

THE NOTARY VIEW



1995

FROM THE EXECUTIVE OFFICE OF THE GOVERNOR

ISSUE 2

APPLICATION FORM GETS MAJOR REVISION

The Department of State, Bureau of Notaries Public, expects to issue about 95,000 notary commissions during 1995. That office recently announced major revisions to the application and the bond forms. The forms have been revised in an effort to reduce errors and processing time.

Several months ago, a study of the application process revealed some startling statistics about the application form. Approximately 25 percent of all the notary applications submitted to the three largest notary bonding agencies in Florida are returned to the applicants because of errors in completing the application form. And, many of those applications require corrections a second or third time. The most common problems are related to the notarization of the applicant's signature.

The new form, DS-DE 77 (7/95), is designed to make the application more user friendly and to reduce processing time. The major changes are listed below.

- The application has been reduced to one page, rather than two, and contains statutorily required information about the applicant, the oath of office, and the affidavit of character. The bond is still a separate page. This reduction will eliminate about 95,000 pieces of paper from the process annually.
- The notarization sections have been totally eliminated. Instead of having their signatures notarized, the applicant and the character witness must swear "under the penalties of perjury" that the contents of their statements are true. This alternative

method of making a sworn statement is expected to reduce a large percentage of the errors in the application process.

- The question regarding the applicant's criminal record requires additional information. If the applicant has ever been convicted of

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ATTORNEY FOR NOTARY SECTION RESIGNS

The Governor's Office bids a fond farewell and best wishes to Kery Carpenter. Kery has provided a tremendous service to the State of Florida and to all the state's notaries public. She joined the Governor's Office in 1992 after the Florida Legislature appropriated funds for the education of notaries. Kery was charged with the responsibility of establishing the Notary Section and has successfully accomplished that task.

The Notary Section, under Kery's direction, has conducted numerous seminars throughout the state, instituted a telephone inquiry service, and



Governor Chiles commends Ms. Carpenter for her service.

developed educational materials on many recurring issues. This office also assists the Governor in notary appointments and processes complaints against notaries. Kery is the founder and editor of *The Notary View* and has participated in national conferences on notary laws.

Kery opened her own law office on November 1, 1995, where she will engage in a general practice, handling such diverse matters as criminal law, family law, real property matters, and bankruptcy. Kery hopes to remain involved in notary issues.

"Good luck, Kery."

AS A REMINDER...

If you have changed your home or business address or telephone number, or if your name has changed legally, you must immediately submit these changes in writing to:

Department of State

Bureau of Notaries Public

401 South Monroe Street

Tallahassee, FL 32399-0250

If you would like to have previous issues of *The Notary View*, a copy of the current notary law, or other educational materials prepared by our office, please send your request in writing to:

Notary Section

Office of the Governor

209 Capitol

Tallahassee, FL 32399-0001

THE NOTARY VIEW

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



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.

NOTARY Q&A

Q *May I sign my signature as a notary public and affix my notary seal in blue ink, or some other color, so that I can easily identify an original document?*

A With the improved quality of photocopies and the mandatory use of the rubber stamp notary seal, notaries often express concern over difficulty in differentiating between the original and a photocopy of the same notarization. Section 117.05(3)(a), Florida Statutes, provides that the official notary seal—the rubber stamp type seal—must be affixed with “photographically reproducible black ink.” However, the notary law does not specify a color of ink to be used when signing a notarial certificate. Therefore, if you prefer, you may use a color of ink, other than black, in signing your name to distinguish between an original and a photocopy of your notarial certificate.

Q *May I notarize a signature on a document that has been prepared in another state, or on a document that will be sent to another state or country?*

A Yes, but you should indicate the correct venue (State of Florida, County of ____) and complete a proper notarial certificate with all the requirements of the Florida notary law. This may mean that you have to revise the form, particularly if it was prepared under the laws of another state. Additions or corrections should be made by striking through any incorrect information and adding the correct information before completing the notarization. It would also be a good idea to initial any correction that you make. Always include the name of the person whose signature is being notarized and the type of identification relied upon, even if the form provided does not request that information.

