

# Informational Legal Memo



TO: Indiana Public Libraries  
FROM: Indiana State Library  
RE: Indiana Notaries  
DATE: September 29, 2017

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Senate Enrolled Act 539 made a significant number of changes to the Indiana notary laws. This memo will cover the law changes that impact Indiana notaries who work at libraries.

**Please note that nearly all of these changes take effect July 1, 2018!!**

The following **existing chapters** of the law about notaries **will be repealed effective July 1, 2018**:

- IC 33-42-1 – Jurisdiction (notaries currently have jurisdiction throughout Indiana)
- IC 33-42-2 – Qualifications, Powers, Duties
- IC 33-42-3 – Requirement of Adding Commission Expiration Date to Notarized Documents.
- IC 33-42-4 – Administering Oaths and Taking Acknowledgments
- IC 33-42-8 – Maximum Fees (currently limited to \$2 per notarial act)
- IC 35-52-33-5 – Defines a crime concerning notaries public fraudulent misrepresentation/advertising leading others to believe they are an attorney (However, this is added back in elsewhere in the law.)
- IC 35-52-33-6 – Defines a crime concerning notaries public where the notary affixes a person's signature to a blank form or affidavit or certificate of acknowledgement and delivers that form to another person with the intent that it be used as an affidavit or acknowledgment (However, this is added back in elsewhere in the law.)
- IC 35-52-33-7 – Defines a crime concerning notaries public and the fraudulent use of forms created in violation of IC 35-52-33-6 above.

So what exactly will be left of existing Notary Public laws after July 1, 2018?

- IC 33-42-5 – Authorizing Township Trustees to perform any act a notary may perform.
- IC 33-42-6 - Authorizing managers, officers, and employees of federal land bank associations located in Indiana to become and act as a notaries.
- IC 33-42-7 – Allowing notaries who are stockholders or officers of a cemetery association whose rules prohibit an officer or stockholder from becoming a beneficiary from the sale of lots by the cemetery association to take acknowledgements of sales of lots.

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The following are **new chapters** that would be applicable to library notaries **effective July 1, 2018**:

- IC 33-42-0.5 - Definitions
- IC 33-42-9 – Notarial Acts
- IC 33-42-10 – Official Seals and Stamping Devices
- IC 33-42-12 – Commission Requirements and Qualifications
- IC 33-42-13 – Notary Discipline
- IC 33-42-14 - Notary Fees
- IC 33-42-16 – Miscellaneous Provisions

So what exactly are the new rules and requirements? Keep reading!!! ☺

## Definitions

There is a definitions chapter ([IC 33-42-0.5](#)) that defines terms such as what taking an acknowledgement means as well as defining notarial officer, notary public, what actions are considered notarial acts, and more.

## Notarial Acts

There is a Notarial Acts chapter ([IC 33-42-9](#)) which sets forth the notarial acts a notary may take. Under existing law, notaries can administer oaths and acknowledgements, take and certify affidavits and depositions, and “do all acts that by common law, and the custom of merchants, notaries are authorized to do.” Under the new law, notaries can:

- take an acknowledgement;
- administer an oath or affirmation;
- take a verification on an oath or affirmation;
- attest to or witness a signature;
- attest or certify a copy;
- note a protest of a negotiable instrument; and
- do any additional act authorized by common law or the custom of merchants.

## Establishing Identity

Notaries are required to determine from personal knowledge or satisfactory evidence, that the person appearing before the notary has the identity claimed and that the signature on the record is the signature of the individual.

A person may use the following to establish identity in the event the person is not personally known to the notary:

- passport
- driver’s license
- government issued ID card
- other government issued credential that contains a photograph of the individual

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The above credentials may be used to establish identity for notarial purposes for up to 3 years after the credential has expired.

In the event the person is not personally known to the notary, identity may alternatively be established by a verification on an oath or affirmation by a credible witness who personally appears before the notary and is personally known by the notary or is identified to the notary by one of the credentials listed above.

A notary may require additional information or identification before performing a notarial act.

A notary may also refuse to perform a notarial act if the notary is not satisfied that the individual executing the record is competent or that the individual's execution of the record is being done knowingly or voluntarily.

