



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4958

Introduced 1/19/2006, by Rep. Kevin Joyce

SYNOPSIS AS INTRODUCED:

5 ILCS 312/1-104	from Ch. 102, par. 201-104
5 ILCS 312/2-101	from Ch. 102, par. 202-101
5 ILCS 312/2-102	from Ch. 102, par. 202-102
5 ILCS 312/2-105	from Ch. 102, par. 202-105
5 ILCS 312/3-101	from Ch. 102, par. 203-101
5 ILCS 312/3-104	from Ch. 102, par. 203-104
5 ILCS 312/3-110 new	
5 ILCS 312/7-105	from Ch. 102, par. 207-105
5 ILCS 312/7-106	from Ch. 102, par. 207-106
5 ILCS 312/7-107	from Ch. 102, par. 207-107
765 ILCS 5/20	from Ch. 30, par. 19

Amends the Illinois Notary Public Act. Authorizes the Secretary of State to appoint and commission real estate notaries public to perform notarial acts involving real property documents. Requires that persons seeking appointment as real estate notaries public submit to criminal background checks. 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. Makes a notary public's official misconduct with respect to real property documents a Class 2 felony. Makes impersonation of a notary public a Class 1 felony (now, a Class A misdemeanor). Makes unlawful possession of a notary's official seal a Class 2 felony (now, a misdemeanor with a fine not to exceed \$1,000). Amends the Conveyances Act. Provides that rights and interests shall (now, may) be acknowledged or proved before specified courts or officers. Provides that when the acknowledgement or proving is outside Illinois but within the United States and its territories, the notary public must be in substantial compliance with the Illinois Notary Public Act.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL 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 changing Sections 1-104, 2-101, 2-102, 2-105, 3-101, 3-104,
6 7-105, 7-106, and 7-107 and by adding Section 3-110 as follows:

7 (5 ILCS 312/1-104) (from Ch. 102, par. 201-104)

8 Sec. 1-104. Notary Public, Real Estate Notary Public, and
9 Notarization Defined.

10 (a) The terms "notary public" and "notary" are used
11 interchangeably to mean any individual appointed and
12 commissioned to perform notarial acts, except those pertaining
13 to real property documents as provided for in Section 3-110 of
14 this Act.

15 (b) The term "real estate notary public" shall mean any
16 individual appointed and commissioned to perform any and all
17 notarial acts pertaining to real property documents as provided
18 for in Section 3-110 of this Act.

19 (c) Unless specifically enumerated, the terms "notary
20 public" and "notary" shall include "real estate notary public".

21 (d) ~~(b)~~ "Notarization" means the performance of any a
22 notarial act.

23 (e) ~~(e)~~ "Accredited immigration representative" means a
24 not-for-profit organization recognized by the Board of
25 Immigration Appeals under 8 C.F.R. 292.2(a) and employees of
26 those organizations accredited under 8 C.F.R. 292.2(d).

27 (Source: P.A. 93-1001, eff. 8-23-04.)

28 (5 ILCS 312/2-101) (from Ch. 102, par. 202-101)

29 Sec. 2-101. Appointment. The Secretary of State may appoint
30 and commission as notaries public for a 4-year term, or as real
31 estate notaries public for a 2-year term, as many persons

1 resident in a county in this State as he deems necessary. The
2 Secretary of State may appoint and commission as notaries
3 public for a one-year term as many persons who are residents of
4 a state bordering Illinois whose place of work or business is
5 within a county in this State as the Secretary deems necessary,
6 but only if the laws of that state authorize residents of
7 Illinois to be appointed and commissioned as notaries public in
8 that state.

9 (Source: P.A. 91-818, eff. 6-13-00.)

10 (5 ILCS 312/2-102) (from Ch. 102, par. 202-102)

11 Sec. 2-102. Application. Every applicant for appointment
12 and commission as a notary shall complete an application form
13 furnished by the Secretary of State to be filed with the
14 Secretary of State, stating:

15 (a) the applicant's official name, which contains his or
16 her last name and at least the initial of the first name;

17 (b) the county in which the applicant resides or, if the
18 applicant is a resident of a state bordering Illinois, the
19 county in Illinois in which that person's principal place of
20 work or principal place of business is located;

21 (c) the applicant's residence address and business
22 address, if any, or any address at which an applicant will use
23 a notary public commission to receive fees;

24 (d) that the applicant has resided in the State of Illinois
25 for 30 days preceding the application or that the applicant who
26 is a resident of a state bordering Illinois has worked or
27 maintained a business in Illinois for 30 days preceding the
28 application;

29 (e) that the applicant is a citizen of the United States or
30 an alien lawfully admitted for permanent residence in the
31 United States;

32 (f) that the applicant is at least 18 years of age;

33 (g) that the applicant is able to read and write the
34 English language;

35 (h) that the applicant has never been the holder of a

1 notary public appointment that was revoked or suspended during
2 the past 10 years;

3 (i) that the applicant has not been convicted of a felony;
4 and

5 (j) any other information the Secretary of State deems
6 necessary.

