

June 2000

EXECUTIVE OFFICE OF THE GOVERNOR NOTARY SECTION Notary E-Mail E-ducation June 2000

Greetings Florida Notaries!

In the May edition of the E-Mail E-ducation we began to discuss some of the common mistakes made by notaries that lead to complaints. This month we will look at two more issues the Notary Section handles when investigating complaints.

FINANCIAL INTEREST IN TRANSACTION

As a business owner, do I have a financial interest in the transactions being notarized for my company's business, or am I a party to the transaction?

Section 117.107(12), Florida Statutes, provides that you may not be the notary for a transaction in which you have a financial interest or to which you are a party. Although this provision was added to the notary law in 1992, it is not a new prohibition. This provision was merely a codification of the same prohibition established by case law dating as far back as the 1800s and as recently as the 1990s.

Generally, it is fairly easy to determine if you are a party to the transaction. For example, if you were buying a home, you could not be the notary for the mortgage documents or the deed. Additionally, if you were being named as the attorney-in-fact on a power of attorney document, you would be prohibited from notarizing the signature of the person executing the document.

What constitutes financial interest? There is no exact answer to this question. Although the term is not defined in the notary laws, there are some clear examples of financial interest. For instance, when a notary receives a sales commission on the transaction at hand (the sale of an automobile, an insurance policy, real estate, etc.), he or she would be prohibited from notarizing the signatures of those persons involved. Additionally, the owner of a business should not notarize signatures on documents pertaining to his business transactions.

The law exempts a salaried employee (if not related to the document signer) from this prohibitive provision of the law. However, what about a notary whose spouse owns the business and he or she receives no salary? Aside from the financial interest issue, the notary is prohibited from notarizing his or her spouse's signature. Experts on notary issues agree that the spouse of the business owner would probably have a financial interest in the transactions of that business, and therefore should not notarize in these instances.

An attorney is exempt from this provision of the law and is permitted to notarize his client's signature on a document that he has prepared, if he is serving as the attorney-of-record and is only receiving a fee for his legal services or his notary services. However, if the attorney were also a party to the transaction, or had an interest, such as being named the executor or administrator of an estate, he should not notarize his client's signature on such documents.

When you are unsure whether you are a party to or have a financial interest in a particular transaction, it is always safer to err on the side of caution and decline to notarize the signature. Keep in mind that, as a notary, you should be a disinterested third party who, if called upon to testify about the transaction, would be completely detached from all parties and appear

unbiased in your testimony.

NOTARIZING FAMILY MEMBERS SIGNATURES

Another common notary complaint is when the notary notarizes the signature of a family member. Section 117.107(11), Florida Statutes (1999), prohibiting notaries from notarizing the signature of family members (spouse, son, daughter, mother, father), has been in effect since April 16, 1992 [formally Section 117.05(6)(d), Florida Statutes (1997)]. From January 1, 1992, until April 16, 1992, this same law prohibited notaries from notarizing for anyone "related by blood or marriage." In 1948, the Attorney General issued an opinion that it was "unwise" for a notary to notarize a family member's signature, particularly that of a spouse. Because notaries are public officers who should be totally unbiased in the performance of their duties, most notaries observed the unwritten prohibition and refused to notarize for any family member, even if not a spouse, son, daughter, mother or father. The Governor's Office still recommends that total prohibition is the best practice.

NOTARY EDUCATION COURSE

During the 2000 Session, the Florida Legislature passed Senate Bill 1334 dealing with electronic commerce. The bill will go into effect July 1, 2000. There are provisions in this bill that pertain to electronic notarization and notary education. SB 1334 requires that "a first time applicant for a notary commission must submit proof that the applicant has, within one year prior to the application, completed at least three hours of interactive or classroom instruction, including electronic notarization, and covering the duties of the notary public. Courses satisfying this section may be offered by any public or private sector person or entity registered with the Executive Office of the Governor and must include a core curriculum approved by that office."

The Governor's Office has partnered with the Department of State to bring this required Notary Education Course to first-time notary applicants. The course will be available on-line and is designed to give the new notary the information necessary to perform their notarial duties with confidence. The course will be located at www.dos.state.fl.us beginning July 1, 2000.

Notary Education courses will also be available in a classroom setting by other education providers. If you have any questions regarding this new law, please e-mail them to FL_GOV_NOTARY@eog.state.fl.us.

As always, this information is available in the *Governor's Reference Manual for Notaries*.

Thank you for your time!
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