

***Remember the “Attention to Details”
When It Comes to Florida Notarization***

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George divides his time between the firm's Boca Raton and Washington offices, spending the majority of his time in Boca Raton.

He earned his B.B.A. in Accounting from the University of Notre Dame in 1984, his J.D. from the Villanova University School of Law in 1987, and his LL.M. in Taxation from the University of Florida in 1988. George has practiced his entire legal career in South Florida (over 31 years), practicing exclusively in the areas of estate planning and probate and trust administration, and also represents numerous clients with respect to nuptial agreements. George has participated in over 170 formal presentations, either individually or as part of a panel discussion, to national, state-wide and local groups, and has over 75 publication credits in national and regional periodicals and journals. Born and raised in Vineland, New Jersey (in the heart of South Jersey), George has called Boca Raton home since 1988.

When not attending Miami Marlins home games, George is any one or more of reading anything and everything regarding the entertainment industry or is keeping current and/or binge-watching television programming that skews way below his supposed demographic (hint...hint...“Riverdale”). George's 2016 personal highlights began on January 21 when he was fortunate to see Lin-Manuel Miranda and the original cast of “Hamilton” at the Richard Rodgers Theater in New York, and then on April 4, he was in attendance at NRG Stadium in Houston, Texas, to watch his law school alma mater, Villanova University, win the 2016 NCAA Men's College Basketball national championship.

On the topic of the Uniform Voidable Transactions Act and its potential negative effect on estate planning, George has published many articles and has lectured in cities across the nation such as Las Vegas, Nashville, New York, Phoenix, Portland (Or.), San Diego, San Francisco, and Wilmington (Del.), and presented webinars to groups in South Dakota and Alaska. George has also presented on the topic in October 2016 at the 42nd Annual Notre Dame Tax and Estate Planning Institute in South Bend, Indiana.

On the topic of same-sex estate planning, George has lectured at various conferences and estate planning councils throughout the United States and has published numerous articles in publications such as Steve Leimberg's LISI Estate Planning Newsletters, Trusts & Estates Magazine and the Florida Bar Journal. George has also been quoted by several publications and websites.

George was presenter at the 48th Annual Heckerling Institute on Estate Planning in Orlando, Florida on January 15, 2014, speaking on a panel discussion titled, “Living and Working with the Uniform Principal and Income Act,” focusing on the tax effects on the power to adjust trust principal to income, the power to convert an income trust to a unitrust, comparing the various unitrust statutes and focusing on potential litigation facing fiduciaries in this area.

George's other lectures have included topics such as Portability, Decanting, Trustee Selection and Duties, the Principal and Income Act, Current Developments in Estate Planning and Taxation, Representing a Client with Potential Capacity Issues, Whether a Supplemental 706 is Required, Inter-Vivos QTIP Planning, Prenuptial Agreements for the Estate Planner and the Advantages and Disadvantages of Domestic Asset Protection Trusts.

For the American Bar Association's Section of Taxation, he is the current Co-Chair of the Estate and Gift Tax Committee; was the Chairperson for the Section's 2016 Comments on the Basis Consistency Regulations, the Chairperson for a 2011-12 Section Task Force Subcommittee Advocating Changes to the Portability Provisions Added by the 2010 Tax Act; and a contributing draftsman to the Section's 2012 Comments on decanting.

For the American Bar Association's Section of Real Property Trusts & Estates, he is a current Co-Chair of the Estate and Gift Tax Committee within the Section's Income and Transfer Tax Planning Group.

For the Florida Bar's Real Property Probate & Trust Law Section, he is the most recent past Chair for the Section's Asset Protection Committee; has been the Co-Vice Chair – Probate & Trust and National Events Editor for the Section's “ActionLine” publication since 2012; the Co-Chairperson of the RPPTL Ad Hoc Committee regarding potential statutory changes in light of a change in Florida's DOMA laws; a member of the Ad Hoc committee to study changes to Florida's decanting statutes (which led the 2018 legislation enacting the suggested changes); the Chairperson and primary draftsman of the Section's 2012 comments to the IRS on decanting, a member of the RPPTL Ad Hoc Committee that drafted a statutory change in response to Florida's Morey v. Everbank decision; and a current member to the Section's Executive Council.

George is also a member of the Greater Boca Raton Estate Planning Council and the South Palm Beach County Bar Association.

George currently serves on the Professional Advisory Committee for George Snow Memorial Scholarship Foundation. Previously, George served on the Professional Advisory Committee for the Boca Raton Museum of Art from 2011 to 2019 and served on the Board of Directors for the Palm Beach County Wealth & Estate Planning Seminar from January 2015 until its suspension in January 2019. George also served as President and a member of the Board of Directors of the Notre Dame Alumni Club of Boca Raton (1996-1997), a member of the St. Jude's Church (Boca Raton) Financial Education Council (1994-1996), and Vice President and a member of the Board of Directors of the Boca Raton Girls Fastpitch Softball Association (2004-2008).

Remember the “Attention to Details” When It Comes to Florida Notarization

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I. Introduction

- (a) Notarization is really not a complicated process! However, properly notarizing a document requires diligence and attention to the details. Lacking such diligence and attention could be costly.
- (b) The process is straight forward: the notary confirms the affiant’s identity, signs the notarial certificate and affixes his or her stamp or seal. What could be easier? If it were that easy, then the first part of this outline would be pointless.
- (c) The notarial process is established by statutory law. For instance, D.C. Code §1-1231.04(c) provides:

A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

- (d) Some states, such as Florida, have much stricter legal requirements for notarization. The failure to follow these requirements can result in questions concerning the validity of the notarization, and that is the basis for the problem at hand.
- (e) This outline explores one of the particular Florida requirements that is often overlooked and discusses its potential impact on documents, such as wills and deeds.

