

Notaries in Special Positions

Government Employees as Notaries Public

A government agency, i.e., state, county, or municipal, is authorized to pay the cost of securing a notary commission for one or more of its employees. Such cost is deemed to be an expense of the agency. See sections 116.35 and 116.36, Florida Statutes.

Based upon research and interpretation of the applicable laws, the following statements reflect the position of the Governor's Notary Section regarding government employees who are notaries:



- Although the government agency pays for the commission, it is the employee who is the appointed notary public, not the agency. Such employee-notary is a notary public 24 hours a day, 7 days a week, for the entire 4-year term of appointment, unless the notary dies, resigns, or is suspended or removed from office by the Governor or the Florida Senate.
- The government agency may set regulations regarding the use of the notary's commission during the employee-notary's regular business hours.
- All fees collected by the employee-notary for notary services rendered during business hours belong to the government agency, pursuant to sections 116.35—116.38. The government agency has the authority to set the notary fees to be charged by that agency for its notary services to the public, but such fees may not exceed the allowable fees specified in Chapter 117, Florida Statutes.
- The employee-notary may perform notarial acts outside his employment and may charge fees for those notary services not exceeding the fees set by law. Such fees belong to the notary public. See sections 117.05(2), 117.045, and 28.24(29).
- The notary seal, the notary commission certificate, and any other papers belonging to the notary public, i.e., a record book or journal of notarial acts, are the property of the notary public. These items are not the property of the government agency, even if the agency paid for such items. Even upon termination of employment, these items belong to the notary public. It is the notary's responsibility to secure the notary seal to prevent its misuse. Any unauthorized use of a notary seal by a person who is not the lawfully commissioned notary public is a criminal offense. It is also unlawful for a person to possess a notary seal or commission certificate when that person is not the lawfully commissioned notary public. See sections 117.05(7) and (8).
- Both the employee-notary and the government agency are liable for all notarial acts performed by the employee-notary within the scope of his or her employment, pursuant to section 117.05(6).
- The government agency is not liable for notarial acts performed by the employee-notary outside his normal employment responsibilities.
- Upon termination of employment by the employee-notary, the government agency's liability for notarial acts performed in the future by the former employee-notary also terminates. However, the government agency may always be held liable for any notarial acts performed by the employee-notary during his or her period of employment.
- When the employee-notary terminates employment with the government agency, the government agency does not have the authority to request, nor require, the resignation of the employee-notary from the office of notary public. The notary public was appointed by the Governor, and only the Governor may request or require the resignation of a notary.



Law Enforcement Officers as Notaries

Florida law provides that certain law enforcement officers or correctional officers may act as notaries in some instances. These officers are limited in what they are authorized to do—in fact, they may only administer oaths “when engaged in the performance of official duties.” See §117.10, Florida Statutes. For example, if they are conducting an investigation, they may take sworn statements from witnesses.

This law is applicable to the following officers:

- Law enforcement officers
- Correctional officers
- Correctional probation officers
- Traffic accident investigation officers
- Traffic infraction enforcement officers

See sections 943.10 and 316.640, Florida Statutes, for definitions of these officers.

The law does not authorize these officers to take acknowledgments, to make attested photocopies, or to solemnize marriage, nor are they permitted to notarize their own signatures. Additionally, these officers do not have to apply for appointment, obtain the required notary bond, use a notary seal, or complete notarial certificates.

Military Officers as Notaries Public

Florida law authorizes certain commissioned military officers to administer oaths and take acknowledgments. §§92.51 & 695.031, Fla. Stat. However, the power given to these military officers is limited. They are authorized to “notarize signatures” when documents must be executed by persons also serving in the Armed Forces. These officers are not notaries public—they are only authorized to perform the two most common notarial acts.

The military officer must be on active duty serving in or with the United States Armed Forces, including the Army, Air Force, Navy, Marines Corps, Coast Guard, or any component of one of these, and must be above the rank of second lieutenant or higher in the Army, Air Force or Marine Corps, or ensign or higher in the Navy or Coast Guard.

