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Florida's Notary Law Update

Florida Governor Ron DeSantis signed Florida House Bill 409 "Electronic Legal Documents (2019-71, Laws of Florida)" on June 7, 2019. The bill, which became effective on January 1, 2020, updated Chapter 117, Florida Statutes (F.S.) to permit online remote notarization. Additionally, the Florida Department of State issued 1N-7001, Florida Administrative Code to implement the new law.

Changes in the notary law are important to public entities, which often require certain documents to be notarized by vendors, particularly construction documents such as: bids, contracts, applications for payments, bonds, and powers of attorney. A notary reduces the risk of fraud by verifying the identity of the person signing a document and witnessing his or her signature.



Prior to passage of HB 409, Florida law prohibited a notary from notarizing a signature on a document if the party executing the document was not in the notary's physical presence at the time of signature. The updated law modifies the notary statutes and creates new provisions for certification and online notarization, including:

- A new requirement that a certificate of acknowledgment or jurat specify whether the principal appeared physically before the notary or by means of audio-video communication.
- The requirement that a Florida notary public wishing to perform online notarizations must register with the Department of State as an online notary public.
- Procedures, standards, and requirements for online notarization.¹
- Standards for supervising the witnessing of electronic records.²
- Standards for keeping an electronic journal of online notarizations.

¹ E.g., Online Notary Publics must be physically present in Florida at the time of the remote notarization, use a Remote Online Notarization Service Provider, and make and retain a recording of the entire notarization session.

² Prior to facilitating witnessing of a signature of an electronic document, the Remote Online Notarization Service Provider must ask the principal certain questions if the record to be signed is a will under Chapter 732, a trust with testamentary aspects under Chapter 765, Health Care Advance Directives, waivers of spousal rights, and powers of attorney authorizing a transaction enumerated in Section 709.2208, F.S.

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When notarizing a signature, a notary must complete a notarial certificate for an oath, affirmation, or an acknowledgment. The certificate of acknowledgement now contains nine basic elements:³

- The venue stating the location of the notary public at the time of the notarization in the format, "State of Florida, County of _____".
- The type of notarial act performed, an oath or an acknowledgment, evidenced by the words "sworn" or "acknowledged".
- Whether the signer personally appeared before the notary public at the time of the notarization by physical presence or by means of audio-video communication technology as authorized under Part II of Chapter 117, F.S.
- The exact date of the notarial act.
- The name of the person whose signature is being notarized. It is presumed, absent such specific notation by the notary public, that notarization is to all signatures.
- The specific type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence specified in Section 117.05(5), F.S.
- The notary public's official signature.
- The notary public's name, typed, printed, or stamped below the signature.
- The notary public's official seal affixed below or to either side of the notary public's signature.



Notarial certificates must contain all the above-required information. This includes remote online notarization of documents for principals outside the State. Documents which are not properly notarized may be deemed invalid or provide evidence of possible fraud, forgery, impersonation, duress, or incapacity.

Suggestions

We recommend that local government entities consult with their Counsel and compare Chapter 117, F.S. with current operational procedures, specifically in regards to acceptable notarized vendor documents used in finance, purchasing, bids and contracts, and construction management.

For further information, please visit the State of Florida's Notary website at <https://www.flgov.com/notary> or the Governor's Notary Reference Manual at: <https://www.flgov.com/fl-notary-manual-statutes-resources>.

³ State of Florida, Executive Office of the Governor, Notary Section (December 17, 2019). *Governor's Reference Manual for Notaries Public*, p. 10.