

UCC Filings and Notaries Public

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UCC

- **What is a UCC financing statement?**
 - A UCC financing statement is a form that a creditor files to give notice to the public that it has an interest in personal property of a debtor
 - A lien on personal property is perfected upon filing of the statement
- **There are also amendments, assignments, and termination statements**
- **Where is a UCC financing statement filed?**
 - Some UCC financing statements are filed by the Secretary of State's office
 - Some are filed by County Recorders

Filing UCC Statements

- **Secretary of State's office has filing rules**
 - Cost of filing, methods of payment, forms, information requests, etc.
- **County Recorders have authority to determine their own filing rules**

Accepting or Rejecting a Filing

- **There are very few reasons why a UCC filing should be rejected. These are outlined in IC 26-1-9.1-516.**
- **Unless the filing should be rejected under section 516 or for failing to meet a filing rule, the filing should be accepted, placed on the record, and made available for public search**
- **There should be no determination made by the filing office on whether they are the appropriate office for filing**

Rejection Reasons

- (1) The record is not by a method or medium of communication authorized by the filing office;
- (2) an amount equal to or greater than the applicable filing fee is not tendered;
- (3) the filing office is unable to index the record because:
- (A) in the case of an initial financing statement, the record does not provide a name for the debtor;
- (B) in the case of an amendment or information statement, the record:
- (i) does not identify the initial financing statement as required by IC 26-1-9.1-512 or IC 26-1-9.1-518, as applicable; or
- (ii) identifies an initial financing statement whose effectiveness has lapsed under IC 26-1-9.1-515;
- (C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or
- (D) in the case of a record recorded in the filing office described in IC 26-1-9.1-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:
- (A) provide a mailing address for the debtor; or
- (B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;
- (6) in the case of an assignment reflected in an initial financing statement under IC 26-1-9.1-514(a) or an amendment filed under IC 26-1-9.1-514(b), the record does not provide a name and mailing address for the assignee; or
- (7) in the case of a continuation statement, the record is not filed within the six (6) month period prescribed by IC 26-1-9.1-515(d).

Any Questions

- **Any questions on UCC filings?**

General Notary Information

- A Notary Public is an officer of the state authorized, by law, to certify documents, take affidavits and administer oaths
- Notaries Public are appointed for an 8-year term
- A Notary has state-wide jurisdiction
 - A notary has the authority to perform notarial acts anywhere in the state
 - A notary cannot perform notarial acts outside of the state

Requirements

- To become a notary, an individual must:
 - Be at least 18 years old
 - Be a full-time, permanent resident of the state of Indiana
 - Legal requirements for residency are the same residency requirements for voter registration, found at Ind. Code § 3-5-5
 - Not have been convicted of a crime receiving a sentence exceeding six months imprisonment*
 - *Time spent on deferred sentences, probation, etc. would count toward the 6-month total

Becoming a Notary

- To become a notary, a person must:
 - Complete an application online
 - Take an oath of office
 - Secure a bond, either surety or freehold, in the amount of \$5,000
 - This is like an insurance policy in the event a notary is found liable for monetary damages

Dos and Don'ts

- A notary can:
 - Take and certify all acknowledgements of deeds or other written instruments
 - Administer oaths generally
 - Take and certify affidavits and depositions
- A notary should not:
 - Notarize a document to which the notary has a financial interest
 - Charge a fee for travel, unless it was discussed and agreed upon upfront
 - Select the notarial certificate

Prohibited Acts

- A notary public shall not:
 - Use a name other than that by which the notary was commissioned
 - Acknowledge an instrument in which the notary's name appears as a party
 - Take the acknowledgement or administer the oath to any one who the notary KNOWS has been adjudged mentally incompetent and is under the guardianship of another
 - Take the acknowledgment of a person who doesn't speak English unless the nature and effect of the document is translated into a language the person understands
 - Acknowledge an affidavit unless the person acknowledges the truth of the statements or acknowledge an instrument unless the person who executed the instrument signs it before the notary or affirms that the signature is their own
 - Affix his or her name to a blank document
 - Post date or antedate any document
 - Prepare or fill in blanks in a legal document

Notarizing in Special Circumstances

- A notary must decide that the signer is aware of what they are signing
- A notary should not authenticate a signature or take the acknowledgment of a person who is incoherent, disoriented, intoxicated or incapacitated
- A notary is not expected to explain the details or ramifications of documents to people before they sign
- Notaries must decide for themselves if they are comfortable notarizing the signature of
 - Minor children
 - Persons who are blind or deaf
 - Persons who are mentally incapacitated or illiterate
 - Persons who are seriously ill or dying

Identification of a Signer

- Before a notary notarizes a document, he or she should require the personal appearance of the signer.
- A signer can be identified in one of three ways
 - Identification documents
 - Current and valid government or university document
 - Personal knowledge
 - Credible Witness

Notary Seal

- A notary seal **MUST** contain the words “Notary Public”
- Many seals also contain the words:
 - “State of Indiana”
 - “Seal”
- A notary seal **MAY** contain the following:
 - The notary’s name, exactly as it appears on his or her commission
 - The county of the residence of the notary
 - The notary’s commission number
 - The expiration date of the notary’s commission

Importance of the Notary Seal

- Ind. Code § 33-42-2-4(b) emphasizes the importance of the notary seal
 - “All notarial acts not attested by a seal...are void”
- However, this statute has **NOT** been interpreted to mean that a document is void or invalid if a notary has not applied the seal.
- A document that has been signed by a party, witnessed by a notary but does not contain a seal will generally still be valid, effective and enforceable
- 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 missing a seal may still be proved, validated and enforced by other means.

