

Fund Affiliate Assembly

Notarizing: Truths and Trials

Denise McCabe
Certified Notary Trainer
Florida Notary Training

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I. The Basics

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Traditional, Electronic, and Remote Online Notaries

In Florida, traditional notaries, electronic notaries, and Remote Online Notaries (RONs) have, for the most part, the same responsibilities – although some are different

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Notary Responsibilities in Common

- Authenticating identification (Presence)
- Determining the signer's comprehension of the document's consequences
- Determining the signer's willingness to sign
- On a jurat, ensuring that the signer swears or affirms the document's veracity

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Before Beginning a Notarization

- Check identification carefully
- Have enough conversation to be sure that the signer is lucid and understands the document

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The Six Notarial Acts

1. Taking Acknowledgments
 - ❖ The signer understands the document
 - ❖ The signer is signing willingly
2. Administering Jurats –
The signer swears the contents of the document are true

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The Six Notarial Acts

3. Attesting to Photocopies

- ❖ This notarial act gives the right to make attested photocopies, not the right to make certified copies of vital records or public records
- ❖ Photocopying of the original must be done or supervised by the notary

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The Six Notarial Acts in Florida

4. Solemnizing Marriages

- ❖ Before the ceremony, check that the marriage license satisfies all requirements
- ❖ Check both parties' identification
- ❖ Check for lucidity and coercion, especially in Florida, a target state

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The Six Notarial Acts in Florida

4. Solemnizing Marriages

- ❖ Complete marriage records after the ceremony
- ❖ Satisfy the other state requirements

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The Six Notarial Acts in Florida

- 5. Verifying Vehicle Identification Numbers
- 6. Certifying Contents of Safety-deposit Boxes

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Acknowledgment vs. Jurat

- On an acknowledgment, you can ask a signer who has already signed if that is their signature, and take their word for it
- On a jurat, you must see the signer sign

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Identification Acceptable for Notarizations in Florida

- Personal knowledge
- Other forms of acceptable identification
 - ❖ Now, ten forms of traditional identification – as of 2017, an identification card issued by the US Department of Veterans Affairs

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Acceptable Identification

- Other forms of acceptable identification
 - ❖ Credible witness identification
 - Single credible witness
 - Double credible witness

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Performing Notarizations – Checklist

- Have a checklist and *use it*. Protect the client and yourself.
 1. Confirm that the signer is competent and willing to sign. Consider the possibilities of drugs, alcohol, dementia, mental illness, coercion, even exhaustion. Mention the thumb printer.

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Checklist

2. Discuss your fee
3. Signer(s) and you complete journal entry, if you use one
4. Obtain ID from all document signers, and examine it well

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Checklist

5. Examine the document for blanks, spaces, inaccuracies, date, completeness, etc. Make necessary changes
6. Administer oath or affirmation, or take acknowledgment
7. Collect fee, if any

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Checklist

8. You and signer(s) write, print, and stamp to complete the notarial certificate accurately. You may add information to the certificate that helps explain circumstances.

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Performing Notarizations – Purposes of Your Journal

- Provides a record if certificate is lost
- Guides you to do the notarization correctly
- Allows you to know where you left off, if interrupted

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Purposes of Your Journal

- In a court proceeding, is admissible as evidence to protect against claims of wrongdoing or to prove someone else's fraud
- Builds your reputation for being meticulous
- Gives you peace of mind

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The Notary Bond and Bond Agency

- The State of Florida requires every traditional notary to carry a \$7500 surety bond, supplied by a state approved bond agency
- The bond agency supplies to the applicant the Florida notary application, bond, stamp commission certificate, possibly errors and omissions insurance, and other services

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Errors and Omissions Insurance

- Is inexpensive and highly recommended
- Should be obtained from your bonding agency to avoid conflicts
- May already be in effect through your employer

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Jurisdiction

- Florida has no reciprocity with other states
- Florida notaries can perform notarizations only within its unusual geographical boundaries
- Correct county of notarization is a basic
- Performing notarizations, including marriages, on the water or in the air should be avoided

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II. Reminders

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Notarial Certificates – 9 Elements

1. Venue – state and county
2. Type of notarization
3. That the signer personally appeared
4. The name(s) of the person(s) whose signature(s) are to be notarized

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Notarial Certificates – 9 Elements

5. Exact date of notarization
6. Specific type of ID
7. Notary's signature
8. Notary's printed, typed, or stamped name
9. Notary's official seal

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Liability – Mobile, Traditional, Electronic, and RON

- Great civil and criminal liability for the notary
- Same liability goes up the ladder