## **Signing for the Principal**

A principal (person whose signature the notary is notarizing) may appoint or direct another individual to sign a record if the principal is physically unable to sign the record personally.

If a principal uses an appointed or designated signatory on a record, the notary shall note the principal's use of an appointed or designated signatory on the record by:

- clearly labeling the appointee or designee's signature;
- clearly labeling the name of the principal; and
- including or using language that conveys the principal's intent to use an assigned or designated signatory.

## **Authenticating a Notarial Act**

This section is pretty similar to current practice. A notarial act must be authenticated by a certificate bearing the date of the notarial act and the signature of the notary. A properly completed certificate contains the following:

- the certificate is completed at the same time as the performance of the notarial act;
- the certificate is signed and dated by the notary in the manner on file with the secretary of state.
- the certificate identifies the jurisdiction (county) in which the notarial act is performed;
- the certificate displays the notary's title;
- notary commission expiration date; and
- county of the notary's commission.

Additionally, the notary performing a notarial act shall:

- affix, display, or emboss the notary's official seal; and
- print or type the notary's name under the notary's signature on a certificate of acknowledgment, jurat, or other official record, unless the name of the notary appears in

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printed form on the record or appears as part of the notary's seal and is legible when the record is photocopied.

## **Official Seals and Stamping Devices ([IC 33-42-10](#))**

**Note, this chapter applies to a notary commissioned or recommissioned after December 31, 2017!**

**This is the only provision that takes effect prior to July 1, 2018.**

The official seal of a notary must include the following:

- the words, "notary public";
- the words, "State of Indiana";
- the word "seal";
- the name of the notary exactly as it appears on the notary's commission certificate;
- the words, "commission number" followed by the commission number of the notary;
- the words, "my commission expires" followed by the expiration date of the notary's commission.

The seal must be capable of being copied together with the record to which it is affixed. The seal may include any other information chosen by the notary to appear on the seal.

A notary public is responsible for the security of his/her stamping device used for notarial acts. The notary may not allow any other person to make use of the stamping device. Upon the expiration, resignation, or revocation of the notary's commission, the notary shall damage, deface, destroy, erase, or secure the stamping device in a manner that precludes any further use of the device. If a stamping device is lost or stolen, the notary shall promptly notify the Secretary of State's office upon learning of the loss or theft.

## **Commission Qualifications and Requirements ([IC 33-42-12](#))**

An applicant for commission as a notary (including an applicant reapplying for a subsequent commission) must

- still be at least 18 years old;
- be a citizen or permanent legal resident of the United States;
- be a resident of or primarily employed in Indiana;
- not be disqualified to receive a commission under IC 33-42-13 (notary discipline chapter);
- satisfy all educational requirements;
- have completed a course of education; and
- passed an examination administered by the Secretary of State

A notary must fulfill a continuing education requirement administered by the Secretary of State, not to exceed 2 hours of continuing education every 2 years.

Application to become a notary still takes place through the Secretary of State's office. An applicant applying for a commission or reapplying for a subsequent commission shall:

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- complete an electronic application and provide all necessary information required by the Secretary of State;
- pay a nonrefundable filing fee of \$5;
- execute an oath of office and comply with any associated requirements imposed by the Secretary of State;
- obtain an assurance (surety bond) in the amount of \$25,000 (previously, this amount was \$5,000);
- submit or have submitted by the surety on the applicant's behalf, an electronic copy of the assurance not later than 30 days after the effective date of the assurance; and
- submit an electronic signature sample to the Secretary of State;

A notary must notify the Secretary of State not later than 30 days after any change to any of the notary's following information:

- name;
- residential address;
- mailing address;
- personal electronic mail address;
- personal telephone number; or
- Employer's address, name, and phone number.

A notary shall file the following documents with the Secretary of State upon any change to the notary's name on file with the Secretary of State:

- a rider or other record issued by the notary's surety reflecting the change of name; and
- an example of the notary's new, official signature.

The commission of a notary who is no longer a citizen or resident of Indiana or primarily employed by the state of Indiana shall be treated as resigned.

