

USING UNSWORN DECLARATIONS INSTEAD OF NOTARIZED AFFIDAVITS ALLOWED UNDER BOTH STATE AND FEDERAL LAW



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Affidavits and Notarized Signatures – Is there another way?

Affidavits are often used in support of certain actions filed in both state and federal courts. An Affidavit, typically signed by the client representative, must be notarized in their presence by a notary. During this pandemic, with most people working remotely, obtaining a notarized signature is difficult. Is a notarized Affidavit a required step for every sworn document filed in Court to be valid? **The surprising answer is no.** Both federal law and many states have statutes covering this issue.

In federal court, a Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 may be used in lieu of a notarized Affidavit. A Declaration under penalty of perjury has the same force and effect as a notarized Affidavit. Under federal law, the Declaration must contain the following specific language if executed within the United States, its territories, or Commonwealth:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (insert date)."

_____ (Signature)

Similarly, many states have statutes allowing the use of unsworn declarations. In Florida, an unsworn Declaration may be used in lieu of a notarized affidavit. See Fla. Stat. § 95.525(1)(b). The Declaration must contain the following statement at the end of or immediately below the

document and above the signature of the person making the declaration:

**“Under penalties of perjury, I declare that
I have read the foregoing (document name) and
that the facts stated in it are true.”**

_____ (Signature)

These statutes show that a sworn declaration is just as effective as a notarized Affidavit. **Please note** - in all events, both an Affidavit and unsworn Declaration must be based on the personal knowledge of the person signing.

THE APPLICABLE STATUTES

28 U.S.C. § 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

Fla. Stat. § 92.525 Verification of documents; perjury by false written declaration, penalty

(1) If authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10 to administer oaths; or

(c) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: “Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

Dennis LeVine focuses his state wide practice on bankruptcy litigation and creditors’ rights. Dennis is one of only seven attorneys in Florida to be Board Certified in both consumer bankruptcy law and business bankruptcy law by the American Board of Certification (ABC).

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