

Governor's Reference Manual for Notaries



State of Florida

NOTARY SECTION OFFICE OF THE GOVERNOR STATE OF FLORIDA

PUBLISHED BY:
State of Florida
Executive Office of the Governor
Notary Section
Tallahassee, Florida 32399-0001

PREPARED BY:
Jennifer Bertsch, Notary
Education Coordinator

PUBLICATION DATE:
September 1, 1997
Updated December 1, 1999
Updated November 1, 2001

This manual has been prepared to educate Florida notaries about the laws governing their duties and is not intended as legal advice. For additional information or for difficult situations, it may be advisable for you or your customer to seek the advice of a licensed attorney.

Table of Contents

Resources for Florida Notaries

Resources	2
Notary Information on the Internet	3
National Organizations	4

Offices of Notary Public

General Information	6
What is a Notary Public?	6
Qualifications and Requirements for Appointment ...	6
Appointment and Commission	7
Application Process	7
Renewal	8
Amended Commission	8
Change of Address	8
Resignation	8
Jurisdiction	8
Surety Bond	8
Notary Seal	9
Notary Fees	9
Authentication of Notarized Documents by Secretary of State	10

Duties of Notary Public

Taking Acknowledgments	12
Administering Oaths	12
Affidavits	13
Depositions	13
Attesting to Photocopies	15
Solemnizing Marriage	16
Verifying a VIN	17
Certifying the Contents of a Safe-Deposit Box	18
Prohibited Acts	19
Other Prohibited Acts	21
Don't Notarize Photographs	21
Don't Provide Certified Copies of Birth Certificates ...	22
Don't Notarize Blank Documents	22

Notaries in Special Positions

Government Employees	24
Law Enforcement Officers	25
Military Officers	26

Performing Notarial Acts

Presence Requirement	28
Notarizing — Step By Step	28
Notarial Certificates	29
Identification	
Acceptable Forms	32
Credible Witness Affidavits	33
Verifying Identification	34
Use of Resident Alien Cards	34
DOC Inmate Identification Cards	34
Notarizing in Special Circumstances	
For a Person Who Is Mentally Incapacitated	36
For a Person Who Is Blind	36
For a Person Who Does Not Speak English	37
For a Person Who Is Deaf	37
For a Person Who Signs a Document Written in Foreign Language	37
For a Person Who Is Illiterate	37
For a Person Who Signs by Mark	38
For a Person with a Disability Who Directs Another to Sign	39
For a Person Who Signs with Power of Attorney	40
For a Person Who Is a Minor	40

Liability and Recordkeeping

Notary and Employer Liability	42
Use of Journal	42
Governor’s Office Complaint Process	43

Electronic Notarization

Electronic Notarization	46
How electronic Notarization Works	47
Where to Learn about Electronic Notarization	48

Notary Q&A

Advertising Notary Services	50
Financial Interest	51
Marriage	52
Proof of Execution by Subscribing Witness	54
Refusing to Notarize	55
Solution for Surveyors	56
Unauthorized Practice of Law	57
Unnotarized Oaths	59
Wills	60
Miscellaneous Topics	61

Appendices

Change of Address Form	71
Glossary of Notary Terms	72
Florida Notary Laws	
From Chapter 117, Florida Statutes	75
From Florida’s Constitution	83
From Florida Statutes other than Chapter 117	84
From Chapter 118, Florida Statutes	96

<i>Index</i>	100
--------------------	-----

Resources for Florida Notaries

Resources

Contact the Governor's Notary Section:

- To obtain educational materials.
- To ask a question about the notary law or proper procedure.
- To file a complaint against a notary.
- To respond to a complaint filed against you for notary misconduct.
- To check the status of a "problem" application.
- To resign your notary commission.
- To report your lost or stolen notary seal.

**Notary Section
Office of the Governor
LL06 Capitol
Tallahassee, Florida 32399-0001
(850) 922-6400**

Contact the Department of State, Notary Commissions and Certifications Section:

- To report a change in your home or business address or telephone number.
- To obtain information about a particular notary public or the notary's bond.
- To receive a duplicate copy of your commission certificate.
- To obtain a list of the surety bond companies approved to process applications.

- To report your lost or stolen notary seal.
- To request authentication of a notary's commission for a document being sent to another state or a foreign country (a Certificate of Notarial Authority or an Apostille).

**Department of State
Notaries Commissions and
Certifications Section
1902 Capitol
Tallahassee, Florida 32399-0250
(850) 488-7521
(850) 413-9732 or (850) 921-5268
(for Authentications only)**

Contact your Bonding Agency:

- To obtain and submit an application for appointment as a notary public.
- To check the status of your pending application.
- To amend your commission after a lawful name change.
- To receive information about your notary bond or optional errors and omissions insurance.
- To purchase a notary seal.

Notary Information on the Internet

Be sure to check out the Governor's Notary Section on the Internet for answers to your notary questions and mark the site for quick reference. Our website address is:

http://www.myflorida.com/myflorida/government/governor_initiatives/notary/index.html

Currently, we have access to the complete Florida notary laws, the last issue of *The Notary View*, information about how to become a notary, a list of the bonding agencies, and our newest addition, the Governor's Reference Manual for Notaries. You can also e-mail the Governor's Notary Education Coordinator with your questions or comments.

Another internet site that may interest you is the Department of State Notary Public Access system. From that site, you can look up any Florida notary and obtain basic information about that notary, such as the mailing address and telephone number, the commission number, the expiration date of commission, the name of the bonding agency, and the Notary Education Course for first time notary applicants. The website address is:

<http://notaries.dos.state.fl.us/index.html>

Check out these other helpful Internet sites for notaries:

Florida Statutes and Constitution

<http://www.leg.state.fl.us>

American Society of Notaries

<http://www.notaries.org>

National Notary Association

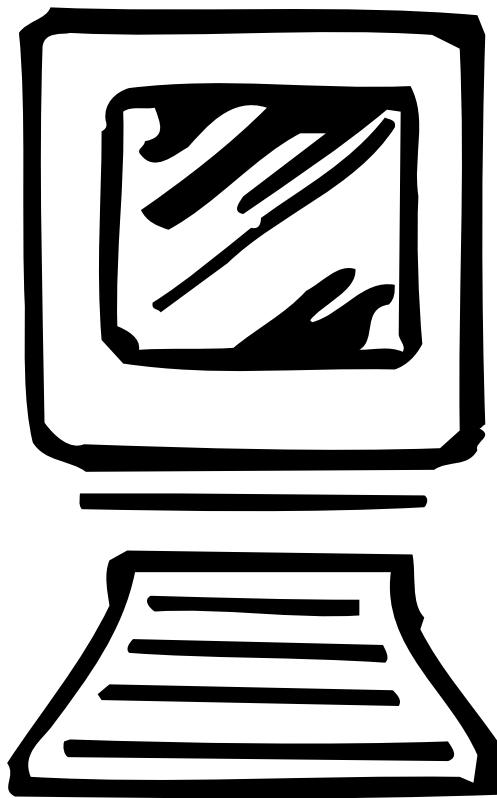
<http://www.nationalnotary.org>

U.S. Immigration and Naturalization Service

<http://www.ins.usdoj.gov>

U.S. State Department Office of Authentications

<http://www.state.gov/www/authenticate>



E-Mail E-ducation for Notaries

How would you like to receive education about your duties as a notary public through your own e-mail system? Sound good? Then, simply e-mail the Notary Education Coordinator with your e-mail address.

The Notary Section recently added a new feature to the Governor's education program for notaries. An issue or question is addressed in an informative article and then e-mailed to notaries once each month. So, send in your address and watch your e-mail each month.

Notary Education Coordinator
Governor's Notary Section
FL_GOV_NOTARY@eog.state.fl.us

National Organizations

Florida notaries are fortunate to have numerous opportunities for education and support. In addition to the Governor's Notary Section, two



national, non-profit, membership organizations offer educational publications and other services to our state's notaries.

The National Notary Association (NNA) was established in 1957 and is based in Chatsworth, California. The chief goal of the NNA is to provide information on notarial laws, customs, and practices, and to support the nation's 4.5 million notaries with a wide variety of instructional programs, professional services, and advocacy efforts. The Association produces several publications of interest to Florida notaries, including *The National Notary* magazine, the *Notary Bulletin* newspaper, and *The Florida Notary Law Primer*.

The American Society of Notaries (ASN) is the oldest non-profit educational organization for notaries in the United States. Its primary aims are to educate notaries, to protect the office of notary public in America, and to inspire a high ethical code of conduct in our nation's notaries. ASN is now based



in Tallahassee after moving to the Sunshine State in 1994 from Washington, DC. The Society publishes a bi-monthly newsletter, *The American Notary*, and notary manuals for various states, including Florida. ASN is also dedicated to the historic preservation of the contribution of notaries

to America and has an extensive collection of notarial memorabilia, antique documents, seals, and artifacts.

Both organizations hold annual conferences for their members which feature workshops on a variety of issues conducted by experts on notarial practices. Additionally, state officials who regulate notaries gather at these conferences to discuss topics of common interest.

NNA and ASN also assume an advocacy role for notaries. State legislators and officials across the nation often rely upon them for their expert assistance in understanding the complex issues concerning notaries. As a result, these organizations have influenced the development of current notarial laws and practices in Florida and other states. They are well respected for their expertise and valuable service.

If you are interested in membership in either or both organizations, you may contact them directly for additional information about their benefits and membership fees.

NATIONAL NOTARY ASSOCIATION

9350 DeSoto Avenue
Post Office Box 2402
Chatsworth, CA 91313-2402
(800) 876-6827
(818) 713-4000
www.nationalnotaries.org

AMERICAN SOCIETY OF NOTARIES

Post Office Box 5707
Tallahassee, FL 32314-5707
(800) 522-3392
(850) 671-5164
www.notaries.org

The Office of Notary Public

General Information

What is a Notary Public?

A notary public is a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgments of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.

Qualifications and Requirements for Appointment

- You may only be commissioned in your legal name (or a nickname of your legal name).

Example: John Quinton Public could be commissioned in the names:

John Quinton Public
John Q. Public
J. Quinton Public
J. Q. Public
Johnny Public

You must sign notarial certificates in your commissioned name, and your notary seal must bear that name. No variation from the commissioned name is permitted.

- You must be at least 18 years of age.
- You must be a legal resident of Florida. There is no certain length of time required to establish residency. However, if the Governor's Office requires proof of residency, the following methods, along with the applicant's intent to reside in Florida, would be acceptable: a Florida driver's license; a Florida vehicle registration document; a voter's registration card; or a recorded Declaration of Domicile.
- If not a U.S. citizen, you must submit a recorded Declaration of Domicile. This affidavit is available at your county clerk's office.
- If ever convicted of a felony charge, you must have your civil rights restored.

If ever convicted of a felony or if ever charged with a felony and adjudication was withheld on the charge or the sentence was suspended, you must submit several documents:

- (1) a written statement regarding the nature and circumstances of the charges;
- (2) a copy of the Judgment and Sentencing Order, or a comparable court document; and,
- (3) if convicted, a copy of the Certificate of Restoration of Civil Rights (or pardon). The name of this document may vary depending on the state where the conviction occurred.

This information is required for all felony convictions whether the charges were brought by the State of Florida, another state, or the United States. If adjudication was withheld and civil rights were not forfeited, the written statement and court documents are sufficient.

To obtain information about the restoration of civil rights, you may contact:

Office of Executive Clemency
2601 Blair Stone Road
Building C, Room 229
Tallahassee, FL 32399-2450
(850) 488-2952

Note: Submission of all the required information does not guarantee appointment. Decisions are made on an individual basis.

- You must take the constitutional oath of office.
- You must swear or affirm that you have read the notary laws and will obey them.
- You must complete a three hour notary education course if you are a first time applicant. §668.50(b), Fla. Stat.

Appointment and Commission

- Notaries are public officers appointed and commissioned by the Governor. You are not licensed, you are appointed. An appointment is a privilege, not a right.
- The term of office is four years. *Example:* A commission which began on July 1, 1996 (12:01 a.m.) will end on June 30, 2000 (12:00 p.m.).
- If your lawful name changes, you must request an amended commission by submitting the appropriate application form, a rider to the notary bond, and a fee of \$25. You should contact your bonding company for assistance. Once you make application for a change of name, you may continue notarizing in your former name until receipt of your amended commission and seal. You will be given a new commission number, but you will retain the same expiration date.
- If you lose your commission certificate, you may request a duplicate from the Department of State, Bureau of Notaries Public, or from your bonding agency.

Application Process

- Since July 1, 1996, applications have been submitted by bonding agencies both in paper format and in an electronic format approved by the Department of State.
- The application form is prescribed by the Department of State and consists of 3 parts:
 - (1) *Personal information* — name, social security number, date of birth, sex, race, residence address, place of employment, business address, home phone, business phone, Florida driver's license number or other state issued identification, information about any previous notary commission, residency status, citizenship status, criminal record, and information about any professional licenses.
 - (2) *Oath of office* — The applicant must sign the following oath. The signature is the notary's legal signature on file.

<p>State of Florida _____ County</p> <p><i>I do solemnly (swear) (affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State of Florida; that I have read Chapter 117, Florida Statutes, and any amendments thereto, and know the duties, responsibilities, limitations, and powers of a notary public, and that I will honestly, diligently, and faithfully discharge the duties of Notary Public, State of Florida, on which I am now about to enter (, so help me God).</i></p> <p><i>Under penalties of perjury, I declare that I have read the foregoing application and oath and that the facts stated in it are true.</i></p> <p><i>I accept the office of Notary Public, State of Florida.</i></p>

- (3) *Affidavit of Character* — A person who is unrelated to the applicant and who has known the applicant for at least one year must give a sworn statement that the applicant is of good character.

Note: *The application form no longer requires notarization.*

- The total state fees are \$39.
 - \$25 application fee
 - \$10 commission fee
 - \$ 4 education surcharge

Veterans who served during a wartime period defined in law and who have a disability rating of 50% or more are exempt from the \$10 commission fee. A veteran who qualifies should request the reduction in writing and provide proof of exemption. See section 117.01(2), Florida Statutes, (effective 1/1/97).

- Once the appointment is made, the commission certificate is usually mailed back to the bonding agency, who forwards it to the notary with the notary seal.



Renewal

- The process to renew your notary commission is exactly the same as the application process to obtain your first appointment. The application form is the same and all the required information must be submitted. See sections 117.01(2) and (6), Florida Statutes.
- The State does not notify you prior to the expiration of your notary commission. However, you will probably receive notification from your bonding agency and a number of other companies seeking your business.
- Submit your application for renewal about two months in advance of your expiration date, or earlier if your application will require special review by the Governor's Office. That should be ample time for processing to ensure that there is no break in service.
- Continue using your current notary seal through the end of your current commission. If you are reappointed, you must not use your new notary seal until the first day of your new commission. Destroy your old seal to prevent its misuse.

Change of Address

- You must submit any change in writing to the Notary Commissions and Certifications Section.
- You are required to keep your home and business addresses and telephone numbers updated.
- If you move out of state and change your legal residence, you must resign your notary commission.
- To change your address, you may photocopy and use the form on page 71.

Resignation

- When resigning your commission, you must submit a resignation in writing to the Governor's Office, return your notary commission certificate (the original, not a copy), and destroy or return your notary seal.

Jurisdiction

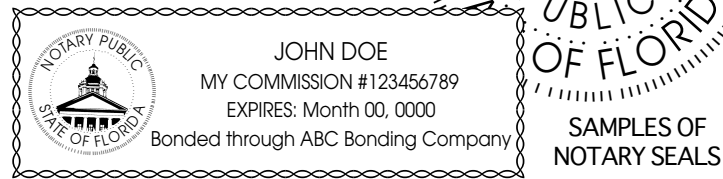
- You may only perform your official duties within the geographical boundaries of Florida.
- Notaries are appointed with statewide jurisdiction; that is, you may perform your official duties anywhere within the state. You are not confined to the county in which you reside. You should always indicate in the notarial certificate the location of the notarization, usually designated by State of Florida, County of _____.
- Notaries from other states have no authority to notarize while in the State of Florida.
- If you are performing your duties on an airplane or a ship, check with the pilot or the ship's captain to make sure that you are within the state boundaries.

Surety Bond


- Prior to appointment, applicants must obtain a surety bond in the amount of \$7,500 and maintain that bond throughout the term of appointment.
- The bond does not protect the notary. The bond is designed to protect the public against any act of misconduct or negligence in the performance of your official duties as a notary public. It does not protect you. In fact, when a notary bond is paid to some individual who was harmed as a result of an improper notarization, the bonding company will usually demand repayment from the notary.
- For your protection, you may want to carry errors and omissions insurance. Contact your bonding company for information.

Notary Seal

- The official notary seal is the rubber stamp type seal with four elements:
 - the words, “Notary Public-State of Florida”
 - the notary’s exact commissioned name
 - the notary’s commission number
 - the notary’s commission expiration date
- The name of the notary’s bonding company may be included on the seal but is not required.
- The state does not furnish notary seals. You may purchase a seal from your bonding company or from a company that makes rubber stamps.
- Some companies that produce notary seals include a symbol or emblem on the stamp, such as the Capitol dome, a flag, an eagle, etc., but this is optional. No emblem or symbol is required. Additionally, you may NOT use the Great Seal of the State of Florida on your notary seal.
- You may sign notarial certificates with any color ink, but the notary seal must be affixed with **black** ink only.
- You may use an impression seal (embosser) in addition to the rubber stamp seal, but not in place of it. If you choose to use an impression seal, your name should be correct and the seal should contain the words, “Notary Public-State of Florida.”
- Before using your notary seal, examine the seal to ensure that all information is correct.
- Keep your seal in a secure location to avoid its loss or misuse.
- If your notary seal is lost, misplaced, or stolen, you are required to notify the Department of State (or the Governor’s Notary Section) in writing. You should include your commission name and number, date of birth, and the last date the seal was in your possession. Additionally, if your seal was stolen, you should file a report with your local law enforcement agency. Please refer to Q & A on page 65 for instructions when an employer keeps your notary seal.



Notary Fees

- Florida authorizes notaries to charge up to \$10 for each notarial act — administering an oath, taking an acknowledgment, attesting to a photocopy, verifying a VIN, or certifying the contents of a safe-deposit box.
 - Notaries may charge up to \$20 to solemnize marriage (perform a marriage ceremony).
 - Fees are optional. Be reasonable when setting fees.
 - If you charge fees for other services not directly related to your notary services, you should provide your customer with an itemized list of charges beforehand.
 - If you are a government employee whose commission fees were paid by your employer for the purpose of notarizing during work hours, please review the information on Government Employees as Notaries on page 24.
-  Remember, notary fees are considered income and should be reported when filing annual income taxes.

Authentication of Notarized Documents by the Secretary of State

On October 5, 1961, representatives from a group of nations met at The Hague in Holland to discuss various issues pertaining to international law. Out of that meeting came an international treaty known as the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. More than 60 countries have joined the Convention, including the United States.

Documents that are notarized and sent to another country require verification or legalization of the notary's signature and official capacity prior to acceptance by the receiving country. The Hague Convention agreement simplifies the process by allowing the attachment of a single verifying certificate called an Apostille (a French word meaning "note"). The Apostille entitles the document to full recognition in the country of intended use, and no further authentication or legalization by the Embassy or Consulate of that country is required.

Each country, or subdivision of that country, has a designated official who is responsible for authenticating notarized documents. The treaty provides a list of officials in the United States with the authority to issue such certifications. In most states (47 out of 50), that authority is vested in the Secretary of State, or one or more of his or her deputies or assistants. Since the treaty came into force for the United States in October 1981, the Florida Secretary of State has been responsible for providing Apostilles for documents notarized in Florida and sent to another country. Revisions to the notary law, effective January 1, 1992, reaffirmed this authority. Section 117.103, Florida Statutes, provides:

Upon the receipt of a written request, the notarized document, and a fee of \$10 payable to the Secretary of State, the Secretary of State shall issue a certificate of notarial authority. Documents destined for countries participating in an International Treaty called the Hague Convention require an Apostille, and that requirement shall be determined by the Secretary of State.

Documents being sent to another state or a country not participating in the Hague Convention may also require certification. In that case, a Certificate of Notarial Authority is issued by the Secretary of State.

A notary public is not responsible for requesting an Apostille or a Certificate of Notarial Authority. Rather, according to the treaty, the person who signed the document or the document bearer may request authentication of documents. In order to provide that certification, the Department of State will need the following information:

- A written request for the Apostille or Certificate, stating the country or state to which the document will be sent. The Department of State will determine which authentication is appropriate for the receiving country.
- The original notarized document. The notarization must fully comply with the requirements of Florida law, or the document will be returned for correction.
- A check (drawn on an American bank) or a money order for \$10 per certificate, made payable to the Secretary of State.

Mail the request, notarized document, and payment to:

**Department of State
Notary Commissions and Certifications Section
Room 1902, The Capitol
Tallahassee, Florida 32399-0250**

The Secretary of State will also provide an Apostille or Certificate for the following Florida documents: birth certificates and death certificates bearing the original signature of the State Registrar; vehicle titles certified by the Department of Highway Safety and Motor Vehicles; corporation documents bearing the signature of the Secretary of State; and documents certified by any Clerk of the Court for any county in Florida (the fee for an Apostille on any county-certified document is \$20).

Documents in proper order with correct notarizations sent to the Department of State are usually processed within 10 working days and are returned by regular mail to the sender or forwarded to an address given by the sender. For additional information, please contact the Department of State at (850) 413-9732 or (850) 921-5268.



Duties of a Notary Public

Duties of a Notary Public

Notaries are authorized by law to perform six basic duties:

- Administer oaths or affirmations
- Take acknowledgments
- Attest to photocopies of certain documents
- Solemnize marriage
- Verify vehicle identification numbers (VINs)
- Certify the contents of a safe-deposit box

Each of these duties is explained in detail in the following pages.



Understanding Oaths and Acknowledgments

The Governor's Notary Section answers hundreds of telephone inquiries every week regarding the notary law and proper notarial procedures. In talking with notaries, it is surprising how many of them do not understand the basic act of "notarizing a signature." Many incorrectly assume that they are just verifying identification and witnessing a signature. But, the act of notarization is much different.

When you notarize a signature, you must perform one of two official notarial acts: take an acknowledgment from or administer an oath (or affirmation) to the document signer. These two acts have different purposes. The lack of understanding of these basic duties causes confusion and often leads to errors in notarizations, even among the most experienced notaries.

To take an acknowledgment, the document signer must personally appear before you, the notary public, and declare that he or she has signed the document voluntarily. You should ensure that the signer understands the document and has not been coerced into signing. If there is any question about the signer's willingness to execute the document or his or her understanding of the contents of the document, you should refuse to notarize and perhaps refer the person to an attorney for legal advice. You may want to ask the signer, "Do you acknowledge that this is your signature and that you are executing this document of your own free will?" If the answer is yes, you should then complete a certificate which states that the execution of the document was acknowledged by the signer. Documents typically requiring an acknowledgment include deeds, mortgages, contracts, and powers of attorney (except those pertaining to motor vehicle titles).

An oath or affirmation is administered to a document signer when the signer is required to make a sworn statement about certain facts. The signer personally appears before you to swear (or affirm) to you, an officer duly appointed to administer oaths, that the information contained in the document is true. A person who makes a false oath or affirmation is subject to criminal charges for perjury. Sworn statements are commonly used in affidavits, depositions, and applications.

A notarization requiring an oath begins with the administration of an oath or affirmation. The courts have held that there should be a verbal exchange between the notary and the document signer in which the signer indicates that he or she is taking an oath. An oath similar to one administered in court by a judge or bailiff would be sufficient. Or, you may simply ask, "Do you swear (or affirm) that the information contained in this document is true?" After receiving an affirmative answer, you must complete a proper notarial certificate indicating that an oath or affirmation was taken.

