

# THE NOTARY VIEW



1998

FROM THE EXECUTIVE OFFICE OF THE GOVERNOR

ISSUE 2

## GOVERNOR SIGNS NEW NOTARY LAW

With the stroke of his pen, Governor Lawton Chiles approved House Bill 1125 in May 1998, substantially revising Florida's notary laws. The new law will take effect on January 1, 1999. Sponsored by Rep. Dennis Jones (R-Pinellas County), the bill passed unanimously after it and its companion bill, Senate Bill 1130, sponsored by Sen. John Grant (R-Hillsborough County), were actively debated in several legislative committees.

Many of the revisions are technical in nature and serve to clarify existing portions of the notary law found in Chapter 117, Florida Statutes. But, some of the revisions represent substantial new law. For example, the

notary bond will increase to \$7,500; specific procedures for notarizing for persons with disabilities are set forth; and new forms of identification have been added. Additionally, notarial certificates on form documents throughout the Florida Statutes have been revised to comply with the form certificates specified in Chapter 117.

In this expanded edition of *The Notary View*, we will explain all the new laws and how you, as a notary public, will be affected.



Phyllis Hampton (left), the Governor's Assistant General Counsel; Donald L. Bell, General Counsel for the Department of State; and Linda Adams, Notary Education Coordinator, watch as Governor Chiles signs the new notary law.

## NOTARY BOND TO INCREASE

During the legislative session, the bills proposing revisions to the notary laws generated some controversial discussions in the House and the Senate. The main issue was a provision raising the surety bond for notaries to \$10,000, a proposal supported by several large bonding companies. Other companies opposed the increase fearing a higher bond premium would be necessary. In the end, an industry-approved compromise set the new bond amount at \$7,500.

A representative for one of the

bonding companies pointed out the reasons for the bond increase. Over the last few years, the national trend has been to increase notary bonds; California's bond is \$15,000. Additionally, there has not been a bond increase in Florida since 1992, but inflation has continued. The higher bond will provide additional protection to the public, and, according to supporters, notaries are not expected to see an increase in their bond premium.

The \$7,500 bond will apply to all notaries who receive a commission on or after January 1, 1999.

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# 1999 NOTARY LAW REVISIONS

Here's a summary of the revisions to Chapter 117, Florida Statutes, enacted by House Bill 1125, effective January 1, 1999 (Chapter 98-246, Laws of Florida):

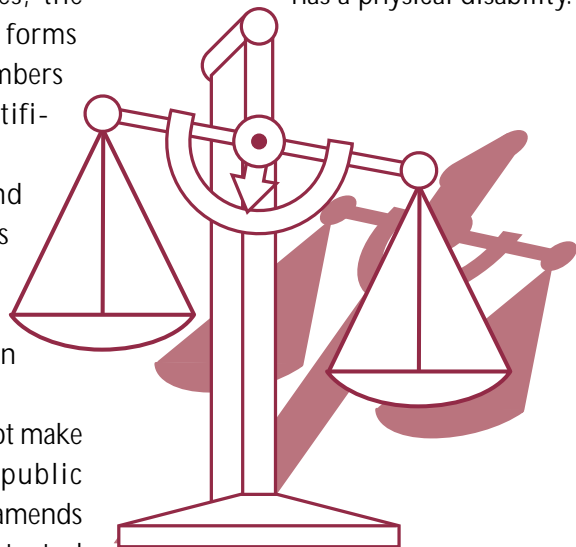
- States that notaries may only exercise their duties in the State of Florida.
- Requires notaries to read, write, and understand English.
- Allows the Governor's Office to contract with private vendors to provide notary education.
- Specifies the procedure for resigning a notary commission.
- Increases the notary bond to \$7,500.
- Separates section 117.04 into two sections authorizing notaries to take acknowledgments and solemnize marriage.
- Provides that the notary seal and commission certificate belong to the notary, must be kept under the

control of the notary, and must not be surrendered to an employer, even if the employer paid for the commission or seal.

- Specifies in one section the nine elements of a notarial certificate.
- Clarifies types of identification and makes requirements for credible witness affidavits, whether using one or two witnesses, the same. Adds two additional forms of identification and renumbers the entire section on identification.
- Requires notaries to amend commission within 60 days after lawful name change and provides that failing to amend commission is reason for suspension from office.
- Specifies that notaries may not make attested photocopies of public records or vital records and amends notarial certificate for attested photocopies.
- Requires notaries to make reasonable accommodations to provide notarial services to persons with disabilities.
- Provides the procedure and notarial certificates for notarizing for a person who signs with a signature mark.
- Provides the procedure and notarial certificates when a person with a disability who cannot sign or make a signature mark directs the notary to sign for him or her.
- Clarifies that law enforcement officers and correctional officers are authorized to only administer oaths in the performance of their official duties.
- Emphasizes that notaries are not required to record their commission certificates in the county clerk's

office and that the Secretary of State provides Certificates of Notarial Authority and Apostilles for notarized documents.

