

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 356

INTRODUCER: Commerce and Tourism Committee and Senator Avila

SUBJECT: Notaries Public

DATE: February 13, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Wells</u>	<u>Jerrett</u>	<u>ATD</u>	<u>Favorable</u>
3.	<u>McMillan</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 356 makes the following changes with respect to notaries public:

- Requires notarial certificates to include the printed name of a person whose signature is being notarized, and printed names of all signatories, including principals and witnesses.
- Prohibits a notary public from falsely notarizing a signature of a person who is not in the presence of a notary public, either in person or online, at the time the signature is notarized.
- Creates criminal penalties for prohibited acts by notaries public, with enhanced penalties for violations pertaining to real estate transactions.

The bill requires notaries public to keep tangible journals of all notarizations performed, specifies duties related to maintaining such journals, and delineates circumstances in which other parties may have access to entries in the journals.

The bill also modifies a provision relating to a recording notification service by clerks of circuit courts, to provide that if a property appraiser receives notice from a property owner or clerk of the circuit court and reasonably determines that a recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls. However, the property appraiser must make a notation in their records that a possible conveyance has been recorded.

The bill takes effect July 1, 2024.

II. Present Situation:

Notaries Public in Florida

A notary public is a public officer under the Florida Constitution,¹ and “an impartial agent of the state.”² As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.³ Notaries public are appointed and commissioned by the Governor to four-year terms,⁴ and are authorized under Florida law to perform six basic duties:⁵

- Administer oaths or affirmations;⁶
- Take acknowledgments;⁷
- Solemnize marriages;⁸
- Attest to photocopies;⁹
- Verify vehicle identification numbers (VINs);¹⁰ and
- Certify the contents of a safe-deposit box.¹¹

A notary public may only exercise the foregoing duties within the physical boundaries of the State of Florida.¹² Generally, a notary public may not charge more than \$10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.¹³

A notary public may provide an electronic signature that is unique, verifiable, under the notary public’s sole control, and attached to a document in a way revealing any subsequent alteration.¹⁴ When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary public’s application for commission, the words “Notary Public State of Florida,” the expiration date of the notary public’s commission, and the notary public’s commission number.¹⁵ The seal must also be applied to all notarized paper documents using a rubber stamp containing the foregoing information.¹⁶ The rubber stamp seal must be affixed to the notarized paper document in

¹ Art. II, § 5(c), Fla. Const.

² 58 AM. JUR. 2D Notaries Public § 1.

³ See s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, the applicant must swear he or she has read ch. 117, F.S., and knows the duties, responsibilities, limitations, and powers of a notary; (7) requiring that notaries give a bond in the amount of \$7,500 in the event the notary breaches duties, of which is to be kept on file with the Department of State). Section 117.01(1), F.S., requires a notary to be able to read, write, and understand the English language.

⁴ Section 117.01(1), F.S.

⁵ Executive Office of the Governor, State of Florida, *Governor’s Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016), available at https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Jan. 24, 2024).

⁶ Section 117.03, F.S.

⁷ Section 117.04, F.S.

⁸ Section 117.045, F.S.

⁹ Section 117.05(12)(a), F.S.

¹⁰ Section 319.23(3)(a)2., F.S.

¹¹ Section 655.94(1), F.S.

¹² Section 117.01(1), F.S.

¹³ Section 117.05(2), F.S.

¹⁴ Section 117.021(2), F.S.

¹⁵ Section 117.021(3), F.S.

¹⁶ Section 117.05(3), F.S.

photographically reproducible black ink. Every notary public must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.¹⁷

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.¹⁸ A notary public is also subject to criminal penalties for certain unlawful uses of the notary public commission (such as notarizing his or her own signature),¹⁹ and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary public's presence).²⁰

Becoming a Notary Public in Florida

In order to be eligible to become a notary public in Florida, a person must:

- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.²¹

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.²² Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.²³ The oath of office and notary public bond must accompany the notary public's application when filed with the Department of State.²⁴ Applicants must also provide the following as part of the application:

- Personal identification information;
- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor's office to confirm eligibility.²⁵

Notary's Duty to Confirm Identity

One of the notary public's primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides "satisfactory

¹⁷ *Id.*

¹⁸ FLA. CONST., Art. IV, s. 7.

¹⁹ Section 117.05(1), F.S. (providing violation is a third degree felony). *See also* s. 117.05(3)(d), (7), and (8), F.S.; s. 117.105, F.S.; s. 117.107(9), F.S.

²⁰ Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to \$5,000).

²¹ *See supra* note 5.

²² Section 117.01(2), F.S. (requiring \$25 application fee, \$10 commission fee, and \$4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).

²³ *See supra* note 5 at p. 7.

²⁴ Section 117.01(2), F.S.