If the document you are asked to notarize contains a prepared notarial certificate, look for the key words "acknowledged" or "sworn to" to tell you which notarial act is required. If there is no notarial certificate on the document, the signer must direct you whether he or she wants to make an acknowledgment or take an oath. Unless you are an attorney, you are not authorized to advise a person which notarial act is appropriate for the document presented for notarization, and you may not advise the person about the contents of the document.

In order to correctly perform the duties of your office, you need to understand what it means to "notarize a signature" and the difference between the acknowledgment and the oath.

NOTE: The form certificates used when taking an acknowledgment or administering an oath are found in the notary law, section 117.05(13), Florida Statutes, and are reprinted on page 30.

Affidavits

An affidavit is a common form of sworn statement requiring an oath. Below is the standard form of affidavit. Please note that the affiant is the person making the sworn statement.

AFFIDAVIT

STATE OF FLORIDA COUNTY OF _____
Before me this day personally appeared _____ who, being duly sworn, (NAME OF AFFIANT) deposes and says:
(INSERT FACTS TO BE SWORN TO OR AFFIRMED BY THE AFFIANT)
<i>Signature of Affiant</i>
Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____, by _____. (NAME OF AFFIANT)
Personally known _____ OR Produced Identification _____ Type of Identification Produced _____
(SEAL)
<i>Notary Signature</i> PRINT, TYPE OR STAMP NAME OF NOTARY

Depositions

A deposition is the testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution. The person giving the testimony is called the deponent.

Notaries are authorized to administer an oath for a deposition for use in a court case or an investigation. When administering the oath, the notary must require the deponent's physical presence and properly identify him or her. If the notary keeps a journal or record of notarial acts, the journal entry should be made at this point, including the deponent's signature. The notary would then administer the oath or affirmation, perhaps by having the deponent raise his or her right hand and asking:

"Do you swear (or affirm) that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth (so help you, God)?"

Once an affirmative answer is given, the deponent is now under oath, and the notary's responsibility is over.

Although depositions may be taken over the telephone, the deponent must be in the physical presence of the notary public, or other official authorized to administer oaths, at the time the oath or affirmation is given. There is no exception to the presence requirement, even if the attorneys for both parties stipulate otherwise. (See Attorney General Opinion, No. 92-95, December 23, 1992.) This means

that, if you are asked to swear in a person over the phone, you must decline. A notary, or other authorized official, would have to be present with the deponent for the administration of the oath or affirmation.

When asked to make a written certificate of the notarial act, we suggest that you make a certificate in substantially the form provided to the right.

You should also know that, as a notary public, you are not authorized to take a deposition. That is, you may not actively participate in questioning a witness who is giving a deposition in a criminal or civil proceeding. A Florida appellate court recently ruled that the taking of a deposition constitutes the practice of law under section 454.23, Florida Statutes. Notaries who are not licensed attorneys are prohibited from engaging in the practice of law and may be suspended from office by the Governor for such violation.

The referenced case involved two paralegals, one of whom was a notary public, who owned a business that performed paralegal functions. Neither was a licensed attorney, but both readily admitted their active participation in several depositions. In its opinion, the Court explained:

A deposition is an important, formal, recorded proceeding in which lawyers must observe the Florida rules of court and must rely on their legal training and skills to question witnesses effectively. The activities and services involved in participating in a deposition often implicate ethical questions and strategic considerations of the utmost importance. The effectiveness of the person deposing a witness can have a significant impact on whether objectionable information is identified and addressed or waived, whether a case is made, and how the evidence therefrom is used in any subsequent legal proceeding . . . Without a doubt, the process of directly examining or cross-examining a witness can affect important rights under the law . . . We conclude that, lacking adequate legal training, a nonattorney participating in the examination of a witness poses the very dangers of incompetent, unethical, or irresponsible representation . . . we hold that the nonlawyer appellees' active participation in questioning witnesses in depositions . . . constitutes the unauthorized practice of law in violation of section 454.23, Florida Statutes.

The notary involved has been denied a renewal appointment by the Governor's Office and both persons have pending criminal charges for the unlicensed practice law. Be careful that you do not overstep your authority when asked to swear in a person for a deposition. The unauthorized practice of law is a serious matter and one that is not taken lightly by the Governor's Office or the Court.

Note: For additional information on the court case, see *State v. Foster*, 674 So.2d 747 (Fla. 1st DCA 1996).

STATE OF FLORIDA
COUNTY OF _____

In my capacity as a Notary Public of the State of Florida, I certify that on the ____ day of _____, 20____, at (time) a.m./ p.m., (name of deponent) personally appeared before me and took an oath (or affirmation) for the purpose of giving testimony in the matter: _____.

Identification:

Personally Known _____

or Produced Identification _____

Type of Identification Produced _____

Notary Signature
PRINT, TYPE OR STAMP NAME OF NOTARY

(SEAL)

Attesting to Photocopies

In Florida, notaries are authorized to attest to the trueness of photocopies of certain documents. Although commonly known as certified photocopies, the notary law refers to these documents as attested photocopies. A notary public may make attested photocopies if the following criteria, found in section 117.05(12) of the Florida Statutes, are satisfied.

- The document must be an original document. A notary public cannot make an attested photocopy from a photocopy, or from another certified copy.
- The document cannot be a public record, certified copies of which are available from another public official. If a certified copy can be obtained from the official source, then the notary public should decline the request.
- The making of the photocopy must be supervised by the notary public. It is not sufficient for the notary public to compare the photocopy with the original document. The notary public must actually make the photocopy or supervise another person while he or she makes the photocopy.

After making (or supervising the making of) the photocopy, the notary should complete a notarial certificate in substantially the same form as prescribed by law.

This notarial certificate should be typed, stamped or written on the front or back of the photocopy or may be attached as a separate page.

One of the most often asked questions concerning attested photocopies is whether a particular document is a public record. Notaries must make a determination about this question before attesting to the trueness of any photocopy. The following documents are examples of public records, copies of which cannot be attested to by a notary:

- Birth certificate
- Marriage certificate
- Death certificate
- Certificate of citizenship or naturalization
- Documents filed in a court proceeding
- Documents recorded by the Clerk of the Court
- Public records maintained in government offices
- Student records (transcripts, etc.) kept in public education offices
- Federal or state income tax forms, already filed
- Professional licenses issued by the State of Florida
- Any document for which photocopying is prohibited

This is not a complete list of public records. If the document is issued by a government entity, the notary should contact that entity to determine whether a certified copy is available. If one is available, then the notary public must decline to make an attested photocopy. Additionally, the notary should ask the person if the document has been filed in a court proceeding or in the official records at the courthouse.

The following documents can be photocopied from the original (if not officially filed or recorded) and attested to by a notary, because certified copies cannot be obtained from another public official:

- Florida driver's license
- Florida vehicle title
- Social Security card
- Diploma
- Medical record
- U.S. passport
- Bill of sale
- Contract
- Lease
- Resident alien card
- Personal letter

The maximum fee a notary may charge for making an attested photocopy is \$10.

STATE OF FLORIDA COUNTY OF _____
On this _____ day of _____, 20____, I attest that the preceding or attached document is a true, exact, complete, and unaltered photocopy made by me of _____(DESCRIPTION OF DOCUMENT)____ presented to me by the document's custodian, _____ _____, and, to the best of my knowledge, that the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary public.
(SEAL)
<i>Notary Signature</i> PRINT, TYPE OR STAMP NAME OF NOTARY



Solemnizing Marriage

Florida is one of only three states which authorize notaries public to perform marriage ceremonies. The following guidelines should be helpful.

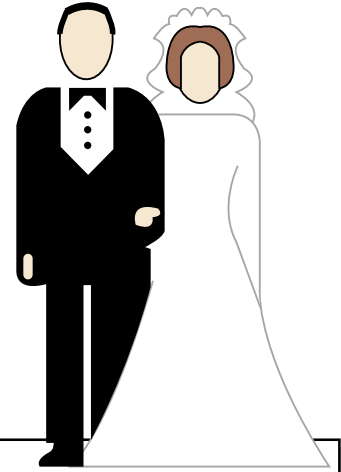
Procedure

- The couple must obtain a valid Florida marriage license from a county court judge or clerk of the circuit court and present it to the notary public before the marriage ceremony.
- The notary public performs the marriage ceremony. An example of a simple, civil ceremony is printed below. It may be personalized, and the bride and groom may even exchange their own vows. But, the couple's vows must reflect their intentions to make a legally binding commitment to each other.
- The notary public is responsible for making a certificate on the appropriate portion of the marriage license and returning it to the office of the county court judge or clerk of the circuit court which issued the license within 10 days after solemnizing the marriage. § 741.08, Fla. Stat.

General Information

- A Florida notary public may perform a marriage ceremony only within the geographical boundaries of this state.
- A notary public may charge up to \$20 for solemnizing the rites of matrimony. §§ 117.045 & 28.24 (29), Fla. Stat.
- A notary public may perform a marriage ceremony for a person who is related to him or her by blood or marriage. The prohibition against notarizing the signature of a spouse, son, daughter, mother, or father does not apply because the notary is not notarizing the signature of the bride and groom, but is only certifying that the couple have been joined in marriage by the notary according to the laws of the State of Florida. Op. Att'y Gen. Fla. 91-70 (1991).
- The notary should check the expiration date of the license to ensure that the license is still valid. The notary should also require identification if the bride and groom are not personally known.
- It is recommended that two witnesses, other than the notary, sign the marriage certificate in the event that proof of the marriage ceremony is necessary in the future.

Additional information about solemnizing marriage is located in the Q&A section on pages 52-53.



Sample Ceremony

Notary states, "Dearly beloved, we are gathered here today (tonight) to join this man and this woman in (holy) matrimony."

Exchange of Vows

Notary asks the man, "(his name), do you take this woman to be your wife, to live together in (holy) matrimony, to love, honor, comfort her and keep her in sickness and in health, and forsaking all others, for as long as you both shall live?"

Man answers, "I do."

Notary asks the woman, "(her name), do you take this man to be your husband, to live together in (holy) matrimony, to love, honor, comfort him and keep him in sickness and in health, and forsaking all others, for as long as you both shall live?"

Woman answers, "I do."

Notary states, "Repeat after me:"

To the man: "I, (his name), take you (her name), to be my wife, to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death do us part."

To the woman: "I, (her name), take you (his name), to be my husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death do us part."

Exchange of Rings

Notary asks the man to place the ring on the woman's finger and to repeat the following, "I give you this ring as a token and pledge of our constant faith and abiding love." (Repeat the same for the woman).

Pronouncement

Notary asks the couple to join hands, then declares, "By virtue of the authority vested in me under the laws of the State of Florida, I now pronounce you husband and wife. The bride and groom may now kiss."

Verifying a VIN

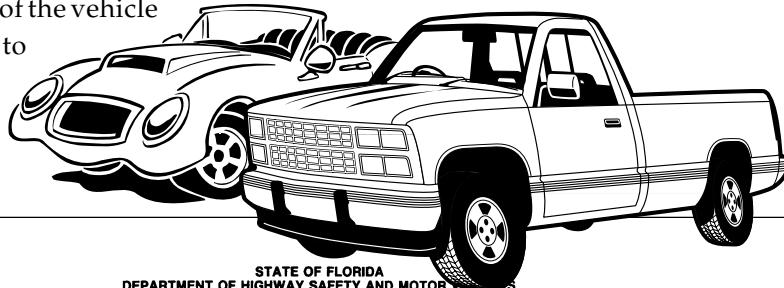
Florida law requires that, when applying for a Florida title for the first time on a used motor vehicle, the owner must sign a sworn statement that the vehicle identification number (VIN) and the odometer reading on the vehicle are correct.

Additionally, a physical inspection of the vehicle must be done by an authorized person to certify the VIN. Notaries public are included in the list of persons authorized to certify this information. § 319.23(3)(a)(2), Fla. Stat.

A form prepared by the Department of Highway Safety and Motor Vehicles, HSMV 82042 (Rev. 5/95)S, is used for this purpose.

Part A requires the owner's sworn statement regarding the correct VIN and odometer reading. A jurat, or notarial certificate, is provided in this section. The notary should make sure that the information in Part A is complete prior to the notarization.

Part B requires the notary public, or other authorized person, to certify that he or she has physically inspected the vehicle and found the VIN to be identical to the number recorded on the form. The notary public must include the date, sign the document, print his or her name, and affix his or her notary seal.



**STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF MOTOR VEHICLES
Neil Kirkman Building — Tallahassee, FL 32399-0500**

VEHICLE IDENTIFICATION NUMBER AND ODOMETER VERIFICATION

PART A — OWNER'S VEHICLE IDENTIFICATION AFFIDAVIT AND ODOMETER DECLARATION
(Completion of this part requires a physical inspection of the vehicle by the owner.)

AFFIDAVIT:

DATE _____

This is to certify that I, the undersigned, am the lawful owner of the motor vehicle described on this form and that I have, on the date entered above, made a physical inspection of the motor vehicle and have recorded the vehicle identification number and other identification information and the odometer reading and certification in the spaces provided on this form.

VEHICLE IDENTIFICATION (MOTOR NUMBER ALL MAKES THROUGH 1954 — IDENTIFICATION NUMBER 1955 AND LATER.)

Vehicle Identification Number	Year	Make	Model	Body	Previous State of Title

ODOMETER DECLARATION

WARNING: Florida law requires that you state the mileage in connection with an application for a Certificate of Title. Providing a false statement may result in fines or imprisonment.

I STATE THAT THIS MOTOR VEHICLE'S 5 DIGIT OR 6 DIGIT ODOMETER NOW READS _____, _____ (NO TENTHS) MILES, DATE READ _____ AND TO THE BEST OF MY KNOWLEDGE IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED ON THIS DOCUMENT UNLESS ONE OF THE FOLLOWING IS CHECKED:

CAUTION: DO NOT CHECK IF ACTUAL MILEAGE

1. **IN EXCESS OF ITS MECHANICAL LIMITS.** I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE **IN EXCESS OF ITS MECHANICAL LIMITS**

2. **NOT THE ACTUAL MILEAGE.** I HEREBY CERTIFY THAT THE ODOMETER READING **IS NOT THE ACTUAL MILEAGE.** **WARNING - ODOMETER DISCREPANCY.**

OWNER'S SIGNATURE AND PRINTED NAME (ONLY ONE SIGNATURE REQUIRED FOR MULTIPLE OWNERS)

(Owner's Signature) _____ (Owner's Printed Name)

NOTARIZATION:

Sworn to (or affirmed) and subscribed before me this _____ day, _____, 19____, by _____ (Name of Person Making Statement)

(Signature of Notary Public) State of _____

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification Type of Identification Produced: _____ (SEAL)

PART B — VERIFICATION OF VEHICLE IDENTIFICATION
(Completion of this part requires a physical inspection of the above described motor vehicle by a licensed Florida Dealer, Florida Notary Public, Police Officer or Division of Motor Vehicles Inspector completing the verification of the vehicle identification number.)

I, the undersigned, certify that I have physically inspected the above described vehicle and find that the vehicle identification number on the vehicle to be identical to the vehicle identification number recorded on this form.

Date: _____ FLORIDA NOTARY SEAL

Signature: _____ Printed Name: _____

Any Law Enforcement Officer _____ Badge Number _____

Florida Dealer License Number _____

Florida Compliance Examiner / Inspector Badge or ID Number _____

NOTICE: ANY ALTERATION OR ERASURE MAY VOID THIS DOCUMENT

HSMV 82042 (Rev. 5/95) S

This VIN verification form is also found on the Application for Certificate of Title With/Without Registration, HSMV 82040 (Rev. 5/96)S. These forms and all other forms related to vehicle registration are available from the tag office of the Tax Collector's Office in each county.

Certifying the Contents of a Safe-Deposit Box

Florida law provides that a financial institution may open a safe-deposit box if the rental fee is past due, providing that proper notice has been made and that certain other conditions are met. A notary public is authorized and required to be present for the opening of the safe-deposit box, to inventory the contents of the vault, and to make an appropriate certificate of the opening. The notary is not required to estimate the value of the contents of the safe-deposit box.

As with other notarial acts, the maximum fee a notary may charge for performing the authorized duties at the opening of a safe-deposit box is \$10.

The law authorizing notaries to perform this function became effective on July 3, 1992, and is found in section 655.94(1), Florida Statutes.

Procedure for the Notary Public

- The notary must be present at the time the safe-deposit box is opened and may not be a director, officer, employee, or stockholder of the financial institution. An officer of the institution must also be present with the notary at the opening of the safe-deposit box.
- When the safe-deposit box is opened, the notary should inventory the contents of the box and should complete a certificate reciting the name of the lessee, the date of the opening, and a list of the contents. Florida law does not provide a form certificate; however, the following form, prepared by the Notary Section, should be sufficient.
- Once the certificate is completed, copies should be made. The notary should place the original certificate in a package with the contents of the safe-deposit box and seal the package. The notary must then write on the outside of the package the name of the lessee and the date of the opening.
- The notary should leave the sealed package and a copy of the certificate with the financial institution.
- If the notary keeps a record book or journal of notarial acts, details of the act should be recorded. It may be a good idea to require the person opening the box, the officer of the institution, and any other witness to sign the journal as well.

STATE OF FLORIDA

COUNTY OF _____

On the ___ day of _____, 20___, safe-deposit box number _____ rented in the name of _____ was opened by _____ (name of financial institution) in my presence and in the presence of _____ (name of officer)____. The contents of the box consisted of the following:

(List contents here.)

(SEAL)

Notary Public

(PRINT, TYPE OR STAMP NAME OF NOTARY)

Signature

(PRINT OR TYPE NAME OF PERSON OPENING BOX)

Signature

(PRINT OR TYPE NAME OF OFFICER OF FINANCIAL INSTITUTION)

Prohibited Acts for Notaries

From Chapter 117, Florida Statutes

A notary public may not notarize a signature on a document if:

- The person whose signature is being notarized is not in the presence of the notary at the time the signature is notarized. §117.107(9).
- The document is incomplete. §117.107(10).
- The notary public actually knows that the person signing the document has been adjudicated mentally incapacitated. §117.107(4).
- The person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public. §117.107(11).
- The notary public has a financial interest in or is a party to the underlying transaction. §117.107(12).



Also, a notary public may not:

- Give legal advice, unless the notary public is a licensed attorney. §117.01(4)(f).
- Take an acknowledgment of execution in lieu of an oath if an oath is required. §117.03.
- Obtain or use a notary commission in a name other than his or her legal name. §117.05(1).
- Notarize his or her own signature. §117.05(1).
- Charge more than \$10 for any one notarial act or more than \$20 for solemnizing the rites of matrimony. §§117.05(2), 117.045, 28.24(29), & 839.11.
- Notarize a signature on a document unless the notary personally knows the signer or has satisfactory evidence of identification. §117.05(5).
- Act as a notary public after his or her commission has expired. §117.05(8).
- Translate the phrase “Notary Public” into a language other than English in an advertisement for notarial services. §117.05(11).
- Attest to the trueness of a photocopy of a public record if a copy can be made by another public official. §117.05(12)(a).
- Use a name or initial in signing certificates other than that by which the notary public is commissioned. §117.107(1).
- Sign a blank form of affidavit or certificate of acknowledgment. §117.107(3).
- Take the acknowledgment of a person who is blind until the notary public has read the instrument to such person. §117.05(14)(a).
- Take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand. §117.107(6).
- Change anything in a written instrument after it has been signed by anyone. §117.107(7).
- Notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization. §117.107(5).

Penalties for Violations

Grounds for Suspension

The State Constitution authorizes the Governor to suspend a notary public from office for “malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony.” s.7, Art. IV, Fla. Const.

Subsection 117.01(4) of the Florida Statutes provides:

The Governor may suspend a notary public for any of the grounds provided in s. 7, Art. IV of the State Constitution. Grounds constituting malfeasance, misfeasance, or neglect of duty include, but are not limited to, the following:

- (a) A material false statement on the application.
- (b) A complaint found to have merit by the Governor.
- (c) Failure to cooperate or respond to an investigation by the Governor’s Office or the Department of State regarding a complaint.
- (d) Official misconduct as defined in s. 839.25.
- (e) False or misleading advertising relating to notary public services.
- (f) Unauthorized practice of law.
- (g) Failure to report a change in business or home address or telephone number within the specified period of time.
- (h) Commission of fraud, misrepresentation or any intentional violation of Chapter 117.
- (i) Charging fees in excess of fees authorized by Chapter 117.
- (j) Failure to maintain the bond required.

Civil Penalty

Section 117.107(9) of the Florida Statutes provides in part:

A notary public may not notarize a signature on a document if:

The person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this paragraph is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and that conduct constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this paragraph that the notary public acted without intent to defraud. A notary public who violates this paragraph with the intent to defraud is guilty of violating s.117.105.

Criminal Penalties

- No person shall obtain or use a notary public commission in other than his legal name, and it is unlawful for a notary public to notarize his own signature. Any person applying for a notary public commission must submit proof of his identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082 s 775.083, or s. 775.084. § 117.05(1).
- Any person who acts as or otherwise willfully impersonates a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. § 117.05(7).
- Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. § 117.05(3)(e).
- Any notary public who knowingly acts as a notary public after his commission has expired is guilty of a misdemeanor of the second degree, punishable in s. 775.082 or s. 775.083. § 117.05(8).
- A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084. §117.105.

Other Prohibited Acts

- Do not notarize a photograph (*see next article*).
- Do not notarize a copy of a birth certificate, or any other vital record or public record (*see page 15*).
- Do not certify a translation of a document from one language into another. (*see page 64 for correct procedure*)
- Do not provide signature guarantees. This duty is usually performed by officials in the banking and securities industry.
- Do not certify the authenticity of objects, such as art or sports memorabilia.
- Do not judge contests or certify contest results.
- Do not certify a person's residency or citizenship status.
- Do not prepare legal documents, or immigration papers, unless you are an attorney licensed to practice in Florida.



Don't Notarize Photographs

Occasionally, you may be asked to “notarize” a photograph. Please be aware that certifying or notarizing photographs is not an authorized notarial act under Florida law.

You may, however, notarize a person's signature on a written statement concerning the photograph. For example, if John Doe wants to certify that the person in a particular photograph is John Doe, he could sign a sworn written statement stating that the photograph is of John Doe. You could then notarize his signature on that statement in the same way that you notarize any sworn written statement. His statement could be made on the back of the photograph or on a separate paper to be attached to the photograph.

Keep in mind that you should not certify or attest that the person in the photograph is John Doe. Rather, you should certify that the statement concerning the photograph was signed and sworn to in your presence by John Doe. This is accomplished by using the standard notarial certificate (jurat) provided in the Florida Statutes for oaths. Remember, you should never apply your notary seal to and sign any document without completing a proper notarial certificate.

Don't Provide Certified Copies of Birth Certificates

The Notary Section continues to receive numerous inquiries about certifying copies of birth certificates. A notary public may NOT make a certified photocopy of a birth certificate, whether it was issued in Florida, another state, or a foreign country. Birth certificates are official records and certified copies may be obtained from the public official who is the custodian of the records.

The typical problem arises when a person is leaving the country within a few days and is required by his or her travel agency to have a "notarized" birth certificate. The word "notarized" immediately sends the person to a notary public. Actually, a person should obtain a "certified" copy of his or her birth certificate, rather than a "notarized" copy. Notaries should decline to certify or notarize these documents for two reasons.



First, a notary public may not attest to the trueness of a photocopy of a public record if a copy can be made by another public official. The Florida Department of Health retains vital records such as birth certificates, death certificates, marriage licenses, and certain divorce records. The Department produces certified copies of these documents when requested by an authorized person.

Second, a notary public may only attest to the trueness of a photocopy of an original document. Most people do not possess their original birth certificate; they only have a certified copy.

