

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2004 (Petrie-Norris)  
Version: March 13, 2024  
Hearing Date: June 18, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

County recorder: recordation of documents

**DIGEST**

This bill shortens the window before a title document that was recorded despite having technical defects can provide notice of its content to subsequent purchasers or encumbrancers, from one year to 90 days; and establishes a procedure by which a tangible copy of an electronic record can be certified for purposes of recordation in a county that does not accept electronic original documents.

**EXECUTIVE SUMMARY**

Under current law, a county recorder is authorized to accept for recordation either a document that contains original signatures, or a “certified copy” of the original. All counties accept hard copies of documents with original signatures and certified hard copies, but not all counties are able to accept electronic documents. If an original document is an electronic document – which is increasingly the case, particularly when the parties have a title document notarized via remote online notarization – there is no hard copy of the original that can be recorded, and current law lacks a method for certifying a print-out of an electronic document as a certified copy of an electronic document.

This bill establishes a mechanism by which a copy of an electronic document can be certified as a copy for purposes of recordation. As currently in print, the bill permits a notary public to observe the copy of an electronic document being printed and certify that the printout is a copy of the electronic document. In response to feedback from stakeholders, including the Office of the Secretary of State, the author has proposes to amend the bill to establish a certification mechanism whereby a disinterested party can certify, before a notary public and under penalty of perjury, that a printed copy of a document is an accurate reproduction of the electronic document. The bill also shortens

the window before a title document that was recorded despite having technical defects can impart notice, from one year to 90 days.

This bill is sponsored by the California Land Title Association and is supported by the California Association of Realtors, the California Bankers Association, the California Credit Union League, the California Escrow Association, the California Mortgage Bankers Association, First American Financial Corporation, the National Notary Association, Proof, and Zillow Group. This bill is opposed by the California League of Independent Notaries. If this Committee passes this bill, it will then be heard by the Senate Local Government Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that an estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the property, or by their agent. (Civ. Code, § 1091.)
- 2) Provides that every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under the grantor, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires title or lien by an instrument that is first duly recorded. (Civ. Code, § 1107.)
- 3) Provides that an instrument that may be recorded must be recorded by the County Recorder of the county in which the real property affected by the instrument is situated. (Civ. Code, § 1169.)
- 4) Provides that an instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the Recorder's office, with the proper officer, for record. (Civ. Code, § 1170.)
- 5) Authorizes a notary public or other specified officer to take an acknowledgement of an instrument provided that the officer taking the acknowledgement has satisfactory evidence that the person making the acknowledgement is the individual who is described in and who executed the instrument, as specified. (Civ. Code, §§ 1181, 1185.)
- 6) Provides that every conveyance of real property or an estate for years therein acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagers; and a certified copy of such a recorded conveyance may be recorded in any other county and when so recorded

the record thereof shall have the same force and effect as though it was of the original conveyance and where the original conveyance has been recorded in any county wherein the property therein is not situated a certified copy of the recorded conveyance may be recorded in the county where such property is situated with the same force and effect as if the conveyance has been recorded in that county. (Civ. Code, § 1213.)

- 7) Provides that an instrument affecting the title to real property, one year after the same has been copied into the proper book of record, kept in the office of any county recorder, imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate or acknowledgement thereof, or in the absence of any such certificate.
  - a) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded, provided that, when such copying in the proper book of record occurred within five years prior to the trial of the action, it is first shown that the original instrument was genuine. (Civ. Code, § 1207.)
  
- 8) Establishes, within each county, the county recorder, who shall, upon the payment of proper fees and taxes, accept for recordation any instrument, paper, or notice that is authorized or required by statute, or court order to be recorded, or authorized or required to be recorded by a local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property.
  - a) The county recorder shall not refuse to record any instrument, paper, or notice that is authorized or required by statute, court order, or local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property to be recorded on the basis of its lack of legal sufficiency.
  - b) Each instrument, paper, or notice shall contain an original signature or signature, except as otherwise provided by law, or be a certified copy of the original. (Gov. Code, § 27201.)
  
- 9) Provides that it is the duty of a notary public, when requested:
  - a) For a notary public employed by a financial institution, to demand acceptance and payment in specified forms of currency, as provided.
  - b) To take the acknowledgement 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 acknowledgement, endorsed or attached to the instrument; a notary public may not accept any acknowledgement or proof of any instrument that is incomplete. The certificate shall be signed by the notary public in their own handwriting.
  - c) 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, or affirmation shall be signed by the notary public in their own handwriting.
- d) To certify copies of powers of attorney under Probate Code section 4307. The certification shall be signed by the notary public in their own handwriting.
  - e) To furnish certified copies of their journal or respond to written requests from the Secretary of State's office, as specified. (Gov. Code, § 8205.)

