

uring the past two years, Florida has been hit with three natural disasters —Hurricane Andrew in August 1992, Tropical Storm Alberto in July 1994, and Tropical Storm Beryl in August 1994. All have caused millions of dollars in damages to property and have disrupted the lives of thousands of Florida residents. Hurricane Andrew was responsible for a whopping \$30 billion in damages. According to state officials, estimates of the damages caused by Alberto and Beryl are not yet tallied. Fortunately, however, experts do not expect the amount of damages to be as astronomical as those caused by Andrew.

Notaries have served an important role in the rebuilding effort after Andrew. The most common function has been notarizing building permit applications and other construction related forms. The primary purpose for having these documents notarized is to prevent fraudulent transactions from occurring. For the most part, notaries have done a great job with handling the unusually large number of requests for notarizations.

Unfortunately, people sometimes look for shortcuts during times of crisis. In an effort to expedite the rebuilding of a home or business, some notaries have notarized signatures on documents when the signer was not present. Worse yet, some notaries actually forged signatures and then notarized the document. Through their efforts to “help” with the paperwork, many notaries have actually assisted unscrup-



Governor Chiles visited relief sites in the flood stricken areas of the

ulous building contractors with obtaining illegal building permits. In fact, in one situation, a deceased person’s signature was notarized on a building permit application. Taking shortcuts like these undermines the role of the office of notary public and erodes the reliability of notarized documents in Florida.

In addition to eroding public faith in notarized documents, some notaries may find themselves facing liability for damages caused by negligent or willful violations of the notary laws. When a building contractor does not fulfill the terms of a contract or when a homeowner is dissatisfied with a builder’s services, the owner may begin looking for remedies. If the notary’s actions caused all or part of the loss, then the owner may seek recovery against the

notary. In many cases, notaries have been successful in recovering their damages by filing claims with the notary’s bonding company. However, the notary’s bonding company may not cover the notary’s bonding claims, bonding cc

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to the notary for repayment. Additionally, the State Attorney has filed criminal charges against numerous contractors and some notaries who were involved in fraudulent activities.

Extensive cleanup and rebuilding efforts are needed to recover from Alberto and Beryl, and once again, notaries will be called upon more often than usual to notarize building permits and other documents necessary to begin the repair work. Notaries, please exercise extreme caution and don't allow yourself to be pressured into violating the notary laws. It's terrible to be a victim of a natural disaster—don't add to the problem by causing a man-made disaster with an improper notarization.

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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.

This problem may occur in different situations. In some scenarios, 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 before notarizing.

In other instances, individuals may 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 signs a document, such as a warranty deed, with 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 _____, 19__, 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.

No. Although allow a notarization sworn testimony, Florida notaries mistakenly may call the signer verify the signature with the notarization prohibits a notary from nature if the signer time of the notarization.

Yes. However several concerns. complete a notarial certificate in English. The Cons of Florida provide language of the State you should not sign without knowing Otherwise, you incur unnecessary risks.

If the document notarial certificate then you must ask type of notarization oath or acknowledgment the appropriate certificate the signer cannot notarize, then you notarize.

Additionally, you that the document is sometimes difficult documents.

Finally, if you ca with the signer be barriers, then you properly administer acknowledgment.

Of course, if you with notarizing a d a foreign language decline.

considered this request a "major" problem. No doubt you have had some of the same questions that we are frequently asked.

1. May I notarize the signature of a minor? Generally speaking, you may notarize for a minor; however, all of the requirements of the notary laws must be followed.

2. Is there an age limit? The notary laws do not limit notarizations based upon a person's age. Our office recommends that you exercise caution when notarizing for a minor. In particular, you should determine whether the minor understands the nature of an oath or acknowledgment before notarizing.

For example, a woman recently called our office to ask whether she could notarize the signature of a 4-year-old child. The father wanted to transfer the title of a boat to his child. A child of this young age would probably not understand the transaction. On the other hand, we recently encountered a

incident that she witnessed. She actually wrote down what she had seen and wanted to sign her statement and swear to it in the presence of a notary. Most likely, a 12-year-old child would understand the act of swearing to the truthfulness of a statement.

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

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

3. What about identification for a minor? Any time you notarize a signature, the signer, including a minor, must provide acceptable identification to the notary. The problem, of course, is that most minors do not have one of

First, you may be that any person 12 may be issued a card. To obtain tl should apply at th Motor Vehicles o licenses are issued.

provide his or her l residence address satisfactory to the other data required The fee for the ide \$3, including payi photograph of the

Second, you may ten statement of a identify the minor. Spring 1993 issue for a full explanatic identification.)

When asked to n of a minor, you ma you are unsure abo notarization. In you may even sugge his or her parent attorney.

certain resident alien cards issued by the U.S. Department of Justice, Immigration and Naturalization Service, will no longer be valid after September 20, 1994. The INS is currently replacing any immigrant registration card identified as Form I-151 and issued prior to 1978.