Q *When notarizing a signature, what elements must be included in my notarial certificate?*

A Sample notarial certificates are found in section 117.05(16), Florida Statutes. The essential elements are:

- the venue—where the notarization takes place (State of Florida, County of ____);
- the type of notarial act performed—whether you administered an oath to the document signer or took his or her acknowledgment (look for the key words “sworn to” or “acknowledged”);
- that the document signer personally appeared before the notary at the time of the notarization (usually indicated by the words “before me”);
- the date of the notarization;
- the name of the person(s) whose signature is being notarized;
- the type of identification relied upon in identifying the signer, either based on personal knowledge or an acceptable form of identification;
- the notary's signature (exactly as commissioned);
- the notary's name printed, typed, or stamped below the signature; and
- the notary's official seal (The seal must contain the words “Notary Public-State of Florida” and the notary's name, expiration date, and commission number and must be affixed in black ink.)

If the prepared notarial certificate does not have each of these elements, you should add the appropriate language to the certificate to make it fully comply with the statutory requirements. The sample notarial certificates were reprinted in the previous issue of *The Notary View* 1995-Issue 1 on page 4.

NOTARIZING FOR A PERSON WITH A DISABILITY WHO DIRECTS ANOTHER TO SIGN

On a rare occasion, a notary public may be asked to notarize the signature of a person who cannot sign a document in the usual manner. Rather than signing by mark, an individual with a disability may direct another person to sign on his or her behalf. In a sense, one person substitutes his hands for the hands of the person with a disability. A notary public may notarize this signature but should indicate the unusual circumstances in the notarial certificate. Although the notary laws do not provide specific guidelines for this situation, the notary may want to take extra precautions to prevent any problems. The following guidelines may be helpful.

- (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, 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) Ask for proper identification from the person with a disability. It is not necessary to require identification from the designated signer. Think of that person only as the "hands" of the person with a disability.
- (3) The designated person may then sign the signature of the person with a disability at the direction of and in the presence of that person.
- (4) Perform the appropriate notarial act: administer an oath or take an acknowledgment. Your notarial act should be directed to the person with a disability, rather than the designated signer.
- (5) Complete the notarial certificate with the required information. When stating whose signature is being notarized, it would be best to indicate the special circumstances of the signing.
- (6) It is also recommended that two persons, with no interest in the transaction, witness the signing of the document and the notarization and that their names and addresses be clearly printed below their signatures. Unless otherwise required by law for the particular document, it is not necessary for the witnesses' signatures to be notarized.

The following certificates should be adequate for use in these unusual notarizations.

For an oath:

<i>Signature of Witness</i> <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	<i>"Signature" of person with disability</i> <small>BY (NAME OF DESIGNATED PERSON)</small>
<i>Signature of Witness</i> <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
Sworn to before me this _____ day of _____, 199____, by (<u>name of person with disability</u>), and subscribed by (<u>name of designated person</u>) in the presence of and at the direction of (<u>name of person with disability</u>).	
(SEAL)	<i>Notary Signature</i> <small>PRINT, TYPE OR STAMP NAME OF NOTARY</small>
<small>(INDICATE IDENTIFICATION FOR PERSON WITH DISABILITY)</small> Personally known _____ OR Produced Identification _____ Type of Identification Produced _____	

For an acknowledgment:

<i>Signature of Witness</i> <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	<i>"Signature" of person with disability</i> <small>BY (NAME OF DESIGNATED PERSON)</small>
<i>Signature of Witness</i> <small>PRINTED NAME AND ADDRESS OF WITNESS</small>	
State of Florida County of _____	
The foregoing instrument was acknowledged before me this _____ day of _____, 199____, by (<u>name of person with disability</u>), and subscribed by (<u>name of designated person</u>) in the presence of and at the direction of (<u>name of person with disability</u>).	
(SEAL)	<i>Notary Signature</i> <small>PRINT, TYPE OR STAMP NAME OF NOTARY</small>
<small>(INDICATE IDENTIFICATION FOR PERSON WITH DISABILITY)</small> Personally known _____ OR Produced Identification _____ Type of Identification Produced _____	