II. Florida Requirements

- (a) Like D.C., Florida law requires that the notary confirm the identity of the affiant. Florida, however, expands on the notary’s duties with some very specific requirements.
- (b) The notarial requirements are found in Fla. Stat. §117.05. The first sentence of the preamble to Fla. Stat. §117.05(5) provides as follows:

(5) A notary public may not notarize a signature on a document unless he or she *personally knows*, or has *satisfactory evidence*, that the person whose signature is to be notarized is the individual

who is described in and who is executing the instrument.” (Emphasis added.)

(c) The statute requires that the notary either have “personal knowledge” or “satisfactory evidence” of the affiant’s identification. While those terms appear to be somewhat vague, fortunately, those terms are defined in the statute.

(1) “Personal knowledge” is defined in Fla. Stat. §117.05(5)(a) as requiring the notary to “ha[ve] an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.”

(2) “Satisfactory evidence”

(A) Defined in Fla. Stat. §117.05(5)(b) as “the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be.”

(B) The statute expands on this and divides “satisfactory evidence” into one of two categories.

(i) First Category

The first category involves obtaining,

(I) the sworn written statement of one credible witness personally known to the notary, or

(II) the sworn written statement of two credible witnesses whose identities are proven to the notary, upon the presentation of satisfactory evidence that each of the following is true:

(a) the person whose signature is to be notarized is the person named in the document;

(b) the person whose signature is to be notarized is personally known to the witnesses;

(c) it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to

obtain another acceptable form of identification;

- (d) reasonable belief of the witnesses that the person whose signature is to be notarized does not possess certain identification documents (described below); and
- (e) the witnesses do not have a financial interest in nor are parties to the underlying transaction.

(ii) **Second Category**

- (I) While the first category would appear to require considerable effort to satisfy, the second category has a much lower threshold.
- (II) The second category requires only that the person whose signature is to be notarized present a form of identification that is current or which has been issued within the past 5 years, and which bears a serial or other identifying number.
- (III) The statute contains an exclusive list of 10 forms of approved identification, which includes the obvious forms of official photo identification, such as a valid state (or territory, Canadian or Mexican) driver's license or a U.S. or foreign passport.

III. Affirmatively Indicate the Identification

- (a) While arguably every state requires the notary to have either personal knowledge or have sufficient identification as proof of the affiant's identity, Florida's statute takes this one step further.
- (b) The second sentence to the preamble to Fla. Stat. §117.05(5) (added to the statute as of January 1, 1992) provides as follows:

A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. (Emphasis added.)

- (c) Thus, the notary is required not only to have personal knowledge of, or possess satisfactory evidence as to, the affiant's identity, but the notary must *certify in the notarial certificate or jurat whether the identification was based on personal knowledge or the presentation of satisfactory evidence* (the "Authentication Requirement").
- (d) To many Florida notaries, this is, perhaps, a very misunderstood facet of the statute. The certification requirement means that Authentication Requirement is an affirmative "either/or" acknowledgment by the notary – the notary *must affirmatively state* that he/she either personally knows the affiant or set forth the form of identification presented by the affiant.
- (e) Often, notarization clauses will state words to the effect of "is personally known or has produced the requisite identification".
 - (1) While this seemingly satisfies the Authentication Requirement, meaning that the notary is attesting that he or she either personally knows the affiant or has asked the affiant to produce the requisite identification, *it is not technically in conformity with the statute* as this is not an "either/or" affirmative statement.
 - (2) This statement is merely stating that "either/or" has been satisfied, but is *not stating which method was satisfied, i.e., personally known or satisfactory external evidence*.
 - (3) It is this requirement that Florida notaries often fail to satisfy.
- (f) When reviewing the statute, the conclusions stated above may not be readily apparent.
 - (1) The statute certainly could have been written with more clarity so as to leave little doubt as to the Authentication Requirement.
 - (2) However, even if a notary is confused by the statutory language, the first sentence of the preamble to Fla. Stat. §117.05(4) provides some clarification by stating:

When notarizing a signature, a notary public shall complete a jurat or notarial certificate *in substantially the same form as those found in subsection (13)*.
- (g) Fla. Stat. §117.05(13) provides model notarial certificates.
 - (1) By way of example, Fla. Stat. §117.05(13)(a) provides as follows:

“STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this
____ day of _____, (year), by (name of person making
statement).

(Signature of Notary Public –
State of Florida)

(Print, Type, or Stamp
Commissioned
Name of Notary Public)

Personally Known OR
Produced Identification

Type of Identification
Produced”

- (2) The provisions at the bottom are the key – the identification provision separates out the required elements with the capitalized word “OR”, which signifies to the notary that the requirement is an “either/or”.
- (3) Further, the attestation specifically asks for the type of identification produced - this should alert the notary that additional actions on his/her part are required.
- (4) As of January 1, 2020, one additional change will occur (see later in the outline).

IV. Does it Really Matter Whether the Notary Complies with the Authentication Requirement?

- (a) While every notary likely complies with the identification procedure, meaning that if he/she does not know the affiant, he/she will ask for identification, is there really any negative impact if the notary does not comply with the Authentication Requirement?
 - (1) After all, suppose the notary is notarizing the signature of his or her lifelong friend, and suppose that the notary and friend have lived next door to each other for their entire lives.

