



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/04/04, by John A. Fritchey

**SYNOPSIS AS INTRODUCED:**

New Act

Creates the Civil Law Notary Act. Provides that the Secretary of State shall have the power to appoint civil law notaries. Authorizes civil law notaries to issue brevets, minutes, and notarial deeds. Lists the powers and obligations of a civil law notary. Effective immediately.

LRB093 20758 LCB 46652 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning civil law notaries.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Civil  
5 Law Notary Act.

6 Section 5. Definition. For purposes of this Act:

7 "Authentic act" means an instrument executed by a civil law  
8 notary referencing this Act, which is imbued by the State with  
9 the legal acceptance of the certainty that comes from the  
10 presumption of truth that accompanies the document and that  
11 includes the particulars and capacities to act of transacting  
12 parties, a confirmation of the full text of any necessary  
13 instrument, the signatures or their legal equivalent of any  
14 transacting parties, the signature and seal of a civil law  
15 notary, and any other information prescribed by the Secretary  
16 of State.

17 "Brevet" means a private document in which a civil law  
18 notary attests to the authenticity of the signature or  
19 signatures, a fact, or a contract. Brevets may be used, among  
20 other things, to certify signatures, prescribe oaths, certify a  
21 translation or a copy of a document that is not part of the  
22 civil law notary's protocol, or certify the identity of any  
23 object or thing.

24 "Civil law notary" means a person who is admitted to the  
25 practice of law in this State, who has practiced law in a  
26 United States jurisdiction for at least 5 years, and who is  
27 appointed by the Secretary of State as a civil law notary.

28 "Minute" mean an authentic act written by a civil law  
29 notary that contains the exact narration of a finding of fact  
30 or facts influencing the rights of private parties of which the  
31 civil law notary has personal knowledge and that due to the  
32 nature of the authentic act does not constitute a contract or

1 juridical business. Types of minutes include, but may not be  
2 limited to:

3 (1) "General minutes", which means a minute providing a  
4 certification of general facts known to the civil law  
5 notary;

6 (2) "Minutes of notoriety", which means a minute  
7 providing a certification that a fact is generally known by  
8 the people who have a direct or close relationship with the  
9 factual situation or its consequences or who belong to the  
10 social or economic environment of the person affected by a  
11 particular fact;

12 (3) "Minutes of correction", which means a minute for  
13 the purpose of rectifying minor errors in forms or  
14 omissions made by a civil law notary in prior authentic  
15 acts; or

16 (4) "Minutes of addition", which means a minute for the  
17 purpose of including a document in a civil law notary's  
18 protocol in order to provide for the preservation of the  
19 document, the limited memorialization of domestic private  
20 documents, or the execution of foreign legal documents.

21 "Notarial deed" means an authentic act that contains a  
22 contract, transaction, or other juridical act and that may also  
23 include the certification of facts. Notarial deeds may involve  
24 either a single party, as in the case of a will, or multiple  
25 parties, as with a contract.

26 "Protocol" means a registry maintained by a civil law  
27 notary in which the acts of the civil law notary are archived.

28 Section 10. Appointment; authorization.

29 (a) The Secretary of State shall have the power to appoint  
30 civil law notaries and to administer this Act.

31 (b) A civil law notary is authorized to issue brevets,  
32 minutes, and notarial deeds and may authenticate or certify any  
33 document, transaction, event, condition, or occurrence. The  
34 contents of an authentic act and matters incorporated in the  
35 authentic act shall be presumed legal and accurate. The

1 presumption may be rebutted in litigation upon a showing of  
2 clear and convincing evidence. A civil law notary may also  
3 administer oaths and make certificates thereof when necessary  
4 for execution of any writing or document to be attested,  
5 protested, or published under the seal of a notary public. A  
6 civil law notary may also take acknowledgement of deeds and  
7 other instruments of writing for record.

