

## Notary Information Now Available Through Governor's Office

The Legislature has authorized and funded, by a small surcharge placed on the applications for and renewals of notary commissions, a Notary Section within the Governor's Legal Office. The Section began its official duties in mid-July.

A typical day in the Notary Section includes taking and processing complaints of notary violations and providing answers to questions commonly asked by notaries. Among our most important duties is to assist in educating notaries. Our staff of three cannot possibly answer every call from the nearly 400,000 notaries in the

State. To reach as many notaries as possible, we have devoted most of our resources to publishing periodic newsletters. If you have particular questions, please submit them in writing.

This first issue of our newsletter is designed to provide you with information regarding the recent changes in the notary laws and also to clarify some common misconceptions about notarial acts. Our office is not authorized to give legal advice to notaries regarding their official duties. Instead, we are here to educate and assist notaries about the notary law. We hope that you find this newsletter informative and useful, and we welcome any of your comments or suggestions.

the flood of calls and letters to my office, legislators, the Secretary of State, and the Attorney General, we determined that a method of educating notaries must be found.

Because you are a state officer appointed by the Governor, it is important to me that you thoroughly understand your duties and authority. This newsletter is for you. It is designed to assist you in protecting yourself and those who rely upon you in the performance of your duties. Please let us know your questions and areas of concern, as well as suggestions as to how we can better serve you.

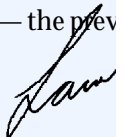
A study commission comprised of interested citizens, representatives of law enforcement, the legislature and the

## Financial Interests

One of the most asked of the Notary "financial interest." that a notary public signature on a document has a financial interest in the underlying transaction is new in that it is not a new prohibition amendment to the Notary Code of Ethics. The codification of the statute was established by case law dating back to the 1800s and as recently as the 1980s.

So what does all this constitute a financial interest?

bonding industry changes to the notary public, including that many notary practices had eroded the integrity of notarized documents. Together we must ensure the dignity of the notary public and the joyed by notaries public in complying with the understanding the role of the office of notary public can again ensure that notarized document performance of the notary function — the previous




### Message from the Governor

I am pleased to announce the publication of the first issue of **The Notary View**. Since January of last year when the notary law changed so substantially, questions have abounded from those of you who serve as notaries public. In the aftermath of



certain authenticity to a notarized document.

When the Florida law governing notaries was drastically revised in January of this year, a new official seal was specified in section 117.05(3) of the Florida Statutes. The impression seal is no longer required; instead, a rubber stamp is now the official seal and must contain the words "Notary Public - State of Florida," the name of the notary public, the commission number, and the expiration date. An impression seal may be used in addition to the rubber stamp seal but cannot be substituted for it.

The use of the new rubber stamp seal is required for all notaries appointed or reappointed on or after January 1, 1992.



## Notary Fees

Most notaries use their commission in connection with their employment and have never considered the subject of fees. It is a question, though, occasionally addressed to our office.

Section 117.05(2) of the Florida Statutes provides that, "[t]he fee of a notary public may not exceed \$10 for any one notarial act, except as provided in s. 117.04." This charge, of course, is not mandatory. Our office encourages notaries to exercise common courtesy and good ethics in determining the fees they charge. For example, if one transaction between two parties requires five different notarizations, the notary may legally charge up to \$50 for services. However, the notary must decide whether such a charge would be appropriate and fair.

Section 117.04 refers to fees which may be charged 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." That charge is currently \$20 as set by Florida Statutes section 28.24(29).

THE NOTARY VIEW • WINTER 1993

County of \_\_\_\_\_.

The venue language should reflect the state and county where notarized. If it is incorrect, change the language and initial the change BEFORE notarizing.

### 2. Check the Date in the Jurat or Certificate.

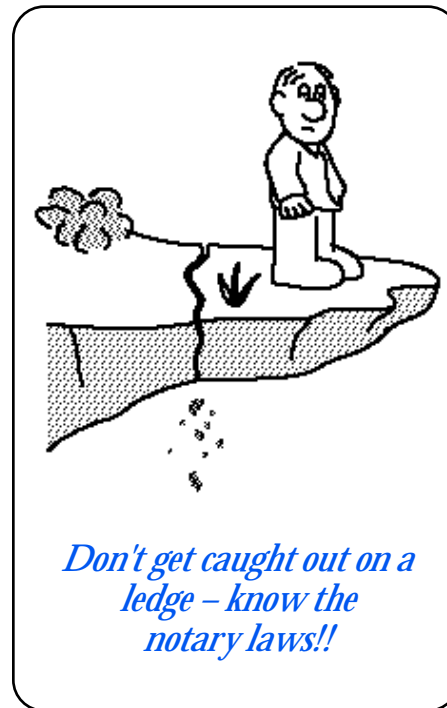
Be careful—the date in many form jurats and certificates is typed on an earlier date. The proper date is the date of notarization. If it is incorrect, change the date and initial the change BEFORE notarizing.

