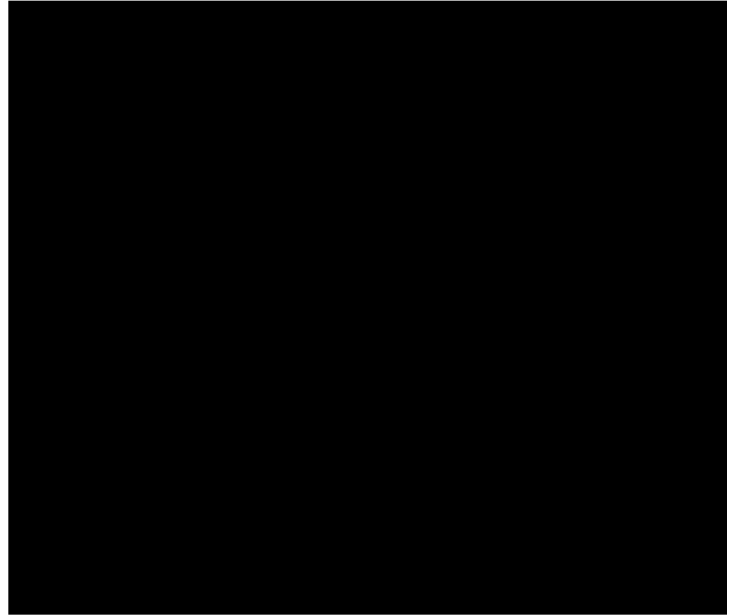


Thanks to all of you who shared your positive and encouraging comments with us about the first issue of *The Notary View*. We were truly amazed by the number of letters and telephone calls that we received during the month following our mailout. We asked for your comments and suggestions and have tried to incorporate many of your ideas in this second issue.

Some of your concerns were addressed by the Legislature during the 1993 Regular Session. Committee Substitute for Senate Bill 1022 was recently signed by Governor Lawton Chiles and took effect on April 22, 1993. Most of the revisions made by this legislation were intended to clarify and clean up the notary law. We have devoted this second issue to announcing and explaining these newest revisions.

SIGNING CEREMONY



Governor Lawton Chiles signs notary bill while Senator Fred L. Section staff look on.

SERVICE DIFFERENCES EXPLAINED

Many notaries have expressed confusion about the differences between the Notary Section and the Bureau of Notaries. The following information should assist you with knowing which office to contact with particular questions.

Although notaries are appointed by the Governor, the Bureau of Notaries Public in the Department of State processes the notary applications. According to Cathy Banks, Bureau Chief, her staff of eight processes approximately 6,000 to 7,000 notary applications each month. They also maintain the records for the state's nearly 400,000 notaries. For this reason, the law requires notaries to

notify the Department of State of any change in their name, home or business address, or phone number. Ms. Banks emphasizes that the Department of State's role in commissioning notaries is strictly ministerial and that they do not offer advice to notaries about their official duties.

On the other hand, the Notary Section was established to educate and assist notaries about the notary law and their official duties. Because notaries are state officers appointed by the Governor, the Notary Section is part of the Executive Office of the Governor. When a notary application requires a decision which goes beyond

the usual ministerial duties, the Bureau of Notaries refers the application to the Governor's Office. The Notary Section assists with about these applications. Although the Notary Section is authorized to provide assistance, staff makes every effort to assist notaries with their duties and responsibilities.

In summary, questions regarding the processing of applications should be directed to the Bureau of Notaries. Questions about "unusual" complaints against notaries or requirements for notaries should be directed to the Notary Section of the Governor's Legal Office.

able upon request. We suggest that you keep all copies and build your own personal handbook of notary information.

NAME CHANGE?

If you legally change your name, you must secure a commission in your new name. You may call the Bureau of Notaries Public at (904) 488-7521 for the forms necessary to request such action.

THE NOTARY VIEW

The Notary View is published by the State of Florida, Office of the Governor, Room 209 The Capitol, Tallahassee, Florida 32399, and is prepared by the Notary Section:

Kerey Carpenter and Linda Adams, with production and layout assistance from Susie White.