- Moves all prohibitive acts into one section.
- Prohibits notaries from signing notarial certificates with a facsimile signature stamp unless the notary has a physical disability.



- Prohibits notaries from notarizing when the signer appears mentally incapable of understanding the document.
- Prohibits notaries from amending notarial certificates after notarization.
- Requires notaries who perform electronic notarizations to keep a notary journal of electronic notarizations. Provides specifics about the journal.
- Corrects notarial certificates on form documents throughout the Florida Statutes to make them comply with the ones specified in Chapter 117.

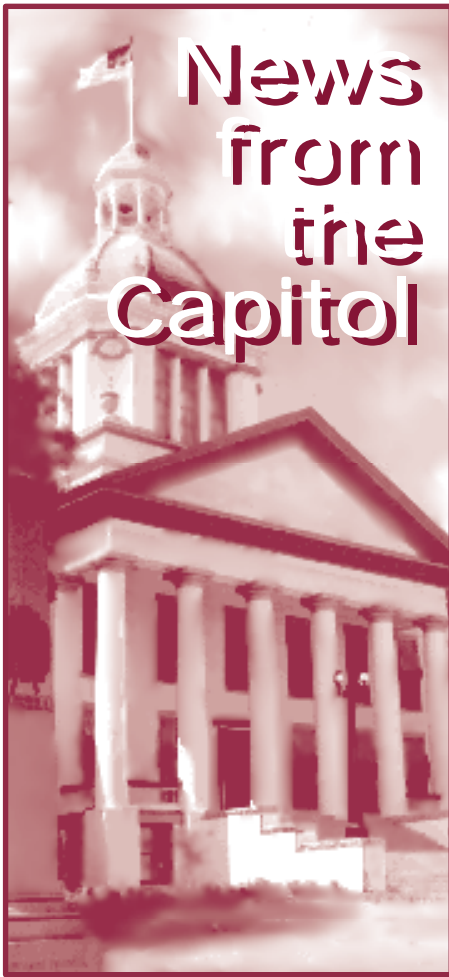
Revisions to the notary laws can be found in the Florida Statutes, 1998 Supplement, to be published this fall.

## THE NOTARY VIEW

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



## FLORIDA TO ELECT NEW GOVERNOR AND SECRETARY OF STATE

As the Fall draws near, so do elections for the State's top officials. This year, Floridians will elect a Governor and Lieutenant Governor and members of the Cabinet: Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture. In addition, all seats in the House of Representatives are up for grabs, and one-half of the Senate seats will be on the ballot.

The Governor appoints and commissions notaries public and is responsible for the education and discipline of notaries, while the Secretary of State carries out the ministerial functions of processing applications, issuing commissions, and maintaining the records of notaries. The Legislature enacts new laws and revises the existing notary laws as needed.

Remember to vote November 3rd!

## AWARD FOR NOTARY SECTION

The American Society of Notaries (ASN) honored the Florida Governor's Office, Notary Section, for outstanding achievement in educating notaries at its annual conference held in San Antonio, Texas, in August. The first annual Excellent Service Award was presented to Linda Adams, Notary Education Coordinator, for her dedication to Florida notaries. Lisa Fisher, Executive Director of ASN, said, "We commend



Lisa Fisher (left), Executive Director of the American Society of Notaries; Richard Authier, Chairman of the Board of Directors; and Derrick Huckleberry (right), Board Member and owner of Florida bonding agency, Huckleberry Associates, Inc., present Linda Adams with the 1998 Excellent Service Award.

Linda for exemplary service and commitment to notaries. Her publication of *The Notary View* newsletter, the *Governor's Reference Manual for Notaries*, the new E-Mail E-ducation program, and her work in revising Florida notary laws stand as benchmarks for other states to follow."

Phyllis Hampton, the Governor's Assistant General Counsel, who

oversees the Governor's Notary Section, expressed pride in Linda's award, "I have known Linda since the Governor's Notary Section was established in 1992. Linda has built this office into one that is recognized nationwide for its services to and for notaries."

Congratulations to Linda and the Notary Section!

