

Duties of a Notary Public

Duties of a Notary Public

Notaries are authorized by law to perform six basic duties:

- Administer oaths or affirmations
- Take acknowledgments
- Attest to photocopies of certain documents
- Solemnize marriage
- Verify vehicle identification numbers (VINs)
- Certify the contents of a safe-deposit box

Each of these duties is explained in detail in the following pages.



Understanding Oaths and Acknowledgments

The Governor's Notary Section answers hundreds of telephone inquiries every week regarding the notary law and proper notarial procedures. In talking with notaries, it is surprising 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 is much different.

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 take an acknowledgment, the document signer must personally appear before you, the notary public, and declare that he or she has 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 contents 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 begins 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(13), Florida Statutes, and are reprinted on page 30.

Affidavits

An affidavit is a common form of sworn statement requiring an oath. Below is the standard form of affidavit. Please note that the affiant is the person making the sworn statement.

AFFIDAVIT

| |
|--|
| STATE OF FLORIDA COUNTY OF _____ |
| Before me this day personally appeared _____ who, being duly sworn, (NAME OF AFFIANT) deposes and says: |
| (INSERT FACTS TO BE SWORN TO OR AFFIRMED BY THE AFFIANT) |
| <i>Signature of Affiant</i> |
| Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____, by _____. (NAME OF AFFIANT) |
| Personally known _____ OR Produced Identification _____ Type of Identification Produced _____ |
| (SEAL) |
| <i>Notary Signature</i> PRINT, TYPE OR STAMP NAME OF NOTARY |

Depositions

A deposition is the testimony of a witness, under oath or affirmation, taken outside of court in which lawyers ask oral questions of the witness. The testimony is usually reduced to writing and duly authenticated and is intended to be used in a trial of a civil action or a criminal prosecution. The person giving the testimony is called the deponent.

Notaries are authorized to administer an oath for a deposition for use in a court case or an investigation. When administering the oath, the notary must require the deponent's physical presence and properly identify him or her. If the notary keeps a journal or record of notarial acts, the journal entry should be made at this point, including the deponent's signature. The notary would then administer the oath or affirmation, perhaps by having the deponent raise his or her right hand and asking:

"Do you swear (or affirm) that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth (so help you, God)?"

Once an affirmative answer is given, the deponent is now under oath, and the notary's responsibility is over.

Although depositions may be taken over the telephone, the deponent must be in the physical presence of the notary public, or other official authorized to administer oaths, at the time the oath or affirmation is given. There is no exception to the presence requirement, even if the attorneys for both parties stipulate otherwise. (See Attorney General Opinion, No. 92-95, December 23, 1992.) This means

that, if you are asked to swear in a person over the phone, you must decline. A notary, or other authorized official, would have to be present with the deponent for the administration of the oath or affirmation.

When asked to make a written certificate of the notarial act, we suggest that you make a certificate in substantially the form provided to the right.

You should also know that, as a notary public, you are not authorized to take a deposition. That is, you may not actively participate in questioning a witness who is giving a deposition in a criminal or civil proceeding. A Florida appellate court recently ruled that the taking of a deposition constitutes the practice of law under section 454.23, Florida Statutes. Notaries who are not licensed attorneys are prohibited from engaging in the practice of law and may be suspended from office by the Governor for such violation.

The referenced case involved two paralegals, one of whom was a notary public, who owned a business that performed paralegal functions. Neither was a licensed attorney, but both readily admitted their active participation in several depositions. In its opinion, the Court explained:

A deposition is an important, formal, recorded proceeding in which lawyers must observe the Florida rules of court and must rely on their legal training and skills to question witnesses effectively. The activities and services involved in participating in a deposition often implicate ethical questions and strategic considerations of the utmost importance. The effectiveness of the person deposing a witness can have a significant impact on whether objectionable information is identified and addressed or waived, whether a case is made, and how the evidence therefrom is used in any subsequent legal proceeding . . . Without a doubt, the process of directly examining or cross-examining a witness can affect important rights under the law . . . We conclude that, lacking adequate legal training, a nonattorney participating in the examination of a witness poses the very dangers of incompetent, unethical, or irresponsible representation . . . we hold that the nonlawyer appellees' active participation in questioning witnesses in depositions . . . constitutes the unauthorized practice of law in violation of section 454.23, Florida Statutes.

