

Proof of Execution by a Subscribing Witness

If a person, called the principal, has signed a document but does not personally appear before a notary public, another person can appear on the principal's behalf to prove the principal signed (or "executed") the document. That person is called a subscribing witness. (Code of Civil Procedure section 1935)

A proof of execution by a subscribing witness cannot be used in conjunction with any power of attorney, quitclaim deed, grant deed (other than a trustee's deed resulting from a decree of foreclosure, or a nonjudicial foreclosure pursuant to Civil Code section 2924, or to a deed of reconveyance), mortgage, deed of trust, security agreement, any instrument affecting real property, or any instrument requiring a notary public to obtain a thumbprint from the party signing the document in the notary public's journal. (Government Code section 27287 and Civil Code section 1195(b)(1) and (2))

The requirements for proof of execution by a subscribing witness are as follows:

- The subscribing witness must prove (say under oath) that the person who signed the document as a party, the principal, is the person described in the document, and the subscribing witness personally knows the principal (Civil Code section 1197); and
- The subscribing witness must say, under oath, that the subscribing witness saw the principal sign the document or in the presence of the principal heard the principal acknowledge that the principal signed the document (Code of Civil Procedure section 1935 and Civil Code section 1197); and
- The subscribing witness must say, under oath, that the subscribing witness was requested

State of California } ss.
County of _____ }

On _____ (date), before me, _____ (name and title of officer), personally appeared _____ (name of subscribing witness), proved to me to be the person whose name is subscribed to the within instrument, as a witness thereto, on the oath of _____ (name of credible witness), a credible witness who is known to me and provided a satisfactory identifying document. _____ (name of subscribing witness), being by me duly sworn, 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 or attached 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 or attached instrument as a witness at the request of _____ (name[s] of principal[s]).

WITNESS my hand and official seal.

Signature

(Seal)

Note: It is not acceptable to affix a notary public seal and signature to a document without the notarial wording.

by the principal to sign the document as a witness and that the subscribing witness did so (Code of Civil Procedure section 1935 and Civil Code section 1197); and

- The notary public must establish the identity of the subscribing witness by the oath of a credible witness whom the notary public personally knows and who personally knows the subscribing witness. The credible witness must also present to the notary public any identification document satisfying the requirements for satisfactory evidence as described in Civil Code section 1185(b)(3) or (4) (Civil Code section 1196); and
- The subscribing witness must sign the notary public's official journal. The credible witness must sign the notary public's official journal or the notary public must record in the notary public's official journal the type of identification document presented, the governmental agency issuing the document, the serial number of the document, and the date of issue or expiration of the document. (Government Code section 8206(a)(2)(C) and (D))

Note: The identity of the subscribing witness must be established by the oath of a credible witness who personally knows the subscribing witness and who is known personally by the notary public. In addition, the credible witness must present an identification document satisfying the requirements of Civil Code section 1185(b)(3) or (4).

Because proof of execution by a subscribing witness is not commonly used, the following scenario is provided as an example of how proof by a subscribing witness may be used.

The principal, Paul, wants to have his signature on a document notarized. Paul is in the hospital and cannot appear before a notary public. So Paul asks a longtime friend, Sue, to visit the hospital and act as a subscribing witness. When Sue comes to the hospital, Sue must watch Paul sign the document. If Paul has signed the document prior to Sue's arrival, Paul must say (acknowledge) to Sue that Paul signed the document. Then Paul should ask Sue to sign the document as a subscribing witness, and Sue must do so.

Next, Sue must take the document to a notary public. Sue chooses Nancy Notary as the notary public. Sue must bring a credible witness with her to see Nancy Notary. Sue chooses Carl, a longtime friend, as a credible witness because Carl has worked with Nancy Notary for several years. Therefore, Carl can act as Sue's credible witness.

Sue and Carl appear together before Nancy. Nancy determines Nancy personally knows Carl and also examines Carl's California driver's license to establish Carl's identity. Then Nancy puts Carl under oath. Under oath or affirmation, Carl swears or affirms that Carl personally knows Sue, that Sue is the person who signed the document as a subscribing witness, and Carl does not have a financial interest in the document signed by Paul and subscribed by Sue, and is not named in the document signed by Paul and subscribed by Sue. Then Nancy puts Sue under oath. Under oath or affirmation, Sue swears or affirms Sue personally knows Paul, that Paul is the person described as a party in the document, that Sue watched Paul sign the document or heard Paul acknowledge that Paul signed the document, that Paul requested Sue sign the document as subscribing witness and that Sue did so.

Sue signs Nancy's notary public journal as a subscribing witness. Carl must sign Nancy's notary public journal as a credible witness, or Nancy must record in the notary public journal that Carl presented a California Department of Motor Vehicles driver's license, the license number, and the date the license expires.

Nancy completes Nancy's notary public journal entry. Nancy then completes a proof of execution certificate and attaches the proof of execution certificate to the document. Sue takes the notarized document back to Paul.

A certificate for proof of execution by a subscribing witness shall be in the following form. (Civil Code section 1195)