Additionally, Florida law prohibits even the photocopying of birth certificates. This would eliminate the alternative procedure of attaching an affidavit to a photocopy of a birth certificate in which a party swears that the photocopy is a true copy of the birth certificate.

Officials at the Bureau of Vital Statistics in Jacksonville, where Florida vital records are housed, report that birth certificates and other vital records are available from their office and may be available for the last 30 years from the county health department in most counties in Florida. The Jacksonville office takes orders by telephone using a major credit card for payment and even offers express or overnight delivery for an additional fee. It is best, of course, to request such records in writing allowing 2-3 weeks for delivery.

If you are requested to make a certified copy of a birth certificate, or other vital record, please decline and refer the party to the public office holding that record. If the document is a Florida vital record, the party may go to the county health department or write to:

**Department of Health
Bureau of Vital Statistics
Vital Records Section
1217 Pearl Street
Jacksonville, Florida 32202**

For telephone orders or additional information, the party may call the Jacksonville office at (904) 359-6931 or (904) 359-6912.

Don't Notarize Blank Documents

Apparently, it is a common practice for people to sign a blank power of attorney form to facilitate the sale of a motor vehicle. Notaries should be careful not to notarize incomplete documents.

Many notarized blank forms have been found at car dealerships by DMV investigators and are often presented to officials at U.S. Customs in Miami. According to officials at these agencies, incomplete forms will not be accepted, and if notarized, they will be presented to the State Attorney's Office and to the Governor's Office for investigation and appropriate action.

Notaries in Special Positions

Government Employees as Notaries Public

A government agency, i.e., state, county, or municipal, is authorized to pay the cost of securing a notary commission for one or more of its employees. Such cost is deemed to be an expense of the agency. See sections 116.35 and 116.36, Florida Statutes.

Based upon research and interpretation of the applicable laws, the following statements reflect the position of the Governor's Notary Section regarding government employees who are notaries:



- Although the government agency pays for the commission, it is the employee who is the appointed notary public, not the agency. Such employee-notary is a notary public 24 hours a day, 7 days a week, for the entire 4-year term of appointment, unless the notary dies, resigns, or is suspended or removed from office by the Governor or the Florida Senate.
- The government agency may set regulations regarding the use of the notary's commission during the employee-notary's regular business hours.
- All fees collected by the employee-notary for notary services rendered during business hours belong to the government agency, pursuant to sections 116.35—116.38. The government agency has the authority to set the notary fees to be charged by that agency for its notary services to the public, but such fees may not exceed the allowable fees specified in Chapter 117, Florida Statutes.
- The employee-notary may perform notarial acts outside his employment and may charge fees for those notary services not exceeding the fees set by law. Such fees belong to the notary public. See sections 117.05(2), 117.045, and 28.24(29).
- The notary seal, the notary commission certificate, and any other papers belonging to the notary public, i.e., a record book or journal of notarial acts, are the property of the notary public. These items are not the property of the government agency, even if the agency paid for such items. Even upon termination of employment, these items belong to the notary public. It is the notary's responsibility to secure the notary seal to prevent its misuse. Any unauthorized use of a notary seal by a person who is not the lawfully commissioned notary public is a criminal offense. It is also unlawful for a person to possess a notary seal or commission certificate when that person is not the lawfully commissioned notary public. See sections 117.05(7) and (8).
- Both the employee-notary and the government agency are liable for all notarial acts performed by the employee-notary within the scope of his or her employment, pursuant to section 117.05(6).
- The government agency is not liable for notarial acts performed by the employee-notary outside his normal employment responsibilities.
- Upon termination of employment by the employee-notary, the government agency's liability for notarial acts performed in the future by the former employee-notary also terminates. However, the government agency may always be held liable for any notarial acts performed by the employee-notary during his or her period of employment.
- When the employee-notary terminates employment with the government agency, the government agency does not have the authority to request, nor require, the resignation of the employee-notary from the office of notary public. The notary public was appointed by the Governor, and only the Governor may request or require the resignation of a notary.



Law Enforcement Officers as Notaries

Florida law provides that certain law enforcement officers or correctional officers may act as notaries in some instances. These officers are limited in what they are authorized to do—in fact, they may only administer oaths “when engaged in the performance of official duties.” See §117.10, Florida Statutes. For example, if they are conducting an investigation, they may take sworn statements from witnesses.

This law is applicable to the following officers:

- Law enforcement officers
- Correctional officers
- Correctional probation officers
- Traffic accident investigation officers
- Traffic infraction enforcement officers

See sections 943.10 and 316.640, Florida Statutes, for definitions of these officers.

The law does not authorize these officers to take acknowledgments, to make attested photocopies, or to solemnize marriage, nor are they permitted to notarize their own signatures. Additionally, these officers do not have to apply for appointment, obtain the required notary bond, use a notary seal, or complete notarial certificates.

Military Officers as Notaries Public

Florida law authorizes certain commissioned military officers to administer oaths and take acknowledgments. §§92.51 & 695.031, Fla. Stat. However, the power given to these military officers is limited. They are authorized to “notarize signatures” when documents must be executed by persons also serving in the Armed Forces. These officers are not notaries public—they are only authorized to perform the two most common notarial acts.

The military officer must be on active duty serving in or with the United States Armed Forces, including the Army, Air Force, Navy, Marines Corps, Coast Guard, or any component of one of these, and must be above the rank of second lieutenant or higher in the Army, Air Force or Marine Corps, or ensign or higher in the Navy or Coast Guard.

The person whose signature is to be “notarized” by taking the oath or making the acknowledgment must also be a member of the United States Armed Forces and be serving on active duty. The military officer may also notarize the signature of the spouse of such military personnel, or the signature of a person whose duties require his or her presence with the Armed Forces.

As required for notaries, the military officer is required to prove the identity of the document signer, although no specific form of identification is specified by law. He or she must personally know the document signer or have “satisfactory proof” of the person’s identity. §695.09, Fla. Stat.

The following certificate is provided in Florida law for use by a military officer when performing these special notarizations.

On this ____ day of _____, 20____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be serving in or with, or whose duties require his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged (or swore) that he executed the same for the purposes therein contained, and the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

(Signature of commissioned officer)
(Rank of commissioned officer and command or branch of service to which officer is attached)



The military officer is not required to use a seal.

When performing a notarial act, the military officer is not bound by geographical boundaries, as is the notary public. The notarization may take place “within or without the United States.” This allows military personnel serving outside the United States, and their spouses, to execute their documents without having to find a notary public in a foreign country or appear before a consul or embassy official.

Documents properly executed in the presence of a military officer in the manner prescribed by law are entitled to recording in Florida.

Although not required, it is

recommended that the military officers print or type their name below their signature and provide their service or serial number for identification purposes. §695.25, Fla. Stat. No venue, or location of the notarial act, is required but, again, adding this information is recommended.

Certain federal law and military regulations also govern the authority of military officers to act as notaries public. More specific information can be obtained from a military legal assistance office.

Performing Notarial Acts

Presence Requirement When Notarizing

The basic role of a notary public in our legal system and in the world of commerce is to prevent fraud. Notaries deter fraud when they perform their duties with diligence and obey the laws governing their duties.

The most basic requirement for performing a notarization is that the person who is taking an oath or making an acknowledgment (the one whose signature is being notarized) must be present at the time of the notarization. The presence requirement refers to physical presence.

Florida Statutes section 117.107(9) provides that:

A notary public may not notarize a signature on a document if the person is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this paragraph is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and that conduct constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this paragraph that the notary public acted without intent to defraud. A notary public who violates this paragraph with the intent to defraud is guilty of violating s. 117.105.

Violation of section 117.105 constitutes a third-degree felony for fraudulently taking an acknowledgment or making a false notary certificate.

There is no exception to the presence requirement!

Notarizing: Step by Step

■ **Examine the Document.**

It is not necessary to read every word of the document, but you should scan the entire document to make sure it is complete BEFORE notarizing.

■ **Check the Notarial Certificate.**

First, look at the venue: State of Florida, County of _____. This language should reflect the location where the document is being notarized. If it is incorrect, change the language and initial the change BEFORE notarizing.

Second, check the date. If an incorrect date has been filled in, strike through that date, write in the correct date, and initial the change BEFORE notarizing. The correct date is the actual date of notarization.

Third, look for the key words, "sworn" or "acknowledged", to determine if you are to administer an oath or take an acknowledgment. If the document does not have a notarial certificate, the signer must tell you which notarial act the document requires. At the signer's direction, you may write or type the appropriate certificate on the document.

■ **Identify the Person.**

This is one of the most important steps. You must either personally know the signer or see one of the acceptable forms of identification specified in the notary law. See pages 32-33 for information on specific types of acceptable identification.

■ **Assure that the Signer Understands the Document.**

You are not responsible for the contents of the document; however, you should be satisfied that the signer has read and understands the document, and that the signer is competent and willing to sign. If the signer has unanswered questions about the document or its effect, you should refer him or her to an attorney and not notarize. If the signer is blind or illiterate, read the document to him or her. If the signer does not understand English, make sure that the document is translated into a language that the person understands.

■ **Administer the Oath or Take the Acknowledgment.**

When administering an oath, make sure that the person understands that he or she is swearing (or affirming) that the contents of the document are true. When taking an acknowledgment, make sure that the person is entering into the transaction of his or her own free will.

■ **Complete the Jurat or Certificate.**

Make sure that the jurat or certificate contains all the information required by law. If the certificate is incomplete, write in the additional information. Sign your name, print or type your name below your signature, and affix your notary seal.

Notarial Certificates

When performing notarizations, you are generally required to complete a notarial certificate of the act. The certificate is a record of what occurred at the time of the notarization, and you are responsible for ensuring that the certificate is complete and accurate.

The following pages contain sample notarial certificates for use on documents being notarized in Florida.

You will note that the notarial certificates for an oath (or affirmation) or an acknowledgment contain nine basic elements:

- venue (the location of the notarization)
- type of notarial act (oath/affirmation or acknowledgment)
- that the signer personally appeared before the notary (“before me”)
- actual date of notarization
- name of person whose signature is being notarized
- form of identification
- signature of notary
- name of notary printed/typed/stamped below signature
- notary seal (with the 4 essential elements)

Some notarial certificates may vary in format, but any certificate should contain all these elements.

“Loose Certificates”

Preprinted notarial certificates designed to be attached to a document should be used only in rare circumstances. Most documents will have a notarial certificate already printed on the document. Use that certificate, but make it comply with Florida law, if necessary. If the document has no notarial certificate, you should ask the document signer which notarial act is required for the execution of the document (an oath/affirmation or an acknowledgment). At the signer’s direction, you may type or print the appropriate certificate on the document below the designated signature line for the document signer. Only in rare circumstances should you actually attach a “loose certificate.” If you do, be sure to state in the notarial certificate the exact document and signature to which the notarization applies.

Documents Prepared or Notarized in Other States

When notarizing a signature on a document that was prepared in another state, make sure that you add the required information to make your notarial certificate comply with Florida law. This means that you may have to change the venue (State of Florida, County of _____), add the type of identification, etc.

Documents notarized in another state must be notarized according to the laws of that state by an officer authorized to act in that state, and will be accepted in Florida, if properly notarized. To determine if a notarization complies with that state’s laws, you may contact the state’s agency that appoints notaries (generally the Governor or Secretary of State).

Corrections

When necessary to correct information already printed in the notarial certificate, i.e., the date, the name of the person whose signature is being notarized, do not use correction fluid. Simply mark through the incorrect information and make the change before you complete the notarization. You should probably initial that change, also.

Once you “complete” the notarization and return it to the document signer, you may not amend your certificate. For instance, if you forgot to state the type of identification or affix your seal and the document is returned to you on a later date by the receiving party, you may *not* correct your error. The document will require re-notarization, including the presence of the document signer.

These notarial certificates are reprints of the forms provided in the Florida Statutes, sections 117.05(13). These forms do not preclude the use of other forms; however, any form that is used must contain all the required information.

For an oath or affirmation (jurat):

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20__, by (NAME OF PERSON MAKING STATEMENT).

(SEAL)

Notary Signature
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
OR Produced Identification _____
Type of Identification Produced _____

For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by (NAME OF PERSON ACKNOWLEDGING).

(SEAL)

Notary Signature
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
OR Produced Identification _____
Type of Identification Produced _____

For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by (NAME OF PERSON) as (TYPE OF AUTHORITY, e.g. OFFICER, TRUSTEE, ATTORNEY IN FACT) for (NAME OF PARTY ON BEHALF OF WHOM INSTRUMENT WAS EXECUTED).

(SEAL)

Notary Signature
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
OR Produced Identification _____
Type of Identification Produced _____

Statutory Short Forms of Acknowledgment

The notarial certificates on this page are found in the real estate chapter of the Florida Statutes but may be used for any notarization requiring an acknowledgement (See section 695.25, Florida Statutes). Although these certificates appear in a slightly different format, each one contains the same elements required in the notary law, Chapter 117. When using one of these certificates, be sure that you circle or underline the appropriate method of identification.

(1) For an individual acting in his own right:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of person acknowledging), who is personally known to me or who has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(4) For an individual acting as principal by an attorney in fact:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of attorney in fact) as attorney in fact, who is personally known to me or who has produced (type of identification) as identification on behalf of (name of principal).

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(2) For a corporation:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(5) By any public officer, trustee, or personal representative:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name and title of position), who is personally known to me or who has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(3) For a partnership:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership. He/she is personally known to me or has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

Acceptable Identification When Notarizing

From Subsection 117.05(5) of the Florida Statutes

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

Personally Known

“Personally known” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.

Satisfactory Evidence

“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 person he or she claims to be, and any one of the following:

(1) *Sworn Written Statement of a Credible Witness*

The sworn written statement of a credible witness personally known to the notary public that the person whose signature is to be notarized is personally known to the witness.

(2) *Sworn Written Statement of Two Credible Witnesses*

The sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

- a. The person whose signature is to be notarized is the person named in the document;
- b. The person whose signature is to be notarized is personally known to the witnesses;
- c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another form of identification;
- d. The person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 3.; and
- e. The witnesses do not have a financial interest in nor are parties to the underlying transaction.

For more information about using these methods of identification, please review “More About Identification” on page 33.

(3) *One of the following forms of identification:*

- a. Driver’s license or identification card issued by the Florida Department of Highway Safety and Motor Vehicles.
- b. Passport issued by the U. S. Department of State.
- c. Passport issued by a foreign government, if stamped by the U.S. Department of Justice, Immigration and Naturalization Service.
- d. Driver’s license issued by a territory of the United States, another state, Canada or Mexico.
- e. Identification card issued by a territory of the United States or a state other than Florida.
- f. Identification card issued by any branch of the U.S. armed forces.
- g. An inmate identification card issued on or after 1/1/91 by Florida Department of Corrections for an inmate who is currently in custody of the Department.
- h. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement, and that the person named in the document is the person whose signature is to be notarized.
- i. An identification card issued by the U.S. Department of Justice, Immigration and Naturalization Service.

Sample Driver License



More About Identification

Occasionally, a notary is asked to notarize the signature of a person who does not have, and cannot obtain, acceptable identification. This most often occurs when the person is an elderly person, a minor child, or a person with a disability. Florida law provides two additional methods of identification for these situations:

(1) CREDIBLE WITNESS AFFIDAVIT

Under the penalties of perjury, I declare that the person appearing before (name of notary) is personally known to me as (name of person whose signature is to be notarized) and is the person named in the document requiring notarization.

 Witness Signature
DATE NAME OF WITNESS

STATE OF FLORIDA
COUNTY OF

Sworn to and subscribed before me this day of , 20 , by (name of witness) who is personally known to me.

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

(1) the sworn written statement of a credible witness who is personally known to the notary and who personally knows the signer, and

(2) the sworn written statement of two credible witnesses whose identities are proven to the notary and who personally know the signer.

Please note that with either method the witnesses must personally know the person whose signature is being notarized and must make a sworn written statement. With the first method, the witness must be personally known to the notary. With the second method, the witnesses must have acceptable identification.

When using these methods of identification, it is a good practice to have the witnesses also sign the document being notarized. Although not required, if the document has sufficient space, you may want to print or type the witnesses' statement on the notarized document itself. If it is on a separate paper, then you should keep it in your records, rather than attach it to the notarized document. Additionally, your notarial certificate should state that the form of identification you relied upon was the sworn written statement of a (two) credible witness(es): .

Keep in mind that these provisions are for the purpose of identifying certain people who do not have other identification and do not replace the "presence" requirement. The person whose signature is being notarized *must* be present at the time of the notarization.

These forms may be used in these unusual circumstances and are merely suggestions. Any affidavit containing the statutorily required information would be sufficient.

(2) CREDIBLE WITNESS AFFIDAVIT

Under the penalties of perjury, I declare that the person appearing before (name of notary) is personally known to me as (name of person whose signature is to be notarized) and is the person named in the document requiring notarization; that I believe that this person does not possess the required identification; that I believe it would be difficult or impossible for this person to obtain such identification; and that I do not have a financial interest in and am not a party to the underlying transaction.

 Witness Signature
DATE NAME OF WITNESS

 Witness Signature
DATE NAME OF WITNESS

STATE OF FLORIDA
COUNTY OF

Sworn to and subscribed before me this day of , 20 , by (name of witness) who is produced (type of identification) as identification, and by (name of witness) who produced (type of identification) as identification.

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Resource for Verifying Identification

If you have ever wondered whether a driver's license from another state is legitimate, you may wish to purchase a booklet used to verify the most common forms of identification. The *I.D. Checking Guide* is published by the Drivers License Guide Company annually in February (ISBN 0-938964-33-X).

This full-color booklet has pictures and descriptions of driver's licenses and identification cards (current and previous valid issues) issued by all 50 states, the provinces of Canada, the federal government (such as resident alien cards and others issued by INS and military identification cards), bank cards, and automobile registration plates. The cost is nominal and may protect you and your employer from reliance upon a fraudulent identification card.

The booklet may be ordered from any of the following sources:

Drivers License Guide Company
1492 Oddstad Drive
P. O. Box 5305, Dept. 96
Redwood City, CA 94063
(415) 369-4849

American Society of Notaries
Post Office Box 5707
Tallahassee, FL 32314-5707
(800) 522-3392
(850) 671-5164

National Notary Association
9350 DeSoto Avenue
Post Office Box 2402
Chatsworth, CA 91313-2402
(800) 876-6827

Identification: "Green Cards" Updated

Resident alien cards, commonly called "green cards," have recently been updated by the U.S. Department of Justice, Immigration and Naturalization Service. Former cards identified as Form I-151 issued prior to 1978 have been replaced with cards designed to be more resistant to fraud and counterfeiting.

The new cards are designated as Form I-551 and are made of hard plastic, similar to credit cards, rather than laminated paper cards. Each card has a pink background, the words "Resident Alien" in dark blue, and a blue INS seal in the center of the card. The card also contains a photo (showing the right ear), signature and fingerprint of the resident alien. Other valid cards issued after 1978 have white backgrounds, but all valid cards will have the photo, signature and fingerprint of the bearer.



*Resident Alien Card,
Form I-551 (New Card)*

Notaries may accept the new cards as identification if the card is current (unexpired) or was issued within the past five years. The old card Form I-151 is no longer valid and should not be accepted for notary services.

Identification: DOC Inmate Identification Cards

Included in the list of acceptable forms of identification in section 117.05(5), Florida Statutes, is the Florida Department of Corrections inmate identification card for an inmate who is in the custody of the department. When a person is taken into custody and housed in a state prison, all forms of identification are confiscated and the inmate is issued a department identification card.

Generally, when inmates require notarial services, those services are provided by a notary employed by the Department of Corrections. Occasionally, though, a notary outside the department may be asked to go to the facility for the purpose of notarizing for an inmate. In this instance, the notary may rely upon the DOC identification card as proof of identity.

The card is made of hard plastic, similar to a credit card, and contains the inmate's name, inmate identification number, date of birth, photo, and physical description. However, the card does not contain the inmate's signature. Upon release from custody, a sticker is placed on the card indicating that the inmate has been released and the date of the release. The inmate may use this card temporarily until he or she can obtain a proper identification card or driver's license from the Department of Highway Safety and Motor Vehicles.

Florida law provides that this card may be used only "for an inmate who is in the custody of the department." Therefore, a notary may not accept this card as identification after the person is discharged from prison.

Case Study — Presence Requirement

Nancy is a notary and owns a small paralegal business. Jan came into the office one day with a deed signed by her husband Rick and requested Nancy to notarize his signature.

Rick was at home sick, but Jan brought Rick's driver's license with her. At Jan's suggestion and just to be on the "safe side," Nancy called Rick at home to verify his signature.

The man identifying himself as Rick confirmed that he had signed the document voluntarily and wanted his signature notarized. Nancy proceeded with the notarization.

Should Nancy have notarized Rick's signature?

NO!

Now, for the real story . . .

Unknown to Nancy, Jan was planning to divorce Rick and she wanted their home transferred to her name first. Jan forged Rick's signature on the deed and took his driver's license without his knowledge.

The man that Nancy spoke to on the phone was actually Jan's boyfriend! The case ended up in divorce court and Rick was given his portion of the property.

The Governor's Office required Nancy Notary's resignation and will not appoint her again as a notary. She now has a difficult time working as a paralegal without a notary commission.



Case Study — Identification

Kevin Costner came into a local bank to have his signature notarized on a contract between him and his agent. Julia, the notary and a faithful fan of Kevin Costner, was star-struck upon meeting him.

Kevin apologized when he explained that he accidentally left his wallet containing his identification in his dressing room on the set.

Julia decided that she could state that she personally knew Kevin, since she had seen all his movies, and she checked "personally known" in the notarial certificate.

Julia completed the notarization, got Kevin's autograph on a scrap of paper, and screamed with excitement after Kevin left.

Should Julia have notarized Kevin's signature without requiring identification?

NO!

Now, for the real story . . .

Kevin Costner disagreed with his agent on the agent's proposed fee on the new contract they were negotiating, and Kevin refused to sign the contract.

The agent forged Kevin's signature on the contract and hired a "look-alike" to present the document for notarization.

Poor Kevin is now in court fighting with his agent and Julia has been subpoenaed to testify. Julia is scared to death, embarrassed at her error, and now knows that her Kevin Costner autograph is a fake!

Be careful when you state that you "personally know" someone. This story is purely fictional, but could actually happen to you if you aren't careful. Our apologies to Mr. Costner and his agent.

"Personally known" means that your acquaintance of and association with the individual establishes that person's identity with reasonable certainty.

Notarizing in Special Circumstances

Occasionally you may be asked to perform a notarization that requires special handling. For example, how do you notarize if the document signer is blind? Cannot speak English? Has a disability? In any special situation, you should make every effort to accommodate the person's request. If you are unsure about the notarization, though, you should decline to notarize.

Florida law addresses some of these situations, but not all. There are, however, some commonly accepted practices for unusual notarizations. As with any other notarization, you must rely upon the law, exercise reasonable care, and use your common sense. You may also want to note the special circumstances of the notarization in the notarial certificate and in your journal (if you keep one).

Remember, unless you are an attorney, you may not give legal advice when you provide notary services. That means you are prohibited from advising the signer which notarial act is required for his or her document, from preparing legal documents, or from explaining the contents or legal effects of a document.

If you believe that the person does not fully understand the document he or she is to sign, you should decline to notarize and suggest that the person seek legal advice from a competent attorney.

For a person who is mentally incapacitated

§§117.107(4) and 117.107(5) Fla. Stat.

The law prohibits you from notarizing the signature of a person who you know has been adjudicated mentally incapacitated by a court of competent jurisdiction if that notarization pertains to a right that has been removed. These rights refer to such things as the right to vote, to marry, to execute conveyances of real property, etc.

What if the person is usually mentally competent, but is medicated at the time of the notarization, or what if a family member says the person is "in and out" of lucidity due to Alzheimer's disease or some other mentally debilitating ailment?