## NATIONAL NOTARY PUBLIC DAY

In honor of Florida notaries public, Governor Lawton Chiles has proclaimed November 7 as Notary Public Day in Florida and November 1-7 as Notary Public Week. Other governors and state officials across the country are issuing similar proclamations to honor the nation's 4.5 million notaries. Florida's notary population totals 360,000.

Notaries perform essential functions in commercial and banking transactions, in governmental operations, and in the nation's legal systems. The valuable contributions of notaries to their communities are immeasurable and should be commended. Notaries who serve conscientiously and in the spirit of genuine public service deserve respect for the assistance they provide.

*Mark November 7 on your calendar.*



Donald L. Bell, General Counsel, Department of State  
*Mr. Bell is General Counsel of the Florida Department of State. In this capacity, he serves as legal counsel to the Secretary of State and other senior personnel in the Secretary's central office. He is also responsible for assisting the Secretary in the development of public policy and for directing a program of legal services to the Department's seven divisions and the Office of International Affairs.*

## IMPROVED APOSTILLE AND CERTIFICATE SERVICE

Foreign jurisdictions often require that notarized documents destined for use in those countries be accompanied by a Certificate of Notarial Authority or an Apostille, both of which are issued by the Secretary of State.

Apostilles are issued in connection with documents destined for use in countries that are signatories to the Hague Convention, an international agreement pertaining to the legalization of documents for foreign use. Many countries that are not parties to the Hague Convention will accept a Certificate of Notarial Authority for legalization purposes. Because of the large volume of trade between Florida and other countries, and because of the large number of foreign visitors entering and leaving Florida each year, Apostille and notary certificate services have become increasingly important.

Secretary of State Sandra Mortham recently announced that by the end of September 1998, the Florida Department of State will begin issuing both Apostilles and Certificates of Notarial Authority from the Department's regional licensing offices. For the first time, Apostilles and notary certificates will be available to walk-in

customers at the Department's offices in Miami, West Palm Beach, Tampa, Orlando, Jacksonville, and Fort Walton Beach. Both certificates will continue to be available by mail from the Secretary of State's office in Tallahassee, and that office will also provide walk-in service. Secretary Mortham believes that it is important to offer these services on a local basis so that people who have business in countries outside the U.S. can complete their transactions without delay.

Simultaneous with the new regional service, the Secretary of State will also phase in a new set of certificates that should be more readily acceptable in foreign countries. The basic Certificate of Notarial Authority currently issued by the Department of State indicates only that the person whose name appears on the certificate is a Florida notary public. This certificate will be improved by adding the information in the Spanish language.

In addition, the Department plans to offer a new certificate that will be available to notaries who appear at a regional office to execute a document in the presence of a Department official. This certificate will authenticate the notary's identity and the



notary's signature, and it will explain that the certificate is issued in connection with a particular document. This additional information will help to assure acceptance of the certificate in many jurisdictions. All information on the certificate will appear in both English and Spanish.

When a certificate is requested in connection with a particular document, Department of State officials will also take the necessary steps to determine whether the document is a "public document," as required by the Hague Convention, to assure that the correct certificate is issued in connection with that document. All of these new features should aid in speeding

*continued to page 5*

# DON'T USE FACSIMILE SIGNATURE STAMPS

The use of a facsimile signature stamp causes concern. When someone inspects a document signed with a rubber stamp instead of an original signature, a legitimate question comes to mind. Did the signer really sign this document, and, if so, did the signer personally appear before the notary public for the notarization?

When a notary public uses a facsimile signature stamp in performing

his or her duties, there is a similar cause for alarm. Did the notary actually notarize this document, or did an unknown person affix the notary's signature stamp and notary seal to the document, with or without the notary's knowledge?

To alleviate these concerns, the new law prohibits notaries from using a facsimile signature stamp to sign notarial certificates. The only exception is if the notary has a physical

disability that limits or prohibits his or her ability to make a written signature. In that case, the notary must first submit written notice to the Department of State with an exemplar of the facsimile signature stamp.

So, forget using a rubber stamp for convenience, and keep your notary seal in a secure place to prevent its misuse. Sign notarial certificates with original signatures.

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## PRESENCE STILL REQUIRED PROHIBITED ACTS JUST REORGANIZED

When you read the new 1999 notary laws, don't be fooled into thinking that the prohibition against notarizing when the signer is not present has been removed. Instead, this prohibition and four others found in former subsection 117.05(6), Florida Statutes, have been combined with other prohibited acts in section 117.107. This simple change will make reading the notary laws easier for notaries.

The personal presence of the document signer is still required for every notarization. Florida law does not allow you to verify a signer's signature by telephone or by the sworn statement of a witness to the signing of the document. In order to avoid a possible civil penalty of \$5,000, possible criminal charges, or suspension from office, you must always require the signer to be present for the notarization.