10) Defines the following relevant terms:

- a) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- b) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record, including a "digital signature," as defined. (Civ. Code, § 1633.2.)

This bill:

- 1) Reduces the time frame after which an instrument affecting the title to real property that has been recorded imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgement, or in the absence of any such certificate, from one year to 90 days.
- 2) Provides that a notary public may certify that a tangible copy of an electronic record is an accurate reproduction of the electronic record.
- 3) Provides that the certification must be in substantially in the same form as the below and be signed by the person making the certification:

*I hereby certify that the attached instrument entitled document title, if applicable, dated document date, and containing page count pages is an accurate reproduction of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the completion of the electronic record's creation, execution, or notarization.*

*I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.*

*Dated: \_\_\_\_\_*

*Name: \_\_\_\_\_*

*Signature: \_\_\_\_\_*

- 4) Provides that it is not a duty of a notary public, as set forth in Government Code section 8205, to provide a certification set forth in 2), and that a notary public may decline a request to print and certify a tangible record of an electronic record.

- 5) Requires a recorder to accept for recording a tangible copy of an electronic record bearing electronic signatures and containing a certificate in the form required by 3) as a certified copy of an original, provided that the electronic record is otherwise an instrument or notice that is authorized or required to be recorded and the tangible copy satisfies the requirements of Government Code section 27201.
- 6) Provides that, for purposes of 2)-5), “electronic record” and “electronic signature” have the same meaning as in Civil Code section 1633.2.

### COMMENTS

#### 1. Author’s comment

According to the author:

This bill would enact two changes aimed at improving the recordability of remotely notarized documents in California. First, it would allow notaries public to certify paper copies of electronic documents as accurate representations entitled to be recorded in public records. The proposed certification process, widely used in other states, is simple: a notary reviews an electronic document, ensures that it is still locked with a tamper-evident seal, prints the document, ensures that the document printed correctly, and completes the simple certification form. Certification would also be permissive, meaning that notaries would be perfectly within their rights to decline to certify should they so choose.

Separately, the bill would ensure that valid documents containing technical defects or omissions in an acknowledgment form provide constructive notice of an instrument 90 days after being recorded in public records, as opposed to the one-year period in place under current law.

These provisions will enhance access to and increase the usability of [remote online notarization] across the state, as well as protect individuals from unintended difficulties should documents contain unintended technical notarial defects. These provisions are commonly contained in other state’s recording statutes; 35 states allow notaries to certify paper copies of electronic documents for recording purposes, while at least 17 states provide that documents containing technical defects or omissions provide immediate constructive notice upon recording.

#### 2. A brief explainer on electronic documents

For most of human history, legal documents – contracts, deeds, etc. – had to be created in a tangible format, which has evolved from rock to papyrus to vellum to paper. Now, however, various technologies enable people to create legal documents entirely

electronically. For purposes of this analysis, it is important to understand the difference between a copy of a tangible original document and an electronic original document.

When a document is executed in the physical world – say, when two parties sign a paper contract in ink – that tangible document is the original document. A person could make electronic copies of the tangible original, including by scanning the document to create a pdf version, but those electronic copies will only ever be copies of the original.

An electronic original document, conversely, can never exist in physical form. An electronic original document is created when the execution takes place entirely through digital means – for example, where two parties use an electronic signature platform to execute a contract. The original document, in that case, is the electronic record created through the electronic signature platform; physical printouts of the document are considered copies of the electronic original. This has implications for recordation and other legal processes when not all participants are capable of accepting electronic original documents.

### 3. Background on remote online notarization and issues with recording electronic original documents

Beginning with Virginia in 2011,<sup>1</sup> most states have adopted “remote online notarization,” a.k.a. “RON.”<sup>2</sup> Under SB 696 (Portantino, Ch. 291, Stats. 2023), enacted last year, California notaries will be able to begin notarizing documents remotely in 2030, unless the Secretary of State finishes its necessary technology project sooner.<sup>3</sup> However, SB 696 also made it clear that a California resident may have a document remotely notarized by an out-of-state notary providing RON consistent with the laws of the state in which the notary public is licensed. In other words, California residents can have their documents notarized remotely, but only by out-of-state notaries public.

As the acronym implies, RON is conducted both remotely and online, meaning the resulting notarized document is an electronic document. The RON process generally requires the person seeking the notarization to upload their document in digital form to a RON platform and go through identification verification; assuming the person is who they say they are, the notary and the person interact through a real-time audiovisual feed, which culminates in the notary affixing their electronic seal and/or electronic signature onto the electronic document.

An electronic document notarized through RON is the original document. A printout of the notarized document is not the original document – as discussed in Part 2, an

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<sup>1</sup> See National Association of Secretaries of State (NASS), Remote Electronic Notarization, <https://www.nass.org/initiatives/remote-electronic-notarization> (link current as of June 13, 2024).