7 A real estate notary public applicant must submit to a
8 criminal background investigation in accordance with rules
9 adopted by the Secretary of State in cooperation with the
10 Department of State Police.

11 (Source: P.A. 93-1001, eff. 8-23-04.)

12 (5 ILCS 312/2-105) (from Ch. 102, par. 202-105)
13 Sec. 2-105. Bond.

14 (a) Every application for appointment and commission as a
15 notary public shall be accompanied by an executed bond
16 commencing on the date of the appointment with a term of 4
17 years, in the sum of \$5,000, with, as surety thereon, a company
18 qualified to write surety bonds in this State. The bond shall
19 be conditioned upon the faithful performance of all notarial
20 acts in accordance with this Act. ~~The Secretary of State may~~
21 ~~prescribe an official bond form.~~

22 (b) Every application for appointment and commission as a
23 real estate notary public shall be accompanied by an executed
24 bond commencing on the date of the appointment with a term of 2
25 years, in the sum of \$25,000, with, as surety thereon, a
26 company qualified to write surety bonds of all notarial acts in
27 accordance with this Act. For real estate notaries employed by
28 a government entity who are authorized solely to notarize real
29 estate documents for their government employer, the amount of
30 the executed bond shall be \$5,000.

31 (c) The Secretary of State may prescribe an official bond
32 form.

33 (Source: P.A. 84-322.)

34 (5 ILCS 312/3-101) (from Ch. 102, par. 203-101)

1 Sec. 3-101. Official Seal. Each notary public shall, upon
2 receiving the commission from the county clerk, obtain an
3 official rubber stamp seal with which the notary shall
4 authenticate his official acts. The rubber stamp seal shall
5 contain the following information:

6 (a) the words "Official Seal";

7 (b) the notary's official name;

8 (c) the words "Notary Public", or "Real Estate Notary
9 Public" for notaries commissioned to notarize real property
10 documents as provided for in Section 3-110 of this Act, "State
11 of Illinois", and "My commission
12 expires_____ (commission expiration date)"; and

13 (d) a serrated or milled edge border in a rectangular form
14 not more than one inch in height by two and one-half inches in
15 length surrounding the information.

16 (Source: P.A. 84-322.)

17 (5 ILCS 312/3-104) (from Ch. 102, par. 203-104)

18 Sec. 3-104. Maximum Fee.

19 (a) Except as provided in subsections ~~subsection~~ (b) and
20 (e) of this Section, the maximum fee in this State is \$1.00 for
21 any notarial act performed.

22 (b) Fees for a notary public, agency, or any other person
23 who is not an attorney or an accredited representative filling
24 out immigration forms shall be limited to the following:

25 (1) \$10 per form completion;

26 (2) \$10 per page for the translation of a non-English
27 language into English where such translation is required
28 for immigration forms;

29 (3) \$1 for notarizing;

30 (4) \$3 to execute any procedures necessary to obtain a
31 document required to complete immigration forms; and

32 (5) A maximum of \$75 for one complete application.

33 Fees authorized under this subsection shall not include
34 application fees required to be submitted with immigration
35 applications.

1 Any person who violates the provisions of this subsection
2 shall be guilty of a Class A misdemeanor for a first offense
3 and a Class 3 felony for a second or subsequent offense
4 committed within 5 years of a previous conviction for the same
5 offense.

6 (c) Upon his own information or upon complaint of any
7 person, the Attorney General or any State's Attorney, or their
8 designee, may maintain an action for injunctive relief in the
9 court against any notary public or any other person who
10 violates the provisions of subsection (b) of this Section.
11 These remedies are in addition to, and not in substitution for,
12 other available remedies.