### 3. Identify the Person.

This is one of the most important steps. You must either personally know the signer or see proper identification.

### 4. Assure that the Signer Has Read And Understands the Document.

You are not responsible for insuring the contents of the document; however, you should be satisfied that the signer has read and understands the document. If the



English, make sure it translated into a language the signer understands.

### 5. Determine Whether the Signer Understands the Document Before Taking an Acknowledgment.

The signer must give an acknowledgment. Often, the document has a jurat or certificate. If not, then you must have the signer tell you that he or she understands the document. If the person is entering into a contract, you must have the person enter into the contract of his or her own free will. If the person is entering into a contract, you must have the person enter into the contract of his or her own free will. If the person is entering into a contract, you must have the person enter into the contract of his or her own free will.

### 6. Complete the Certificate.

Make sure that the certificate contains the proper information. The recent changes in the law may need to add some information to the certificate. For example, you may need to add the type of identification used and/or print, type, or sign your name below your signature line (see page 4). Sign your name below your signature line.

## Name Change


If you legally change your name, you must have your commission renewed in your new name. You should contact the Bureau of Notary Public at (904) 487-1111 for the forms and request su

If you can answer this question, then you are among the few notaries in this State who know the new law. You should read Chapter 117, Florida Statutes to fully review the statutory requirements. There are only three changes that are really evident in a jurat or certificate:

2. You must type, print or stamp your name below.
3. If appointed or reappointed on or after January 1, 1992, you must use a rubber stamp seal that includes the Public-State of Florida, your name, commission expiration date.

**For Oaths:**


Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_.

 Nancy Notary  
**Notary Signature**  
 Nancy Notary  
 Notary Public, State of Florida

Personally Known \_\_\_\_\_  
 Produced Identification \_\_\_\_\_  
 Type: \_\_\_\_\_

---


Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, who is personally known to me.

 Nancy Notary  
**Notary Signature**  
 Notary Public, State of Florida  
 Notary's Name Printed Below

My Commission expires: \_\_\_\_\_


---

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, who produced a Florida driver's license as identification.

 Nancy Notary  
**Notary Signature**


**For Acknowledgments:**

The foregoing instrument was acknowledged \_\_\_\_ day of May, 1992 by \_\_\_\_\_, known to me.

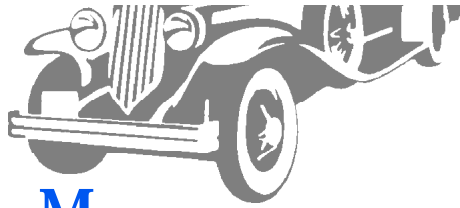
 Nancy Notary  
**Notary Signature**  
 Nancy Notary

---

The foregoing instrument was acknowledged \_\_\_\_ day of May, 1992 by \_\_\_\_\_, United States Passport as identification.

 Nancy Notary  
**Notary Signature**  
 Notary Public  
 Notary's Name

Here are some examples that are legally sufficient but are certainly only forms that can be used.



**M**any notaries have experienced difficulties with notarizing signatures on automobile titles designed and printed prior to the recent changes in the notary law. The Department of Highway Safety and Motor Vehicles is working with the Notary Section at the Governor's Office to resolve some of these problems.

According to the Department, applications for a vehicle title must be notarized, and some of the applications currently being used do not provide for all of the required information. The Department plans to use the current form before issuing its new forms around the first of the year. In the meantime, the Department asks notaries to simply handwrite the appropriate information on the notarial jurat. In particular, the notary should indicate the type of identification produced or if the signer is personally known to the notary, that fact may be stated. Also, the notary should type, print or stamp his or her name below the signature line. The Department representative stated that attaching "loose" notarial certificates is problematic because they often become detached from the notarized documents and get lost or misplaced.

The Department representative also pointed out that Florida law no longer requires the seller's signature to be notarized when selling a vehicle. This has caused some confusion because the certificates of title issued for many vehicles contain a notarial jurat below the seller's signature. This notarial certificate is now unnecessary and may be disregarded. The new certificates of title currently being issued do not contain the notarial jurat after the seller's signature as this is not required by Chapter 319, Florida Statutes. The applications for title still must be notarized as described above.