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## IMPROVED APOSTILLE AND CERTIFICATE SERVICE *continued from page 4*

transactions for foreign use and should increase the level of acceptance of Florida documents overseas.

Secretary Mortham has asked that, for the time being, notaries and others who need these services continue to use the Department's mail service in Tallahassee. The new services will be available in the

Department of State's regional offices in late September. The Department will publicize the addresses and telephone numbers of the offices where the new local walk-in services will be available in advance of that time.

For additional information about the new services, please contact the General Counsel, Department of State.

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## RECORDING NOTARY COMMISSION NOT REQUIRED

Many notaries mistakenly believe that they are required to register or record their notary commission certificate with the clerk's office in their county. In some counties, the clerk's office provides Certificates of Notarial Authority (also known as clerks' certificates) for notarized documents destined for other states or foreign countries.

Actually, notaries are **not** required to register with the county, and new language to an existing law confirms that certification of a notary's authority must be provided by the Secretary of State. Remember, the Secretary of State is the official custodian of notary public records — that's why any certification must be provided by that office. See section 117.103, Florida Statutes.

*Old notaries never die . . . they just become dis-appointed!*

# NOTARIZING FOR A PERSON WHO SIGNS WITH A MARK

Occasionally, a notary public is asked to notarize the signature of a person who signs with a mark. The person may be illiterate or may have a physical disability which prevents or restricts him or her from signing in the customary manner. Until now, the Governor's Notary Section has recommended a procedure for notarizing in this special situation. However, beginning January 1, 1999, Florida law will require an additional procedure for notarizing in these situations. See section 117.05(14)(b) & (c), Florida Statutes (1998 Supp.).

(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 blind or illiterate, read the entire document to him or her. If the person does not understand, refer him or her to an attorney for legal



advice and do **not** proceed with the notarization.

- (2) Check the identification of the signer.
- (3) If the notary keeps a journal of notarial acts, he or she should make the journal entry at this point and indicate the special circumstances of the notarization.
- (4) Perform the appropriate notarial act: administer an oath or take an acknowledgment.

- (5) Before the person signs the document, print his or her first name at the beginning of the signature line and his or her last name at the end of the line. Just below the line, print the words "His Mark" or "Her Mark." Then ask the person to make his or her mark on the designated line.

John X Doe  
His Mark

- (6) Two disinterested parties must witness the signing and notarization of the document. Make sure their names and addresses are clearly printed below their signatures. It is recommended that the witnesses also sign the notary's journal noting their addresses.
- (7) Complete the notarial certificate with the required information.

*The following notarial certificates are specified in the law for use in these notarizations.*

## FOR AN OATH OR AFFIRMATION

(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	(First Name) <u>X</u> (Last Name) <small>HIS (OR HER) MARK</small>
(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
Sworn to (or affirmed) before me this ____ day of _____, (year), by (name of person making statement) who signed with a mark in the presence of these witnesses.	
(Signature of Notary Public) <small>PRINT, TYPE OR STAMP NAME OF NOTARY PUBLIC</small>	
[SEAL]	
Personally Known _____ or Produced Identification _____ Type of Identification Produced _____	

## FOR AN ACKNOWLEDGMENT

(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	(First Name) <u>X</u> (Last Name) <small>HIS (OR HER) MARK</small>
(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person acknowledging) who signed with a mark in the presence of these witnesses.	
(Signature of Notary Public) <small>PRINT, TYPE OR STAMP NAME OF NOTARY PUBLIC</small>	
[SEAL]	
Personally Known _____ or Produced Identification _____ Type of Identification Produced _____	

# NOTARIZING FOR A PERSON WHO DIRECTS ANOTHER TO SIGN

On a rare occasion, a notary may be asked to notarize the signature of a person with a disability who cannot sign a document in the usual manner or make a signature mark. An individual with a disability may direct another person to sign on his or her behalf. See *State v. Hickman*, 180 So.2d 254 (1966). Beginning January 1, 1999, Florida law will allow the notary to sign for the person with a disability if that person directs the notary to do so in his or her presence. See section 117.05(14)(d) & (e), Florida Statutes (1998 Supp.).

In addition to the required notarial service, the notary acts as the hands of the person with a disability signing his or her name to the document. When providing this service, the notary must follow the procedure set forth in the law.

(1) Question the person to make sure that he or she understands the

nature and effect of the document to be signed. If the person is blind or illiterate, read the entire document to him or her. If the person does not understand, refer him or her to an attorney for legal advice and do **not** proceed with the notarization.