13 If the Attorney General or any State's Attorney fails to
14 bring an action as provided pursuant to this subsection within
15 90 days of receipt of a complaint, any person may file a civil
16 action to enforce the provisions of this subsection and
17 maintain an action for injunctive relief.

18 (d) All notaries public must provide receipts and keep
19 records for fees accepted for services provided. Failure to
20 provide receipts and keep records that can be presented as
21 evidence of no wrongdoing shall be construed as a presumptive
22 admission of allegations raised in complaints against the
23 notary for violations related to accepting prohibited fees.

24 (e) Fees for a real estate notary public for notarizing
25 real property documents as provided for in Section 3-110 of
26 this Act shall be limited to \$20 for the first notarial act and
27 \$1 for each additional notarial act that is part of the same
28 real estate transaction.

29 (Source: P.A. 93-1001, eff. 8-23-04.)

30 (5 ILCS 312/3-110 new)

31 Sec. 3-110. Real property documents.

32 (a) As to the notarization of documents affecting real
33 property, including but not limited to deeds, liens, or
34 mortgages, a notary public shall keep one active sequential
35 journal at a time of all official acts performed as a notary

1 public. The journal shall be kept in a locked and secured area,
2 under the direct and exclusive control of the notary.
3 Assignments and releases of interest in property are not
4 subject to the provisions of this Section.

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

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

9 (2) Character of the instrument acknowledged or proved
10 before the notary.

11 (3) The signature of each person whose signature is
12 being notarized.

13 (4) A statement as to whether the identity of a person
14 making an acknowledgment was based on personal knowledge or
15 satisfactory evidence. If identity was established by
16 satisfactory evidence pursuant to Section 6-102 (5 ILCS
17 312/6-102), then the journal shall contain the signature of
18 the credible witness swearing to or affirming the identity
19 of the individual or the type of identifying document, the
20 governmental agency issuing the document, the serial or
21 identifying number of the document, and the date of issue
22 or expiration of the document.

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

27 (6) If the identity of the person making the
28 acknowledgment was established by the oaths or
29 affirmations of 2 credible witnesses whose identities are
30 proven upon the presentation of satisfactory evidence, the
31 type of identifying documents, the identifying numbers of
32 the documents, and the dates of issuance or expiration of
33 the documents presented by the witnesses to establish their
34 identity.

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

36 (8) The right thumbprint of the party signing the

1 document. If the right thumbprint is not available, then
2 the notary shall have the party use his or her left thumb,
3 or any available finger, and shall so indicate in the
4 journal. If the party signing the document is physically
5 unable to provide a thumbprint or fingerprint, the notary
6 shall so indicate in the journal and shall also provide an
7 explanation of that physical condition. This paragraph
8 shall not apply to a trustee's deed resulting from a decree
9 of foreclosure or a non-judicial foreclosure pursuant to
10 the Code of Civil Procedure beginning at Section 15-1101
11 (735 ILCS 5/15-1101 et seq.) or to a deed of reconveyance.

12 (c) If the journal of official acts performed by a notary
13 public is stolen, lost, misplaced, destroyed, damaged, or
14 otherwise rendered unusable as a record of notarial acts and
15 information, the notary public shall notify the Secretary of
16 State by certified or registered mail within 5 business days of
17 discovering the journal is stolen, lost, misplaced, destroyed,
18 damaged, or otherwise rendered unusable as a record of notarial
19 acts and information. The notification shall include the period
20 of the journal entries, the notary public commission number,
21 the expiration date of the commission, and, when applicable, a
22 photocopy of any police report that specifies the theft of the
23 sequential journal of official acts.

24 (d) Upon written request of any member of the public, which
25 request shall include the name of the parties, the type of
26 document, and the month and year in which notarized, the notary
27 shall supply a photostatic copy of the line item representing
28 the requested transaction at a cost of not more than 30 cents
29 per page.

