

## ***Notary Review***

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### **Civil Law Notaries Offer Authentication of Documents**

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In the United States, notaries public administer oaths and witness signatures. Civil law notaries, however, are a subspecialty group of private practice attorneys in certain states.

"In the rest of the world, notaries are mostly attorneys with advanced legal training," said Todd Kocourek, a civil law notary since 1998 and president and CEO of Florida First Capital Finance Corp. in Tallahassee. "Most of them have a monopoly on things like real estate transactions."

Civil law notaries practice in Florida and Alabama, countries in the European Union (except Denmark, Great Britain and Ireland), and in Africa, Asia, and Central and South America. There are approximately 100 civil law notaries in Florida and 17 in Alabama appointed by their respective secretaries of state after concentrated educational training and a rigorous exam.

"In Florida, they must be members of the Florida bar, authorized to practice in the state and have five years' experience," said Kocourek. "Civil law notaries tend to be more established attorneys with around 15 years of experience."

Kocourek noted that the genesis of the civil law notary in Florida stemmed from a review of digital and notarial issues commissioned about 12 years ago by the Florida Department of State. The discussions centered on digital security and notarial authentications.

"The idea merged a number of issues of interest, including cyber notary and digital security with the function of the notary public in the rest of the world," added Kocourek, who took part in establishing the law in Florida. "The cyber component wasn't ready for primetime because of technology, but the notary part was, and we developed the concept of the international notary."

On Oct. 8, 1998, Florida made the civil law notary application form available to attorneys. For more information, see Florida Administrative Code Annotated Statute Ch. 118 and Administrative Rule 1C-18.001 on the [Department of State Web site](#).

In Alabama, Boyd Campbell, general counsel, Alabama Center for Foreign Investment, LLC, in Montgomery, saw the Florida law and contacted Kocourek.

"I decided I wanted to do the same thing in Alabama," Campbell said. "I teamed up with the secretary of state in Florida, and we divided up the foreign countries to learn about their notarial laws."

Campbell studied Germany, Spain, the United Kingdom and the European Union. Chuck Grainger, another attorney and now a civil law notary in Alabama, examined the laws of Mexico and South America.

"We crafted the model code and it was passed by the Alabama legislature in 1999," said Campbell, who was appointed a civil law notary in 2001. "Chuck and I were the first attorneys in Alabama to have civil law notary training. We were fortunate to pass the exam, which was very tough."

Civil law notaries are authorized by Florida and Alabama to "grant public faith to certain common, everyday transactions" (Code of Alabama, §36-20-50). These transactions are given a higher level of trust as to their accuracy and have the effect of legally "armor-plating" the transactions, said Kocourek. Court intervention is averted or reduced because civil law notaries draw up and authenticate contracts and agreements that comply with the law and are effective and enforceable according to the respective state's requirements. A contract or agreement signed by a civil law notary is an authentic public deed of trust and effective as a means of evidence.

In essence, the civil law notary represents the transaction, not the parties to the transaction. He or she is obligated to make sure that all the parties to the transaction are properly advised on the legal implications and ramifications of the transaction.

Civil law notaries cannot certify all documents, but they can sign international adoptions, prenuptial agreements, last wills, powers of attorney and agency contracts, deeds and mortgages. Documents prepared by civil law notaries are acceptable to most international jurisdictions.

"All legal transactions are very carefully conducted in a manner that makes it unlikely to break up," said Kocourek. "The civil law notary's role is to make an ironclad agreement so it won't end up in a legal fight later on."

"Internationally, civil law documents are considered authentic by other countries and, in the U.S., civil law presumes that the acknowledgment is applied to the entire document, not just the signature and the identification of the signers, such as in a regular acknowledgment signed by a notary public."

The authentic act document contains:

- A preamble identifying the civil law notary, the time and place of the act, the participating parties and the type of act that will be performed
- Content or body of the contract, will, power of attorney or deed
- Certification of the civil law notary as to who participated, that they were advised of the content and consequences of the act, identification of the parties' personal information, identification of the owners of attorney and the witnesses of the signatures of the parties

The civil law notary then signs the certification, giving public faith to the entire document. Each document is date-stamped and archived by the civil law notary.

"No one is obliged to go to a civil law notary, especially in the domestic law context. We are finding that foreign notaries who have matters in the U.S. are requesting and sometimes requiring that the folks they are dealing with engage a civil law notary," said Kocourek. "This is not our requirement; this is a developing issue in the civil law world."

Campbell, who is also the director of the National Association of Civil Law Notaries and director of the Alabama

Association of Civil Law Notaries, said the "bar and the bench don't know much about civil law notaries.

"If it spreads, it will spread very slowly because there's just not a demand for these services. Florida has seen a lot of business overseas in real estate transactions. In Alabama, we're seeing activity from Korean car manufacturers."

Kocourek doesn't know of any movement to develop civil law notaries in other states.

"We're focusing on continuing in the development of civil law notaries in Florida. It's much more important to focus on the development of the law and practice and spread it as requested," he said.