

TITLE 1 DEPARTMENT OF STATE
SECRETARY OF STATE
CHAPTER 1C-18 FLORIDA CIVIL-LAW NOTARY

1C-18.001, F.A.C.

1C-18.001 Florida Civil-law Notary.

(1) Application:

(a) Florida Civil-law Notaries appointed pursuant to this rule may continue to use the title "Florida International Notary" wherever that title is used or required to be used under this rule. Persons wishing to be appointed by the Secretary of State as Florida Civil-law Notaries may request an application by writing to the following address and requesting Form Number DS-DE-38, titled "Application for Appointment as a Florida Civil-law Notary," Effective October 8, 1998, which form is hereby incorporated by reference. All other forms discussed in this rule may be obtained by writing the same address:

Department of State

Office of the Secretary

PL-02

The Capitol

Tallahassee, Florida 32399-0250

(b) The application to become a Florida Civil-law Notary must be complete and on the above form prescribed by the Department of State. The application must be accompanied by:

1. A certificate of good standing from the Supreme Court of Florida issued within 90 days of the date of application showing that the applicant is currently a member of The Florida Bar and has been a member of The Florida Bar for at least five years.

2. An application processing fee in the amount of fifty dollars.

(2) Educational programs:

(a) Persons or entities who wish to submit a proposed civil-law notary curriculum or course of study to the Department of State for consideration as to its acceptability by the Department of State may do so. Any such curriculum or course of study submitted for the Department of State's approval should incorporate all of the following elements:

1. The nature and characteristics of notarial practice in civil-law jurisdictions including a review of the historical development of civil-law notarial practice;

2. A comparison of notarial functions and the nature and characteristics of notarial practice under Chapter 117, Florida Statutes, and civil-law notarial functions and practices under Chapter 118, Florida Statutes, including a review of the historical development of common law notarial practice;

3. The nature and characteristics of the Florida Civil-law Notary, including a comparison of notarial practice in civil-law countries and practice as a non-lawyer notary public under Chapter 117, Florida Statutes;

4. The similarities and differences between practicing as a Florida Civil-law Notary and the traditional practice of law in the State of Florida;

5. The purposes of and uses for authentic acts, and the rules regulating the execution of authentic acts, administration of oaths, and taking of acknowledgments by Florida Civil-law Notaries;

6. Solemnization of marriage by a Florida Civil-law Notary;

7. Florida laws relevant to practice as a Florida Civil-law Notary;

8. Rules regulating The Florida Bar including the Rules of Discipline and the Rules of Professional Conduct;

9. The potential malpractice liability of Florida Civil-law Notary.

(b) The Department of State shall maintain a list of the currently approved Florida Civil-law Notary education programs and shall make the list available upon request. Each education program shall be subject to annual renewal.

(c) Persons who have had a curriculum or course of study approved by the Department may also administer the Department's civil-law notary test under the Department's supervision, but may not charge a fee in excess of \$200 to any person for administering a test to that person. All test materials are confidential property of the Department of State and any person who compromises the confidentiality of the test materials or allows another to do so shall not in the future be authorized by the Department to serve as a test administrator.

(3) Examination:

(a) A Florida Civil-law Notary application shall be valid for a period of one year from the date on which the application was received by the Department of State, during which time the applicant must complete the Florida Civil-law Notary examination. If the applicant completes the examination, with a satisfactory score of 70%, within the one year period prescribed above, the applicant remains eligible for appointment as a Florida Civil-law Notary even though the appointment itself may occur more than one year after the date on which the application was received.

(b) After reviewing the application for completeness and accuracy of information, determining that all necessary documents accompany the application, and that the applicant meets the requirements of this rule and section 118.10, Florida Statutes, the Department of State will provide the applicant with a certificate of eligibility to take the Florida Civil-law Notary examination and a list of examination dates and corresponding examination locations.

(c) The applicant who has been certified as eligible must notify the Department of State at least two weeks in advance of any scheduled examination that the applicant intends to take a scheduled examination. If notice is not received, or if the notice is untimely, the applicant will not be admitted to the examination.

(d) Upon appearing at the examination location, and prior to entering the examination facility, the applicant must present to the examination authorities the certificate of eligibility issued to the applicant by the Department of State, a governmentally issued identification card which bears the applicant's picture, and pay the examination fee.

(4) Appointment, Revocation, Voluntary Resignation:

(a) Upon completion of each examination session and after the examinations are scored, the testing authority shall promptly forward the examination results to the Department of State. The Department of State shall then notify the applicants of their respective test scores and shall appoint those persons with satisfactory scores of 70% as Florida Civil-law Notaries.