Design by Colleen Fahey.



This newsletter is intended to educate and assist notaries public and does not constitute legal advice. Each legal situation requires individual review of the facts and applicable law. Our goal is to provide notaries with knowledge of the law. If the terms of the law do not resolve your question, it may be necessary for you or your client to obtain the advice of private counsel.

COLUMN

Senator Fred R. Dudley, a senior partner in the Cape Coral law firm of Aloia McIver & Brandt and former Municipal Judge in Cape Coral, was elected to the House of Representatives in 1992. He previously served in the House of Representatives from 1987 to 1992. Dudley was appointed to the Governor's Task Force on Notaries Public in 1993. The members studied the need for legislative amendments. Since that time, he sponsored improvements in Florida's notary laws.

As a fellow notary, I am sincerely interested in sponsoring legislation that improves Florida's notary public laws. I am pleased to announce that the Florida Legislature addressed some problematic areas during the 1993 Regular Session. The new law was signed by Governor Lawton Chiles and went into effect on April 22, 1993.

Committee Substitute for Senate Bill 1022 was designed to clarify and clean up the notary laws. For example, many notaries have been confused about whether they were required to apply the identification requirements when administering an oath, as well as when taking an acknowledgment. The identification requirements now clearly apply whenever a signature is being notarized on a document. A notary must either personally know the signer or see appropriate identification.

Additionally, it was brought to our attention that some people in Florida were unable to have their signatures notarized because they did not have acceptable identification. Therefore, we expanded the types of identification that may be relied upon to include a driver's license or identification card issued by a United States territory or an identification card issued by the United States Department of Justice, Immigration and Naturalization Service.

In rare situations, an individual may

find it very difficult to obtain an acceptable identification. Note that in these situations when the notary is an elderly person, a disabled person, or a child. For this reason, the law was enacted a provision that allows notaries to rely upon a statement of two witnesses.

These witnesses must provide acceptable identification and swear in writing to the truth of this statutory provision.

Another problem with the current legislation was that the notarial certificates and acknowledgments require a notary to certify that the information contained therein is true and correct. This information is provided in chapter 61, Florida Statutes. These provisions were expanded to require a notary to certify that the information provided in chapter 61, Florida Statutes, is true and correct. This information was previously provided in chapter 61, Florida Statutes. The amendments to the Florida Statutes were amended and are now contained in chapter 61, Florida Statutes. The amendments to the Florida Statutes were amended and are now contained in chapter 61, Florida Statutes.

One of the most common problems with the notary law involves the signature of a person in the presence of the notary.

Q. *My friend and I recently received our new rubber stamp notary seals. Her seal contains a picture of the Capitol, but mine does not. Which one is correct?*

A. Both are correct because emblems or symbols are neither required nor prohibited. After our Winter 1993 newsletter, some people questioned the round emblem used in our article about the seal. That emblem was merely a graphic for aesthetic purposes. All notaries whose expiration date is on or after December 31, 1995, must use a new seal which contains the following: 1) the words "Notary Public - State of Florida"; 2) the notary's name exactly as commissioned; 3) the expiration date; and 4) the commission number. The seal may contain other information, such as the name of the bonding agency. In fact, many companies add an extra touch by including an emblem such as the Capitol, an eagle, or a flag. An impression type seal may be used in addition to the new rubber stamp seal but not as a substitution for it.

ALERT: We have discovered that some companies are selling notary seals which include the Great Seal of the State of Florida (*See Seal at upper right hand corner of front page*). Phyllis Slater, General Counsel to the Secretary of State, informed our office that the Great Seal may not be used on any notary seal. If your notary seal contains the Great Seal, then you should immediately cease using it and replace it with a proper seal.

Q. *What is a notarial certificate?*

A. A notarial certificate is the portion of a notarized document which contains the notary's statement. It is

commonly referred to as a jurat (for sworn statements) or a certificate of acknowledgment (for acknowledgments). You should never just sign your name and apply your seal when notarizing a signature on a document—you are required to sign and date a notarial certificate. Without a certificate, the notarization is, in effect, meaningless.

