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**EXECUTIVE OFFICE OF THE GOVERNOR
NOTARY SECTION
Notary E-Mail E-ducation May 2000**

Greetings Florida Notaries!

The Governor's Office is responsible for investigating complaints against notaries who have intentionally or unintentionally violated notary law. Over the next few months we will discuss in detail some of the most common mistakes made by notaries that lead to complaints.

The most basic requirement for performing a notarization is that the person who is taking an oath or making an acknowledgment (the one whose signature is being notarized) must be present at the time of the notarization. The presence requirement refers to physical presence.

Florida Statutes section 117.107(9) provides that:

A notary public may not notarize a signature on a document if the person is not in the presence of the notary public at the time the signature is notarized. Any notary public who violates this paragraph is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and that conduct constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this paragraph that the notary public acted without intent to defraud. A notary public who violates this paragraph with the intent to defraud is guilty of violating s. 117.105.

Fraudulently taking an acknowledgment or making a false notary certificate is a violation of section 117.105 and constitutes a third degree felony.

There is no exception to the presence requirement!

May I notarize a signature without the person being present if another person swears that the person signed the document?

No! The Notary Section receives frequent inquiries about "notarizing a person's signature by subscribing witness." Evidently, some notaries believe that it is permissible to notarize a signature when the person is not present if someone who witnessed the signing of the document appears before the notary and swears that the person actually signed the document. Some states, like California, do, in fact, allow such notarizations, but Florida does not. Misunderstanding may also stem from a section in Florida law that provides a method by which instruments concerning real property may be entitled to recording in Florida when the document signer cannot appear before a notary to acknowledge his or her signature. You may hear this procedure referred to as "proof of execution by subscribing witness."

We recently asked the leading experts in Florida about this issue. The Attorneys' Title Insurance Fund, Inc. is considered the state's foremost authority on matters related to the real estate industry. The following information should clarify any confusion which may exist on the subject.

First, the proof method of execution is used only for acknowledgments on real estate transactions. Second, this is not an alternative method of notarization. The person whose signature is being notarized must personally appear before the notary at the time of the notarization without exception. Rather, this provision is a method by which a document can be recorded in Florida. For example, say a person signed a document related to a real estate

transaction but did not acknowledge his signature before a notary public. Later, the document cannot be recorded by the county clerk because it lacks notarization. The problem is further complicated when the document signer cannot be located or is deceased. Florida law provides that one of the subscribing witnesses on the document may "prove" the execution of the document by swearing that the person did actually sign the document. With that sworn statement, the document may then be recorded.

The proof method is not commonly used. In fact, one experienced lawyer at Attorneys' Title Fund said that she had never seen a real property instrument recorded using this method and that, for insuring purposes, her company would investigate thoroughly before issuing title insurance. As a notary public, you will probably never encounter this situation. Generally, when there is a problem with the recording of a document, an attorney handles the matter and takes other legal steps to remedy the situation. Some private companies produce form "certificates of proof." We prefer the affidavit format instead. By using an affidavit with a standard jurat, the notary will not be certifying more information than is required of the notary. It is up to the affiant to state the facts and swear to the truthfulness of his or her statement.

Remember then, if a co-worker, family member, or anyone else asks you to notarize another person's signature based on a sworn statement that he or she saw the person sign the document, JUST SAY NO!!

More information is located in The Governor's Reference Manual for Notaries. You can request a manual by e-mailing your mailing address or you can download the manual from our website www.myflorida.com

Thank you for your time!
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