



THE NOTARY VIEW



1996

FROM THE EXECUTIVE OFFICE OF THE GOVERNOR

ISSUE 1

NOTARY NEWS NOW ON THE INTERNET

The hottest item in the computer world these days is the Internet, a global computer communications network that links the user with an infinite world of intriguing information and resources at the touch of a keystroke. Well, we have some exciting news! Educational information published by the Governor's Office Notary Section is now available on the Internet for Florida notaries. That's right! The Governor's Office has a web site on the Internet where you can obtain **Notary News**, along with other information published by the Governor's Office. And, if you'd like, you can send electronic correspondence directly to the Governor or to the Notary Section through the Internet.

Currently, the **Notary News** allows you to read through the Florida laws relating to notaries, browse any of the issues of *The Notary View*, or scroll through "Notary Q & A" to find the answers to your most puzzling notary

questions. To find our **Notary News**, follow these easy steps:

1. Access the Governor's Web Site at the following address: <http://www.eog.state.fl.us>.
2. Select the **Documents** link.
3. Select the **Notary News** link.
4. Select the specific information you wish to view.

It's that simple. And, if you have print capability, you can print copies of any of the information for future reference. To send mail to us, please complete the form provided.

We will continue to expand and upgrade the educational resources



Governor Chiles, Assistant General Counsel Michelle Anchors (seated) and Linda Adams of the Notary Section check out the Internet.

available for Florida notaries on the Internet. If you have suggestions, we'd love to hear from you. Whether you are a novice to the Internet or a pro who "surfs the net" daily, be sure to check out the Notary News.

INSIDE:

1996 Revisions to the Notary Law	2
Order in the Court	2
Notary Q & A	3
Unauthorized Practice of Law	4
Glossary of Notary Terms	5
Authentication of Notarized Documents by the Secretary of State	6
Proof of Execution by Subscribing Witness	7

WELCOME . . .

The Governor's Legal Office welcomes Michelle Anchors as its newest attorney. Michelle joined the Governor's legal staff in December 1995 after working with the Department of Revenue, Child Support Enforcement Program, and clerking for Justice Parker Lee McDonald of the Florida Supreme Court. She is a graduate of the

University of Florida College of Law.

In addition to her numerous duties in the Legal Office, Michelle is the coordinator for Governor Chiles' initiatives related to children, and she is the consulting attorney for the Notary Section. We are fortunate to have Michelle's energy, experience, and expertise in the Governor's Office.

SECURE YOUR NOTARY SEAL



Notaries, please keep your notary seal, commission certificate, and journal or log book (if you keep one) under lock and key. It is your responsibility to protect your seal from its unauthorized use by a co-worker, family member, or friend. Remember, you may be held liable for any improper notarization performed with your notary seal.

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 Linda Adams of the Notary Section, with production and layout assistance from EOG/IS/Presentations.



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.

1996 REVISIONS TO THE NOTARY LAW

The Legislature packed their bags and left Tallahassee in the wee hours of the morning of May 4. Just hours before, they passed House Bill 2725 which included two changes to the notary law, Chapter 117 of the Florida Statutes.

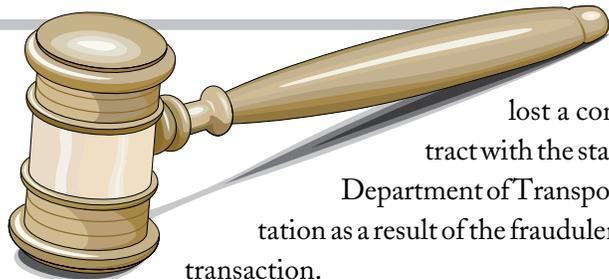
First, the language previously found in section 113.01 exempting certain qualifying veterans from the \$10 commission fee for notaries was moved to section 117.01(2). The amendment will be effective on January 1, 1997.

Second, beginning July 1, 1996, surety bond companies that process notary applications will be required to submit these documents electronically and in paper format to the Department of State.

