

CHAPTER 3 POWERS AND DUTIES

The purpose of this chapter is to mention, briefly, the powers and duties of county recorders, insofar as they apply to the actual transaction of the business of the office. Such powers and duties are statutory and, for the most part, are covered in detail in Chapter 8, Legal Guide.

It should be constantly kept in mind that the powers and duties of a county recorder are no more and no less than those expressly or impliedly given or imposed upon county recorders by law. You should familiarize yourself with the applicable laws prior to or immediately upon assuming the office and should proceed only in the manner and under authority of existing statutes.

As county recorder you should not assume any grant of power or authority under the color of the office which is not expressly granted by law. For example, you should not use the power of your office to prepare legal papers, such as abstracts of title, deeds, mortgages and other legal documents, when this power or authority has not been granted.

Acquaint yourself with the powers and duties of the office and proceed only in the manner and under authority of the statutes. If a legal question should arise consult the statutes or, if necessary, seek the advice of the county attorney.

Recording Instruments: The primary duty of the county recorder is to record instruments submitted for recording. It is the duty of the recorder to see that each instrument meets the essential requirements for recording, as discussed in Chapter 8, Recording Guide. Each instrument must be entered in the Entry Book, properly indexed, and recorded in the manner provided by law. The processing of instruments submitted for recording is discussed in Chapter 6.

Copies of Records or Instruments: It is the duty of the county recorder to prepare, proof and furnish any submitted copy of any transcript of any record or copy of any record or instrument in all cases, when required by law or ordered by the court or requested by any parties and, if further requested, to certify under seal as to the correctness thereof. The handling of such copies is discussed under this heading in Chapter 6.

Cash Receipts: It is the duty of the county recorder to keep an accurate account of all fees charged and collected and to deposit such collections daily in the depository or depositories duly designated by the county board of finance. The county board of finance consists of the three county commissioners and the county treasurer. Contact the county treasurer with questions about designated depositories. It is also the duty of the recorder to pay over all collections to the county treasurer after the close of each calendar month. In order to allow for reconciling bank records to the recorder's fee and cashbook remittance is timely if complete by the 10th day after month end.

Search of Records for Liens: In Official Opinion No. 22 of the Attorney General, dated March 20, 1958, and Official Opinion No. 58 of the Attorney General, dated September 28, 1964, it was held that there is no affirmative duty imposed upon the county recorder to search his official records, at the request of any party, for liens or other instruments, and to certify to the results of such search, and to certify to an interested party as to the existence of or lack thereof of a presently effective financial statement in his files. However, a county recorder does have permissive authority for searching his records upon request and as an elected public official may wish to do so.

For information regarding searches required by the provisions of the Uniform Commercial Code see Administrative Rules published on the Indiana Secretary of State's website at www.IN.gov/sos/business/ucc.html.

Acknowledgments: The county recorder is empowered under IC 32-21-2-3 to acknowledge "any conveyance, mortgage or instrument of writing to be recorded." Such power is restricted to only those instruments.

Uniform Commercial Code: Duties of the county recorder under the Uniform Commercial Code are set out on the Indiana Secretary of State's website at www.IN.gov/sos/business/ucc.html.

Special Sessions - Board of County Commissioners: Special sessions of the board of county commissioners of the various counties in this state, may be called whenever the public interests requires it, by a member of the board of county commissioners, by the county auditor, by the clerk of the circuit court, or if the offices of county auditor and county clerk are both vacant, by the recorder of the proper county. [IC 36-2-2-8]

Member - County Commission of Public Records: The county recorder is a member of the county commission of public records. Members of this commission serve without compensation and shall receive no reimbursement for any expense. The county commission shall meet at least one time each calendar year. For additional information regarding the local records commission's duties review IC 5-15-6 or consult with the Indiana Commission on Public Records at www.IN.gov/icpr. [IC 5-15-6-1]