

MEMORANDUM

Agenda Item No. 11(A)(9)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: February 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution urging the Florida
Legislature to enact legislation
ensuring that the notary process
has sufficient procedures and
safeguards in place to protect the
elderly and vulnerable
communities against the
fraudulent transfer of real
property and other financial
abuse, and to increase penalties
for the abuse of notary powers

Resolution No. R-107-23

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Senator René García.



Geri Bonzon-Keenan
County Attorney

GBK/jp



MEMORANDUM

(Revised)

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and Members, Board of County Commissioners

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Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(9)
2-7-23

RESOLUTION NO. R-107-23

RESOLUTION URGING THE FLORIDA LEGISLATURE TO ENACT LEGISLATION ENSURING THAT THE NOTARY PROCESS HAS SUFFICIENT PROCEDURES AND SAFEGUARDS IN PLACE TO PROTECT THE ELDERLY AND VULNERABLE COMMUNITIES AGAINST THE FRAUDULENT TRANSFER OF REAL PROPERTY AND OTHER FINANCIAL ABUSE, AND TO INCREASE PENALTIES FOR THE ABUSE OF NOTARY POWERS

WHEREAS, according to the National Institute on Aging, each year, hundreds of thousands of adults over the age of 60 are subject to elder abuse; and

WHEREAS, elder abuse is generally defined as an intentional act or failure to act that causes or creates a risk of harm to an older adult; and

WHEREAS, elder abuse can include physical, sexual, emotional, or psychological abuse or neglect; and

WHEREAS, it can also involve financial abuse and exploitation, or the illegal or unauthorized or improper use of an elder person's money, benefits, belongings, property, or assets for the benefit of someone other than the older adult; and

WHEREAS, elder abuse can have a detrimental impact on the person's mental and physical and financial health and circumstances; and

WHEREAS, abuse of an elder person or other vulnerable adult, such as a person with disabilities, can happen in the person's home, a family member's house, or an assisted living facility and can be done by family members, strangers, health care providers, caregivers, or friends; and

WHEREAS, while financial abuse and exploitation of the elderly and vulnerable community was prevalent prior to the coronavirus disease 2019 (“COVID-19”) pandemic (“pandemic”), recent reports show that these cases surged during the pandemic; and

WHEREAS, the pandemic enhanced the already increased risk for abuse among elder persons and other vulnerable adults; and

WHEREAS, during the pandemic, families could not easily visit their relatives at assisted living facilities or nursing homes and monitor the care being provided; and

WHEREAS, many assisted living facilities and nursing homes faced a workforce shortage and had to hire temporary workers who were untrained to fill the need gap; and

WHEREAS, some elder persons and vulnerable adults lost their social connections to families and friends due to social distancing and shelter-at-home orders and were forced to shelter at home with family or caregivers who were abusers; and

WHEREAS, due to social distancing and other pandemic health restrictions, social workers and others who investigate allegations of abuse had difficulties meeting with persons who were the subject of abuse reports; and

WHEREAS, a recent article by the Wall Street Journal highlighted the financial abuse on elder persons that took place during the pandemic; and

WHEREAS, the article featured a Miami woman whose property had been in her family for a century and was stolen by three people who forged the octogenarian’s name on a deed and sold it in a virtual transaction, which had become commonplace during the pandemic; and

WHEREAS, the fraudulent transfer of real property disproportionately impacts elder persons who may possess real property free of mortgage and whose ability to protect themselves may be impaired due to age-related infirmities; and

WHEREAS, elder abuse is expected to continue to rise after the pandemic ends due, in part, to the aging population and to the shortage of trained and licensed caregivers; and

WHEREAS, the County Mayor and the State Attorney for Miami-Dade recently announced the creation of the Elder & Vulnerable Abuse Work Group (“work group”) whose aim is to discuss best practices and to foster cooperation among key stakeholders and law enforcement agencies on issues and policy initiatives related to the abuse and neglect of older adults and adults with disabilities; and

WHEREAS, in its first two meetings, the work group identified the fraudulent transfer of real property as a major problem facing the elderly and vulnerable communities and identified noncompliance with the laws governing notarizations and insufficient safeguards within the notary process as key causes of the problem; and