THE NOTARY VIEW • WINTER 1993



## HYPOTHETICAL

**I**t was a dark and stormy Monday morning. Hurricane Andrew was beating down on our notary hero Horatio. He entered his office only moments before a knock on the back door ushered in a short man and a tall woman. "I need a notary," proclaimed the man.

"Do you have identification?" asked our hero.

"Well," said the man, "my wife can identify me."

"I can," she offered, "he has a cute little mole on his . . ."

"Enough," screamed the man, "I can show you my social security card." Horatio examined the card and noted that F. Watkins Smutz had the unusual social security number of 123-45-6789.

"I'm here to transfer my car to my darling wife," the man stated. He produced a title certificate to a 1953 Chevrolet, owned by Frank Smutz. The line for the seller had already been signed "Bubba Smutz."

"I signed this yesterday," said the man. "My wife saw me do it, didn't you honey."

"Well sugar," she said, "you know I did."

Horatio slowly opened the cabinet where he kept his notary seal and stamp. He knew he could not delay for long, but so many questions bothered him about this situation. What is our hero to do?

**ANSWER:** Horatio should not notarize Mr. Smutz's signature. We hope that you found at least six issues in Horatio's Hypothetical.

1) Horatio cannot rely on a statement from "Mrs. Smutz" for identifying Mr. Smutz. Notaries may rely on the sworn written statement of a credible witness personally known to the notary that the signer is personally known to the witness. This doesn't work here because Horatio

does not personally

2) A social security identification for notary types of identification 117.05(5) of the Florida Statutes.

3) Horatio should not because of the "fishy" nature of the identification. A notary should decline to notarize anything suspicious.

4) The automobile title must be signed in the presence of the seller on the title.

5) Florida law no longer requires the seller's signature to be notarized when selling a motor vehicle.

6) The title transfer must be signed in the presence of the seller for Horatio. Many people believe that they can notarize a document in the absence of the notary; however, Florida law requires the document to be signed in the presence of the notary; however, the document can be done in the presence of the notary.

## Notary Tip

The literal translation of the phrase "Notary Public" is "one who writes in an official capacity." This phrase is often used in an advertisement for notarial services.

❖ A jurat is another name for a notarial certificate. It is a sworn statement.

❖ You must sign the document personally as commissioner.

*Debby Kearney, Deputy General Counsel to Governor Chiles, is the primary author of legislation creating the Notary Section in the Governor's Office, the need for which became apparent to her after earlier substantive changes to the notary law went into effect. Ms. Kearney came to the Governor's Office three years ago after more than eight years as staff attorney for the House Judiciary Committee, where she drafted legislation primarily in the areas of real property and family law.*

## Acknowledgments V. Oaths

By and large, notaries public perform two functions: administration of oaths and the taking of acknowledgments. Oddly enough, very few notaries understand what is meant by taking an acknowledgment or administering an oath. This lack of understanding of the nature of these notarial acts often leads to mistakes in the notarization.

Oaths and acknowledgments are very different animals and have very different purposes. **An acknowledgment is a statement which discloses that the person whose signature is being notarized freely and voluntarily executed the document on which his signature appears.**

Documents typically acknowledged are deeds, mortgages, consents to adoption, and various corporate documents. The terms of these types of documents can be legally enforced and/or be the subject of damages for failure to meet the terms; therefore, it is important for the notary to assure that the signer executed the document voluntarily and without coercion. The notary should then complete a certificate which states in some manner that the execution of the document was acknowledged by the signer.

On the other hand, **an oath or affirmation is a sworn statement, or one in which the person signing the document swears that the information contained in the document is true and correct to the best of his or her knowledge.** A person who

person who he says signed and sealed by a nullity, a meaningless person who executed the notary, must acknowledge the document essential to identify the purpose of the certificate that the signature was voluntarily.

More recently we of electoral college presidential aspirant the so-called "oaths knowledge" and notary acknowledged given an oath. To whom we are not sure. If the notary, the document the form of a sworn these acknowledgments at all because an oath over, the notary law that "[a] notary public acknowledgment of an oath if an oath is § 117.03 (1991).

## Conclusion

Because a notary advice unless the notaries should not a document require knowledge. In the duties of the office need to understand formed notarial acts language. Does it actually doing what you done? If the language person swore in your presence done so? If you feel the notarial language execute, refer the person Your notarial duties ward. If you have a b

Office. May I help you?"