When performing any notarization, you should question the signer to determine that he or she is willing and competent to execute the document. The following suggestions may be helpful:

- You may want to have an impartial witness for the notarization.
- If you are asked to go to a hospital or nursing home to provide services, check with the patient's nurse or doctor prior to notarization.
- Talk to the person alone. Ask questions unrelated to the notarization. Ask for his name, home address, and telephone number. You could also engage the person in a conversation about his family, his occupation, a television program, a recent news event, etc.
- Ask the signer to tell you about the document to be notarized. What kind of document do you need to sign? Have you read the document completely? Do you understand the document? Do you need someone to explain the contents of the document to you? Has anyone pressured you to sign this document?
- If you feel the person is mentally competent at the time, proceed. If in doubt, don't do it!
- If you keep a record of your notarial acts, document the special circumstances of this notarization - even if you must refuse to notarize.
- Have the witness sign your journal.

For a person who is blind

§117.05(14)(a), Fla. Stat.

- The law requires you to read the document to the document signer before the notarization.
- You may wish to add a statement in your notarial certificate that you have complied with this requirement of the law: "I further certify that I read the document to (name of signer) prior to notarization."
- Unless you are an attorney, you cannot advise the person about the contents of the document; however, you may re-read any portion of the document to the person.

For a person who does not speak English

§117.107(6), Fla. Stat.

- The nature and effect of the document must be translated into a language that the person does understand. The law does not specify that a written translation is required; therefore, an oral translation is sufficient.
- You may wish to add a statement in your notarial certificate that you have complied with this requirement of the law: "I further certify that the nature and effect of the document was translated for (name of signer) by (name of translator) prior to notarization."
- You may also want the translator to sign the document and your journal.

For a person who is deaf

- The obvious problem that exists in this situation is communication. Unless you and the signer are competent in sign language or lip reading, you should communicate with the person by writing notes.
- Make additional comments about the notarization in your journal entry.

For a person who is signing a document written in a foreign language not understood by the notary

Remember, you are not responsible for the contents of the document, but you need to exercise caution in this situation. Follow these recommendations:

- Make sure that you can communicate verbally with the document signer or that a qualified, trustworthy translator is present.
- Determine, if possible, that the document is complete.
- Check the document for a notarial certificate. If the document does not have a notarial certificate, ask the document signer for instructions. If he directs you which notarial act is appropriate for his document, proceed by adding the correct certificate and completing the notarization. If he does not know, refuse to notarize.
- Complete the notarial certificate in English. The certificate may be translated into the language of the document, but the translated certificate should not be signed and sealed by the notary.
- If you are unsure about the notarization, you should refuse to notarize.

For a person who is illiterate

- Although not required by law, you should read the document to the document signer before the notarization.
- You may wish to add a statement in your notarial certificate: "I further certify that I read the document to (name of signer) prior to notarization."
- Unless you are an attorney, you cannot advise the person about the contents of the document, however, you may re-read any portion of the document to the person.

For a Person with a Disability Who Directs Another to Sign

On a rare occasion, you may be asked to notarize the signature of a person who cannot sign a document in the usual manner. An individual with a disability may direct a notary to sign on his or her behalf. §117.05(14)(b)(d). In a sense, one person substitutes his hands for the hands of the person with a disability. You may notarize this signature but you should indicate the unusual circumstances in the notarial certificate. The following guidelines may be helpful.

For An Oath:

<i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small>	<i>"Signature" of Person with Disability</i> <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO §117.05(14), FLORIDA STATUTES</small>
<i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small>	
STATE OF FLORIDA COUNTY OF _____	
Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20__, by <u>(name of person with disability,</u> and subscribed by <u>(name of designated person)</u> in the presence of these witnesses at the direction of <u>(name of person</u> <u>with disability)</u> .	
(SEAL)	<i>Notary Signature</i> <small>(PRINT, TYPE OR STAMP NAME OF NOTARY)</small>
Personally known _____ OR Produced Identification _____ Type of Identification Produced _____	

For An Acknowledgment:

<i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small>	<i>"Signature" of Person with Disability</i> <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO §117.05(14), FLORIDA STATUTES</small>
<i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small>	
STATE OF FLORIDA COUNTY OF _____	
The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by <u>(name of</u> <u>person with disability,</u> and subscribed by <u>(name of</u> <u>designated person)</u> in the presence of these witnesses at the direction of <u>(name of person with disability)</u> .	
(SEAL)	<i>Notary Signature</i> <small>(PRINT, TYPE OR STAMP NAME OF NOTARY)</small>
Personally known _____ OR Produced Identification _____ Type of Identification Produced _____	

- Question the person to make sure that he or she understands the nature and effect of the document to be signed. If the person is blind, read the entire document to him or her. If the person does not understand, refer him or her to an attorney for legal advice and do not proceed with the notarization.
- Ask for proper identification from the person with a disability. It is not necessary to require identification from the designated signer. Think of that person only as the "hands" of the person with a disability.
- The notary may then sign the signature of the person with a disability at the direction of and in the presence of that person.
- Perform the appropriate notarial act: administer an oath or take an acknowledgment. Your notarial act should be directed to the person with a disability.
- Complete the notarial certificate with the required information. When stating whose signature is being notarized, it would be best to indicate the special circumstances of the signing.
- Two persons with no interest in the transaction must witness the signing of the document and the notarization and that their names and addresses be clearly printed below their signatures. Unless otherwise required by law for the particular document, it is not necessary for the witnesses' signatures to be notarized.

- Be sure to get the witnesses and the designated signer to sign your journal and make appropriate notes.

For a Person Signing with Power of Attorney

- Situation: John Doe presents a document to be signed by Nancy Smith. John Doe states that he has power of attorney for Nancy Smith. John Doe signs the document in one of two ways:
 - (1) *John Doe as attorney-in-fact for Nancy Smith*
 - (2) *Nancy Smith by John Doe, attorney-in-fact*The first way is the preferred method.
- It is not the notary's responsibility to ensure that the signer has power of attorney. The person states he has that authority and indicates this fact when he signs - just accept his word.

Note: If you are notarizing in connection with your employment, you may need to require a copy of the POA for your employer's files.
- Note the capacity of the signer in the notarial certificate. Use a notarial certificate in substantially the same form as the one on page 30 for an acknowledgment in a representative capacity.

For a Person Who is a Minor

Have you ever been asked to notarize the signature of a person under the age of 18? If so, you may have considered this request a "major" problem. No doubt you have had some of the same questions that we are frequently asked.

- **May I notarize the signature of a minor?** Generally speaking, you may notarize for a minor; however, all of the requirements of the notary laws must be followed.
- **Is there an age limit?** The notary laws do not limit notarizations based upon a person's age. The Governor's Notary Section recommends that you exercise caution when notarizing for a minor. In particular, you should determine whether the minor understands the nature of an oath or acknowledgment before notarizing.

For example, a woman recently called our office to ask whether she could notarize the signature of a 4-year-old child. The father wanted to transfer the title of a boat to his child. A child of this young age would probably not understand the transaction. On the other hand, we recently encountered a situation involving a 12-year-old child who wanted to submit a sworn statement to the court regarding an incident that she witnessed. She actually wrote down what she had seen and wanted to sign her statement and swear to it in the presence of a notary. Most likely, a 12-year-old child would understand the act of swearing to the truthfulness of a statement.

In these types of situations, the notary should question the child to make sure that he or she understands the nature of an oath or an acknowledgment. The notary should also determine that the child is not being pressured or coerced to sign the document.

When a child is too young to comprehend the transaction, a parent sometimes signs on behalf of the child. If you are asked to notarize in that situation, it is the parent's signature that is to be notarized, not the child's.

- **What about identification for a minor?** Any time you notarize a signature, the signer, including a minor, must provide acceptable identification to the notary. The problem, of course, is that most minors do not have one of the forms of acceptable identification listed in the Florida Statutes. There are two possible solutions.

First, you may be interested to know that any person 12 years of age or older may be issued a state identification card. To obtain the card, the person should apply at the local Division of Motor Vehicles office where driver's licenses are issued.

Second, you may use the sworn written statement of a credible witness to identify the minor. (Please refer to page 33 for a full explanation of this method of identification.)

When asked to notarize the signature of a minor, you may refuse to do so if you are unsure about any aspect of the notarization. In unusual situations, you may even suggest that the minor or his or her parent or guardian see an attorney.



Liability and Recordkeeping

Notary and Employer Liability

Although as a notary you are bonded, you may be held personally liable for any misconduct or negligence in the performance of your official duties. This means that you could be sued if an improper notarization causes loss to another individual or company. However, if you perform your duties correctly and carefully, always exercising reasonable care, you probably don't have to worry about being sued.

“Reasonable care” is that degree of care which a person of ordinary prudence and intelligence would exercise in the same or similar circumstances. Failure to exercise such care is negligence.

Florida law provides that the notary's employer may also be held liable if the notarization in question was done within the scope of the notary's employment. See §117.05(6), Florida Statutes. A government agency may or may not be held liable for the misconduct of their employee-notaries depending on the circumstances and the laws governing such issues. Please read page 24 for additional information on government employees as notaries.

The best protection for you and your employer against a lawsuit or a claim filed against your notary bond is simple:

- Know the laws governing your duties.
- Use reasonable care in notarizing.
- Don't make any exceptions.
- Keep accurate records.

Keeping Records of Your Notarial Acts: The Notary Journal



Notaries are not authorized to keep copies of the documents they notarize. The best way to protect yourself is to document your notarial acts in a journal (record book or log).

Florida law does not require the use of a notary journal; however, you may be interested to know that the Governor's Task Force on Notaries Public in 1989 recommended the mandatory use of journals. Although the Legislature did not follow that recommendation, many notaries in Florida are beginning to voluntarily use a journal. You may want to consider this option as well. Each time you perform a notarial act you should record the event your journal.

Numerous notary journals are available on the market today, and they all have similar features. We recommend that your journal be bound (not loose-leaf) and have consecutively numbered pages, so that a page could not be removed without being detected. Important information should be recorded in the journal including:

- the date of the notarial act;
- the type of notarial act: oath, acknowledgment, attested photocopy, marriage;
- the name or brief description of the document;
- the party's printed name, exactly as he or she signed the document;
- the party's address;
- the party's signature;
- the type of identification relied upon in identifying the party, including the serial number, expiration date, date of birth, etc.;
- the fee charged for the notary service; and
- any additional comments you consider important; for example, the person is blind and you read the document to him.

When using a journal to record your notarizations, it is a good idea to complete the journal entry prior to the notarization to ensure that the party does not leave before the necessary information is recorded.

Other important considerations:

- Journals can be used to refresh your memory about an event that occurred years earlier, and if kept consistently, may be relied upon for court testimony.
- Journals may also prove your compliance with the law.
- To be reliable, make sure that you record *every* notarial act and any special circumstances of the notarization.
- Do not share a journal with another notary.
- Guard your journal. Keep completed journals for at least 5 years.

Notary journals are usually available from your bonding agency, an office supply store, or one of the two national organizations that provide educational assistance to notaries. Even though journals are not required, any notary who is concerned with liability may want to consider this protective measure to provide a permanent record of his or her notarial acts.

Order in the Court

A recent court decision should be of special interest to Florida notaries and their employers. In *Ameriseal of North East Florida, Inc. v. Leiffer* (673 So. 2d 68 [Fla. 5th D.C.A. 1996]), the Court ruled that a notary public and the law firm that employs her may be held liable for damages resulting from an improper notarization.



A notary employed by a law firm agreed to notarize signatures on several documents as a favor to a co-worker's husband. Neither of the document signers was present. Unknown to the notary, the husband was engaged in a fraudulent bond transaction involving the documents, and the individuals whose signatures were notarized did not actually have authority to sign the documents. A highway subcontractor lost a contract with the state Department of Transportation as a result of the fraudulent transaction.

The company sued the husband, the law firm, and the notary and won a default judgment for more than \$350,000 against the husband. However, the trial court granted summary judgment in favor of the law firm and the notary, concluding that the improper notarization was not the proximate cause of the contractor's losses. The District Court of Appeal reversed, saying the contractor relied on documents without knowing that the notary (Ellis) had failed to verify the signers' identities.

The Court stated, "Ellis' obligation as a notary is quite simple: she must either know or have properly identified the affiants that appear before her and she must administer the proper oath. If business cannot depend on notaries doing this simple task, then there is no place for notaries in the world of commerce."

Complaint Process

Because notaries are appointed by the Governor, it is the responsibility of the Governor's Office to investigate allegations of misconduct by notaries. The Notary Section investigates hundreds of complaints each year and takes disciplinary action against those notaries found to have been negligent in their duties. Most complaints involve business deals gone awry, persons involved in legal disputes, or friends who asked the notary for a special favor.

The majority of the complaints, about 75 percent, are violations of the presence requirement, and most of those also involve allegations of forgery or fraud. Although the notaries are not usually involved in the forgery or fraud, they facilitate the commission of these crimes by not requiring the document signer to be present. Other common complaints are related to incomplete notarial certificates.

Once a complaint is received, a copy is forwarded to the notary requesting a sworn written response to the allegations. The notary's response is then sent to the complainant, giving him or her an opportunity to reply. The Notary Section may find it necessary to request additional information from either party or from other sources. Once all information is gathered, the complaint file is reviewed in its entirety by the Governor's legal staff.

If the allegations against the notary are unfounded, the complaint is dismissed. If the allegations prove to be true, the Governor’s Notary Section recommends disciplinary action. The most common actions include a letter of advice in which the notary is advised of his or her improper action and the method for correcting the error; a written reprimand in which the notary is informed of the findings and issued a warning that any further violation or negligence of duties will result in stronger disciplinary action; and a request for the notary’s resignation. When the notary resigns, the complaint is closed without any further action. However, in most cases, the notary will not be appointed again. If the complaint allegation involves a criminal violation, the complaint is referred to the appropriate State Attorney’s Office for investigation.

A rarer, but stronger, form of disciplinary action is suspension from office by the Governor. Suspensions are typically done when a notary is convicted of a felony while commissioned, when the notary refuses to resign when requested by the Governor’s Office, or when the notary cannot be contacted for a response. The process to accomplish a suspension requires the Governor to issue an executive order, filed with the Secretary of State, and the notary to appear before The Florida Senate for a hearing or trial. The Senate makes the final determination as to whether the notary should be permanently removed from office.

If you ever have a complaint filed against you, it is best for you to provide a timely and honest response to any request from the Governor’s Office. Of course, the best way to avoid a complaint is to know and comply with the notary laws.

R E V I E W

Case Study — Presence Requirement and Notary Liability

Marie Notary’s friend Susan and Susan’s father Roy came to Marie’s office to get some papers notarized. Marie personally knew both Susan and Roy and notarized a number of documents for them.

Later that day, Susan returned with another document they had forgotten. The document was signed by Roy and needed to be notarized.

Susan explained that Roy could not leave work and asked Marie to notarize the signature even though Roy was not present. Marie did so.

Should Marie have notarized Roy’s signature?

NO !

Now, for the rest of the story . . .

The document was a deed transferring ownership of Roy’s home to Susan. Roy did not sign the document — Susan forged his signature.

Using the deed as security, Susan obtained a loan for \$27,900. Susan never made any payments, and the bank began foreclosure proceedings on the property.

Roy filed a lawsuit against the bank for relying upon a fraudulent deed. The bank filed a lawsuit against Marie for her illegal notarization.

The bank lost their claim to the property and Roy got his property back. But, the Court awarded the bank a judgment against Marie for \$27,900. Additionally, Marie’s bonding company paid out the entire amount of her bond (\$1,000) to the bank, which she was required to repay.

By doing a favor for a friend, the notary was held liable for her improper notarization and had to pay back almost \$30,000!

Be careful — it could happen to you!

Electronic Notarization

What does electronic notarization mean to the traditional notary?

Florida defines a notary public as a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgments of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties as specified by law. Electronic notarization is simply a different platform to perform these legally sanctioned acts.



With the Internet permitting execution of online documents that often require notaries public to verify the identity of the individual, the notarized digital signature legally executes an electronic document. Now legally recognized in the Florida Statutes, Section 668.50, the digital signature is equivalent to the traditional signature and seal of the notary - the pen is now a mouse and the stamp an electronic icon.

Using the Internet as a medium means transactions can happen at light speed for individuals and businesses alike. Transactions that previously took days or weeks to process can now be accomplished in a matter of minutes.

Additionally, utilizing e-transactions results in a reduction of transaction and processing expenses.

Little additional training is needed to begin using electronic signatures since electronic notarization is the online version of an offline, hard-copy process. As use of electronic notarization increases, the opportunity for more and more economic transactions grows.

Various pilot projects around the nation have already proven the practicality and legality of using electronic means to conduct business. The use of the Internet provides Floridians with huge opportunities for e-commerce efficiencies. The service and experience of online notaries will enable this to occur.

A noteworthy transaction took place in Florida, when the first fully paperless mortgage loan and home purchase in the United States was completed. The entire procedure was originated, underwritten, processed, approved, and recorded electronically. The transaction complied with *Florida's Uniform Electronic Transaction Act*, which specifically addresses the legality of electronic transactions, electronic records and electronic contracts. Importantly, electronic signatures were required at each phase of the process- these signatures still required the service of a notary to perform the notarial act. However, instead of a traditional wet seal and signature, the acknowledgment was accomplished through the use of electronic notarization.

Same-day mortgages are only one example of how electronic signatures can benefit individuals. Other areas where electronic signatures can have a significant impact include business-to-business transactions, the financial and healthcare industries and governmental transactions (voting, accessing vital tax records, etc.). In some cases, the use of this technology will be mandatory to comply with state or federal regulation, such as the Healthcare Information Portability and Accountability Act (HIPPA).

The electronic medium is becoming the accepted norm in our society. The benefits are numerous. You can be an integral part of the Knowledge Age by utilizing technology, specifically this new and necessary tool- electronic notarization. Those using electronic notarization technology will be early adopters of the cutting-edge e-commerce revolution - with the associated prestige gained by those offering e-solutions.

What is the need for electronic notarization?

In recent months, numerous measures have been approved giving digital signatures the same legitimacy as pen signatures. This includes various pieces of state legislation (including Section 668.50, Florida Statutes) and federal legislation known as the *Electronic Signatures in Global and National Commerce Act* (E-Sign Act), which was digitally signed by President Clinton on June 30, 2000 and took

effect on October 1, 2000. What makes this bill so notable for notaries is Section 101(g), which recognizes the validity of electronic notarization.

The passage of legislation removes legal barriers to electronic commerce. Business continues to transcend time and space. Strangers do business with strangers locally and globally. The need to know that individuals are who they claim to be is critical in the business world. This legal setting provides a framework for the inclusion of electronic transactions. It is imperative that notaries be there to fill their role within this framework.

The recent state and federal statutes concerning electronic transactions stemmed from governmental recognition of the significance of electronic commerce on the Internet. In 1999, the Uniform Law Commissioners distributed what is known as the *Uniform Electronic Transaction Act* (UETA). The basic objective of UETA is to ensure that e-transactions are as enforceable as traditional paper transactions. UETA is related to the *Uniform Commercial Code* (UCC), but specifically addresses “electronic records and electronic signatures relating to a transaction.”

UETA applies to transactions only when both parties have agreed to conduct the transaction electronically. It should be noted that while UETA provides some uniform rules, it does not attempt to create a set of new rules or regulations - it addresses the legality of electronic signatures, but in no way does the bill require their use. The Uniform Electronic Transaction Act is technology-neutral - no one security measure or electronic signature policy is endorsed. Individuals can choose to implement the digital signing method or security procedure of their choice. Those who opt to process documents or forms online can rest assured that electronic notarization is available and legally recognized. Notaries who implement this technology will be at the forefront of the e-commerce revolution.

The Uniform Law Commissioners’ national effort effectively provided guidelines to govern e-transactions. Many states have thus followed suit to implement their version of the Uniform Electronic Transaction Act. Florida’s own version of UETA took effect July 1, 2000, as detailed in Section 668.50, (Florida Statutes). This section applies to electronic records and electronic signatures relating to a transaction. However, this does not apply to transactions that are governed by the creation or execution of wills or trusts, the UCC or the Uniform Computer Information Transactions Act, or by rules relating to judicial procedure.

UETA, as the Uniform Law Commissioners had hoped, is beginning to take root in various state bills. Florida is part of the vanguard in promoting and recognizing online documentation. Other states have implemented, or are implementing, legislation as well. Notary involvement is vital to making the acceptance of electronic commerce a success! Taking advantage of today’s technology and legislation allows notaries to empower themselves for tomorrow’s world.

How do E-notarization and E-signatures work?

How can a notary digitally sign a document? Typically an electronic version of a document (e.g., a Word or Excel document) or online form is presented to a notary public. The notary administers an oath or takes the acknowledgement of the document signer, remembering that all current notary law, (Florida Statutes, Chapter 117), must be followed. The document is then signed with a digital certificate or with a UCC signature (typing their name in a box). In turn, the notary also digitally signs the document in a similar fashion. The document is now electronically notarized and can be transmitted (e.g., via email) or saved to disk. The process is practically the same as that of paper notarization.



The actual process of digitally notarizing an electronic document can be implemented by a number of various structures and approaches that allow us to realize the benefits of e-transactions and e-notarizations. The underlying technology in accomplishing secure transactions and authenticating individuals is encryption. Encryption is a process that transforms data to an unreadable format so that the information remains secure. This allows for a measure of authenticity, integrity, and confidentiality.

In short, by using this technology, one can validate the integrity of the document and verify the identity of an individual - the key to notarizing online documents.

Digital notarizations commonly use digital signatures, a type of electronic signature, in place of wet signatures. A digital signature, using the technology of a digital certificate, is a form of encrypted data that can be used to authenticate an individual and his or her document.

The technology that allows for digital certificates and electronic signatures is precisely what makes electronic notarization legally acceptable. A digital signature is part of a system called Public-key Infrastructure (PKI) and has a corresponding component called a digital certificate. PKI is the generally accepted method of ensuring e-commerce security. Confidentiality, authentication, integrity and non-repudiation are four important ingredients required for trust in e-commerce transactions. The emerging response to meet these requirements is the implementation of PKI technology. In basic terms, PKI allows an individual to obtain a digital certificate, which then would be used to affix that individual's digital signature to an electronic document. A digital certificate holds vital information and allows for authentication of the individual, through the use of two related "keys," your private key and your public key, known as a key pair.

Public key infrastructure incorporates various terms and technologies such as message digests (hash functions), asymmetric cryptography, tokens, X.509 certificates, public and private keys, nonrepudiation, and others. There is no doubt that the technologies used to digitally sign documents can be daunting. But for you, the notary, using this technology is completely transparent. Electronic notarization is achievable without requiring you to know the fundamental technology, allowing you to expand your notarial role without having to invest a lot of time in learning a new technology.

A digital certificate is a credential (think of it as a driver's license online), issued by a trusted third party, known as a Certification Authority, that validates individuals or organizations. A digital certificate is the foundation that allows a user to authenticate other users and to sign transactions with legally binding signatures.

The Certification Authority (CA) maintains digital certificates and serves to validate a digital signature (and therefore a notarization's signatory). As stated, various firms act in this capacity, including ARCANVS, Baltimore Technologies, Entrust Technologies, Thawte, and Verisign. Though methods and authentication procedures vary, all CA's provide a means to distribute digital certificates, maintain a repository of their issued certificates, and validate the identity of any certificate holder.

That is all there is to it! The procedure remains essentially the same. You can view a digital signature as another form of the traditional pen - one you use to sign the document.

How do I begin?

To begin with, you can start by learning more about digital certificates and electronic security measures such as PKI. Contact any certification authority that specializes in witnessed-identity authentication. Additionally, there are several online sites that offer a wealth of information concerning security in an electronic arena.

