

ILLINOIS COMPILED STATUTES
CHAPTER 5. GENERAL PROVISIONS
ACT 312. ILLINOIS NOTARY PUBLIC ACT

ARTICLE I
GENERAL PROVISIONS

5 ILCS 312/1-101 Short Title

This Act may be cited as the Illinois Notary Public Act.

History

P.A. 86-1475.

5 ILCS 312/1-102 Purposes and Rules of Construction

(a) This Act shall be construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this Act are:

(1) to simplify, clarify, and modernize the law governing notaries public; and

(2) to promote, serve, and protect the public interest.

History

P.A. 84-322.

5 ILCS 312/1-103 Prospective Effect of Act

This Act applies prospectively. Nothing in this Act shall be construed to revoke any notary public commission existing on the effective date of this Act. All reappointments of notarial commissions shall be obtained in accordance with this Act.

History

P.A. 84-322.

5 ILCS 312/1-104 Definitions.

As used in this Act:

“Accredited immigration representative” means a not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.29(a) and employees of those organizations accredited under 8 C.F.R. 292.29(d).

“Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

“Audio-video communication” means communication by which a person is able to see, hear, and communicate with another person in real time using electronic means.

“Communication technology” means an electronic device or process that allows a notary public and a remotely located individual to communicate with each other simultaneously by audio-video communication.

“Credential” means a tangible record evidencing the identity of a person, including a valid and unexpired identification card or other document issued by the federal government or any state government that contains the photograph and signature of the principal.

“Digital certificate” means a computer-based record or electronic file to a notary public or applicant for commission as an electronic notary public for the purpose of creating an official

electronic signature. The digital certificate shall be kept in the exclusive control of the electronic notary public.

“Dynamic knowledge based authentication assessment” means an identity assessment that is based on a set of questions formulated from public or private data sources for which the person taking the assessment has not previously provided an answer that meets any rules adopted by the Secretary of State.

“Electronic” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

“Electronic notarial act” means an act that an electronic notary public of this State is authorized to perform. The term includes:

- (1) taking an acknowledgment;
- (2) administering an oath or affirmation;
- (3) executing a jurat;
- (4) certifying a true and correct copy; and
- (5) performing such other duties as may be prescribed by a specific statute.

“Electronic notarial certificate” means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

- (1) the electronic notary public’s electronic signature, electronic seal, title, and commission expiration date;
- (2) other required information concerning the date and placement of the electronic notarization; and
- (3) the facts attested to or certified by the electronic notary public in the particular notarization.

“Electronic notarial certificate” includes the form of an acknowledgment, jurat, verification on oath or affirmation, or verification of witness or attestation that is completed remotely by an electronic notary public and:

- (1) contains the electronic notary’s electronic signature, electronic seal, title and commission, and expiration date;
- (2) contains other required information concerning the date and place of the electronic notarization;
- (3) otherwise conforms to the requirements for an acknowledgment, jurat, verification on oath or affirmation, or verification of witness or attestation under the laws of this State; and
- (4) indicates that the person making the acknowledgment, oath, or affirmation appeared.

“Electronic notarization system” means a set of applications, programs, hardware, software, or technology to enable an electronic notary to perform electronic notarial acts through audio-video communication.

“Electronic notary public” means a person commissioned by the Secretary of State to perform electronic notarial acts.

“Electronic presentation” means the transmission of a quality image of a government-issued identification credential to an electronic notary public through communication technology for the purpose of enabling the electronic notary public to identify the person appearing before the electronic notary public and to perform a credential analysis.

“Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

“Electronic seal” means information within a notarized electronic document that includes the

names, commission number, jurisdiction, and expiration date of the commission of an electronic notary public and generally includes the information required to be set forth in a mechanical stamp under subsection (b-5) of Section 3-101 [5 ILCS 312/3-101].

“Electronic signature” means the official signature of the commissioned notary that is on file with the Secretary of State and has been reduced to an electronic format that may be attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

“Identity proofing” means a process or service operating according to criteria approved by the Secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources, including (a) by means of dynamic knowledge-based authentication, such as a review of personal information from public or proprietary data sources; or (b) by means of analysis of biometric data, such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

“In the presence of” or “appear before” means:

(1) being in the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person; or

(2) being in a different physical location from another person, but able to see, hear, and communicate with the person by means of audio-video communication that meets any rules adopted by the Secretary of State.

“Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notary public, a remote notary public, or an electronic notary public may perform under the laws of this State. “Notary act” includes taking an acknowledgment, administering an oath, or affirmation, taking a verification on oath, or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

“Notary public” or “notary” means an individual commissioned to perform notarial acts.

“Notarization” means the performance of a notarial act.

“Outside the United States” means a location outside of the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory, or insular possession, or other location subject to the jurisdiction of the United States.

“Principal” means an individual:

(1) whose signature is notarized; or

(2) taking an oath or affirmation from the notary but not in the capacity of a witness for the notarization.

“Public key certificate” means an electronic credential which is used to identify an individual who signed an electronic record with the certificate.

“Real time” means the actual span of uninterrupted time during which all parts of an electronic notarial act occur.

“Remote notarial act” means a notarial act that is done by way of audio-video communication technology that allows for direct, contemporaneous interaction between the individual signing the document (the signatory) and the witness by sight and sound but that requires the notary public to use his or her physical stamp and seal to notarize the document without the aid of an electronic seal or signature.

“Remote notary public” means any notary public that performs a remote notarial act.

“Tamper evident” means that any change to an electronic document shall display evidence of the change.

“Unique to the electronic notary public” and “sole control” mean, with respect to an electronic notarization that the signing device used to affix the electronic signature of the electronic notary public and to render the official electronic seal information tamper evident must be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the necessary period of time that such device is engaged and operating to effectuate the authorized electronic notarization.

5 ILCS 312/1-105 Notarization Task Force on Best Practices and Verification Standards to Implement Electronic Notarization. [Repealed]

History

2017 P.A. 100-440, § 5, effective July 1, 2017; 2020 P.A. 101-645, § 5, effective June 26, 2020; repealed internally by P.A. 101-645, § 5, effective July 1, 2021.

5 ILCS 312/1-106 Electronic Notarization Fund.

The Electronic Notarization Fund is created as a special fund in the State treasury. Moneys in the Electronic Notarization Fund during the preceding calendar year, shall be distributed, subject to appropriation, to the Secretary of State to fund the Department of Index’s implementation and maintenance of the electronic notarization commissions. This Section is effective on and after July 1, 2022.

History

2021 P.A. 102-160, § 5, effective January 1, 2022.

ARTICLE II
APPOINTMENT PROVISIONS

5 ILCS 312/2-101 Appointment.

(a) The Secretary of State may appoint and commission as notaries public for a 4-year term as many persons resident in a county in this State as he deems necessary. The Secretary of State may appoint and commission as notaries public for a one-year term as many persons who are residents of a state bordering Illinois whose place of work or business is within a county in this State as the Secretary deems necessary, but only if the laws of that state authorize residents of Illinois to be appointed and commissioned as notaries public in that state.

(b) A notary public commissioned in this State may apply for an electronic notary public commission to perform electronic notarial acts with the name that appears on the notary’s commission.

(c) An individual may apply for a notary public commission and apply for an electronic notary public commission at the same time.

(d) Any notary or electronic notary appointed by the Secretary of State may elect not to perform a notarial act or an electronic notarial act for any reason.

(e) The commission of a notary public and an electronic notary public shall have the same term pursuant to subsection (a).

(f) The electronic notary public commission of a notary public is suspended by operation of law when the notary public is no longer appointed and commissioned as a notary public in this State under this Act. If the commission of the notary public has been revoked or suspended, the Secretary of State shall immediately notify the notary public in writing that his or her commission as a notary public and as an electronic notary public will be suspended by operation of law until he or she is reappointed.

History

5 ILCS 312/2-101.5 Course of study and examination.

(a) Applicants applying for the first time as a notary public or as an electronic notary public or applying to renew his or her appointment as a notary public or as an electronic notary public shall:

(1) complete any course of study on notarization and electronic notarization that is required by the Secretary of State; and

(2) pass an examination at the completion of the course.

(b) The Secretary of State shall have the authority to adopt administrative rules mandating a course of study and examination and establishing the course of study content, length of the course of study to be required, and to approve any course of study providers.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/2-102 Application.