The new cards are designated as Form I-551 and are made of hard plastic, similar to credit cards, rather than laminated paper cards. Each card has a pink background, the words "Resident Alien" in dark blue, and a blue INS seal in the center of the card. The card also contains a photo (showing the right ear), signature, and

fingerprint of the resident alien. Other cards issued after 1978 have white backgrounds, but after September, all valid cards will have these three identifying essentials. The INS expects the new cards to be more resistant to fraud and counterfeiting.

Since April 1993, a notary public in Florida has been able to accept an INS identification card when notarizing. Remember, though, after September 20, 1994, a notary may not accept an INS Form I-151 card as identification for a person



Resident Alien Card, Form I-

requesting notary s Individuals mayre tion about the card r by calling INS at (8

Occasionally, a notary public is asked to notarize the signature of a person who signs by way of mark. The person may be illiterate or may have a physical disability which prohibits him or her from signing in the customary manner. The notary laws do not require any additional procedures for notarizing in these situations. You may notarize in the same manner as for usual signatures. However, some notaries prefer to take extra precautions. The following guidelines may be helpful.

- (1) Question the signer to make sure that he or she understands the nature and effect of the document to be signed. If the person is illiterate, read the document to him or her. If the person does not understand, refer him or her to an attorney for legal advice and do not proceed with the notarization.
- (2) Ask for proper identification.
- (3) Perform the appropriate notarial act: administer an oath or take an acknowledgment.
- (4) Before the person signs the document, print his or her first name at the beginning of the signature line and the last name at the end of the line. Just below the line, print the words "His Mark" or "Her Mark".

JOHN 7 DOE
His Mark

Then, ask the person to make his or her mark on the designated line.

- (5) Complete the notarial certificate with all the required information. When filling in the person's name whose signature is being notarized, you may want to indicate that the person signed by way of mark.
- (6) It is also recommended that two uninterested persons witness the signing of the document and the notarization and that their names and addresses be clearly printed under their signatures.

For an acknowledgment:

Signature of Witness John 7
PRINTED NAME AND ADDRESS OF WITNESS HIS MA

Signature of Witness
PRINTED NAME AND ADDRESS OF WITNESS

State of Florida
 County of _____

The foregoing instrument was acknowledged before day of _____, 199__, by _____ John who signed by way of mark in the presence of these who produced (type of identification) as identif

Signature of
PRINT, TYPE OR STAMP (SEAL)

For an oath or affirmation:

Signature of Witness John _____
PRINTED NAME AND ADDRESS OF WITNESS HI

Signature of Witness
PRINTED NAME AND ADDRESS OF WITNESS

State of Florida
 County of _____

Sworn to (or affirmed) and subscribed before m day of _____, 199__, by _____ John who signed by way of mark in the presence of the and who produced (type of identification) as ic

Signature of
PRINT, TYPE OR STAMP (SEAL)



Horatio fumbled in the dark for the phone. It was 3:00 A.M. “Who would be calling at this hour?” he wondered as he picked up the phone.

“Darling, I need your help.” It was Holly, his fiancée. They planned to get married next spring. “Mother is worse—she may not make it through the night. Come to the hospital right away to witness and notarize her signature on a deed.”

Horatio jumped out of bed and raced to the hospital. The elevator seemed to be moving in slow motion. When the door opened, he quickly found his way to her room.

“Thank goodness you made it,” sighed Holly. “Mother’s a little woozy from medications, so I’ll have to help her hold the pen.”

“Wake up, Mother,” prodded Holly. “Horatio is here to notarize this paper.”

“Horatio? Who is Horatio?” she groaned.

“Oh mother, you know. Just let me help you sign this paper.” Turning to Horatio, Holly chuckled, “She’s just clowning around. At least she still has her sense of humor.”

“Wait!” Horatio shouted abruptly, “I forgot my notary seal. I’ll have to go home to get it.”

“We don’t have time. Let’s get it signed now, and you can notarize it later.”

“Well—I—don’t—think that’s a good idea,” stammered Horatio nervously. “The notary laws . . .”

“Notary, schmotary! You know that Mother wants us to have the house for our wedding present. If we don’t get this done, my brother will take it. I don’t know why mother always favored him.” Holly was becoming impatient. She grabbed her mother’s hand and helped her sign the deed.

Horatio paused. The notary laws were flashing through his mind. He knew that notarizing this deed may be a criminal offense. What should he do?

ANSWER: It should be obvious that Horatio should not notarize this deed. We hope that you found at least five problems in this issue of Horatio’s Hypothetical.

1) One problem is that Holly’s mother was “woozy” from taking medication and apparently did not know what she was signing. Horatio should not notarize without assuring that she has read and understands the document.

2) Another problem arises because Holly assisted her mother with signing. A person helping another with signing, especially when the signer is medicated, certainly raises suspicions that the signature may be coerced or involuntary. A person who cannot sign because of a physical disability may sign by way of mark, if possible. Please review the article on page 4 for more information about this topic.

3) Horatio seems to be aware that the notary laws prohibit him from notarizing this later when he gets home.

It is not sufficient that the signer is signing. Florida law requires that the signer must be in the presence of the notary at the time the deed is notarized. In fact, the requirement is violated if the signer is subjected to a § 817.03(1) and may be removed from the premises with intent to prevent the signer from signing. Horatio would be violating the law by urging.