If you would like a copy of the revised law, please request it in writing from:

Notary Section
Office of the Governor
209 Capitol
Tallahassee, FL 32399-0001

Order in the Court



lost a contract with the state Department of Transportation as a result of the fraudulent transaction.

A recent court case should be of special interest to Florida notaries and their employers. In the case, *Ameriseal of North East Florida, Inc. v. Leiffer* (Case No. 95-565, District Court of Appeal, Fifth District of Florida, opinion filed March 29, 1996), the Court ruled that a notary public and the law firm that employs her may be held liable for damages resulting from an improper notarization.

A notary employed by a law firm agreed to notarize signatures on several documents as a favor to a co-worker's husband. Neither of the document signers was present. Unknown to the notary, the husband was engaged in a fraudulent bond transaction involving the documents, and the individuals whose signatures were notarized did not actually have authority to sign the documents. A highway subcontractor

The company sued the husband, the law firm, and the notary and won a default judgment for more than \$350,000 against the husband. However, the trial court granted summary judgment in favor of the law firm and the notary, concluding that the improper notarization was not the proximate cause of the contractor's losses. The DCA reversed, saying the contractor relied on documents without knowing that the notary (Ellis) had failed to verify the signers' identities.

"Ellis' obligation as a notary is quite simple: she must either know or have properly identified the affiants that appear before her and she must administer the proper oath. If business cannot depend on notaries doing this simple task, then there is no place for notaries in the world of commerce," the DCA said in ordering further action in the case.

NOTARY Q&A

Q *As a bilingual notary public, may I certify the accuracy of a translation of a document from English to Spanish, or vice versa?*

A Certifying a translation is not an authorized duty of a Florida notary public. However, you may notarize the signature of the translator on an affidavit where the translator certifies and swears to the accuracy of his or her translation. If you are the translator for a particular document, you would be translating the document, not in your capacity as a notary public, but as a person who is fluent in both languages required for the translation. You should make an affidavit and have your signature notarized by another notary. The following sample affidavit should be sufficient to certify the accuracy of a translation.

Q *Recently, I quit my job. My employer kept my notary seal and commission certificate and refuses to return them to me. I am worried that someone may use my seal and I would be liable. What should I do?*

A Even if your commission, bond, and seal were paid for by your employer, your employer has no right to keep these items. In fact, it may be a criminal offense to do so. Remember, you were appointed as a notary public for a four-year commission—not your employer. And, your employer cannot make you resign your appointment—only the Governor may request your resignation or suspend you from the office of notary public. You should take several precautions, however, to protect yourself. First, notify the Secretary of State or the Governor’s

Office in writing that your seal is in the possession of someone else. Be sure to give us your commission number and date of birth for identification, and tell us the last date that your seal was in your possession. Second, you may want to send a written request by certified mail to your employer requesting the return of your notary commission and seal. If your employer does not comply, you should file a report with the law enforcement agency having jurisdiction. This may protect you in the event that your seal is used and a complaint is filed against you. It may also be your defense if you are sued or charged criminally for an improper notarization that you did not perform. Third, you may obtain a duplicate notary commission certificate from the Department of State, Bureau of Notaries Public, and another seal from your bonding agency or an office supply store. Your notary bond cannot be revoked, and you may continue serving as a notary public until the expiration of your term.

Q *May I sign a document as one of the witnesses if I am also acting as the notary public for that transaction?*

A Generally, a notary public may sign as one of the witnesses and as the notary public on a document. In fact, it is a common practice among Florida notaries, particularly on real estate transactions. Typically, you will see the title clerk sign as one of the two required witnesses and then notarize the document signer’s signature. In addition, a Florida court has held that “there is nothing to prevent a notary

CONTINUED TO PAGE 8

STATE OF FLORIDA
 COUNTY OF _____

Before me this day personally appeared _____ (name of translator),
 who, being duly sworn, deposes and says:

I am fluent in both _____ (language) _____ and _____ (language) _____.

I certify that I have accurately translated the attached document, _____ (name or description of document) _____, from _____ (language) _____ into _____ (language) _____.

