

## August 1999

### Greetings Florida Notaries!

This month we will look at the steps required for a correct notarization and how to perform the essential notarial act.

### STEPS FOR A CORRECT NOTARIZATION

The terms, "notarization" or "notarize a signature," are generic terms that often cause confusion. The act of notarization includes a series of acts required by law and performed by a Notary Public. The requirements include a communicative exchange between the Notary and the signer so that the signer can take the appropriate notarial act for the execution of a particular document. The following steps are essential to comply with the statutory requirements of a notarization:

1. the signer must personally appear before the Notary Public at the time of the notarization and present the entire document to the Notary;
2. the Notary must examine the document to ensure that the text is complete and that the document contains a properly formatted notarial certificate;
3. the Notary must satisfactorily identify the signer by one of the methods stated in the law;
4. the Notary must determine that the signer is mentally capable of understanding and executing the document;
5. the Notary must perform the notarial act-either administer an oath to or take the acknowledgment of the signer;
6. the signer may or may not sign the document in the presence of the Notary;
7. the Notary must complete a written record of the notarization, called a notarial certificate, with all the information required by law, including the Notary's signature and seal.

Unfortunately, Step 5 is often ignored by both the Notary and the signer. Yet, it is the heart of the notarization. There are two types of notarial acts that we generically call, "notarizing a signature," - the oath and the acknowledgment.

### OATHS AND ACKNOWLEDGMENTS - WHAT'S THE DIFFERENCE?

An oath is used when the contents of the document must be sworn to, or affirmed, by the signer. An affidavit is a good example of a document requiring an oath. An affidavit is a written statement setting forth certain facts made under oath by a person. Applications and vehicle titles also require oaths.

An acknowledgment is used when the signer must declare that he or she signed the document voluntarily, without any coercion. Documents requiring acknowledgments include deeds, mortgages, powers of attorney, contracts, etc.

As a Notary Public, you are a public officer empowered by the State to administer oaths and take acknowledgments. That is why it is imperative for you to understand your duties concerning the administration of notarial acts. You must communicate with the signer to administer an oath or take an acknowledgment. For an oath, you would simply ask the question: "Do you swear, or affirm, that the information contained in this document is the truth?" For an acknowledgment, you could ask, "Do you acknowledge that you understand this document and have signed it voluntarily?" Other language is also acceptable as long as there is a sufficient exchange between you and the signer to assure understanding of the notarial act.

### PERFORMING THE NOTARIAL ACT

Most documents requiring notarization will contain a prepared notarial certificate. Look at the certificate for the key words, "sworn" or "acknowledged." Those words will tell you which notarial

act you are required to perform. If the document does not have the notarial wording on it, the signer must instruct you whether he or she would like to give an oath or an acknowledgment. At the signer's direction, you may add the corresponding notarial certificate and proceed with the notarization.

### **RESULTS OF NOT PERFORMING THE NOTARIAL ACT**

If you fail to administer the oath or take the acknowledgment of the signer, the results can be far-reaching. The document could be declared "null and void" by a Court or rejected by the receiving party. That could be devastating if the document is being used as evidence in a criminal or civil case where guilt or culpability is the desired outcome. If the result is a monetary loss, you or your employer may be held liable for the damages incurred by your failure to perform the required notarial duties. Additionally, you may be suspended from office or disciplined by the Governor's Office for violating the notary law.

### **NOTARIAL CERTIFICATES**

Florida law prescribes the notarial certificates for an oath and an acknowledgment in Section 117.05(13), Florida Statutes (1998 Sup.). If you need a sample of those certificates, you can request it from our office. We can fax or mail the form certificates to you, or you may check the appropriate section of the law from the Governor's Notary Section website. Our address is:

<http://www.state.fl.us/eog>" (Link to Notary Education, then to Notary Laws)

### **NOT TOO LATE TO REGISTER FOR A NOTARY SEMINAR**

The Governor's Office, in association with the American Society of Notaries, is presenting notary training classes this summer. These 3-hour seminars cover basic notarial duties and procedures, and update Notaries on any recent law changes. The course also teaches Notaries to handle complex notarizations. The fee is \$49 per student, which includes registration and materials; group discounts are available. Morning classes are held from 8:30 until 11:30 a.m.; afternoon classes are scheduled from 1:30 until 4:30 p.m.. Registration begins one-half hour early. The remaining seminars are being held in the following cities:

- August 10 a.m. - Ocala
- August 10 p.m. - Daytona Beach
- August 11 a.m. - Jacksonville
- August 24 p.m. - Pensacola
- August 25 a.m. - Crestview
- August 25 p.m. - Panama City Beach
- August 31 a.m. - Marianna
- September 10 a.m. - Tallahassee

Registration or requests for additional information should be directed to the American Society of Notaries at (800) 522-3392, or e-mail ASN at [mail@notaries.org](mailto:mail@notaries.org).

Until next month,

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