Second, research companies that offer digital certificates and become familiar with the electronic notarization environment. The need remains the same, but there are differences in how an electronic document is notarized. Knowing how the procedures work will ensure a smooth transition to electronic transactions, as well as make you an expert.

Finally, relax! Technology does not necessarily mean adverse change. Recognizing the benefits that electronic notarization provides will help you allay any concerns. Your role will not diminish. On the contrary, incorporating electronic notarization into your functions will prepare you for the future - and add skills that make you more valuable to your employer and clients.



Answers to the Most Frequently Asked Questions

Q *Could you give me some advice on how to advertise my notary services?*

A If you are interested in using your notary commission to earn extra income, advertising your services may be a way to build or increase your business. Before you leap into 60-second radio commercials or full-page ads in your local newspaper, let's discuss some important aspects of advertising.



First, you should consult the notary law. Subsections 117.05(10) & (11), Florida Statutes, must be your guide if you are not an attorney and are advertising your notary services in a foreign language. Your advertisement must contain the following notice in English and in the language used for the advertisement: "I am not an attorney licensed to practice law in the State of Florida, and I may not give legal advice or accept fees for legal advice." You are also prohibited from translating the term "Notary Public" into a language other than English. These requirements apply to advertisements via radio, television, signs, pamphlets, newspaper, or other written communication, with the exception of a single desk plaque. Additionally, some notaries like to imprint their notary seal on written advertisements. We advise against this. The notary law requires that a notary seal must be affixed to all notarized documents. §117.05(3)(a), Fla. Stat. The law does not authorize any other use of the notary seal.

Next, decide what services you will provide. Are you willing to perform marriage ceremonies? Some notaries prefer not to solemnize the rites of matrimony for religious reasons. Would you be willing to travel to a hospital, nursing home, office, or private residence to perform your duties? If so, you may need to set specific hours that are convenient to you and the public. You should also be careful that you do not advertise services that you, as a notary public, are not authorized to perform. For example, do not advertise that you provide certified translations or signature guarantees, judge contests or certify contest results, or "notarize" photographs or collectable memorabilia, etc. These are not authorized duties of a Florida notary public, and to perform such duties in your capacity as a notary public is unlawful. Additionally, unless you are a licensed attorney, you may not give legal advice or prepare legal documents, such as those pertaining to immigration, trusts, etc.

When deciding on the types of services you will provide, you should also consider establishing a schedule of fees. This will provide consistency and demonstrate credibility with your customers, and avoid the appearance of discrimination. Remember, though, you cannot exceed the maximum fees allowed by law — up to \$10 per notarial act or up to \$20 for solemnizing marriage. If you are asked to travel 25 miles to a hospital in a neighboring town, are you willing to do it? If so, you may want to charge your customary fee for the notarization and a small fee for travel expense. In performing a marriage ceremony, will you provide additional services, such as flowers, photographer, wedding cake, etc.? If so, you have a right to be compensated for these extras. However, make sure that your customer understands your fees prior to performing the services. We recommend that you always give an itemized receipt for your services. Receipts also provide you with reliable records for income tax preparation. Advertise only those services that you are willing to perform, and be careful that you do not discriminate between customers. If you advertise your services, you should be willing to provide those services to everyone.

Additionally, think about the medium to use for your advertising. What will reach the most people for the money you have to spend? Besides advertisements in newspapers, on radio and television, and window or street signs, you may consider advertising in the newsletter of your church or civic organization, putting up a poster in your community supermarket (with the permission of management), posting a sign by your office copy machine, or passing out your own business cards to people you come in contact with. Some companies specialize in direct mail advertising in conjunction with other advertisers for a nominal cost. A long-lasting advertising medium, such as your telephone yellow pages, may also be an option. Whatever medium you use, spend some time refining your advertisement. Remember, you want to catch the attention of your reader or listener.

If you post a sign in your yard, be sure to check with your local government to find out what ordinances may govern your advertising. Some local governments would not consider a small sign displayed tastefully in your front yard as advertising a business in a residential area. Other local governments, though, have ordinances that strictly prohibit such displays. In addition, there may be local laws that would require you to obtain an occupational license.

Finally, you should know that a notary public and a Justice of the Peace are not the same. Florida has not had Justices of the Peace since January 2, 1973, when the office was abolished by law. Therefore, you should not advertise your services as a Justice of the Peace. This may be considered deceptive advertising. The Economic Crimes Division of the Florida Department of Legal Affairs (the Attorney General's Office) strongly warns notaries against deceptive, false or misleading advertising.

Advertising can be an effective way of making your services known as a notary public. Before you advertise, though, you should investigate and think through all your options to make sure that you are obeying the law and that your efforts will be profitable.

Q *As a business owner, would I have a financial interest in the transactions being notarized for my company's business?*

A Section 117.107(12), Florida Statutes, provides that you may not be the notary for a transaction in which you have a financial interest or to which you are a party. Although this provision was added to the notary law in 1992, it is not a new prohibition. This provision was merely a codification of the same prohibition established by case law dating as far back as the 1800s and as recently as the 1990s.

Generally, it is fairly easy to determine if you are a party to the transaction. For example, if you were buying a home, you could not be the notary for the mortgage documents or the deed. Additionally, if you were being named as the attorney-in-fact on a power of attorney document, you would be prohibited from notarizing the signature of the person executing the document.

What constitutes financial interest? There is no exact answer to this question. Although the term is not defined in the notary laws, there are some clear examples of financial interest. For instance, when a notary receives a sales commission on the transaction at hand (the sale of an automobile, an insurance policy, real estate, etc.), he or she would be prohibited from notarizing the signatures those persons involved. Additionally, the owner of a business should not notarize signatures on documents pertaining to his business transactions.

The law exempts a salaried employee (if not related to the document signer) from this prohibitive provision of the law. However, what about a notary whose spouse owns the business and he or she receives no salary? Aside from the financial interest issue, the notary is prohibited from notarizing his or her spouse's signature. Experts on notary issues agree that the spouse of the business owner would probably have a financial interest in the transactions of that business, and therefore, should not notarize in these instances.

An attorney is exempt from this provision of the law and is permitted to notarize his client's signature on a document that he has prepared, if he is serving as the attorney-of-record and is only receiving a fee for his legal services or his notary services. However, if the attorney were also a party to the transaction, or had an interest, such as being named the executor or administrator of an estate, he should not notarize his client's signature on such documents.

When you are unsure whether you are a party to or have a financial interest in a particular transaction, it is always safer to err on the side of caution and decline to notarize the signature. Keep in mind that, as a notary, you should be a disinterested third party who, if called upon to testify about the transaction, would be completely detached from all parties and appear unbiased in your testimony.

Q *Is a marriage ceremony performed by a notary public of the State of Florida “legal and binding”? Is a Florida notary public authorized to perform a marriage ceremony outside the state, or may a notary from another state perform a marriage ceremony in Florida?*



A Florida is one of only three states (the other two are South Carolina and Maine) who authorize their notaries public to “solemnize the rites of matrimony.” §117.045, Florida Statutes. The Florida notary may perform a marriage ceremony providing the couple first obtain a marriage license from an authorized Florida official and may only perform such ceremony within the geographical boundaries of Florida. Thus, a Florida notary could not perform a marriage ceremony in another state. Additionally, a notary from another state, including South Carolina and Maine, could not perform a marriage ceremony in Florida. And, a Florida notary may not marry a couple who has obtained a marriage license from another state.

There are many factors which determine the validity of a marriage. Assuming, though, that the notary public is duly appointed and commissioned at the time of the ceremony, that both the bride and the groom are qualified to be joined in marriage, that the couple have obtained the required marriage license, and that the marriage ceremony is performed in Florida, the marriage would be “legal and binding.” Florida law will presume a marriage to be legal until otherwise shown. An attorney may be able to provide more specific information, if required.

Q *What officials are authorized in Florida to perform a marriage ceremony?*

A Section 741.07, Florida Statutes, provides that the following persons are authorized to solemnize matrimony:

- State judicial officers (judges)
- Retired state judicial officers
- Federal judges serving in a court with jurisdiction over a part of this state (per Attorney General informal opinion, May 14, 1996)
- Clerks of the Circuit Court.

Note: Section 28.06 authorizes Clerks to appoint deputy clerks who have all the same powers of the Clerk.

- Regularly ordained ministers of the Gospel, elders, or other ordained clergy, if in good standing with his or her affiliate church or denomination
- Notaries Public
- Designated members of the Society of Friends (Quakers)

Officials Not Authorized to Perform Marriage

- State Attorneys
- Judges of Compensation Claims
- Administrative Law Judges

According to Attorney General Opinions 072-262 (August 11, 1972) and 92-62 (September 3, 1992), neither a state attorney nor a judge of compensation claims is a judicial officer of this state, and therefore, is not authorized to solemnize marriage.

Q *Is a notary public permitted to perform a marriage ceremony for two persons of the same sex?*

A No. Florida law prohibits same-sex marriages. A notary public or other authorized person may not perform a marriage ceremony without a marriage license issued in accordance with the requirements set forth in Chapter 741 of the Florida Statutes (§ 741.08). Florida law further provides that a marriage license may not be issued unless:

- both parties sign an affidavit reciting their true and correct ages,
- both parties meet the age requirement or comply with the special provisions set forth for those individuals under the age of 18 years, and
- one party is male and the other party is female.

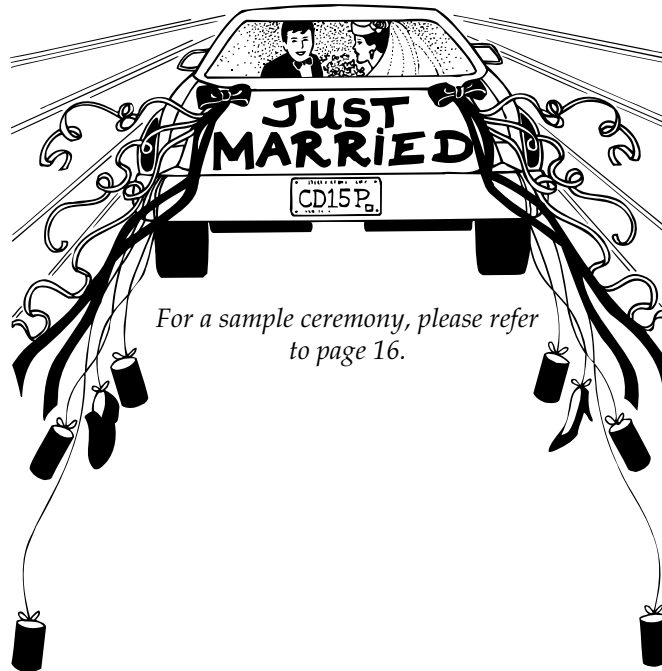
See §§ 741.04 & 741.0405, Fla. Stat.

Thus, Florida notaries may not perform a marriage ceremony for two persons of the same sex. If they choose to participate in an unofficial ceremony “uniting” two persons of the same sex, they must not do so in their official capacity as a notary public of the State of Florida.

Q *When “solemnizing the rites of matrimony,” is it acceptable for the notary public to complete the marriage certificate without actually performing a marriage ceremony?*

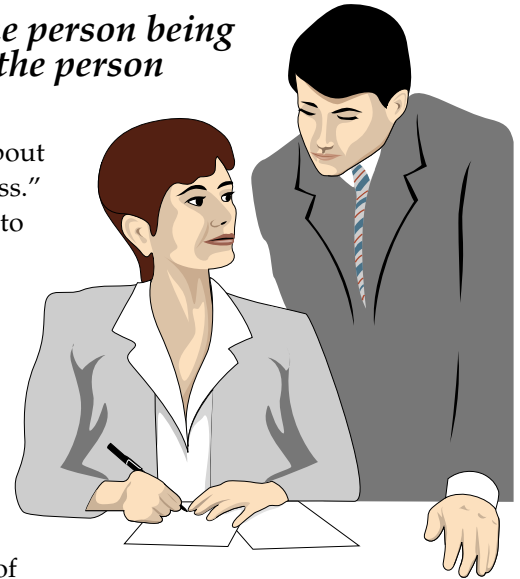
A No. Completing the marriage certificate portion of the marriage record is not the same act as performing the marriage ceremony. Actually, the certificate is the notary’s way of certifying that he or she performed the ceremony. A notary should not falsely certify that a ceremony was performed when, in fact, one had not been.

The ceremony does not have to be in any particular form. Any form of ceremony to solemnize a marriage that the parties choose ordinarily suffices, so long as there is an agreement by words of present assent. The words used or the ceremony performed are mere evidence of a present intention and agreement of the parties. A marriage ceremony is usually performed for the sake of notoriety and certainty and must be conducted by a person authorized by law to perform the ceremony.



Q *May I notarize a signature without the person being present if another person swears that the person signed the document?*

A No! The Notary Section receives frequent inquiries about “notarizing a person’s signature by subscribing witness.” Evidently, some notaries believe that it is permissible to notarize a signature when the person is not present — if someone who witnessed the signing of the document appears before the notary and swears that the person actually signed the document. Some states, like California, do, in fact, allow such notarizations, but Florida does not. Misunderstanding may also stem from a section in Florida law that provides a method by which instruments concerning real property may be entitled to recording in Florida when the document signer cannot appear before a notary to acknowledge his or her signature. You may hear this procedure referred to as “proof of execution by subscribing witness.”



We recently asked the leading experts in Florida about this issue. The Attorneys’ Title Insurance Fund, Inc. is considered the state’s foremost authority on matters related to the real estate industry. The following information should clarify any confusion which may exist on the subject.

First, this method is used only for acknowledgments on real estate transactions. Second, this is not an alternative method of notarization. The person whose signature is being notarized must personally appear before the notary at the time of the notarization — without exception. Rather, this provision is a method by which a document can be recorded in Florida. For example, say a person signed a document related to a real estate transaction but did not acknowledge his signature before a notary public. Later, the document cannot be recorded by the county clerk because it lacks notarization. The problem is further complicated when the document signer cannot be located or is deceased. Florida law provides that one of the subscribing witnesses on the document may “prove” the execution of the document by swearing that the person did actually sign the document. With that sworn statement, the document may then be recorded.

The proof method is not commonly used. In fact, one experienced lawyer at Attorneys’ Title Fund said that she had never seen a real property instrument recorded using this method and that, for insuring purposes, her company would investigate thoroughly before issuing title insurance. As a notary public, you will probably never encounter this situation. Generally, when there is a problem with the recording of a document, an attorney handles the matter and takes other legal steps to remedy the situation.

Some private companies produce form “certificates of proof.” We prefer the affidavit format instead. By using an affidavit with a standard jurat, the notary will not be certifying more information than is required of the notary. It is up to the affiant to state the facts and swear to the truthfulness of his or her statement.

Remember then, if a co-worker, family member, or anyone else asks you to notarize another person’s signature based on a sworn statement that he or she saw the person sign the document, **JUST SAY NO!!**

Q *May I ever refuse to provide notary services?*

A Yes, under certain conditions. Eventually, most notaries are faced with the issue of whether they may refuse to provide notary services when requested. Florida law actually requires notaries to refuse in some situations. In other situations, notaries either should or may refuse to notarize.

Most of the situations in which notaries must refuse are set forth in sections 117.05 and 117.107, Florida Statutes, and relate primarily to taking acknowledgments and administering oaths. Other prohibitions, not discussed here, may apply to less common types of notarial acts, such as attesting to photocopies and performing marriage ceremonies. The most common situations with statutory prohibitions occur when:

- the signer is not present;
- the document is incomplete or blank;
- the notary is the signer;
- the signer is the notary's spouse, parent, or child;
- the signer has been adjudicated mentally incapacitated and has not been restored to capacity as a matter of record;
- the notary does not personally know the signer and the signer cannot produce acceptable identification;
- the notary is a party to the underlying transaction or has a financial interest in it; or
- the signer does not speak English and there is no one available to translate the document into a language the signer understands.

There are other precautionary reasons for which a notary should refuse to notarize even though a specific prohibition may not appear in Chapter 117. These situations occur when:

- the document does not have a prepared notary certificate, and the signer cannot tell the notary what notarial act is required;
- the notary believes that the signer is being coerced or does not understand the consequences of signing the document;
- the signer appears to be drunk, sedated, or disoriented; or
- the notary knows or suspects that the transaction is illegal, false, or deceptive.

In addition to the situations described above, a notary may refuse to perform a notarization in a variety of circumstances, such as when:

- the signer cannot pay the notary's fee for services;
- it is before or after the notary's regular office hours;
- it is a holiday;
- the notary is busy with other work or activities;
- the notary would be inconvenienced;
- the notary is sick;
- the notary is not comfortable with the request;
- the signer is a minor;
- the document is written in a foreign language that the notary does not understand; or
- the notary is requested to travel to another location.

How to Refuse

A refusal to notarize may be viewed as an inconvenience to the signer or may be misinterpreted as unlawful discrimination. Therefore, notaries should be careful to refuse in a tactful manner. Tactfulness should not be a problem when the refusal is based on one of the statutory prohibitions, such as when the document is incomplete. The notary should explain that the law prohibits notarizing in that situation.

However, the situations in which a notary should refuse for precautionary reasons may be more difficult to explain. For example, suppose a notary suspects that the signer is being coerced or that the transaction may be illegal. In such situations, it may be best for notaries to simply explain that they are not comfortable with notarizing that document. No further explanation is necessary. Another good approach is for the notary to state that he or she is not familiar with the type of document involved. It is best not to be drawn into a debate regarding the refusal.

Restricting Services

Some people have taken the position that a notary public may not refuse any legitimate request for notary services. An argument could be made that because notaries are public officers, they have a duty to be reasonably available to the general public. This issue often arises in an employment context when a notary's employer sets parameters on notarizations that may be performed by employees within the scope of their employment. Some employers advertise notary services as a benefit for their customers. Other employers prefer to have a notary public in the office solely for notarizing signatures of the company's personnel.

Employers may have good reasons for limiting the notary services that may be performed by their employees. First, most employees have assigned duties for their position, and performing notarizations is generally not their primary focus. An employer may not want employees to neglect their regular duties to perform notarizations unrelated to the business. Second, an employer may want to restrict notarizations because of the risk of liability resulting from a notary's negligence committed during the scope of employment. Florida law now holds an employer liable for such negligence.

The Governor's Notary Section has considered the issue of whether a notary may refuse to notarize because of policies established by an employer; for example, in the case of a bank. A notary should never exercise his or her authority in a discriminatory manner. However, it is the opinion of this office that limiting bank employees to notarizing only for bank customers is not considered unlawful discrimination. Most notaries are employed in businesses or government agencies which conduct business beyond the provision of notary services. These entities are not required to permit their employees to neglect their duties of employment so as to be available to the general public for notary services.

Conclusion

Refusing to notarize may be required by Florida law or may be an option the notary public chooses in certain situations. Every notary should have a thorough understanding of the notary laws and should exercise good judgment when making decisions about whether to notarize.

Q *When affixing my notary seal on a recording plat, my notary seal impression smears. Can you offer a solution?*

A Yes. The rubber stamp notary seal has created problems for surveyors and others involved in subdivision platting. The developers or mortgagees sign the plat and their signatures are notarized using an acknowledgment certificate. The problem arises because the ink used in most notary seals does not dry and will smear on the plastic film, known as mylar, used for recording plats. We looked into the matter and found several possible solutions.

One surveyor suggested allowing the use of an impression seal when notarizing on mylar. This would require a change in the notary law and may not be the best solution. Since the impression seal is no longer the official seal for Florida notaries, most notaries do not have this type of seal readily available.

We contacted several county recording offices to inquire about their recording procedures and possible solutions. Some offices may accept the document for recording with the acknowledgment certificate placed on regular paper rather than the mylar. There does not appear to be any statutory requirement that the notarization be placed directly onto the mylar with the plat. However, for practical

reasons, some counties expressed reluctance in accepting acknowledgments on a separate attachment. Another official suggested preserving the ink seal imprint by spraying it immediately with an aerosol acrylic sealer. We experimented using Krylon No. 1303 Crystal Clear Acrylic Spray Coating and found this to be a satisfactory solution.

The best solution, however, was discovered when we contacted companies who make rubber stamps and reproduce blueprints. A rubber stamp notary seal, that is not self-inking, can be used with a different ink. A non-porous, permanent ink that dries through evaporation, like Phillips Industrial Marking Ink #40A, will adhere to mylar without smearing. This is a permanent, black ink and an imprint made with this ink can be photographically reproduced, thereby meeting the statutory requirements for the notary seal. The companies also recommended using this ink with a special balsa wood stamp pad, rather than the usual felt or foam rubber stamp pad. These supplies are available at office supply stores or from companies who specialize in making rubber stamps. The average cost for a bottle of ink and a stamp pad is about \$10.

If you are frequently asked to notarize signatures which are affixed to mylar, you may want to have these supplies on hand to avoid smearing your notary seal imprint.

Q *As a notary, may I prepare legal documents for my customers?*

A No. The following article, written by Lori S. Holcomb, Assistant Unlicensed Practice of Law Counsel, The Florida Bar, appeared in *The Notary View*, 1996, Issue 1.

You have just obtained your notary commission and wish to open an office providing limited legal services to the public — but you are not a licensed attorney. Exactly, what can you do? Who regulates this type of business? What if you overstep your authority — what are the consequences? Before you think about engaging in this type of business, you need the answers to these basic questions.

Let's consider the question of regulation first. The Florida Constitution gives the Supreme Court of Florida the exclusive authority to regulate the practice of law. Included in this regulation is the prohibition against the unlicensed or unauthorized practice of law (UPL). The reason for prohibiting the unlicensed practice of law is to protect the public from incompetent, unethical, or irresponsible representation — it is not done to protect lawyers.

The Florida Bar has been charged by the Court with the responsibility of investigating matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The Bar does not actively seek instances of UPL; rather, it investigates written complaints received from individuals. Once a complaint is received, a preliminary investigation into the matter is conducted by staff UPL attorneys, and if the allegations have merit, the case is referred directly to a local circuit committee for thorough investigation. These committees are comprised of attorneys and members of the public who volunteer to investigate these matters for The Bar. Each of the twenty judicial circuits in Florida has at least one circuit committee.

The circuit committees have several options available to resolve a UPL complaint. They may close the case if there are insufficient grounds to support the allegations. They may recommend that the individual accept "a cease and desist affidavit". By signing such an affidavit, the individual, without admitting any wrongdoing, acknowledges that the conduct set forth in the affidavit constitutes the unlicensed practice of law and agrees to refrain from the conduct until licensed to practice law in Florida. The committees may also recommend litigation. Litigation is initiated with the filing of a petition with the Supreme Court of Florida seeking a court order prohibiting the nonlawyer from engaging in the practice of law. If the order is violated, The Bar may seek indirect criminal contempt against the individual which could result in a jail sentence.

Engaging in the unlicensed practice of law is also a misdemeanor in Florida. Criminal complaints alleging UPL are handled by the State Attorney's Office. The penalties include a fine and/or a jail sentence. Additionally, if a notary public is found to be engaging in the unauthorized practice of law, the Governor may suspend that notary from office by executive order.



Now, exactly what services can you provide without engaging in the unlicensed practice of law? Generally speaking, a nonlawyer may only sell legal forms and then type those forms which have been completed in writing by the customer. As an example, you could sell a will form to an individual. The customer would have to fill in the blanks for the factual information customizing the will to his or her own needs. You can have no oral communication with the customer regarding how the form should be completed, and you may not correct mistakes. You may simply type the information written down by the customer.

The Supreme Court of Florida has approved several forms for use by individuals or by attorneys. These forms pertain to matters of family law, landlord-tenant law, and certain residential leases, and allow the notary to provide additional, but limited, assistance. When using one of the forms approved by the Supreme Court, you may engage in limited oral communication with the customer to elicit the factual information that goes in the blanks on the form. For example, if using the form for a simplified dissolution of marriage, you may ask for the name of the husband and wife, what county they live in, when and where they got married, and whether the wife wants her former name back, and then complete the form accordingly. But, under no circumstances may you give legal advice about possible remedies or courses of action.