 (Signature of Translator)

 (Address)

Sworn to and subscribed before me this _____ day of _____, 19____,
 by _____ (name of translator) _____.

Personally known _____ or Produced identification _____

Type of identification _____

 (Signature of Notary Public)

(Seal) _____
 (Type, print, or stamp name of notary public)

BEWARE OF THE UNAUTHORIZED PRACTICE OF LAW

BY LORI S. HOLCOMB



Lori S. Holcomb has been employed as Assistant Unlicensed Practice of Law Counsel with The Florida Bar in Tallahassee since 1987. She received her B.A. from the University of South Florida in 1979, and her J.D. from Emory University School of Law, Atlanta, Georgia, in 1985. Ms. Holcomb was admitted to The Florida Bar in 1985.

You have just obtained your notary commission and wish to open an office providing limited legal services to the public — but you are not a licensed attorney. Exactly, what can you do? Who regulates this type of business? What if you overstep your authority — what are the consequences? Before you think about engaging in this type of business, you need the answers to these basic questions.

Let's consider the question of regulation first. The Florida Constitution gives the Supreme Court of Florida the exclusive authority to regulate the practice of law. Included in this regulation is the prohibition against the unlicensed or unauthorized practice of law (UPL). The reason for prohibiting the unlicensed practice of law is to protect the public from incompetent, unethical, or irresponsible representation — it is not done to protect lawyers.

The Florida Bar has been charged by the Court with the responsibility of investigating matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The Bar does not actively seek instances of UPL; rather, it investigates written complaints received from individuals. Once a complaint is received, a preliminary investigation into the matter is conducted by staff UPL attorneys, and if the allegations have merit, the case is referred directly to a local circuit committee for thorough investigation.

These committees are comprised of attorneys and members of the public who volunteer to investigate these matters for The Bar. Each of the twenty judicial circuits in Florida has at least one circuit committee.

The circuit committees have several options available to resolve a UPL complaint. They may close the case if there are insufficient grounds to support the allegations. They may recommend that the individual accept "a cease and desist affidavit". By signing such an affidavit, the individual, without admitting any wrongdoing, acknowledges that the conduct set forth in the affidavit constitutes the unlicensed practice of law and agrees to refrain from the conduct until licensed to practice law in Florida. The committees may also recommend litigation. Litigation is initiated with the filing of a petition with the Supreme Court of Florida seeking a court order prohibiting the nonlawyer from engaging in the practice of law. If the order is violated, The Bar may seek indirect criminal contempt against the individual which could result in a jail sentence.

Engaging in the unlicensed practice of law is also a misdemeanor in Florida. Criminal complaints alleging UPL are handled by the State Attorney's Office. The penalties include a fine and/or a jail sentence. Additionally, if a notary public is found to be engaging in the unauthorized practice of law, the Gov-

ernor may suspend that notary from office by executive order.

Now, exactly what services can you provide without engaging in the unlicensed practice of law? Generally speaking, a nonlawyer may only sell legal forms and then type those forms which have been completed in writing by the customer. As an example, you could sell a will form to an individual. The customer would have to fill in the blanks for the factual information customizing the will to his or her own needs. You can have no oral communication with the customer regarding how the form should be completed, and you may not correct mistakes. You may simply type the information written down by the customer.

The Supreme Court of Florida has approved several forms for use by individuals or by attorneys. These forms pertain to matters of family law, landlord-tenant law, and certain residential leases, and allow the notary to provide additional, but limited, assistance. When using one of the forms approved by the Supreme Court, you may engage in limited oral communication with the customer to elicit the factual information that goes in the blanks on the form. For example, if using the form for a simplified dissolution of marriage, you may ask for the name of the husband and wife, what county they live in, when and where they got married, and whether the wife wants her former name

back, and then complete the form accordingly. But, under no circumstances may you give legal advice about possible remedies or courses of action.