The person whose signature is to be “notarized” by taking the oath or making the acknowledgment must also be a member of the United States Armed Forces and be serving on active duty. The military officer may also notarize the signature of the spouse of such military personnel, or the signature of a person whose duties require his or her presence with the Armed Forces.

As required for notaries, the military officer is required to prove the identity of the document signer, although no specific form of identification is specified by law. He or she must personally know the document signer or have “satisfactory proof” of the person’s identity. §695.09, Fla. Stat.

The following certificate is provided in Florida law for use by a military officer when performing these special notarizations.

On this ____ day of _____, 20____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be serving in or with, or whose duties require his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged (or swore) that he executed the same for the purposes therein contained, and the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

(Signature of commissioned officer)
(Rank of commissioned officer and command or branch of service to which officer is attached)



The military officer is not required to use a seal.

When performing a notarial act, the military officer is not bound by geographical boundaries, as is the notary public. The notarization may take place “within or without the United States.” This allows military personnel serving outside the United States, and their spouses, to execute their documents without having to find a notary public in a foreign country or appear before a consul or embassy official.

Documents properly executed in the presence of a military officer in the manner prescribed by law are entitled to recording in Florida.

Although not required, it is

recommended that the military officers print or type their name below their signature and provide their service or serial number for identification purposes. §695.25, Fla. Stat. No venue, or location of the notarial act, is required but, again, adding this information is recommended.

Certain federal law and military regulations also govern the authority of military officers to act as notaries public. More specific information can be obtained from a military legal assistance office.

Performing Notarial Acts

Presence Requirement When Notarizing

The basic role of a notary public in our legal system and in the world of commerce is to prevent fraud. Notaries deter fraud when they perform their duties with diligence and obey the laws governing their duties.

The most basic requirement for performing a notarization is that the person who is taking an oath or making an acknowledgment (the one whose signature is being notarized) must be present at the time of the notarization. The presence requirement refers to physical presence.

Florida Statutes section 117.107(9) provides that:

A notary public may not notarize a signature on a document if the person 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.

Violation of section 117.105 constitutes a third-degree felony for fraudulently taking an acknowledgment or making a false notary certificate.

There is no exception to the presence requirement!

Notarizing: Step by Step

■ **Examine the Document.**

It is not necessary to read every word of the document, but you should scan the entire document to make sure it is complete BEFORE notarizing.

■ **Check the Notarial Certificate.**

First, look at the venue: State of Florida, County of _____. This language should reflect the location where the document is being notarized. If it is incorrect, change the language and initial the change BEFORE notarizing.

Second, check the date. If an incorrect date has been filled in, strike through that date, write in the correct date, and initial the change BEFORE notarizing. The correct date is the actual date of notarization.

Third, look for the key words, "sworn" or "acknowledged", to determine if you are to administer an oath or take an acknowledgment. If the document does not have a notarial certificate, the signer must tell you which notarial act the document requires. At the signer's direction, you may write or type the appropriate certificate on the document.

■ **Identify the Person.**

This is one of the most important steps. You must either personally know the signer or see one of the acceptable forms of identification specified in the notary law. See pages 32-33 for information on specific types of acceptable identification.

■ **Assure that the Signer Understands the Document.**

You are not responsible for the contents of the document; however, you should be satisfied that the signer has read and understands the document, and that the signer is competent and willing to sign. If the signer has unanswered questions about the document or its effect, you should refer him or her to an attorney and not notarize. If the signer is blind or illiterate, read the document to him or her. If the signer does not understand English, make sure that the document is translated into a language that the person understands.

■ **Administer the Oath or Take the Acknowledgment.**

When administering an oath, make sure that the person understands that he or she is swearing (or affirming) that the contents of the document are true. When taking an acknowledgment, make sure that the person is entering into the transaction of his or her own free will.