The notary involved has been denied a renewal appointment by the Governor's Office and both persons have pending criminal charges for the unlicensed practice law. Be careful that you do not overstep your authority when asked to swear in a person for a deposition. The unauthorized practice of law is a serious matter and one that is not taken lightly by the Governor's Office or the Court.

Note: For additional information on the court case, see *State v. Foster*, 674 So.2d 747 (Fla. 1st DCA 1996).

STATE OF FLORIDA
COUNTY OF _____

In my capacity as a Notary Public of the State of Florida, I certify that on the ____ day of _____, 20____, at (time) a.m./ p.m., (name of deponent) personally appeared before me and took an oath (or affirmation) for the purpose of giving testimony in the matter: _____.

Identification:

Personally Known _____

or Produced Identification _____

Type of Identification Produced _____

Notary Signature
PRINT, TYPE OR STAMP NAME OF NOTARY

(SEAL)

Attesting to Photocopies

In Florida, notaries are authorized to attest to the trueness of photocopies of certain documents. Although commonly known as certified photocopies, the notary law refers to these documents as attested photocopies. A notary public may make attested photocopies if the following criteria, found in section 117.05(12) of the Florida Statutes, are satisfied.

- The document must be an original document. A notary public cannot make an attested photocopy from a photocopy, or from another certified copy.
- The document cannot be a public record, certified copies of which are available from another public official. If a certified copy can be obtained from the official source, then the notary public should decline the request.
- The making of the photocopy must be supervised by the notary public. It is not sufficient for the notary public to compare the photocopy with the original document. The notary public must actually make the photocopy or supervise another person while he or she makes the photocopy.

After making (or supervising the making of) the photocopy, the notary should complete a notarial certificate in substantially the same form as prescribed by law.

This notarial certificate should be typed, stamped or written on the front or back of the photocopy or may be attached as a separate page.

One of the most often asked questions concerning attested photocopies is whether a particular document is a public record. Notaries must make a determination about this question before attesting to the trueness of any photocopy. The following documents are examples of public records, copies of which cannot be attested to by a notary:

- Birth certificate
- Marriage certificate
- Death certificate
- Certificate of citizenship or naturalization
- Documents filed in a court proceeding
- Documents recorded by the Clerk of the Court
- Public records maintained in government offices
- Student records (transcripts, etc.) kept in public education offices
- Federal or state income tax forms, already filed
- Professional licenses issued by the State of Florida
- Any document for which photocopying is prohibited

This is not a complete list of public records. If the document is issued by a government entity, the notary should contact that entity to determine whether a certified copy is available. If one is available, then the notary public must decline to make an attested photocopy. Additionally, the notary should ask the person if the document has been filed in a court proceeding or in the official records at the courthouse.

The following documents can be photocopied from the original (if not officially filed or recorded) and attested to by a notary, because certified copies cannot be obtained from another public official:

- | | | |
|----------------------------|------------------|-----------------------|
| ■ Florida driver's license | ■ Medical record | ■ Lease |
| ■ Florida vehicle title | ■ U.S. passport | ■ Resident alien card |
| ■ Social Security card | ■ Bill of sale | ■ Personal letter |
| ■ Diploma | ■ Contract | |

The maximum fee a notary may charge for making an attested photocopy is \$10.

| | |
|---|--|
| STATE OF FLORIDA COUNTY OF _____ | |
| On this _____ day of _____, 20____, I attest that the preceding or attached document is a true, exact, complete, and unaltered photocopy made by me of _____(DESCRIPTION OF DOCUMENT)____ presented to me by the document's custodian, _____ _____, and, to the best of my knowledge, that the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary public. | |
| (SEAL) | <i>Notary Signature</i> PRINT, TYPE OR STAMP NAME OF NOTARY |



Solemnizing Marriage

Florida is one of only three states which authorize notaries public to perform marriage ceremonies. The following guidelines should be helpful.

