

Indiana Notary Public Guide



Office of the Indiana Secretary of State – Business Services Division

<http://www.in.gov/sos/notary>

NOTICE: This document is intended to serve as an overview of information concerning notary public commissions and notarial acts in Indiana. Although the office of the Indiana Secretary of State takes every effort to ensure the accuracy of the information in this document, where your legal rights are involved, you are advised not to rely on this document. Instead you should review the law yourself and consult with an attorney.

Letter from Indiana Secretary of State

Connie Lawson

Dear Notary Public,

The largest single group of public officials in our state, with over 80,000 members, is the group of notaries public. As a notary public, your duties serve a crucial function within the state.

To assist you in rendering professional service, my office maintains this guide outlining the laws governing the official acts of notaries. Please take a few minutes to read this for your knowledge and protection.

This document, although a good reference, does not provide guidance for every question, problem or situation you might face as a notary. If at any time you are unsure how to proceed, I recommend you seek legal advice. As a notary, you may be liable both criminally and civilly for any negligent or fraudulent acts.

If you need further assistance, please do not hesitate to call my office at (317) 232-6532. We are always available to serve you and the public.

Sincerely,
Connie Lawson
Secretary of State

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Resources

Indiana Secretary of State: Business Services Division: Notary Section:

- Questions about notary law or procedures.
- File a complaint against a notary.
- Notary public database - search and commission status.
- On-line application for notary public commission.
- Assistance with on-line application.
- Update address or contact information or to resign your notary commission.

Web: <http://www.in.gov/sos/notary>

Email: notary@sos.in.gov

Phone: 317-232-6532

Mail: Indiana Secretary of State
Notary Division
200 W. Washington St. Room 201
Indianapolis, IN 46204

In person:

Customer service is available at the Secretary of State Business Services Division, 302 W. Washington St. Room E-018, Indianapolis, Monday – Friday 8:30 a.m. – 5:00 p.m. eastern standard time.

Note: state offices are closed on the following holidays: New Years Day, Martin Luther King Jr. Day, Good Friday, Primary Election Day, Memorial Day, Independence Day, Labor Day, Columbus Day, General Election Day, Veterans Day, Thanksgiving Day, Washington's and Lincoln's Birthdays and Christmas Day.

Web link to calendar of state holidays: <http://www.in.gov/judiciary/cofc/2329.htm>

Links to Notary Organizations:

- American Society of Notaries: <http://www.notaries.org/>
- National Notary Association: <http://www.nationalnotary.org/>

Note: Notary organizations provide useful information to notaries and the public. However, the state of Indiana does not endorse or require notaries to be a member of any notary organization or to purchase bonds, educational services or supplies from any notary organization.

What is a Notary?

A notary is a public official responsible for independently verifying signatures and oaths. Depending on how a document is written, a notarization serves to affirm the identity of a signer and the fact that they personally executed their signature. A notarization, or notarial act, officially documents the identity of a party to a document or transaction and the occasion of the signing that others can rely upon, usually at face value. A notary's authentication is intended to be reliable, to avoid the inconvenience of having to locate a signer to have them personally verify their signature, as well as to document the execution of a document perhaps long after the lifetime of the signor and the notary. An oath is a sworn statement. In most cases a person will swear that a written statement, oral statement, or testimony they are about to give is true. A notary can document that the notary administered an oath to an individual. In the alternative, a notary can notarize an individual's signature on a document (affidavit) setting forth the information that a person swears is true or the oath they will abide by.

There are four basic components of a notary public. He or she serves as a *law abiding, bonded, impartial, public official*.

Law abiding:

A notary's key functions are to perform reliable acts that the public can rely and depend upon, and to deter fraud. Hoosiers expect notaries to be honest and faithful to the law. Notaries must take an oath to obey the laws of the United States and the State of Indiana. No person convicted of a crime receiving a sentence exceeding six months imprisonment may be a notary public (see [Indiana Code 5-8-3-1](#)).

Bonded:

Before receiving an Indiana notary commission an applicant must secure an approved \$5000.00 corporate (commercial) official surety bond or a freehold bond (see Indiana Code 33-42-2-1(c)).

Impartial:

The role of a notary is to be an impartial witness to a signature, oath or affidavit. A notarial act serves as a legal attestation to, and presumptive evidence of, a signing, oath taking or swearing to an affidavit. A notary's impartiality is expected and required. Under state and common law, a notary may not notarize their own signature and must not be a party to, or have a financial or beneficial interest in a transaction or proceeding they are attesting to - other than collecting a nominal notary fee (see Indiana Code 33-42-2-2).

Public official:

A notary public is commissioned by the state and serves as a public official. Notaries must meet and maintain many of the same qualifications as other state appointed and elected public officials. The term of the office of notary public is 8 years and a notary's jurisdiction is state wide. Though notaries are appointed to serve the public, an Indiana notary may not be compelled to provide any particular notarial act.

Most of the law concerning notaries and notarial acts can be found in the Indiana Code, Title 33 Article 42 (see **Appendix I**). Keep in mind however that laws are subject to change. Indiana Code Title 33, Article 42, Chapter 2, Section 5 (cited as IC 33-42-2-5) provides for the powers of a notary public in Indiana:

IC 33-42-2-5

Powers of notary

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.

Some aspects of the office of notary public and practice as a notary public are also governed by the Indiana Constitution, agency rules and published court opinions, sometimes referred to as common law. The Indiana Secretary of State receives applications for notary commissions, administers the commissioning process and keeps the roll of active notary publics. The Secretary of State has limited authority to revoke a notary's commission for certain types of misconduct. Conduct that can result in revocation of a notary commission is detailed in Indiana Code 33-42-2-2. A judge of a county circuit or superior court in the county in which a notary resides may also revoke a notary's commission:

IC 33-42-2-2 Prohibited acts; violation; revocation; investigation

(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.

Qualifications to become a notary

In order to qualify for an Indiana notary public commission, the applicant must meet the following criteria at the time of application and throughout their term of service:

- a) Be at least *18 years of age*.
- b) Be a *full-time, permanent resident of the state of Indiana*. Note: non U.S. citizens must have visa or immigration status allowing permanent residence in the U.S. in order to be eligible to serve as an Indiana notary. An Indiana notary must continuously maintain their Indiana residency. If at any time an Indiana notary ceases to be a full-time resident of the state of Indiana, their commission becomes invalid and must be relinquished. An Indiana notary cannot reside or claim primary residency anywhere outside of this state. Legal requirements for Indiana residency are the same residency requirements for voting registration and are detailed in Indiana Code 3-5-5 “Standards for Determining Residency” (see **Appendix II**).
- c) Possess an Indiana driver’s license, Indiana non-driver identification card or other acceptable form of identification and proof of Indiana residence.
- d) *Never have been convicted of a crime which would disqualify the applicant from holding a public office in the state of Indiana¹, unless* the individual has petitioned for and received an order of criminal history expungement under Indiana Code 35-38-9². A conviction that has been reversed, vacated, set aside or “expunged” under IC 35-38-9 would not serve to disqualify a person from holding a notary commission.

Note: because laws describing criminal convictions which would disqualify a person from receiving a notary commission or continuing to serve as a notary public are not specific to the notary statutes (Indiana’s disqualification law apply to all elected and appointed public offices in Indiana) the applicable statutes are not found within the notary statute, but are located in other sections of the Indiana Code.

- e) Obtain a *\$5,000.00 corporate surety bond or freehold bond*. “Corporate” surety bond refers to a bond provided by a commercial insurance company or bond company

¹ Indiana Code 5-8-1-38; 5-8-3-1 and IC 3-8-1-5 provide that a public officer (i.e. notary public) is disqualified from holding office, and removed by operation of law from an office currently being held, if convicted of a crime in which they might have been imprisoned for more than one year or in which the sentence imposed exceeds 6 months. Criminal disqualification applies even if the sentence is served under house arrest or on probation.

² You may find details on the Indiana Criminal Record expungement law here: <http://iga.in.gov/legislative/laws/2015/ic/titles/035/articles/038/chapters/009/>.

licensed to conduct business in the state of Indiana. Companies offering corporate notary bonds can be identified through an Internet search or by contacting an insurance agent. Before purchasing a corporate notary bond, an applicant should verify that the provider is registered with the Indiana Department of Insurance and authorized to provide bonds in Indiana. A freehold bond is a written personal guarantee given by a person (other than the notary), who owns and agrees to pledge at least \$5,000.00 worth of unencumbered real estate. The Indiana Secretary of State is authorized to determine if a particular notary bond is acceptable. Qualifying corporate or freehold bonds guarantee payment of up to \$5,000.00 claims against the notary for injury or damages resulting from a notary's improper or negligent actions.

The requirements to apply for and receive a notary public commission are few and not difficult to comply with. Nonetheless, the responsibility and importance associated with proper and faithful performance of notarial acts is of great significance and responsibility. A notary's official actions are likely to involve important and highly valuable personal and property rights of others. A notary's official actions are expected to be accurate and genuine, reliable on face value, and capable of withstanding careful scrutiny by interested parties, attorneys, courts and the general public. The decision to apply for a notary commission and undertake the responsibilities of a notary public should not be taken lightly.

Applying for an Indiana Notary Commission

Indiana residents seeking a notary public commission should verify they meet the minimum age, residency, identification, clear criminal history and bond requirements before submitting an application and fees for a notary public commission. Applications are **only** accepted by electronic submission available at the following web page:

<https://myweb.in.gov/SOS/notaryapp/>

Step-by-step instructions on how to apply or reapply for a commission may be found by clicking on the following links:

New Notary Application Through the Secretary of State's Office Step-by-Step

http://prezi.com/ssr1e0aycwan/?utm_campaign=share&utm_medium=copy&rc=ex0share

New Notary Application through a Service Company

http://prezi.com/ukxrtnoalq15/?utm_campaign=share&utm_medium=copy&rc=ex0share

Reapplying for a Notary Commission through the Secretary of State's Office

http://prezi.com/mmiajckwqdqx/?utm_campaign=share&utm_medium=copy&rc=ex0share

Reapplying for a Notary Commission through a Service Company

http://prezi.com/0zmgeis62oew/?utm_campaign=share&utm_medium=copy&rc=ex0share

Step-by-step instructions on how to update your name or address on your notary commission or terminating your commission may be found by clicking on the following links:

Revise Your Commission: Name Change

http://prezi.com/j5kaigdymhuo/?utm_campaign=share&utm_medium=copy&rc=ex0share

Revise Your Commission: Address Change (Same County)

http://prezi.com/73r1vqvwasrl/?utm_campaign=share&utm_medium=copy&rc=ex0share

Revise Your Commission: Address Change (Different County)

http://prezi.com/niufqwxfqzyv/?utm_campaign=share&utm_medium=copy&rc=ex0share

Terminate Your Commission

http://prezi.com/uiibutj-odym/?utm_campaign=share&utm_medium=copy&rc=ex0share

Note: notary service companies, notary associations and notary bonding companies provide the service of obtaining notary commissions for fees in addition to the state of Indiana notary commission fee. Some providers of notary services operate web sites that can be

easily be confused with the Indiana Secretary of State’s web site. Caution should be used when searching on the Internet for information on obtaining a notary commission. Most notary service companies, associations and bond companies are reputable; however, the State of Indiana makes no endorsements or recommendations regarding these services.

Applications for a notary public commission must be submitted by the individual applicant, who is required to affirm under the criminal penalty of perjury that all information provided is true. Knowingly submitting false information on a notary application may subject the applicant to criminal prosecution.

Notary public application and commission fees totaling \$11.22 must be paid by credit, debit card, e-check, or IN.Gov Subscriber Account to the State of Indiana at the time of submitting of application.