30 (e) The journal of notarial acts of a notary public is the
31 exclusive property of that notary public and shall not be
32 surrendered to an employer upon termination of employment,
33 whether or not the employer paid for the journal, or at any
34 other time. The notary public shall not surrender the journal
35 to any other person except a peace officer, as defined in
36 Section 2-13 of the Criminal Code of 1961 (720 ILCS 5/2-13),

1 acting in his or her official capacity and within his or her
2 authority, in response to a criminal search warrant signed by a
3 judge or to a grand jury subpoena or subpoena duces tecum and
4 served upon the notary public by the peace officer. The notary
5 public shall obtain a receipt for the journal and shall notify
6 the Secretary of State by certified mail within 10 days that
7 the journal was relinquished to a peace officer. The
8 notification shall include the period of the journal entries,
9 the commission number of the notary public, the expiration date
10 of the commission, and a photocopy of the receipt. The notary
11 public shall obtain a new sequential journal. If the journal
12 relinquished to a peace officer is returned to the notary
13 public and a new journal has been obtained, the notary public
14 shall make no new entries in the returned journal. A notary
15 public who is an employee shall permit inspection and copying
16 of journal transactions by a duly designated auditor or agent
17 of the notary public's employer, provided that the inspection
18 and copying are done in the presence of the notary public and
19 the transactions are directly associated with the business
20 purposes of the employer. The notary public, upon the request
21 of the employer, shall regularly provide copies of all
22 transactions that are directly associated with the business
23 purposes of the employer but shall not be required to provide
24 copies of any transaction that is unrelated to the employer's
25 business. Confidentiality and safekeeping of any copies of the
26 journal provided to the employer shall be the responsibility of
27 that employer.

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

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

35 (1) For the first violation of any provision concerning
36 the securing of the journal or notification as set forth in

1 this Section, the notary shall be fined not less than \$500
2 and not more than \$1,500 by the Secretary of State.

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

9 (5 ILCS 312/7-105) (from Ch. 102, par. 207-105)

10 Sec. 7-105. Official Misconduct. (a) A notary public who
11 knowingly and willfully commits any official misconduct is
12 guilty of a Class A misdemeanor; provided that a notary public
13 who knowingly and willfully commits any official misconduct in
14 connection with a notarial act involving a document of
15 conveyance or encumbrance affecting real estate is guilty of a
16 Class 2 felony.

17 (b) A notary public who recklessly or negligently commits
18 any official misconduct is guilty of a Class A ~~B~~ misdemeanor.

19 (Source: P.A. 84-322.)

20 (5 ILCS 312/7-106) (from Ch. 102, par. 207-106)

21 Sec. 7-106. Willful Impersonation. Any person who acts as,
22 or otherwise willfully impersonates, a notary public while not
23 lawfully appointed and commissioned to perform notarial acts is
24 guilty of a Class 1 felony ~~A misdemeanor~~.

25 (Source: P.A. 84-322.)

26 (5 ILCS 312/7-107) (from Ch. 102, par. 207-107)

27 Sec. 7-107. Wrongful Possession. Any person who unlawfully
28 possesses a notary's official seal is guilty of a Class 2
29 felony ~~misdemeanor and punishable upon conviction by a fine not~~
30 ~~exceeding \$1,000.~~

31 (Source: P.A. 84-322.)

32 Section 10. The Conveyances Act is amended by changing

1 Section 20 as follows:

2 (765 ILCS 5/20) (from Ch. 30, par. 19)

3 Sec. 20. Deeds, mortgages, conveyances, releases, powers
4 of attorney or other writings of or relating to the sale,
5 conveyance or other disposition of real estate or any interest
6 therein whereby the rights of any person may be affected, shall
7 ~~may~~ be acknowledged or proven before some one of the following
8 courts or officers, namely:

9 1. When acknowledged or proven within this State, before a
10 notary public, United States commissioner, county clerk, or any
11 court or any judge, clerk or deputy clerk of such court. When
12 taken before a notary public or United States commissioner, the
13 same shall be attested by his official seal; when taken before
14 a court or the clerk thereof, or a deputy clerk thereof, the
15 same shall be attested by the seal of such court.

16 2. When acknowledged or proved outside of this State and
17 within the United States or any of its territories or
18 dependencies or the District of Columbia, before a justice of
19 the peace, notary public in substantial compliance with the
20 Illinois Notary Public Act, master in chancery, United States
21 commissioner, commissioner to take acknowledgments of deeds,
22 mayor of city, clerk of a county, or before any judge, justice,
23 clerk or deputy clerk of the supreme, circuit or district court
24 of the United States, or before any judge, justice, clerk or
25 deputy clerk, prothonotary, surrogate, or registrar of the
26 supreme, circuit, superior, district, county, common pleas,
27 probate, orphan's or surrogate's court of any of the states,
28 territories or dependencies of the United States. In any
29 dependency of the United States such acknowledgment or proof
30 may also be taken or made before any commissioned officer in
31 the military service of the United States. When such
32 acknowledgment or proof is made before a notary public, United
33 States commissioner or commissioner of deeds, it shall be
34 certified under his seal of office. If taken before a mayor of
35 a city it shall be certified under the seal of the city; if