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Notarizing in Special Circumstances

This may include signers who may not be lucid, are vision-impaired or illiterate, are hearing impaired, need to sign by mark, are physically unable to sign, are minors, do not speak English, are signing a document in a language not understood by the notary, or are presenting an incomplete or inaccurate document

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Notarizing in Special Circumstances

- A notary must make reasonable accommodations to provide services to persons with disabilities
- Use appropriate notarial certificate
- Be mindful of the necessity to have disinterested witnesses

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Notarizing in Special Circumstances

- Use an affidavit of translator when appropriate
- Decline to notarize if legal requirements are not met

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Documents Being Sent to Foreign Countries

- Authentication by the Secretary of State of Florida of notarized documents being sent to foreign countries – after primary notarization
 - ❖ Necessary so that the Secretary of State of Florida can verify to authorities in foreign countries that the state notary truly is a commissioned notary public in this state

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Documents Being Sent to Foreign Countries

- Authentication by the Secretary of State of Florida
 - ❖ Two forms
 - Apostilles – Applied to documents to be sent to countries that are signers to the Hague Convention
 - Certificates of Notarial Authority – Applied to document to be sent to countries that are not signers to the Hague Convention

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Documents Being Sent to Foreign Countries

- Authentication by the Secretary of State of Florida
 - ❖ The signer must submit a written request to the Secretary of State of Florida stating the country or state to which the document will be sent
 - ❖ Check the law for other requirements

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Notarizing for Self or Others

- A notary may not notarize their own signature
- A notary may not notarize for their parents, children, or spouse

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Notarizing for Self or Others

- A notary may notarize for other relatives but should first consider the risk of the appearance of conflict of interest
- A notary may perform a marriage for their parents, children, or former spouse

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Notary No-no's – Just Some of Them

- Notarizing without the presence, either physical or by means of audio-video communication technology, of the signer
- Not authenticating a signer's identification
- Notarizing an incomplete or inaccurate document

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Notary No-no's

- Notarizing when the signer may be being coerced, may not understand the document, or may not be lucid
- Notarizing outside of Florida's jurisdiction
- Changing anything in a written instrument after it has been signed by anyone

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Notary No-no's

- Amending a notarial certificate after the notarization is complete
- Charging unlawful fees
- Notarizing documents which the notary is a party to or has a financial interest in other than the usual salary or fee

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Notary No-no's

- Notarizing the notary's own signature or the signature of the notary's own parents, children, or spouse
- Saying or implying that the notary has authority they don't have
- Notarizing a document that is illegal, false, or deceptive

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Most Common Wrongdoing

- Not requiring the presence – whether physical or by means of audio-video communication technology
- Not authenticating identification well
- Not having all elements on the notarial certificate
- Not filling out the notarial certificate correctly

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Consequences of Wrongdoing

- Can be a slap on the hand up to prison time
- Can include costs not covered by surety bond or even errors and omissions Insurance
- Can include some documents not being processed or accepted by the state, and/or being returned – not good for time sensitivity

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III. New Information

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Remote Online Notarization – A Few of the Differences

- Secure audio-visual communication technology through an approved provider is required
- “In the presence of” includes being outside the physical presence of another person, but still able to see, hear, and communicate with the person by means of audio-visual communication technology

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**Remote Online Notarization –
A Few of the Differences**

- Confirming a person's identity includes different options
- Location of witness may be outside of Florida, but must be in the US or a territory of the US unless they are in the physical presence of the principal

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**Remote Online Notarization –
A Few of the Differences**

- Remote online notarizations do not include solemnizing the rite of matrimony
- Remote online notarizations of wills may be executed as of July 1, 2020

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**Remote Online Notarization –
A Few of the Differences**

- A remote online notary must complete an extra 2-hour class
- A remote online notary must maintain a \$25,000 bond
- A remote online notary must carry a \$25,000 errors and omissions insurance policy

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Remote Online Notarization – A Few of the Differences

- The remote online notary may charge a fee not to exceed \$25
- Electronic journals must be kept and must meet certain requirements
- Should choose a third-party provider that will likely be around for a long time

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Notarizing in the Time of Covid-19

- Notarization can be performed for signers in a facility (e.g., hospitals, ALFs, LTCs) at a door or a window, with careful attention to chain of custody
- Document to be notarized can be carried by someone authorized to enter the building, or through a door or a window

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Notarizing in the Time of Covid-19

- Precautions must be taken to ensure that no alternations are made to the document
- Use hand sanitizer, masks, gloves, pens, alcohol wipes for thumbprints, and disposable thumb printers
- There is no obligation to do these notarizations

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