Notaries are often asked to provide assistance in matters concerning bankruptcy and immigration. There are no Supreme Court approved forms for these legal actions as they are governed by specific federal laws. As in other matters, a nonlawyer may only sell forms and type those forms with information completed in writing by the customer. There are additional requirements and restrictions in the bankruptcy area, and you should consult the federal laws before attempting to complete any of these forms. Of course, you are prohibited from counseling your customer about appropriate legal action.

Not only can a nonlawyer run into problems when assisting an individual in completing forms, the nonlawyer also runs afoul of the unlicensed practice of law if the nonlawyer gives legal advice. This is especially problematic where the customer is relying on the nonlawyer for proper advice and guidance. Generally, the Court has held that, if the advice affects an individual's important legal rights, it will probably be viewed as legal advice. For example, your friend needs to authorize another member of her family to provide care for her child while she is temporarily out of the country. Because you are a notary public, she asks you to advise her. So, you assist her in preparing and wording a power of attorney. Unfortunately, you just engaged in the unlicensed practice of law and may be subject to one or all of the sanctions previously discussed.

Representation of an individual in court proceedings obviously constitutes the practice of law. However, what about matters that are related to the court proceeding, but are not taking

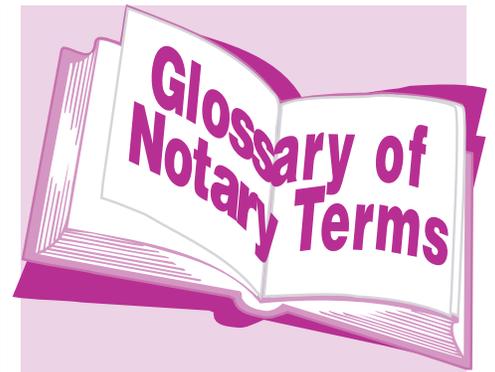
place in court? The question of whether a nonlawyer may take a deposition was recently decided by a Florida appellate court. There, the court held that taking a deposition constitutes the practice of law, and therefore, a nonlawyer may not question witnesses in a deposition.

In most foreign countries, a notary public is an attorney. Some individuals use their notary public commission as a means to advertise and mislead individuals into believing that they may act as an attorney. For this reason, the notary law provides that a notary public who is not an attorney and advertises his or her services in a language other than English must include a notice in the advertisement which states, "I am not an attorney licensed to practice law in the State of Florida, and I may not give legal advice or accept fees for legal advice." The law also prohibits the literal translation of the term notary public into a language other than English in an advertisement for notary services.

As a notary public, you are held to a higher standard than other individuals because you are a public officer holding a position of trust. This trust is violated if improper legal advice and services are provided. The public is harmed and notaries are held in disrespect. By consistently observing the restrictions placed upon you as a nonlawyer notary public, abuses can be prevented and the public can be spared unnecessary expense and hardship. And, you will not subject yourself to court action, executive suspension, or criminal penalties.

* * * * *

If you have questions about the Unauthorized Practice of Law, you may contact Ms. Holcomb at The Florida Bar in Tallahassee. Her telephone number is (904) 561-5839, Ext. 6755. Copies of the Supreme Court Approved Forms are available from your local clerk's office.



Florida Notary Public — A public officer appointed by the Governor whose function it is to administer oaths; to take acknowledgments of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.

Acknowledgment — A formal declaration before an authorized official (a notary public) by a person signing an instrument that such execution is his or her free act and deed. The term also refers to the notary's certificate on the document indicating that it was so acknowledged.

Affidavit — A written statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it before an officer authorized to administer oaths (a notary public).

Execute a document — To sign a document.

Free act and deed — To admit one's act and assume the responsibility for it.

Instrument — A written document.

Jurat — The written notarial certificate on any sworn statement or affidavit completed by the notary public indicating that the document was sworn or affirmed to by the signer.

Solemnize the rites of matrimony — To perform a marriage ceremony.