Completed applications for a notary application are promptly processed by the office of the Indiana Secretary of State. A receipt and a link to the commission certificate are available from the last page of the application. In most cases applicants will also receive an email advising them of the status of their application within 1 business day. Issuance of a notary commission is evidenced by a confirming e-mail containing a link to a certificate of appointment which can be downloaded and printed. The name of a commissioned notary public will appear on the Secretary of State’s official list of notary publics which is available for public viewing at the following web site:

<https://myweb.in.gov/SOS/notaryapp/Common/NotarySearch.aspx?isReapplying=0>

Upon receiving a notary public commission, the notary should review their certificate of appointment and listing on the Secretary of State’s official list of notary publics for accuracy. Notaries are responsible for verifying that the information on their certificate of appointment and on the list of notary publics is correct. Notaries needing to update their legal name, residence, contact information, or wishing to terminate their commission, can do so on-line by following the links on the following web page: <http://www.in.gov/sos/business/2378.htm> .

Notaries requiring assistance with updating their commission information or terminating their commission may contact the Secretary of State – Business Services Division:

Email: Notary@sos.in.gov

Phone: 317-232-6532

Mail: Indiana Secretary of State
Notary Department
200 W. Washington St. Room 201
Indianapolis, IN 46204

Indiana public officials that may perform notary functions

In addition to commissioned notary publics, the following public officials and designees may authenticate documents and subscribe or administer oaths and affidavits:

- Official court reporters.
- Judges and justices of courts in their jurisdictions.
- The Secretary of State.
- The Clerk of the Supreme Court.
- Mayors, clerks, clerk-treasurers of towns and cities and township trustees, in their respective towns, cities and townships.
- Clerks of circuit courts and county commissioners in their respective counties.
- Judges of the United States District Courts of Indiana, in their jurisdictions.
- Commissioners of U.S. District Courts of Indiana, in their jurisdictions.
- Precinct election officers and absentee voter board members.
- Election commission members, election division co-directors and election division employees.
- County auditors in their counties.
- Members of the Indiana General Assembly (anywhere in Indiana).
- Indiana Guard adjutant general and designees.

See Indiana Code 33-42-4-1 as added by P.L.98-2004, SEC.21. Amended by P.L.174-2014, SEC.1; P.L.76-2014, SEC.64.

Generally executive officers of state agencies and designated deputies may authenticate documents and administer oaths in connection with matters concerning their respective agencies and offices. For example, the commissioner of the Indiana Bureau of Motor Vehicles and designated deputies may authenticate signatures on vehicle titles and automobile sales affidavits handled by their agency. They do not have authority to provide general notarial services or provide authentications or acknowledgements concerning matters unrelated to their agency's authority and jurisdiction.

Duties and Responsibilities of a Notary Public

The general function (and responsibility) of a notary public is to serve as a independent, disinterested public official in acknowledging (verifying) the identity of individuals and the actions of those individuals in signing documents or making sworn statements (i.e. an affidavit or an oath). In performing these duties notaries must verify identities and confirm that individuals understand what they are signing or affirming under oath.

A **notarial act** (where a notary signs, provides required information and affixes their seal) constitutes the **notary's** independent, sworn verification, or attestation, that the signature, affidavit or oath represented in a document actually happened and that the notary verified the party's identity and witnessed or performed the acts indicated. A notary documents and memorializes a notarial act by signing the "jurat" and applying their notary seal. In addition to the notary's signature and seal, a jurat must include the notary's printed name, county of residence and commission expiration date.

The following is an example of a typical notary jurat that would appear at the bottom of a legal document:

UNITED STATES OF AMERICA
STATE OF INDIANA
TIPPECANOE COUNTY

On January 2, 2010 before me Jane Doe, Notary Public, personally came and appeared, John Q. Public, resident of West Lafayette, Indiana over the age of majority, who after taking an oath, swore under the penalty of perjury that he has read and understands the terms of the aforesaid contract and agrees to be bound by the terms and conditions provided therein.

<u> (Jane Doe's signature) </u> N.P.	xxxxxxx
Jane Doe, Tippecanoe County	(notary seal)
My commission expires: July 4, 2015	xxxxxxx

In some cases a document or transaction may only call for the date, notary's signature, printed name, county, commission expiration date and seal immediately after the place provided for a party's signature:

/S/ John Q. Public Date: January 2, 2010

Notary: /S/ Jane Doe, N.P.
Printed Name: Jane Doe *seal*
County: Tippecanoe
Exp. Date: 7/4/2010

In *every* case a notary must comply with specific requirements in the Indiana notary statutes. In *some* cases parties to a transaction or style of the documentation may call for a notary to perform specific actions. For example a, jurat may call for a notary to verify a signer's identity by examining a government issued photo-ID and attest that a person raised their hand and repeated a specific oath or statement, under the penalties of perjury, etc. The notary's signature and seal serves as verification that what the notarial jurat says happened, is what actually happened. A notary should always carefully read any part of a document that calls for the notary's attestation (i.e. signature and seal) to assure that at the conclusion of the act, the document accurately represents who appeared and what took place.

Assuring the accuracy and truth of the matters that a notary attests to is the most critical and essential function of a notary public. The notary public's attestation is intended to serve the parties to the immediate transaction (signature) or act (affidavit or oath) as well as any other party (now or in the future) who may have an interest in the transaction or event, and the general public at large. The accuracy and authenticity of a notarized document or notarial act might be examined and challenged at any time in the near or distant future. Careful attention to notarial duties will serve to minimize questions and disputes about the authenticity of the parties and their actions. A notary's inattention to detail and requirements can lead to unnecessary disputes, subjecting parties and the public to expense, uncertainty and inconvenience. Moreover, a notary who fails to faithfully adhere to the requirements for their official acts may be subject to disqualification, civil damages and even criminal penalties.

Notary Certificates

Selecting the Notarial Certificate

You may be confronted with a situation in which you must notarize a document with no notarial certificate attached or the wrong notarial certificate attached. Although you may want to suggest or automatically provide the correct certificate, your role as a notary public does not allow you to do so. Notaries public may not give legal advice nor can they draft documents; only attorneys can do so. The notary public could be held liable if the certificate is incorrect. **Notaries public should never take it upon themselves to select or substitute a certificate on behalf of a person.**

If there are concerns, you may recommend that the client reexamine the document and consult with an attorney in order to obtain the proper certificate. If your client insists that the certificate is correct, you have the option of denying notarization or notarizing and putting a note in your journal saying that the client insisted the certificate was correct. A notary public is free to have the client review the types of certificates and allow them to choose the one they feel is correct. For more information on the various types of certificates, see **Appendix V** of this guide. However, the notary public should never select the certificate for the person.

Steps to Complete a Notarial Certificate:

1. **Do not advise or select the certificate for the client.** If you do so, you would be illegally practicing law.
2. **Certificate must fit the notarization.** Different types of certificates fit different forms of notarizations. Ask the client to contact the sender or the recipient to confirm which type of certificate is appropriate.
3. **Read the certificate carefully.**
 - If it says “subscribed and sworn,” make sure you administer an oath and witness the signature.
 - “County” is where the notarization took place. Since Indiana notaries have state-wide jurisdiction, the county of the notary’s residence may be different.
 - Pay close attention to the name blanks. In a certificate that says, “Before me, _____, personally appeared _____”, the notary’s name is entered in the first blank and the signer’s name is entered in the second blank.
 - Fill in all the blanks. If you are unsure of what to put in a blank, talk to the signer and get the correct information. If he/she does not know, then you may have to speak to the recipient or the sender in order to complete the certificate.
 - Draw a line to fill extra space. For example, if the signer’s name does not fill up the whole blank, draw a line through the remaining portion. This ensures that no one will be able to add on to the certificate after you have notarized it.

- Cross out any incorrect/inappropriate wording. For example, “he/she executed it”. The certificate should read smoothly and leave the reader no doubt exactly who did what and when.
 - Make sure all elements of a proper certificate are included. For example, jurisdiction, signer and date.
4. **Do not just “stamp and sign”.** If there is no certificate, you should create the certificate that your client is requesting. If there is no room on the document, attach a loose certificate.
 5. **Identify the signer.** If you are creating a certificate, recall that the certificate must identify the signer. For example: “by Jane Doe”.
 6. **Affix the notary signature and stamp properly.** The stamp should go in the immediate left or right of the notarial certificate and notary signature. Do not put the stamp over the abbreviation “LS” because this could obscure words or writing.
 - The imprint of the stamp must be legible so that can be copied. If the stamp gets smudged and is not legible, then restamp close to the original and initial the original.
 - In order to be recorded, the notary stamp, certificate and notary’s signature should be close enough to be put onto one microfilm image. The certificate cannot be on one side and the signature and stamp on another. The stamp may be placed in the margin, but indicate this with a note detailing the location of the stamp.
 - If there is no space on the signature page, attach a loose certificate or type out the certificate on the back of the document. Check with the receiver before typing on the back.

Beware of Loose Certificates

An attached or “loose” certificate should be filled out like any other notarial certificate with the additional of a few details. Because a loose certificate is not an original part of the document, it is important to protect it from fraud. The goal is to ensure that the certificate is used with one and only one notarization and only with the document it was intended for.

- Any notarial wording on the document should be crossed off and replaced with “SEE ATTACHED NOTARIAL CERTIFICATE”.
- Attach the certificate to the left-hand margin using staples or another type of fastener that will make holes if torn out.
- The certificate should be above the signature page and directly above the signature.
- The document’s date, type and signer should be noted at the bottom of the certificate. You may also want to indicate the number of pages as an additional safeguard. For example, attached to the declaration, signed by John Hancock on July 4, 1776, two pages.

- Make a note in your journal of the loose certificate.
- An embosser is also an additional safeguard that can be used to protect against fraud. The impression should rest half on the signer's page and half on the certificate. Put a whole impression on the certificate as well so the auditor has a comparison.
- Attach the certificate yourself.

Making Corrections

Correcting During Notarization

- Do not use white out.
- Draw a line through the mistake in ink and print the correct information immediately above the mistake with your initial and date by it.
- Reapply stamp if it has been smeared and initial the original smeared stamp.
- Record any changes in your journal.

Correcting after Notarization

- Do not allow anyone to change your certificate. It is your responsibility as a notary public to correct errors and omissions on the certificates you complete.
- Never send a completed certificate for someone else to attach. The document should be returned and you must attach the corrected certificate personally.
- Make corrections on the certificate by either filling in missing information or drawing a line through the incorrect information in ink. Print the correct information with your initials and the date nearby.
- Do not make a correction until you have confirmed it from a journal entry or the signer can verify.
- Record any changes in the journal.

Types of Notarial Certificates

- Acknowledgment in an Individual Capacity
- Acknowledgment in a Representative Capacity
- Verification upon Oath or Affirmation
- Witnessing or Attesting a Signature
- Certifying to a Copy of a Document

Notary Seal

“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 may choose.”

A notary seal may be a rubber stamp or type that embosses an impression on paper. At minimum the seal must contain the words “Notary Public,” For convenience and security, notaries are advised to obtain a custom seal which includes the following information:

- The words: “Notary Public – State of Indiana”.
- The notary’s name, exactly as it appears on their commission.
- The county of the notary’s residence.
- The notary’s commission number
- The expiration date of the notary’s commission.

If a notary’s seal contains all of the above information, in most cases a notary will only need to sign, date and seal a document to complete a notarial act. Keep in mind that if a notary uses a seal that does not include their printed name, county of residence and commission expiration date, then this information must be printed or written in on every notarial act.

The State of Indiana does not supply notary seals. Notary seals may be purchased from notary service companies, notary associations, companies that manufacture seals and stamps, office supply and printing businesses.

Notaries are responsible for safeguarding against misuse of their seal. It should be kept in a secure location to avoid loss or use by anyone other than the notary – which would be illegal. When a notary discontinues their service, their seal should be destroyed or disfigured to prevent fraudulent use.

