

Marriage Q & A

Some questions regarding the solemnization of marriage may require legal advice. If the following questions and answers do not address your concerns, you or your customers may need to seek the advice of an attorney.

Q: My son's wedding next month will be performed by a Notary Public. Is a marriage ceremony performed by a Notary Public of the State of Florida "legal and binding"?

A: There are many factors which determine the validity of a marriage. Assuming, though, that the Florida Notary Public is duly appointed and commissioned at the time of the ceremony, that both the bride and the groom are qualified to be joined in marriage, that the couple have obtained the required Florida marriage license, and that the marriage ceremony is performed in Florida, the marriage would be "legal and binding." Florida law will presume a marriage to be legal until otherwise shown.

Q: Does Florida require blood tests prior to the issuance of a marriage license?

A: No.

Q: Does Florida recommend any premarital counseling prior to the issuance of a marriage license?

A: Yes. During the 1998 Legislative Session, the Legislature passed the "Marriage Preparation and Preservation Act of 1998" in an effort to strengthen marriages, make stronger families, children and communities, and reduce the divorce rate. See Chapter 98-403, Laws of Florida. The Act recommends the completion of a premarital preparation course of not less than 4 hours taught by a provider who has been approved by the Clerk of the Circuit Court.

The course may be completed by personal instruction or by video/electronic instruction. Providers must furnish a certificate of completion at the conclusion of the course, which should be submitted to the Clerk's Office when applying for a marriage license. For those couples who voluntarily complete this premarital preparation course, the state offers a reduced marriage license fee and no waiting period.

Additionally, the Legislature has authorized the Family Law Section of The Florida Bar to create a handbook explaining those sections of Florida law pertaining to the rights and responsibilities of marital partners to each other and to their children, both during a marriage and upon dissolution.

NOTE: For additional information about the premarital preparation course and providers in your area, or the family law handbook, please contact the Clerk of the Circuit Court, Marriage Division, in your county.

Q: Is there a waiting period for the issuance of the marriage license?

A: Yes. Effective January 1, 1999, there is a 3-day delay in the effective date of the marriage license if the couple does not participate in a premarital preparation course meeting the requirements specified in law and whose provider is registered with the Clerk

of the Circuit Court. Exceptions to the delayed effective date must be granted to non-Florida residents seeking a marriage license from the state and for individuals asserting hardship who have been granted a waiver by a county court judge.

Q: What is the county/state fee for obtaining a marriage license?

A: Florida law specifies that the marriage license fee is \$88.50. For all couples who complete the premarital preparation course, there is a reduction of \$32.50, making the marriage license cost \$56.00 for these couples.

Q: Occasionally, when I am scheduled to perform a marriage ceremony, the bride and groom forget to bring their marriage license with them to the ceremony. What should I do in this instance?

A: The law states that the official "shall require of the parties a marriage license" before the solemnization of the marriage. That means that you should take possession of the marriage license before you perform the ceremony. Remember, you must also complete your portion and return the Marriage Record to the county for recording. If the couple forgets their marriage license or has not yet obtained a license, you may not solemnize the marriage.

Q: Is a Florida Notary Public authorized to perform a marriage ceremony outside the state, or may a Notary from another state perform a marriage ceremony in Florida?

A: No. Florida is one of only three states (the other two are South Carolina and Maine) which authorize their Notaries Public to "solemnize the rites of matrimony." A Florida Notary may perform a marriage ceremony providing the couple first obtain a marriage license from an authorized Florida official and may only perform a ceremony within the geographical boundaries of Florida. Thus, a Florida Notary may not perform a marriage ceremony in another state. Additionally, a Notary from another state, including South Carolina and Maine, may not perform a marriage ceremony in Florida. And, a Florida notary may not marry a couple who has obtained a marriage license from another state.

Q: May a Notary Public solemnize the marriage of two individuals when one party is not physically present, but participates in the ceremony via telephone or video transmission, or when one of the parties is not present and another individual represents that person in the ceremony, i.e., "marriage by proxy"?

A: No. Florida law does not allow marriage by proxy. Both parties must be physically present before the Notary Public for the solemnization of the marriage. The Notary should properly identify both parties prior to the ceremony.

Q: May I perform the marriage ceremony for a member of my family, specifically my daughter?

A: Yes. You may perform a marriage ceremony for a person who is related by blood or marriage. The prohibition against notarizing the signature of a spouse, son, daughter, mother, or father does not apply because you are not notarizing the signature of the bride and groom. You are only certifying that the couple have been joined in marriage according to the laws of the State of Florida. See Attorney General Opinion, 91-70 (1991) below.

Q: My fiance and I would like to have a special friend who lives in another state come to Florida to perform our marriage ceremony. Would that be acceptable if we have a Notary Public witness the ceremony and sign the license?

A: No. Florida law provides that only certain officials are authorized to solemnize marriage. Your friend may participate in the ceremony, for instance, by providing an inspirational message or prayer; but the vows and pronouncement should be done by an official authorized to solemnize marriage in Florida.

Q: What officials are authorized in Florida to perform a marriage ceremony?