AUTHENTICATION OF NOTARIZED DOCUMENTS BY THE SECRETARY OF STATE

On October 5, 1961, representatives from a group of nations met at The Hague in Holland to discuss various issues pertaining to international law. Out of that meeting came an international treaty known as the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Approximately 47 countries have joined the Convention, including the United States.

Documents that are notarized and sent to another country require verification or legalization of the notary's signature and official capacity prior to acceptance by the receiving country. The Hague Convention agreement simplifies the process by allowing the attachment of a single verifying certificate called an Apostille (a French word meaning "note"). The Apostille entitles the document to full recognition in the country of intended use, and no further authentication or legalization by the Embassy or Consulate of that country is required.

Each country, or subdivision of that country, has a designated official who is responsible for authenticating notarized documents. The treaty provides a list of officials in the United States with the authority to issue such certifications. In most states (47 out of 50), that authority is vested in the Secretary of State, or one or more of his or her deputies or assistants. Since the treaty came into force for the United States in October 1981, the Florida Secretary of State has been responsible for providing Apostilles for documents notarized in Florida and sent to another country. Revisions to the notary law, effective January 1, 1992, reaffirmed this authority. Section 117.103, Florida Statutes, provides:

Upon the receipt of a written request, the notarized document, and a fee of \$10 payable to the Secretary of State, the Secretary of State shall provide a certificate of notarial authority. Documents destined for countries participating in an International Treaty called the Hague Convention require an Apostille, and that requirement shall be determined by the Secretary of State.

Documents being sent to another state or a country not participating in the Hague Convention may also require

certification. In that case, a Certificate of Notarial Authority is issued by the Secretary of State.

A notary public is not responsible for requesting an Apostille or a Certificate of Notarial Authority. Rather, according to the treaty, the person who signed the document or the document bearer may request authentication of documents. In order to provide that certification, the Department of State will need the following information:

- A written request for the Apostille or Certificate, stating the country or state to which the document will be sent. The Department of State will determine which authentication is appropriate for the receiving country.
- The original notarized document. The notarization must fully comply with the requirements of Florida law, or the document will be returned for correction.
- A check, drawn on an American bank, or money order for \$10 per certificate, made payable to the Secretary of State.

Mail the request, notarized document, and payment to:

Department of State
Division of Elections
Authentication Section
Room 1801, The Capitol
Tallahassee, Florida 32399-0250

The Secretary of State will also provide an Apostille or Certificate for the following Florida documents: birth certificates and death certificates bearing the original signature of the State Registrar; vehicle titles certified by the Department of Highway Safety and Motor Vehicles; corporation documents bearing the signature of the Secretary of State; and documents certified by any Clerk of the Court for any county in Florida (the fee for an Apostille on any county-certified document is \$20).

Documents in proper order with correct notarizations sent to the Department of State are usually processed within 10 working days and are returned by regular mail to the sender or forwarded to an address given by the sender. For additional information, please contact the Department of State at (904) 413-9732.

PROOF OF EXECUTION BY SUBSCRIBING WITNESS

The Notary Section receives frequent inquiries about “notarizing a person’s signature by subscribing witness.” Evidently, some notaries believe that it is permissible to notarize a signature when the person is not present — if someone who witnessed the signing of the document appears before the notary and swears that the person actually signed the document. Some states, like California, do, in fact, allow such notarizations, but Florida does not. Misunderstanding may also stem from a section in Florida law that provides a method by which instruments concerning real property may be entitled to recording in Florida when the document signer cannot appear before a notary to acknowledge his or her signature.

We recently asked the leading experts in Florida about this issue. The Attorneys’ Title Insurance Fund, Inc. is considered the state’s foremost authority on matters related to the real estate industry. The following information should clarify any confusion which may exist on the subject.

First, this method is used only for acknowledgments on real estate transactions. Second, this is not an

alternative method of notarization. The person whose signature is being notarized must personally appear before the notary at the time of the notarization — without exception. Rather, this provision is a method by which a document can be recorded in Florida. For example, say a person signed a document related to a real estate transaction but did not acknowledge his signature before a notary public. Later, the document cannot be recorded by the county clerk because it lacks notarization. The problem is further complicated when the document signer cannot be located or is deceased. Florida law provides that one of the subscribing witnesses on the document may “prove” the execution of the document by swearing that the person did actually sign the document. With that sworn statement, the document may then be recorded.