Note: Indiana Code 33-42-2-4(b) emphasizes the necessity of the notary’s seal accompanying every notarial act: “All notarial acts not attested by a seal...are void.” Importantly, this statute has not been interpreted to mean that a document such as a contract, deed, title, will, power of attorney, affidavit or oath is void or invalid if a notary has not applied their seal. A document that has been signed by a party, witnessed by a notary but not containing a seal will generally still be valid, effective and enforceable, even if the notarial act is incomplete or invalid. If a notary act is incomplete or invalid, the statutory *presumption* that a party signed or attested a document may be challenged, but a document or attestation missing a seal may still be proved, validated and enforced by other means.

Jurisdiction of a Notary Public

The term “jurisdiction” means authority with respect to the parties, subject matter and place. Indiana notaries have authority to authenticate or attest to affirmations and oaths for persons or authorized representatives of organizations located in the state of Indiana. Notaries have authority to perform notarial acts anywhere in the state and nowhere outside of the state.

For example, a resident of Ohio may visit a bank in Indiana to obtain a mortgage on their home located in Ohio. An Indiana notary may authenticate the signature of the Ohio resident, if the signing, affirmation and notarization take place in Indiana. An Indiana notary is not authorized to perform a notarial act in the state of Ohio, even on behalf of an Indiana employer.

The jurisdiction of non-notary elected and appointed public officials, to authenticate affirmations and oaths, is generally limited to the jurisdiction of the public office. For example, the notarial jurisdiction of the mayor of a city is limited to the city. The notarial authority of a county clerk of court is limited to their county. The notarial authority of most public officials is also limited to official matters pertaining to their office. For example, the Bureau of Motor Vehicles Commissioner and his or her deputies, may authenticate affirmations and oaths in connection with issuing driver’s licenses and vehicle registrations, but may not notarize a mortgage or contract to purchase real estate.

Conflicts of Interest and Family Members

A notary may not acknowledge any instrument in which the notary’s name appears as a party to the transaction (Indiana Code 33-42-2-1). This statute uses the legal term “instrument” rather than “document”, “writing” or “affidavit”. In common law, the term “instrument” is generally used indicate a document that establishes or transfers property rights, such as a deed, title, last will and testament or bill of sale. Documents concerning *property rights* are generally important and can have a long lasting effect. A notary may not acknowledge anyone’s signature or affirmation on a transaction document concerning or effecting property rights that the notary is (or may become) a party to. This prohibition could apply even if the notary’s name does not literally appear on the document or instrument. For example, a notary should not acknowledge a real estate deed transferring real estate to a company the notary has an ownership stake in. Also, it would be wrong for a notary to authenticate the will of a relative if the notary might inherit property – even if the notary is not specifically named. A notary could be a party to a will devising property “in equal shares to all my surviving children” if the notary was a child of the deviser, even though not specifically named.

Though the applicable statute is not highly detailed, a good rule of practice is for a notary not to authenticate the signature of anyone on any sort of document if it concerns a matter that the notary, a close relative, business or business associate has a financial or personal interest in. Notaries are expected to be impartial witnesses to the signatures and acknowledgements of others and be free of any motivation to affirm anything that is not entirely true or accurate.

Indiana notary law does not specifically state that a notary may not acknowledge the signature, oath or affidavit of a family member. However, it's highly likely that a notary will have some personal or financial interest in most transactions that involve a family member. It might be acceptable for a notary to administer an oath of office to a family member in a public setting, but it would be questionable for a notary to authenticate their spouse's signature on the bill of sale for an automobile. Due to the possibility that a notary's impartiality may be conflicted or compromised, it is generally considered a good practice for notary's to *not* authenticate documents for family members.

A notary should never authenticate the signatures of a husband and wife if the notary did not witness or otherwise affirm, that each spouse actually signed the document. The claim that a husband signed an important document for his wife, or a wife signed for her husband – and the notary did not actually witness the signing of each, is a common source of notary complaints, disciplinary sanctions and litigation.

Certified Copies and True Copies

A *certified copy* is a copy of a record (i.e. of a government agency, university or school, health care provider, insurance company etc.) that can only be issued by the original issuing organization or agency or a specifically authorized agent of the original issuer. For only the state or county agency that prepares and maintains birth and death certificates can issue certified copies of these documents. A certified copy of a school attendance record or grade transcript can only be issued by the particular school or an organization that a school authorizes to provide certified copies of its records. Only the Bureau of Motor Vehicles can issue a certified copy of driver's record and only a Clerk of Court can issue a certified copy of a court record.

If a certified copy of an official record is appropriately stamped or marked, it will generally be accepted at face value same as an original official record. For example, when a person applies for a U.S. passport they will be required to present either their original birth certificate or a certified copy of their birth certificate – issued by the State of Indiana.

A notary public *does not* have authority to create or *certify* copies of official records or documents.

A **true copy** is a copy of any document containing a notarized affidavit or attestation of the person who made the copy, or is in a position to know, that it is an accurate, "true" and complete copy of an original. Generally a notary can notarize or attest to an affidavit that a copy is a true copy of an original. Some authorities in some cases will accept a true copy in lieu of an original or certified copy. In other cases, such as applying for a driver's license or U.S. passport, authorities will only accept original or certified copies, and will not accept true copies.

Secretary of State Certificates and Apostilles

One of the Secretary of State's main tasks is to certify to the status of a notary using either a certificate or an Apostille. These papers are attached to documents that require some official acknowledgment that the notarization was performed by a notary in good standing commissioned in Indiana. Foreign jurisdictions often require them before they will accept the notarized document.

Authentication Certificates and Apostilles

An authentication certificate or an Apostille verifies that the notary's signature and official notary seal matches what is on file with the Secretary of State's office. It does not validate the completeness or correctness of the notarization.

Authentication certificates certify the same information (seal and signature), but the format differs depending on the country of receipt. If the country belongs to The Hague Convention, an Apostille is used. If the country is not a member of The Hague Convention, a general Authentication Certificate is used. The Office of the Indiana Secretary of State provides Apostille and authentication services to U.S. citizens and foreign nationals for documents used overseas. The types of documents which can be authenticated include:

- Corporate documents such as company bylaws and articles of incorporation;
- Power of attorney;
- Diplomas;
- Transcripts;
- Letters relating to degrees;
- Marital status;
- References and job certifications;
- Home studies;
- Deeds of assignments;
- Distributorship agreements; and
- Papers for adoption purposes.

The U.S. State Department provides general information about document [authentications and apostilles](#) under the [Hague Convention of 1961](#).

Indiana **does not charge a fee** for the apostille/authentication service, unlike most other states.

Requesting an Apostille

- Collect and notarize all documents.
- Write a cover letter, which must include the following:

1. The name of the country where the documents will be sent - different countries require different certifications and the documents cannot be certified without this information;
 2. A daytime phone number where the customer can be reached for questions; and
 3. Information as to where the documents should be mailed after processing.
- Include a postage paid envelope for document return.
 - Mail all documents to the Secretary of State's Business Services Division, 302 W. Washington Street – Room E-018, Indianapolis, IN 46204

For additional information on the authentication certificates, please visit:

<http://www.in.gov/sos/business/2377.htm>.

Identification

Require the personal appearance of your signer. The person signing the document must physically be in your presence for the notarization to be valid.

Make careful identification of the signer. There are three possible ways for a notary to verify the identity of a signer: *ID documents*, *personal knowledge* or *credible witness*.

Identification Documents – The following types of identification may be used to positively identify a client, as long as they are **current** and **not expired**:

- A current driver's license or current identity card issued by any state;
- A current U.S. passport or a current officially recognized passport of a foreign country;
- A current U.S. military identification card;
- A current identity card issued by a federally recognized Indian tribe;
- A current university identification card; or
- At least one current document issued by the federal government or a state, county, or other local government which contains the person's photograph, signature and physical description.

Personal knowledge – A notary may claim to know the signer personally if at least one of the criteria is met:

- A long-term relationship. You should not use personal knowledge as identification for someone your boss introduced you to this morning.
- Sufficient breadth of knowledge. You should know more about the individual than what a nodding acquaintanceship would bring.
- Absolutely certain. You must have no reasonable doubt in your mind that the signer is who he or she claims to be. The test is whether you would be willing to swear to the person's identity in court.

Credible Witness - The notary personally knows someone who swears that he or she personally knows the signer. In order to use the credible witness as identification, the following must be met:

- The notary should personally know the witness.
- The witness must personally know the signer.
- Both the witness and the signer must be present during notarization.
- The witness must take an oath from notary. A sample oath/affirmation would be: *“Do you swear (or affirm) that you personally know this document signer to be the individual he/she claims to be (so help you God)?”*
- The witness should be honest, competent, and impartial.

Notarizing in Special Circumstances

A notarial act creates a legal presumption that the party that signed or swore, did so knowingly and willingly. This can be especially relevant in the case of minors or persons who have physical or mental impairments or disabilities. A notary is not an attorney or legal advisor and is not expected to explain the details and ramifications of documents to people before they sign or affirm them. However, notaries may not:

- Take the acknowledgement of, or administer an oath to a person the notary actually knows: a) has been adjudged mentally incompetent by a court (or); b) to be under a guardianship.
- Take the acknowledgement of any person who is blind, without first reading the instrument to the blind person.
- Take the acknowledgement 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 (see **Indiana Code 33-42-2-2**).

The notary must make a judgment that the signer is aware of what they are signing. A notary should not authenticate a signature or take the acknowledgement of a person if it is apparent, or suspected that a person is incoherent, disoriented, intoxicated or otherwise incapacitated. Notaries should advise parties to obtain legal advice before affirming or authenticating important documents or transactions for persons who may have legal, physical or mental impairments, such as:

Minor children.

Persons who are blind or deaf.

Persons who are mentally incapacitated or illiterate.

Persons who are seriously ill or dying.

Note: A notary may acknowledge or authenticate a mark, such as an X made by a person who is illiterate or physically incapable of signing their name, if the notary can affirm that in making the mark the person is indicating their understanding and acknowledgement.

If there are questions about a party's identity or legal, mental or physical capacity to understand and acknowledge a transaction or document, a notary is advised to expand their notarial jurat to document any special circumstances, actions taken to affirm a party's identity or capacity and any additional witnesses to the transaction or notarial act. Such additional information may be quite helpful to fact finders, if a document is questioned at some point in the future.

Notaries who are employees

A notary is not required to provide notary services to the general public and may not be compelled to do so. However, a notary may agree, and thus be bound, to provide notarial services as a matter of employment, or at the direction of their employer. For example, a bank may employ notaries and authorize them to provide notarial services only for the bank's clients.

A notary providing services behalf of an employer is still required to exercise their independent judgment and authority, and is still personally responsible for accuracy and legality of their notarial acts. For example, a notary must not attest to the signature of person they do not personally know or witness signing – even if their employer instructs them to do so.

An employer may supply or pay for a notary employee's official seal and surety bond. In the case of a notary seal that does not contain a notary's personal information, the seal is the property of the employer, even though it may only be used by the individual notary. If the stamp or seal provided by the employer contains the notary's personal information (i.e. commission number, name, or expiration date) the stamp or seal should travel with the notary. An employer may discontinue providing bonding for a notary at termination of an employee's employment. In these cases a notary would need to obtain their own seal and bond they intended to continue to perform as a notary after their employment.

Depending on the circumstances, an employer hiring a notary to provide notarial services may be liable for the actions and official acts of a notary employee. Employers of notaries and employed notaries are advised to obtain professional legal advice concerning their liability and professional responsibilities.

Indiana Uniform Electronic Transactions Act

This section is for informational purposes only. This section is only intended to provide basic information about the Indiana Uniform Electronic Transactions Act.

Indiana law allows certain transactions to be conducted electronically if all parties to a transaction agree to the arrangements provided. A party may refuse to conduct a transaction

electronically and may not be forced to do so. Indiana Code 26-2-8-110 (see appendix IV) provides:

If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

The Indiana Secretary of State's Office does not administer the Uniform Electronic Transactions Act statute and the office is not authorized to provide legal advice. Notaries are advised to discuss questions or concerns about utilizing new technologies with legal counsel.

