

IC 33-42-2

Chapter 2. Qualifications, Powers, and Duties

IC 33-42-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 10 of this chapter by P.L.85-2007 apply only to crimes committed after June 30, 2007.

As added by P.L.220-2011, SEC.545.

IC 33-42-2-1

Qualifications; appointment; application; bond; fees

Sec. 1. (a) An applicant for a commission as a notary public must be:

- (1) at least eighteen (18) years of age; and
- (2) a legal resident of Indiana.

(b) A notary public shall be appointed and commissioned by the governor. A notary public holds office for eight (8) years. A notary public, when so qualified, may act throughout Indiana.

(c) A person may request an application to become a notary public from the secretary of state. The secretary of state shall prescribe a written application form on which a person may apply for a commission as a notary public. The secretary of state may provide an applicant with enhanced access (as defined in IC 5-14-3-2) to an application form that may be completed and submitted to the secretary of state by means of an electronic device. IC 4-5-10 applies to an application form provided by enhanced access under this section. The application form must include the applicant's county of residence, oath of office, and official bond. The application must also contain any additional information necessary for the efficient administration of this chapter.

(d) The applicant must:

- (1) personally appear with an application form before an officer, authorized by law to administer oaths, who shall administer an oath of office to the applicant; or
- (2) certify on an application form under penalty of perjury that the applicant will abide by the terms of the oath.

The secretary of state shall prescribe the manner in which an applicant may complete a certification authorized under subdivision (2).

(e) The applicant must secure an official bond, with freehold or corporate security, to be approved by the secretary of state in the sum of five thousand dollars (\$5,000). The official bond must be conditioned upon the faithful performance and discharge of the duties of the office of notary public, in all things according to law, for the use of any person injured by a breach of the condition. The completed application must be forwarded to the secretary of state. The secretary of state shall forward each commission issued by the governor to the applicant or the applicant's surety company.

(f) The secretary of state shall charge and collect the following fees:

- (1) For each commission to notaries public, five dollars (\$5).
- (2) For each duplicate commission to notaries public, five dollars (\$5).

As added by P.L.98-2004, SEC.21.

IC 33-42-2-2

Prohibited acts; violation; revocation; investigation

Sec. 2. (a) A notary public may not do any of the following:

- (1) Use any other name or initial in signing acknowledgments, other than that by which the notary has been commissioned.
- (2) Acknowledge any instrument in which the notary's name appears as a party to the transaction.
- (3) Take the acknowledgment of or administer an oath to any person whom the notary actually knows:
 - (A) has been adjudged mentally incompetent by a court; and
 - (B) to be under a guardianship under IC 29-3 at the time the notary takes the acknowledgment or administers the oath.
- (4) Take the acknowledgment of any person who is blind, without first reading the instrument to the blind person.
- (5) Take the acknowledgment of any person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does speak or understand.
- (6) Acknowledge the execution of:
 - (A) an affidavit, unless the affiant acknowledges the truth of the statements in the affidavit; or
 - (B) an instrument, unless the person who executed the instrument:
 - (i) signs the instrument before the notary; or
 - (ii) affirms to the notary that the signature on the instrument is the person's own.

(b) Except as provided in subsection (d), if a notary public violates this article, the notary's appointment may be revoked by the judge of a court with jurisdiction in the county in which the notary resides.

(c) The secretary of state may:

- (1) investigate any possible violation of this section or of section 10 of this chapter (notario publico deception) by a notary public; and
- (2) under IC 4-21.5, revoke the commission of a notary public who violates this section or section 10 of this chapter (notario publico deception).

If the secretary of state revokes the commission of a notary public, the notary public may not reapply for a new commission for five (5) years after the revocation. If a notary public has been convicted of notario publico deception (this chapter), the notary public may not reapply for a new commission.

(d) If a notary public is convicted of notario publico deception (this chapter), the judge of a court with jurisdiction in the county in which the notary resides shall permanently revoke the notary's

appointment.

As added by P.L.98-2004, SEC.21. Amended by P.L.85-2007, SEC.1.