Q. *What information is required in the notarial certificate?*

A. 1. An indication of the type of notarial act performed.

2. The name of the person whose signature was notarized. Without this specific notation, the law presumes that all signatures were notarized. To protect yourself from the possibility of someone adding a signature later, you should specify the person's name in your notarial certificate.

3. The date of the notarization.

4. The type of identification that you relied upon. If more than one signature is being notarized, state the type of identification for each person.

5. Your name printed, typed, or stamped below your signature. This may be accomplished by affixing your seal below your signature, if you have the new rubber stamp type seal which contains your name.

6. Your signature and seal.

Although chapter 117 does not specifically require the venue language (State of Florida, County of _____), it is found in numerous forms throughout the Florida Statutes, and should be included. Additionally, if your seal does not contain your

proof or will form.

A. Yes. Flor provided that, "E proof of a will . . . a certify in his acknowledgment o type of identificati notary public is re 117.03. This exce and the requiremen certificate of ackno including the self-

testator and both w opens the door witnesses' signatu undermines the enta notarized in this p a signature notari declared that

Guest Column

(continued from pag

this violation mayre up to \$5,000, and removed from offi committed with in notary is guilty of a t

Finally, we und notaries are just l substantial revision laws, and we wer inadvertent viola requirements. In : persons who have l notarized improp provided that until notarization is con notary complied v were in effect pri (January 1, 1991). ' not alter a notary's o the new laws, but it countless transac challenged in c inadvertent technic

I hope that thes

identification card issued by a territory of the United States and an identification card issued by the United States Department of Justice, Immigration and Naturalization Service. As with other acceptable forms, they should be current (not expired) or issued within the last 5 years and should bear a serial or other identifying number.

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

- (1) the sworn written statement of a credible witness who is personally known to the notary and who personally knows the signer, and
- (2) the sworn written statement of two credible witnesses whose identities are proven to the notary.

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

When using these methods of identification, it is a good practice to have the witnesses also sign the document being notarized. Although not required, if the document has sufficient space, you may want to print or type the witness's statement on the notarized document itself. If it is on a separate paper, then you should keep it in your records, rather than attach it to the notarized document.

The following forms may be used in these unusual circumstances and are merely suggestions. Any affidavit containing the

sufficient.

(1)

CREDIBLE WITNESS AFFIDAVIT

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

Witness 

DATE

NAME OF WITNESS

State of Florida
County of _____

Sworn to and subscribed before me this _____, 19____, by (name of witness) who is

Notary 

(SEAL)

PRINT, TYPE OR STAMP NAME

(2)

CREDIBLE WITNESS AFFIDAVIT

Under the penalties of perjury, I declare that appearing before (name of notary) , is personally known to me as (name of person whose signature is notarized) and is the person named in the requiring notarization; that I believe it would be impossible for this person to obtain another acceptable identification; and that I do not have any interest in and am not a party to the underlying

Witness 

DATE

NAME OF WITNESS

State of Florida
County of _____

Sworn to and subscribed before me this _____ day of _____, 19____, by (name of witness) who produce (identification) as identification.

Notary 

(SEAL)

PRINT, TYPE OR STAMP NAME

THE NOTARY

On April 29, 1993, the Florida Senate ordered that Daniel E. Schramek and Lawrence T. Osten were removed from the Office of Notary Public. The Governor had previously suspended these individuals from office under the authority of the State Constitution. Both individuals were convicted of felony offenses under Florida law which constitutes grounds for suspension and removal from public office. The orders were signed by Ander Crenshaw, President of the Senate, were filed with the Department of State, and will remain in the permanent records of the Florida Secretary of State.

