing executed by the notary public nor shall depositions or affidavits of the notary public be taken by the notary public.

§ 8225. Improper notarial acts, solicitation, coercion or influence of performance; misdemeanor

(a) Any person who solicits, coerces, or in any manner influences a notary public to perform an improper notarial act knowing that act to be an improper notarial act, including any act required of a notary public under Section 8206, shall be guilty of a misdemeanor.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

§ 8227.1. Unlawful acts by one not a notary public; misdemeanor

It shall be a misdemeanor for any person who is not a duly commissioned, qualified, and acting notary public for the State of California to do any of the following:

(a) Represent or hold himself or herself out to the public or to any person as being entitled to act as a notary public.

(b) Assume, use or advertise the title of notary public in such a manner as to convey the impression that the person is a notary public.

(c) Purport to act as a notary public.

§ 8227.3. Unlawful acts by one not a notary public; deeds of trust on single-family residences; felony

Any person who is not a duly commissioned, qualified, and acting notary public who does any of the acts prohibited by Section 8227.1 in relation to any document or instrument affecting title to, placing an encumbrance on, or placing an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence containing not more than four dwelling units, is guilty of a felony.

§ 8228. Enforcement of chapter; examination of notarial books, records, etc.

The Secretary of State may enforce the provisions of this chapter through the examination of a notary public's books, records, letters, contracts, and other pertinent documents relating to the official acts of the notary public.

§ 8228.1 Willful failure to perform duty or control notarial seal

(a) Any notary public who willfully fails to perform any duty required of a notary public under Section 8206, or who willfully fails to keep the seal of the notary public under the direct and exclusive control of the notary public, or who surrenders the seal of the notary public to any person not otherwise authorized by law to possess the seal of the notary, shall be guilty of a misdemeanor.

(b) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

§ 8230. Identification of affiant; verification

If a notary public executes a jurat and the statement sworn or subscribed to is contained in a document purporting to identify the affiant, and includes the birthdate or age of the person and a purported photograph or finger or thumbprint of the person so swearing or subscribing, the notary public shall require, as a condition to executing the jurat, that the person verify the birthdate or age contained in the statement by showing either:

- (a) A certified copy of the person's birth certificate, or
- (b) An identification card or driver's license issued by the Department of Motor Vehicles.

For the purposes of preparing for submission of forms required by the United States Immigration and Naturalization Service, and only for such purposes, a notary public may also accept for identification any documents or declarations acceptable to the United States Immigration and Naturalization Service.

* * *

§ 1360. Necessity of taking constitutional oath

Unless otherwise provided, before any officer enters on the duties of his office, he shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

§ 1362. Administration by authorized officer

Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths.

§ 6100. Performance of services; officers; notaries public

Officers of the state, or of a county or judicial district, shall not perform any official services unless upon the payment of the fees prescribed by law for the performance of the services, except as provided in this chapter.

This section shall not be construed to prohibit any notary public, except a notary public whose fees are required by law to be remitted to the state or any other public agency, from performing notarial services without charging a fee.

§ 6107. Veterans

(a) No public entity, including the state, a county, city, or other political subdivision, nor any officer or employee thereof, including notaries public, shall demand or receive any fee or compensation for doing any of the following:

(1) Recording, indexing, or issuing certified copies of any discharge, certificate of service, certificate of satisfactory service, notice of separation, or report of separation of any member of the Armed Forces of the United States.

(2) Furnishing a certified copy of, or searching for, any public record that is to be used in an application or claim for a pension, allotment, allowance, compensation, insurance (including automatic insurance), or any other benefits under any act of Congress for service in the Armed Forces of the United States or under any law of this state relating to veterans' benefits.

(3) Furnishing a certified copy of, or searching for, any public record that is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration.

(4) Rendering any other service in connection with an application or claim referred to in paragraph (2) or (3).

(b) A certified copy of any record referred to in subdivision (a) may be made available only to one of the following:

(1) The person who is the subject of the record upon presentation of proper photo identification.

(2) A family member or legal representative of the person who is the subject of the record upon presentation of proper photo identification and certification of their relationship to the subject of the record.

(3) A county office that provides veteran's benefits services upon written request of that office.

(4) A United States official upon written request of that official. A public officer or employee is liable on his or her official bond for failure or refusal to render the services.

§ 6108. Oaths of office; claim against counties

No officer of a county or judicial district shall charge or receive any fee or compensation for administering or certifying the oath of office or for filing or swearing to any claim or demand against any county in the State.

