

# HB3041



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB3041**

Introduced 2/23/2011, by Rep. Chris Nybo

#### SYNOPSIS AS INTRODUCED:

5 ILCS 312/3-102

from Ch. 102, par. 203-102

Amends the Illinois Notary Public Act. Changes the definition of the term "financial institution" to include trust companies.

LRB097 08966 JDS 49099 b

A BILL FOR

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 Section 3-102 as follows:

6 (5 ILCS 312/3-102) (from Ch. 102, par. 203-102)

7 Sec. 3-102. Notarial Record; Residential Real Property  
8 Transactions.

9 (a) This Section shall apply to every notarial act in  
10 Illinois involving a document of conveyance that transfers or  
11 purports to transfer title to residential real property located  
12 in Cook County.

13 (b) As used in this Section, the following terms shall have  
14 the meanings ascribed to them:

15 (1) "Document of Conveyance" shall mean a written  
16 instrument that transfers or purports to transfer title  
17 effecting a change in ownership to Residential Real  
18 Property, excluding:

19 (i) court-ordered and court-authorized conveyances  
20 of Residential Real Property, including without  
21 limitation, quit-claim deeds executed pursuant to a  
22 marital settlement agreement incorporated into a  
23 judgment of dissolution of marriage, and transfers in

1 the administration of a probate estate;

2 (ii) judicial sale deeds relating to Residential  
3 Real Property, including without limitation, sale  
4 deeds issued pursuant to proceedings to foreclose a  
5 mortgage or execute on a levy to enforce a judgment;

6 (iii) deeds transferring ownership of Residential  
7 Real Property to a trust where the beneficiary is also  
8 the grantor;

9 (iv) deeds from grantors to themselves that are  
10 intended to change the nature or type of tenancy by  
11 which they own Residential Real Property;

12 (v) deeds from a grantor to the grantor and another  
13 natural person that are intended to establish a tenancy  
14 by which the grantor and the other natural person own  
15 Residential Real Property;

16 (vi) deeds executed to the mortgagee in lieu of  
17 foreclosure of a mortgage; and

18 (vii) deeds transferring ownership to a revocable  
19 or irrevocable grantor trust where the beneficiary  
20 includes the grantor.

21 (2) "Financial Institution" shall mean a State or  
22 federally chartered bank, savings and loan association,  
23 savings bank, ~~or~~ credit union, or trust company.

24 (3) "Notarial Record" shall mean the written document  
25 created in conformity with this Section by a notary in  
26 connection with Documents of Conveyance.

1           (4) "Residential Real Property" shall mean a building  
2           or buildings located in Cook County, Illinois and  
3           containing one to 4 dwelling units or an individual  
4           residential condominium unit.

5           (5) "Title Insurance Agent" shall have the meaning  
6           ascribed to it under the Title Insurance Act.

7           (6) "Title Insurance Company" shall have the meaning  
8           ascribed to it under the Title Insurance Act.

9           (c) A notary appointed and commissioned as a notary in  
10          Illinois shall, in addition to compliance with other provisions  
11          of this Act, create a Notarial Record of each notarial act  
12          performed in connection with a Document of Conveyance. The  
13          Notarial Record shall contain:

14                 (1) The date of the notarial act;

15                 (2) The type, title, or a description of the Document  
16          of Conveyance being notarized, and the property index  
17          number ("PIN") used to identify the Residential Real  
18          Property for assessment or taxation purposes and the common  
19          street address for the Residential Real Property that is  
20          the subject of the Document of Conveyance;

21                 (3) The signature, printed name, and residence street  
22          address of each person whose signature is the subject of  
23          the notarial act and a certification by the person that the  
24          property is Residential Real Property as defined in this  
25          Section, which states "The undersigned grantor hereby  
26          certifies that the real property identified in this

1 Notarial Record is Residential Real Property as defined in  
2 the Illinois Notary Public Act".

3 (4) A description of the satisfactory evidence  
4 reviewed by the notary to determine the identity of the  
5 person whose signature is the subject of the notarial act;

6 (5) The date of notarization, the fee charged for the  
7 notarial act, the Notary's home or business phone number,  
8 the Notary's residence street address, the Notary's  
9 commission expiration date, the correct legal name of the  
10 Notary's employer or principal, and the business street  
11 address of the Notary's employer or principal; and

12 (6) The notary public shall require the person signing  
13 the Document of Conveyance (including an agent acting on  
14 behalf of a principal under a duly executed power of  
15 attorney), whose signature is the subject of the notarial  
16 act, to place his or her right thumbprint on the Notarial  
17 Record. If the right thumbprint is not available, then the  
18 notary shall have the party use his or her left thumb, or  
19 any available finger, and shall so indicate on the Notarial  
20 Record. If the party signing the document is physically  
21 unable to provide a thumbprint or fingerprint, the notary  
22 shall so indicate on the Notarial Record and shall also  
23 provide an explanation of that physical condition. The  
24 notary may obtain the thumbprint by any means that reliably  
25 captures the image of the finger in a physical or  
26 electronic medium.