- (2) In other words, there is no doubt that the notary “personally knows” the friend. Would anyone object to the notarization if the notary fails to comply with the Authentication Requirement? Perhaps not, but the better question to ask is whether the notarization is actually a proper or legal notarization if the Authentication Requirement is not satisfied.
- (b) Consider the effect of notarization on a last will and testament (a “Will”).
- (1) Under Fla. Stat. §732.502(b), a Will is valid in Florida if the testator/testatrix’s signature is accompanied by two attesting witnesses.
 - (2) Although the Will is valid, satisfying the “two attesting witnesses requirement” is not, by itself, sufficient to allow the Will to be admitted to probate - Fla. Stat. §732.201(1) provides that only a “self-proved” Will may be admitted to probate without further proof.
 - (3) A Will that is not self-proved may still be admitted to probate, but, pursuant to Fla. Stat. §732.201(2), only upon the presentation of the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk.
- (c) This begs the question – “what is a self-proved Will?”
- (1) The answer to this is found in Fla. Stat. §732.503(1), which states, in part, that,

A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer’s certificate attached to or following the will ...
 - (2) Who is the “officer authorized to administer oaths”? Under Fla. Stat. §117.03, this is a *notary!!!*
 - (3) What this tells us is that for a Will to be self-proved, the testator/testatrix’s signature, and those of the witnesses, *must be properly notarized.*
- (d) Based on the above, the next question to ask is: “Whether the self-proving affidavit to a Florida Will is valid if there is no compliance with the Authentication Requirement?”

- (1) According to a recent edict from the Probate Division in the South Palm Beach County Courthouse (serving southern Palm Beach County communities including Boca Raton, Delray Beach and Boynton Beach), the answer is a resounding “NO.”
- (2) The Probate Judges in the South Palm Beach County Courthouse have recently begun enforcing the proper notarization of self-proving affidavits, stating that if the self-proving affidavit does not comply with the Authentication Requirement, the self-proving affidavit is invalid because the document is technically *not properly notarized* (which is a statutory requirement under the self-proving affidavit statute).
- (3) While the result is harsh, it is technically correct.

V. Effect on Deeds

- (a) Consider the results beyond that of the self-proving affidavit - in order to validly convey real property in Florida, Fla. Stat. §689.01 requires only that the instrument (i.e., the deed) be signed in the presence of two subscribing witnesses.
- (b) However, if the deed is to be recorded, the preamble to Fla. Stat. §695.03 provides that:

To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, *or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal ...*
(Emphasis added.)
- (c) Applying the Authentication Requirement discussed above, if a Florida deed is signed and recorded, but the notary does not comply with the Authentication Requirement, is there a valid recording? Again, by applying the technical provisions of Fla. Stat. §117.04, *probably not!!!*
- (d) Note, however, that the deed may be considered to be validly notarized; the issue is whether it may be admitted for recording.
 - (1) Historically, the failure to follow the statute will not result in a recorded instrument not imparting constructive notice, as long as the acknowledgment is otherwise proper – see Fund Title Note 1.02.05 (Attorney’s Title Insurance Fund, Inc.).
 - (2) However, query as to the chain of legal title if a deed is rejected for recording for failing to comply with the notarization requirement.

(4) Although the “check the box” should be sufficient, it is also highly recommended that the notary cross out the option that does not apply or even add a “belts-and-suspenders” approach and circle the option that was selected (the circle feature is emphasized in correspondence from the South Palm Beach County Courthouse, although that contemplates the form suggested by Fla. Stat. §117.05(13), which does not involve a “check the box” approach).

(A) For example, if the notary personally knows the affiant, the notary should not only check the box next to the “is personally known to me” line, but should also cross out the “has produced _____ as identification” line.

(B) The notary may also consider circling the “is personally known to me” line.

(b) This procedure should be followed in *every* Florida document requiring notarization.

(c) Important Safety Tip for Oaths

The above is an example of an *acknowledgment* notarization; for the administration of an oath or affirmation, the opening paragraph would read as follows:

Sworn to (or affirmed) and subscribed before
me, a Notary Public, this _____ day of
_____, 2019, by [AFFIANT], who, ...

(d) What About Wills and Self-Proving Affidavits?

(1) Keep in mind that, with a self-proving affidavit, this applies not only to the testator/testatrix, but also to the witnesses.

(2) A form similar to the following should be used:

Acknowledged and subscribed before me by

[TESTATOR/TESTATRIX],

the Testat[or/rix],

who is personally known to me, or

has produced _____ as
identification,

and sworn to and subscribed before me by the witnesses,

_____ who is personally known to me, or

has produced _____ as
identification, and

_____ who is personally known to me, or
 has produced _____ as
identification,

[Check the applicable box to satisfy the Identification Requirement of Fla. Stat. §117.05,
and, if identification is required, list the form of identification]

and subscribed by me in the presence of the Testat[or/rix] and the
subscribing witnesses, all on _____, 2019.

Notary Public (Affix Seal)
My commission expires:
My commission number is:

(e) Revocable Trusts?

(1) Most estate planners are aware of the requirements of Fla. Stat. §736.0403(2)(b) which states,

(b) The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution of a will in this state. For purposes of this subsection, the term “testamentary aspects” means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor’s estate.

(2) As a “belt-and-suspenders”, most attorneys will draft revocable trusts to include a self-proving affidavits, if the attorney adopts this approach – or even if the draftsman uses a regular notarial certificate, the revocable trust’s self-proving affidavit also must be these forms should also be compliant.

(f) Best Practices and Updating Your Forms

(1) Here’s an example that the author sees all-too-many-times. The client bring a document in from another Florida lawyer, or perhaps the document was prepared by opposing counsel in a matter where the signatures of all parties are involved, and the document requires notarization. The notary certificate contains additional affirmative requirements, such a “check the box” to indicate if the principal did or did not take an oath. While this appears to be a great safeguard, affirming as to an oath is NOT a requirement under Fla. Stat. §117.05 and, to the best of the author’s knowledge,

has NEVER been a requirement in Fla. Stat. §117.05. Therefore, why add something to the certificate which a notary may not complete and which could cause an issue as to whether the document was properly notarized? Thus, *DELETE IT* and only include what the statute requires!!!

- (2) Now is a good time for all attorneys to review their forms and update the notarial certificates.