The proof method is not commonly used. In fact, one experienced lawyer at Attorneys’ Title Fund said that she had never seen a real property instrument recorded using this method and that, for insuring purposes, her company would investigate thoroughly before issuing title insurance. As a notary



public, you will probably never encounter this situation. Generally, when there is a problem with the recording of a document, an attorney handles the matter and takes other legal steps to remedy the situation.

Some private companies produce form “certificates of proof.” We prefer the affidavit format instead. By using an affidavit with a standard jurat, the notary will not be certifying more information than is required of the notary. It is up to the affiant to state the facts and swear to the truthfulness of his or her statement.

Remember, then, if a co-worker, family member, or anyone else asks you to notarize another person’s signature based on a sworn statement that he or she saw the person sign the document, **JUST SAY NO!!**

Notary Trivia

- (1) Notaries Public may administer an oath of office for a public official. Who was the only American President to be sworn in by a notary public?
- (2) Florida has about 14 million people and about 350,000 active Notaries Public. Japan has a population of approximately 120 million people. How many notaries do you suppose there are in Japan?
- (3) When were the first Notaries Public appointed in Florida?

ANSWERS: (1) Calvin Coolidge. Upon the death of President Warren G. Harding on August 3, 1923, then Vice President John Calvin Coolidge was sworn in as President of the United States by his father, a Notary Public of the State of Vermont. The ceremony took place in Coolidge’s birthplace, Plymouth, Vermont, where he was visiting at the time. [Source: *Encyclopedia Britannica*] (2) Only 548 [Source: Mr. Tatsumi Tamura, President, Japan Notaries Association, 5/31/96] (3) On September 13, 1822, during the first meeting of the Legislative Council of the Territory of Florida, the Governor was “empowered to appoint so many notaries public as to him shall seem necessary.” We can assume that Florida’s first territorial governor, Governor William P. DuVal, had the honor of appointing Florida’s first Notaries Public.

ATTENTION TRAVEL AGENTS

When assisting your customers who are traveling out of the country, please do not advise them to obtain a “notarized copy” of their birth certificate to be used for reentry into the country. A Florida notary public is prohibited from certifying (attesting to) a photocopy of a birth certificate, or any other vital record or public record. Instead, you should advise your clients to obtain a “certified copy” of their birth certificate from the custodial government agency in the state or country where they were born.

THINK...about this profound statement:

“Most notaries don’t know what they don’t know.”

Peter C. Garcia, Secretary of State’s Office, New Mexico,
on the need to educate Notaries Public, May 1996.

NOTARY Q&A

(CONTINUED FROM PAGE 3)

from also being a witness.” See *Walker v. City of Jacksonville*, 360 So.2d 52 (1978). However, before signing as a witness, the notary should ensure that the document does not require the notarization of the witnesses’ signatures. For example, a self-proof affidavit on a will or codicil requires the notarization of the signatures of the testator and both witnesses. If the notary signed as a witness in this instance, he or she would be notarizing his or her own signature, which is a criminal violation of the notary law.

The notary should also certify in the notarial certificate the name of the person whose signature is being notarized. Absent such specific notation, the law presumes that all signatures were notarized. Thus, the notary could unintentionally notarize his or her own signature if the notarial certificate is not specific.

Therefore, providing that the document does not require the notarization of the witnesses’ signatures, and providing that the notary certifies in the notarial certificate exactly whose signature is being notarized, the notary may be one of the two subscribing witnesses as well as the notary public.

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

<http://www.eog.state.fl.us>



Office of the Governor
209 The Capitol
Tallahassee, Florida 32399-0001

THE NOTARY VIEW

BULK RATE
U.S. POSTAGE
PAID
JACKSONVILLE, FL
PERMIT NO. 1176