Fraudulent Advertising

- Notario publico deception is fraudulent advertising or misrepresentation by a notary
 - This does not apply to notaries who are attorneys admitted to practice law in Indiana
- It is illegal for a notary 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 the disclosure is made in written advertisements, it must appear in a conspicuous size. If the disclosure is made in a spoken ad, it must be spoken at a normal volume and speed
 - For written ads, this includes business cards and letterhead

Employees as Notaries

- A notary is not required to provide notary services to the general public, and cannot be compelled to do so
- A notary may agree to provide notarial services as a matter of employment, at the discretion of the employer
 - Ex: a bank may employ notaries and authorize them to provide notarial services to the bank’s clients only
- A notary must still exercise independent judgment and authority. The notary is still personally responsible for their actions
- If the employer-employee relationship is terminated
 - If an employer provided the bond, they may discontinue this
 - If a stamp was purchased by the employer and does NOT contain the notary’s personal information, the employer may keep the stamp. If the stamp **DOES** contain the notary’s personal information, it should travel with the notary.

Revocation of a Notary Commission

- The Secretary of State’s office may investigate any violation of the prohibited acts or notario publico deception and revoke the commission of a notary public
 - If the Secretary of State revokes a notary’s commission for violation a prohibited act, the notary may not reapply for 5 years
 - If the Secretary revokes a commission based on notario publico deception, the notary may never reapply
- If a notary violates a prohibited act, a judge may revoke the notary’s commission
- If a notary is convicted of notario publico deception, the judge shall permanently revoke the commission

Any Questions?

- Any questions on existing notary laws?

Senate Enrolled Act 539

- What's in the bill?
 - Trademark
 - Apostille
 - Notary
- Effective January 1, 2017 and July 1, 2018

Notary Law Changes in SEA 539

- What's not changing:
 - A notary's term will remain an 8-year commission
 - The application fee will remain the same
 - The jurisdiction of a notary will be limited to the State of Indiana
 - Fraudulent advertising is still prohibited

What is changing?

- Education requirement and continuing education
 - Test requirement
 - Non-resident employees
 - Bond information
 - Signature sample
 - Notary fees
 - Travel fees
 - Notary seal
 - The signatures a notary can notarize
 - Change in information
- *This is an overview of the changes that will be made. For more information, please refer to SEA 539 for a more complete information on the changes.

Education

- Currently, there is no education requirement
- After the law in effective:
 - A notary will be required to pass a "course" of education before becoming commissioned
 - A notary will also have to take a "course" every two years during their commission
 - This can take no longer than 2 hours to complete

Test

- Now, only a "training" must be completed before an applicant can receive a commission
- SEA 539 will create a requirement for an applicant to pass a test

Non-resident employees

- To become a notary today, an applicant must be a legal Indiana resident.
- The new law will allow a non-resident to become a notary if they are primarily employed in Indiana

Bond Information

- Many bond changes
 - Bond option
 - Today, a notary can choose to have a surety bond or a freehold
 - The law will remove the option for a notary to use a freehold and will require a surety bond only
 - Bond amount
 - The required bond amount is \$5,000 today.
 - This will go up to \$25,000 when the law becomes effective
 - Bond upload
 - The law will require that a notary upload a copy of their surety bond in order to receive the notary commission.

Signature Sample

- SEA 539 will require a notary to upload a sample of their signature
 - It will be used by the office when authentication documents

Notary Fees

- Today, a notary can charge \$2 per notarization
- SEA 539 will allow a notary to charge \$10

Travel Fees

- No law today
- The legislation will allow a notary to charge a travel fee equal to (or less than) the federal mileage rate
 - Today, it's \$0.34 per mile

Notary Seals

- As of 7/1/18, a seal **MUST** contain the following:
 - Words "notary public"
 - Words "state of Indiana"
 - Word "seal"
 - Name of the notary public exactly as it appears on the commission
 - The words "commission number" followed by the commission number
 - The words "my commission expires" followed by the expiration date

Signatures a notary can notarize

- **Under current law:**
 - A notary cannot notarize their own signature
 - A notary should not notarize a document in which the notary has a financial interest
- **Under SEA 539:**
 - A notary will be prohibited from notarizing documents for themselves, their spouse, or any party that may directly benefit the notary or their spouse

Change in Information

- **A notary must inform the Secretary of State's office of any change in the following information:**
 - Name
 - Residential address
 - Mailing address
 - Email address
 - Phone number
 - Employer's name, address, or phone number
- **If the notary changes their name, they must:**
 - Provide a bond rider
 - Upload a new signature sample

Resources

- **Notary**
 - www.in.gov/sos/notary
 - notary@sos.in.gov
 - 317-232-6532
- **UCC**
 - www.in.gov/sos/business/2380.htm
 - 317-233-3984