Notaries are often asked to provide assistance in matters concerning bankruptcy and immigration. There are no Supreme Court approved forms for these legal actions as they are governed by specific federal laws. As in other matters, a nonlawyer may only sell forms and type those forms with information completed in writing by the customer. There are additional requirements and restrictions in the bankruptcy area, and you should consult the federal laws before attempting to complete any of these forms. Of course, you are prohibited from counseling your customer about appropriate legal action.

Not only can a nonlawyer run into problems when assisting an individual in completing forms, the nonlawyer also runs afoul of the unlicensed practice of law if the nonlawyer gives legal advice. This is especially problematic where the customer is relying on the nonlawyer for proper advice and guidance. Generally, the Court has held that, if the advice affects an individual's important legal rights, it will probably be viewed as legal advice. For example, your friend needs to authorize another member of her family to provide care for her child while she is temporarily out of the country. Because you are a notary public, she asks you to advise her. So, you assist her in preparing and wording a power of attorney. Unfortunately, you just engaged in the unlicensed practice of law and may be subject to one or all of the sanctions previously discussed.

Representation of an individual in court proceedings obviously constitutes the practice of law. However, what about matters that are related to the court proceeding, but are not taking place in court? The question of whether a nonlawyer may take a deposition was recently decided by a Florida appellate court. There, the court held that taking a deposition constitutes the practice of law, and therefore, a nonlawyer may not question witnesses in a deposition. (For more information, see Depositions on page 13.)

In most foreign countries, a notary public is an attorney. Some individuals use their notary public commission as a means to advertise and mislead individuals into believing that they may act as an attorney. For this reason, the notary law provides that a notary public who is not an attorney and advertises his or her services in a language other than English must include a notice in the advertisement which states, "I am not an attorney licensed to practice law in the State of Florida, and I may not give legal advice or accept fees for legal advice." The law also prohibits the literal translation of the term notary public into a language other than English in an advertisement for notary services.

As a notary public, you are held to a higher standard than other individuals because you are a public officer holding a position of trust. This trust is violated if improper legal advice and services are provided. The public is harmed and notaries are held in disrespect. By consistently observing the restrictions placed upon you as a nonlawyer notary public, abuses can be prevented and the public can be spared unnecessary expense and hardship. And, you will not subject yourself to court action, executive suspension, or criminal penalties.

If you have questions about the Unauthorized Practice of Law, you may contact Ms. Holcomb at The Florida Bar in Tallahassee. Her telephone number is (850) 561-5839, Ext. 6755. Copies of the Supreme Court Approved Forms are available from your local clerk's office.



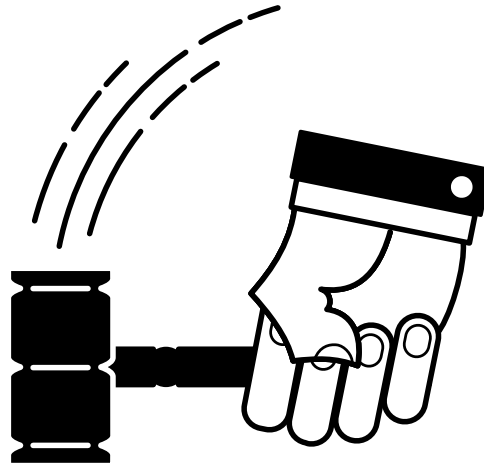
Q What is an unnotarized oath?

A In a 1993 case, the Florida Supreme Court addressed the issue of “unnotarized oaths.” *State v. Shearer*, 617 So.2d (Fla. App. 5 Dist. 1993). This case may significantly affect the role of notaries in Florida because it recognized an acceptable alternative oath that may be used for verified or sworn written documents. A person using the alternative oath would not need the services of a notary public or other official authorized to administer oaths.

The alternative method of making verified (or sworn) documents is set forth in section 92.525, Florida Statutes, and provides that a signed written declaration can substitute for a notarized oath if it contains the following language: “Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.” The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. By signing a document with that language, a person can make a sworn written statement without having it notarized.

The Court noted that because the oath starts with the words, “Under penalties of perjury,” a person who falsely signs such an oath could be convicted of perjury, just as one who signs and falsely swears to a document before a notary public or other official authorized to administer oaths. For this reason, the Court concluded that the alternative oath was acceptable for the purpose of filing a motion required to be sworn to by the court rules.

The alternative oath was enacted by the Legislature in 1986 but has not gained much popularity. Perhaps, the *Shearer* case will cause an increased usage of “unnotarized oaths.”



Q *May I notarize a will that has not been prepared by an attorney? What does it mean to make a will “self-proving”?*

A Yes, you may notarize a will, whether prepared by an attorney or not, provided the required conditions for a notarization are met.

- The document signer must be present and competent to execute the document.
- The signer must be personally known to you or produce appropriate identification.
- The document must have a jurat, or the document signer must direct you to provide a jurat.

Making a will self-proving shortens and simplifies the steps of probate. Section 732.503, Florida Statutes, prescribes the method by which a will (or an addendum to an existing will, known as a codicil) may be self-proved. The process involves the testator and witnesses taking an oath and signing an affidavit stating that they signed the will in the presence of each other. The notary is responsible for administering an oath to the testator and the witnesses, and for completing the jurat.

As with any document, an improperly notarized will can result in serious legal problems; therefore, you should exercise caution when asked to notarize a signature on a will. This is especially true of a “home-made will” where the person has not sought adequate legal advice. Unless you are a licensed attorney, you may not give legal advice about the contents of the will or the proper method of executing the document. You are also not responsible, nor required, to make the will self-proving but may add the affidavit and notarial certificate above if requested by the testator. However, you may not explain the purpose or effect of the self-proving process.

Witnesses

The notary does not have the responsibility of furnishing two witnesses for the execution of a self-proving will, or any other document.

Because the witnesses’ signatures are also notarized on a self-proved will, the notary may not serve as one of the witnesses. This also eliminates the notary’s spouse, son, daughter, mother, or father from being one of the witnesses.

The above affidavit is the form prescribed in §732.503, Florida Statutes.

STATE OF FLORIDA
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as his last will (codicil), that he (signed)(directed another to sign for him), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

Testator Signature

Witness Signature

Witness Signature

Subscribed and sworn to before me by _____, the testator* who is personally known to me or who has produced (type of identification) as identification, and by _____, a witness who is personally known to me or who has produced (type of identification), and by _____, a witness who is personally known to me or who has produced (type of identification) as identification, on _____, 20__.

(SEAL)

Notary Signature

PRINT, TYPE OR STAMP NAME OF NOTARY

My commission expires: _____.

**The words “the witness” appear in the statute, but were apparently inserted by error during the bill drafting process. Therefore, we have omitted them from this form.*

Q *May I notarize a signature on a living will if there is no prepared notarial certificate on the document?*

A Yes, if you add the appropriate notarial certificate determined by the principal (the person making the living will).

Florida law provides that a competent adult may make a living will directing the providing, withholding, or withdrawal of life-prolonging procedures in the event such person suffers from a terminal condition. A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither the spouse, nor a blood relative of the principal.

Section 765.303, Florida Statutes, provides a suggested form of a living will. The document requires two witnesses but does not require notarization. However, if your customer insists on acknowledging his or her signature, you may do so.

Remember, if you are not an attorney, do not advise your customer about the contents of the document, nor the correct procedure for executing the document. If your customer has any questions, you should suggest that he or she consult an attorney for assistance.

Q *What should I do if a person produces identification with a name different from the name being signed?*

A This problem may occur in different situations. In some situations, individuals may have simply neglected to update their identification cards after a name change. You should direct them to the local Division of Motor Vehicles office to make the necessary changes.

In some instances, individuals may need to sign a document with their former name after making the necessary updates to their identification cards. A classic situation arises when a woman changes her name after marriage and has to sign a document, such as a warranty deed, in her former name. You may notarize her signature if she signs both names, but you may want to indicate that fact in your notarial certificate.

For an acknowledgment, you could state, "The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Mary Smith, who represented to me that she was formerly known as Mary Jones, and who provided a Florida driver license, No. 123 45 678 890 in the name of Mary Smith as identification." You may also want to include information such as the date of birth, expiration date, or physical description.

You may always provide additional information in your certificate, especially if it helps to clarify the circumstances. You may also want to include information about supporting documentation concerning the name change or additional identification cards, if available, in your journal.

Q *May a notary public accept the sworn testimony of a person who witnessed a signature in lieu of the signer being present for the notarization?*

A No. Although some states may allow a notarization based upon such sworn testimony, Florida does not. Some notaries mistakenly believe that they may call the signer on the telephone to verify the signature and then proceed with the notarization. Florida law prohibits a notary from notarizing any signature if the signer is not present at the time of the notarization.



Q *When I personally know the signer, am I required to indicate that fact in my notarial certificate?*

A Yes. When notarizing a signature, a notary public must always certify the type of identification relied upon, either personal knowledge or other form of identification produced. This can be done as part of the main wording in the notarial certificate or at the bottom of the certificate.

We have seen notarized documents where the notary simply noted “PK” or “DL”, meaning “personally known” or “driver’s license.” These abbreviations are not clear, and we recommend that you make more specific notations about identification. Although not required, it is a good practice to indicate the identification card number and the state or country that issued the card. This will help to protect you in case a signer later claims that he or she did not sign the document and did not appear before you for the notarization.

Please review the form notarial certificates on pages 30 and 31 for examples of noting the method of identification.

Q *May I attest to a photocopy of a resident alien card issued by the U.S. Department of Justice, Immigration and Naturalization Service?*

A Yes. This is a frequent request in Florida because of the large number of resident aliens living here. We have consulted the office of Immigration and Naturalization Service in Miami and learned that a person cannot obtain a certified copy of a resident alien card from any INS office. Therefore, if you have the original card, you may attest to the trueness of a photocopy if you make the copy or supervise the making of the copy. You should use a notarial certificate in substantially the same form as that provided in the notary law for attested photocopies (See page 15).



*Resident Alien Card,
Form I-551 (New Card)*

The INS office emphasized that an attested photocopy of a resident alien card should not be used to prove residency status. Although the notary is not responsible for how the attested photocopy will be used, it may be a good idea to refer the party to an INS office if such certification is needed. If you believe that an attested copy may be used for an improper purpose, you should decline to attest to the copy.

Q *Is there a shortcut for renewing my notary commission?*

A No. The application process for reappointment is exactly the same as for a first-time appointment. Incomplete applications will not be processed until the applicant submits all the required information. When applying for a renewal commission, treat it as a new application and do not refer our office or the Notary Commissions and Certifications Section to your previous application for information.

Q *Must a notary public actually sign the notarial certificate when notarizing a signature?*

A Yes. When notarizing a signature, you are required by law to date, sign, and affix your seal to a notarial certificate. See §§ 117.05(3)(a) and (4), Fla. Stat. This is in addition to the requirements that your notary seal contain your exact commissioned name and that you must print, type, or stamp your name below your signature. These provisions of the law ensure the ability to identify the notary, if necessary, and confirm that the notary is the person who completed the notarial certificate and affixed the notary seal.

Q *May I sign my signature as a notary public and affix my notary seal in blue ink, or some other color, so that I can easily identify an original document?*

A With the improved quality of photocopies and the mandatory use of the rubber stamp notary seal, notaries often express concern over difficulty in differentiating between the original and a photocopy of the same notarization. Section 117.05(3)(a), Florida Statutes, provides that the official notary seal—the rubber stamp type seal—must be affixed with “photographically reproducible black ink.” However, the notary law does not specify a color of ink to be used when signing a notarial certificate. Therefore, if you prefer, you may use a color of ink, other than black, in signing your name to distinguish between an original and a photocopy of your notarial certificate. Bear in mind, though, that copying machines now reproduce in color.

Q *May I notarize a signature on a document that has been prepared in another state, or on a document that will be sent to another state or country?*

A Yes, but you should indicate the correct venue (State of Florida, County of ____) where the notarization occurred and complete a proper notarial certificate with all the requirements of the Florida notary law. This may mean that you have to revise the form, particularly if it was prepared under the laws of another state. Additions or corrections should be made by striking through any incorrect information and adding the correct information before completing the notarization. It would also be a good idea to initial any correction that you make. Always include the name of the person whose signature is being notarized and the type of identification relied upon, even if the form provided does not request that information.

Q *When notarizing a signature, what elements must be included in my notarial certificate?*

A Sample notarial certificates are found in section 117.05(13), Florida Statutes. The essential elements are:

- the venue—where the notarization takes place (State of Florida, County of ____);
- the type of notarial act performed—whether you administered an oath to the document signer or took his or her acknowledgment (look for the key words “sworn to” or “acknowledged”);
- that the document signer personally appeared before the notary at the time of the notarization (usually indicated by the words “before me”);
- the date of the notarization;
- the name of the person(s) whose signature is being notarized;
- the type of identification relied upon in identifying the signer, either based on personal knowledge or an acceptable form of identification;
- the notary's signature (exactly as commissioned);
- the notary's name printed, typed, or stamped below the signature; and
- the notary's official seal (The seal must contain the words “Notary Public-State of Florida” and the notary's name, expiration date, and commission number, and must be affixed in black ink.)

If the prepared notarial certificate does not have each of these elements, you should add the appropriate language to the certificate to make it fully comply with the statutory requirements. Please review the form certificates on pages 30-31.

Q *As a bilingual notary public, may I certify the accuracy of a translation of a document from English to Spanish, or vice versa?*

A Certifying a translation is not an authorized duty of a Florida notary public. However, you may notarize the signature of the translator on an affidavit where the translator certifies and swears to the accuracy of his or her translation. If you are the translator for a particular document, you would be translating the document, not in your capacity as a notary public, but as a person who is fluent in both languages required for the translation. You should make an affidavit and have your signature notarized by another notary. The following sample affidavit should be sufficient to certify the accuracy of a translation.

STATE OF FLORIDA COUNTY OF _____
Before me this day personally appeared _____ (name of translator), who, being duly sworn, deposes and says:
I am fluent in both _____ (language) and _____ (language).
I certify that I have accurately translated the attached document, (name or description of document) , from _____ (language) into (language).
<i>Signature of Translator</i> (Address) _____
Sworn to and subscribed before me this _____ day of _____, 20____, by _____ (name of translator).
Personally known _____ or Produced identification _____ Type of identification _____
(SEAL)
<i>Notary Public</i> (TYPE, PRINT, OR STAMP NAME OF NOTARY PUBLIC)

Q *Recently, I quit my job. My employer kept my notary seal and commission certificate and refuses to return them to me. I am worried that someone may use my seal and I would be liable. What should I do?*

A Even if your commission, bond, and seal were paid for by your employer, your employer has no right to keep these items. In fact, it may be a criminal offense to do so. Remember, you were appointed as a notary public for a four-year commission—not your employer. And, your employer cannot make you resign your appointment—only the Governor may request your resignation or suspend you from the office of notary public. You should take several precautions, however, to protect yourself. First, notify the Secretary of State or the Governor’s Office in writing that your seal is in the possession of someone else. Be sure to give us your commission number and date of birth for identification, and tell us the last date that your seal was in your possession. Second, you may want to send a written request by certified mail to your employer requesting the return of your notary commission and seal. If your employer does not comply, you should file a report with the law enforcement agency having jurisdiction. This may protect you in the event that your seal is used and a complaint is filed against you. It may also be your defense if you are sued or charged criminally for an improper notarization that you did not perform. Third, you may obtain a duplicate notary commission certificate from the Department of State, Notary Commissions and Certifications Section, and another seal from your bonding agency or an office supply store. Your notary bond cannot be revoked, and you may continue serving as a notary public until the expiration of your term.

Q *May I sign a document as one of the witnesses if I am also acting as the notary public for that transaction?*

A Generally, a notary public may sign as one of the witnesses and as the notary public on a document. In fact, it is a common practice among Florida notaries, particularly on real estate transactions. Typically, you will see the title clerk sign as one of the two required witnesses and then notarize the document signer’s signature. In addition, a Florida court has held that “there is nothing to prevent a notary from also being a witness.” See *Walker v. City of Jacksonville*, 360 So.2d 52 (1978). However, before signing as a witness, the notary should ensure that the document does not require the notarization of the witnesses’ signatures. For example, a self-proof affidavit on a will or codicil requires the notarization of the signatures of the testator and both witnesses. If the notary signed as a witness in this instance, he or she would be notarizing his or her own signature, which is a criminal violation of the notary law.

The notary should also certify in the notarial certificate the name of the person whose signature is being notarized. Absent such specific notation, the law presumes that all signatures were notarized. Thus, the notary could unintentionally notarize his or her own signature if the notarial certificate is not specific.

Therefore, providing that the document does not require the notarization of the witnesses’ signatures, the notary may be one of the two subscribing witnesses as well as the notary public.

Q *What should I do when I affix my notary seal to a document and do not get a legible imprint?*

A The information on the rubber stamp notary seal is vital in identifying the notary public. If you get an imperfect imprint of your rubber stamp seal, you should affix the seal again as closely to the first imprint as possible. This may present a problem if the document has limited space. You should never affix your seal over writing, and, if necessary, you may have to resort to the margin area of the document. You may also need to stamp your seal at an angle in order to make it fit the available space. If your seal imprints improperly because it is defective, return it to the supplier for replacement.

Q *I am often asked to certify a photocopy of a tax return for customers who are enrolling their children in college or applying for a mortgage on a new home. May I do so?*

A No. Section 117.05(12), Florida Statutes, which authorizes notaries to attest to photocopies, requires the following:

- the notary may not certify a copy of a public record, if a copy can be obtained from the official source;
- the notary must have the original document from which to make the copy;
- the notary must either make the copy or supervise the making of the copy; and
- the notary must complete a certificate in substantially the form specified in the law.

In this case, the original tax forms have been filed with the Internal Revenue Service, and no original is available from which you can photocopy the document. However, certified copies are available from IRS. You may want to provide the following information to your customer.

To request a photocopy or a certified copy of a tax form from a previous year, the person must file Form 4506 "Request for Copy of Tax Form" with the IRS. The cost of the copies is \$14 and usually takes 6-8 weeks to receive. A form and more information can be obtained from any IRS office.

There are two alternative documents provided by the IRS that may satisfy the needs of your customer. First, a "1722 Letter" is available at no charge and can be ordered over the phone and received within just a few days. This document contains pertinent tax information and is usually accepted by all universities, lending institutions, courts, and government agencies in lieu of certified or "notarized" copies of tax forms. Second, a "Transcript of Account" contains limited tax information but itemizes all payments, interest, and/or penalties for an account. This document is also free and can be received within 30 days.

For additional information, your customer should visit an office of the Internal Revenue Service or call (800) 829-1040.

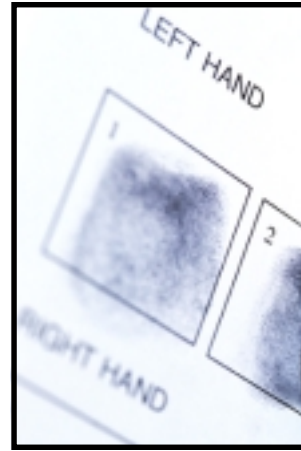


Q *I will be moving to another state in a few months. May I transfer my Florida notary commission to that state?*

A No. A Florida notary commission is not transferable to another state. Additionally, because you are a public officer appointed for the State of Florida, you must resign your commission if you change your legal residency and move out of state. You should submit a written letter of resignation to the Governor's Office, specifying an effective date, and return your notary commission certificate (the original, not a copy). You should also destroy your seal or return it to our office. Be sure to give us your new address, as the Governor will send you an acceptance letter acknowledging your resignation.

Q *May I require the fingerprints of a person for whom I notarize?*

A No. Florida law does not require, nor authorize, notaries to take fingerprints from persons whose signatures they notarize. Many notary journals or records books allow space for a thumbprint, but this feature is optional. If there is no objection from the signer, you may record a thumbprint in your journal. However, you should not refuse to provide notary services based solely on the person’s refusal to provide a fingerprint in your record book.



Q *Occasionally, I see the letters “S.S.” on a notarial certificate, usually near the venue. What do these letters mean?*

A Some notaries mistakenly believe that they are to fill in the signer’s social security number after the letters “S.S.” Actually, the letters are the abbreviation of the Latin word *scilicet*, meaning “in particular” or “namely.” They appear in the venue, so that the location of the notarization literally reads, “In the State of Florida, in particular the County of ____.” You may simply ignore these letters and complete the venue as usual.

SAMPLE

Sample sample sample sample sample sample
 (xxxx xx xxxxxx) sample sample sample sample
 (xxxxx xxxxxx xxxxxx xxxxxx xxxx xx) sample
 sample sample sample sample sample sample sample
 sample sample sample sample .

_____ *Signature* **L.S.**

DATE

STATE OF FLORIDA } **s.s.**
 COUNTY OF _____

Sample sample sample sample sample sample sample
 sample ___ day of ____, 20__, by (xxxx xxxxxx)
 sample sample sample sample sample .

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Q *What do the letters “L.S.” mean on a signature line on a document?*

A The Latin phrase *logus sigilli* means “place of the seal.” You may see the letters at the end of a signature line for the document signer or for the notary. Although rarely done, a person may use a private seal to authenticate his or her signature. More commonly, a corporate seal may be affixed next to the officer’s signature when he or she signs on behalf of the corporation. When affixing your notary seal, take care not affix the seal over these letters, or any other writing.

Appendices

Change of Address Form

Glossary of Notary Terms

Florida Notary Laws

Change of Address

Florida law requires that all notaries public must report any change in their home or business address or telephone number in writing to the Department of State within 60 days of the change. § 117.01(2), Fla. Stat. If you have a change to report, please copy the form below, complete it, and mail to:

**Department of State
Bureau of Notaries Public
Room 1902, The Capitol
Tallahassee, FL 32399-0250**

Name (as it appears on Commission) _____	
Commission # _____	Expiration Date _____
Social Security Number _____	Date of Birth _____
Home Address _____	Business Name _____
_____	Business Address _____
_____	_____
Phone () _____	Phone () _____

Moving Out of State?

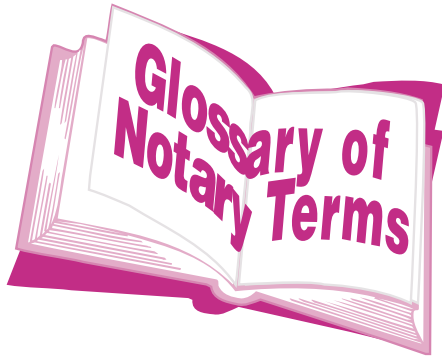
Florida law requires a notary public to maintain legal residency in the State of Florida during the entire term of the appointment. § 117.01(1), Fla. Stat. If you are no longer a legal resident of Florida, you must submit your resignation to the Governor immediately. Please complete the change of address form above and sign the resignation letter below. Destroy your notary seal, and return this form and your notary commission certificate to:

**Notary Section
Office of the Governor
LL06 Capitol
Tallahassee, FL 32399-0001**

Dear Governor:
Due to my move out of the State of Florida, I am resigning my notary public commission, effective _____.
(DATE)

SIGNATURE OF NOTARY

PRINTED NAME OF NOTARY



This glossary has been prepared to assist notaries in understanding commonly used words related to legal documents and the performance of their duties. The definitions are not precise legal definitions, but are generally based on Black's Law Dictionary, Fifth Edition.

ACKNOWLEDGMENT

A formal declaration before an authorized official (a notary public) by a person signing an instrument that such execution is his or her free act and deed. The term also refers to the notary's certificate on the document indicating that it was so acknowledged.