VII. Florida Documents Executed Outside of Florida – What About Them?

- (a) In many estate and trust administrations, certain documents to be signed by beneficiaries or other interested persons are required to be notarized.
- (b) Suppose, for example, that a Florida document requiring notarization is brought by a D.C. resident to a D.C. notary.
 - (1) As stated above, the Authentication Requirement is not part of D.C. law, so is the document validly notarized if the notary complies with D.C. law but does not satisfy the Florida Authentication Requirement?
 - (2) Arguably, the answer is “yes,” but now let’s suppose that the document is required to be filed in a probate matter administered in the South Palm Beach County Courthouse, or perhaps it is to be recorded in the Palm Beach County public records.
 - (A) Can the probate court or recording clerk deem the notarization to be invalid, meaning can a court or recording clerk reject a document on the premise that it was intended to be a Florida document, so it should be subject to the Florida laws regarding notarization?
 - (B) While legal scholars would state that a Conflicts of Law analysis would deem this result to be highly unlikely, the more thoughtful response is “why take a chance?”
 - (C) The “best practices” would be to have the non-Florida notary comply with Florida law with respect to the Authentication Requirement.
 - (D) This way, regardless of whether filing or recording is required, the document will have been notarized in compliance with Florida law.

VIII. What if the Notarial Certificate Does Not Contain the Authentication Requirement?

- (a) As noticed by many Floridians who sit for the Florida Bar Exam, many non-Floridians will sit for the exam so that they will be licensed in Florida and can continue to represent their clients who may either move permanently to Florida or become “snowbirds” by switching their residency and domicile to Florida while retaining their Northeastern or Midwestern home. While such attorneys are licensed to practice Florida law, they may not be cognizant of all of the nuances that Florida law presents (we’re looking at you, homestead!!!), such as the Authentication Requirement. Often, these attorneys may prepare documents for their clients to sign but use their standard notarial certificate from their home state, which likely will not include a provision for the Authentication Requirement.
- (b) If a Florida notary is asked to notarize such a document, what should he/she do?
- (c) The answer is simple – the notary must add the Authentication Requirement to the notarial certificate.
 - (1) The omission of the Authentication Requirement language in a notarial certificate does not preclude the notary from satisfying the Authentication Requirement – as set forth above, the failure to comply with the Authentication Requirement can jeopardize the validation of the notarization.
 - (2) In such a situation, the notary should insert language underneath the notarial seal (preferably by printing instead of using cursive) to the effect of “the affiant is personally known to me” or “the affiant has produced [a valid Florida’s driver’s license] as identification” (whichever is applicable).

IX. The New Kid in Town – Electronic Notarization

- (a) Introduction
 - (1) After several years of discussion, debate, vetoes, etc., on June 7, 2019, the governor approved CS/CS/HB 409 became Chapter No. 2019-71 which allows for, among other items (including electronic wills), electronic notarization.
 - (2) A new “Part II” of Fla. Stat. Chapter 117 is added called “Online Notarizations” and takes effect on January 1, 2020. This includes new Fla. Stat. §§ 117.201 through 117.305.
 - (3) To say that this is just “electronic notarization” is a misnomer – this also encompasses *electronic witnessing*.

(b) Electronic Signature – Pre-2020 Law

- (1) True or False – prior to 2020, Florida already had statutes for electronic notarizations.

TRUE!!! The statute was, and is, Fla. Stat. §117.021 called “Electronic Notarization” and was adopted in 2007 as part of CS/SB 2490 which became Fla. Laws 2007-257, effective January 1, 2008.

- (2) The Senate provided this in its summary back in 2007:¹

This bill creates s. 117.021, F.S., to allow for electronic notarization of documents. According to industry representatives, the bill implements standards for secure electronic notarization approved by the National Association of Secretaries of State (NASS) in 2006. However, this bill does not provide any definitions, unlike the national standards adopted by NASS. It may be helpful to include certain definitions in proposed s. 117.021, F.S., or at a minimum include cross-references to appropriate statutes.

The bill requires that the provisions found in ch. 117, F.S., which apply to traditional notarization apply to electronic notarization of documents as well. This bill provides the specifications of the electronic signature of a notary public to be:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public’s sole control; and
- Attached to or logically associated with the electronic document in such a manner that any subsequent alterations to the document render evidence of the change.

When a signature is required to be accompanied by a notary public seal, the bill provides that this requirement is satisfied when the electronic signature

¹ <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2007s2490.ju.doc&DocumentType=Analysis&BillNumber=2490&Session=2007>

of the notary public contains all of the following seal information:

- The full name of the notary public exactly as provided on the notary public's application for appointment;
- The words "Notary Public State of Florida";
- The date the commission of the notary public expires; and
- The commission number of the notary public.

(c) New Definitions - new Fla. Stat §117.201 provides new definitions for electronic notarization that are used throughout Part II. Everyone should become familiar with the terms and their statutory meaning.

- (1) "Appear before," "before," or "in the presence of" shall mean 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.
- (2) "Audio-video communication technology" means technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.
- (3) "Credential analysis" means a process or service, in compliance with applicable law, in which a third party aids a public notary in affirming the validity of a government-issued identification credential and data thereon through review of public or proprietary data sources.
- (4) "Electronic," "electronic record," or "electronic signature" has the same meaning as provided in Fla. Stat. § 668.50 (which is the Uniform Electronic Transaction Act, and under which, "electronic" relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means; and "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record).
- (5) "Errors and omissions insurance" means a type of insurance that provides coverage for potential errors or omissions in or relating to the notarial act and is maintained, as applicable, by the online

notary public or his or her employer, or a Remote Online Notarization service provider.