(2) Check the identification of the person with a disability. If a person other than the notary is acting as the designated signer, it is not necessary to require identification from that person. Think of the designated signer only as the "hands" of the person with a disability.

(3) If the notary keeps a journal of notarial acts, he or she should make the journal entry at this point and indicate the special circumstances of the notarization.

(4) Perform the appropriate notarial

act: administer an oath or take an acknowledgment. The notarial act must be directed to the person with a disability, rather than the designated signer.

(5) The notary may then sign the name of the person with a disability at the direction of and in the presence of that person. The law requires the following statement below the signature: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes."

(6) Two disinterested parties must witness the signing and notarization of the document. Make sure their names and addresses are clearly printed below their signatures. It is recommended that the witnesses also sign the notary's journal noting their addresses.

(7) Complete the notarial certificate with the required information.

*The following notarial certificates are specified in the law for use in these unusual notarizations.*

## FOR AN OATH OR AFFIRMATION

(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	("Signature" of Person with Disability) <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO S. 117.05(14), FLORIDA STATUTES.</small>
(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
Sworn to (or affirmed) before me this ____ day of _____, (year), by (name of person making statement) and subscribed by (name of notary) at the direction of and in the presence of (name of person making statement), and in the presence of these witnesses.	
(Signature of Notary Public) <small>PRINT, TYPE OR STAMP NAME OF NOTARY PUBLIC</small>	
[SEAL]	
Personally Known _____ or Produced Identification _____ Type of Identification Produced _____	

## FOR AN ACKNOWLEDGMENT

(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	("Signature" of Person with Disability) <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO S. 117.05(14), FLORIDA STATUTES.</small>
(Signature of Witness) <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
The foregoing instrument was acknowledged before me this ____ day of _____, (year), by (name of person acknowledging) and subscribed by (name of notary) at the direction of and in the presence of (name of person acknowledging), and in the presence of these witnesses.	
(Signature of Notary Public) <small>PRINT, TYPE OR STAMP NAME OF NOTARY PUBLIC</small>	
[SEAL]	
Personally Known _____ or Produced Identification _____ Type of Identification Produced _____	

# NOTARY SEAL BELONGS TO THE NOTARY

The Governor's Notary Section has long cautioned notaries about keeping their notary seal in a secure location to prevent its loss, theft, or misuse. Additionally, we have instructed notaries not to surrender their notary seals to employers who may have paid for the seal. There is always the possibility that someone will use the seal, and the notary will be held liable for damages resulting from improper notarizations.

Often, employers feel that they have a right to the notary seal of their notary-employee if their business or public agency paid the costs associated with making an employee a notary public. However, the employee is the

appointed notary public, not the business or agency.

A law that emphasizes the ownership of the notary seal and designed to protect the notary and prevent the unauthorized use of notary seals was part of the bill passed by the 1998 Legislature. The law states:

*The notary public official seal and the certificate of notary public commission are the exclusive property of the notary public and must be kept under the direct and exclusive control of the notary public. The seal and certificate of commission must not be surrendered to an*

*employer upon termination of employment, regardless of whether the employer paid for the seal or for the commission.*

If the notary seal is lost, stolen, or believed to be in the possession of another person, the notary is required to notify the state in writing. The law also provides that possessing another person's notary seal is a criminal offense. Notaries are advised to file a police report when they believe their notary seal has been stolen or is in the possession of another person who refuses to return the seal. These simple steps offer the best protection for notaries and the public.

# NEW FORMS OF IDENTIFICATION FOR INMATES

In response to an ongoing problem, the Legislature has added two new forms of identification for inmates in federal prisons and for those incarcerated in city or county jails or other detention facilities. The law currently allows notaries to accept an inmate identification card issued by the Florida Department of Corrections; but, that's only for inmates in a state prison. It is standard procedure for a prison or jail to confiscate all identification when a person is received into custody. This presents a problem when the prisoner needs to have his or her signature notarized on important court documents or for personal transactions.

Effective January 1, 1999, notaries may rely upon two additional forms of identification for inmates in the custody of a detention facility:

- (1) an inmate identification card issued by the United States Department of Justice, Bureau of Prisons.

State of Florida  
County of \_\_\_\_\_

Under penalties of perjury, I declare that the inmate appearing before (name of notary) has relinquished all forms of identification upon confinement, has been identified by this department as (name of person whose signature is to be notarized), and is the person signing the document requiring notarization.

(Signature of Law Enforcement Officer)  
(Print, type or stamp name of Law Enforcement Officer)  
(Rank and duty station of officer)

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, (year), by (name of law enforcement officer).