UNDERSTANDING OATHS AND ACKNOWLEDGMENTS

The Governor's Office Notary Section answers hundreds of telephone inquiries every week regarding the notary law and proper notarial procedures. In talking with notaries, it is amazing how many of them do not understand the basic act of "notarizing a signature." Many incorrectly assume that they are just verifying identification and witnessing a signature. But, the act of notarization involves much more.

When you notarize a signature, you must perform one of two official notarial acts: take an acknowledgment from or administer an oath (or affirmation) to the document signer. These two acts have different purposes. The lack of understanding of these basic duties causes confusion and often leads to errors in notarizations, even among the most experienced notaries.

To make an acknowledgment, the document signer must personally appear before you, the notary public, and declare that he or she has executed and signed the document voluntarily. You should ensure that the signer understands the document and has not been coerced into signing. If there is any question about the signer's willingness to execute the document or his or her understanding of the terms of the document, you should refuse to

notarize and perhaps refer the person to an attorney for legal advice. You may want to ask the signer, "Do you acknowledge that this is your signature and that you are executing this document of your own free will?" If the answer is yes, you should then complete a certificate which states that the execution of the document was acknowledged by the signer. Documents typically requiring an acknowledgment include deeds, mortgages, contracts, and powers of attorney (except those pertaining to motor vehicle titles).

An oath or affirmation is administered to a document signer when the signer is required to make a sworn statement about certain facts. The signer personally appears before you to swear (or affirm) to you, an officer duly appointed to administer oaths, that the information contained in the document is true. A person who makes a false oath or affirmation is subject to criminal charges for perjury. Sworn statements are commonly used in affidavits, depositions, and applications.

A notarization requiring an oath should begin with the administration of an oath or affirmation. The courts have held that there should be a verbal exchange between the notary and the

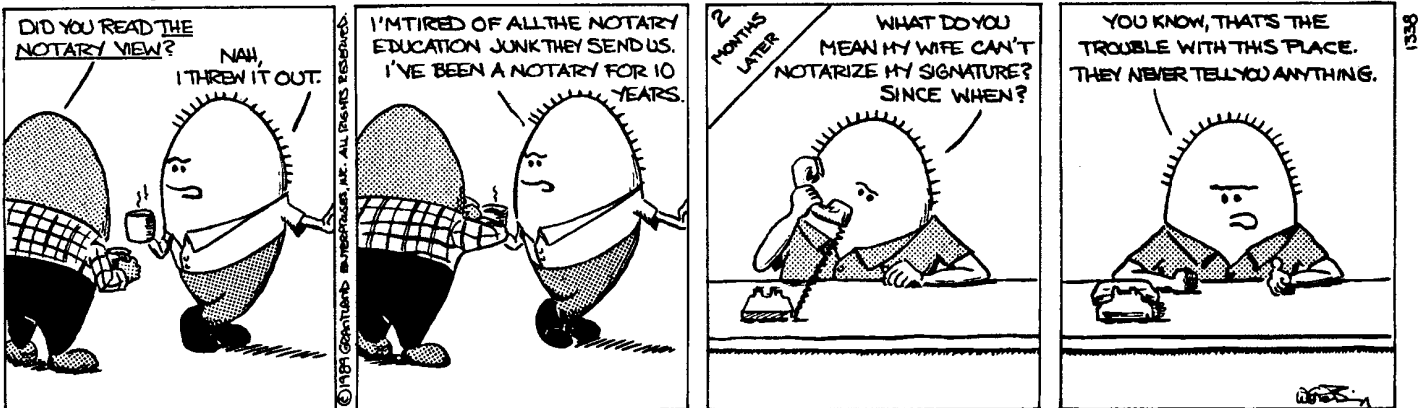
document signer in which the signer indicates that he or she is taking an oath. An oath similar to one administered in court by a judge or bailiff would be sufficient. Or, you may simply ask, "Do you swear (or affirm) that the information contained in this document is true?" After receiving an affirmative answer, you must complete a proper notarial certificate indicating that an oath or affirmation was taken.