Procedure

- The couple must obtain a valid Florida marriage license from a county court judge or clerk of the circuit court and present it to the notary public before the marriage ceremony.
- The notary public performs the marriage ceremony. An example of a simple, civil ceremony is printed below. It may be personalized, and the bride and groom may even exchange their own vows. But, the couple's vows must reflect their intentions to make a legally binding commitment to each other.
- The notary public is responsible for making a certificate on the appropriate portion of the marriage license and returning it to the office of the county court judge or clerk of the circuit court which issued the license within 10 days after solemnizing the marriage. § 741.08, Fla. Stat.

General Information

- A Florida notary public may perform a marriage ceremony only within the geographical boundaries of this state.
- A notary public may charge up to \$20 for solemnizing the rites of matrimony. §§ 117.045 & 28.24 (29), Fla. Stat.
- A notary public may perform a marriage ceremony for a person who is related to him or her by blood or marriage. The prohibition against notarizing the signature of a spouse, son, daughter, mother, or father does not apply because the notary is not notarizing the signature of the bride and groom, but is only certifying that the couple have been joined in marriage by the notary according to the laws of the State of Florida. Op. Att'y Gen. Fla. 91-70 (1991).
- The notary should check the expiration date of the license to ensure that the license is still valid. The notary should also require identification if the bride and groom are not personally known.
- 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.

Additional information about solemnizing marriage is located in the Q&A section on pages 52-53.



Sample Ceremony

Notary states, "Dearly beloved, we are gathered here today (tonight) to join this man and this woman in (holy) matrimony."

Exchange of Vows

Notary asks the man, "(his name), do you take this woman to be your wife, to live together in (holy) matrimony, to love, honor, comfort her and keep her in sickness and in health, and forsaking all others, for as long as you both shall live?"

Man answers, "I do."

Notary asks the woman, "(her name), do you take this man to be your husband, to live together in (holy) matrimony, to love, honor, comfort him and keep him in sickness and in health, and forsaking all others, for as long as you both shall live?"

Woman answers, "I do."

Notary states, "Repeat after me:"

To the man: "I, (his name), take you (her name), to be my wife, to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death do us part."

To the woman: "I, (her name), take you (his name), to be my husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death do us part."

Exchange of Rings

Notary asks the man to place the ring on the woman's finger and to repeat the following, "I give you this ring as a token and pledge of our constant faith and abiding love." (Repeat the same for the woman).

Pronouncement

Notary asks the couple to join hands, then declares, "By virtue of the authority vested in me under the laws of the State of Florida, I now pronounce you husband and wife. The bride and groom may now kiss."

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 sign a sworn statement that the vehicle identification number (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.

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 jurat, or notarial certificate, is provided in this section. The notary should make sure that the information in Part A is complete prior to the notarization.

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.



**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 FOR MULTIPLE OWNERS)

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

NOTARIZATION:

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

(Signature of Notary Public) State of _____

(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

This VIN verification form is also found on the Application for Certificate of Title With/Without Registration, HSMV 82040 (Rev. 5/96)S. These forms and all other forms related to vehicle registration are available from the tag office of the Tax Collector's Office in each county.

Certifying the Contents of a Safe-Deposit Box

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 performing the authorized duties 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.

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 complete 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.
- 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 record book or 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.

STATE OF FLORIDA

COUNTY OF _____

On the ___ day of _____, 20___, 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.)

