

## **What it Means to Sign a Document Freely and Willingly**

A notary public is an official witness to someone signing a document freely and willingly. "Freely and willingly" is one of those phrases that people use without really considering the meaning. This expression has been in use for so long that everyone thinks they know what it covers, but most people do not actually know.

"Freely" means without bribes, threats, compulsion, restraint, restriction, control of another person, or any undue influence. Certain illnesses or medical conditions or the drugs taken to deal with them may remove your ability to make free decisions because you are under their influence. Relatives or bosses may exert pressure that counts as undue influence.

If you are doing something freely, no one is forcing you to do it. By signing a document freely, you affirm that you are able to choose whether or not to sign it, that you have chosen to sign it, that you agree to the statements within it, and that no one is putting pressure on you to sign.

When dealing with hospital signings or the elderly, it is especially important for notaries public to ensure that an individual is signing freely and willingly. In such cases, the evidence of undue influence - pressure from the relatives or the effects of illness or medication - may be less than clear. If the notary suspects such influence, however, before proceeding, he needs to clear the room of everyone except the signer and any disinterested witnesses. The notary should then have a private conversation with the signer to be sure he or she has freely chosen to sign.

"Willingly" connects with the undue influence aspect of "freely," as you are only doing something willingly if you have knowledge of what you are doing and you are doing it to fulfill a purpose or design that you have chosen. An idea may not have been your own originally, but you have to accept it as your own before you can be said to execute it willingly.

Taken together, "freely and willingly" is the gold standard of consent. This is why the phrase appears in so many different documents, from wills and personal contracts to deeds and trusts. When you execute a document freely and willingly, you are waiving any reservation about proceeding; you are agreeing to be bound by the statements made within the document and to follow the terms and conditions within it. If the document is a sworn statement, you are doing all this under oath or affirmation and the penalties of perjury apply as well.

The phrases "of my own free will and accord" and "free act" are related to "freely and willingly." Both mean that you have chosen to proceed, that you own the act (of executing this document), and that you accept the validity of the act - in short, that you are bound by it.

"Freely and willingly" does not require that the signer be adjudged by a medical or legal professional to be mentally competent; being "of sound mind" is not the same thing as doing something freely and willingly. This concept also does not require that the signer has a full understanding of what every particular detail of a document means, as only a lawyer could give such a detailed opinion about a document's legal ramifications. What it does mean is that the signer has stated his desire to execute a document and the notary public has had enough of a conversation with the signer to determine, from a layman's perspective, that the signer is aware of who he is, knows what he is seeking to accomplish by executing the document, and has chosen to proceed.

**NOTE:** This article serves as informational purposes to broaden the knowledge of the notary public. The Delaware Notary Association is dedicated in keeping the Delaware Notary with working information in performing their duties to the best they can and to the fullest.

Please feel free at any time to send questions, comments, etc. on topics for future articles.