1 before a clerk, deputy clerk, prothonotary, registrar or
2 surrogate, then under the seal of his court; if before a
3 justice of the peace or a master in chancery there shall be
4 added a certificate of the proper clerk under the seal of his
5 office setting forth that the person before whom such proof or
6 acknowledgment was made was a justice of the peace or master in
7 chancery at the time of taking such acknowledgment or proof. As
8 acknowledgment or proof of execution of any instrument above
9 stated, may be made in conformity with the laws of the State,
10 territory, dependency or district where it is made. If any
11 clerk of any court of record within such state, territory,
12 dependency or district shall, under his signature and the seal
13 of such court, certify that such acknowledgment or proof was
14 made in conformity with the laws of such state, territory,
15 dependency or district, or it shall so appear by the laws of
16 such state, territory, dependency or district such instrument
17 or a duly proved or certified copy of the record of such deed,
18 mortgage or other instrument relating to real estate heretofore
19 or hereafter made and recorded in the proper county may be
20 admitted in evidence as in other cases involving the admission
21 of evidence of certified copies.

22 3. When acknowledged or proven outside of the United States
23 before any court of any republic, dominion, state, kingdom,
24 empire, colony, territory, or dependency having a seal, or
25 before any judge, justice or clerk thereof or before any mayor
26 or chief officer of any city or town having a seal, or before a
27 notary public or commissioner of deeds, or any ambassador,
28 minister or secretary of legation or consul of the United
29 States or vice consul, deputy consul, commercial agent or
30 consular agent of the United States in any foreign republic,
31 dominion, state, kingdom, empire, colony, territory or
32 dependency attested by his official seal or before any officer
33 authorized by the laws of the place where such acknowledgment
34 or proof is made to take acknowledgments of conveyances of real
35 estate or to administer oaths in proof of the execution of
36 conveyances of real estate. Such acknowledgments are to be

1 attested by the official seal, if any, of such court or
2 officer, and in case such acknowledgment or proof is taken or
3 made before a court or officer having no official seal, a
4 certificate shall be added by an ambassador, minister,
5 secretary of legation, consul, vice consul, deputy consul,
6 commercial agent or consular agent of the United States
7 residing in such republic, dominion, state, kingdom, empire,
8 colony, territory, or dependency under his official seal,
9 showing that such court or officer was duly elected, appointed
10 or created and acting at the time such acknowledgment or proof
11 was made.

12 4. Any person serving in or with the armed forces of the
13 United States, within or outside of the United States, and the
14 spouse or former spouse of any such person, may acknowledge the
15 instruments wherever located before any commissioned officer
16 in active service of the armed forces of the United States with
17 the rank of Second Lieutenant or higher in the Army, Air Force
18 or Marine Corps, or Ensign or higher in the Navy or United
19 States Coast Guard. The instrument shall not be rendered
20 invalid by the failure to state therein the place of execution
21 or acknowledgment. No authentication of the officer's
22 certificate of acknowledgment shall be required and such
23 certificate need not be attested by any seal but the officer
24 taking the acknowledgment shall indorse thereon or attach
25 thereto a certificate substantially in the following form:

26 On (insert date), the undersigned officer, personally
27 appeared before me, known to me (or satisfactorily proven) to
28 be serving in or with the armed forces of the United States
29 (and/or the spouse or former spouse of a person so serving) and
30 to be the person whose name is subscribed to the instrument and
31 acknowledged that he executed the same as free
32 and voluntary act for the purposes therein contained, and the
33 undersigned further certifies that he is at the date of this
34 certificate a commissioned officer of the rank stated below and
35 is in the active service of the armed forces of the United
36 States.

1
 2 Signature of Officer
 3
 4 Rank of Officer and Command to
 5 which attached.

6 5. All deeds or other instruments or copies of the record
 7 thereof duly certified or proven which have been acknowledged
 8 or proven prior to August 30, 1963, before either of the courts
 9 or officers mentioned in this Act and in the manner herein
 10 provided, shall be deemed to be good and effectual in law and
 11 the same may be introduced in evidence without further proof of
 12 their execution, with the same effect as if this amendatory Act
 13 of 1963 had been in force at the date of such acknowledgment or
 14 proof.

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