Proof of execution before out of state notary public

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Subject:
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RECORD OF CONVEYANCES--ACKNOWLEDGMENT OR PROOF OF EXECUTION BEFORE OUT-OF-STATE NOTARY PUBLIC

To: E. M. Strobel, Broward County Comptroller, Fort Lauderdale

Prepared by: Jerald S. Price, Assistant Attorney General

QUESTION:

Must the certificate of acknowledgment or proof include the notary public's commission expiration date in order to entitle such instrument to be recorded in Florida when an instrument concerning real property is executed without the State of Florida and the execution thereof is acknowledged or proved before an out-of-state notary public?

SUMMARY:

Under s. 695.03(2), F. S., an instrument which has been acknowledged or proved before an out-of-state notary public is entitled to recordation in the public records of this state if the notary's certificate of acknowledgment has affixed thereto either the notary public's seal or a prothonotary certificate of proper authority, even though the date of the expiration of his notary public commission is not shown on the certificate.

The requirement in s. 117.07(1), F. S., that every notary public signing a certificate of acknowledgment include thereon a statement of the date of expiration of his commission is specifically limited to notaries public in Florida. Chapter 695, F. S., controls the recording in Florida of instruments relating to conveyances of real property. Acknowledgment or proof of the execution of such instruments is required by s. 695.03 before they are entitled to be recorded in the public records. Subsection 695.03(2) specifically refers to acknowledgments or proofs of execution made in states other than Florida and makes no reference to an out-of-state notary public's commission expiration date.

With respect to acknowledgments made before notaries public, s. 695.03(2), *supra*, as amended by Ch. 71-53, Laws of Florida, provides that

"[i]f the acknowledgment or proof is made before a notary public who does not have or does not affix a seal, the instrument shall have affixed a certificate by the clerk of a court having a seal under the seal to the effect that the notary public was duly authorized by the laws of this state to take the acknowledgment or proof of the instrument to which the certificate is affixed. . . ."

As amended, the statute apparently requires either that a notary public's seal be affixed or that a prothonotary certificate of proper authority be attached. (This interpretation is confirmed by the title to the 1971 amendatory act, which states that the act is one "providing that when a notary public out of this state does not affix a seal, a certificate of proper authority is sufficient.") And insofar as AGO 070-41 may be interpreted as holding to the contrary, it must be deemed to have been overruled by the amendatory act.

However, as noted above, there is nothing in the statutes -- either s. 695.03 or s. 117.07(1), *supra* -- that may be interpreted as requiring an out-of-state notary public to include the expiration date of his commission as a part of his certificate of acknowledgment in order to entitle the instrument to be recorded in the public records of this state.

Accordingly, your question is answered in the negative.