(b) Upon accepting appointment as a Florida Civil-law Notary, the applicant shall file within 90 days after appointment with the Department of State Form Number DS-DE-42, titled "Appointment of Protocol Custodian and Seal Filing," Effective October 8, 1998, which form is hereby incorporated herein by reference. The applicant shall identify a Florida Civil-law Notary in good standing with the Department of State and the Florida Bar who has agreed to take custody of the applicant's protocol in the event that the applicant's appointment is ever suspended or revoked, or if the applicant dies or becomes incapacitated. If for any reason a Florida Civil-law Notary chooses to change secondary custodial notaries, the Florida Civil-law Notary shall promptly notify the Department of State in writing and shall make the appropriate change on the civil-law notary's annual report.

(c) Unless suspended or revoked in accordance with this rule, an appointment as a Florida Civil-law Notary shall continue in force for so long as the applicant is a member in good standing of the Florida Bar, subject to the requirement that the applicant must file an annual report with the Florida Department of State at the address noted above on Form Number DS-DE-39, titled "Florida Civil-law Notary Annual Report," effective October 8, 1998, which form is hereby incorporated by reference. The annual report shall include the civil-law notary's current business address and telephone number and the identity and signature of another Florida Civil-law Notary who has agreed to take custody of the civil-law notary's protocol upon the suspension, revocation, incapacitation or death of the civil-law notary. A processing fee payable to the Department of State in the amount of fifty dollars shall accompany the annual report. Failure to file an annual report with the Florida Department of State shall result in revocation of the civil-law notary's appointment.

(5) Form and content of signatures and seals; registration of signatures and seals:

(a) A Florida Civil-law Notary's original hand written signature and seal shall be registered with the Department of State. No Florida Civil-law Notary shall take any official action or execute any document as a civil-law notary until his seal has properly registered.

(b) Except for those documents executed by digital signature as provided under subsection (6)(b)2. of this rule, the Florida Civil-law Notary's original handwritten signature and an original rubber stamp or embossed impression of the civil-law notary's seal shall be affixed by the civil-law notary to all documents executed by the civil-law notary while acting in as a Florida Civil-law Notary under Chapter 118, Florida Statutes. The civil-law notary shall not allow any other person to sign or seal a document using the civil-law notary's official signature or seal.

(c) The civil-law notary's seal may be an embossing seal or a rubber stamp and may be circular or square in shape and shall not be more than two inches nor less than one inch in diameter if circular, or more than two inches on each side nor less than one inch on each side if square.

(d) A registered signature and seal may be changed by applying to the Department of State at the address listed above for Form Number DS-DE-41, Effective October 8, 1998, which form is hereby incorporated herein by reference. An application to change a signature or seal shall be considered an amendment to the notary's application and shall be accompanied by a processing fee of \$25.00.

(6)(a) Form and content of authentic acts:

(b) Each authentic act shall contain:

1. The handwritten signature and original seal of the Florida Civil-law Notary.
2. The signature and seal may be incorporated into public key certificate which complies with the requirements of Rule 1-10.001, F.A.C. When serving as part of an authentication instrument, the public key certificate of a Florida Civil-law Notary must clearly show the Florida Civil-law Notary's signature and seal are registered with the Department of State.
3. The typewritten full name of the Florida Civil-law Notary in the form in which the notary's application for appointment was originally submitted to the Department of State and the words "Florida Civil-law Notary" typewritten in the English language.
4. The current business address and telephone number of the Florida Civil-law Notary typewritten in the English language.
5. A statement typewritten in the English language that "Under the laws of the State of Florida, section 118.10, Florida Statutes, this authentic act is legally equivalent to the authentic acts of civil-law notaries in all jurisdictions outside the geographic borders of the United States and is issued on the authority of the Florida Secretary of State."
6. The date on which the authentic act was signed and sealed by the Florida Civil-law Notary and the signatures of the parties to the transaction.

7. All words or statements required to appear in the English language may also appear in any other language.

8. An authentic act may also contain such other information or material as may be required to satisfy any legal requirements, or to satisfy ethical or legal concerns, or the business needs of the parties to the transaction or of the Florida Civil-law Notary including statements attesting to the signatures on accompanying documents if executed in the Florida Civil-law Notary's presence, and any witnessing signatures; a statement confirming the legality of the transaction and the contents of any documents and any limitations thereon; any facts contained in the documents or relied on by any interested party and any limitations thereon.

(7) Procedures for the administration of oaths; taking of acknowledgments and solemnizations of marriage:

(a) A Florida Civil-law Notary may administer an oath and make a certificate thereof when it is necessary for the execution of any writing or document to be attested, protested, or published under seal of a notary public. In administering the oath, the Florida Civil-law Notary must require the signer to voluntarily swear or affirm that the statements contained in the document are true.

(b) A Florida Civil-law Notary may administer an acknowledgment of deeds and other instruments of writing for record. Such acknowledgment does not require that an oath be taken, but the signer must acknowledge that the execution of the document is his or her voluntary act. The Florida Civil-law Notary may not take an acknowledgment of execution in lieu of an oath if an oath is required.