- (6) “Government-issued identification credential” means any approved credential for verifying identity under Fla. Stat §117.05(5)(b)2 (which states that reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:
- (A) Florida identification card or driver license issued by the public agency authorized to issue driver licenses;
 - (B) a passport issued by the Department of State of the United States;
 - (C) a passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;
 - (D) a driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;
 - (E) an identification card issued by any branch of the armed forces of the United States;
 - (F) an inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;
 - (G) an inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;
 - (H) a sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or
 - (I) an identification card issued by the United States Bureau of Citizenship and Immigration Services.
- (7) “Identity proofing” means a process or service in compliance with applicable law in which a third party affirms the identity of an individual through use of public or proprietary data sources, which

may include by means of “knowledge-based authentication” or biometric verification.

- (8) “Knowledge-based authentication” means a form of identity proofing based on a set of questions which pertain to an individual and are formulated from public or proprietary data sources.
- (9) “Online notarization” means the performance of a notarial act using electronic means in which the principal appears before the notary public by means of audio-video communication technology.
- (10) “Online notary public” means a notary public commissioned under Part I of Chapter 117, a civil-law notary appointed under Chapter 118, or a commissioner of deeds appointed under Part IV of Chapter 721, who has registered with the Department of State to perform online notarizations under this part.
- (11) “Physical presence” means being in the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person.
- (12) “Principal” means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation administered by the online notary public.
- (13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including public records as defined in Fla. Stat §119.011.
- (14) “Remote Online Notarization service provider” or “RON service provider” means a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations in compliance with Chapter 117 and any rules adopted by the Department of State pursuant to Fla. Stat. § 117.295.
- (15) “Remote presentation” means transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary’s services and to perform credential analysis through audio-video communication technology.
- (16) “Vulnerable adult” is defined in Fla. Stat. §415.102(28) as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-

term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

(d) Online Notarization – The Overview

(1) What Can the Online Notary Do?

- (A) Under Fla. Stat. §117.209(1), an online notary public may perform any of the regular notarial functions by complying with the requirements of Part II as well as with any rules adopted by the Department of State.
- (B) Fla. Stat. §117.235(2) further provides that an online notary public may perform notarial acts as provided in Part I in addition to performing online notarizations as authorized and pursuant to the provisions of Part II.
- (C) EXCEPTION: Fla. Stat. §117.209(1) states that an online notary cannot solemnize the rites of matrimony.

(2) What if the physical presence is required?

Under Fla. Stat. §117.209(2), if a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of Part II as well as any rules adopted by the Department of State.

(3) Someone has to be present in Florida for this to happen, right?
Maybe Not!!!

- (A) Regular Notarization – Notary...Yes...Principal and Witnesses...No

Under Fla. Stat. §117.209(3), an online notary public *physically located in Florida* may perform an online notarization as authorized under Part II, *regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization.*

- (B) Commissioner of Deeds – No

A commissioner of deeds registered as an online notary public may perform an online notarization *while physically located within or outside Florida* in accordance with the territorial limits of its jurisdiction and other limitations and requirements otherwise applicable to notarial acts by commissioners of deeds.

- (C) This is legal? Really???? Yes, Really!!!!
- (i) The validity of an online notarization performed by an online notary public registered in Florida shall be determined by applicable Florida law regardless of the physical location of the principal or any witnesses at the time of the notarial act.
 - (ii) Under Fla. Stat. §117.215(1), if a provision of law requires a notary public or other authorized Florida official to notarize a signature or a statement, to take an acknowledgment of an instrument, or to administer an oath or affirmation so that a document may be sworn, affirmed, made under oath, or subject to penalty of perjury, an online notarization performed in accordance with the provisions of Part II and any rules adopted hereunder satisfies such requirement.
 - (iii) Fla. Stat. §117.215(2) provides further legal guidance for electronic witnessing - if a provision of law requires a signature or an act to be witnessed, compliance with the online electronic witnessing standards prescribed in Fla. Stat. § 117.285 and any rules adopted thereunder satisfies that requirement.
- (e) How Does One Become an Online Notary? Fla. Stat. §117.225 Tells You How.
- (1) First, you already have to be some form of person authorized to notarize documents - the preamble states that any notary public, a civil-law notary appointed under Fla. Stat. Chapter 118, or a commissioner of deeds appointed under part IV of Fla. Stat. Chapter 721, may complete registration as an online notary public with the Department of State.
 - (2) Next, here are the steps that are required to be completed:
 - (A) Under (1), when submitting a registration application, a copy of the person's existing commission or proof of such appointment must be included.
 - (B) Under (2), the registrant must certify that he/she has completed a classroom or online course covering the duties, obligations, and technology requirements for serving as an online notary public.
 - (C) Under (3), pay the required fee set forth in Fla. Stat. §113.01. (That's how they get you...)

- (i) The fee is \$10 is prescribed for the issuance of each commission issued by the Governor of the state and attested by the Secretary of State for an elected officer or a notary public.
 - (ii) Presumably, this fee is in addition to the regular notary fee, although it is not clear.
 - (D) Under (4), the registration application is submitted to the Department of State and the application must be signed and sworn to by the registrant.
 - (E) Under (5), the registrant must identify the RON service provider whose audio-video communication technology and processes for credential analysis and identity proofing technologies the registrant intends to use for online notarizations, and confirming that such technology and processes satisfy the requirements of Chapter 117 (*not just Part III!*) and any rules adopted by the Department of State.
 - (F) Under (6), the registrant must state that he/she has obtain a security bond in the amount of \$25,000, which must be approved and filed with the Department of State. Note that compliance by an online notary public with this requirement shall satisfy the requirement of obtaining a bond under s. Fla. Stat. §117.01(7).
 - (G) Under (7), the registrant must also submit proof that he/she is covered by an “errors and omissions” insurance policy in the minimum amount of \$25,000 and on such terms as are specified by the Department of State.
- (f) Now I’m an electronic notary! YAY!!! But do I actually “do” this “electronic notary” thing? Fla. Stat. §117.265 provides the steps.
- (1) In performing an online notarization, an online notary public shall:
 - (A) Confirm the identity of a principal and any witness appearing online, at the time that the signature is taken, by using audio-video communication technology and processes that meet the requirements of Part II, and
 - (B) Record the two-way audio-video conference session between the notary public and the principal and any witnesses.
 - (2) A principal may not act in the capacity of a witness for his or her own signature in an online notarization (pretty obvious requirement).