8 (c) The authentic acts, oaths, and acknowledgments of a  
9 civil law notary shall be chronologically recorded in the civil  
10 law notary's protocol in a manner prescribed by the Secretary  
11 of State.

12 (d) The civil law notary may, without prejudice to his or  
13 her duty to ensure professional confidentiality, issue  
14 certified copies of authentic acts to individuals who, in his  
15 or her opinion, have a legitimate interest in the contents of  
16 the authentic act. Certified copies of authentic acts shall  
17 have the same legal force and effect as the original.

18 (e) A civil law notary is obligated to:

19 (1) Draw up authentic acts in accordance with his or  
20 her knowledge and comprehension and the documents must  
21 clearly reflect the wishes of the contracting parties duly  
22 adapted to legal requirements necessary for the documents  
23 to have full legal force and effect.

24 (2) Represent the transaction itself in the creation of  
25 the authentic act. For this purpose, the civil law notary  
26 acts as an intermediary where there are multiple parties to  
27 a transaction.

28 (3) Use his or her best efforts to advise all parties  
29 to the transaction equally, accurately, fully, and  
30 impartially regarding the nature and legal consequences of  
31 the transaction.

32 (4) Refrain from representing any party in any matter  
33 arising from or related to the civil law notary's authentic  
34 act.

35 Section 15. Rules. The Secretary of State shall adopt rules

1     prescribing:

2             (1) The form and content of authentic acts, oaths,  
3             acknowledgements, and signatures and seals or their legal  
4             equivalents.

5             (2) Procedures for the permanent archiving of  
6             authentic acts, for the maintenance of records of  
7             acknowledgments and oaths, and for the administration of  
8             oaths and taking of acknowledgments.

9             (3) The charging of reasonable fees to be retained by  
10            the Secretary of State for the purpose of administering  
11            this Act.

12            (4) Educational requirements and procedures for  
13            testing an applicant's knowledge of all matters relevant to  
14            the appointment, authority, duties, or legal or ethical  
15            responsibilities of a civil law notary.

16            (5) Procedures for the disciplining of a civil law  
17            notary including, but not limited to, the suspension and  
18            revocation of his or her appointment for failure to comply  
19            with the requirements of this Act or the rules adopted  
20            pursuant to this Act or for misrepresentation or fraud  
21            regarding the civil law notary's authority, the effect of  
22            the civil law notary's authentic acts, or the identities or  
23            acts of the parties to a transaction.

24            (6) Bonding or errors and omissions insurance  
25            requirements, or both, for civil law notaries.

26            (7) Other matters necessary for administering this  
27            Act.

28            Section 20. Powers.

29            (a) The powers of civil law notaries include, but are not  
30            limited to, all of the powers of a notary public under the laws  
31            of this State.

32            (b) This Act shall not be construed as abrogating the  
33            provisions of any other Act relating to notaries public,  
34            attorneys, or the practice of law in this State.

1           Section 25. Certificate of authority. If certification of a  
2 civil law notary's authority is necessary for a particular  
3 document or transaction, it must be obtained from the Secretary  
4 of State.

5           Upon receipt of a written request from a civil law notary  
6 and the fee prescribed by the Secretary of State, the Secretary  
7 of State shall issue a certificate of the civil law notary's  
8 authority, in a form prescribed by the Secretary of State,  
9 which shall include a statement explaining the legal  
10 qualification and authority of a civil law notary in this  
11 State. The fee prescribed for the issuance of the certificate  
12 under this Section may not exceed \$20 per document. The  
13 Secretary of State may adopt rules to implement this Section.

14           Section 30. Severability. If any provision of this Act or  
15 its application to any person or circumstance is held invalid,  
16 the invalidity of that provision or application does not affect  
17 other provisions or applications that can be given effect  
18 without the invalid provision or application.

19           Section 35. Conflict of law. All laws or parts of laws in  
20 conflict with this Act are superseded.

21           Section 99. Effective date. This Act takes effect upon  
22 becoming law.