For additional information see Appendix IV – the complete text of the Indiana Uniform Electronic Transaction Act, Indiana Code 26-2-8.

Fraudulent Advertising and Notario Publico law

A person who knowingly or intentionally advertises using the notary designation without using the notary disclosure in the advertisement, on the business card or on the person's letterhead or advertises or claims to be an expert on immigration matters without being a designated entity or who 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 (See: [Indiana Code 33-42-2-10](#)).

Notario publico deception is fraudulent advertising or misrepresentation by the notary. This applies only to a person who is not an attorney in good standing admitted to practice law in Indiana. It is illegal for a notary public in Indiana to advertise without including the following disclosure: "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 this disclosure is required to be made in a written advertisement, the disclosure must appear in a conspicuous size. If the notary disclosure is required to be made in a spoken advertisement, the notary disclosure must be spoken at normal speed and at a normal volume.

Notary Fees

The maximum fee a Notary Public may charge is two dollars (\$2) per individual notarization. ([Indiana Code 33-42-8-1](#)). Notaries may bill separately for incidental costs and services such as travel. Notaries should inform clients in advance of any service fees which may be charged above the \$2.00 per notarization fee.

Constitutional Prohibition on Dual Office holding

Under the Indiana Constitution (Article II § 9 and Article III § 1) some government officials may not legally serve in more than one public service position at any given time. The holding of two lucrative offices may result in the constitutional violation commonly referred to as “dual office holding.” Prior to July 1, 2012 the office of notary public was considered to be a “lucrative office” meaning that a notary public could not simultaneously hold another state, county or local public office, nor could an elected or appointed public official obtain a notary commission.

In 2012 Indiana Code 33-42-2-7 was amended to specifically provide that a notary public commission was henceforth, not a “lucrative office” and therefore elected and appointed public officials could simultaneously hold a notary public commission and exercise the duties of a notary public. Section b of the statute indicates however that a public official may not charge a notary fee for administering attestations, affirmations or oaths in performing their official office duties. For example a township tax assessor may also be a commissioned notary public. However the tax assessor may not charge taxpayers a fee for authenticating filed tax returns, because that is a duty of the office of tax assessor.

The Office of the Indiana Attorney General has created the Dual Office Holding Guide for your information. This Guide provides a four-part legal analysis that public officials may use in order to determine whether accepting a second public service position violates the law. The Dual Office Holding Guide may be viewed here:
http://www.in.gov/attorneygeneral/files/Dual_Office_Holding_Guide_2010.pdf.

Those reviewing this material should recognize that even if serving in two positions does not result in a constitutional violation, it may violate the constitutional doctrine of separation of powers, create a conflict of interest or public policy concern, or be prohibited by another federal, state or local law. All public officials should read this Guide and seek legal advice from an attorney before accepting a second public service position.

Real Estate and Loan Closings; Title Agents

Real estate transactions can be complex, often involving mortgages, promissory notes, contractual terms, title examinations, title insurance, recording and releasing of title and liens, etc. The roll of a notary in a real estate transaction is typically limited to authenticating and attesting to the signatures of sellers and buyers. Notaries are cautioned to be careful not to stray into the territory of providing legal services or giving legal advice.

Note: pursuant to Indiana Code 27-1-15.6-18(4) an Indiana notary may not engage in a real estate loan closing (if title insurance is included – which it virtually always is) without first obtaining a *limited insurance producer license* from the Indiana Department of Insurance. Any person who conducts a real estate closing on behalf of a title insurance company must be licensed. See Appendix III for additional information.

Contact the Indiana Department of Insurance for information about applying for a license to conduct real estate closings:

Indiana Department of Insurance
Attn: Agency Licensing
311 West Washington Street, Suite 103
Indianapolis, IN 46204

Fax: 317-232-5251
<http://www.in.gov/idoi/>

Matt Tapp at (317) 232-2414 or email MTapp@idoi.in.gov

See Appendix III, "Title Insurance Producer License for Notaries Conducting Real Estate Closings" for more information.

Blank, Post-Dated and Anti-Dated Documents

A notary must never complete an attestation or affirmation (i.e. notarization) of a blank document or one that has not been signed by the parties indicated or that contains unfilled spaces for necessary information such as parties who are not present before the notary.

If a document calls for the signature and affirmations of both a husband and wife, a notary may not notarize a document without affirming that both spouses have signed the document. If both spouses are not present and signing at the same time, a notary must indicate this and be prepared to provide a separate attestation for each spouse.

A notary should never notarize a document that is undated or that has been inaccurately post or anti-dated. A notary may correct or update an incorrectly dated document by striking and initialing the incorrect date and writing in the correct date. Notaries should be wary of and protect against facilitating fraudulent documents or activities.

Notary Associations and Resources

Notary organizations provide useful information to notaries and the public. However, the state of *Indiana does not endorse or require notaries to be a member of any notary organization* or to purchase bonds, educational services or supplies from any notary organization or business.

Links to Notary Organizations:

- American Society of Notaries: <http://www.notaries.org/>
- National Notary Association: <http://www.nationalnotary.org/>
- Indiana Notary Association: <https://www.linkedin.com/groups/7445485/profile>

Notary Liability

A notary public who fails to carry out notary duties correctly may be subject to civil liability for any damages caused by the failure or error. If the notary's error enables a forgery, false writing or other crime to occur, the notary also may be held criminally liable as an accessory to the crime. Failure to attach the date of expiration to a notarization is a class C misdemeanor. [Indiana Code 33-42-3-2](#). Additionally, the Secretary of State also may revoke the notary's commission.

Misconduct

Negligent or purposeful improper notarization is called “misconduct”. Misconduct can be either intentional or unintentional.

Intentional misconduct is deliberate disobedience of notarial statute that seeks to benefit the notary in some way, often to defraud the signer of the document.

Unintentional misconduct is negligent behavior that causes a notary to make an error or unintentionally omit a required portion or step of a notarization. Most misconduct is the result of disobeying the law, either by failing to do everything the law requires; or attempting to provide assistance beyond what the law allows.

Notaries must not give legal advice. This includes telling a person which legal procedure to use or what specific steps they will need to take in order to accomplish a desired legal outcome. You may think you know what to do, but you open yourself up to a lawsuit even if you are right.

Notaries must not prepare documents. Do not fill out documents or finish drafting them, even as a favor or if a customer comes to you with the wrong certification. You may not suggest or select the proper certification; you may refuse to notarize until they have talked to an attorney. It takes an attorney to know what is legally appropriate for a document.

Common examples of misconduct include:

- Not requiring personal appearance of the signer;
- Failing to attach the notary seal;
- Neglecting to attach the notary public's date of expiration of appointment;
- Failing to sign the notarized document; and
- Omitting names and dates from the documents.

Liability

Because many documents and judgments based on those documents rely on the validity of a notarization, breaches of notarial law are taken seriously. There are two kinds of penalties notaries can incur through their misconduct: civil and criminal penalties.

Civil penalties are the most commonly incurred penalties. If a notary, through carelessness or inaction, intentionally or unintentionally damages the complainant, they may be liable for

monetary damages. For example, if an improperly notarized grant deed causes a deal to fall through, and that deal costs the signer thousands of dollars, the notary may be sued in order for the signer to recover his losses.

Criminal penalties may be applied if the notary's act enables a forgery, false writing, or other crime to occur. In these cases, the notary has intentionally committed misconduct and is therefore subject to be prosecuted in the same manner as any crime.

Protecting Yourself

Many situations a notary public can potentially encounter are not precisely spelled out in law. The law gives general guidelines but relies on the notary's common sense to properly evaluate each situation. For example, notaries may use a driver's license to identify a signer, but if the ID looks false (a tampered photo, obviously incorrect date of birth, etc.), then the notary has a duty to act appropriately. Indiana does not require a notary to keep a journal, but it is recommended. You may use this journal to make notes about each notarial act. Keeping a journal will allow you to accurately track notarizations and protect you from liability issues. *The best defense against liability is to take reasonable care while notarizing. Understand what the law requires of you and act accordingly.*

If you are ever unsure of how to proceed, it is best to ask. You may contact the notary department by email notary@sos.in.gov. Please remember that we cannot give legal advice. To ensure that you are in compliance with the law, it is strongly suggested that you consult an attorney.

Notary Journals

In some states notaries are required to keep a record of all notarial acts in a permanent journal. Indiana does not require notaries to maintain a journal of their notarial acts. Leading notary associations recommend that notaries maintain a journal of all of their notarial acts, both as a good professional practice and as protection in the event fraud or malpractice is alleged. The Secretary of State recommends that all acts be recorded in this journal. Journals can be purchased from notary associations, notary service businesses and office supply stores.

The notarial journal is a vital component of exercising reasonable care. If anyone wishes to make inquiries about a notarization, few people can trust their memory to recall the details of a notarization without referring to a journal. The journal reminds a notary to ask for necessary information. The journal can even help prevent a notary from being named in a lawsuit.

Recommended Notary Journal Content:

- Date and time the notarial act was performed
- Type of notarial act performed
- Date of the document notarization
- Type of document notarized (i.e. will, contract, deed, etc.)

- Printed name of the signer
- Description of how the notary public identified the signer
- Any other pertinent information
- Fees collected, if any
- Unusual circumstances such as reason for refusal to notarize, etc.

Additional Notarial Acts That May Be Recorded in Notarial Journal

The Secretary of State’s office strongly recommends that all acts be recorded in a notary journal in order to protect the notary from liability. This record of acts can protect the notary in case of a lawsuit. Here is a list of other acts that may be recorded:

- Administering an oath or affirmation;
- Affidavits;
- Billing Statements for media advertising;
- Certifying or attesting a copy of a document; and
- Verifications upon oath or affirmation.

Examples of Notary Journals and Entries

A. Basic Notary Journal Layout

Date/Time of Act	Type of Act	Document Date	Document Type	Printed Name Contact Address	Signature of Customer	ID	Additional Info	Fee

B. Journal Entry for Typical Notarial Acts

Date/Time of Act	Type of Act	Document Date	Document Type	Printed Name Contact Address	Signature of Customer	ID	Additional Info	Fee
3/2/14 1:30 p.m.	Ack.	3/2/13	Bill of Sale	James L. Howe James’	<i>James L. Howe</i>	IDL Exp 12/1/17	35 copies notarized	\$70.

				Address				
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**C. Journal Entry for Two Separate Acts
(Swear and Witness)**

Date/Time of Act	Type of Act	Document Date	Document Type	Printed Name Contact Address	Signature	ID	Additional Info	Fee
7/23/14 4:30 p.m.	Swear	6/4/14	Affidavit	Deborah Smith	<i>Deborah</i>	IDL	Two	\$2
	Witness	6/5/14	Deed	Deborah's Address	<i>Smith</i>	Exp 8/14/17	separate documents	\$2

**D. Cite to Identification in a Previous Journal Entry
(If Ms. Smith comes back in)**

Date/Time of Act	Type of Act	Document Date	Document Type	Printed Name Contact Address	Signature	ID	Additional Info	Fee
4/11/14 9:15 a.m.	Ack.	3/27/14	Contract	See page 2 Line 3	<i>Deborah Smith</i>	See page 2 Line 3		\$2

Complaints and Notary Misconduct

The Secretary of State may investigate any possible violation of prohibited acts by a notary and under [Indiana Code 4-21.5](#), revoke the commission of a notary public who violates the section of the law which discusses prohibited acts.

If the Secretary of State revokes the commission of notary public, the notary public may not reapply for a new commission for five years after the revocation. If a notary public has been convicted of notario publico deception, the notary may never reapply for a new commission.

If a notary public is convicted of notario publico deception, the judge of a court with jurisdiction in the county in which the notary resides shall permanently revoke the notary's appointment.

If a person suspects any illegal, improper or questionable acts by a notary public, they may report it to the General Counsel of the Secretary of State's office. The notary complaint form may be found on the Secretary of State's website here: <http://www.in.gov/sos/business/2378.htm>.