If the document you are asked to notarize contains a prepared notarial certificate, look for the key words "acknowledged" or "sworn to" to tell you which notarial act is required. If there is no notarial certificate on the document, the signer must direct you whether he or she wants to make an acknowledgment or take an oath. Unless you are an attorney, you are not authorized to advise a person which notarial act is appropriate for the document presented for notarization, and you may not advise the person about the contents of the document.

In order to correctly perform the duties of your office, you need to understand what it means to "notarize a signature" and the difference between the acknowledgment and the oath.

NOTE: The form certificates used when taking an acknowledgment or administering an oath are found in the notary law, section 117.05(16), Florida Statutes. Please refer to the third question in "Notary Q & A" on page 2 for the requirements for notarial certificates.

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NOTARIES HAVE ADDITIONAL DUTIES

Florida notaries have four important functions which are specified in the notary law found in Chapter 117, Florida Statutes: to administer oaths, to take acknowledgments, to perform marriage ceremonies, and to make attested (certified) photocopies of certain documents. Two additional duties not mentioned in the notary

law, and unknown to many notaries, are established in other sections of the Florida Statutes. These duties include verifying the vehicle identification number (VIN) of a motor vehicle by physical inspection and inventorying and certifying the contents of a safe-deposit box when opened by a financial institution due to nonpayment of rental fees.

Verifying a VIN

Florida law requires that, when applying for a Florida title for the first time on a used motor vehicle, the owner must swear that the VIN and the odometer reading on the vehicle are correct. Additionally, a physical inspection of the vehicle must be done by an authorized person to certify the VIN. Notaries public are included in the list of persons authorized to certify this information. § 319.23(3)(a)(2), Fla. Stat. (1995).

A form prepared by the Department of Highway Safety and Motor Vehicles, HSMV 82042 (Rev. 5/95)S, is used for this purpose. Part A requires the owner's sworn statement regarding the correct VIN and odometer reading. A notarial certificate is provided in this section for notarizing the owner's signature. Part B requires the notary public, or other authorized person, to certify that he or she has physically inspected the vehicle and found the VIN to be identical to the number recorded on the form. The notary public must include the date, sign the document, print his or her name, and affix his or her notary seal.

Inventorying a Safe-Deposit Box

Information about a notary's duties related to a safe-deposit box opening is given in detail on page 6.

NOTE: For an explanation of acknowledgments and oaths, see page 4. For information regarding performing marriage ceremonies and attesting to photocopies, please refer to *The Notary View* 1994-Issue 1.

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF MOTOR VEHICLES
 Neil Kirkman Building — Tallahassee, FL 32399-0500
VEHICLE IDENTIFICATION NUMBER AND ODOMETER VERIFICATION

PART A — OWNER'S VEHICLE IDENTIFICATION AFFIDAVIT AND ODOMETER DECLARATION
 (Completion of this part requires a physical inspection of the vehicle by the owner).

AFFIDAVIT:

DATE _____

This is to certify that I, the undersigned, am the lawful owner of the motor vehicle described on this form and that I have, on the date entered above, made a physical inspection of the motor vehicle and have recorded the vehicle identification number and other identification information and the odometer reading and certification in the spaces provided on this form.

VEHICLE IDENTIFICATION (MOTOR NUMBER ALL MAKES THROUGH 1954 — IDENTIFICATION NUMBER 1955 AND LATER.)

Vehicle Identification Number	Year	Make	Model	Body	Previous State of Title

ODOMETER DECLARATION

WARNING: Florida law requires that you state the mileage in connection with an application for a Certificate of Title. Providing a false statement may result in fines or imprisonment.