²⁵ *Id.*

evidence” by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary public may notarize the document.²⁶

Prohibited Acts

Section 117.107, F.S., specifies prohibited acts by notaries. A notary public may not:

- Use a name or initial in signing certificates other than that by which the notary public is commissioned.
- Sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This does not apply to or prohibit the use of an electronic signature and seal by a notary public who is registered as an online notary public to perform an electronic or online notarization in accordance with ch. 117, F.S.
- Affix his or her signature to a blank form of affidavit or certificate of acknowledgment and deliver that form to another person with the intent that it be used as an affidavit or acknowledgment.
- Take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed, and where the person has not been restored to capacity as a matter of record.
- Notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.
- Take the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.
- Change anything in a written instrument after it has been signed by anyone.
- Amend a notarial certificate after the notarization is complete.
- Notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology as authorized under part II of ch. 117, F.S., at the time the signature is notarized. Any notary public who violates this prohibition is guilty of a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.
- Notarize a signature on a document if the document is incomplete or blank. However, an endorsement or assignment in blank of a negotiable or nonnegotiable note and the assignment in blank of any instrument given as security for such note is not deemed incomplete.
- Notarize a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.
- Notarize a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction; however, a notary public who is an employee may notarize a signature for his or her employer, and this employment does not constitute a financial interest in the transaction nor make the notary a party to the transaction as long as he or she does not

²⁶ Section 117.05(5), F.S.

receive a benefit other than his or her salary and the fee for services as a notary public authorized by law.

Recording Notification Service

In 2023, in response to an increase in fraudulent real property attempted conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself or a third party without the property owner's knowledge or consent, the Legislature enacted legislation in an attempt to minimize the potential for fraudulent real property deeds.²⁷ Pursuant to s. 28.47, F.S., on or before July 1, 2024, each clerk of the circuit court must create, maintain, and operate a free recording notification service which is open to all persons wishing to register for the service. The clerk must ensure that registration for the recording notification service is possible through an electronic registration portal. When a land record is recorded for a monitored identity, a recording notification must be sent within 24 hours after the recording to each registrant who is subscribed to receive recording notifications for that monitored identity. The notification must contain:

- Information identifying the monitored identity for which the land record was filed;
- The land record's recording date;
- The official record book and page number or instrument number assigned to the land record by the clerk;
- Instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number; and
- A phone number at which the clerk's office may be contacted during normal business hours with questions related to the recording notification.

There is no right or cause of action against, and no civil liability on the part of, the clerk with respect to the creation, maintenance, or operation of the recording notification service, and nothing in s. 28.47, F.S., may be construed to require the clerk to provide or allow access to a record or information which is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution or to otherwise violate the public records laws of Florida.

Section 28.47, F.S., also applies to county property appraisers who have adopted an electronic land record notification service before July 1, 2023. The property appraiser may use a verification process for persons wishing to register for the electronic land record notification service to ensure the integrity of the process. For purposes of the property appraiser electronic land notification service, "land record" means a deed or other document purporting to convey real property. When a land record is recorded for a monitored identity, the property appraiser must send a recording notification to each registrant who is subscribed to receive recording notifications for that monitored identity within 24 hours after the instrument has been reflected on the county tax roll.

²⁷ Chapter 2023-238, Laws of Fla.

III. Effect of Proposed Changes:

Public Notary Requirements

Section 1 amends s. 117.05, F.S., to require that when notarizing a signature, a notary public must complete a jurat or notarial certificate that must contain, among other elements, the *printed* name of the person whose signature is being notarized. The notarial certificate must also contain the printed names of all signatories, including principals and witnesses.

Section 2 amends s. 117.105, F.S., to prohibit a notary public from:

- Falsely notarizing a signature on a written or electronic document of a person who is not in the presence of the notary public, either in person or online, at the time the signature is notarized;²⁸ or,
- Falsely *or fraudulently* taking or receiving an acknowledgment of the signature on a written *or electronic document*.

A notary public who violates the above provisions commits a felony of the third degree, punishable as provided in s. 775.082, F.S., (sentencing), s. 775.083, F.S., (fines), or s. 775.084, F.S., (habitual offenders).²⁹ If the document notarized under these circumstances pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree.³⁰

Section 3 amends s. 117.107, F.S., by deleting subsection (9), which provides that a notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or by means of audio-video communication technology at the time the signature is notarized, and specifies the penalty for a notary public who violates this provision.

The bill also specifies the criminal penalty for a notary public who commits a violation of any of the prohibited acts specified in s. 117.107, F.S. A notary public who commits a violation of s. 117.107, F.S., commits a misdemeanor of the first degree.³¹ A notary public who commits a violation of s. 117.107, F.S., with the intent to defraud commits a felony of the third degree. If the violation of s. 117.107, F.S., pertains to a real estate transaction or any other transfer of real property, the notary public commits a felony of the second degree.

