

February 2000

Greetings Florida Notaries!

The Notary Section has received many inquiries about notarizing for a person signing with a power of attorney and the notary acting as a witness. This month we'll answer these questions:

1. How do I notarize for a person signing with Power of Attorney?
2. May I sign a document as one of the witnesses if I am also signing as the notary public for that transaction?

NOTARIZING FOR A PERSON SIGNING WITH A POWER OF ATTORNEY

The first thing to remember is you are notarizing the person's signature who has the power of attorney. For example, 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

You are not responsible for verifying that the signer has power of attorney. The person states he has authority and indicates this fact when he signs. Nonetheless, some employers may require you get a copy of the Power of Attorney for their files if you are notarizing in connection with your employment. Use a notarial certificate in substantially the same form as the one used for 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).

Don't forget to sign the certificate, print, type, or stamp your name, affix your seal, and provide the type of identification produced or personally known.

AS A NOTARY MAY I ALSO ACT AS A WITNESS TO THE TRANSACTION?

A Notary Public may sign as one of the witnesses and as the Notary Public on most documents. In fact, it is common practice among Florida Notaries, particularly on real estate transactions. Typically, you will see the title clerk sign as one of the two required witnesses and then notarize the document signer's signature. In addition, a Florida court has held that "there is nothing to prevent a notary from also being a witness." See Walker v. City of Jacksonville, 360 So.#2d 52, 53 (Fla. 1st DCA 1978). However, before signing as a witness, the notary should ensure that the document does not require the notarization of the witnesses' signatures. For example, a self-proof affidavit on a will or codicil requires the notarization of the signatures of the testator and both witnesses. If the notary signed as a witness in this instance, he or she would be notarizing his or her own signature which is a criminal violation of the Notary law.

If the document does not require the notarization of the witnesses' signatures, the Notary may be one of the two subscribing witnesses as well as the Notary Public.

NOTARY INFORMATION AVAILABLE ON THE INTERNET

As always, this information and more is available in the "The Governor's Reference Manual for Notaries," and it has been updated and is available on our website at www.flgov.com. The Governor's Notary Education website currently has all educational materials available for downloading, as well as past issues of "The Notary View" and previous E-mail E-ducation

Newsletters that you might have missed.

Thank you for your time!

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