(SEAL)

Notary Public

(PRINT, TYPE OR STAMP NAME OF NOTARY)

Signature

(PRINT OR TYPE NAME OF PERSON OPENING BOX)

Signature

(PRINT OR TYPE NAME OF OFFICER OF FINANCIAL INSTITUTION)

Prohibited Acts for Notaries

From Chapter 117, Florida Statutes

A notary public may not notarize a signature on a document if:

- The person whose signature is being notarized is not in the presence of the notary at the time the signature is notarized. §117.107(9).
- The document is incomplete. §117.107(10).
- The notary public actually knows that the person signing the document has been adjudicated mentally incapacitated. §117.107(4).
- The person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public. §117.107(11).
- The notary public has a financial interest in or is a party to the underlying transaction. §117.107(12).



Also, a notary public may not:

- Give legal advice, unless the notary public is a licensed attorney. §117.01(4)(f).
- Take an acknowledgment of execution in lieu of an oath if an oath is required. §117.03.
- Obtain or use a notary commission in a name other than his or her legal name. §117.05(1).
- Notarize his or her own signature. §117.05(1).
- Charge more than \$10 for any one notarial act or more than \$20 for solemnizing the rites of matrimony. §§117.05(2), 117.045, 28.24(29), & 839.11.
- Notarize a signature on a document unless the notary personally knows the signer or has satisfactory evidence of identification. §117.05(5).
- Act as a notary public after his or her commission has expired. §117.05(8).
- Translate the phrase “Notary Public” into a language other than English in an advertisement for notarial services. §117.05(11).
- Attest to the trueness of a photocopy of a public record if a copy can be made by another public official. §117.05(12)(a).
- Use a name or initial in signing certificates other than that by which the notary public is commissioned. §117.107(1).
- Sign a blank form of affidavit or certificate of acknowledgment. §117.107(3).
- Take the acknowledgment of a person who is blind until the notary public has read the instrument to such person. §117.05(14)(a).
- Take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand. §117.107(6).
- Change anything in a written instrument after it has been signed by anyone. §117.107(7).
- Notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization. §117.107(5).

Penalties for Violations

Grounds for Suspension

The State Constitution authorizes the Governor to suspend a notary public from office for “malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony.” s.7, Art. IV, Fla. Const.

Subsection 117.01(4) of the Florida Statutes provides:

The Governor may suspend a notary public for any of the grounds provided in s. 7, Art. IV of the State Constitution. Grounds constituting malfeasance, misfeasance, or neglect of duty include, but are not limited to, the following:

- (a) A material false statement on the application.
- (b) A complaint found to have merit by the Governor.
- (c) Failure to cooperate or respond to an investigation by the Governor’s Office or the Department of State regarding a complaint.
- (d) Official misconduct as defined in s. 839.25.
- (e) False or misleading advertising relating to notary public services.
- (f) Unauthorized practice of law.
- (g) Failure to report a change in business or home address or telephone number within the specified period of time.
- (h) Commission of fraud, misrepresentation or any intentional violation of Chapter 117.
- (i) Charging fees in excess of fees authorized by Chapter 117.
- (j) Failure to maintain the bond required.

Civil Penalty

Section 117.107(9) of the Florida Statutes provides in part:

A notary public may not notarize a signature on a document if:

The person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this paragraph is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and that conduct constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this paragraph that the notary public acted without intent to defraud. A notary public who violates this paragraph with the intent to defraud is guilty of violating s.117.105.

Criminal Penalties

- No person shall obtain or use a notary public commission in other than his legal name, and it is unlawful for a notary public to notarize his own signature. Any person applying for a notary public commission must submit proof of his identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082 s 775.083, or s. 775.084. § 117.05(1).
- Any person who acts as or otherwise willfully impersonates a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. § 117.05(7).
- Any person who unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. § 117.05(3)(e).
- Any notary public who knowingly acts as a notary public after his commission has expired is guilty of a misdemeanor of the second degree, punishable in s. 775.082 or s. 775.083. § 117.05(8).
- A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084. §117.105.