(Signature of Notary Public)  
(Print, type or stamp name of notary public)

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_ [SEAL]  
Type of Identification Produced \_\_\_\_\_

- (2) a sworn written statement from a law enforcement officer about the identity of the inmate.

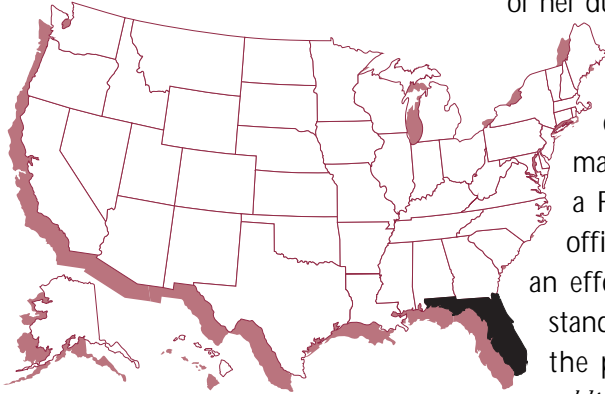
Affidavits made by law enforcement officers should be based upon the department's official identification process, i.e., fingerprinting, etc. The affidavit form above will be sufficient for identification by a law enforcement officer.

When using this form of identifi-

cation, the notary should indicate in the notarial certificate that the type of identification is "the sworn written statement of (name of law enforcement officer)." This sworn statement should be typed or printed on the front or back of the document, if possible, or can be attached to the notarized document. We also recommend that the notary keep a copy of the statement for future reference.

# No More Confusion Over Jurisdiction

In 1991 when major revisions to the notary laws were enacted, a provision stating the notary's juris-



diction was omitted from the law. The statement regarding jurisdiction was

probably taken out of the law because it was considered unnecessary language. A Florida notary public performs his or her duties in Florida. Right?

As logical as this sounds, the omission of this jurisdictional language has caused many people to question whether a Florida notary could perform official acts outside the state. In an effort to clarify any misunderstanding, the Legislature reenacted the previous language: *Notaries public shall . . . use and exercise the office of notary public within the boundaries of this state.*

## Coming Soon . . . Notary Seminars

- When:** February 1999  
**Where:** Miami, Tampa, Orlando, Tallahassee  
**Tuition Fee:** \$49 (includes registration and materials)  
**Sponsored by:** Governor's Notary Section in partnership with the American Society of Notaries -- Limited seating, reserve your space now!

*For more information, contact:*

### American Society of Notaries

Phone: (800) 522-3392

Fax: (850) 671-5165

E-mail: [mail@notaries.org](mailto:mail@notaries.org)

### Governor's Notary Section

Fax: (850) 410-1294

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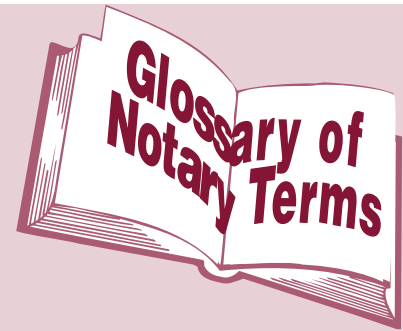
## DO NOT CHANGE NOTARIAL CERTIFICATE

Last week you notarized your friend's signature on a deed. The county clerk's office rejected the deed for recording because you forgot to affix your notary seal. Your friend brought the document back to you and asked you to correct your error and affix your seal. What should you do?

According to a Florida court case, you may not amend your notarial

certificate by affixing your seal. Instead, the document should be renotarized. See *Robinson v. Bruner*, 114 So.(1927). A revision to the notary laws which will take effect on January 1, 1999, includes prohibitive language reaffirming the decision by the court:

*A notary public may not amend a notarial certificate after the notarization is complete.*



**Apostille** (a-pos-stil') - A certificate of notarial authority issued by the Florida Secretary of State for notarized documents being sent out of Florida to those countries who are parties to the international treaty commonly known as the Hague Convention.

**facsimile signature** - an exact reproduction of a signature made by a rubber stamp or some mechanical process.

**Florida Statutes** - A series of books containing the legislatively enacted laws which govern our state, as opposed to court-decided or unwritten common law. While the Florida Legislature meets annually, the Florida Statutes are only printed in odd years. Supplements are printed in even years and include the laws enacted since the Florida Statutes were last printed.

**journal** - a recordbook of notarial acts including vital information about the signer, the document, and the notarial act.

