

March 2000

Greetings Florida Notaries!

This month we will discuss some special situations you may come across when you are performing a notarization.

- How do I notarize for a person who is mentally incapacitated?
- How do I notarize for a person who is blind?
- How do I notarize for a person who does not speak English?
- How do I notarize for a person who is deaf?
- How do I notarize for a person who is signing a document in a foreign language?
- How do I notarize for a person who is illiterate?

FOR A PERSON WHO IS MENTALLY INCAPACITATED

§117.107(4), 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

§117.107(5), 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 as to 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.

GOVERNOR'S REFERENCE MANUAL FOR NOTARIES

The Notary Section will have updated reference manuals available in April. If you are interested in obtaining one please e-mail your name and address to FL_GOV_NOTARY@eog.state.fl.us.

Thank you for your time!

Jennifer Bertsch

Notary Education Coordinator
State of Florida, Office of the Governor
FL_GOV_NOTARY@EOG.STATE.FL.US

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COORDINATOR](mailto:NOTARY_EDUCATION_COORDINATOR@EOG.STATE.FL.US)