<sup>2</sup> *Ibid.*

<sup>3</sup> Gov. Code, § 8231.

electronic original cannot, by definition, be converted to a tangible medium without losing its status as the original document.

Under current law, a county recorder is authorized to accept for recordation either a document that contains original signatures, or a “certified copy” of the original.<sup>4</sup> In counties that accept electronic documents for recordation, this requirement does not pose a problem: the recorder accepts the electronic original document digitally, and the effect is the same as if the document were a tangible original.

According to the author and sponsor, however, not all counties are currently capable of accepting electronic documents for recordation. This means the only option for a person with an electronic original document that needs to be recorded is to submit a certified copy of the original – except there is currently no statutory provision for the creation of a certified tangible copy of an electronic document relating to real property.

4. This bill provides a mechanism for the creation of a certified copy of an electronic document relating to real property, and shortens the amount of time after which a recorded document with technical errors can provide notice of its contents

This bill is intended to provide a mechanism by which an electronic document can be converted into a tangible paper copy that can be recorded, thereby providing notice of the contents of the document. As currently in print, the bill permits a notary public to certify a tangible copy of an electronic document; the notary public must print the document themselves, or observe it being printed, and determine that the document is a true and correct copy of the electronic record and that no security features on the document indicated that the document had been tampered with. The certification must be under penalty of perjury.

Both the Office of the Secretary of State and the California League of Independent Notaries oppose this notarial certification mechanism, for similar reasons. Generally speaking, the object to asking a notary public to certify that the contents of a document are accurate when the notary did not notarize the document themselves, has no relationship with the parties, and the document may be scores of pages long. They note that, because Californians can have a document remotely notarized by a notary in any state in which remote notarization is permitted, the notary public is unlikely to be familiar with all the different online notarization platforms and all the different security features used by notaries in each state, meaning the notary is less likely to be confident that they are viewing an authentic electronic record that has not been altered. They also object to the requirement that the certification be made under penalty of perjury, which is not required for notarizations of other documents affecting title.

After discussions with stakeholders, the author proposes amending the bill to establish a different mechanism, whereby a disinterested third party – i.e., a person who does not

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<sup>4</sup> Gov. Code, § 27201.

directly benefit from the record being certified – certifies, under penalty of perjury, that the printed document is a correct copy of the electronic record to the best of their knowledge. This certification must be sworn to before notary public and accompanied by a jurat. The complete amendments proposed by the author are set forth in Part 5 of this analysis. At this time, the opponents of the bill have not formally removed their opposition, but the amendments appear responsive to many of their concerns. The author’s discussion with stakeholders are ongoing, and they are collectively continuing to work on fine-tuning the amendments proposed below.

In addition to adding a mechanism for certifying tangible copies of electronic records, this bill shortens the period of time before which a recorded document that contains errors, such as omitting signatures, can provide notice of its contents to subsequent purchasers and encumbrancers, from one year to 90 days. Committee staff are not aware of any objections to this portion of the bill.

## 5. Amendments

As noted above, the author has agreed to amend the bill to establish a certification procedure whereby a disinterested third party certifies, before a notary public and under penalty of perjury, that a tangible document is a complete and accurate printout of an electronic document. The amendments are set forth as follows, with additions in bold and underline and deletions in strikethrough, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

### Amendment

At page 2, lines 17-22, and page 3, lines 1-30, modify the text as follows:

**27201.1.** (a) (1) A **disinterested custodian** ~~notary public may certify that a tangible copy of an electronic record~~ **may certify that a tangible copy is a complete and an accurate reproduction of the electronic record.** The certification shall be **subscribed and sworn to (or affirmed) by the disinterested custodian before a notary public and accompanied by a jurat attached thereto pursuant to Section 8282. The certification pursuant to this section shall be** in substantially the following form ~~and signed by the person making the certification:~~

### **Certification of a Printed Copy of an Electronic Record**

I hereby certify that the attached instrument entitled [document title, if applicable], dated [document date], and containing [page count] pages is an accurate reproduction of an electronic record printed by me or under my supervision. At the time of printing, **I had access to the electronic record displaying intact and tamper-evident security procedures.** ~~no~~ ~~No security features~~ ~~procedures used~~ present on the electronic record indicated any changes or errors in an electronic signature or



other information in the electronic record after the completion of the electronic record's creation, execution, or notarization.