IC 33-42-2-3

Appointment in public interest

Sec. 3. The governor may appoint notaries public in the several counties if, in the governor's judgment, the public interest would be promoted by the appointment.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-4

Seal; acts void if not attested by seal

Sec. 4. (a) A notary may not act until the notary has procured a seal that will stamp upon paper a distinct impression, in words or letters, sufficiently indicating the notary's official character, to which may be added any other device as the notary public may choose.

(b) All notarial acts not attested by a seal as described in subsection (a) are void.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-5

Powers of notary

Sec. 5. A notary may:

- (1) do all acts that by common law, and the custom of merchants, notaries are authorized to do;
- (2) take and certify all acknowledgments of deeds or other instruments of writing required or authorized by law to be acknowledged; and
- (3) administer oaths generally, and take and certify affidavits and depositions.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-6

Certificate with seal as presumptive evidence

Sec. 6. The official certificate of a notary public, attested by the notary's seal, is presumptive evidence of the facts stated in cases where, by law, the notary public is authorized to certify the facts.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-7

Prohibition on lucrative officeholders serving as notary; exception

Sec. 7. (a) A person who holds any lucrative office or appointment under the United States or under this state, and prohibited by the Constitution of the State of Indiana from holding more than one (1) lucrative office, may not serve as a notary public. If a person accepts a lucrative office or appointment, the person shall vacate the person's appointment as a notary.

(b) Subsection (a) does not apply to a person who holds a lucrative office or appointment under any civil or school city or town of Indiana. A person who is a public official, or a deputy or

appointee acting for or serving under a public official, may not make any charge for services as a notary public in connection with any official business of that office, or of any other office in the governmental unit in which the person serves unless the charges are specifically authorized by a statute other than the statute that establishes generally the fees and charges of notaries public.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-8

List of commissioned notaries; notice of change in notary's name or county; revised commission

Sec. 8. (a) Upon the request of the clerk of the circuit court of a county, the secretary of state shall furnish to the clerk a list of all commissioned notaries public residing in that county.

(b) If a notary public changes the notary's:

- (1) name; or
- (2) county of residence;

during the term of the notary's commission, the notary public shall notify the secretary of state in writing of the change.

(c) The secretary of state shall process a revised commission to reflect any change of name or county. A revised commission under this subsection is valid for the unexpired term of the original commission.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-9

Affixing printed name of notary on documents

Sec. 9. (a) A notary, in addition to affixing the notary's name, expiration date, and seal, shall:

(1) print or type the notary's name immediately beneath the notary's signature on a certificate of acknowledgment, jurat, or other official document, unless the notary's name appears:

- (A) in printed form on the document; or
- (B) as part of the notary's stamp in a form that is legible when the document is photocopied; and

(2) indicate the notary's county of residence on the document.

(b) Failure to comply with subsection (a) does not affect the validity of any document notarized before July 1, 1982.

As added by P.L.98-2004, SEC.21.

IC 33-42-2-10

Fraudulent advertising or misrepresentation

Sec. 10. (a) This section applies only to a person who is not an attorney in good standing admitted to practice law in Indiana.

(b) As used in this section, "advertise" means to make a communication to the public offering the person's services. The term includes a communication made in any medium, including a written medium, a broadcast medium, by means of the Internet, on a web site, or using any other form of electronic communication.

(c) As used in this section, "notary designation" means a

representation that a person is a notary public, including the use of the term:

- (1) notary public;
- (2) notario;
- (3) notario publico;

or any other term indicating in English or a language other than English that a person is a notary public.

(d) As used in this section, "notary disclosure" means a statement in English, and, if an advertisement requiring a notary disclosure is made in another language, the other language, stating:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN INDIANA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

If the notary disclosure is required to be made in a written advertisement, the notary disclosure must appear in a conspicuous size. If the notary disclosure is required to be made in an oral advertisement, the notary disclosure must be spoken at a normal speed and at a normal volume.

(e) A person who knowingly or intentionally:

(1) advertises using the notary designation without using the notary disclosure:

- (A) in the advertisement;
- (B) on the person's business card; and
- (C) on the person's letterhead;

(2) advertises or claims to be an expert on immigration matters without being a designated entity as defined under 8 CFR 245a.1(l); or

(3) accepts payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

commits notario publico deception, a Class A misdemeanor.

As added by P.L. 98-2004, SEC.21. Amended by P.L. 85-2007, SEC.2.