A notary must notify the Secretary of State of the following circumstances not later than 14 days after they occur:

- the notary is convicted of a felony offense involving deceit, dishonest, or fraud;
- the notary is found to have acted deceitfully, dishonestly, or fraudulently in any disciplinary action or legal proceeding;
- the notary has a notary commission denied, restricted, or revoked in a state other than Indiana.

## **General Authority of Notary Public**

A notary commission still lasts for an 8 year period. The notary may only perform notarial acts during the period covered by a valid assurance on file with the Secretary of State. A notary commission still authorizes the notary to perform notarial acts only within the State of Indiana. The commission does not provide any immunity or benefit. A person may only have one active

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notary commission at any given time. A notary public commission is not a lucrative office for the purpose of Article 2, Section 9 of Indiana's Constitution.

## **Notary Discipline (IC 33-42-13)**

The Secretary of State may take any of the following actions with regard to a notary's commission.

The Secretary of State may:

- deny;
- refuse to renew;
- revoke;
- suspend; or
- impose a condition upon;

a commission.

Actions that may result in one or more sanctions:

- an act or omission that demonstrates a deficiency in competence, honesty, integrity, or reliability;
- failure to comply with the law or rules relating to notaries;
- any deceitful, dishonest, or fraudulent statement or omission made during the application for a commission;
- any conviction for a felony offense or a crime involving deceit, dishonesty, or fraud;
- adverse ruling or admission of liability in any legal proceeding pertaining to deceit, dishonesty, or fraud;
- failure to discharge a duty required of a notary;
- any use of false or misleading advertisements;
- use of any false or misleading statement claiming a right or privilege that the notary does not have;
- any denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state;
- any violation of a rule or requirement that is required by the Secretary of State;
- any failure to maintain an assurance (surety bond).

The Secretary of State may investigate any violation by a notary and may revoke the commission of a notary as well. If the Secretary of State denies, refuses to renew, revokes, suspends, or imposes a condition on an applicant or notary's commission, the affected party is entitled to timely notice and a hearing. A notary who has had his/her commission revoked must wait 5 years after the revocation before applying for another commission. If the notary is convicted of notario publico deception, the notary may not apply for a new commission.

## **What a Notary Commission Does Not Do; Prohibited Activities**

A Commission as a notary public does not allow a person to perform the following:

- provide legal advice or otherwise practice law;

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- act as an immigration consultant or provide advice on immigration matters;
- represent a person in an administrative or judicial proceeding related to citizenship or immigration;
- use an initial or name, other than the initial or name under which the notary public has been commissioned, to sign an acknowledgement;
- take an acknowledgement or administer an oath to any person the notary knows to be adjudicated mentally incompetent or under guardianship;
- take an acknowledgement from a blind person without first reading the record to the person who is blind;
- take the acknowledgment of any person who does not understand or speak the English language unless the nature and effect of the record is translated into a language the person speaks or understands;
- take the acknowledgement of a record without witnessing a signature or receiving an acknowledgement from the principal that the signature is authentic;
- take a verification of an affidavit or oath in the absence of an affirmation of truth by the affiant;
- perform a notarial act for oneself, one's spouse, or any party that may directly benefit oneself, one's spouse, or the party;

Additional prohibitions are as follows. The notary may not:

- engage in false or deceptive advertising;
- use the term "notario" or "notario publico", unless the person is licensed to practice law in Indiana;
- advertise or represent that the notary can draft legal documents, provide legal advice, or otherwise practice law, unless the person is licensed to practice law in Indiana;

Unless the notary is licensed in Indiana to practice law, any notary who advertises notarial services shall include the following statement in each advertisement: "I am not an attorney licensed to practice law in Indiana. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." This disclaimer shall be translated in every language used in the advertisement.

## **Miscellaneous Additional Authority of the Secretary of State**

The Secretary of State may adopt rules under IC 4-22-2 in order to implement the above requirements.

For more information about the notary changes, see [SEA 539](#).

Please direct any questions regarding the new requirements to the Secretary of State's Notary Department at: (317) 232-6531