ADMINISTER

To discharge the duties of an office; to give (as in the giving of an oath).

AFFIDAVIT

A written statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it before an officer authorized to administer oaths, i.e., a notary public.

AFFIRM

To make a solemn, formal declaration under the penalty of perjury that certain statements are true. An affirmation is legally equivalent to an oath and may be substituted for an oath when a document requires an oath for its execution, i.e., an affidavit.

AFFIX

To attach or impress the notary seal to a document.

APOSTILLE

A certificate of notarial authority issued by the Florida Secretary of State for notarized documents being sent out of Florida to those countries who are parties to the international treaty commonly known as the Hague Convention.

ATTEST

To bear witness to or to certify.

AUTHENTICATION

A process by which the Florida Secretary of State certifies or verifies the status of a notary public. An Apostille or a Certificate of Notarial Authority is attached to the notarized document.

CERTIFIED COPY

A copy of a document or record, signed and certified as a true copy by the public official who has custody of the original record. NOTE: A notary may make an "attested photocopy," but not a certified copy. A certified copy is not the same as an original document.

CODICIL

A supplement or addendum to a will.

COERCE

To force into submission or compliance.

COMMISSION

The certificate issued by the Governor verifying appointment as a notary public and authorizing the notary public to perform the official acts of that office. The commission also bears the commission number and the beginning and ending dates of the term of appointment.

CUSTODIAN OF THE DOCUMENT

The person who has charge or custody of the document. In the case of making an attested photocopy, the "document's custodian" is the person presenting the document, who may or may not be the document signer.

DEED

A document by which a person conveys (transfers) real property.

Quitclaim Deed — A deed intended to pass any title, interest, or claim which the grantor may have in the real property, but not professing that such title is valid or containing any warranty for title.

Warranty Deed — A deed in which the grantor warrants or guarantees good clear title to the real property.

DEPONENT

The person giving testimony in a deposition.

DEPOSITION

The testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution.

EXECUTE A DOCUMENT

To perform all formalities necessary to make a document fully effective; often a matter of signing, but may require delivery or other elements.

FLORIDA NOTARY PUBLIC

A public officer appointed by the Governor whose function is to administer oaths; to take acknowledgments of deeds and other instruments; to attest to photocopies of certain documents; and to perform other duties specified by law.

FLORIDA STATUTES

Legislatively enacted laws which govern our state, as opposed to court-decided or unwritten common laws.

FREE ACT AND DEED

To admit one's act and assume the responsibility for it.

GRANTEE

A person who receives the deed of real property from the grantor, i.e., generally the buyer.

GRANTOR

The person who transfers a deed of real property, i.e., generally the seller.

INSTRUMENT

A written document.

JURAT

The written notarial certificate on any sworn statement or affidavit completed by the notary public indicating that the document was sworn or affirmed to by the signer.

LEASE

An agreement between two parties, where one party is the owner of certain property and grants to another party the right to possess, use and enjoy such property for a specified period of time in exchange for periodic payment of a stipulated price, referred to as rent.

LESSEE

One who rents property from another.

LESSOR

One who rents property to another.

LIEN

A legal right or security attached to real estate or personal property until the payment of some debt, obligation, or duty.

LITIGATION

A lawsuit or legal action.

MALFEASANCE

The doing of an act which a person ought not to do at all.

MISFEASANCE

The improper doing of an act which a person might lawfully do.

NEGLIGENCE

The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

NOTARIAL ACT

The official acts of a notary public — administering an oath, taking an acknowledgment, attesting to a photocopy, or any other other act authorized by law.

NOTARIAL CERTIFICATE

A written statement made by the notary public certifying specific facts of the notarial act performed.

OATH

Any form of attestation or pledge by which a person signifies that he or she is bound in conscience and out of a sense of responsibility to a Supreme Being to the truthfulness for some statement. Willfully swearing to untrue statements constitutes perjury.

PERJURY

Making a false statement under oath or affirmation. Perjury is a felony punishable by a fine and/or prison term.

PERSONALLY KNOWN

Having an acquaintance derived from association with an individual, which establishes the individual’s identity with at least a reasonable certainty.

POWER OF ATTORNEY

A document authorizing a person to act as another’s agent or attorney for a specified purpose.

Principal — The person making the power of attorney.

Attorney-in-Fact — The person authorized to act for another by power of attorney.

REASONABLE CARE

The degree of care which a person of ordinary prudence and intelligence would exercise in the same or similar circumstances. Failure to exercise such care is negligence.

SATISFACTORY EVIDENCE

Any one of the acceptable forms of identification specified in section 117.05(5), Florida Statutes, providing that the notary does not have any information, evidence, or other circumstances which would lead a reasonable person to believe that the person making the acknowledgment (or taking the oath) is not the person he or she claims to be.

SOLEMNIZE THE RITES OF MATRIMONY

To perform a marriage ceremony.

SUBSCRIBE

To sign a document.

SWEAR

To take an oath.

TESTATOR

The person making a will.

VENUE

The location of the notarial act, usually stated in the form:

STATE OF FLORIDA

COUNTY OF _____

WILL

An instrument by which a person makes a disposition of his or her property, to take effect after his or her death.

FLORIDA STATUTES CHAPTER 117

Notaries Public

Effective July 1, 2000

- 117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.
- 117.03 Administration of oaths.
- 117.04 Acknowledgments.
- 117.045 Marriages.
- 117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photo copies; penalties.
- 117.06 Validity of acts prior to April 1, 1903.
- 117.10 Law enforcement and correctional officers.
- 117.103 Certification of notary's authority by Secretary of State.
- 117.105 False or fraudulent acknowledgments; penalty.
- 117.107 Prohibited acts.
- 117.108 Validity of acts, seals, and certificates prior to January 1, 1995.

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.—

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom shall be at least 18 years of age and a legal resident of the state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. Notaries public shall be appointed for 4 years and shall use and exercise the office of notary public within the boundaries of this state. An applicant must be able to read, write, and understand the English language.

(2) The application for appointment shall be signed and sworn to by the applicant and shall be accompanied by a fee of \$25, together with the \$10 commission fee required by s. 113.01, and a surcharge of \$4, which \$4 is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public. The Executive Office of the Governor may contract with private vendors to provide the services set forth in this section. However, no commission fee shall be required for the issuance of a commission as a notary public to a veteran who served during a period of wartime service, as defined in s. 1.01(14), and who has been rated by the United States Government or the United States Department of Veterans Affairs or its predecessor to have a disability rating of 50 percent or more; such a disability is subject to verification by the Secretary of State, who has authority to adopt reasonable procedures to implement this act. The oath of office and notary bond required by this section shall also accompany the application and shall be in a form prescribed by the Department of State which shall require, but not be limited to, the following information: full name, residence address and telephone number, business address and telephone number, date of birth, race, sex, social security number, citizenship status, driver's license number or the number of other official state-issued identification, affidavit of good character from someone unrelated to the applicant who has known the applicant for 1 year or more, a list of all professional licenses and commissions issued by the state during the previous 10 years and a statement as to whether or not the applicant has had such license or commission revoked or suspended, and a statement as to whether or not the applicant has been convicted of a felony, and, if there has been a conviction, a statement of the nature of the felony and restoration of civil rights. The applicant may not use a fictitious or assumed name other than a nickname on an application for commission. The application shall be maintained by the Department of State for the full term of a notary commission. A notary public shall notify, in writing, the Department of State of any change in his or her business address, home telephone number, business telephone number, home address, or criminal record within 60 days after such change. The Governor may require any other information he or she deems necessary for determining whether an applicant is eligible for a notary public commission. Each applicant must swear or affirm on the application that the information on the application is true and correct.

(3) As part of the oath, the applicant must swear that he or she has read this chapter and knows the duties, responsibilities, limitations, and powers of a notary public.

(4) The Governor may suspend a notary public for any of the grounds provided in s. 7, Art. IV of the State Constitution. Grounds constituting malfeasance, misfeasance, or neglect of duty include, but are not limited to, the following:

- (a) A material false statement on the application.
- (b) A complaint found to have merit by the Governor.
- (c) Failure to cooperate or respond to an investigation by the Governor's office or the Department of State regarding a complaint.
- (d) Official misconduct as defined in s. 839.25.
- (e) False or misleading advertising relating to notary public services.
- (f) Unauthorized practice of law.
- (g) Failure to report a change in business or home address or telephone number, or failure to submit documentation to request an amended commission after a lawful name change, within the specified period of time.
- (h) Commission of fraud, misrepresentation, or any intentional violation of this chapter.
- (i) Charging fees in excess of fees authorized by this chapter.
- (j) Failure to maintain the bond required by this section.

(5)(a) If a notary public receives notice from the Department of State that his or her office has been declared vacant, the notary shall forthwith mail or deliver to the Secretary of State his or her notary commission.

(b) A notary public who wishes to resign his or her commission, or a notary public who does not maintain legal residence in this state during the entire term of appointment, or a notary public whose resignation is required by the Governor, shall send a signed letter of resignation to the Governor and shall return his or her certificate of notary public commission. The resigning notary public shall destroy his or her official notary public seal of office, unless the Governor requests its return.

(6) No person may be automatically reappointed as a notary public. The application process must be completed regardless of whether an applicant is requesting his or her first notary commission, a renewal of a commission, or any subsequent commission.

(7)(a) A notary public shall, prior to executing the duties of the office and throughout the term of office, give bond, payable to any individual harmed as a result of a breach of duty by the notary public acting in his or her official capacity, in the amount of \$7,500, conditioned for the due discharge of the office and shall take an oath that he or she will honestly, diligently, and faithfully discharge the duties of the notary public. The bond shall be approved and filed with the Department of State and executed by a surety company for hire duly authorized to transact business in this state.

(b) Any notary public whose term of appointment extends beyond January 1, 1999, is required to increase the amount of his or her bond to \$7,500 only upon reappointment on or after January 1, 1999.

(c) Beginning July 1, 1996, surety companies for hire which process notary public applications, oaths, affidavits of character, and bonds for submission to the Department of State must properly submit these documents in a software and hard copy format approved by the Department of State.

(8) Upon payment to any individual harmed as a result of a breach of duty by the notary public, the entity who has issued the bond for the notary public shall notify the Governor of the payment and the circumstances which led to the claim.

117.03 Administration of oaths.—A notary public may administer an oath and make a certificate thereof when it is necessary for the execution of any writing or document to be published under the seal of a notary public. The notary public may not take an acknowledgment of execution in lieu of an oath if an oath is

required.

117.04 Acknowledgments.—A notary public is authorized to take the acknowledgments of deeds and other instruments of writing for record, as fully as other officers of this state.

117.045 Marriages.—A notary public is authorized to solemnize the rites of matrimony. For solemnizing the rites of matrimony, the fee of a notary public may not exceed those provided by law to the clerks of the circuit court for like services.

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(1) No person shall obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed \$10 for any one notarial act, except as provided in s. 117.045.

(b) A notary public may not charge a fee for witnessing an absentee ballot in an election, and must witness such a ballot upon the request of an elector, provided the notarial act is in accordance with the provisions of this chapter.

(3)(a) A notary public seal shall be affixed to all notarized paper documents and shall be of the rubber stamp type and shall include the words “Notary Public-State of Florida.” The seal shall also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number. The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public shall print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned. An impression-type seal may be used in addition to the rubber stamp seal, but the rubber stamp seal shall be the official seal for use on a paper document, and the impression-type seal may not be substituted therefor.

(b) Any notary public whose term of appointment extends beyond January 1, 1992, is required to use a rubber stamp type notary public seal on paper documents only upon reappointment on or after January 1, 1992.

(c) The notary public official seal and the certificate of notary public commission are the exclusive property of the notary public and must be kept under the direct and exclusive control of the notary public. The seal and certificate of commission must not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the commission.

(d) A notary public whose official seal is lost, stolen, or believed to be in the possession of another person shall immediately notify the Department of State or the Governor in writing.

(e) Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notarization in the format, “State of Florida, County of _____.”

(b) The type of notarial act performed, an oath or an acknowledgment, evidenced by the words “sworn” or “acknowledged.”

(c) That the signer personally appeared before the notary public at the time of the notarization.

(d) The exact date of the notarial act.

(e) The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.

(f) The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in subsection (5).

(g) The notary's official signature.

(h) The notary's name, typed, printed, or stamped below the signature.

(i) The notary's official seal affixed below or to either side of the notary's signature.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

(a) For purposes of this subsection, "personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

(b) For the purposes of this subsection, "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver's license issued by the public agency authorized to issue driver's licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the document is stamped by the United States Immigration and Naturalization Service;

d. A driver's license or an identification card issued by a public agency authorized to issue driver's licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

g. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

h. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named

in the document is the person whose signature is to be notarized; or

i. An identification card issued by the United States Immigration and Naturalization Service.

(6) The employer of a notary public shall be liable to the persons involved for all damages proximately caused by the notary's official misconduct, if the notary public was acting within the scope of his or her employment at the time the notary engaged in the official misconduct.

(7) Any person who acts as or otherwise willfully impersonates a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Any notary public who knowingly acts as a notary public after his or her commission has expired is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Any notary public who lawfully changes his or her name shall, within 60 days after such change, request an amended commission from the Secretary of State and shall send \$25, his or her current commission, and a notice of change form, obtained from the Secretary of State, which shall include the new name and contain a specimen of his or her official signature. The Secretary of State shall issue an amended commission to the notary public in the new name. A rider to the notary public's bond must accompany the notice of change form. After submitting the required notice of change form and rider to the Secretary of State, the notary public may continue to perform notarial acts in his or her former name for 60 days or until receipt of the amended commission, whichever date is earlier.

(10) A notary public who is not an attorney who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall post or otherwise include with the advertisement a notice in English and in the language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF FLORIDA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(11) Literal translation of the phrase "Notary Public" into a language other than English is prohibited in an advertisement for notarial services.

(12)(a) A notary public may supervise the making of a photocopy of an original document and attest to the trueness of the copy, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

A notary public must use a certificate in substantially the following form in notarizing an attested copy:

STATE OF FLORIDA
COUNTY OF _____

On this ____ day of _____, (year), I attest that the preceding or attached document is a true, exact, complete, and unaltered photocopy made by me of (description of document) presented to me by the document's custodian, _____, and, to the best of my knowledge, that the photocopied document is neither a vital record nor a public record, certified copies of which are available from an official source other than a notary public.

(Official Notary Signature and Notary Seal)

(Name of Notary Typed, Printed or Stamped)

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, (year), by (name of person making statement).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person acknowledging).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person) as (type of authority, . . . e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(a) A notary public may notarize the signature of a person who is blind after the notary public has read the entire instrument to that person.

(b) A notary public may notarize the signature of a person who signs with a mark if:

1. The document signing is witnessed by two disinterested persons;
2. The notary prints the person's first name at the beginning of the designated signature line and the person's last name at the end of the designated signature line; and
3. The notary prints the words "his (or her) mark" below the person's signature mark.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

1. For an oath or affirmation:

(First Name) (Last Name)

His (or Her) Mark

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this ____ day of _____, (year), by (name of person making statement), who

signed with a mark in the presence of these witnesses:

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

2. For an acknowledgment in an individual capacity:

(First Name) (Last Name)

His (or Her) Mark

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person acknowledging), who signed with a mark in the presence of these witnesses:

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

(d) A notary public may sign the name of a person whose signature is to be notarized when that person is physically unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary to sign in his or her presence;
2. The document signing is witnessed by two disinterested persons;
3. The notary writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances of the signing in the notarial certificate.

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) before me this ____ day of _____, (year), by (name of person making statement), and subscribed by (name of notary) at the direction of and in the presence of (name of person making statement), and in the presence of these witnesses.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person acknowledging) and subscribed by (name of notary) at the direction of and in the presence of (name of person acknowledging), and in the presence of these witnesses:

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

117.06 Validity of acts prior to April 1, 1903.—Any and all notarial acts that were done by any notary public in the state prior to April 1, 1903, which would have been valid had not the term of office of the notary public expired, are declared to be valid.

117.10 Law enforcement and correctional officers.—Law enforcement officers, correctional officers, and correctional probation officers, as defined in s. 943.10, and traffic accident investigation officers and traffic infraction enforcement officers, as described in s. 316.640, are authorized to administer oaths when engaged in the performance of official duties. Sections 117.01, 117.04, 117.045, 117.05, and 117.103 do not apply to the provisions of this section. An officer may not notarize his or her own signature.

117.103 Certification of notary's authority by Secretary of State.— A notary public is not required to record his or her notary public commission in an office of a clerk of the circuit court. If certification of the notary public's commission is required, it must be obtained from the Secretary of State. Upon the receipt of a written request and a fee of \$10 payable to the Secretary of State, the Secretary of State shall issue a certificate of notarial authority, in a form prescribed by the Secretary of State, which shall include a statement explaining the legal qualifications and authority of a notary public in this state.

117.105 False or fraudulent acknowledgments; penalty.—A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

117.107 Prohibited acts.—

(1) A notary public may not use a name or initial in signing certificates other than that by which the notary public is commissioned.

(2) A notary public may not sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp.

(3) A notary public may not affix his or her signature to a blank form of affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment.

(4) A notary public may not take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), and where the person has not been restored to capacity as a matter of record.

(5) A notary public may not notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.

(6) A notary public may not take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.

(7) A notary public may not change anything in a written instrument after it has been signed by anyone.

(8) A notary public may not amend a notarial certificate after the notarization is complete.

(9) A notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.

(10) A notary public may not notarize a signature on a document if the document is incomplete or blank.

However, an endorsement or assignment in blank of a negotiable or nonnegotiable note and the assignment in blank of any instrument given as security for such note is not deemed incomplete.

(11) A notary public may not notarize a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.

(12) A notary public may not notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction; however, a notary public who is an employee may notarize a signature for his or her employer, and this employment does not constitute a financial interest in the transaction nor make the notary a party to the transaction under this subsection as long as he or she does not receive a benefit other than his or her salary and the fee for services as a notary public authorized by law. For purposes of this subsection, a notary public who is an attorney does not have a financial interest in and is not a party to the underlying transaction evidenced by a notarized document if he or she notarizes a signature on that document for a client for whom he or she serves as an attorney of record and he or she has no interest in the document other than the fee paid to him or her for legal services and the fee authorized by law for services as a notary public.

117.108 Validity of acts, seals, and certificates prior to January 1, 1995.—A notarial act performed, a notarial certificate signed, or a notarial seal used by any notary public before January 1, 1995, which would have been valid under the laws in effect in this state on January 1, 1991, is valid.

ELECTRONIC NOTARIZATION

§. 668.50 Section 1.(1) SHORT TITLE— This section may be sighted as the “Uniform Electronic Transaction Act.”

(1) NOTARIZATION AND ACKNOWLEDGMENT.—

(a) If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized by applicable law to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. Neither a rubber stamp nor an impression type seal is required for an electronic notarization.

(b) A first-time applicant for a notary commission must submit proof that the applicant has, within one year prior to the application, completed at least three hours of interactive or classroom instruction, including electronic notarization, and covering the duties of the notary public. Courses satisfying this section may be offered by any public or private sector person or entity registered with the Executive Office of the Governor and must include a core curriculum approved by that office.

THE CONSTITUTION OF THE STATE OF FLORIDA

(as revised in 1968 and subsequently amended January 1999)

NOTARIES ARE PUBLIC (STATE) OFFICERS

Article II, Section 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

“I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.”,

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

GOVERNOR'S AUTHORITY TO SUSPEND NOTARIES

Article IV, Section 7. Suspensions; filling office during suspensions.—

(a) By executive order stating the grounds and filed with the secretary of state, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

(b) The senate may, in proceedings prescribed by law, remove from office or reinstate the suspended official and for such purpose the senate may be convened in special session by its president or by a majority of its membership.

DISQUALIFICATION DUE TO FELONY CONVICTION

Article IV, Section 4. Disqualifications.—

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Article X, Section 10. Felony; definition.—The term “felony” as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.

FLORIDA STATUTES, OTHER THAN CHAPTER 117, RELATED TO NOTARIES PUBLIC

COMMISSION FEE; VETERANS' EXEMPTION

113.01 Fee for commissions issued by Governor.—A fee of \$10 is prescribed for the issuance of each commission issued by the Governor of the state and attested by the Secretary of State for an elected officer or a notary public.

1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

(14) The term “veteran” means a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served during one of the following periods of wartime service:

(a) Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.

(b) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(c) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.

(d) World War II: December 7, 1941, to December 31, 1946.

(e) Korean Conflict: June 27, 1950, to January 31, 1955.

(f) Vietnam Era: February 28, 1961, to May 7, 1975.

(g) Persian Gulf War: August 2, 1990, and ending on the date thereafter prescribed by presidential proclamation or by law.

AUTHORITY OF SECRETARY OF STATE TO ISSUE APOSTILLES

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.— (7) The Secretary of State may issue apostilles conforming to the requirements of the international treaty known as the Hague Convention of 1961 and may charge a fee for the issuance of apostilles not to exceed \$10 per apostille. The Secretary of State has the sole authority in this state to establish, in accordance with the laws of the United States, the requirements and procedures for the issuance of apostilles. The Department of State may adopt rules to implement this subsection.

FEES FOR NOTARY SERVICES

28.24 Service charges by clerk of the circuit court.—The clerk of the circuit court shall make the following charges for services rendered by the clerk's office in recording documents and instruments and in performing the duties enumerated. However, in those counties where the clerk's office operates as a fiscal unit of the county pursuant to s. [145.022\(1\)](#), the clerk shall not charge the county for such services.

(29) For solemnizing matrimony 20.00

839.11 Extortion by officers of the state.—Any officer of this state who willfully charges, receives, or collects any greater fees or services than the officer is entitled to charge, receive, or collect by law is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

GOVERNMENT EMPLOYEES AS NOTARIES PUBLIC; FEES COLLECTED

116.35 Notary public commissions; employees of state and county agencies.—Each agency, board, commission or department of the state and of the several counties of the state is hereby authorized to pay the cost of securing a notary public commission for any employee of such agency, board, commission or department. Such cost is declared to be an expense of such agency, board, commission or department and shall be expended from the budget thereof. The chief administrative officer of each such agency, board, commission or department shall determine the number of notaries public necessary for the proper administration of such agency, board, commission or department. All fees collected by such notaries public as hereinafter provided shall become fee receipts of the state or the several counties and shall be deposited in the general fund from which the budget of such agency, board, commission or department is allocated.

116.36 Notary public commissions; municipal employees.—Each agency, board, commission or department of each of the several municipalities of the state is hereby authorized to pay the cost of securing a notary public commission for any employee of such agency, board, commission or department. Such cost is declared to be an expense of such agency, board, commission or department and shall be expended from

the budget thereof. The chief administrative officer of each such agency, board, commission or department shall determine the number of notaries public necessary for the proper administration of such agency, board, commission or department. All fees collected by such notaries public as hereinafter provided shall become fee receipts of such municipality and shall be deposited in the general fund thereof.

116.37 Notary public commissions; elected officers.—In all cases where such agency, board, commission or department is under the direction of one or more elected officers such officer or officers may become notaries public in like manner as provided in the case of employees as aforesaid.

116.38 Notary fees.—

(1) Except as is hereinafter provided, all such notaries shall collect fees for their services as notaries performed in connection with such agency, board, commission or department at the rates provided for under chapter 117; provided, however, that in any case wherein a certain fee shall be provided by law for such service then in that event such fee as provided by law shall be collected.

(2) No notary fee shall be charged or collected by such notaries in connection with such agency, board, commission or department, in connection with or incidental to the issuance of motor vehicle license tags or titles.

(3) No notary public fees shall be charged by such notaries for notarizing loyalty oaths which are required by law.

(4) The chief administrative officer of any such agency, board, commission or department may, upon determining that such service should be performed as a public service, authorize such service to be performed free of charge.