I STATE THAT THIS MOTOR VEHICLE'S 5 DIGIT OR 6 DIGIT ODOMETER NOW READS _____, _____, (NO TENTHS) MILES, DATE READ _____ AND TO THE BEST OF MY KNOWLEDGE IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED ON THIS DOCUMENT UNLESS ONE OF THE FOLLOWING IS CHECKED:

CAUTION: DO NOT CHECK IF ACTUAL MILEAGE

1. **IN EXCESS OF ITS MECHANICAL LIMITS.** I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.

2. **NOT THE ACTUAL MILEAGE.** I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE. **WARNING - ODOMETER DISCREPANCY.**

OWNER'S SIGNATURE AND PRINTED NAME (ONLY ONE SIGNATURE REQUIRED WHEN MULTIPLE OWNERS)

 (Owner's Signature) _____ (Owner's Printed Name)

NOTARIZATION:

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19____, by _____ (Name of Person Making Statement)

 (Signature of Notary Public - State of Florida)

 (Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification Type of Identification Produced: _____ (SEAL)

PART B — VERIFICATION OF VEHICLE IDENTIFICATION
 (Completion of this part requires a physical inspection of the above described motor vehicle by a licensed Florida Dealer, Florida Notary Public, Police Officer or Division of Motor Vehicles Inspector completing the verification of the vehicle identification number.)

I, the undersigned, certify that I have physically inspected the above described vehicle and find that the vehicle identification number on the vehicle to be identical to the vehicle identification number recorded on this form.

Date: _____ FLORIDA NOTARY SEAL

Signature: _____ Printed Name: _____

Any Law Enforcement Officer _____ Badge Number _____

Florida Dealer License Number _____

Florida Compliance Examiner / Inspector Badge or ID Number _____

NOTICE: ANY ALTERATION OR ERASURE MAY VOID THIS DOCUMENT

HSMV 82042 (Rev. 5/95) S

SAFE-DEPOSIT BOX OPENING AND INVENTORY

Florida law provides that a financial institution may open a safe-deposit box if the rental fee is past due, providing that proper notice has been made and that certain other conditions are met. A notary public is authorized and required to be present for the opening of the safe-deposit box, to inventory the contents of the vault, and to make an appropriate certificate of the opening. The notary is not required to estimate the value of the contents of the safe-deposit box.

As with other notarial acts, the maximum fee a notary may charge for being present at the opening of a safe-deposit box is \$10.

The law authorizing notaries to perform this function became effective on July 3, 1992, and is found in section 655.94(1), Florida Statutes (1995).

- Once the certificate is completed, copies should be made. The notary should place the original certificate in a package with the contents of the safe-deposit box and seal the package. The notary must then write on the outside of the package the name of the lessee and the date of the opening.
- The notary should leave the sealed package and a copy of the certificate with the financial institution.
- If the notary keeps a journal of notarial acts, details of the act should be recorded. It may be a good idea to require the person opening the box, the officer of the institution, and any other witness to sign the journal as well.

PROCEDURE FOR THE NOTARY PUBLIC

- The notary must be present at the time the safe-deposit box is opened and may not be a director, officer, employee, or stockholder of the financial institution. An officer of the institution must also be present with the notary at the opening of the safe-deposit box.
- When the safe-deposit box is opened, the notary should inventory the contents of the box and should execute a certificate reciting the name of the lessee, the date of the opening, and a list of the contents. Florida law does not provide a form certificate; however, the following form, prepared by the Notary Section, should be sufficient.

STATE OF FLORIDA
COUNTY OF _____

On the ___ day of _____, 199 __, safe-deposit box number _____ rented in the name of _____ was opened by (name of financial institution) in my presence and in the presence of (name of officer). The contents of the box consisted of the following:

(List contents here.)