- (3) Out of State Principals - in performing an online notarization of a principal not located within this state, an online notary public must confirm, either verbally or through the principal's written consent, that the principal desires for the notarial act to be performed by a Florida notary public and under the general law of Florida.
- (4) How does the notary confirm the principal's identity?
 - (A) Personal knowledge of each principal; or
 - (B) All of the following, as such criteria may be modified or supplemented in rules adopted by the Department of State:
 - (i) Remote presentation of a government-issued identification credential by each principal.
 - (ii) Credential analysis of each government-issued identification credential.
 - (iii) Identity proofing of each principal in the form of knowledge-based authentication or another method of identity proofing that conforms to the standards of this chapter.
 - (C) If the online notary public is unable to satisfy the above, or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public may not perform the online notarization.
- (5) The Notarial Certificate - the electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization which may be satisfied by placing the term "online notary" in or adjacent to the online notary public's seal.
- (6) The Seal
 - (A) Of course, there's the electronic seal (found with other electronic seals at the electronic Fisherman's Wharf in electronic San Francisco).
 - (B) Under Fla. Stat. §117.255, an online notary public shall:
 - (i) Take reasonable steps to ensure that any registered device used to create an electronic seal is current and has not been revoked or terminated by the issuing or registering authority of the device.
 - (ii) Keep the electronic journal and electronic seal secure and under his or her sole control, which includes

access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use the online notary public's electronic journal, electronic signature, or electronic seal, other than a RON service provider or other authorized person providing services to an online notary public to facilitate performance of online notarizations.

- (iii) Attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.
- (iv) Notify an appropriate law enforcement agency and the Department of State of any unauthorized use of or compromise to the security of the electronic journal, official electronic signature, or electronic seal within 7 days after discovery of such unauthorized use or compromise to security.
- (v) Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the following persons:
 - (I) The parties to an electronic record notarized by the online notary public;
 - (II) The qualified custodian of an electronic will notarized by the online notary public;
 - (III) The title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to a real estate transaction;
 - (IV) The online notary public's RON service provider whose services were used by the online notary public to notarize the electronic record;
 - (V) Any person who is asked to accept a power of attorney that was notarized by the online notary public;

- (VI) The Department of State pursuant to a notary misconduct investigation; and
 - (VII) To other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand.
- (vi) Transaction Record Fees
- (I) This is only the fee for making electronic copies – this is NOT the fee for electronic notarization!!!
 - (II) The online notary public may charge a fee not to exceed \$20 per transaction record for making and delivering electronic copies of a given series of related electronic records, except if requested by:
 - (a) A party to the electronic record;
 - (b) In a real estate transaction, the title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to such transaction; or
 - (c) The Department of State pursuant to an investigation relating to the official misconduct of an online notary public.
 - (d) If the online notary public does charge a fee, the online notary public shall disclose the amount of such fee to the requester before making the electronic copies.
- (7) The Fee
- (A) Under Fla. Stat. § 117.275, an online notary public or the employer of such online notary public may charge a fee, not to exceed \$25, for performing an online notarization.
 - (B) To summarize...it's \$25 for each electronic notarization, and \$20 for each copy of the notarization record.
- (g) Hooray...I'm Now an Online Notary and I Sort of Know What I Can Do. Is Anything Else Required? Of course...everything must be journaled and recorded!!!

- (1) The Journal
 - (A) Fla. Stat. §117.245 requires that an electronic journal be kept (still better than the manual journal required in California!).
 - (B) Under (1), an online notary public is required to keep one or more secure electronic journals of online notarizations performed by the online notary public.
 - (C) This seems complicated. What, exactly do I have to journal? For each online notarization, the journal must report the following:
 - (i) The date and time of the notarization.
 - (ii) The type of notarial act.
 - (iii) The type, the title, or a description of the electronic record or proceeding.
 - (iv) The name and address of each principal involved in the transaction or proceeding.
 - (v) Evidence of identity of each principal involved in the transaction or proceeding in any of the following forms:
 - (I) A statement that the person is personally known to the online notary public.
 - (II) A notation of the type of government-issued identification credential provided to the online notary public.
 - (vi) An indication that the principal satisfactorily passed the identity proofing.
 - (vii) An indication that the government-issued identification credential satisfied the credential analysis.
 - (viii) The fee, if any, charged for the notarization.
- (2) The Recording
 - (A) Under (2), the online notary public is required to retain an uninterrupted and unedited copy of the recording of the

audio-video communication in which an online notarization is performed.

- (B) The recording must include all of the following:
 - (i) Appearance by the principal and any witness before the online notary public.
 - (ii) Confirmation of the identity of the principal and any witness.
 - (iii) A general description or identification of the records to be signed.
 - (iv) At the commencement of the recording, recitation by the online notary public of information sufficient to identify the notarial act.
 - (v) A declaration by the principal that his or her signature on the record is knowingly and voluntarily made.
 - (vi) All of the actions and spoken words of the principal, notary public, and any required witness during the entire online notarization, including the signing of any records before the online notary public.

(3) So what do I do with the Journal and the Recording? Fla. Stat. §117.245(3) and (4) tell us what to do.

- (A) Basic protective actions – under (3), the online notary public shall take reasonable steps to:
 - (i) Ensure the integrity, security, and authenticity of online notarizations.
 - (ii) Maintain a backup record of the electronic journal required by subsection (1).
 - (iii) Protect the electronic journal, the backup record, and any other records received by the online notary public from unauthorized access or use.
- (B) How long do I have to store these?
 - (i) Under (4), the journal and the recordings must be maintained for at least 10 years after the date of the notarial act.

