



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0568

Introduced 1/27/2005, by Rep. Kevin Joyce

SYNOPSIS AS INTRODUCED:

5 ILCS 312/3-110 new
765 ILCS 5/20

from Ch. 30, par. 19

Amends the Illinois Notary Public Act. Requires that a notary public keep a journal as to notarization of documents concerning real property. Specifies the information to be entered in the journal in order to identify the witnesses who or documents that affirmed the identity of persons whose acknowledgements were notarized. Specifies the manner in which the journal must be kept and the conditions under which journal entries must be disclosed. Makes violations by a notary public punishable by fines imposed by the Secretary of State and revocation of the notary's commission. Amends the Conveyances Act. Provides that rights and interests may be acknowledged or proved outside Illinois but within the United States and its territories by a notary public in substantial compliance with the Illinois Notary Public Act (now, by a notary public).

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning government.

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

4 Section 5. The Illinois Notary Public Act is amended by
5 adding Section 3-110 as follows:

6 (5 ILCS 312/3-110 new)

7 Sec. 3-110. Real property documents.

8 (a) As to the notarization of documents affecting real
9 property, including but not limited to deeds, liens, or
10 mortgages, a notary public shall keep one active sequential
11 journal at a time of all official acts performed as a notary
12 public. The journal shall be kept in a locked and secured area,
13 under the direct and exclusive control of the notary.
14 Assignments and releases of interest in property are not
15 subject to the provisions of this Section.

16 (b) The journal shall be in addition to and apart from any
17 copies of notarized documents that may be in the possession of
18 the notary public and shall include the following:

19 (1) Date, time, and type of each official act.

20 (2) Character of the instrument acknowledged or proved
21 before the notary.

22 (3) The signature of each person whose signature is
23 being notarized.

24 (4) A statement as to whether the identity of a person
25 making an acknowledgment was based on personal knowledge or
26 satisfactory evidence. If identity was established by
27 satisfactory evidence pursuant to Section 6-102 (5 ILCS
28 312/6-102), then the journal shall contain the signature of
29 the credible witness swearing to or affirming the identity
30 of the individual or the type of identifying document, the
31 governmental agency issuing the document, the serial or
32 identifying number of the document, and the date of issue

1 or expiration of the document.

2 (5) If an identifying document is used in order to
3 verify the identity of the person whose signature is being
4 notarized, copies of the front and back of the identifying
5 document attached to the corresponding journal entry page.

6 (6) If the identity of the person making the
7 acknowledgment was established by the oaths or
8 affirmations of 2 credible witnesses whose identities are
9 proven upon the presentation of satisfactory evidence, the
10 type of identifying documents, the identifying numbers of
11 the documents, and the dates of issuance or expiration of
12 the documents presented by the witnesses to establish their
13 identity.

14 (7) The fee charged for the notarial service.

15 (8) The right thumbprint of the party signing the
16 document. If the right thumbprint is not available, then
17 the notary shall have the party use his or her left thumb,
18 or any available finger, and shall so indicate in the
19 journal. If the party signing the document is physically
20 unable to provide a thumbprint or fingerprint, the notary
21 shall so indicate in the journal and shall also provide an
22 explanation of that physical condition. This paragraph
23 shall not apply to a trustee's deed resulting from a decree
24 of foreclosure or a non-judicial foreclosure pursuant to
25 the Code of Civil Procedure beginning at Section 15-1101
26 (735 ILCS 5/15-1101 et seq.) or to a deed of reconveyance.

27 (c) If the journal of official acts performed by a notary
28 public is stolen, lost, misplaced, destroyed, damaged, or
29 otherwise rendered unusable as a record of notarial acts and
30 information, the notary public shall notify the Secretary of
31 State by certified or registered mail within 5 business days of
32 discovering the journal is stolen, lost, misplaced, destroyed,
33 damaged, or otherwise rendered unusable as a record of notarial
34 acts and information. The notification shall include the period
35 of the journal entries, the notary public commission number,
36 the expiration date of the commission, and, when applicable, a

1 photocopy of any police report that specifies the theft of the
2 sequential journal of official acts.

3 (d) Upon written request of any member of the public, which
4 request shall include the name of the parties, the type of
5 document, and the month and year in which notarized, the notary
6 shall supply a photostatic copy of the line item representing
7 the requested transaction at a cost of not more than 30 cents
8 per page.

