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.

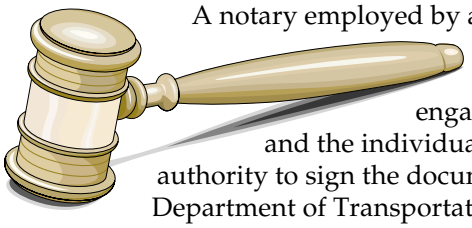
Other important considerations:

- 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 mdean 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.

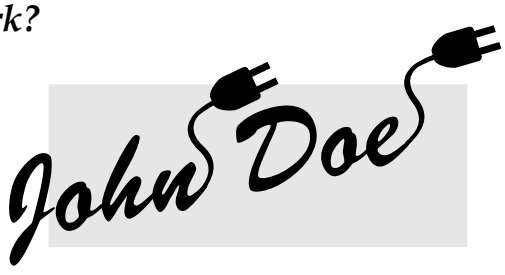
The recent state and federal statutes concerning electronic transactions stemmed from governmental recognition of the significance of electronic commerce on the Internet. In 1999, the Uniform Law Commissioners distributed what is known as the *Uniform Electronic Transaction Act* (UETA). The basic objective 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?

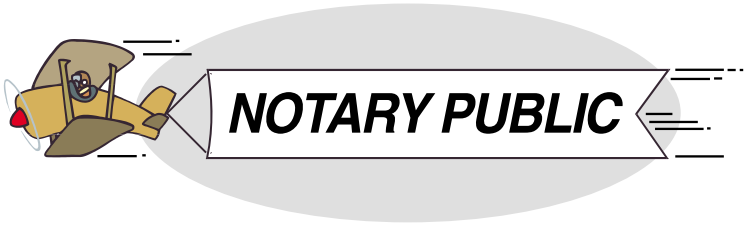
To begin with, you can start by learning more about digital certificates and electronic security measures such as PKI. Contact any certification authority that specializes in witnessed-identity authentication. Additionally, there are several online sites that offer a wealth of information concerning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

For a sample ceremony, please refer to page 16.

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.)

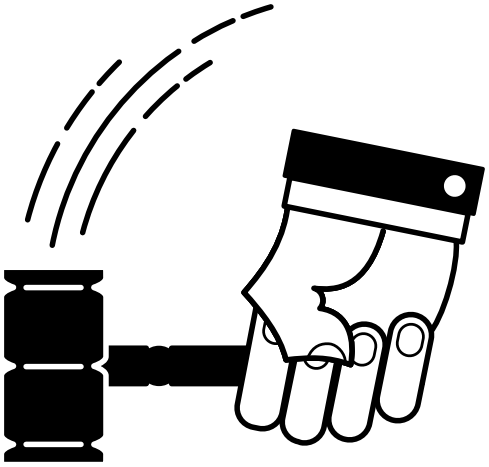
In most foreign countries, a notary public is an attorney. Some individuals use their notary public commission as a means to advertise and mislead individuals into believing that they may act as an attorney. For this reason, the notary law provides that a notary public who is not an attorney and advertises 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.

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.*

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.

Q *May I notarize a signature on a living will if there if 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 it if 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) .

Signature of Translator
(Address)_____

Sworn to and subscribed before me this _____ day of _____, 20____, by _____(name of translator)_____.

Personally known _____
or Produced identification _____
Type of identification _____

(SEAL)

Notary Public
(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.

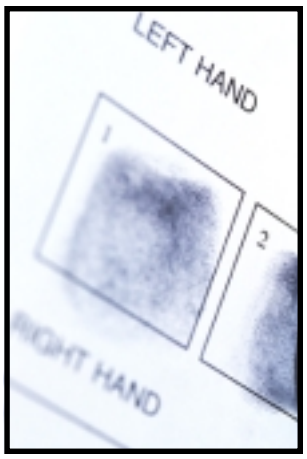
There are two alternative documents provided by the IRS that may satisfy the needs of your customer. First, a "1722 Letter" is available at no charge and can be ordered over the phone and received within just a few days. This document contains pertinent tax information and is usually accepted by all 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 abreviation 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 sample __(xxxx xx xxxxxx)__ sample sample sample sample __(xxxxx xxxxxx xxxxx xxxxxx xxxx xx)__ sample sample sample sample sample sample sample sample sample sample sample sample .

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

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

Sample sample sample sample sample sample sample sample ___ day of _____, 20__, by _(xxxx xxxxxxx)_ 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.