1           (d) If a notarial act under this Section is performed by a  
2 notary who is a principal, employee, or agent of a Title  
3 Insurance Company, Title Insurance Agent, Financial  
4 Institution, or attorney at law, the notary shall deliver the  
5 original Notarial Record to the notary's employer or principal  
6 within 14 days after the performance of the notarial act for  
7 retention for a period of 7 years as part of the employer's or  
8 principal's business records. In the event of a sale or merger  
9 of any of the foregoing entities or persons, the successor or  
10 assignee of the entity or person shall assume the  
11 responsibility to maintain the Notarial Record for the balance  
12 of the 7-year business records retention period. Liquidation or  
13 other cessation of activities in the ordinary course of  
14 business by any of the foregoing entities or persons shall  
15 relieve the entity or person from the obligation to maintain  
16 Notarial Records after delivery of Notarial Records to the  
17 Recorder of Deeds of Cook County, Illinois.

18           (e) If a notarial act is performed by a notary who is not a  
19 principal, employee, or agent of a Title Insurance Company,  
20 Title Insurance Agent, Financial Institution, or attorney at  
21 law, the notary shall deliver the original Notarial Record  
22 within 14 days after the performance of the notarial act to the  
23 Recorder of Deeds of Cook County, Illinois for retention for a  
24 period of 7 years, accompanied by a filing fee of \$5.

25           (f) The Notarial Record required under subsection (c) of  
26 this Section shall be created and maintained for each person

1 whose signature is the subject of a notarial act regarding a  
2 Document of Conveyance and shall be in substantially the  
3 following form:

4 **NOTARIAL RECORD - RESIDENTIAL REAL PROPERTY TRANSACTIONS**

5 Date Notarized:

6 Fee: \$

7 The undersigned grantor hereby certifies that the real property  
8 identified in this Notarial Record is Residential Real Property  
9 as defined in the Illinois Notary Public Act.

10 Grantor's (Signer's) Printed Name:

11 Grantor's (Signer's) Signature:

12 Grantor's (Signer's) Residential Street Address, City, State,  
13 and Zip:

14 Type or Name of Document of Conveyance:

15 PIN No. of Residential Real Property:

16 Common Street Address of Residential Real Property:

17 Thumbprint or Fingerprint:

1 Description of Means of Identification:

2 Additional Comments:

3 Name of Notary Printed:

4 Notary Phone Number:

5 Commission Expiration Date:

6 Residential Street Address of Notary, City, State, and Zip:

7 Name of Notary's Employer or Principal:

8 Business Street Address of Notary's Employer or Principal,  
9 City, State, and Zip:

10 (g) No copies of the original Notarial Record may be made  
11 or retained by the Notary. The Notary's employer or principal  
12 may retain copies of the Notarial Records as part of its  
13 business records, subject to applicable privacy and  
14 confidentiality standards.

15 (h) The failure of a notary to comply with the procedure  
16 set forth in this Section shall not affect the validity of the  
17 Residential Real Property transaction in connection to which



1 the Document of Conveyance is executed, in the absence of  
2 fraud.

3 (i) The Notarial Record or other medium containing the  
4 thumbprint or fingerprint required by subsection (c)(6) shall  
5 be made available or disclosed only upon receipt of a subpoena  
6 duly authorized by a court of competent jurisdiction. Such  
7 Notarial Record or other medium shall not be subject to  
8 disclosure under the Freedom of Information Act and shall not  
9 be made available to any other party, other than a party in  
10 succession of interest to the party maintaining the Notarial  
11 Record or other medium pursuant to subsection (d) or (e).

12 (j) In the event there is a breach in the security of a  
13 Notarial Record maintained pursuant to subsections (d) and (e)  
14 by the Recorder of Deeds of Cook County, Illinois, the Recorder  
15 shall notify the person identified as the "signer" in the  
16 Notarial Record at the signer's residential street address set  
17 forth in the Notarial Record. "Breach" shall mean unauthorized  
18 acquisition of the fingerprint data contained in the Notarial  
19 Record that compromises the security, confidentiality, or  
20 integrity of the fingerprint data maintained by the Recorder.  
21 The notification shall be in writing and made in the most  
22 expedient time possible and without unreasonable delay,  
23 consistent with any measures necessary to determine the scope  
24 of the breach and restore the reasonable security,  
25 confidentiality, and integrity of the Recorder's data system.

26 (k) Subsections (a) through (i) shall not apply on and

1 after July 1, 2013.

2 (1) Beginning July 1, 2013, at the time of notarization, a  
3 notary public shall officially sign every notary certificate  
4 and affix the rubber stamp seal clearly and legibly using black  
5 ink, so that it is capable of photographic reproduction. The  
6 illegibility of any of the information required by this Section  
7 does not affect the validity of a transaction.

8 (Source: P.A. 95-988, eff. 6-1-09.)