Frequently Asked Questions

Q. What is an Indiana notary public?

A. An Indiana notary public is a person appointed by the Governor and commissioned by the Indiana Secretary of State to acknowledge and witness the signing of documents, and administer oaths and affirmations.

Q: How old do I need to be to become a Notary Public?

A: You must be at least 18 years of age at the time of appointment.

Q: Do I need to be an Indiana resident?

A: You must be a legal resident of this state. [Indiana Code 33-42-2-1](#).

Q: Must I be able to read and write the English language?

A: Yes.

Q: How long is a commission good for?

A: The term of office for an Indiana Notary Public is 8 years. They must reapply online up to 60 days prior to their expiration date to continue to be a notary public without a lapse.

Q. What is a surety bond?

A. A bond is an insurance policy that can be purchased at most major insurance companies or, if you choose, through a service company.

Q. What is a Freehold and do I have to complete this section?

A. A Freehold is when a person other than the applicant puts forth the \$5,000.00 bond in the form of real property they own. You are required to hold either a freehold or a surety bond.

Q: Am I required to be bonded or have liability (errors and omissions) insurance?

A: Yes. Indiana does require its notary publics to be bonded or have liability insurance. [Indiana Code 33-42-2-1](#).

Q. When may I begin notarizing signatures?

A. An appointed notary public may begin notarizing documents after receipt of a certificate of appointment from the Secretary of State.

Q. How do I renew my notary appointment?

A. There is no automatic reappointment in Indiana. A notary public must apply for appointment and follow the same procedures required for a new appointment. Applications should be made prior to expiration to ensure uninterrupted authority. The Secretary of State's online portal will accept filings up to sixty (60) days prior to expiration.

Q: My current commission has expired and I have reapplied. May I use my old stamp until my new stamp is made?

A: No. The stamp with the expired date should be destroyed as soon as possible. A notary public may only use the notary stamp for the notarial commission they are currently in. Any other stamp would have the wrong expiration date and the wrong commission number.

Q: What should I do if my notary stamping device is stolen?

A: Report the incident to the police, and then report the fact to the Secretary of State, Business Services Division.

Q: May I advertise my services as a notary public in the phone book or newspaper?

A: A notary public may advertise as long as they are careful about how they describe their qualifications and services. You must state that you do not offer legal advice nor can you prepare legal documents.

Q. What types of notary seals are acceptable in Indiana?

A. The notary public's seal shall either be a seal press or a rubber stamp. In either case, the notary public's seal must contain the words "Notary Public." If a seal press is used, the impression must be inked or blackened so that it may be photocopied. [Indiana Code 33-42-2-4.](#)

Q. Can information about my notary application or appointment be given to other people?

A. Yes. All notary public applications and appointments are required to be open to public inspection pursuant to Indiana law and are available in the Notary Public database.

Q. May I notarize my own signature and the signatures of my spouse, children, parents or other relatives?

A. A notary public may not notarize his or her own signature, but may notarize the signatures of his or her spouse, children, parents or other relatives. [Indiana Code 33-42-2-2.](#) Keep in mind however, that a notary may not notarize a document that they are a party to and should not notarize a relation's signature if the notary has an interest in the transaction.

Q. May I notarize documents when I am physically outside the state of Indiana?

A. No. A notary public only has jurisdiction to perform notarial acts while the notary public is in the state of Indiana. [Indiana Code 33-42-1-1.](#)

Q: May I notarize for a minor?

A: A minor must provide acceptable ID just as an adult would. Have the minor put her or his age next to the signature so that the receiving party realizes that they are dealing with a minor. Note the age of the minor in the notarial journal.

Q: Must a notary always notarize?

A: A notary is not required to always notarize. In fact, when you are in doubt because something appears fraudulent (the ID looks fake), or some other aspect of the notarizations appears amiss, you **should not** notarize. However, if it is merely discomfort because you are not familiar with the particular type of act, such as a certifying to a copy, then you should consult with either a more experienced notary public or a lawyer.

Q: May I notarize for someone in a hospital or nursing home?

A: Special care must be taken when notarizing for the elderly or those in a medical care setting. Awareness may need to be established by someone in authority (i.e. doctor, nurse, attorney). Medications can alter the customer's reasoning abilities. Consult with the signer's doctor/nurse/attorney and write down their remarks in the notarial journal have the authority sign your journal by their remarks as to the awareness of the client. Prior to notarizing, ask the client some questions about the document to be sure that they understand what they are signing and seem competent in their responses. Common sense, as well as reasonable care and caution, are the prime indicators on whether to proceed. When in doubt, do not notarize, but note why in the notarial journal and advise the client to seek legal advice.

Q: Should I notarize a blank or incomplete document?

A: Common sense would prevent most notaries from notarizing a signature on a completely blank piece of paper, knowing that a fraudulent document could be created.

Q: May the signer use a signature stamp on the document they want notarized?

A: Yes, a signature on a tangible record is a tangible symbol. A stamp, mark or other indication of execution is sufficient.

Q: May I correct a mistake I made in a notary certificate several days after it was executed?

A: Corrections can be made. Only the notary public may make corrections that are needed, and the corrections must be made on the original certificate. Note in your journal any corrections or changes that were made.

Q: A notarial certificate that was pre-printed on a document did not have a jurisdiction or a signature line for the notary. What should I have done?

A: To have a valid notarization, certain elements must be present:

- Jurisdiction- state and county
- Statement- who appeared on what day and what they did (acknowledge, sign and swear, etc)
- Notary public's signature and official notary stamp imprint.
- When a certification is not complete, the notary public can add the necessary information. In the case mentioned above, the notary public should type or hand write at the beginning of the notarial certificate the jurisdiction where the notarization was taking place and then create a signature line near where the official notary stamp was placed.

Q: May I chose a notarial certificate to go on a document?

A: No, you do not have the legal rights to do so.

Q: When using an attachment certificate, must I always put a complete stamp impression on the attachment?

A: When using an attachment certificate, a complete imprint of your official stamp must be on the attachment certificate. A second imprint may overlap the document and the certificate as a protection device.

Q. Why does the notary block have blanks for state and county, and how do I fill them out?

A: The beginning of each notarial certificate should include jurisdictional information that indicates where the document was notarized, similar to the following: State of _____), County of _____). This information indicates where the notarial act took place. The notary public completes the venue block by inserting "Indiana" and adding the county where the notarial act occurred. An Indiana notary can notarize documents in all counties of Indiana.

Q. Should I keep a log book of notarizations which I perform?

A: There is no statutory requirement in Indiana that a notary public keep a log book or journal. However, it is recommended that a notary public keep one for his or her own records and protection from liability.

Q: May I choose not to keep a notarial journal?

A: Yes. Indiana law does not require notary publics to keep a notary journal but it is highly recommended.

Q: What if I have multiple entries for my journal?

A: Duplicate originals with the same name and date may be recorded as a single entry in the notarial journal.

Q: Should I keep copies of every document that I notarize?

A: No, a notary should not keep copies of the documents they notarize. Your journal entry is sufficient evidence for the purpose of recording a notarial act. If a notary should keep an original record provided by a person for notarization, the notary may not withhold access to the original record. However, the Secretary of State strongly recommends that notaries do not keep such records.

Q: Should I keep copies of identification that I use to identify the signer?

A: No, a notary public should not keep copies of identification that they use to identify the signer. Your journal entry is sufficient evidence for the purpose of recording how you identified the signer.

Q. Can my employer keep my notary stamp and Commission paper after I leave my job?

A: An employer cannot keep the notary's commission. A notary commission is personal to the notary public. If a notary seal does not contain a notary's personal information, the seal is the property of the employer, even though only the notary can use it. If the stamp does contain personal information (i.e. commissioner number, county of residence and expiration date), the stamp should travel with the notary.

Q. How do I report a change in my name or address while I am serving as a notary public?

A. A notary public must report the change to the Secretary of State through the online service by selecting "Revise" from the link below

<https://myweb.in.gov/SOS/notaryapp/>.

Q. What are the most common errors or omissions made by notaries public in notarizing documents?

A. The most common errors by notaries public in notarizing documents are:

- (1) Failing to attach the notary seal;
- (2) Neglecting to attach the notary public's date of expiration of appointment;
- (3) Failing to sign the notarized document; and
- (4) Omitting names and dates from the acknowledgments, oaths and affirmations, etc.

Q. Can I notarize documents that I will be signing as an officer on behalf of a corporation?

A. No. A notary public can never notarize his or her own signature, whether signing for themselves or for a corporation.

Q. What is the most serious error made by notaries in notarizing documents?

A. The most serious error made by notaries is failure to require the person to appear before the notary before notarizing the document. The person who signed the document must always appear in person. Failure to observe this requirement can result in criminal and civil liability and the loss of the notary's commission. [Indiana Code 33-42-2-2](#).

Q. What are the liabilities and penalties for notary public misconduct?

A. A notary public who fails to carry out notary duties correctly may be subject to civil liability for any damages caused by the failure or error. If the notary's error enables a forgery, false writing or other crime to occur, the notary also may be held criminally liable as an accessory to the crime. The Secretary of State also may revoke the notary's commission. Failure to attach the date of expiration to a notarization is a class C misdemeanor. [Indiana Code 33-42-3-2](#).

Q. What if my boss insists that I notarize a document when the person has not signed or acknowledged his or her signature in my presence?

A. Explain to the boss that Indiana law requires the person appear before a notary public personally before the notary can notarize the document. Failure to follow this procedure could result in civil and criminal liability for both the notary public and the boss. Also, the document may be invalidated by a court if it is improperly notarized. [Indiana Code 33-42-2-2](#).

Q. If my notary appointment expires but I have applied for a new appointment, may I continue to exercise my notarial powers?

A. No. There is no carryover or grace period for a notary public once his or her appointment has expired. A person whose notary public appointment has expired may not perform any notarial acts until he or she has received a new certificate of appointment.

Q. As an Indiana notary, can I take a person's acknowledgment in another state, then

return to Indiana and complete the notarial certificate here?

A. No. A notary's authority extends no further than the geographic boundaries of Indiana. A notary cannot perform one part of a notarial act outside the state and the other part inside the state. Both parts must be executed at the same time and the same place inside Indiana. If the resident of another state cannot come to Indiana, he should find a notary public in his state. [Indiana Code 33-42-1.](#)

Q. A person whose identification indicates a first name of "Robert" has asked me to take his acknowledgment on a document he has signed as "Bob". Should I insist that he sign as "Robert"?

A. Yes. The notary should insist that a person's signature agree exactly with the name printed on the person's identification, such as a driver's license, and the name used on the document.

Q. May a notary give legal advice or draft legal documents?

A. No. Unless the notary also is an attorney, the notary cannot act as a legal advisor and cannot prepare legal documents. For example, if a document does not contain a notarial certificate, the notary public cannot advise as to the proper type of notarization. An attorney should be consulted as to the proper notarization that is required for the document (acknowledgment, witnessing or verification).

Q: May a notary public perform a marriage ceremony?

A: No. Indiana notaries are not authorized to perform a marriage ceremony.

Q. Is the notarial act required by law?

A. A notarial act is required for many documents. The Indiana law governing the document will state whether the document must be notarized. The determination whether a document is required to be notarized cannot be made by the notary public or the Secretary of State's office.

Q. How does a notary identify a signer?

A. A notary identifies a signer by carefully examining the identification presented by that person and comparing the signatures the person has made on the document with the signature on the identification. Proper "ID" should include a photograph and signature on a reliable identification card such as a driver's license. It also is considered sufficient identification if, under oath, a credible witness personally known by the notary identifies the person.

Q. Must a notary determine the competence of the person signing the document?

A. Although there are differing opinions on whether a notary public has a duty to determine the person's competency, many experts recommend that the notary make a limited inquiry into the person's ability to understand the contents of the document that the person is signing. The notary can make a quick assessment by asking the person if he or she understands the document. Clearly, a notary should refuse to notarize the signature of a person who unquestionably has no ability to understand the document (i.e. unconscious, incapacitated or mentally disabled).

