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**EXECUTIVE OFFICE OF THE GOVERNOR
NOTARY SECTION
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Greetings Florida Notaries!

Continuing with the theme of common mistakes made by notaries, let's look at the unlicensed practice of law.

UNLICENSED PRACTICE OF LAW

As a Notary, may I prepare legal documents for my customers?

No. The following article, written by Lori S. Holcomb, Assistant Unlicensed Practice of Law Counsel, The Florida Bar, appeared in The Notary View, 1996, Issue 1.

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 Governor 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 any questions about the Unauthorized Practice of Law, you may contact Ms. Holcomb at the Florida Bar in Tallahassee. The number for The Florida Bar is (850) 561-5600. Copies of the Supreme Court Approved Forms are available from your local clerk's office.

Thank you for your time!
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