4) Because Horatio is married to Holly, he is financially from the house, it would not be fair to require him to notarize the deed.

5) Under normal circumstances, Horatio could sign and notarize on a witness’ signatures. Of course, Horatio should not use the name of the person being notarized in his signature to avoid any confusion.

F.Y.I.

The Legislature did amend the notary laws during the legislative session. See chapter 117, Florida Statutes, made on April 22, 1999, a reprint of the current statute included in the last issue of Notary View (1999). Let us know if you . . .

Eugene E. Hines is the principal founder of the American Society of Notaries, a nonprofit organization devoted to notarial practice through education. The Society is located in Washington, DC, but will be relocated to Tallahassee, Florida. Hines has served as executive director of the Society and editor of The American Notary newsletter since 1965 and as a member of the Governor's Task Force on Notaries Public in 1988.

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 public 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 other 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.

A refusal to notarize is not an inconvenience to the signer. It is a misinterpreted as unwillingness. Therefore, notaries should refuse in a tactful manner. It should not be a problem based on one of the situations, such as when the document is not complete. The notary should not refuse to notarize if the document prohibits notarizing it.

However, the situation in which a notary should refuse to notarize may be more complex. For example, suppose that the signer is being coerced into a transaction. In such a situation, it may be best to simply explain the situation to the signer and be comfortable with the document. No further action is necessary. Another situation is when the notary is asked to state the facts of a transaction familiar with the parties involved. It is best to avoid a debate regarding the facts.

Some people have argued that a notary public's legitimate request for a signature could be refused. Notaries are public officers with a duty to be reasonable to the general public. A refusal to notarize arises in an employment situation when a notary's employer refuses to perform notarizations that are

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 Office has considered the issue of whether a notary may refuse to notarize because of policies established by an employer. In a letter to the vice president of a Florida bank, Assistant General Counsel Kerey Carpenter outlined the position of that office. She noted that a notary should never exercise his or her authority in a discriminatory manner. However, she stated that to limit bank employees to notarizing only for bank customers was not considered unlawful discrimination. "Most notaries," she said, "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."

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.

of other states and require a certificate of notarial authority. Countries participating in an International Treaty called the Hague Convention may require a certificate called an Apostille. The certificate or Apostille is used to verify that the notary public was indeed commissioned as a notary public for the State of Florida on the date of that notarization. Florida law provides that the Secretary of State shall furnish a certificate of notarial authority or an Apostille when properly requested.

A notary is not responsible for knowing whether a certificate or an Apostille is required or for making the request when one is required. Rather, the person whose document was notarized may request the certificate or Apostille from the Department of State. The Department will need the following information and documents:

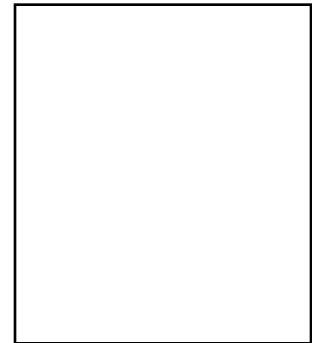
sent. The Department determine whether appropriate for the

- **The original notary** The notarization with the requirer for a certificate or.
- **A check or monitoring** certification, made Secretary of State document, and j

**Department of State
Bureau of Notaries
Elliot E. ...
401 South M...
Tallahassee, Flo**

The certificate or prepared and all c be returned by the process currently ta to complete.

congratulations to Cathy White, formerly Cathy Banks, on her recent marriage. Ms. White is the Bureau Chief of the Bureau of Notaries Public in the Department of State. We were pleased to learn that Ms. White immediately complied with Florida law by requesting an amended notary commission in her new name. Thanks, Cathy, for setting a good example for all notaries.



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processes between applications per me name has changed, c amend your comm name.

Remember, any about the notary law procedures should Notary Section in Governor.

the Department of Corrections inmate identification card for an inmate who is in the custody of the department. According to an official at the department, a person who is taken into custody and housed in a state prison is issued a department identification card and all other identification is confiscated.

Many times, inmates require notary services which are usually provided by a notary employed by the Department of Corrections. Occasionally, though, a notary outside the department may be asked to come to the facility for the purpose of notarizing for an inmate. In these situations, the inmate may present his or her DOC identification card as proof of identity.

card may also contain a specimen of the inmate's signature. Upon release from custody, a sticker is placed on the card indicating that the inmate has been released, the date of the release, and the signatures of the inmate and one witness. The inmate may use this card to secure a proper identification card or driver's license from the Department of Highway Safety and Motor Vehicles.

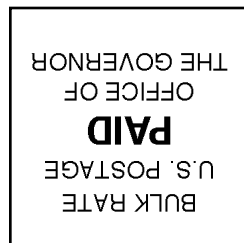
Most notaries have never been presented this type of identification from a person requesting their services. Recently, though, some notaries have questioned whether they may accept the DOC inmate identification card when notarizing for a person who has been released from a state prison. Florida law

a person is discharged

AS A REMINDER

If you have a home or business telephone number and your name has changed, you must immediately notify these changes.

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