■ **Complete the Jurat or Certificate.**

Make sure that the jurat or certificate contains all the information required by law. If the certificate is incomplete, write in the additional information. Sign your name, print or type your name below your signature, and affix your notary seal.

Notarial Certificates

When performing notarizations, you are generally required to complete a notarial certificate of the act. The certificate is a record of what occurred at the time of the notarization, and you are responsible for ensuring that the certificate is complete and accurate.

The following pages contain sample notarial certificates for use on documents being notarized in Florida.

You will note that the notarial certificates for an oath (or affirmation) or an acknowledgment contain nine basic elements:

- venue (the location of the notarization)
- type of notarial act (oath/affirmation or acknowledgment)
- that the signer personally appeared before the notary (“before me”)
- actual date of notarization
- name of person whose signature is being notarized
- form of identification
- signature of notary
- name of notary printed/typed/stamped below signature
- notary seal (with the 4 essential elements)

Some notarial certificates may vary in format, but any certificate should contain all these elements.

“Loose Certificates”

Preprinted notarial certificates designed to be attached to a document should be used only in rare circumstances. Most documents will have a notarial certificate already printed on the document. Use that certificate, but make it comply with Florida law, if necessary. If the document has no notarial certificate, you should ask the document signer which notarial act is required for the execution of the document (an oath/affirmation or an acknowledgment). At the signer’s direction, you may type or print the appropriate certificate on the document below the designated signature line for the document signer. Only in rare circumstances should you actually attach a “loose certificate.” If you do, be sure to state in the notarial certificate the exact document and signature to which the notarization applies.

Documents Prepared or Notarized in Other States

When notarizing a signature on a document that was prepared in another state, make sure that you add the required information to make your notarial certificate comply with Florida law. This means that you may have to change the venue (State of Florida, County of _____), add the type of identification, etc.

Documents notarized in another state must be notarized according to the laws of that state by an officer authorized to act in that state, and will be accepted in Florida, if properly notarized. To determine if a notarization complies with that state’s laws, you may contact the state’s agency that appoints notaries (generally the Governor or Secretary of State).

Corrections

When necessary to correct information already printed in the notarial certificate, i.e., the date, the name of the person whose signature is being notarized, do not use correction fluid. Simply mark through the incorrect information and make the change before you complete the notarization. You should probably initial that change, also.

Once you “complete” the notarization and return it to the document signer, you may not amend your certificate. For instance, if you forgot to state the type of identification or affix your seal and the document is returned to you on a later date by the receiving party, you may *not* correct your error. The document will require re-notarization, including the presence of the document signer.

These notarial certificates are reprints of the forms provided in the Florida Statutes, sections 117.05(13). These forms do not preclude the use of other forms; however, any form that is used must contain all the required information.

For an oath or affirmation (jurat):

STATE OF FLORIDA
 COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20__, by (NAME OF PERSON MAKING STATEMENT).

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
 OR Produced Identification _____
 Type of Identification Produced _____

For an acknowledgment in a representative capacity:

STATE OF FLORIDA
 COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by (NAME OF PERSON) as (TYPE OF AUTHORITY, e.g. OFFICER, TRUSTEE, ATTORNEY IN FACT) for (NAME OF PARTY ON BEHALF OF WHOM INSTRUMENT WAS EXECUTED).

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
 OR Produced Identification _____
 Type of Identification Produced _____

For an acknowledgment in an individual capacity:

STATE OF FLORIDA
 COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by (NAME OF PERSON ACKNOWLEDGING).

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known _____
 OR Produced Identification _____
 Type of Identification Produced _____

Statutory Short Forms of Acknowledgment

The notarial certificates on this page are found in the real estate chapter of the Florida Statutes but may be used for any notarization requiring an acknowledgement (See section 695.25, Florida Statutes). Although these certificates appear in a slightly different format, each one contains the same elements required in the notary law, Chapter 117. When using one of these certificates, be sure that you circle or underline the appropriate method of identification.