9 (e) The journal of notarial acts of a notary public is the
10 exclusive property of that notary public and shall not be
11 surrendered to an employer upon termination of employment,
12 whether or not the employer paid for the journal, or at any
13 other time. The notary public shall not surrender the journal
14 to any other person except a peace officer, as defined in
15 Section 2-13 of the Criminal Code of 1961 (720 ILCS 5/2-13),
16 acting in his or her official capacity and within his or her
17 authority, in response to a criminal search warrant signed by a
18 judge or to a grand jury subpoena or subpoena duces tecum and
19 served upon the notary public by the peace officer. The notary
20 public shall obtain a receipt for the journal and shall notify
21 the Secretary of State by certified mail within 10 days that
22 the journal was relinquished to a peace officer. The
23 notification shall include the period of the journal entries,
24 the commission number of the notary public, the expiration date
25 of the commission, and a photocopy of the receipt. The notary
26 public shall obtain a new sequential journal. If the journal
27 relinquished to a peace officer is returned to the notary
28 public and a new journal has been obtained, the notary public
29 shall make no new entries in the returned journal. A notary
30 public who is an employee shall permit inspection and copying
31 of journal transactions by a duly designated auditor or agent
32 of the notary public's employer, provided that the inspection
33 and copying are done in the presence of the notary public and
34 the transactions are directly associated with the business
35 purposes of the employer. The notary public, upon the request
36 of the employer, shall regularly provide copies of all

1 transactions that are directly associated with the business
2 purposes of the employer but shall not be required to provide
3 copies of any transaction that is unrelated to the employer's
4 business. Confidentiality and safekeeping of any copies of the
5 journal provided to the employer shall be the responsibility of
6 that employer.

7 (f) The notary public shall provide the journal for
8 examination and copying in the presence of the notary public
9 upon receipt of a subpoena duces tecum or a court order and
10 shall certify those copies if requested.

11 (g) Failure to secure the journal or make reports as
12 required by this Section shall result in the following measures
13 being taken by the Secretary of State:

14 (1) For the first violation of any provision concerning
15 the securing of the journal or notification as set forth in
16 this Section, the notary shall be fined not less than \$500
17 and not more than \$1,500 by the Secretary of State.

18 (2) For any subsequent violation of any provision
19 concerning the securing of the journal or notification as
20 set forth in this Section, the notary shall be fined not
21 less than \$1,500 and not more than \$5,000 by the Secretary
22 of State and the notary's commission shall be permanently
23 revoked.

24 Section 10. The Conveyances Act is amended by changing
25 Section 20 as follows:

26 (765 ILCS 5/20) (from Ch. 30, par. 19)

27 Sec. 20. Deeds, mortgages, conveyances, releases, powers
28 of attorney or other writings of or relating to the sale,
29 conveyance or other disposition of real estate or any interest
30 therein whereby the rights of any person may be affected, may
31 be acknowledged or proven before some one of the following
32 courts or officers, namely:

33 1. When acknowledged or proven within this State, before a
34 notary public, United States commissioner, county clerk, or any

1 court or any judge, clerk or deputy clerk of such court. When
2 taken before a notary public or United States commissioner, the
3 same shall be attested by his official seal; when taken before
4 a court or the clerk thereof, or a deputy clerk thereof, the
5 same shall be attested by the seal of such court.

6 2. When acknowledged or proved outside of this State and
7 within the United States or any of its territories or
8 dependencies or the District of Columbia, before a justice of
9 the peace, notary public in substantial compliance with the
10 Illinois Notary Public Act, master in chancery, United States
11 commissioner, commissioner to take acknowledgments of deeds,
12 mayor of city, clerk of a county, or before any judge, justice,
13 clerk or deputy clerk of the supreme, circuit or district court
14 of the United States, or before any judge, justice, clerk or
15 deputy clerk, prothonotary, surrogate, or registrar of the
16 supreme, circuit, superior, district, county, common pleas,
17 probate, orphan's or surrogate's court of any of the states,
18 territories or dependencies of the United States. In any
19 dependency of the United States such acknowledgment or proof
20 may also be taken or made before any commissioned officer in
21 the military service of the United States. When such
22 acknowledgment or proof is made before a notary public, United
23 States commissioner or commissioner of deeds, it shall be
24 certified under his seal of office. If taken before a mayor of
25 a city it shall be certified under the seal of the city; if
26 before a clerk, deputy clerk, prothonotary, registrar or
27 surrogate, then under the seal of his court; if before a
28 justice of the peace or a master in chancery there shall be
29 added a certificate of the proper clerk under the seal of his
30 office setting forth that the person before whom such proof or
31 acknowledgment was made was a justice of the peace or master in
32 chancery at the time of taking such acknowledgment or proof. As
33 acknowledgment or proof of execution of any instrument above
34 stated, may be made in conformity with the laws of the State,
35 territory, dependency or district where it is made. If any
36 clerk of any court of record within such state, territory,