CASE NOTES

In a recent opinion, the Florida Supreme Court disciplined an attorney for requesting a notary to improperly notarize the signatures of his clients. *The Florida Bar v. Farinas*, 608 So. 2d 22 (Fla. 1992). His clients had signed and returned a set of interrogatories, as instructed by the attorney. Upon discovering that the interrogatories had not been notarized, the attorney requested the notary to notarize their signatures, even though his clients were not present.

The Court stated that “while the signee need not actually execute [sign] the document before the notary, the signee must personally appear before the notary at the time the signee acknowledges that he or she executed the document.” The Court noted that there are no exceptions to this requirement. Finding that the attorney had solicited the improper and illegal conduct of a notary public, the Court publicly reprimanded the attorney and entered a judgment against him in the amount of \$2,582.60.

One of the attorney's defenses in this case was that he did nothing unlawful, and that if anyone did, it was the notary. He was right — the notary acted unlawfully; however, the attorney violated his code of ethics in precipitating the act.

Elizabeth sign it this morning.

Audrey: Well, I don't think I . . .

Rob: Aw, come on Audrey, I have to file it before

Audrey: How do I know that she really signed it?

Rob: Just call her — she'll verify her signature for

SITUATION 2

Boss: Kassi, notarize Bruce's signature on this before

Kassi: But, he's not here Mr. Lewis, and I . . .

Boss: Just get it done — I'm in a hurry.

As tempted as you are to “help” in these types of situations, DON'T DO IT. You should never notarize when the signer is not present. Verifying a signature over the telephone is not sufficient. When administering an oath or taking an acknowledgment, you must truthfully certify that the signer was present when you notarized his or her signature. If the person did not appear before you, then you have neglected your official duties.

Society depends on notaries to perform their duties properly. When a statutory requirement is disregarded, the notarial act can cause costly legal consequences. Additionally, if violations of the notary law become a common practice, then

notarizations will not become meaningless. The problem, the Legislature imposed a civil penalty on any notary who violated this requirement. They were punished by penalty. They may be removed from office. The penalty applies to violators after the new law took effect in 1993.

You may be interested that many of the notaries involved in these cases are between family members. They are responsible for these requirements, even if they are a friend, relative, boss,

OUTDATED PHRASE

The phrase “and who did (did not) take an oath” is no longer required on notarial certificates. The Legislature deleted the requirement from chapter 117 in April 1992, however, the phrase was not removed from the Statutory Short Forms of Acknowledgment at that time. To resolve this conflict, the Legislature recently amended the forms to delete the phrase. If someone asks you to complete a notarial certificate that contains that phrase, you may simply mark through it.

The reason for the phrase was that when certifying a document was administered, a notary would certify that the person took an oath. The phrase “and who did take an oath” would be redundant, and the phrase “and who did not take an oath” would be unnecessary. To resolve this conflict, the Legislature recently amended the forms to delete the phrase. If someone asks you to complete a notarial certificate that contains that phrase, you may simply mark through it.

Regency Insurance Company recently went into receivership; and unfortunately, thousands of notary bonds issued by Regency became invalid at midnight on November 23, 1992. All notaries who were bonded by Regency must immediately purchase a new bond, have it approved by the Department of Banking and Finance, and then submit it to the Department of State, Bureau of Notaries. Contact your agent for assistance with the new bond.

Most importantly, if you were bonded by Regency, then you should not perform any notarial acts until correcting this matter. Florida law requires that notaries give bond prior to executing the duties of office and maintain that bond throughout the term of office. Failure to maintain the required bond constitutes grounds for suspension from office.

We share the frustrations of the many notaries who suffered financial loss due to this situation; however, the bond requirement cannot be waived in any circumstance. Several companies are offering replacement bonds at prices ranging from \$26 to \$40. We recommend that you avoid companies who charge additional application fees or ask you to resign. You are still a notary, albeit an unbonded notary, and you are not required to pay additional state fees or charges. Moreover, private companies are not authorized to ask for your resignation and should not insist that you either pay them or resign and give them your commission certificate. If you would rather resign than purchase a new bond, send your letter of resignation and commission certificate to the Governor at 209 The Capitol, Tallahassee, FL 32399-0001. However, we suggest that you shop around for a competitively priced bond offered by a financially stable bonding company.