(c) A Florida Civil-law Notary may not administer an oath to a person or take his or her acknowledgment unless he or she personally knows, as defined in section 117.05(5)(a), Florida Statutes, or has satisfactorily evidence, as defined in section 117.05(5)(b), Florida Statutes, that the person whose oath is to be administered or whose acknowledgment is to be taken, is the individual who is described in and who is executing the authentic act or other instrument. A Florida Civil-law Notary may not administer an oath to a person or take his or her acknowledgment unless the person whose oath is being administered or whose acknowledgment is to be taken is in the presence of the Florida Civil-law Notary at the time the oath is being administered or the acknowledgment is being taken.

(d) An oath or acknowledgment taken or administered by a Florida Civil-law Notary shall be signed in the presence of the notary, and where otherwise required by law witnessed in the presence of the Florida Civil-law Notary, and shall be executed with the civil-law notary's handwritten signature and original seal.

(e) A Florida Civil-law Notary may use any of the forms prescribed in Chapter 117, Florida Statutes, for administering oaths or taking acknowledgments but shall not be required to do so, and an oath or acknowledgment may be, but is not required to be, incorporated into any document executed by a civil-law notary as an authentic act. This section does relieve the civil-law notary of the obligation to secure the signatures of other witnesses where otherwise required by law.

(8) The Florida Civil-law Notary's Protocol:

(a) A Florida Civil-law Notary's protocol shall be maintained in a secure, fireproof location at the Florida Civil-law Notary's principal place of business;

(b) The protocol shall contain an original copy or photocopy of each of the Florida Civil-law Notary's authentic acts in date sequence, and an original photocopy of any supporting or related documents, which shall be permanently archived in the protocol. The protocol shall also contain, in date sequence, a photocopy or original copy of any document containing, incorporating or depending upon, an acknowledgment, oath or solemnization executed by the civil-law notary, which shall include a copy of any certificate made by the civil-law notary.

(c) The protocol shall contain or be accompanied by an index to its contents in date order. In addition to the date on which act, oath, acknowledgment, or solemnization was executed, each entry in the index shall identify the party or parties who paid the notary's fee.

(d) The protocol shall be available for inspection by the Department of State during reasonable business hours and copies of any documents contained in the protocol shall be furnished to the Department upon request. The contents of

the protocol shall otherwise be considered confidential and shall be made available only to persons who have a legal interest in a particular transaction.

(e) A Florida Civil-law Notary who takes custody of the protocol of another Florida Civil-law Notary's protocol because of suspension or incapacitation shall maintain the protocol until the suspension period expires or the incapacitation is relieved. When a Florida Civil-law Notary takes custody of another Florida Civil-law Notary's protocol because of revocation or death the custodial Florida Civil-law Notary shall permanently maintain the protocol in accordance with this rule.

(9) Discipline; suspension and revocation:

(a) A Florida Civil-law Notary shall be disciplined for violation of this rule. All complaints to the Department of State concerning the conduct or acts of a Florida Civil-law Notary will also be referred to The Florida Bar for a determination by the Bar as to whether the complaint alleges a violation of the rules of The Florida Bar governing the conduct and discipline of lawyers.

(b) All complaints to the Department of State concerning the conduct or acts of a Florida Civil-law Notary which on their face appear to establish facts which if proven true would constitute an act of misrepresentation or fraud in the creation or execution of an authentication instrument will be investigated by the Department of State to determine whether cause exists to suspend the Florida Civil-law Notary's appointment or reprimand the Florida Civil-law Notary.

(c) After investigation and upon a determination by the Department that one or more acts of misrepresentation, or fraud, or violation of this rule has been committed by a Florida Civil-law Notary, the Department of State shall, after considering the extent of the fraud or misrepresentation including the number of persons involved and the effect on those persons; the number of acts of misrepresentation or fraud; any financial loss or other injury that may have resulted; and the degree of culpability of the Florida Civil-law Notary:

1. Issue a letter of warning to the Florida Civil-law Notary including the Department's findings;
2. Order compliance with this rule;
3. Order restitution;
4. Order suspension of the appointment of the Florida Civil-law Notary;
5. Order revocation of the appointment of the Florida Civil-law Notary.

(d) Any order under this rule which requires payment of restitution or results in the suspension or revocation of the appointment of a Florida Civil-law Notary shall be accompanied by a notice of final agency action as required by Chapter 120, Florida Statutes, and the Florida Civil-law Notary shall be entitled to a hearing in accordance with the requirements of sections 120.57 and 120.569, Florida Statutes.

(e) A former Florida Civil-law Notary whose appointment has been finally revoked shall not be eligible to apply for a new appointment as a Florida Civil-law Notary for a period of at least five years.

(f) A Florida Civil-law Notary may voluntarily resign from an appointment by notifying the Department of State in writing at the above address of the intention to do so. Any voluntary resignation from an appointment as a Florida Civil-law Notary shall be permanent and the resigned Florida Civil-law Notary may only resume service as a Florida Civil-law Notary after successfully completing a new application and examination process.

AUTHORITY

Specific Authority 118.10(5) Fla. Stat. Law Implemented 118.10 Fla. Stat.

HISTORY

New 6-15-98, Amended 10-8-98.