- (ii) However, a full copy of the recording of the online notarization session that involves the signing of an electronic will must be maintained by a “qualified custodian” in accordance with Fla. Stat. Chapters 731 and 732.
 - (I) The references to Chapter 731 and 732 are a tip off that this is related to the new “electronic Wills” provision which is not the scope of this outline.
 - (II) However, as a sneak peak, Fla. Stat. §732.524 defines a “qualified custodian” as someone who is:
 - (a) Domiciled in and a resident of Florida; or
 - (b) Incorporated, organized, or have its principal place of business in Florida.
 - (III) The qualified custodian is required, in the course of maintaining custody of electronic wills, regularly employ a secure system and store in such secure system electronic records containing:
 - (a) Electronic wills;
 - (b) Records attached to or logically associated with electronic wills; and
 - (c) Acknowledgments of the electronic wills by testators, affidavits of the witnesses, and the records described in Fla. Stat. §117.245(1) and (2) which pertain to the online notarization; and
- (iii) The Department of State maintains jurisdiction over the journal and audio-video communication recordings to investigate notarial misconduct for a period of 10 years after the date of the notarial act.
 - (I) Note that the online notary public, a guardian of an incapacitated online notary public, or the personal representative of a deceased online notary public may, by contract with a secure repository in accordance with any rules established under Chapter II, delegate to the repository the online notary public’s duty to

retain the electronic journal and the required recordings of audio-video communications, provided that the Department of State is notified of such delegation of retention duties to the repository within 30 days thereafter, including the address and contact information for the repository.

- (II) If an online notary public delegates to a secure repository under this section, the online notary public shall make an entry in his or her electronic journal identifying such repository, and provide notice to the Department of State.
- (C) Oops...I screwed up the journal entry. Does that make my notarization invalid?
- (i) Of course not. Under (5), an omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record which was notarized.
 - (ii) BUT...this may be introduced as evidence to establish violations of Chapter 117; as evidence of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability; or for other evidentiary purposes.
 - (iii) However, if the recording of the audio-video communication required under subsection (2) to the online notarization of the execution of an electronic will cannot be produced by the online notary public or the qualified custodian, the electronic will shall be treated as a lost or destroyed will subject to Fla. Stat. § 733.207.
- (4) Other Miscellaneous Things to Note:
- (A) Except where otherwise expressly provided in Part II, the provisions of Part I apply to an online notarization and an online notary public.
 - (B) What if I screw up the electronic notarization? Is it invalid?
 - (i) Not necessarily - under Fla. Stat. § 117.265(9), any failure to comply with the online notarization procedures does not impair the validity of the notarial act or the electronic record that was notarized.

- (ii) Like the journal compliance failures described above, it may, though, be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or for other evidentiary purposes.
 - (iii) To clarify, Fla. Stat. § 117.265(9) may not be construed to alter the duty of an online notary public to comply with Chapter 117 and any rules adopted by the Department of State.
 - (C) Keeping Tabs on the RON Service Provider:
 - (i) An online notary public may change his or her RON service provider or providers from time to time, but shall notify the Department of State of such change within 30 days thereafter.
 - (ii) The online notary public or his or her RON service provider shall take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception.
- (h) Electronic Witnessing
 - (1) Introduction
 - (A) As stated above, electronic notarization was not the only addition to the law – it is now possible notarize a document electronically with remote witnesses.
 - (B) The new statute for electronic witnessing is Fla. Stat §117.285, titled “Supervising the Witnessing of Electronic Records”. The statute is extremely detailed as it involves much more than just verifying a person’s identification.
 - (2) What is Electronic Witnessing?
 - (A) Under Fla. Stat. §117.285(3), the act of “witnessing an electronic signature” means the witness is either in the physical presence of the principal *or present through audio-video communication technology* at the time the principal affixes the electronic signature and the witness hears the principal make a statement to the effect that the principal has signed the electronic record.

- (B) Note that the witnesses do not have to be present with the principal for the witnessing to occur.
 - (C) An online notary public may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization.
- (3) Electronic Witness Requirements:
- (A) Confirming the Witness's Identity
 - (i) Witness is Remote from Principal – if the witness is remote and is viewing and communicating with the principal by means of audio-video communication technology, the witness's identity must be verified in accordance with the procedures for identifying a principal as set forth in Fla. Stat. § 117.265(4) (see Section IX(f)(4) above).
 - (ii) Witness in Physical Presence of Principal - if the witness is the physical presence of the principal, the witness must confirm his or her identity by stating his or her name and current address on the audio-video recording as part of the act of witnessing.
 - (B) U.S. Locale or Residency Required - a witness remote from the principal and appearing through audio-video communication technology must verbally confirm that he or she is a resident of and physically located within the United States or a territory of the United States at the time of witnessing.
- (4) Special Rules for Certain Estate Planning-Related Documents – Fla. Stat. §117.285(5)
- (A) If an electronic record to be signed is a will under Fla. Stat. Chapter 732, a trust with testamentary aspects under Fla. Stat. Chapter 736, an advance health care directive under Fla. Stat. Chapter 765, a durable power of attorney defined in Fla. Stat. § 709.2104 which is being executed concurrently with a will, or a waiver of spousal rights under Fla. Stat. §§ 732.701 or 732.702, special rules will apply.
 - (B) The act of witnessing an electronic signature through the witness's presence by audio-video communication is valid only if, during the audio-video communication, the principal provides verbal answers to certain questions.