Q. Can I only notarize documents in my own county?

A. An Indiana notary public has authority throughout Indiana. The county in which the notarial act took place should be inserted in the appropriate blank above the notary's signature. The jurisdiction of a notary public qualified in Indiana is co-extensive with the limits of the state. However, a notary may not be compelled to act out of the limits of the county in which the notary public resides. [Indiana Code 33-42-1-1.](#)

Q. Must the person sign the document in my presence?

A. If the document is an affidavit, verification or other document requiring an oath, the person must be properly sworn-in and sign the document in the notary's presence. If the document requires acknowledgment, it is sufficient for the person to appear before the notary and acknowledge execution of the document. If the document requires witnessing, the notary must personally see the person sign the document. Never notarize an unsigned document; and never notarize a document outside the presence of the person. Do not notarize a document in which the notarial certificate contains untrue statements. The notary cannot take a notarization over the telephone (because the person has not appeared in person before the notary). The notary cannot notarize a document just because someone else assures the notary that the signature is genuine. The notary cannot take an acknowledgment just because the notary recognizes the person's signature. [Indiana Code 33-42-4.](#)

Q. What should I do when I have a question about performing a notarial act?

A. Contact either the Secretary of State's office for assistance or an attorney for legal advice.

Q. How much are the filing fees?

A. The filing fee for notary application is \$11.22. The fee for other transactions requiring a filing fee is \$6.12.

- Other transactions with a filing fee are:
 - Changing the name of the notary
 - Changing the address (if the change in address results in a new county)
 - Obtaining a copy of the commission certificate without an ID number
- Transactions without a filing fee are:
 - Address change within the same county
 - Changing an email address
 - Terminating your commission
 - Reprinting your certificate with a transaction ID number

Q. Where does a person report illegal, improper or questionable acts by a notary public?

A. Persons who suspect any wrongdoing or mistake by a notary public should report it to the General Counsel for the Indiana Secretary of State. The notary complaint form may be found on our website here: <http://www.in.gov/sos/business/2378.htm>.

Appendix I

Indiana Notary Statute (Indiana Code 33-42, Chapters 1 – 4 and 8)

IC 33-42-1 Jurisdiction

IC 33-42-1-1

Limits of state

The jurisdiction of a notary public qualified in Indiana is co-extensive with the limits of the state. However, a notary may not be compelled to act out of the limits of the county in which the notary public resides.

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

IC 33-42-2 Qualifications, Powers, and Duties

IC 33-42-2-1

Qualifications; appointment; application; bond; fees

(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

(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

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

(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

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

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

Notary public not a lucrative office

(a) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.

(b) 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. Amended by P.L.135-2012, SEC.5.

IC 33-42-2-8

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

(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

- (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

(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(1); 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.

IC 33-42-3 Requirement of Appending Date of Expiration of Commission

IC 33-42-3-1

Statement of date of expiration of notary commission

A person commissioned as a notary public by the state shall append a true statement of the date of the expiration of the notary's commission as a notary public to any certificate of acknowledgment of a deed, mortgage, or other instrument or any jurat or other official document at the time the document is signed.

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

IC 33-42-3-2

Omission of statement

A notary public who omits to make the statement required by section 1 of this chapter commits a Class C infraction.

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

IC 33-42-4 Administering Oaths and Taking Acknowledgments

IC 33-42-4-1

Persons authorized to administer oaths and take acknowledgments

The following may subscribe and administer oaths and take acknowledgments of all documents pertaining to all matters where an oath is required:

(1) Notaries public.

(2) An official court reporter acting under IC 33-41-1-6.

(3) Justices and judges of courts, in their respective jurisdictions.

(4) The secretary of state.

(5) The clerk of the supreme court.

(6) Mayors, clerks, clerk-treasurers of towns and cities, and township trustees, in their respective towns, cities, and townships.

(7) Clerks of circuit courts and master commissioners, in their respective counties.

(8) Judges of United States district courts of Indiana, in their respective jurisdictions.

(9) United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions.

(10) A precinct election officer (as defined in IC 3-5-2-40.1) and an absentee voter board member appointed under IC 3-11-10, for any purpose authorized under IC 3.

(11) A member of the Indiana election commission, a co-director of the election division, or an employee of the election division under IC 3-6-4.2.

(12) County auditors, in their respective counties.

(13) Any member of the general assembly anywhere in Indiana.

(14) The adjutant general of the Indiana National Guard, specific active duty members, reserve duty members, or civilian employees of the Indiana National Guard designated by the adjutant general of the Indiana National Guard, for any purpose related to the service of an active or reserve duty member of the Indiana National Guard.

As added by P.L.98-2004, SEC.21. Amended by P.L.174-2014,SEC.1; P.L.76-2014, SEC.64.

IC 33-42-4-2

Fraudulent acts

A person authorized to administer oaths or take acknowledgments who, with intent to defraud:

(1) affixes the person's signature to a blank form of affidavit or certificate of acknowledgment; and

(2) delivers that form to another person, with intent that it be used as an affidavit or acknowledgment; commits a Level 6 felony.

As added by P.L.98-2004, SEC.21. Amended by P.L.158-2013,SEC.344.

IC 33-42-4-3

Fraudulent use of forms

A person who knowingly uses a form that was delivered to the person in violation of section 2 of this chapter commits a Level 6 felony.

As added by P.L.98-2004, SEC.21. Amended by P.L.158-2013,SEC.345.

IC 33-42-8 Maximum Fees

IC 33-42-8-1

Maximum fee of a notary public

The maximum fee of a notary public is two dollars (\$2) for each notarial act.

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

Appendix II

Indiana Standards for Determining Residency IC 3-5-5

IC 3-5-5-0.5

"Immediate family"

For purposes of this chapter, an individual's "immediate family" includes the spouse, children, stepchildren, parents, or grandparents of the individual.

As added by P.L.258-2013, SEC.6.

IC 3-5-5-1

Purpose of chapter

This chapter shall be used to determine the residency of the following:

- (1) A voter or a person applying to become a voter.
- (2) A candidate.
- (3) A person holding an elected office.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-2

Methods of establishing residency

A person's residence may be established by:

- (1) origin or birth;
- (2) intent and conduct taken to implement the intent; or
- (3) operation of law.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-3

Residence in more than one precinct; no residence both within and outside Indiana

- (a) A person does not have residence in more than one (1) precinct within Indiana.
- (b) For purposes of this chapter, a person does not have residence both within Indiana and outside Indiana.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.7.

IC 3-5-5-4

Abandonment of residence

A person who has a residence in a precinct retains residency in that precinct until the person abandons the residence by:

- (1) having the intent to abandon the residence;
- (2) having the intent to establish a new residence; and
- (3) acting as provided in this intent by establishing a residence in a new precinct.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-5

Absence due to state or federal business

As provided in Article 2, Section 4 of the Constitution of the State of Indiana, a person does not lose residence in a precinct in Indiana by reason of the person's absence on the business of:

- (1) the state of Indiana; or
- (2) the United States.

As added by P.L.12-1995, SEC.10. Amended by P.L.3-1995, SEC.10;P.L.258-2013, SEC.8.

IC 3-5-5-6

Presumption of residence specified by individual under penalties for perjury; rebuttable presumptions

(a) Sections 7 through 17 of this chapter establish presumptions regarding the residency of a person in a precinct. A person can rebut these presumptions by demonstrating intent to reside in another precinct and conduct taken to implement that intent.

(b) An individual who makes a statement regarding the residence of the individual, under the penalties for perjury, is presumed to reside at the location specified by the individual, as of the date of making the statement.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.9.

IC 3-5-5-7

Temporary residency; residency of students attending postsecondary educational institution

(a) Subject to section 6 of this chapter, a person does not gain residency in a precinct in which the person is physically present for:

- (1) temporary employment;
- (2) educational purposes, except as provided in subsection (b);
- (3) preparing to purchase or occupy a residence; or
- (4) other purposes; without the intent of making a permanent home in the precinct.

(b) The following apply to a student attending a postsecondary educational institution in Indiana:

- (1) A student who applies to register to vote shall state the student's residence address.
- (2) A student has only one (1) residence for purposes of this title.
- (3) A student may state the student's residence as either of the following, but not both:
 - (A) The address where the student lives when the student attends the postsecondary educational institution where the student pursues the student's education.
 - (B) The address where the student lives when the student is not attending the postsecondary educational institution where the student pursues the student's education.

As added by P.L.12-1995, SEC.10. Amended by P.L.3-1997, SEC.18;P.L.164-2006, SEC.5; P.L.258-2013, SEC.10; P.L.169-2015, SEC.6.

IC 3-5-5-8

Physical presence outside Indiana with intent to make new residence outside Indiana

Subject to section 6 of this chapter, if a person is physically present within another state with the intention of making that state the person's residence, the person loses residency in Indiana.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.11.

IC 3-5-5-9

Physical presence outside Indiana with intent to remain indefinitely outside Indiana

Sec. 9. Subject to section 6 of this chapter, if a person is physically present within another state with the intention of remaining in the other state for an indefinite time as a place of residence, the person loses residency in Indiana, even if the person intends to return at some time.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013.

IC 3-5-5-10

Physical presence in another Indiana precinct

Subject to section 6 of this chapter, if a person is physically present within another precinct in Indiana with the intention of making that precinct the person's residence, the person loses residency in the precinct that the person left.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.13.

IC 3-5-5-11

Location of immediate family as residence

The place where a person's immediate family resides is the person's residence, unless the family's residence is:

- (1) a temporary location for the person's immediate family; or
- (2) for transient purposes.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-12

Living away from family while conducting business

Except as provided in section 13 of this chapter, if:

- (1) a person's immediate family resides in one (1) place; and
- (2) the person does business in another place; the residence of the immediate family is the person's residence.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-13

Living away from family with intent to remain away; conduct to carry out intent

Subject to section 6 of this chapter, if a person:

- (1) is living at a place other than the residence of the person's immediate family; and
- 2) has the intention of remaining at that place and engages in conduct to carry out that intent; the place where the person lives is the person's residence.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.14.

IC 3-5-5-14

Establishment of voting residence separate from spouse; intent; conduct to carry out intent

Subject to section 6 of this chapter, a married person who does not live in a household with the person's spouse may establish a separate residence from the residence of the person's spouse by intending to do so and engaging in conduct to carry out that intent.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.15.

IC 3-5-5-15

Unmarried person; place where person usually sleeps; intent; conduct to carry out intent

Subject to section 6 of this chapter, the residence of a person who:

- (1) is unmarried; and
- (2) does not have an immediate family; is where the person usually sleeps if that is the intent of the person, and the person engages in conduct to carry out that intent.

As added by P.L.12-1995, SEC.10. Amended by P.L.258-2013,SEC.16.

IC 3-5-5-16

Residents of veterans home

A person who resides in a veterans home is a resident of the precinct in which the home is located.

As added by P.L.12-1995, SEC.10.

IC 3-5-5-17

Persons committed to mental health institutions

A person who is:

- (1) adjudged mentally ill; and
- (2) committed to an institution for individuals with a mental illness; does not gain residency in the precinct in which the institution is located.

As added by P.L.12-1995, SEC.10. Amended by P.L.99-2007, SEC.4.

IC 3-5-5-18

Nontraditional residence

Notwithstanding IC 3-5-2-42.5, an individual with a nontraditional residence whose residence is within a precinct, but is not fixed or permanent, resides in that precinct.

As added by P.L.12-1995, SEC.10.

