

## June 1998

### Greetings Florida Notaries!

**OUR FIRST E-MAIL ARTICLE** went out to about 1,000 notaries, and comments indicate that this medium is a welcome form of education. Unfortunately, as expected we had a few technical problems which we are working on. In order to accommodate a mail-out of this size, we had to send the messages in groups of 100. The undelivered mail was checked for accuracy and resent a few days later.

Several notaries wrote back and asked that we suppress the address list in order to shorten the printing of the message and in order to protect their address from future junk mail. At this time, we are unable to accommodate that request. Some notaries commented about the format. Formats vary depending on the software and we cannot control how the message looks when you get it. If you want a clean format, we suggest that you cut and paste the message into your word processing program, reformat it to your tastes, then print it from there. Wise notaries will save all these articles for future reference.

### NOTARY NEWS ON THE INTERNET

Don't forget to check out the Governor's Notary Section website as an educational resource for your duties as a notary public. Our address is:

<http://www.eog.state.fl.us/eog/govdocs/notary/notary.htm>

The address for the Florida Statutes and Constitution printed in our last issue of The Notary View changed during our publication process. The correct address is:

<http://www.leg.state.fl.us/citizen/documents/statutes/index.html>

### NEW NOTARY LAWS TO TAKE EFFECT 1/1/99

The Governor signed into law House Bill 1125 on May 27, 1998. The bill revises the notary laws in Chapter 117 as well as other sections of the Florida Statutes. In the months to come, we will be telling you about those changes. If you would like to read the bill for yourself, check out the website for the Florida Legislature--Online Sunshine. The address is:

<http://www.leg.state.fl.us/>

Click on House Bills, then on House Bills 1998, then find 1125. Under Bill Text, you will want to view or print the final version of the bill that is designated as hb1125er. That is the enrolled version of the bill with all the amendments that was sent to the Governor for action.

The Legislature is already working to update the 1997 Florida Statutes with the 1998 Supplement. Watch their website for the new version of the Florida Statutes.

### NOTARIZING WILLS

What type of notarial certificate is required for a will? Who or what is the testator? Can I notarize a will if I work at a bank? Can I notarize a handwritten will? Does a will have to have witnesses? Can I as the notary also be one of the witnesses on a will? Can my spouse be a witness? What does it mean to make a will self-proving? These are typical questions we are asked on a daily basis. Let's talk about your responsibility in notarizing wills.

You may be surprised to learn that wills executed in Florida do not have to be notarized. They may be executed with just two witnesses. Wills may also be executed by an acknowledgment

before a notary with two witnesses. Generally, wills prepared by attorneys are also made self-proving by the addition of a separate affidavit. Making a will self-proving simplifies the probate process by eliminating the need to have the witnesses appear in court at the time the will is probated.

The Self-Proof of Will Affidavit is a sworn statement made by the testator (the person making and signing the will) and the two witnesses. All three parties must personally appear before a notary public at the same time to swear or affirm that the testator, in the presence of the witnesses, signed the document as the testator's last will, and that each of the witnesses also signed the document in the presence of each other.

Sections 732.502 and 732.503 of the Florida Statutes specifies how wills are executed and how wills are made self-proving. Even the affidavit and the jurat for making the will self-proving are provided in the law. Please understand, though, that it is not your responsibility as a notary public to advise your customer about the correct procedure for executing a will. In fact, you are prohibited from doing so unless you are a licensed attorney who has been asked for legal advice.

Handwritten wills frequently cause concern for notaries. Certainly if a will has been prepared by the testator without the benefit of adequate legal advice, the language of the will may not be legally sufficient to accomplish the desires of the testator. But, as the notary, you are not responsible for the contents of the will. The prudent notary, however, will suggest that the testator seek legal advice before executing the will. Additionally, if the signer does not understand the will or the execution process, you should refuse to notarize the will.

As the notary, you are not responsible for providing witnesses for the will but, if the will is prepared for witnesses, you should make sure that witnesses are present for the signing of the will and the notarization. If the will has the self-proof affidavit, the witnesses' signatures will also be notarized. That means that the testator and the witnesses must all personally appear before you to sign the document in your presence, take the appropriate oath, and present acceptable identification. When you are required to notarize the witnesses' signatures, you or a member of your family may not be one of the witnesses because you may not notarize your own signature, nor the signatures of certain family members (spouse, son, daughter, mother, father).

Many employers are concerned about their notary-employees notarizing certain types of documents. Remember, employers may be held liable for any damages incurred as a result of an improper notarization performed by their notary-employees during working hours. For this reason, notaries at banks and other businesses are prohibited from notarizing wills for their customers or the public. Check with your supervisor to make sure you understand and follow the policy of your employer.

Well, that's the story on wills. Exercise caution and follow the law when notarizing wills, and you can perform your notarial duties with confidence, satisfy your customers, and eliminate unwanted liability for yourself and your employer.

Until next month . . .

If you would like to receive this electronic newsletter please e-mail me, [Linda Adams](#)  
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