- (C) The principal's response to the questions must be in the affirmative and all of the questions must be asked by the online notary public.
- (D) The questions to be asked, in substantially the following form, are as follows:
 - (i) What is your date of birth?
 - (ii) Are you under the influence of any drug or alcohol that impairs your ability to make decisions?
 - (iii) Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily living?
 - (iv) Are you unable to provide for your own daily care?
 - (v) Did anyone assist you in accessing this video conference or in drafting the documents you're here to sign, and, if so, who?
 - (vi) Where are you currently located?
 - (vii) Name everyone you know who is with you.
- (E) An online notary public shall consider the responses to the questions specified above in the carrying out of the notary public's standard existing duties as set forth in Fla. Stat. § 117.107(5).
- (F) A principal's responses to the questions above may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument.
- (G) Vulnerable Adults
 - (i) Instruments governed under the special rule of Fla. Stat. §117.285(5) and which are witnessed by a witness remote from the principal and present through audio-video communication technology is voidable if signed by a principal who is a "vulnerable adult".
 - (ii) The contestant of an electronic record has the burden of proving that the principal was a vulnerable adult at the time of executing the electronic record.

- (iii) If the principal is a vulnerable adult, the RON service provider shall provide written notice to the signers, in substance, that an instrument governed by this subsection which is signed by a vulnerable adult and is remotely witnessed in accordance with Fla. Stat. §117.285(5) is voidable and that the signer can instead choose to have such instruments signed in the physical presence of any required witnesses.
- (i) Is there any other guidance out there?
 - (1) Fla. Stat. §117.295 sets for the standards and the rule making authority.
 - (2) Subsection (1) states that the Department of State may adopt rules necessary to implement the requirements of this chapter and to set standards for online notarization which include, but are not limited to:
 - (A) Improvements in technology and methods of assuring the identity of principals and the security of an electronic record, including tamper-evident technologies in compliance with the standards adopted pursuant Fla. Stat. §117.021 which apply to online notarizations.
 - (B) Education requirements for online notaries public and the required terms of bonds and errors and omissions insurance, but not including the amounts of such bonds and insurance policies.
 - (C) Identity proofing, credential analysis, unauthorized interception, remote presentation, audio-video communication technology, and retention of electronic journals and copies of audio-video communications recordings in a secure repository.
 - (3) Department of State guidance
 - (A) By January 1, 2020, the Department of State is required to adopt forms, processes, and interim or emergency rules necessary to accept applications from and register online notaries public pursuant to Fla. Stat §117.225.
 - (B) Until such time as the Department of State adopts rules setting standards that are equally or more protective, the following minimum standards shall apply to any online notarization performed by a Florida online notary public or his or her RON service provider:

- (i) Use of identity proofing by means of knowledge-based authentication which must have, at a minimum, the following security characteristics:
 - (I) The principal must be presented with five or more questions with a minimum of five possible answer choices per question.
 - (II) Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.
 - (III) Responses to all questions must be made within a 2-minute time constraint.
 - (IV) The principal must answer a minimum of 80 percent of the questions correctly.
 - (V) The principal may be offered one additional attempt in the event of a failed attempt.
 - (VI) During the second attempt, the principal may not be presented with more than three questions from the prior attempt.
- (ii) Use of credential analysis using one or more commercially available automated software or hardware processes that are consistent with sound commercial practices; that aid the notary public in verifying the authenticity of the credential by analyzing the integrity of visual, physical, or cryptographic security features to indicate that the credential is not fraudulent or inappropriately modified; and that use information held or published by the issuing source or authoritative source, as available, to confirm the validity of credential details. The output of the credential analysis process must be provided to the online notary public performing the notarial act.
- (iii) Use of audio-video communication technology in completing online notarizations that must meet the following requirements:
 - (I) The signal transmission must be reasonably secure from interception, access, or viewing by

anyone other than the participants communicating.

- (II) The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and any witness, and to confirm the identity of the principal and any witness, as required, using the identification methods described in Fla. Stat. § 117.265.
- (iv) A RON service provider is deemed to have satisfied tamper-evident technology requirements by use of technology that renders any subsequent change or modification to the electronic record evident.
- (v) In addition to any coverage it elects to provide for individual online notaries public, maintenance of errors and omissions insurance coverage by a RON service provider in a total amount of at least \$250,000 in the annual aggregate with respect to potential errors or omissions in or relating to the technology or processes provided by the RON service provider. An online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.
- (vi) A 2-hour in-person or online course addressing the duties, obligations, and technology requirements for serving as an online notary public offered by the Florida Land Title Association; the Real Property, Probate and Trust Law Section of The Florida Bar; the Florida Legal Education Association; the Department of State; or a vendor approved by the Department of State shall satisfy the education requirements of Fla. Stat. §117.225(2). Each such provider shall make the in-person or online course generally available to all applicants, at the same cost, regardless of membership in the provider's organization.
- (vii) The rulemaking required under this section is exempt from Fla. Stat. §120.541(3).
- (j) I'm all set and ready. What else do I need to do before I can start notarizing things online?
 - (1) As of January 1, 2020, the notarial affidavit changes to reflect the option for electronic notarization.

- (c) Although we are only personally aware of the South Palm Beach County Probate Court calling attention to the Authentication Requirement, that does not mean that any Florida notarization without the Authentication Requirement is a valid notarization. Some of our colleagues have reported similar issues in the Miami-Dade County Courthouse and elsewhere.
- (d) The conclusion from this analysis is that notarized documents that do not comply with the Authentication Requirement are technically not notarized in compliance with the law, which means that such documents may not actually be “notarized” and could be a legal dispute waiting to happen.
- (e) The better approach is to ensure compliance with the Authentication Requirement so that a call never has to be made to the client indicating that an ineffectual notarization has occurred due to a lack of attention to the details.
- (f) A whole new set of rules apply effective January 1, 2020 regarding electronic notarization; even if there are no electronic notaries in the draftperson’s offices, every notary certificate should be modified to take electronic notarization into consideration.