**jurisdiction** - the geographical area in which a notary public has the power to act or perform official duties.

**Laws of Florida** - A series of books containing the laws enacted in a given year. The Laws of Florida are printed after each legislative session. Each law is assigned a chapter number and then reprinted in the Laws of Florida in chapter order. The Laws of Florida are also referred to as "chapter laws" or "session laws."

**notary bond** - A written obligation by a guarantor, i.e., an insurance company, to pay any individual harmed as a result of a notary's misconduct or negligence in the performance of official duties up to the face amount of the bond.

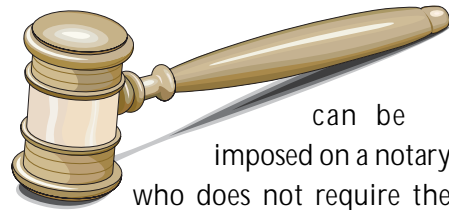
# ORDER IN THE COURT

The judge looked directly at the notary-defendant when he pronounced the judgment and sentence on her, "There is no doubt in my mind that you are guilty of 10 counts of misuse and fraud of your notary commission. The court assesses a fine of \$3,000 as to each count, that's a \$30,000 total fine." The notary was stunned — she had just been ordered to pay more in penalties than her annual salary — and all because she did a favor for her friend!

This 1996 court case stemmed from a complaint of election fraud in the election for city commissioner in a small Florida town. The main issue of the allegation involved the legitimacy of certain absentee ballots. The Florida Department of Law Enforcement investigated the matter, interviewed numerous voters, and concluded that there was no election fraud. However, FDLE uncovered notary violations on numerous absentee ballots where this notary notarized the voters' signatures when they were not present.

The notary's friend picked up the ballots from the voters and brought them to her. She notarized them even though the signers were not present to sign the ballots in her presence, be properly identified, and take the required oath. After the notarizations were complete, the friend turned the ballots in to the Supervisor of Elections. At first glance, the notarizations looked perfect, that is, until FDLE discovered exactly how the notarizations were performed.

The State Attorney prosecuted the notary public, not on criminal charges, but for the civil infraction of violating the presence requirement. Florida law provides that a penalty of up to \$5,000



can be imposed on a notary who does not require the presence of the document signer. See section 117.05(6)(a), Florida Statutes (1997) or section 117.107(9), Florida Statutes (1998 Supp.).

One by one the witnesses testified that they were not present when the notary public notarized their signatures on the absentee ballots. The notary disputed their testimony. In the end, the judge reduced the number of counts to 10 and found the notary guilty on all 10 counts. Considering the notary's

inability to pay the large penalty, the judge later reduced the fine to \$500 for each of the 10 counts, thereby reducing the total from \$30,000 to \$5,000. In addition, the notary was required to resign her notary commission.

Ironically, the notary was a paralegal who worked for a state agency, and prior to her resignation, she had been a notary for 10 years.

This case is a good lesson for all notaries. If you are asked to notarize a signature on an absentee ballot in this year's election, make sure that you obey the notary laws and don't make any exceptions — even for your best friend!

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## ABSENTEE BALLOTS REVISED NOTARIES PROHIBITED FROM CHARGING FEES

An overhaul of Florida's election laws this year will affect the way absentee ballots are signed in future elections. The new procedure will require the certificate for an absentee ballot to either be witnessed by a registered voter or by a notary public. If a notary is involved, the certificate must be signed under oath in the presence of the notary. The notary must properly identify the voter, administer an oath so that the voter can swear or affirm that he or she is a

registered voter and is entitled to vote by absentee ballot, and then complete the jurat (notarial certificate) on the ballot secrecy envelope. (See Chapter 98-129, Laws of Florida).

Another provision of the new law requires notaries to "witness" an absentee ballot when a proper request is made by the elector. In addition, notaries are prohibited from charging any fees for notarizing the signature of the elector.

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## RESIGNING A NOTARY COMMISSION

Another addition to the notary laws is a procedure for resigning the notary commission. When would a notary resign? Usually, under several conditions:

- if the notary moves out of state before the expiration of his or her commission;

- if the notary has no further need of the notary commission;
- if the Governor requests a resignation because of a valid complaint against the notary.

Because Florida notaries are appointed by the Governor, notaries

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# NEW OFFICE: COMMISSIONER OF DEEDS ONLY FOR TIMESHARE PROPERTY IN FLORIDA

Monique Antoinette, a resident of Paris, France, has decided to buy a timeshare condominium in Orlando. The real estate firm in Florida prepares the transaction papers and will send an agent to meet with Ms. Antoinette at her country villa in France to close the transaction. What is the best way to have Ms. Antoinette's signature notarized on the transaction papers?