1 dependency or district shall, under his signature and the seal
2 of such court, certify that such acknowledgment or proof was
3 made in conformity with the laws of such state, territory,
4 dependency or district, or it shall so appear by the laws of
5 such state, territory, dependency or district such instrument
6 or a duly proved or certified copy of the record of such deed,
7 mortgage or other instrument relating to real estate heretofore
8 or hereafter made and recorded in the proper county may be
9 admitted in evidence as in other cases involving the admission
10 of evidence of certified copies.

11 3. When acknowledged or proven outside of the United States
12 before any court of any republic, dominion, state, kingdom,
13 empire, colony, territory, or dependency having a seal, or
14 before any judge, justice or clerk thereof or before any mayor
15 or chief officer of any city or town having a seal, or before a
16 notary public or commissioner of deeds, or any ambassador,
17 minister or secretary of legation or consul of the United
18 States or vice consul, deputy consul, commercial agent or
19 consular agent of the United States in any foreign republic,
20 dominion, state, kingdom, empire, colony, territory or
21 dependency attested by his official seal or before any officer
22 authorized by the laws of the place where such acknowledgment
23 or proof is made to take acknowledgments of conveyances of real
24 estate or to administer oaths in proof of the execution of
25 conveyances of real estate. Such acknowledgments are to be
26 attested by the official seal, if any, of such court or
27 officer, and in case such acknowledgment or proof is taken or
28 made before a court or officer having no official seal, a
29 certificate shall be added by an ambassador, minister,
30 secretary of legation, consul, vice consul, deputy consul,
31 commercial agent or consular agent of the United States
32 residing in such republic, dominion, state, kingdom, empire,
33 colony, territory, or dependency under his official seal,
34 showing that such court or officer was duly elected, appointed
35 or created and acting at the time such acknowledgment or proof
36 was made.

1 4. Any person serving in or with the armed forces of the
2 United States, within or outside of the United States, and the
3 spouse or former spouse of any such person, may acknowledge the
4 instruments wherever located before any commissioned officer
5 in active service of the armed forces of the United States with
6 the rank of Second Lieutenant or higher in the Army, Air Force
7 or Marine Corps, or Ensign or higher in the Navy or United
8 States Coast Guard. The instrument shall not be rendered
9 invalid by the failure to state therein the place of execution
10 or acknowledgment. No authentication of the officer's
11 certificate of acknowledgment shall be required and such
12 certificate need not be attested by any seal but the officer
13 taking the acknowledgment shall indorse thereon or attach
14 thereto a certificate substantially in the following form:

15 On (insert date), the undersigned officer, personally
16 appeared before me, known to me (or satisfactorily proven) to
17 be serving in or with the armed forces of the United States
18 (and/or the spouse or former spouse of a person so serving) and
19 to be the person whose name is subscribed to the instrument and
20 acknowledged that he executed the same as free
21 and voluntary act for the purposes therein contained, and the
22 undersigned further certifies that he is at the date of this
23 certificate a commissioned officer of the rank stated below and
24 is in the active service of the armed forces of the United
25 States.

26
27 Signature of Officer
28
29 Rank of Officer and Command to
30 which attached.

31 5. All deeds or other instruments or copies of the record
32 thereof duly certified or proven which have been acknowledged
33 or proven prior to August 30, 1963, before either of the courts
34 or officers mentioned in this Act and in the manner herein
35 provided, shall be deemed to be good and effectual in law and
36 the same may be introduced in evidence without further proof of

1 their execution, with the same effect as if this amendatory Act
2 of 1963 had been in force at the date of such acknowledgment or
3 proof.

4 (Source: P.A. 91-357, eff. 7-29-99.)