Signature of Person Opening Box

(PRINT OR TYPE NAME)

Signature of Notary Public

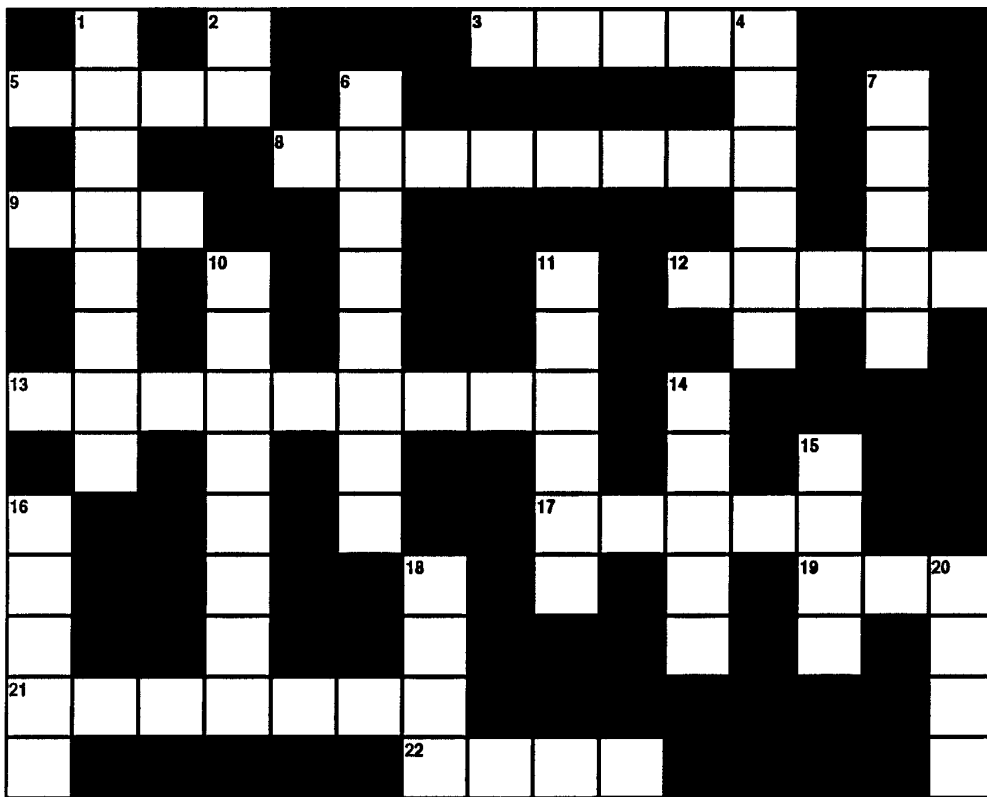
(PRINT, TYPE OR STAMP NAME OF NOTARY)

(SEAL)

Signature of Officer

(PRINT OR TYPE NAME)

NOTARY CROSSWORDS



ACROSS

3. Signer must produce ID or be personally ____.
5. Security to protect the public
8. Acceptable ID
9. Maximum notary fee \$ ____
12. Notary prevents ____
13. Gripe against notary
17. Secretary of ____
19. Count up; total
21. What notary must update
22. Vow: "I swear"

DOWN

1. Appoints notaries
2. Driver's license, INS card, etc.
4. Public officer authorized to take oaths & acknowledgments
6. "I do" ceremony
7. Location of notarization
10. May share liability with notary
11. To certify a photocopy
14. Do not notarize a ____ form.
15. Rubber stamp ____
16. Notarial certificate for an oath
18. Too
20. The day of notarization

SOLUTION ON PAGE 8

SOLUTION FOR SURVEYORS FOUND

The Notary Section has been informed that the rubber stamp notary seal has created problems for surveyors and others involved in subdivision platting. The developers or mortgagees sign the plat and their signatures are notarized using an acknowledgment certificate. The problem arises because the ink used in most notary seals does not dry and will smear on the plastic film, known as mylar, used for recording plats. We looked into the matter and found several possible solutions.

One surveyor suggested allowing the use of an impression seal when notarizing on mylar. This would require a change in the notary law and may not be the best solution. Since the impression seal is no longer the official seal for Florida notaries, most notaries do not have this type of seal readily available.