Appendix III

Title Insurance Producer License for notaries conducting real estate closings (Real estate sales, financing and refinancing)

Most real estate transactions or “closings” in Indiana involve a real estate title insurance company. Between the time an agreement to purchase real estate is made and the closing of the transaction, a buyer (and in most cases a mortgage lender) will engage the services of a title company to examine the seller’s title to the real estate, make sure the property survey and legal description are correct, and issue a title insurance policy – guaranteeing the buyer’s title to the property. Because of their role as insurers of title, title companies typically “package” real estate closing documents and employ attorneys or notary publics to “conduct” the closing. An Indiana Notary may not conduct a real estate closing i.e.: sale or refinancing of real estate including a mortgage, title examination and title insurance unless they have obtained a Limited Insurance Producer License (also known as a Title Insurance License or Title Agent License) from the Indiana Department of Insurance. IC 27-1-15.6-18(4) provides for limited insurance producer license for persons (i.e. notaries) who solicit or negotiate only title insurance products.

Any person who conducts a real estate closing on behalf of a title insurance producer or title insurance company in which a title insurance policy is issued or is to be issued must be a licensed Title insurance producer.

Indiana Department of Insurance: <http://www.in.gov/idoi/2446.htm>

Appendix IV

Uniform Electronic Transactions Act

IC 26-2-8 Uniform Electronic Transactions Act

IC 26-2-8-101

Short Title

IC 26-2-8 may be cited as the Uniform Electronic Transactions Act.

IC 26-2-8-102

Definitions

As used in this chapter:

- (1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
- (2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records in which the acts or records of one (1) or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
- (3) "Business entity" means a corporation, nonprofit corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable Indiana law.
- (4) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
- (5) "Constituent" means a person who holds a position defined in the business entity's organic law that permits the person, directly or indirectly, to own, manage, or operate a business entity either alone or with others. The term includes officers, directors, shareholders, members, managers, general partners, limited partners, partners, and persons occupying a similar status or performing similar functions for a business entity.
- (6) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.
- (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8) "Electronic agent" means a computer program or an electronic or other automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.
- (9) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

- (10) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.
- (11) "Governing documents" means the publicly filed and nonpublicly filed organic documents of a business entity.
- (12) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, instrumentality, or other political subdivision of the state.
- (13) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.
- (14) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.
- (15) "Organic actions" means actions, notices, consents, and signatures relating to the operation of a business entity that are undertaken among constituents of that business entity or among constituents of a business entity and that business entity. The term does not include the service of process or the service of a summons, subpoena, or other service contemplated by rules or statutes governing trial procedure, civil procedure, or comparable provisions.
- (16) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.
- (17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The term includes records transmitted in the course of organic actions.
- (18) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.
- (19) "Transaction" means an action or set of actions relating to the conduct of business, commercial, or governmental affairs and occurring between two (2) or more persons. The term includes an organic action.

IC 26-2-8-103

Scope

- (a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures that relate to a transaction.
- (b) This chapter does not apply to transactions subject to the following laws:

- (1) A law governing the creation and execution of wills, codicils, or testamentary trusts.
- (2) IC 26-1 other than IC 26-1-1-107, IC 26-1-1-206, IC 26-1-2, and IC 26-1-2.1.
- (3) Laws specifically excluded by a governmental agency under sections 201 and 202 of this chapter.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) when used for transactions subject to a law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

IC 26-2-8-104

Agreement to conduct transaction electronically; variation by agreement

(a) This chapter does not require that a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter only applies to transactions between parties each of which has agreed to conduct transactions electronically. An agreement to conduct transactions electronically is determined from the context and surrounding circumstances, including the parties' conduct. A constituent of a business entity and a business entity are presumed to have agreed to conduct organic actions electronically unless and to the extent:

(1) the governing documents of the business entity limit or prohibit, in whole or in part, the use of electronic signatures, electronic records, or both; or

(2) the business entity expressly states the method, means, or requirement by which a constituent may respond to or participate in any organic action, including imposing a requirement that participants use a specific form of writing, record, or signature. Unless and to the extent limited or prohibited in the governing documents of a business entity, any electronic record or electronic signature to be sent to a constituent is properly sent if sent in the manner and to the electronic address or other means of receipt designated by the constituent to receive the electronic record or electronic Signature as shown in the current records of the business entity. If the electronic record is a notice, it is effective when sent. Unless and to the extent limited or prohibited, any electronic record or electronic signature sent by a constituent to a business entity shall be considered properly sent if it is sent in a manner designated by the business entity to an electronic address or other location designated by the business entity in a publication or notice provided by the business entity to the constituent. If the electronic record is a notice, it is effective upon receipt. The publication or notice may be included in the governing documents of the business entity, may be communicated to the constituent in writing, or may be transmitted by any other means selected by the business entity that is reasonably likely to convey the information to the constituent. A constituent or business entity may revoke or change any instruction regarding the manner, electronic address, or means of receipt the person requires for electronic records or electronic signatures by sending notice of the change and the corresponding new information.

(c) If a party agrees to conduct a transaction electronically, this chapter does not prohibit the party from refusing to conduct other transactions electronically. This subsection may not be varied by agreement.

(d) Except as otherwise provided in this chapter, the effect of any provision of this chapter may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter, if applicable, and otherwise by other applicable law.

IC 26-2-8-105

Construction and application

This chapter must be construed and applied:

- (1) to facilitate electronic transactions consistent with other applicable law;
- (2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

IC 26-2-8-106

Legal recognition of electronic records, electronic signatures, and electronic contracts

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record or electronic signature was used in its formation.
- (c) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.
- (d) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

IC 26-2-8-107

Provision of information in writing; presentation of records

- (a) If parties have agreed to conduct transactions electronically and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record and the information is capable of retention by the recipient at the time the information is received.
- (b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

- (1) The record must be posted or displayed in the manner specified in the other law.
 - (2) Except as otherwise provided in subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law.
 - (3) The record must contain the information formatted in the manner specified in the other law.
- (c) An electronic record may not be sent, communicated, or transmitted by an information processing system that inhibits the ability to print or download the information in the electronic record.
- (d) This section may not be varied by agreement, but:
- (1) a requirement under a law other than this chapter to provide information in writing may be varied by agreement to the extent permitted by the other law; and
 - (2) a requirement under a law other than this chapter to send, communicate, or transmit a record by first class mail, may be varied by agreement to the extent permitted by the other law.

IC 26-2-8-108

Attribution and effect of electronic record and electronic signature

- (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be proved in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
- (b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

IC 26-2-8-109

Effect of change or error

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

- (1) If the parties have agreed to use a security procedure to detect changes or errors and one (1) party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the effect of the changed or erroneous electronic record is avoidable by the conforming party.
- (2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error by the individual made in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:
 - (A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;
 - (B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy

the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subdivision (1) nor subdivision (2) applies, the change or error has the effect provided by law, including the law of mistake, and the parties' contract, if any.

(4) Subdivisions (2) and (3) may not be varied by agreement.

IC 26-2-8-110

Notarization and acknowledgment

If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

IC 26-2-8-111

Retention of electronic records; originals

(a) If a law requires that certain records be retained, that requirement is met by retaining an electronic record of the information in the record that:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain records in accordance with subsection (a) does not apply to any information whose sole purpose is to enable the record to be sent, communicated, or received.

(c) A person satisfies subsection (a) by using the services of any other person if the requirements of subsection (a) are met.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain records for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2000, specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from specifying additional requirements for the retention of records, written or electronic, subject to the agency's jurisdiction.

IC 26-2-8-112

Admissibility of evidence

In a legal proceeding, evidence of an electronic record or electronic signature may not be excluded because it is an electronic record or electronic signature or it is not an original or is not in its original form.

IC 26-2-8-113

Automated transaction

(a) If an offer evokes an electronic record in response, a contract may be formed in the same manner and with the same effect as if the record were not electronic, but an acceptance of the offer is effective, if at all, when received.

(b) In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(c) The terms of a contract are determined by the substantive law applicable to the particular contract.

IC 26-2-8-114

Time and place of sending and receipt

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when the information is addressed or otherwise directed properly to the recipient and either:

(1) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender; or

(2) enters a region of an information processing system that is under the control of the recipient.

(b) Unless otherwise agreed between the sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent from which the recipient is able to retrieve the electronic record; and

(2) the electronic record is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and is deemed to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one (1) place of business, the place of business of that person is that which has the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is effective when received even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, in itself, does not establish that the content sent corresponds to the content received.

(g) If a law other than this chapter requires that a record be sent or received, the requirement is satisfied by an electronic record only if it is sent in accordance with subsection (a) or received in accordance with subsection (b). If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subsection may not be varied by agreement.

IC 26-2-8-115

Transferable records

(a) In this section, "transferable record" means an electronic record that:

(1) would be a note under IC 26-1-3.1 or a document under IC 26-1-7, if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is subject to this chapter.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to whom the transferable record has been issued or transferred.

(c) A system satisfies subsection (a), and a person is deemed to have control of a transferable record, if the record or records are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists that is unique, identifiable, and except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in IC 26-1-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under IC 26-1, including, if the applicable statutory requirements under IC 26-1-3.1-302(a), IC 26-1-7-501, or IC 26-1-9.1-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights in this subsection.

(e) Except as otherwise agreed, obligors under a transferable record have the same rights and defenses as equivalent obligors under equivalent records and writings under IC 26-1.

(f) If requested by the person against whom enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. This proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and establish the identity of the person in control of the transferable record.

IC 26-2-8-116

Electronic signature involving individual health information

(a) As used in this section, "authorization" means a consent, an approval, or an authorization between an individual and a person.

(b) As used in this section, "electronic identification" means the electronic identification system for form, location, and endorsement that is specified in subsection (d).

(c) Electronic signature authentication and identification may be used for an individual who participates in agreements, authorizations, contracts, records, or transactions that involve individually identifiable health information, including medical records and record keeping, transfer of medical records, medical billing, health care proxies, health care directives, consent to medical treatment, medical research, and organ and tissue donation or procurement.

(d) The electronic authentication and identification under subsection (c) may be accomplished by an interactive system of security procedures that include any of the following:

(1) A tamper proof electric appliance that receives input of unique identification numbers, unique biometric identifiers, or location devices.

(2) A computerized authentication process for biometric identifiers that is linked to the appropriate identification numbers upon receipt of the identifiers.

(3) Transmission of verification of the identifiers to a securely maintained electronic repository. No provision in this section may be construed to supersede or preempt applicable federal and state law, including the Indiana Uniform Electronic Transactions Act (IC 26-2-8), the Health Insurance Portability and Accountability Act of 1996 and associated regulations, and 21 CFR Part 11.

IC 26-2-8-201

Creation and retention of electronic records and conversion of written records by governmental agency

Each governmental agency shall determine whether, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records.

IC 26-2-8-202

Acceptance and distribution of electronic records by governmental agencies

(a) Except as otherwise provided in section 111(f) of this chapter, each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify:

- (1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for such purposes;
- (2) if electronic records must be electronically signed, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;
- (3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
- (4) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in section 111(f) of this chapter, this chapter does not require a governmental agency to use or permit the use of electronic records or electronic signatures.

IC 26-2-8-203

Interoperability

Standards adopted by a governmental agency under section 202 of this chapter must encourage and promote consistency and interoperability with similar requirements adopted by:

- (1) other governmental agencies;
- (2) other states;

(3) the federal government; and

(4) nongovernmental persons interacting with governmental agencies. If appropriate, those standards must specify differing levels of standards from which governmental agencies may choose in implementing the most appropriate standard for a particular application.

IC 26-2-8-301

Severability clause

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

IC 26-2-8-302

Prospective application

This chapter applies to an electronic record or electronic signature created, generated, sent, communicated, received, or stored after June 30, 2000.

As added by P.L.62-2000, SEC.1.

Appendix V

Notary Certificate (Jurat) Examples

Acknowledgment in an Individual Capacity

Acknowledgments allow the signer of the document to verify that the signature on the document is their signature. An acknowledgment requires that the signer personally appear before the notary and sign the document. The signer must be properly identified and has to declare that he/she understands the document and is signing of their own free will.