A: Section 741.07, Florida Statutes, provides that the following persons are authorized to solemnize matrimony:

State judicial officers (judges)	Notaries Public	Retired state judicial officers
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Federal judges serving in a court with jurisdiction over a part of this state	Regularly ordained ministers of the Gospel, elders, or other ordained clergy, if in good standing with his or her affiliate church or denomination	Clerks and Deputy Clerks of the Circuit Court
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Designated members of the Society of Friends (Quakers)

The following officials are not authorized to perform marriage in Florida:

State Attorneys	Judges of Compensation Claims	Administrative Law Judges
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Persons in these positions are not judicial officers of this state.

Q: What fee may I charge when performing a marriage ceremony?

A: The law provides that you may charge the same fee for solemnizing matrimony as the Clerks of the Circuit Court charge for the same service. That fee is set by law and is currently \$30. Many Notaries provide additional services related to the wedding, such as

flowers, reception, photographer, etc., and have a right to be compensated for these services. If you charge for extras, we recommend that you provide your customers with an itemized list of charges before the wedding ceremony in order to prevent any misunderstanding about your fees.

Q: When "solemnizing the rites of matrimony," is it acceptable for the Notary Public to complete the marriage certificate without actually performing a marriage ceremony?

A: No. Completing the marriage certificate portion of the Marriage Record is not the same act as performing the marriage ceremony. Actually, the certificate is your way of certifying that you solemnized the marriage. You should not falsely certify that a ceremony was performed when, in fact, one was not.

The ceremony does not have to be in any particular form. Any form of ceremony to solemnize a marriage that the parties choose ordinarily suffices, as long as both parties agree to the marriage and make a legally binding commitment to each other. A marriage ceremony is usually performed for the sake of notoriety and certainty and must be conducted by a person authorized by law to perform the ceremony.

Q: Should I perform a marriage ceremony if it appears that the bride or groom is not mentally capable of understanding his or her actions at the time of the ceremony? What if I suspect that the bride or groom is not a willing party to the marriage? What if one of the parties appears intoxicated or under the influence of some mind/behavior- altering substance?

A: As a Notary Public, you are not expected to make a legal determination or a medical evaluation of a person's mental competency; but, you should use your own common sense to determine that both parties are willing participants and are mentally capable of entering into the marriage at the time of the ceremony. If you have any doubt about the willingness or mental state of either party, you must refuse to solemnize the marriage.

Q: May I solemnize the marriage of a couple when one of the parties is under the age of 18?

A: Yes, providing the couple produces a valid Florida marriage license signed and sealed by the Clerk of the Circuit Court, and providing that you have no reason to suspect that the marriage license was obtained by fraud. If either or both parties are minors, parental consent is required. It is the responsibility of the bride and groom to provide the proper documentation to the Clerk's Office when they apply for the marriage license.

Q: Is a Notary Public permitted to perform a marriage ceremony for two persons of the same sex?

A: No. Florida law prohibits same-sex marriages. A Notary Public or other authorized person may not perform a marriage ceremony without a marriage license issued in accordance with the requirements set forth in Chapter 741 of the Florida Statutes. The law provides that a marriage license may not be issued unless:

- both parties sign an affidavit reciting their true and correct ages,

- both parties meet the age requirement or comply with the special provisions set forth for those individuals under the age of 18, and
- one party is male and the other party is female.

Thus, Florida Notaries may not perform a marriage ceremony for two persons of the same sex. If you choose to participate in an unofficial ceremony "uniting" two persons of the same sex, you must not do so in your official capacity as a Notary Public of the State of Florida.

Q: I recently read educational materials from an organization which stated that, as a Notary Public, I am not allowed to refuse to perform notarial services when asked. Must I solemnize a marriage if I have a religious conviction against doing so?

A: No. You have the right to refuse to perform notary services for any number of reasons, including your own religious convictions. Of course, you should never exercise your authority in a discriminatory manner.

Q: Are witnesses required to sign the marriage certificate?

A: Although the marriage certificate has spaces for two witnesses to sign, witnesses are not specifically required by law. However, it is recommended that two witnesses, other than the Notary, sign the marriage certificate in the event that proof of the marriage ceremony is necessary in the future. Remember, though, you are not notarizing the signatures of the witnesses.

Q: May I perform a marriage ceremony in a different county than the one where the marriage license was issued?

A: Yes. A Florida marriage license is good in any county in Florida. However, after the marriage is solemnized, the license must be returned to the county that issued it for recording.

Q: May I perform a marriage ceremony while aboard a ship?

A: Yes - as long as the ship is in Florida waters at the time of the ceremony. The legal definition of "Florida waters" is somewhat complex, but is generally stated as three geographic miles from the coastline seaward on the Atlantic Ocean and nine geographic miles from the coastline seaward on the Gulf of Mexico. Determining the exact location of the ship is best left to the captain or someone qualified to make that judgment.

Many cruise ships prefer to conduct marriage ceremonies while safely docked in a Florida port. Then, the wedding party enjoys celebrating after the ship sails. Whether on a cruise ship or a private vessel, you should ensure that you are in Florida waters at the time of the marriage ceremony.

Q: May I participate in a ceremony for the renewal of marriage vows?

A: The renewal of marriage vows is not an official duty of a Notary Public. No marriage license is required because no marriage is taking place. This type of ceremony is usually done as part of a celebration of a wedding anniversary or as a recommitment by the

parties to each other without any legal effect. You may participate in a renewal ceremony, but not in your official capacity as a Notary Public.