²⁸ “In the presence of” and “electronic” have the same meaning as provided in s. 117.201, F.S. “In the presence of” means in the physical presence of another person; or outside of the physical presence of another person, but able to see, hear, and communicate with the person by means of audio-video communication technology. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

²⁹ A “felony of the third degree” is punishable by a term of imprisonment not to exceed 5 years, and a fine not to exceed \$5,000.

³⁰ A “felony of the second degree” is punishable by a term of imprisonment not to exceed 15 years, and a fine not to exceed \$10,000.

³¹ A “misdemeanor of the first degree” is punishable by a term of imprisonment not to exceed 1 year, and a fine not to exceed \$1,000. *See* ss. 775.082 and 775.083, F.S.

Journal of Notarizations

Section 4 creates s. 117.109, F.S., to provide that a notary public must keep one or more tangible journals of all notarizations performed by the notary public. For each notarization, the journal entry must contain all of the following:

- The date and time of the notarization.
- The type of notarial act performed, whether an oath or acknowledgment.
- The type, the title, or a description of the electronic recording or proceeding.
- The name and address of each principal or witness involved in the transaction or proceeding.
- Evidence of identity of each principal involved in the transaction or proceeding in either of the following forms:
 - A statement that the person is personally known to the notary public; or
 - A notation of the type of government-issued identification credential the person provided to the notary public;
 - An indication that the government-issued identification credential satisfied the credential analysis; and
 - An indication that the principal satisfactorily passed the identity proofing.
- The fee, if any, charged for the notarization

The notary public must maintain a backup record of the journal, and protect from unauthorized access the journal, the backup record, and any other records the notary public receives.

The Department of State must retain jurisdiction over the journal records for a period of 10 years after the date of the notarial acts for the purpose of investigating possible notarial misconduct. A notary public must also maintain the journal for at least 10 years after the date of the notarial act.

A notary public, a guardian of an incapacitated notary public, or the personal representative of a notary public may contract with a secure repository, in accordance with any rules established under ch. 117, F.S., and delegate to the repository the notary public's duty to maintain the journal, provided that the Department of State is notified of such delegation of retention duties within 30 days thereafter, including the effective date of the delegation and the address and contact information for the repository.

If a notary public delegates to a secure repository their duty to maintain the journal, the notary public must make an entry in their journal identifying such repository and notify the Department of State. During any delegation, the secure repository must fulfill the responsibilities of the notary public to provide copies or access under s. 117.111, F.S., created by section 5 of the bill.

An omitted or incomplete entry in the journal does not invalidate the notarial act performed, but may be introduced as evidence to establish violations of ch. 117, F.S., as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability; or for other evidentiary purposes.

Section 5 creates s. 117.111, F.S., to specify further requirements concerning the use of journals by notaries public. A notary public is required to:

- Keep the journal secure and under their sole control. The notary public may not allow another person to use the notary public's journal or allow another person who is providing services to a notary public to facilitate the performance of notarizations.
- Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the journal within 7 days after the discovery of the unauthorized use or compromise to security.
- Provide copies of pertinent entries in the journal upon the request of:
 - The Department of State, pursuant to a notary misconduct investigation; or
 - Any other persons or entities, pursuant to a subpoena, a court order, a law enforcement investigation, or any other lawful inspection demand.³²

Property Appraiser and Recording Notification Service

Section 6 amends s. 28.47, F.S., to provide that if a property appraiser receives notice from the property owner or clerk of the circuit court and reasonably determines that the recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls. However, the property appraiser must make a notation in his or her records that a possible conveyance has been recorded.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 6 of the bill, which modifies a provision relating to a recording notification service by clerks of circuit courts, to provide that if a property appraiser receives notice from a property owner or clerk of the circuit court and reasonably determines that a

³² The bill provides that these provisions may not be construed to prevent a notary public from designating a secure repository.

recorded deed is fraudulent, the property appraiser may refuse to update the owner of record on the county's tax rolls, may cause the bill to violate the single-subject requirement in Art. III, s. 6, of the Florida Constitution.³³ A legislative act violates the single-subject requirement when the provisions in the bill are not logically connected to one another, are not necessary to achieve the purpose of the legislation or "are designed to accomplish dissociated objects of legislative effort."³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The journal of notarizations will presumably come at some cost to notaries public.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.05, 117.105, 117.107, and 28.47.

This bill creates the following sections of the Florida Statutes: 117.109 and 117.111.

IX. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 23, 2024

The committee substitute removes the requirement that notaries public must keep secure "electronic" journals of all notarizations performed, and provides that a notary public must keep one or more "tangible" journals of all notarizations performed.

³³ Art. III, § 6, Fla. Const.

³⁴ See *Heggs v. State*, 759 So. 2d 620, 626 (Fla. 2000); *State v. Petruzzelli*, 374 So. 2d 13, 15 (Fla. 1979), *State ex rel-Landis v. Thompson*, 120 Fla. 860,892-3, 16350.270, 283 (1935).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