§ 6109. Receipt of fees; written account; officer liability

Every officer of a county or judicial district, upon receiving any fees for official duty or service, may be required by the person paying the fees to make out in writing and to deliver to the person a particular account of the fees. The account shall specify for what the fees, respectively, accrued, and the officer shall receipt it. If the officer refuses or neglects to do so when required, he is liable to the person paying the fees in treble the amount so paid.

§ 6110. Performance of services following payment; officer liability

Upon payment of the fees required by law, the officer shall perform the services required. For every failure or refusal to do so, the officer is liable upon his official bond.

§ 6203. False certificate or writing by officer

Every officer authorized by law to make or give any certificate or other writing is guilty of a misdemeanor if he makes and delivers as true any certificate or writing containing statements which he knows to be false.

§ 6800. Computation of time in which act is to be done

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

§ 27287. Acknowledgment of execution or proof by subscribing witness required before recording; exceptions

* * * before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

§ 66433. Content and form; application of article

The content and form of final maps shall be governed by the provisions of this article.

§ 66436. Statement of consent; necessity; exceptions; nonliability for omission of signature; notary acknowledgment

(a) A statement, signed and acknowledged by all parties having any record title interest in the subdivided real property, consenting to the preparation and recordation of the final map is required, * * *

(c) A notary acknowledgment shall be deemed complete for recording without the official seal of the notary, so long as the name of the notary, the county of the notary's principal place of business, and the notary's commission expiration date are typed or printed below or immediately adjacent to the notary's signature in the acknowledgment.

§ 14. Words and phrases; construction; tense; gender; number

* * * signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is by mark it must in order that the same may be acknowledged or may serve as the signature to any sworn statement be witnessed by two persons who must subscribe their own names as witnesses thereto. * * *

§ 1181. Notaries public; officers before whom proof or acknowledgment may be made

The proof or acknowledgment of an instrument may be made before a notary public at any place within this state, or within the county or city and county in this state in which the officer specified below was elected or appointed, before either:

- (a) A clerk of a superior court.
- (b) A county clerk.
- (c) A court commissioner.
- (d) A retired judge of a municipal or justice court.
- (e) A district attorney.
- (f) A clerk of a board of supervisors.
- (g) A city clerk.
- (h) A county counsel.
- (i) A city attorney.
- (j) Secretary of the Senate.
- (k) Chief Clerk of the Assembly.

§ 1185. Acknowledgments; requisites

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

(b) For purposes of this article, “personally knows” means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual’s identity with at least reasonable certainty.

(c) For the purposes of this section “satisfactory evidence” means the absence of any information, evidence, or other circumstances which 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) The oath or affirmation of a credible witness personally known to the officer that the person making the acknowledgment is personally known to the witness and that each of the following are true:

- (A) The person making the acknowledgment is the person named in the document.
- (B) The person making the acknowledgment is personally known to the witness.
- (C) 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.
- (D) The person making the acknowledgment does not possess any of the identification documents named in paragraphs (3) and (4).
- (E) The witness does not have a financial interest in the document being acknowledged and is not named in the document.

(2) The oath or affirmation under penalty of perjury of two credible witnesses, whose identities are proven to the officer upon the presentation of satisfactory evidence, 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 (E), 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, if the inmate is in custody.

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

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

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

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

§ 1188. Certificate of acknowledgment

An officer taking the acknowledgment of an instrument shall endorse thereon or attach thereto a certificate substantially in the form prescribed in Section 1189.

§ 1189. Certificate of acknowledgment; form; sufficiency of out of state acknowledgment; force and effect of acknowledgment under prior laws

(a) Any certificate of acknowledgment taken within this state shall be in the following form:

State of California }
County of _____ }

On _____ before me, (here insert name and title of the officer), personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

(b) Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made.

(c) On documents to be filed in another state or jurisdiction of the United States, a California notary public may complete any acknowledgment form as may be required in that other state or jurisdiction on a document, provided the form does not require the notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law.

(d) An acknowledgment provided prior to January 1, 1993, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not been repealed.

§ 1190. Certificate of acknowledgment as prima facie evidence; duly authorized person

The certificate of acknowledgment of an instrument executed on behalf of an incorporated or unincorporated entity by a duly authorized person in the form specified in Section 1189 shall be prima facie evidence that the instrument is the duly authorized act of the entity named in the instrument and shall be conclusive evidence thereof in favor of any good faith purchaser, lessee, or encumbrancer. "Duly authorized person," with respect to a domestic or foreign corporation, includes the president, vice president, secretary, and assistant secretary of the corporation.