(1) For an individual acting in his own right:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of person acknowledging), who is personally known to me or who has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(4) For an individual acting as principal by an attorney in fact:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of attorney in fact) as attorney in fact, who is personally known to me or who has produced (type of identification) as identification on behalf of (name of principal).

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(2) For a corporation:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(5) By any public officer, trustee, or personal representative:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name and title of position), who is personally known to me or who has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

(3) For a partnership:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ (date) ___ by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership. He/she is personally known to me or has produced (type of identification) as identification.

Signature of Person Taking Acknowledgment

(NAME TYPED, PRINTED OR STAMPED)
(TITLE OR RANK)
(SERIAL NUMBER, IF ANY)

Acceptable Identification When Notarizing

From Subsection 117.05(5) of the Florida Statutes

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

Personally Known

“Personally known” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.

Satisfactory Evidence

“Satisfactory evidence” means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person making the acknowledgment is not the person he or she claims to be, and any one of the following:

(1) *Sworn Written Statement of a Credible Witness*

The sworn written statement of a credible witness personally known to the notary public that the person whose signature is to be notarized is personally known to the witness.

(2) *Sworn Written Statement of Two Credible Witnesses*

The sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

- a. The person whose signature is to be notarized is the person named in the document;
- b. The person whose signature is to be notarized is personally known to the witnesses;
- c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another form of identification;
- d. The person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 3.; and
- e. The witnesses do not have a financial interest in nor are parties to the underlying transaction.

For more information about using these methods of identification, please review “More About Identification” on page 33.

(3) *One of the following forms of identification:*

- a. Driver’s license or identification card issued by the Florida Department of Highway Safety and Motor Vehicles.
- b. Passport issued by the U. S. Department of State.
- c. Passport issued by a foreign government, if stamped by the U.S. Department of Justice, Immigration and Naturalization Service.
- d. Driver’s license issued by a territory of the United States, another state, Canada or Mexico.
- e. Identification card issued by a territory of the United States or a state other than Florida.
- f. Identification card issued by any branch of the U.S. armed forces.
- g. An inmate identification card issued on or after 1/1/91 by Florida Department of Corrections for an inmate who is currently in custody of the Department.
- h. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement, and that the person named in the document is the person whose signature is to be notarized.
- i. An identification card issued by the U.S. Department of Justice, Immigration and Naturalization Service.

Sample Driver License



More About Identification

Occasionally, a notary is asked to notarize the signature of a person who does not have, and cannot obtain, acceptable identification. This most often occurs when the person is an elderly person, a minor child, or a person with a disability. Florida law provides two additional methods of identification for these situations:

(1) CREDIBLE WITNESS AFFIDAVIT

Under the penalties of perjury, I declare that the person appearing before (name of notary) is personally known to me as (name of person whose signature is to be notarized) and is the person named in the document requiring notarization.

_____ *Witness Signature*
DATE NAME OF WITNESS

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this ___ day of _____, 20___, by (name of witness) who is personally known to me.

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

(1) the sworn written statement of a credible witness who is personally known to the notary and who personally knows the signer, and

(2) the sworn written statement of two credible witnesses whose identities are proven to the notary and who personally know the signer.

Please note that with either method the witnesses must personally know the person whose signature is being notarized and must make a sworn written statement. With the first method, the witness must be personally known to the notary. With the second method, the witnesses must have acceptable identification.

When using these methods of identification, it is a good practice to have the witnesses also sign the document being notarized. Although not required, if the document has sufficient space, you may want to print or type the witnesses' statement on the notarized document itself. If it is on a separate paper, then you should keep it in your records, rather than attach it to the notarized document. Additionally, your notarial certificate should state that the form of identification you relied upon was the sworn written statement of a (two) credible witness(es): .

Keep in mind that these provisions are for the purpose of identifying certain people who do not have other identification and do not replace the "presence" requirement. The person whose signature is being notarized *must* be present at the time of the notarization.

These forms may be used in these unusual circumstances and are merely suggestions. Any affidavit containing the statutorily required information would be sufficient.

