

NOTARY PUBLIC - NEW RECORD REQUIREMENT

P.A. 95-0988
Effective: 6-1-09
(S.B. 546)

The Illinois Notary Public Act was amended in response to fraudulent real estate transactions occurring in Cook County. New record-keeping requirements will apply to notarial acts performed in Illinois involving documents of conveyance that transfer title to Cook County residential real property.

Terminology

The following terminology has the following meanings for purposes of the amendments to the Notary Public Act.

Notarial Record. This is the written document created in accordance with the new record-keeping requirements.

Documents of Conveyance. References to "documents of conveyance" means written instruments that effect a change in ownership of residential real property. The new requirements do not apply, however, whenever the documents of conveyance are:

(i) court-ordered and court-authorized conveyances of residential real property; for example:

- quit-claim deeds executed pursuant to a marital settlement agreement incorporated into a judgment of dissolution of marriage; and

- transfers in the administration of a probate estate;
- (ii) judicial sale deeds relating to residential real property; for example:
- sale deeds issued pursuant to proceedings to foreclose a mortgage or execute on a levy to enforce a judgment;
- (iii) deeds transferring ownership of residential real property to a trust where the beneficiary is also the grantor;
- (iv) deeds from grantors to themselves that are intended to change the nature or type of tenancy by which they own residential real property;
- (v) deeds from a grantor to the grantor and another natural person that are intended to establish a tenancy by which the grantor and the other natural person own residential real property;
- (vi) deeds executed to the lender in lieu of foreclosure of a mortgage; and
- (vii) deeds transferring ownership to a revocable or irrevocable grantor trust where the beneficiary includes the grantor.

Residential Real Property. "Residential real property" means buildings located in Cook County containing one-to-4 dwelling units, or an individual residential condominium unit.

New Notarial Record

As of June 1, 2009 -- in addition to complying with other requirements applicable to notaries -- notaries commissioned in Illinois will be required to create a written record of each notarial act performed in connection with a document of conveyance involving Cook County residential real property.

The Notarial Record must contain:

(1) The date of the notarial act;

(2) The type, title, or a description of the document of conveyance being notarized, and the property index number ("PIN") used to identify the property for assessment or taxation purposes and the common street address for the property that is the subject of the document of conveyance;

(3) The signature, printed name, and residence street address of each person whose signature is the subject of the notarial act and a certification by the person that the property is Cook County residential real property, which states;

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

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

A notary has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(1) is personally known to the notary;

(2) is identified upon the oath or affirmation of a credible witness personally known to the notary;
or

(3) is identified on the basis of identification documents.

"Identification documents" are documents that are valid at the time of the notarial act, issued by a state or federal government agency, and bearing the photographic image of the individual's face and the signature of the individual.

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

(6) The notary public must require the person signing the document of conveyance (including an agent acting on behalf of a principal under a power of attorney), whose signature is the subject of the notarial act, to place his or her right thumbprint on the Notarial Record.

If the right thumbprint is not available, then the notary is to have the party use his or her left thumb, or any available finger, and must indicate that on the Notarial Record.

If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary is to indicate that on the Notarial Record and must also provide an explanation of that physical condition.

The notary may obtain the thumbprint by any means that reliably captures the image of the finger in a physical or electronic medium.

Model Form of Notarial Record

A Notarial Record must be created and maintained for each person whose signature is the subject of a notarial act regarding a Document of conveyance involving Cook County residential real property.

The record must be in substantially the following form:

NOTARIAL RECORD -- RESIDENTIAL REAL PROPERTY TRANSACTIONS

Date Notarized:

Fee: \$

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

Grantor's (Signer's) Printed Name:

Grantor's (Signer's) Signature:

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

Type or Name of Document of Conveyance:

PIN No. of Residential Real Property:

Common Street Address of Residential Real Property:

Thumbprint or Fingerprint:

Description of Means of Identification:

Additional Comments:

Name of Notary Printed:

Notary Phone Number:

Commission Expiration Date:

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

Name of Notary's Employer or Principal:

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

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

Maintenance of the Notarial Record

Notaries employed by or acting for financial institutions, title insurance companies/agencies, and law firms

If the Notarial Record is created by a notary who is a principal, employee, or agent of a Title Insurance Company, Title Insurance Agent, Financial Institution, or attorney: the notary must deliver the original Notarial Record to the notary's employer or principal within 14 days after the performance of the notarial act.

References in the amendment to "financial institutions" means State or federally-chartered banks, savings and loan associations, savings banks, and credit unions.

Responsibilities of financial institutions, title insurance companies/agencies, and law firms receiving Notarial Records

The Notarial Record delivered to the employer must be retained for a period of 7 years as part of the employer's or principal's business records.

In the event of a sale or merger of any of these entities, the successor or assignee of the entity must assume the responsibility to maintain the Notarial Record for the balance of the 7-year business records retention period.

In the event of liquidation or other cessation of business by any of these entities, the obligation to maintain Notarial Records will cease, upon delivery of Notarial Records to the Cook County Recorder of Deeds.

Responsibilities of notaries not employed by or acting for financial institutions, title insurance companies/agencies, and law firms

The notary must deliver the original Notarial Record to the Cook County Recorder of Deeds within 14 days after the performance of the notarial act, for retention for a period

of 7 years. The notary will also be required to pay a \$5 filing fee.

Duplication or Disclosure Prohibitions

No copies of the original Notarial Record may be made or retained by the notary.

The Notarial Record or other medium will not be subject to disclosure under the Freedom of Information Act. The thumbprint disclosure is statutorily considered an unwarranted invasion of personal privacy, unless the individual consents to the disclosure in writing.

The Notarial Record or other medium containing the thumbprint or fingerprint may be made available or disclosed only upon receipt of a judicial subpoena.

No other party (other than a party in succession of interest to the party maintaining the Notarial Record) has access to the Notarial Record.

Fee

The maximum fee that can be charged for a notarial act involving the Notarial Record is \$25.00.

As in other situations, notaries must provide receipts and keep records for fees accepted for services provided.

Security Breach in Office of Recorder of Deeds

In the event of a breach in the security of a Notarial Record maintained by the Cook County Recorder of Deeds, the Recorder must notify the person identified as the "signer" in the Notarial Record, at the signer's residential street address in the Notarial Record.

"Breach" means unauthorized acquisition of the fingerprint data contained in the Notarial Record that compromises the security, confidentiality, or integrity of the fingerprint data maintained by the Recorder.

The notification must be in writing and made in the most expedient time possible and without unreasonable delay, consistent with any measures necessary to determine the scope of the breach and restore the reasonable security, confidentiality, and integrity of the Recorder's data system.

Effect of Failure to Comply with the Notarial Record Requirements

The failure of a notary to comply with the Notarial Record procedures will not affect the validity of the residential real property transaction in which the document of conveyance is executed, in the absence of fraud.

Effective Until June 30, 2013

With the exception of the provision regarding security breaches in the Cook County Recorder's office, the above record-keeping requirements are in effect only through June 30, 2013.

AMENDMENTS TO AMERICANS WITH DISABILITY ACT

The Americans with Disabilities Act ("ADA"), originally passed in 1990, removes everyday obstacles faced by individuals with physical and mental challenges. The ADA applies to credit unions with fifteen (15) or more employees and prohibits discriminating against those with disabilities when making any employment-related decisions (such as hiring, firing, promotions).