§ 1193. Certificate of acknowledgment; authentication

Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

§ 1195. Proof of execution; methods; certificate form

(a) Proof of the execution of an instrument, when not acknowledged, may be made any of the following:

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

(b) Proof of the execution of a grant deed, mortgage, deed of trust, quitclaim deed, or security agreement is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee's deed or deed of reconveyance is permitted.

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

State of California }
County of _____ } ss.

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

WITNESS my hand and official seal.

Signature _____

(Seal)

§ 1196. Subscribing witness; establishment of identity

If by a subscribing witness, that witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or shall be proved to be such by the oath of a credible witness who is personally known to the officer taking the proof, as defined in subdivision (b) of Section 1185.

§ 1197. Subscribing witness; items to be proved

The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

§ 1633.11. Notarization and signature under penalty of perjury requirements

(a) If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

* * *

§ 1633.12. Retaining records; electronic satisfaction

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record, if the electronic record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

(b) A requirement to retain a record in accordance with subdivision (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subdivision (a) by using the services of another person if the requirements of subdivision (a) are satisfied.

(d) If a law requires a record to be retained in its original form, or provides consequences if the record is not retained in its original form, that law is satisfied by an electronic record retained in accordance with subdivision (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subdivision (a).

(f) A record retained as an electronic record in accordance with subdivision (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this title specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

CODE OF CIVIL PROCEDURE**§ 12a. Computation of time; holidays; application of section**

(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day which is not a holiday. For purposes of this section, “holiday” means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days which by terms of Section 12b are required to be considered as holidays.

* * *

§ 1935. Subscribing witness defined

A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

§ 2093. Officers authorized to administer oaths or affirmations

(a) Every court, every judge, or clerk of any court, every justice, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

(b) (1) Every shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths or affirmations and may perform the duties of the deposition officer pursuant to Section 2025. The certified shorthand reporter shall be entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision shall also apply to depositions taken by telephone or other remote electronic means as specified in Sections 2017 and 2025.

(c) A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification.

No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

§ 2094. Oath to witness; form

(a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) “Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?”

(2) “Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?”

* * *

ELECTIONS CODE**§ 8080. Fee for verification**

No fee or charge shall be made or collected by any officer for verifying any nomination document or circulator’s affidavit.

§ 3505. Protest; Noting for Protest

* * *

(b) 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. It may be made upon information satisfactory to that person. The protest shall identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PROBATE CODE

§ 4307. Certified copies of power of attorney

(a) A copy of a power of attorney certified under this section has the same force and effect as the original power of attorney.

(b) A copy of a power of attorney may be certified by any of the following:

(1) An attorney authorized to practice law in this state.

(2) A notary public in this state.

(3) An official of a state or of a political subdivision who is authorized to make certifications.

(c) The certification shall state that the certifying person has examined the original power of attorney and the copy and that the copy is a true and correct copy of the original power of attorney.

(d) Nothing in this section is intended to create an implication that a third person may be liable for acting in good faith reliance on a copy of a power of attorney that has not been certified under this section.

FAMILY CODE

§ 9003. Consent of birth parents to adoption; execution; filing; out-of-state procedure; prima facie evidence of custody; minor birth parents

(a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state. The notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before the notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member, is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of the minority.

PENAL CODE**§ 17. Felony; misdemeanor; infraction; classification of offenses**

(a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions. * * *

§ 115.5. Filing false or forged documents relating to single-family residences; punishment; false statement to notary public

(a) Every person who files any false or forged document or instrument with the county recorder which affects title to, places an encumbrance on, or places an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence containing not more than four dwelling units, with knowledge that the document is false or forged, is punishable, in addition to any other punishment, by a fine not exceeding seventy-five thousand dollars (\$75,000).

(b) Every person who makes a false sworn statement to a notary public, with knowledge that the statement is false, to induce the notary public to perform an improper notarial act on an instrument or document affecting title to, or placing an encumbrance on, real property consisting of a single-family residence containing not more than four dwelling units is guilty of a felony.

§ 118. Perjury defined; evidence necessary to support conviction

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

§ 126. Punishment

Perjury is punishable by imprisonment in the state prison for two, three or four years.

§ 470. Forgery; signatures or seals; corruption of records

* * *

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

* * *

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: ... or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

* * *

§ 473. Forgery; punishment

Forgery is punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

§ 830.3. Peace officers; employing agencies; authority

The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. * * *

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. * * *

NOTES