(2) CREDIBLE WITNESS AFFIDAVIT

Under the penalties of perjury, I declare that the person appearing before (name of notary) is personally known to me as (name of person whose signature is to be notarized) and is the person named in the document requiring notarization; that I believe that this person does not possess the required identification; that I believe it would be difficult or impossible for this person to obtain such identification; and that I do not have a financial interest in and am not a party to the underlying transaction.

_____ *Witness Signature*
DATE NAME OF WITNESS

_____ *Witness Signature*
DATE NAME OF WITNESS

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this ___ day of _____, 20___, by (name of witness) who is produced (type of identification) as identification, and by (name of witness) who produced (type of identification) as identification.

(SEAL) *Notary Signature*
PRINT, TYPE OR STAMP NAME OF NOTARY

Resource for Verifying Identification

If you have ever wondered whether a driver's license from another state is legitimate, you may wish to purchase a booklet used to verify the most common forms of identification. The *I.D. Checking Guide* is published by the Drivers License Guide Company annually in February (ISBN 0-938964-33-X).

This full-color booklet has pictures and descriptions of driver's licenses and identification cards (current and previous valid issues) issued by all 50 states, the provinces of Canada, the federal government (such as resident alien cards and others issued by INS and military identification cards), bank cards, and automobile registration plates. The cost is nominal and may protect you and your employer from reliance upon a fraudulent identification card.

The booklet may be ordered from any of the following sources:

Drivers License Guide Company
1492 Oddstad Drive
P. O. Box 5305, Dept. 96
Redwood City, CA 94063
(415) 369-4849

American Society of Notaries
Post Office Box 5707
Tallahassee, FL 32314-5707
(800) 522-3392
(850) 671-5164

National Notary Association
9350 DeSoto Avenue
Post Office Box 2402
Chatsworth, CA 91313-2402
(800) 876-6827

Identification: "Green Cards" Updated

Resident alien cards, commonly called "green cards," have recently been updated by the U.S. Department of Justice, Immigration and Naturalization Service. Former cards identified as Form I-151 issued prior to 1978 have been replaced with cards designed to be more resistant to fraud and counterfeiting.

The new cards are designated as Form I-551 and are made of hard plastic, similar to credit cards, rather than laminated paper cards. Each card has a pink background, the words "Resident Alien" in dark blue, and a blue INS seal in the center of the card. The card also contains a photo (showing the right ear), signature and fingerprint of the resident alien. Other valid cards issued after 1978 have white backgrounds, but all valid cards will have the photo, signature and fingerprint of the bearer.



*Resident Alien Card,
Form I-551 (New Card)*

Notaries may accept the new cards as identification if the card is current (unexpired) or was issued within the past five years. The old card Form I-151 is no longer valid and should not be accepted for notary services.

Identification: DOC Inmate Identification Cards

Included in the list of acceptable forms of identification in section 117.05(5), Florida Statutes, is the Florida Department of Corrections inmate identification card for an inmate who is in the custody of the department. When a person is taken into custody and housed in a state prison, all forms of identification are confiscated and the inmate is issued a department identification card.

Generally, when inmates require notarial services, those services are provided by a notary employed by the Department of Corrections. Occasionally, though, a notary outside the department may be asked to go to the facility for the purpose of notarizing for an inmate. In this instance, the notary may rely upon the DOC identification card as proof of identity.

The card is made of hard plastic, similar to a credit card, and contains the inmate's name, inmate identification number, date of birth, photo, and physical description. However, the card does not contain the inmate's signature. Upon release from custody, a sticker is placed on the card indicating that the inmate has been released and the date of the release. The inmate may use this card temporarily until he or she can obtain a proper identification card or driver's license from the Department of Highway Safety and Motor Vehicles.

Florida law provides that this card may be used only "for an inmate who is in the custody of the department." Therefore, a notary may not accept this card as identification after the person is discharged from prison.