**I am not a grantee, beneficiary, or otherwise who directly benefits from the attached instrument or electronic record.**

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraphs are ~~is~~-true and correct.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**(2) A certification made by a disinterested custodian pursuant to this subdivision is separate and distinct from a certified copy issued by a recorder for purposes of Section 1530 and 1531 of the Evidence Code. The disinterested custodian shall so identify the certification according to the form required by paragraph (1). It is not a duty of a notary public, as set forth in Section 8205, to provide a certification pursuant to this section. A notary public may decline a request to print and certify a tangible reproduction of an electronic record.**

(b) The recorder shall accept for recording a tangible copy of an electronic record bearing electronic signatures and containing a certificate in the form required by subdivision (a) as a certified copy of an original pursuant to subdivision (b) of Section 27201 provided that the electronic record is otherwise an instrument or notice that is authorized or required to be recorded and the tangible copy satisfies the requirements of subparagraph (A) of paragraph (1) of subdivision (a) of Section 27201.

**(c) A tangible copy of an electronic record, once copied into the proper book of record, kept in the office of any county recorder, imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any failure of the person making the certification to qualify as a disinterested custodian.**

**(de) For purposes of this section, "electronic record," and "electronic signature," and "security procedure" have the same meaning as in Section 1633.2 of the Civil Code, and "disinterested custodian" means a person who has access to an electronic record displaying intact tamper-evident security procedures, and who is not the grantee, beneficiary, or otherwise who directly benefits from the electronic record.**

6. Arguments in support

According to a coalition of the bill's supporters, including the bill's sponsor, the California Land Title Association:

California law supports the use of electronic documents, electronic signatures, and electronic notarization. However, not all county recorder offices are equipped to accept electronic documents for recording purposes.

As provided under Government Code Section 27201, documents intended for recordation are required to contain an original signature or be a certified copy of an original. A county recorder may refuse to accept any document that does not meet recording requirements.

As a result, there is no method for recording a remotely notarized document in the 13 of California's 58 counties (or approximately 22%) that lack the capacity to accept electronic documents, because there is currently no mechanism under state law to create a certified paper copy from an electronic document for recording purposes.

AB 2004 would resolve this by putting in place a simple certification process, in which a notary reviews an electronic document, ensures that it is still locked with a tamper-evident seal, prints the document, ensures that the document printed correctly, and completes the simple certification form. Certification would also be permissive, meaning that notaries would be perfectly within their rights to decline to certify should they so choose.

7. Arguments in opposition

According to Dr. Shirley Weber, the California Secretary of State:

I respectfully oppose Assembly Bill 2004 as currently drafted. AB 2004 in its current form would drastically and unnecessarily expand the longstanding role of notaries public by authorizing them to review and attest to the content of any electronically signed document, regardless of the page limit or whether the notary had any prior relationship to the document. This is an action that notarial law has never before authorized. It is equally concerning that this measure would so significantly expand the scope of a notary's duties while attaching a penalty of perjury provision in the event the contents of the document as certified by the notary are less than accurate.

As a result, the adoption of AB 2004 in its current form would have significant practical and fiscal impacts on notary practice, notarial law, regulations, and disciplinary actions. I appreciate the problem this bill is attempting to solve, but

there are other avenues to address the issue of “papering out” electronically notarized documents for purposes of recordation. This issue can and should be resolved without expanding the well-established purpose and role of a notary public...

A key deficiency in this bill is that it does not require the notary who would be attesting to the accuracy of the reproduction of an electronic document to have previously performed an acknowledgement or jurat relating to that document. In fact, AB 2004 is silent as to whether the document must have been notarized at all. The likely scenario is that the notary would have no prior connection to the reproduction...

Moreover, it is unreasonable to expect a notary to be able to determine whether the document proffered for certification is the same document that was signed, thus risking the very purpose of notarization, which is nearly always limited to the verification of the identity of the person signing the document, and in some cases, the signer’s oath as to the truthfulness of the document.

### **SUPPORT**

California Land Title Association (sponsor)  
California Association of Realtors  
California Bankers Association  
California Credit Union League  
California Escrow Association  
California Mortgage Bankers Association  
First American Financial Corporation  
National Notary Association  
Proof  
Zillow Group

### **OPPOSITION**

California League of Independent Notaries  
Dr. Shirley Weber, California Secretary of State

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 696 (Portantino, Ch. 291, Stats. 2023) established a framework for the Secretary of State to authorize California notaries to perform remote online notarization, as defined,

beginning January 1, 2030, or sooner if the Secretary of State completes its technology project before then.

AB 793 (Petrie-Norris, 2023) would have established a framework for remote online notarization similar, but not identical to, SB 696. AB 793 died in the Assembly Appropriations Committee.

AB 1093 (Jones-Sawyer, 2022) would have established a framework for remote online notarization similar, but not identical to, SB 696. AB 1093 died in the Senate Judiciary Committee.

**PRIOR VOTES:**

Assembly Floor (Ayes 73, Noes 0)  
Assembly Appropriations Committee (Ayes 15, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

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