There are many forms of acknowledgments but they all basically say the same thing: “I signed this document of my own free will”. The notary public is a witness to this statement and shows that:

1. The signer personally **appeared** before the notary;
2. The signer was positively **identified** by the notary; and
3. The signer freely and willingly **acknowledged** his or her signature.

An acknowledgment does not have to be signed before a notary unless it specifically says “subscribed/signed before me”. If the certificate says that a notary must witness its signing, then the document can be re-signed before the notary, even if it was signed previously by the signer. It is also permissible to notarize a document that was signed several years ago, as long as the document has an original signature. Documents cannot be signed **AFTER** notarization.

An **acknowledgment in individual capacity** means that one individual, the signer, has signed a record for the purpose stated in the document. The individual must personally appear before the notary, acknowledge that he or she signed out of his or her own free will and the notary must positively ID the individual as the signer. The signature may be made **before or during** the notarization, but **not after**.

SAMPLE CERTIFICATE FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY

State of Indiana
 County of _____ ← County where signed

Name of Signer _____

This record was acknowledged before me on _____, 20__ by _____

Notary Signature _____

 (Signature)
 Notary of the State of Indiana

OFFICIAL STAMP
 JANE DOE
 NOTARY PUBLIC - INDIANA
 Commission No. 000000
 My commission expires April 14, 2017

Acknowledgment in a Representative Capacity

Corporations and other business entities are viewed as legal or corporate persons with the same rights as “natural” individuals, but they cannot sign on their own. They need a representative such as a director, trustee, partner, attorney-in-fact or officer to sign for them. This means that the signer is signing on behalf of a business. A notary may not notarize a document for a company if the notary is a shareholder, director, officer, employee, member or partner.

The notary public should only notarize the document if the following criteria are met:

- Personal knowledge. If the notary is a long-time acquaintance with the signer and would be willing to swear in court that the signer is an officer of the company, then he or she can notarize the document.
- Documentary evidence could be provided such as partnership agreements, corporate annual reports, trust agreements or verification from the Corporation Division. Business cards and stationary are NOT sufficient evidence.
- Oath of a third party who the notary personally knows and who is impartial to the transaction. This should be the notary public’s last resort.

SAMPLE CERTIFICATE FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY

State of Indiana
 County of _____ ← County where signed

Name of Signer Title at Company Company Name

This record was acknowledged before me on ____, 20__ by _____ as _____ of _____.

Notary Signature

 (Signature)
 Notary of the State of Indiana

Official Stamp

OFFICIAL STAMP
 JANE DOE
 NOTARY PUBLIC - INDIANA
 Commission No. 000000
 My commission expires April 14, 2017

Verification upon Oath or Affirmation Certificate (Jurat)

This type of notarization is meant to verify the truthfulness in the signer. A jurat is a declaration made by an individual on oath or affirmation that a statement is true. A notary **must** have the signer appear personally, verbally swear the oath or affirm to the truth and sign before the notary. An oath is a pledge to a Supreme Being; an affirmation is a solemn personal pledge of honor that something is true. The penalty for swearing these pledges is perjury.

You are showing that the signer

- Personally **appeared** before you ;
- Was positively **identified** by you;
- Took an **oath/affirmation** before you; and
- Freely and willingly **signed** before you.

An oath cannot

- be done on behalf of someone else, including a corporation; or
- be given over the telephone.

Sample oath/affirmation

- “Do you solemnly swear (or affirm) that the statements in this document are true (so help you God)?”
- “Do you solemnly swear (or affirm) that the information you are about to give (or have given) is the truth, the whole truth, and nothing but the truth (so help you God)?”

The signer/oath taker can either repeat these back to you (using “I” instead of “you”) or can simply say “I do” or “I will”. Draw a line through “sworn” or “(or affirmed)” if you do not use it.

SAMPLE CERTIFICATE FOR VERIFICATION UPON OATH OR AFFIRMATION

State of Indiana
 County of _____ ← County where signed

Name of Signer

Signed and sworn to (or affirmed) before me on _____, 20__ by _____

Notary Signature

 (Signature)
 Notary of the State of Indiana

Official Stamp

OFFICIAL STAMP
 JANE DOE
 NOTARY PUBLIC - INDIANA
 Commission No. 000000
 My commission expires April 14, 2017

Witnessing or Attesting a Signature Certificate

Witnessing or attesting a signature is just like an acknowledgment except that the signer must sign before the notary. If the document has already been signed, then the signer must re-sign the document in front of the notary.

The notary shows that the signer

- Personally **appeared** before the notary;
- Was positively **identified** by the notary; and
- Freely and willingly **signed** before the notary.

Draw a line through “signed” or “attested” if you do not use it.

SAMPLE CERTIFICATE FOR WITNESSING OR ATTESTING A SIGNATURE

State of Indiana
 County of _____ ← **County where signed**

Name of Signer
 ↓

Signed (or attested) before me on _____, 20__ by _____

Official Stamp
 ↓

Notary Signature
 ↓

 (Signature)
 Notary of the State of Indiana

OFFICIAL STAMP
 JANE DOE
 NOTARY PUBLIC - INDIANA
 Commission No. 000000
 My commission expires April 14, 2017

Copy Certification Certificate

A notary public is allowed to certify or attest to a copy of a document. The signer of the document does not state anything about the document; only the notary does. You must carefully make the copy or oversee its making in order to make sure that the copy is true and accurate. The transcription and reproduction must be full, true and accurate. It is best to photocopy the document. A true copy does NOT have to be made from an original copy unless specified.

Personal appearance is required from the person requesting the certified copy.

A photograph cannot be notarized. A statement about the photograph may be notarized though.

SAMPLE CERTIFICATE FOR A COPY CERTIFICATION

State of Indiana
 County of _____ ← County where signed

Name of Signer

Official Stamp

I certify that this is a true and correct copy of a record in the possession of _____

Dated: _____, 20__

Notary Signature

_____(Signature)_____
 Notary of the State of Indiana

OFFICIAL STAMP
 JANE DOE
 NOTARY PUBLIC - INDIANA
 Commission No. 000000
 My commission expires April 14, 2017

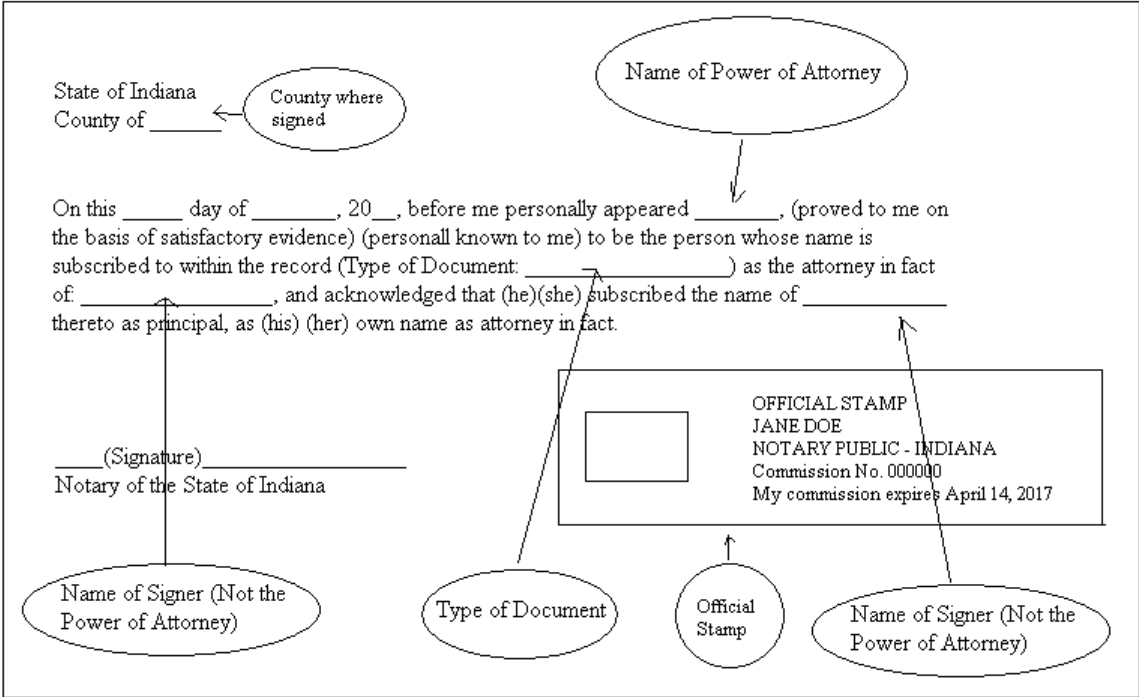
Attorney- In- Fact Acknowledgment Certificate

This is an acknowledgment in a representative capacity. The attorney-in-fact represents the person named in the document and signs on his or her behalf. A power of attorney document is the authorization the attorney-in-fact gets so that he or she can sign documents on the signer’s behalf. You must see proof of the signer’s authority to sign for another. That proof is called the power of attorney.

A general acknowledgment notarial certificate is generally used for power of attorney and needs to be seen before notarizing an attorney-in-fact acknowledgment certificate.

You are not required to judge whether power of attorney is valid for that particular transaction. However, if the document is expired or it clearly says not to use it for the type of document being notarized, then you have the right to refuse notarization.

SAMPLE CERTIFICATE FOR AN ATTORNEY-IN-FACT ACKNOWLEDGMENT



Appendix VI

Glossary of Notarial Terms

Acknowledge: To admit the existence of truth of a statement and accept responsibility.

Acknowledgement: A formal declaration before a notary public that the instrument presented is the free and voluntary act of the party executing it and the signatures on the document are genuine.

Administer: To give or apply in a formal way.

Affidavit: A signed statement made under oath or affirmation.

Affirmation: An oral or written declaration made by a person who has an objection to taking oaths, certifying that under penalty of perjury the declarations are true.

Affix: To secure (an object) to another; to attach; add to.

Apostille: A type of authentication of an official document or the official status of a notary or government official who has authenticated or certified a document. In the United States an apostille is typically prepared by Secretaries of State. Typically when an official record or document is going to be presented to a foreign court or authority, a government office in the issuing country (i.e. a Secretary of State) upon request, will prepare and attach an apostille to the document as an additional form of authentication.

Appointment: The act of designations for an office or position.

Authenticate: To prove or verify as genuine.

Certificate: 1) A document testifying to fact, qualification, or promise; or 2) A written statement legally authenticated.

Civil Liability: The responsibility and obligation to make compensation to another person for damages caused by improper performance of duties and acts.

Commission: A document describing the notary's appointment and term of office.

Credible Witness: A believable witness worthy of confidence. It creates a chain of personally known individuals from the notary public to the signer of a document.

Instrument: A legal document that establishes or transfers property rights, such as a real estate deed, last will and testament, trust or bill of sale. Instruments, such as real estate deeds, are typically recorded and available for public inspection and reliance.

Jurat: Latin for "it has been sworn". A certificate (typically completed by a notary) added to an affidavit or document stating when, before whom and where it was made.

Jurisdiction/Venue: The locality where a cause of action occurs, the state and/or county where a notarization takes place.

Misconduct: Behavior not conforming to prevailing standards of law.

Misdemeanor: An offense of lesser gravity than a felony for which punishment may be a fine or imprisonment.

Oath: Oral or written appeals before God that the declarations made are true.

Official Notary Seal: Rubber stamp or embosser that conforms to the laws and rules.

Personally Known: Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to verify that the individual has the identity claimed.

Power of Attorney: A legal instrument authorizing one to act as another's agent or attorney.

Resignation: Statement that one is resigning a post or office.

Revoke: To cancel or rescind.

Swear/Sworn: To make a solemn promise; to vow, usually before God.

Venue/Jurisdiction: The locality where a cause of action occurs. The state and/or county where a notarization takes place.

Verification: A confirmation of the truth of a theory or fact.

Witness: A person who watches an event take place.