Case Study — Presence Requirement

Nancy is a notary and owns a small paralegal business. Jan came into the office one day with a deed signed by her husband Rick and requested Nancy to notarize his signature.

Rick was at home sick, but Jan brought Rick's driver's license with her. At Jan's suggestion and just to be on the "safe side," Nancy called Rick at home to verify his signature.

The man identifying himself as Rick confirmed that he had signed the document voluntarily and wanted his signature notarized. Nancy proceeded with the notarization.



Should Nancy have notarized Rick's signature?

NO!

Now, for the real story . . .

Unknown to Nancy, Jan was planning to divorce Rick and she wanted their home transferred to her name first. Jan forged Rick's signature on the deed and took his driver's license without his knowledge.

The man that Nancy spoke to on the phone was actually Jan's boyfriend! The case ended up in divorce court and Rick was given his portion of the property.

The Governor's Office required Nancy Notary's resignation and will not appoint her again as a notary. She now has a difficult time working as a paralegal without a notary commission.

Case Study — Identification

Kevin Costner came into a local bank to have his signature notarized on a contract between him and his agent. Julia, the notary and a faithful fan of Kevin Costner, was star-struck upon meeting him.

Kevin apologized when he explained that he accidentally left his wallet containing his identification in his dressing room on the set.

Julia decided that she could state that she personally knew Kevin, since she had seen all his movies, and she checked "personally known" in the notarial certificate.

Julia completed the notarization, got Kevin's autograph on a scrap of paper, and screamed with excitement after Kevin left.

Should Julia have notarized Kevin's signature without requiring identification?

NO!

Now, for the real story . . .

Kevin Costner disagreed with his agent on the agent's proposed fee on the new contract they were negotiating, and Kevin refused to sign the contract.

The agent forged Kevin's signature on the contract and hired a "look-alike" to present the document for notarization.

Poor Kevin is now in court fighting with his agent and Julia has been subpoenaed to testify. Julia is scared to death, embarrassed at her error, and now knows that her Kevin Costner autograph is a fake!

Be careful when you state that you "personally know" someone. This story is purely fictional, but could actually happen to you if you aren't careful. Our apologies to Mr. Costner and his agent.

"Personally known" means that your acquaintance of and association with the individual establishes that person's identity with reasonable certainty.

Notarizing in Special Circumstances

Occasionally you may be asked to perform a notarization that requires special handling. For example, how do you notarize if the document signer is blind? Cannot speak English? Has a disability? In any special situation, you should make every effort to accommodate the person's request. If you are unsure about the notarization, though, you should decline to notarize.

Florida law addresses some of these situations, but not all. There are, however, some commonly accepted practices for unusual notarizations. As with any other notarization, you must rely upon the law, exercise reasonable care, and use your common sense. You may also want to note the special circumstances of the notarization in the notarial certificate and in your journal (if you keep one).

Remember, unless you are an attorney, you may not give legal advice when you provide notary services. That means you are prohibited from advising the signer which notarial act is required for his or her document, from preparing legal documents, or from explaining the contents or legal effects of a document.

If you believe that the person does not fully understand the document he or she is to sign, you should decline to notarize and suggest that the person seek legal advice from a competent attorney.

For a person who is mentally incapacitated

§§117.107(4) and 117.107(5) Fla. Stat.

The law prohibits you from notarizing the signature of a person who you know has been adjudicated mentally incapacitated by a court of competent jurisdiction if that notarization pertains to a right that has been removed. These rights refer to such things as the right to vote, to marry, to execute conveyances of real property, etc.

What if the person is usually mentally competent, but is medicated at the time of the notarization, or what if a family member says the person is "in and out" of lucidity due to Alzheimer's disease or some other mentally debilitating ailment?

