

# The Florida Civil-Law Notary

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Estate planners, do you ever do any estate planning or administration that involves clients from other countries, especially in the Caribbean, Mexico, Central or South America? Or do you ever represent clients who are inheriting from individuals from other countries?

Real estate practitioners, do you ever handle real estate transactions in Florida involving foreign nationals? Or clients in Florida involved in real estate transactions in civil law jurisdictions? Do you ever represent clients' transactions or estate matters where you travel with them or for them to foreign jurisdictions and need to have documents acknowledged that will be valid for filing or recording when you return to Florida?

If so, you may be interested in something I have discovered - the Florida Civil-law Notary. What is that, you say?

Most Florida attorneys, other than maybe international law attorneys, probably do not know what a Florida Civil-law Notary is, and I didn't either until recently. The purpose of this brief article is to alert you to the fact that the Florida Civil-law Notary exists or to make you aware of how it could be helpful in many estate planning, probate and real estate situations so that you can seek one out when the situation arises.

If you are familiar at all with civil law countries, you may know that civil law notaries (variously referred to as notarios, notaries, notaio or notariats depending on the country) are much different than notaries public here in the United States. Whereas almost any warm body can become a notary public in Florida, notaries in civil law jurisdictions are actually lawyers and quite often are the cream of the legal talent in their jurisdictions. A notary in a civil law jurisdiction has significant quasi-judicial powers to authenticate documents and matters of fact.

Florida passed a statute several years ago that creates a similar quasi-judicial appointment of a Florida Civil-law Notary by the Secretary of State. This appointment is for life and it gives a Florida Civil-law Notary many of the same types of powers that notaries in civil law countries have, including the ability to take acknowledgments anywhere in the world which are valid here in the State of Florida (similar to the old Commissioner of Deeds appointments) for recording documents and other purposes. The Florida Civil-law Notary is also able to act in an impartial capacity to review factual matters and issue documents, sometimes referred to as "authentic

acts", which are presumed to be valid under state law.

With permission from one of the authors, J. Brock McClane, below are a few examples of practical application of the Florida Civil-law Notary statute from the Stetson Law Review article "The Florida Civil-Law Notary: A Practical New Tool for Doing Business With Latin America," Vol. 32, No. 4, Stetson Law Review pages 727-767, Summer 2003. Samples of what the authentic acts would be like under each set of facts described below are illustrated in the law review article.

1. A Florida decedent owned a parcel of beachfront land in St. Martin as tenants in common with his spouse and died intestate. A pending sale to a developer was being held up until title could be cleared by the St. Martin notaire handling the transaction. The notaire contends that because the decedent died in, and was a resident of, Florida the St. Martin choice-of-law rules dictate Florida law govern the devise and descent of the property. But the notaire indicates even a certified copy of a probate court order would be insufficient to clear title because the notaire could not be sure of the authority of the court.

The establishment of the descent of the property could be established to the satisfaction of the notaire by an authentic act of a Florida Civil-law Notary who reviews the probate court order and other documentation leading up to it to confirm the validity of the probate court's authority and resulting court determination of the descent of the property. The authentic act would be prepared in the manner that foreign notaries would prepare such an authentic act with certified copies of all the substantiating documentation attached as exhibits.

2. An Italian notaio prepared a power of attorney for a client's signature to allow her brother residing in Italy to sell a piece of property she owned because she was now living in Florida and would not be able to attend the closing. However, if she signed the power of attorney in front of a notary public, an apostille from the secretary of State would only establish that the notary public was duly authorized to take the acknowledgment, but not necessarily establish the proper identity of the signer herself to the satisfaction of the closing agent. However, a Florida Civil-law Notary was able to perform an authentic act confirming the identity of the giver of the power through examination of her as well as the proper execution of the power of attorney.

***The St. Martin notaire indicates even a certified copy of a probate court order would be insufficient to clear title because the notaire could not be sure of the authority of the court. The establishment of the descent of the property could be established to the satisfaction of the notaire by an authentic act of a Florida Civil-law Notary.***

3. A trial in an Italian court dealt with an estate challenge. The trial established that the heirs-at-law of the decedent would receive the estate. It then became necessary for those lineal descendants to establish their status as heirs. A grandson of the decedent living in Florida whose father had died during the pendency of the litigation needed to submit proof to the court that he was in fact a grandson and heir of the decedent. An authentic act by a Florida Civil-law Notary who was able to examine the birth certificate of the grandson, the death certificate of his deceased father, and a passport to confirm identity (and attach appropriate copies of each of those documents) established to the satisfaction of the Italian court that the grandson was an appropriate heir.

Appointment as a Civil-law Notary is only available for members in good standing who have been members of The Florida Bar for at least five years. In addition to the requirements of bar membership, potential appointees must take a three-day class and pass a rigorous examination. The

class covers various information necessary to understand the powers, duties and responsibilities of a Florida Civil-law Notary, including the statutes and administrative code governing Florida Civil-law Notaries, Florida law governing Notaries Public, practice by notaries in civil law jurisdictions, the Hague Convention XII (dealing with recognition of foreign public documents and apostilles), and the Rules of Professional Conduct relating to attorneys acting as intermediaries. The exam is no cream-puff, and I understand the pass rate is only about 70%, so paying attention in the class and studying to master the information is required. There are only about 150 Civil-law Notaries in Florida so far.

For more information, check out the following web links:

The State of Florida web page: <http://notaries.dos.state.fl.us/civil.html>

The National Association of Civil-law Notaries: <http://www.nacln.org/index.html> ■