We contacted several county

recording offices to inquire about their recording procedures and possible solutions. Some offices may accept the document for recording with the acknowledgment certificate placed on regular paper rather than the mylar. There does not appear to be any statutory requirement that the notarization be placed directly onto the mylar with the plat. However, for practical reasons, some counties expressed reluctance in accepting acknowledgments on a separate attachment. Another official suggested preserving the ink seal imprint by spraying it immediately with an aerosol acrylic sealer. We experimented using Krylon No. 1303 Crystal Clear Acrylic Spray Coating and found this to be a satisfactory solution.

The best solution, however, was discovered when we contacted companies who make rubber stamps and reproduce blueprints. A rubber

stamp notary seal, that is not self-inking, can be used with a different ink. A non-porous, permanent ink that dries through evaporation, like Phillips Industrial Marking Ink #40A, will adhere to mylar without smearing. This is a permanent, black ink and an imprint made with this ink can be photographically reproduced, thereby meeting the statutory requirements for the notary seal. The companies also recommended using this ink with a special balsa wood stamp pad, rather than the usual felt or foam rubber stamp pad. These supplies are available at office supply stores or from companies who specialize in making rubber stamps. The average cost for a bottle of ink and a stamp pad is about \$10.

If you are frequently asked to notarize signatures which are affixed to mylar, you may want to have these supplies on hand to avoid smearing your notary seal imprint.

REVISIONS

(continued from page 1)

or charged with a felony for which adjudication of guilt was withheld or sentence suspended, a copy of the court judgment and sentencing order must accompany the application, in addition to the Certificate of Restoration of Civil Rights. This information will assist the Governor's Office in determining eligibility to hold office.

A number of large agencies have been using the revised application form for several months and have reported a significant reduction in the error rate already. It appears from these early reports that the revised form will simplify the application process and reduce the time it takes the Bureau to issue a notary commission.

Beginning January 1, 1996, use of the revised form is mandatory and no other application forms will be accepted.

Bond Form Also Revised

In addition to the application form, the bond form has also been updated. The revised form, DS/DE 76 (6/95), now requires the signature and social security number of a licensed resident agent, instead of an attorney-in-fact. This change eliminates the need to submit a power of attorney form with the bond and allows the Bureau of Notaries Public, working in conjunction with the Department of Insurance, to verify that a licensed resident agent is properly registered and qualified to write surety bonds for Florida notaries.

The Bureau also recently assumed the responsibility of approving all notary surety bonds, thus eliminating the additional step of approval by the Department of Banking and Finance (Comptroller's Office). Applicants may now submit their completed application and bond directly to the Department of State, Bureau of Notaries Public.

Since October 1, 1995, the old bond form is no longer accepted by the Bureau.

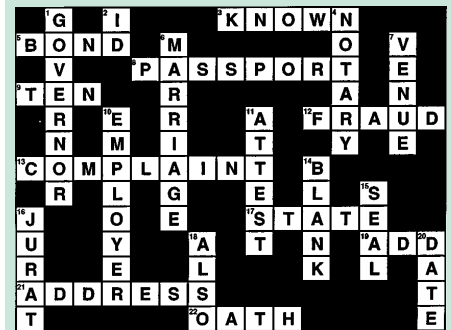
NOTARY CROSSWORDS

ACROSS

- 3. KNOWN
- 5. BOND
- 8. PASSPORT
- 9. TEN
- 12. FRAUD
- 13. COMPLAINT
- 17. STATE
- 19. ADD
- 21. ADDRESS
- 22. OATH

DOWN

- 1. GOVERNOR
- 2. ID
- 4. NOTARY
- 6. MARRIAGE
- 7. VENUE
- 10. EMPLOYER
- 11. ATTEST
- 14. BLANK
- 15. SEAL
- 16. JURAT
- 18. ALSO
- 20. DATE



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

THE NOTARY VIEW

BULK RATE
U.S. POSTAGE
PAID
OFFICE OF
THE GOVERNOR