The answer is to have the firm send an agent who lives in France and who has been commissioned as a new Timeshare Commissioner of Deeds (COD). This new office was

created by legislation passed by the Florida Legislature and became effective on April 30, 1998.

The COD is authorized to administer oaths and take acknowledgments like a Florida notary public, except that the notarial acts are performed in another country and only for documents executed in connection with timeshare property in Florida. CODs may not make attested photocopies, solemnize marriage, perform notarial acts related to any transaction other than timeshare interests, and may only act in the country for which the COD is

commissioned.

Timeshare Commissioners of Deeds are appointed by the Governor of Florida for a term of four years. To obtain an application or more information about this office, please contact:

Appointments Office  
Office of the Governor  
LL08 Capitol  
Tallahassee, FL 32399-0001  
(850) 488-2183  
(850) 921-0733 Fax

*Note: The former office of Commissioner of Deeds was abolished by the Florida Legislature effective May 1997.*

## JOURNAL REQUIRED FOR ELECTRONIC NOTARIZATIONS

House Bill 1125 added new requirements for electronic notarizations. Beginning January 1, 1999, notaries who perform electronic notarizations will be required to record these special notarial acts in a sequential journal. The reason is simple. In electronic notarizations, there is no paper document. Keeping a journal will provide a tangible record of the notarization in the event that the electronic document is lost. The notary public will also have a record in the event the notary is called to testify about the notarization..

Notaries will be required to record at least the following information in their journal of electronic notarial acts: the date and time of the notarial act, the type of notarial act, the type or name of the document, the signer's

printed name and signature, the signer's complete address and telephone number, and the specific type of identification presented by the signer, including serial number and expiration date.

Additionally, when requested by state authorities, notaries are required to provide the journal for inspection and must notify the state if the journal is stolen, lost, misplaced, destroyed, or rendered unusable. The journal must be retained for at least five years beyond the date of the last notarial act recorded in the journal.

Although the new law requires notaries to only keep a journal of electronic notarizations, the Governor's Notary Section has long recommended that notaries record all of their notarial acts.

### RESIGNING COMMISSION

*Continued from page 10*

must submit a signed, written resignation when they wish to terminate their commission or when their resignation is required by the Governor. A simple letter will suffice. The notary should state his or her intention to resign, specify an effective date of the resignation, and provide a forwarding address where the Governor may send a letter accepting the resignation. The notary is also required to return the notary commission certificate and destroy the notary seal, unless the Governor requests its return.

When a resignation is received, the status is noted in the state's official records. Notaries should keep a copy of their resignation letter and the Governor's acceptance letter for future reference.

Resignation letters may be addressed to the Governor in care of the Notary Section.

## E-MAIL E-DUCATION RECEIVES APPLAUSE

The new E-Mail E-ducation program for notaries has received applause from notaries and from education experts for its simple but innovative features. Since May 1998, this newest component of the Governor's education program for notaries has reached the desks of notaries all over Florida with informative articles about proper notarial practice.

If you would like to receive these

free, mini newsletters around the first of each month, just e-mail us with your request.

Notary Education Coordinator  
Governor's Notary Section  
[adamsl@eog.state.fl.us](mailto:adamsl@eog.state.fl.us)

For previous issues of E-Mail E-ducation, check out the Governor's Notary Section website.

<http://www.state.fl.us/eog/govdocs/notary/notary.htm>

## OOPS! WE GOOFED!

Please accept our apology for the problems in the mailing of the last issue of *The Notary View*. Unfortunately, the mailer used incorrect or incomplete

addresses for many of you and dropped the first two letters of everyone's last name - all 360,000 notaries! What a mess! We'll try not to let this happen again.

## NEW BOOKLETS AVAILABLE

Two new booklets for notaries are available from the Governor's Notary Section at no charge.

- *Laws Related to Florida Notaries Public* (effective January 1, 1999)
- *Performing Marriage Ceremonies: A Guide for Florida Notaries Public*

To obtain a copy of either booklet, please write, fax, or e-mail your request to our office:

Office of the Governor  
**Notary Section**

LL06 Capitol

Tallahassee, FL 32399-0001

E-mail: [adamsl@eog.state.fl.us](mailto:adamsl@eog.state.fl.us)

Fax: (850) 410-1294

*If you are unsure about your duties as a notary public, contact our office for educational materials.*

<http://www.state.fl.us/eog/govdocs/notary/notary.htm>



Office of the Governor  
The Capitol  
Tallahassee, Florida 32399-0001  
(850) 922-6400

# THE NOTARY VIEW