The bride looked green. High winds caused the small boat to pitch violently. “Does it look like this weather is getting worse?” Horatio, our notary, asked.

“Yep”, Captain Bob, Horatio’s future son-in-law, answered after taking a healthy swig from a pint of rum. Horatio hoped that something would prevent him from carrying out the shipboard marriage ceremony between his daughter Hilda and this drunk.

They had been sailing for hours and Horatio was not comfortable on the water. The sight of land was just a memory. Horatio wasn’t sure how many miles of ocean were between the boat and the safety of land. One thing was certain, if he had to perform the ceremony, at least he would charge the derelict \$50 for his trouble.

“I now pronounce you husband and wife.” It had happened. The drunk was now his son-in-law.

“Poopsy, honey, why don’tcha fix us up some grub.” Bob’s words were slurred, and since the ceremony, Hilda looked even more seasick.

“Fix it yourself,” she croaked, “I’m not feeling so hot.”

“Well now,” Bob replied, “I can’t be bothered with woman’s work when I’m running the boat.”

“Woman’s work!” she yelled, “you fix something yourself—or starve.”

Bob was not pleased. “Now that we’re married, honey, I’m the boss.”

Horatio was delighted at the sudden turn of events between the bride and groom and offered Hilda a solution. “I don’t have to file the marriage certificate for ten days, so just tear it up,” Horatio said.

“But daddy, what legal, and you get in

“Don’t worry about bonded,” Horatio corrected?

ANSWER: No. destroy the marriage that you found at least Hypothetical.

1) Horatio n marriage certificate clerk of the court with ceremony. This requirement and does not create a which the parties may Destroying the certificate the marriage. Only a order that a marriage i suggestion may actual Hilda’s marital situation

2) Horatio has from his bond. As w Horatio’s bond protect his negligence; it d from liability. In fact may seek reimbursement notary after paying notary’s negligence.

3) Horatio she type of notarial act b of Florida. Because whether he was within he should not have pe ceremony. Additionally intoxicated and may location. A notarial e the state boundaries court.

4) Horatio may \$20 for performing a Horatio indicated th

THE NOTARY

indicate whether his fee was for performing the ceremony or for other services related to the marriage ceremony. Many notaries charge for related services, such as photography, candles, flowers, cruises, music, etc. To help protect against allegations that a notary violated the statutory maximum fee for performing a marriage ceremony, it is a recommended practice to itemize the charges for these extra products or services.

5) Some of you may be concerned about Horatio performing a marriage ceremony for his daughter. Florida law prohibits a notary from notarizing the signature of a spouse, son, daughter, mother, or father of the notary public. According to an advisory opinion of the Attorney General, this prohibition does not apply to marriage ceremonies because the notary is not notarizing a signature. As such, it is our view that Horatio may perform a marriage ceremony for his daughter.

6) Horatio should be concerned about Bob's competence to participate in the ceremony because of his intoxication. A notary should never perform a notarial act for someone who is incompetent to understand the nature of his or her act.

NOTARY TIDBITS

Florida's first notary law was enacted in 1822.



The fee set by law in 1834 for administering an oath was 12 1/2 cents.



Since 1976, notaries have been appointed for the State of Florida at large, rather than for limits and precincts set by the Governor.

The Legislature clarified the law concerning the requirement that notaries certify the type of identification that they relied upon when notarizing. Prior to the amendment, some notaries thought that identification documents were always required, even when they personally knew the signer. To eliminate the confusion, the Legislature amended the law to state that notaries must certify the type of identification, either based on personal knowledge or other form of identification, upon which

they rely when the amendment was de existing requirement a new responsibility requirement was fo section pertaining (Legislature relocate a section which appl acknowledgments.

Note: person; "having an acquaint association with th establishes the indiv



Believe it or not, this defense was actually used our office recently investigated. Remember, y notarize a signature when the signer is not in yo is not sufficient that you recognize the signature

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. () _____

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