WHEREAS, the Florida Legislature recently enacted legislation permitting virtual notarizations and developed strict requirements for virtual notarizations, including maintaining and securing an electronic journal of all notarial acts and recordings of the audio-video communications in which the notarization is performed; and

WHEREAS, similar requirements were not, however, enacted for in-person notarizations, leaving an unanticipated gap and area of vulnerability; and

WHEREAS, the problem of fraudulent transfer of real property and other such financial abuse is rampant among the elderly and vulnerable populations in Florida; and

WHEREAS, currently, the Miami-Dade State Attorney’s Office has numerous cases, filed and under investigation, where either the notary notarized a signature when the signatory was not present or when the signatory had dementia; and

WHEREAS, in other instances, the cases involve an illegible signature of the property owner and/or witnesses and, because it was done in-person, the notary was not required to keep a separate record of the notary act; and

WHEREAS, financial exploitation cases are already difficult to pursue due to, in part, the fact that the elderly or vulnerable victim is frequently not in a good position to assist in the investigation or its prosecution; and

WHEREAS, therefore, to assist in the investigation and prosecution of fraudulent transfers of real property, the work group recommends enacting legislation to expand and strengthen the requirements for in-person notarizations to match the requirements for virtual notarizations; and

WHEREAS, this would also serve to have a deterrent effect on financial abuse and will also protect and foster best practices among notaries; and

WHEREAS, the work group also recommends an increase in the punishment for those who fail to follow these safeguards and who abuse their notary powers; and

WHEREAS, section 117.105, Florida Statutes, currently provides that “[a] notary public who falsely or fraudulently takes an acknowledgement of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree”; and

WHEREAS, this penalty provision, however, is later scaled back in part by section 117.107(9), Florida Statutes, which provides that if a notary notarizes a signature on a document by a person who does not appear before the notary, either by means of physical presence or by means of audio-video communication technology, at the time the signature is notarized, the notary is guilty of only a civil infraction; and

WHEREAS, section 117.107(9) requires an “intent to defraud” for the notary to be guilty of section 117.105, Florida Statutes, a felony of the third degree, as opposed to a civil infraction; and

WHEREAS, in addition, it is uncertain whether section 117.105, Florida Statutes, applies to the other enumerated “Prohibited acts” set forth in section 117.107, Florida Statutes, including that “[a] notary public may not notarize a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization”; and

WHEREAS, adding clarity to and strengthening the penalties for abuse of notary powers will also deter fraudulent transfers of real property and other financial abuse and will aid in the prosecution of financial abuse cases; and

WHEREAS, this Board has a longstanding interest in and concern for the senior population in Miami-Dade County, as demonstrated by its funding of services, programing, and facilities for elderly persons, and by its Elder Affairs Advisory Board, charged with serving as a liaison between the elderly population, this Board, and the County Mayor on matters that affect seniors in our community; and

WHEREAS, this Board supports the findings and recommendations of the work group and wishes to urge the Florida Legislature to enact appropriate legislation to ensure that the notary process has sufficient safeguards in place to protect our elderly and vulnerable community and appropriately penalizes abuse of notary powers which can lead to the fraudulent transfer of real property and other financial abuse,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to enact legislation ensuring that the notary process has sufficient procedures and safeguards in place to protect our elderly and vulnerable community against the fraudulent transfer of real property and other financial abuse, and to increase penalties for the abuse of notary powers.

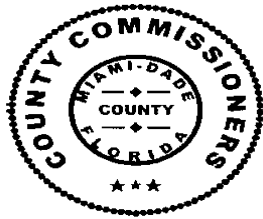
Section 2. Directs the Clerk of the Board to send a certified copy of this resolution to Governor Ron DeSantis, Attorney General Ashley Moody, Senate President Kathleen C. Passidomo, House Speaker Paul Renner, the Chair and Members of the Miami-Dade State Legislative Delegation, and the Florida Department of Law Enforcement Commissioner Mark Glass.

Section 3. Directs the County's state lobbyists to advocate for the actions set forth in section 1 above and authorizes and directs the Office of Intergovernmental Affairs to amend the 2023 State Legislative Package to include this item and to include this item in the 2024 State Legislative Package when it is presented to the Board.

The Prime Sponsor of the foregoing resolution is Senator René García. It was offered by Commissioner **Anthony Rodriguez** , who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of February, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

LCK

Leigh C. Kobrinski