

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Nelson <i>GPN</i>	Alberdi <i>[Signature]</i>	1. JCI	Fav/2 amend.
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Real Property/Recording
Conveyances

BILL NO. AND SPONSOR:

SB 619 by
Senator Dunn

I. SUMMARY:

A. Present Situation:

Section 695.03, F.S., provides that in order to entitle any instrument concerning real property to be recorded, the execution of the instrument must be acknowledged by the party executing it, or the execution must be proved by a subscribing witness before the appropriate officers and in the form and manner prescribed in subsections (1), (2), and (3).

Subsection (3) of s. 695.03 provides that an acknowledgment or proof made in any foreign country may be made before a commissioner of deeds appointed by the Governor of Florida to reside in that country, a notary public of that foreign country, or certain officials of the United States. The subsection does include a civil law notary as one of the officials before whom an acknowledgment or proof may be made in a foreign country.

Section 695.04 provides that the certificate of the officer before whom the acknowledgment or proof shall be taken shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual.

Section 695.09 provides that no acknowledgment or proof shall be taken by any officer unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make proof is one of the subscribing witnesses to the instrument.

B. Effect of Proposed Changes:

SB 619 would amend s. 695.03 to provide that an instrument could be recorded if it has been legalized or authenticated by a civil law notary or notary public who affixes his official seal.

Subsection 695.03(3) would be amended by adding civil law notaries to the current list of officials before whom an instrument may be acknowledged, legalized, authenticated, or proved in a foreign country. A certificate legalizing or authenticating the signature of a party executing any instrument concerning real property to which a notary public or civil law notary of that country affixed his official seal would be sufficient as an acknowledgment.

The bill also excepts certificates legalized or authenticated pursuant to s. 695.03(3) from the requirements of ss. 695.04 and 695.09.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

This bill is recommended by the International Property, Estate, and Trust Law Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar.

A similar bill, HB 1071, has been introduced in the House, and was voted favorably by the House Judiciary Committee.

IV. AMENDMENTS:

#1 by Judiciary-Civil:

Provides a definition of a "civil law notary."

#2 by Judiciary-Civil:

Title amendment for amendment #1.

COMMITTEE ON JUDICIARY
STAFF SUMMARY

SB 619

HB: 1071 OTHER COMM. REFERENCE: _____
SPONSOR: Rep. Ros PREPARED BY: Robin Conner *RC*
SUBJECT: Real Estate Conveyances STAFF DIRECTOR: Richard Hixson *RH*
DATE: April 13, 1984

I. SUMMARY

A. Present Situation

Section 695.03, Florida Statutes, provides that in order to entitle any instrument concerning real property to be recorded, the execution of the instrument must be acknowledged by the party executing it, or the execution must be proved by a subscribing witness before the appropriate officers and in the form and manner as prescribed in subsections (1), (2), and (3) of s. 695.03. Subsection (3) pertains to instruments acknowledged or proved in foreign countries.

Section 695.04 provides that the certificate of the officer before whom the acknowledgment or proof shall be taken shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual.

Section 695.09 provides that no acknowledgment or proof shall be taken by any officer within or without the United States unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make proof is one of the subscribing witnesses to such instrument.

Application of the above mentioned statutes creates the possibility that a deed acknowledged or proved by a foreign civil law notary may not be entitled to be recorded in Florida. Consequently, title could be defeated when such a conveyance is in issue.

B. Effect of Proposed Changes

This bill would amend s. 695.03 to provide that an instrument could be recorded if it has been legalized or authenticated by a civil law notary or notary public who affixes his official seal.

Subsection 695.03(3) is amended to provide that an instrument shall be valid if authenticated or legalized in a foreign country if such authentication or legalization is made before any commissioner of deeds appointed by the Governor of Florida to act in such country, or before any civil law notary of such foreign country. Such authentication or legalization shall be under the seal of the office making such legalization or authorization. A certificate legalizing or authenticating the signature of a party executing any instrument concerning real property to which a notary public or civil law notary of that country has affixed his official seal shall be sufficient as an acknowledgment. All such certificates, affidavits, legalizations, authentications, and acknowledgments taken in the above prescribed manner would be validated.

The bill also provides that the provisions of ss. 695.04 and 695.09 would not apply to those certificates legalized or authenticated pursuant to s. 695.03(3) as amended.

II. FISCAL IMPACT

Enactment of this bill could eliminate costs necessary to litigate or settle questions concerning title.

III. COMMENTS

This bill is recommended by the International Property, Estate, and Trust Law Committee of the Real Property, Probate, and Trust Law Section of the Florida Bar.

Amend. defining "civil - notary"^{ed}

Bill Wiley

Fla. Bar

Int'l Property & Trust Law
Committee.