"Yes, I would like to file a complaint against a Notary Public. A document that I signed recently reappeared with a notary's signature and seal on it. I was unaware that the document was to be notarized, and furthermore, I was not in the presence of the notary when I signed the document and the notarization was done. What can I do?"

Similar phone calls are received in the Governor's Office on a regular basis. We receive many complaints that are relatively routine, but some are rather bizarre in nature. Some have minor consequences, but some raise very complicated legal questions. The Governor's Legal Office recently established a new Notary Section which will, among other things, handle such complaints.

When a complaint is received by telephone, we advise the complainant to submit the complaint in writing along with a copy of the notarized document. A copy of the complaint is then sent to the notary for a response. Once the response is received from the notary, our office may seek additional information or ask the complainant to reply.

Based upon the evidence presented and the circumstances of the alleged violation, the staff of the Notary Section then takes appropriate action. The complaint may be dismissed, a letter of reprimand may be written to the notary, the matter may be referred to the appropriate State Attorney's Office for possible prosecution, or at the Governor's direction, proceedings to suspend the notary from office may be initiated.

Because our office is not authorized to give legal advice to notaries or the public, and because we are unable to help in recovering damages which result from improper notarizations, our office may advise the complainant to seek the advice and assistance of a competent attorney. Our role is strictly to educate, assist and discipline notaries when necessary. In the future as notaries become better informed,

**1. Your neighbor, Sheila, asks you to notarize her signature on a handwritten contract that does not have a notarial certificate. You should:**

- (a) sign your name and apply your seal.
- (b) advise Sheila as to the proper certificate for her transaction.
- (c) ask Sheila whether she wishes to take an oath or give an acknowledgment and add the appropriate certificate.

**2. In the above example, the contract was signed by Sheila and her husband Bob. Bob is not present for the notarization. You should:**

- (a) notarize the document but specify in your certificate that the notarization is only for Sheila's signature.
- (b) not notarize the document.
- (c) notarize the document but only after calling Bob to verify his signature.

**3. The notarial certificate does not indicate the type of identification that you relied upon or that Sheila is personally known to you. You should:**

- (a) not worry because she is your neighbor and friend.
- (b) handwrite or type the information on the certificate.
- (c) attach a "loose certificate."

**4. You own a car dealership and Shauna Customer asks you to notarize her signature on the title application for a car she bought from you. You may:**

- (a) notarize her signature and charge up to \$10 for your notarial services.
- (b) notarize because your signature is not being notarized.
- (c) not notarize because you have a financial interest in the transaction.

**5. In the above example, the manager, Ross, is asked to notarize Shauna's signature. Ross may:**

- (a) not notarize because the manager's signature constitutes a financial interest in the transaction.
- (b) notarize if he receives any benefit other than a notarial fee for his services.
- (c) not notarize because he is not present for the transaction.

**Answers:**

- 1. (c) is correct. Because you are not a licensed notary, you may not notarize unless you are a licensed notary. (a) is incorrect because you are not a notary. (b) is incorrect because you are not a notary.
- 2. (a) is correct. Because you are not a licensed notary, you may not notarize unless you are a licensed notary. (b) is incorrect because you are not a notary. (c) is incorrect because you are not a notary.
- 3. (b) is correct. Because you are not a licensed notary, you may not notarize unless you are a licensed notary. (a) is incorrect because you are not a notary. (c) is incorrect because you are not a notary.
- 4. (c) is correct. Because you are not a licensed notary, you may not notarize unless you are a licensed notary. (a) is incorrect because you are not a notary. (b) is incorrect because you are not a notary.
- 5. (b) is correct. Because you are not a licensed notary, you may not notarize unless you are a licensed notary. (a) is incorrect because you are not a notary. (c) is incorrect because you are not a notary.

BUREAU OF NOTARIES PUBLIC • CHANGE OF ADDRESS FORM

Name (as it Appears on Commission) \_\_\_\_\_

Commission # \_\_\_\_\_ Exp. Date \_\_\_\_\_

Social Security Number \_\_\_\_\_ Date of Birth \_\_\_\_\_

New Address (Home) \_\_\_\_\_ Ph. (     ) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

New Address (Business) \_\_\_\_\_ Ph. (     ) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

To preserve your newsletter, make a photo copy of this form.

A notary p  
sioned in Flor  
legal resident o  
Florida at the ti  
ment and mair  
dency through  
appointment.

If you move t  
you should im  
mit your resign  
ing to the Go  
your commissi  
and destroy yo



ida 32399-  
vernor