Other Prohibited Acts

- Do not notarize a photograph (*see next article*).
- Do not notarize a copy of a birth certificate, or any other vital record or public record (*see page 15*).
- Do not certify a translation of a document from one language into another. (*see page 64 for correct procedure*)
- Do not provide signature guarantees. This duty is usually performed by officials in the banking and securities industry.
- Do not certify the authenticity of objects, such as art or sports memorabilia.
- Do not judge contests or certify contest results.
- Do not certify a person's residency or citizenship status.
- Do not prepare legal documents, or immigration papers, unless you are an attorney licensed to practice in Florida.



Don't Notarize Photographs

Occasionally, you may be asked to “notarize” a photograph. Please be aware that certifying or notarizing photographs is not an authorized notarial act under Florida law.

You may, however, notarize a person's signature on a written statement concerning the photograph. For example, if John Doe wants to certify that the person in a particular photograph is John Doe, he could sign a sworn written statement stating that the photograph is of John Doe. You could then notarize his signature on that statement in the same way that you notarize any sworn written statement. His statement could be made on the back of the photograph or on a separate paper to be attached to the photograph.

Keep in mind that you should not certify or attest that the person in the photograph is John Doe. Rather, you should certify that the statement concerning the photograph was signed and sworn to in your presence by John Doe. This is accomplished by using the standard notarial certificate (jurat) provided in the Florida Statutes for oaths. Remember, you should never apply your notary seal to and sign any document without completing a proper notarial certificate.

Don't Provide Certified Copies of Birth Certificates

The Notary Section continues to receive numerous inquiries about certifying copies of birth certificates. A notary public may NOT make a certified photocopy of a birth certificate, whether it was issued in Florida, another state, or a foreign country. Birth certificates are official records and certified copies may be obtained from the public official who is the custodian of the records.

The typical problem arises when a person is leaving the country within a few days and is required by his or her travel agency to have a "notarized" birth certificate. The word "notarized" immediately sends the person to a notary public. Actually, a person should obtain a "certified" copy of his or her birth certificate, rather than a "notarized" copy. Notaries should decline to certify or notarize these documents for two reasons.



First, a notary public may not attest to the trueness of a photocopy of a public record if a copy can be made by another public official. The Florida Department of Health retains vital records such as birth certificates, death certificates, marriage licenses, and certain divorce records. The Department produces certified copies of these documents when requested by an authorized person.

Second, a notary public may only attest to the trueness of a photocopy of an original document. Most people do not possess their original birth certificate; they only have a certified copy.

Additionally, Florida law prohibits even the photocopying of birth certificates. This would eliminate the alternative procedure of attaching an affidavit to a photocopy of a birth certificate in which a party swears that the photocopy is a true copy of the birth certificate.

Officials at the Bureau of Vital Statistics in Jacksonville, where Florida vital records are housed, report that birth certificates and other vital records are available from their office and may be available for the last 30 years from the county health department in most counties in Florida. The Jacksonville office takes orders by telephone using a major credit card for payment and even offers express or overnight delivery for an additional fee. It is best, of course, to request such records in writing allowing 2-3 weeks for delivery.

If you are requested to make a certified copy of a birth certificate, or other vital record, please decline and refer the party to the public office holding that record. If the document is a Florida vital record, the party may go to the county health department or write to:

**Department of Health
Bureau of Vital Statistics
Vital Records Section
1217 Pearl Street
Jacksonville, Florida 32202**

For telephone orders or additional information, the party may call the Jacksonville office at (904) 359-6931 or (904) 359-6912.

Don't Notarize Blank Documents

Apparently, it is a common practice for people to sign a blank power of attorney form to facilitate the sale of a motor vehicle. Notaries should be careful not to notarize incomplete documents.

Many notarized blank forms have been found at car dealerships by DMV investigators and are often presented to officials at U.S. Customs in Miami. According to officials at these agencies, incomplete forms will not be accepted, and if notarized, they will be presented to the State Attorney's Office and to the Governor's Office for investigation and appropriate action.