320.04 Registration service charge.—

(2)...No tax collector, deputy tax collector, or employee of the state or any county shall charge, collect, or receive any fee or compensation for services performed as notary public in connection with or incidental to the issuance of license plates or titles. The provisions of this subsection and of s. 116.38(2) prohibiting the charging, collecting, or receiving of notary public fees do not apply to any privately owned license plate agency appointed by the county manager of a charter county which has an appointed tax collector.

OATHS (AFFIRMATIONS) AND ACKNOWLEDGMENTS

1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

(5) The word “oath” includes affirmations.

92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.—

(1) **IN THIS STATE.**—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) **IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.**—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments.

The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) **IN FOREIGN COUNTRIES.**—Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

92.52 Affirmation equivalent to oath.—Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

695.03 Acknowledgment and proof; validation of certain acknowledgments; legalization or authentication before foreign officials.—To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the form and manner following:

(1) **WITHIN THIS STATE.**—An acknowledgment or proof made within this state may be made before a judge, clerk, or deputy clerk of any court; a United States commissioner or magistrate; or a notary public or civil-law notary of this state, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.

(2) **WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.**—An acknowledgment or proof made out of this state but within the United States may be made before a civil-law notary of this state or a commissioner of deeds appointed by the Governor of this state; a judge or clerk of any court of the United States or of any state, territory, or district; a United States commissioner or magistrate; or a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is made before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand on the instrument, "I am a Notary Public of the State of (state) , and my commission expires on (date) ."

(3) **WITHIN FOREIGN COUNTRIES.**—If the acknowledgment, legalization, authentication, or proof is made in a foreign country, it may be made before a commissioner of deeds appointed by the Governor of this state to act in such country; before a notary public of such foreign country or a civil-law notary of this state or of such foreign country who has an official seal; before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by the Laws or Articles of War of the United States to perform the duties of notary public, and the certificate of acknowledgment, legalization, authentication, or proof must be under the seal of the officer. A certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil-law notary or notary public of that country has affixed her or his official seal is sufficient as an acknowledgment. For the purposes of this section, the term "civil-law notary" means a civil-law notary as defined in chapter 118 or an official of a foreign country who has an official seal and who is authorized to make legal or lawful the execution of any document in that jurisdiction, in which jurisdiction the affixing of her or his official seal is deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

OATH BY WRITTEN DECLARATION

92.525 Verification of documents; perjury by false written declaration, penalty.—

(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or

(b) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: “Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section:

(a) The term “administrative agency” means any department or agency of the state or any county, municipality, special district, or other political subdivision.

(b) The term “document” means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

CERTAIN OFFICERS IN THE ARMED FORCES AUTHORIZED TO TAKE ACKNOWLEDGMENTS AND ADMINISTER OATHS

92.51 Oaths, affidavits, and acknowledgments; taken or administered by commissioned officer of United States Armed Forces.—

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person’s presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person’s act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

695.031 Affidavits and acknowledgments by members of armed forces and their spouses.—

(1) In addition to the manner, form and proof of acknowledgment of instruments as now provided by law, any person serving in or with the Armed Forces of the United States, including the Army, Navy, Marine Corps, Coast Guard, or any component or any arm or service of any thereof, including any female auxiliary of any thereof, and any person whose duties require his or her presence with the Armed Forces of the United States, as herein designated, or otherwise designated by law or military or naval command, may acknowledge any instrument, wherever located, either within or without the state, or without the United States, before any commissioned officer in active service of the Armed Forces of the United States, as herein designated, or otherwise designated by law, or military or naval command, or order, with the rank of second lieutenant or higher in the Army or Marine Corps, or of any component or any arm or service of either thereof, including any female auxiliary of any thereof, or ensign or higher in the Navy or United States Coast Guard, or of any component or any arm or service of either thereof, including any female auxiliary of any thereof.

(2) The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment or otherwise shall be required, and no seal shall be necessary, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this ____ day of ____, (year), before me ____, the undersigned officer, personally appeared ____, known to me (or satisfactorily proven) to be serving in or with, or whose duties require her or his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that she or he executed the same for the purposes therein contained, and the undersigned does further certify that she or he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

(Signature of commissioned officer.)

(Rank of commissioned officer and command or branch of service to which officer is attached.)

ADDITIONAL NOTARIAL CERTIFICATES FOUND IN CHAPTER 695, FLORIDA STATUTES, "RECORD OF CONVEYANCES OF REAL ESTATE"

695.25 Short form of acknowledgment.—The forms of acknowledgment set forth in this section may be used, and are sufficient for their respective purposes, under any law of this state. The forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:

STATE OF ____
COUNTY OF ____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging), who is personally known to me or who has produced (type of identification) as identification.

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

(2) For a corporation:

STATE OF ____
COUNTY OF ____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

(3) For a partnership:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership. He/she is personally known to me or has produced (type of identification) as identification.

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

(4) For an individual acting as principal by an attorney in fact:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact, who is personally known to me or who has produced (type of identification) as identification on behalf of (name of principal).

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

(5) By any public officer, trustee, or personal representative:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position), who is personally known to me or who has produced (type of identification) as identification.

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Title or rank)

(Serial number, if any)

NOTARIES AUTHORIZED TO PERFORM MARRIAGE CEREMONIES

741.07 Persons authorized to solemnize matrimony.—

(1) All regularly ordained ministers of the gospel or elders in communion with some church, or other ordained clergy, and all judicial officers, including retired judicial officers, clerks of the circuit courts, and notaries public of this state may solemnize the rights of matrimonial contract, under the regulations prescribed by law. Nothing in this section shall make invalid a marriage which was solemnized by any member of the clergy, or as otherwise provided by law prior to July 1, 1978.

(2) Any marriage which may be had and solemnized among the people called “Quakers,” or “Friends,” in the manner and form used or practiced in their societies, according to their rites and ceremonies, shall be good and valid in law; and wherever the words “minister” and “elder” are used in this chapter, they shall be held to include all of the persons connected with the Society of Friends, or Quakers, who perform or have charge of the marriage ceremony according to their rites and ceremonies.

741.08 Marriage not to be solemnized without a license.—Before any of the persons named in s. 741.07 shall solemnize any marriage, he or she shall require of the parties a marriage license issued according to the requirements of s. 741.01, and within 10 days after solemnizing the marriage he or she shall make a certificate

thereof on the license, and shall transmit the same to the office of the county court judge or clerk of the circuit court from which it issued.

NOTARIES AUTHORIZED TO VERIFY A VEHICLE IDENTIFICATION NUMBER (VIN)

319.23 Application for, and issuance of, certificate of title.—

(3) If a certificate of title has not previously been issued for a motor vehicle or mobile home in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a proper bill of sale or sworn statement of ownership, or a duly certified copy thereof, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of the state or county from which the motor vehicle or mobile home was brought into this state. The application shall also be accompanied by:

(a)1. A sworn affidavit from the seller and purchaser verifying that the vehicle identification number shown on the affidavit is identical to the vehicle identification number shown on the motor vehicle; or

2. An appropriate departmental form evidencing that a physical examination has been made of the motor vehicle by the owner and by a duly constituted law enforcement officer in any state, a licensed motor vehicle dealer, a license inspector as provided by s. 320.58, or a notary public commissioned by this state and that the vehicle identification number shown on such form is identical to the vehicle identification number shown on the motor vehicle...

NOTARIES AUTHORIZED TO CERTIFY THE CONTENTS OF A SAFE-DEPOSIT BOX

655.94 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe-deposit box has not been paid for 3 months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee, or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box. The lessor has a lien on the package and its contents to the extent of any rental due and owing plus the actual, reasonable costs of removing the contents from the safe-deposit box.

CERTAIN LAW ENFORCEMENT OFFICERS AUTHORIZED TO ADMINISTER OATHS

943.10 Definitions; ss. 943.085-943.255.—The following words and phrases as used in ss. 943.085-943.255 are defined as follows:

(1) “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

(2) “Correctional officer” means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of

inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

(3) “Correctional probation officer” means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

(6) “Part-time law enforcement officer” means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

(7) “Part-time correctional officer” means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1.a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission, the Division of Law Enforcement of the Department of Environmental Protection, and law enforcement officers of the Department of Transportation each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who successfully completes at least 200 hours of instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This paragraph does not permit the carrying of firearms or other weapons, nor do such officers have arrest authority other than for the issuance of a traffic citation as authorized in this paragraph.

(2) COUNTIES.—

The sheriff’s office of each county may employ as a traffic crash investigation officer any individual who successfully completes at least 200 hours of instruction in traffic crash investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the commission, but who does not necessarily otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic crash investigation officer who makes an investigation at the scene of a traffic crash may issue traffic citations when, based upon personal investigation, he or she has reasonable and probable grounds to believe that a person who was involved has committed an offense under this chapter in connection with the crash. This paragraph does not permit the carrying of firearms or other weapons, nor do such officers have arrest authority other than for the issuance of a traffic citation as authorized in this paragraph.

(3) MUNICIPALITIES.—

(b) The police department of a chartered municipality may employ as a traffic crash investigation officer any individual who successfully completes at least 200 hours of instruction in traffic crash investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the commission, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic crash investigation officer who makes an investigation at the scene of a traffic crash is authorized to issue traffic citations when, based upon personal investigation, he or she has reasonable and probable grounds to believe that a person involved has committed an offense under the provisions of this chapter in connection with the crash. Nothing in this paragraph shall be construed to permit the carrying of firearms or other weapons, nor shall such officers have arrest authority other than for the issuance of a traffic citation as authorized above.

(5)(a) Any sheriff’s department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes at least 200 hours of instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in s. 318.14.

(b) The traffic enforcement officer shall be employed in relationship to a selective traffic enforcement program at a fixed location or as part of a crash investigation team at the scene of a vehicle crash or in other types of traffic infraction enforcement under the direction of a fully qualified law enforcement officer; however, it is not necessary that the traffic infraction enforcement officer’s duties be performed under the immediate supervision of a fully qualified law enforcement officer.

(c) This subsection does not permit the carrying of firearms or other weapons, nor do traffic infraction enforcement officers have arrest authority other than the authority to issue a traffic citation as provided in this subsection.

NOTARIZING A WILL WITH A SELF-PROOF AFFIDAVIT

732.503 Self-proof of will.—A will or codicil executed in conformity with s. 732.502(1) and (2) may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer’s certificate attached to or following the will, in substantially the following form:

STATE OF _____
COUNTY OF _____

We, _____, _____, and _____ the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as the testator’s last will (codicil), that the testator (signed) (or directed another to sign for him or her), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

(Testator)

(Witness)

(Witness)

Subscribed and sworn to before me by _____, the testator who is personally known to me or who has produced (type of identification) as identification, and by _____, a witness who is personally known to me or who has produced (type of

identification) as identification, and by _____, a witness who is personally known to me or who has produced (type of identification) as identification, on _____, (year) .

(Signature of Notary Public)

(Print, type, or stamp commissioned name of Notary Public)

NOTARIES WHO PERFORM SERVICE FOR RURAL ELECTRIC COOPERATIVES

425.26 Trustees, officers or members, notaries.—No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

RECORDING REQUIREMENTS

695.26 Requirements for recording instruments affecting real property.—

*1)(d) The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such notary public or other officer authorized to take acknowledgment or proofs.

**This is not the only recording requirement but it is the only one that is directly related to the notarization. This section does not apply to: documents executed before July 1,1991: an instrument executed, acknowledged, or proved outside of the state: or a will. For a complete understanding of recording requirements, please review all of s.695.26, Florida Statutes, or contact the recording section of the county clerk's office.*

PERSONS ADJUDICATED MENTALLY INCAPACITATED

744.3215 Rights of persons determined incapacitated.—

2) Rights that may be removed from a person by an order determining incapacity include the right:

- (a) To marry.
- (b) To vote.
- (c) To personally apply for government benefits.
- (d) To have a driver's license.
- (e) To travel.
- (f) To seek or retain employment.

(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

- (a) To contract.
- (b) To sue and defend lawsuits.
- (c) To apply for government benefits.
- (d) To manage property or to make any gift or disposition of property.
- (e) To determine his or her residence.
- (f) To consent to medical and mental health treatment.
- (g) To make decisions about his or her social environment or other social aspects of his or her life.

OFFICIAL MISCONDUCT BY A NOTARY PUBLIC

839.25 Official misconduct.—

(1) "Official misconduct" means the commission of the following act by a public servant, with corrupt

intent to obtain a benefit for himself or herself or another or to cause unlawful harm to another: knowingly falsifying, or causing another to falsify, any official record or official document.

(2) “Corrupt” means done with knowledge that act is wrongful and with improper motives.

(3) Official misconduct under this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

FORGERY

831.01 Forgery.—Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

831.02 Uttering forged instruments.—Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in s. 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

PENALTIES AND FINES FOR VIOLATION OF NOTARY LAWS

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(3) A person who has been convicted of any other designated felony may be punished as follows:

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

775.083 Fines.—

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(c) \$5,000, when the conviction is of a felony of the third degree.

(d) \$1,000, when the conviction is of a misdemeanor of the first degree.

(e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—[not reprinted]

PENALTIES FOR THE UNAUTHORIZED PRACTICE OF LAW

454.23 Penalties.—Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself or herself out to the public as qualified to practice in this

state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to act as a lawyer in this state, and any person entitled to practice who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. or s. 775.083.

FLORIDA STATUTES CHAPTER 118

International Notaries

118.10 Civil-law notary.

118.12 Certification of civil-law notary's authority; apostilles.

118.10 Civil-law notary.—

(1) As used in this section, the term:

(a) "Authentic act" means an instrument executed by a civil-law notary referencing this section, which instrument includes the particulars and capacities to act of any transacting parties, a confirmation of the full text of any necessary instrument, the signatures or their legal equivalent of any transacting parties, the signature and seal of a civil-law notary, and such other information prescribed by the Secretary of State.

(b) "Civil-law notary" means a person who is a member in good standing of The Florida Bar, who has practiced law for at least 5 years, and who is appointed by the Secretary of State as a civil-law notary.

(c) "Protocol" means a registry maintained by a civil-law notary in which the acts of the civil-law notary are archived.

(2) The Secretary of State shall have the power to appoint civil-law notaries and administer this section.

(3) A civil-law notary is authorized to issue authentic acts and thereby may authenticate or certify any document, transaction, event, condition, or occurrence. The contents of an authentic act and matters incorporated therein shall be presumed correct. A civil-law notary may also administer an oath and make a certificate thereof when it is necessary for execution of any writing or document to be attested, protested, or published under the seal of a notary public. A civil-law notary may also take acknowledgments of deeds and other instruments of writing for record, and solemnize the rites of matrimony, as fully as other officers of this state. A civil-law notary is not authorized to issue authentic acts for use in a jurisdiction if the United States Department of State has determined that the jurisdiction does not have diplomatic relations with the United States or is a terrorist country, or if trade with the jurisdiction is prohibited under the Trading With the Enemy Act of 1917, as amended, 50 U.S.C. ss. 1, et seq.

(4) The authentic acts, oaths and acknowledgments, and solemnizations of a civil-law notary shall be recorded in the civil-law notary's protocol in a manner prescribed by the Secretary of State.

(5) The Secretary of State may adopt rules prescribing:

(a) The form and content of authentic acts, oaths, acknowledgments, solemnizations, and signatures and seals or their legal equivalents;

(b) Procedures for the permanent archiving of authentic acts, maintaining records of acknowledgments, oaths and solemnizations, and procedures for the administration of oaths and taking of acknowledgments;

(c) The charging of reasonable fees to be retained by the Secretary of State for the purpose of administering this chapter;

(d) Educational requirements and procedures for testing applicants' knowledge of all matters relevant to the appointment, authority, duties or legal or ethical responsibilities of a civil-law notary;

(e) Procedures for the disciplining of civil-law notaries, including, but not limited to, the suspension and revocation of appointments for failure to comply with the requirements of this chapter or the rules of the Department of State, or for misrepresentation or fraud regarding the civil-law notary's authority, the effect of the civil-law notary's authentic acts, or the identities or acts of the parties to a transaction;

- (f) Bonding or errors and omissions insurance requirements, or both, for civil-law notaries; and
- (g) Other matters necessary for administering this section.

(6) The Secretary of State shall not regulate, discipline, or attempt to discipline any civil-law notary for, or with regard to, any action or conduct that would constitute the practice of law in this state, except by agreement with The Florida Bar. The Secretary of State shall not establish as a prerequisite to the appointment of a civil-law notary any test containing any question that inquires of the applicant's knowledge regarding the practice of law in the United States, unless such test is offered in conjunction with an educational program approved by The Florida Bar for continuing legal education credit.

(7) The powers of civil-law notaries include, but are not limited to, all of the powers of a notary public under any law of this state.

(8) This section shall not be construed as abrogating the provisions of any other act relating to notaries public, attorneys, or the practice of law in this state.

118.12 Certification of civil-law notary's authority; apostilles.—If certification of a civil-law notary's authority is necessary for a particular document or transaction, it must be obtained from the Secretary of State. Upon the receipt of a written request from a civil-law notary and the fee prescribed by the Secretary of State, the Secretary of State shall issue a certification of the civil-law notary's authority, in a form prescribed by the Secretary of State, which shall include a statement explaining the legal qualifications and authority of a civil-law notary in this state. The fee prescribed for the issuance of the certification under this section or an apostille under s. 15.16 may not exceed \$10 per document. The Department of State may adopt rules to implement this section.

TIMESHARE COMMISSIONER OF DEEDS (Chapter 721, Part IV, Florida Statutes)

721.96 Purpose.—The purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

721.97 Timeshare commissioner of deeds.—

(1) The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), Florida Statutes 1997, and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

(2) Any person seeking to be appointed a commissioner of deeds must take and subscribe to an oath, before a notary public in this state or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of such commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with and under the authority of this part.

721.98 Powers of the division.—The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

Index

A

Acknowledgment 12, 72
Address 7, 8, 20, 71
Advertising 19, 50
Affidavit
 definition 13, 72
 self-proving on will 60
 standard form 13
Affidavit of character 7
Affirm/affirmation 72
Age requirement 6
Amended commission 7
American Society of
 Notaries 3, 4, 34
Application process 7
Appointment 6, 7
Apostille 10, 72
Attested photocopies 15, 62
Authentication 10, 72

B

Birth certificate 15, 21, 22
Blank document, notarizing 22
Blind person, notarizing
 for 19, 36
Bond, surety 8
Bonding agency 2
Bureau of Vital Statistics 22

C

Ceremony, marriage 16
Certificate
 birth 15, 21, 22
 correcting a notarial 29
 deposition 13
 false 20
 “loose” 29
 notarial 28, 29, 30, 31, 74
 of commission 7, 72
 of notarial authority 10
 requirements of 29, 64
 signing 6, 63
 statutory short forms of
 acknowledgment 31
Certified copies 22, 72
Change of address 8, 20, 71
Citizenship 6, 21
Civil rights 6
Clemency 6

C *CONTINUED*

Commission
 amended 7
 certificate of 7
 expiration of 7
 number 8
 renewal of 8, 62
Competency of document
 signer 28, 36
Complaint 43
Correctional officers as notaries 25
Corrections, Department of,
 inmate identification
 card 34
Corrections to notarial
 certificates 29
Credible witness 32, 33
Custodian, document 15, 72

D

Date 28
Deaf person, notarizing for 37
Death certificate 15
Declaration of Domicile 6
Department of Health 22
Department of State 2, 10, 71
Deposition 13, 73
Directing another to sign 39
Disability, notarizing for a person
 with 38, 39
Disciplinary action 43-44
Driver’s license 32, 62
Drivers license guide 34

E

Embossed seal 9
Employer liability 42, 43
English, notarizing for person
 who does not speak 37
Errors and omissions insurance 8
Execute a document 73
Expiration date 7, 8, 20

F

False acknowledgment or
 certificate 20
Family members, notarizing for 19

F *CONTINUED*

Fees
 Application 7
 Notary 9, 15, 16, 19, 20
Felony charge 6
Financial interest 19, 47
Fingerprints 67
Florida Bar, The 57
Foreign language document 19, 37
Free act and deed 73

G

Government employees 9, 24
Governor
 appointment 6, 7
 Notary Section ii, 2, 43
 resignation 8, 71
 suspension 19, 20
“Green” card 15, 32, 34, 62
Guarantees, signature 21

H

Hague Convention 10

I

I.D. Checking Guide 34
Identification
 acceptable forms 32
 credible witness 32, 33
 inmate card 34
 personally known 32,
 35, 62, 74
 problem with name 61
 satisfactory
 evidence 19, 32, 74
Illiterate person, notarizing for 37
Impersonation of notary 20
Impression seal 9
Incomplete document,
 notarizing 19, 28
Ink 9, 63
Instrument 73
Insurance, errors and omissions 8
Internet 3

J

Journal 42
Jurat 28, 30, 73
Jurisdiction 8

K

Keeping records 42

L

Laws, notary 75
Law enforcement officers as notaries 25
Legal advice 19, 57
Liability 42, 43, 44
Lost notary seal 9
L.S. 67

M

Malfeasance 20, 73
Mark, notarizing for person who signs by 38
Marriage
 general information 16, 52, 53, 74
 officers authorized to perform 52
 same-sex 53
Mentally incapacitated 19, 36
Military officers as notaries 26
Minors, notarizing for 40
Misfeasance 20, 73
Moving out of state 8, 71

N

Name
 change of 7
 commissioned 6
 legal 6, 7, 19, 20
 nickname 6
 print/type/stamp below signature 29
National Notary Association 3, 4, 34
Notary Commissions and Certifications Section 2, 10, 71
Notario Publico 50
Notary public 6, 7, 73
Notary Section 2, 43
Notary View, The 3

O

Oath of office 6, 7
Oath 12, 13, 59, 74
Own signature 19

P

Party to transaction 19
Passport 15, 32
Penalties for violations 19, 20
Perjury 59, 74
Personally known 32, 35, 62, 74
Photocopies, attested 15, 62
Photograph 21
Power of attorney 40, 74
Presence requirement 13, 19, 20, 28, 35, 44, 54, 61
Prohibited acts 19, 21
Proof of execution by subscribing witness 54
Public officer 6

Q

Qualifications 6

R

Reappointment 62
Reasonable care 42, 74
Record keeping 42
Refusing to notarize 55
Relatives, notarizing for 19
Renewal commission 8, 62
Residency 6, 21
Resident alien card 15, 32, 34, 62
Resignation 8, 66, 71
Restoration of civil rights 6

S

Safe-deposit box, certifying contents 18
Satisfactory evidence 19, 32, 74
Seal, notary
 description 9
 imperfect imprint 65
 in employer's possession 65
 lost or stolen 9
 on recording plats 56
 unlawful use 20
Secretary of State 2, 10, 71
Self-proving affidavit on will 60
Seminars 4

S *CONTINUED*

Sign
 as a witness 65
 notarial certificates 6, 62
Signature guarantees 21
S.S. 67
Solemnize
 matrimony 16, 52, 53, 74
State, Department of 2, 10, 71
Statutory Short Forms of Acknowledgment 31
Steps for notarization 28
Stolen notary seal 9
Subscribe 74
Subscribing witness 54
Surety bond 8
Surveyors 56
Suspension from office 19, 20

T

Tax return, attested copy 66
Term of office 7
Testator 60, 74
Thumbprint 67
Traffic officers as notaries 25
Translation 21, 64

U

Unauthorized practice of law 20, 21, 57
Unnotarized oaths 59

V

Vehicle identification number (VIN) 17
Venue 8, 29, 63, 64, 67, 74
Verified statements 59
Verifying a VIN 17
Veterans 7
Vital records, certified copies of 15, 21, 22

W

Wedding 16, 52, 53, 74
Wills 60, 61, 72, 74
Witness 60, 65
Witness, credible 33
Witness, subscribing 54