When performing any notarization, you should question the signer to determine that he or she is willing and competent to execute the document. The following suggestions may be helpful:

- You may want to have an impartial witness for the notarization.
- If you are asked to go to a hospital or nursing home to provide services, check with the patient's nurse or doctor prior to notarization.
- Talk to the person alone. Ask questions unrelated to the notarization. Ask for his name, home address, and telephone number. You could also engage the person in a conversation about his family, his occupation, a television program, a recent news event, etc.
- Ask the signer to tell you about the document to be notarized. What kind of document do you need to sign? Have you read the document completely? Do you understand the document? Do you need someone to explain the contents of the document to you? Has anyone pressured you to sign this document?
- If you feel the person is mentally competent at the time, proceed. If in doubt, don't do it!
- If you keep a record of your notarial acts, document the special circumstances of this notarization - even if you must refuse to notarize.
- Have the witness sign your journal.

For a person who is blind

§117.05(14)(a), Fla. Stat.

- The law requires you to read the document to the document signer before the notarization.
- You may wish to add a statement in your notarial certificate that you have complied with this requirement of the law: "I further certify that I read the document to (name of signer) prior to notarization."
- Unless you are an attorney, you cannot advise the person about the contents of the document; however, you may re-read any portion of the document to the person.

For a person who does not speak English

§117.107(6), Fla. Stat.

- The nature and effect of the document must be translated into a language that the person does understand. The law does not specify that a written translation is required; therefore, an oral translation is sufficient.
- You may wish to add a statement in your notarial certificate that you have complied with this requirement of the law: "I further certify that the nature and effect of the document was translated for (name of signer) by (name of translator) prior to notarization."
- You may also want the translator to sign the document and your journal.

For a person who is deaf

- The obvious problem that exists in this situation is communication. Unless you and the signer are competent in sign language or lip reading, you should communicate with the person by writing notes.
- Make additional comments about the notarization in your journal entry.

For a person who is signing a document written in a foreign language not understood by the notary

Remember, you are not responsible for the contents of the document, but you need to exercise caution in this situation. Follow these recommendations:

- Make sure that you can communicate verbally with the document signer or that a qualified, trustworthy translator is present.
- Determine, if possible, that the document is complete.
- Check the document for a notarial certificate. If the document does not have a notarial certificate, ask the document signer for instructions. If he directs you which notarial act is appropriate for his document, proceed by adding the correct certificate and completing the notarization. If he does not know, refuse to notarize.
- Complete the notarial certificate in English. The certificate may be translated into the language of the document, but the translated certificate should not be signed and sealed by the notary.
- If you are unsure about the notarization, you should refuse to notarize.

For a person who is illiterate

- Although not required by law, you should read the document to the document signer before the notarization.
- You may wish to add a statement in your notarial certificate: "I further certify that I read the document to (name of signer) prior to notarization."
- Unless you are an attorney, you cannot advise the person about the contents of the document, however, you may re-read any portion of the document to the person.

For a Person with a Disability Who Directs Another to Sign

On a rare occasion, you may be asked to notarize the signature of a person who cannot sign a document in the usual manner. An individual with a disability may direct a notary to sign on his or her behalf. §117.05(14)(b)(d). In a sense, one person substitutes his hands for the hands of the person with a disability. You may notarize this signature but you should indicate the unusual circumstances in the notarial certificate. The following guidelines may be helpful.

For An Oath:

<p><i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small></p> <p><i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small></p>	<p><i>"Signature" of Person with Disability</i> <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO §117.05(14), FLORIDA STATUTES</small></p>
<p>STATE OF FLORIDA COUNTY OF _____</p> <p>Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20__, by <u>(name of person with disability,</u> and subscribed by <u>(name of designated person)</u> in the presence of these witnesses at the direction of <u>(name of person with disability)</u>.</p>	
<p><i>Notary Signature</i> <small>(PRINT, TYPE OR STAMP NAME OF NOTARY)</small></p>	
<p>(SEAL)</p> <p>Personally known _____ OR Produced Identification _____ Type of Identification Produced _____</p>	

For An Acknowledgment:

<p><i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small></p> <p><i>Signature of Witness</i> <small>(PRINTED NAME AND ADDRESS OF WITNESS)</small></p>	<p><i>"Signature" of Person with Disability</i> <small>SIGNATURE AFFIXED BY NOTARY, PURSUANT TO §117.05(14), FLORIDA STATUTES</small></p>
<p>STATE OF FLORIDA COUNTY OF _____</p> <p>The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by <u>(name of person with disability,</u> and subscribed by <u>(name of designated person)</u> in the presence of these witnesses at the direction of <u>(name of person with disability)</u>.</p>	
<p><i>Notary Signature</i> <small>(PRINT, TYPE OR STAMP NAME OF NOTARY)</small></p>	
<p>(SEAL)</p> <p>Personally known _____ OR Produced Identification _____ Type of Identification Produced _____</p>	

- 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.
- 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.
- The notary may then sign the signature of the person with a disability at the direction of and in the presence of that person.
- Perform the appropriate notarial act: administer an oath or take an acknowledgment. Your notarial act should be directed to the person with a disability.
- 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.
- Two persons with no interest in the transaction must 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.

- Be sure to get the witnesses and the designated signer to sign your journal and make appropriate notes.

For a Person Signing with Power of Attorney

- Situation: John Doe presents a document to be signed by Nancy Smith. John Doe states that he has power of attorney for Nancy Smith. John Doe signs the document in one of two ways:
 - (1) *John Doe as attorney-in-fact for Nancy Smith*
 - (2) *Nancy Smith by John Doe, attorney-in-fact*The first way is the preferred method.
- It is not the notary's responsibility to ensure that the signer has power of attorney. The person states he has that authority and indicates this fact when he signs - just accept his word.

Note: If you are notarizing in connection with your employment, you may need to require a copy of the POA for your employer's files.
- Note the capacity of the signer in the notarial certificate. Use a notarial certificate in substantially the same form as the one on page 30 for an acknowledgment in a representative capacity.

For a Person Who is a Minor

Have you ever been asked to notarize the signature of a person under the age of 18? If so, you may have considered this request a "major" problem. No doubt you have had some of the same questions that we are frequently asked.

- **May I notarize the signature of a minor?** Generally speaking, you may notarize for a minor; however, all of the requirements of the notary laws must be followed.
- **Is there an age limit?** The notary laws do not limit notarizations based upon a person's age. The Governor's Notary Section recommends that you exercise caution when notarizing for a minor. In particular, you should determine whether the minor understands the nature of an oath or acknowledgment before notarizing.

For example, a woman recently called our office to ask whether she could notarize the signature of a 4-year-old child. The father wanted to transfer the title of a boat to his child. A child of this young age would probably not understand the transaction. On the other hand, we recently encountered a situation involving a 12-year-old child who wanted to submit a sworn statement to the court regarding an incident that she witnessed. She actually wrote down what she had seen and wanted to sign her statement and swear to it in the presence of a notary. Most likely, a 12-year-old child would understand the act of swearing to the truthfulness of a statement.

In these types of situations, the notary should question the child to make sure that he or she understands the nature of an oath or an acknowledgment. The notary should also determine that the child is not being pressured or coerced to sign the document.

When a child is too young to comprehend the transaction, a parent sometimes signs on behalf of the child. If you are asked to notarize in that situation, it is the parent's signature that is to be notarized, not the child's.

- **What about identification for a minor?** Any time you notarize a signature, the signer, including a minor, must provide acceptable identification to the notary. The problem, of course, is that most minors do not have one of the forms of acceptable identification listed in the Florida Statutes. There are two possible solutions.

First, you may be interested to know that any person 12 years of age or older may be issued a state identification card. To obtain the card, the person should apply at the local Division of Motor Vehicles office where driver's licenses are issued.

Second, you may use the sworn written statement of a credible witness to identify the minor. (Please refer to page 33 for a full explanation of this method of identification.)

When asked to notarize the signature of a minor, you may refuse to do so if you are unsure about any aspect of the notarization. In unusual situations, you may even suggest that the minor or his or her parent or guardian see an attorney.