(a) Application for notary public commission. Every applicant for appointment and commission as a notary shall complete an application in a format prescribed by the Secretary of State to be filed with the Secretary of State, stating:

(1) the applicant's official name, as it appears on his or her current driver's license or state-issued identification card;

(2) the county in which the applicant resides or, if the applicant is a resident of a state bordering Illinois, the county in Illinois in which that person's principal place of work or principal place of business is located;

(3) the applicant's residence address, as it appears on his or her current driver's license or state-issued identification card;

(4) the applicant's e-mail address;

(5) the applicant's business address if different than the applicant's residence address, if performing notarial acts constitutes any portion of the applicant's job duties;

(6) that the applicant has resided in the State of Illinois for 30 days preceding the application or that the applicant who is a resident of a state bordering Illinois has worked or maintained a business in Illinois for 30 days preceding the application;

(7) that the applicant is a citizen of the United States or lawfully admitted for permanent residence in the United States;

(8) the applicant's date of birth;

(9) that the applicant is proficient in English language;

(10) that the applicant has not had a prior application or commission revoked due to a finding or decision by the Secretary of State;

(11) that the applicant has not been convicted of a felony;

(12) that the applicant's signature authorizes the Office of the Secretary of State to conduct a verification to confirm the information provided in the application, including a criminal background check of the applicant, if necessary;

(13) that the applicant has provided satisfactory proof to the Secretary of State that the applicant has successfully completed any required course of study on notarization; and

(14) any other information the Secretary of State deems necessary.

(b) Any notary appointed under subsection (a) shall have the authority to conduct remote notarizations.

(c) Application for electronic notary public commission. An application for an electronic notary public commission must be filed with the Secretary of State in a manner prescribed by the Secretary of State. Every applicant for appointment and commission as an electronic notary public shall complete an application to be filed with the Secretary of State, stating:

- (1) all information required to be included in an application for appointment as an electronic notary public, as provided under subsection (a);
- (2) that the applicant is commissioned as a notary public under this Act;
- (3) the applicant's email address;
- (4) that the applicant has provided satisfactory proof to the Secretary of State that the applicant has successfully completed any required course of study on electronic notarization and passed a qualifying examination;
- (5) a description of the technology or device that the applicant intends to use to create his or her electronic signature in performing electronic notarial acts;
- (6) the electronic signature of the applicant; and
- (7) any other information the Secretary of State deems necessary.

(d) Electronic notarial acts. Before an electronic notary public performs an electronic notarial act using audio-video communication, he or she must be granted an electronic notary public commission by the Secretary of State under this Section, and identify the technology that the electronic notary public intends to use, which must be approved by the Secretary of State.

(e) Approval of commission. Upon the applicant's fulfillment of the requirements for a notarial commission or an electronic notary public commission, the Secretary of State shall approve the commission and issue to the applicant a unique commission number.

(f) Rejection of application. The Secretary of State may reject an application for a notarial commission or an electronic notary public commission if the applicant fails to comply with any Section of this Act.

History

P.A. 85-593; 91-818, § 5; 93-1001, § 5; 99-112, § 5; 2018 P.A. 100-809, § 5, effective January 1, 2019; 2021 P.A. 102-160, § 5, effective January 1, 2022; 2022 P.A. 102-160, § 5, effective May 27, 2022; 2022 P.A. 102-1030, § 5, effective May 27, 2022.

5 ILCS 312/2-102.5 Online application system.

(a) The Secretary of State may establish and maintain an online application system that permits an Illinois resident to apply for appointment and commission as a notary public or electronic notary public.

(b) Any such online application system shall employ security measures to ensure the accuracy and integrity of notary public applications submitted electronically under this Section.

(c) The Secretary of State may cross reference information provided by applicants with that contained in the Secretary of State's driver's license and Illinois Identification Card databases in order to match the information submitted by applicants, and may receive from those databases the applicant's digitized signature upon a successful match of the applicant's information with that information contained in the databases.

(d) An online application shall contain all of the information that is required for a paper application as provided in Section 2-102 of this Act [5 ILCS 312/2-102]. The applicant shall also be required to provide:

- (1) the applicant's full Illinois driver's license or Illinois Identification Card number;
- (2) the date of issuance of the Illinois driver's license or Illinois Identification Card; and
- (3) the applicant's e-mail address for notices to be provided under this Section.

(e) For his or her application to be accepted, the applicant shall mark the box associated with the following statement included as part of the online application: By clicking on the box below, I swear or affirm all of the following:

(1) I am the person whose name and identifying information is provided on this form, and I desire to be appointed and commissioned as a notary public in the State of Illinois.

(2) All the information I have provided on this form is true and correct as of the date I am submitting this form.

(3) I authorize the Secretary of State to utilize my signature on file with the Secretary of State driver's license and Illinois Identification Card databases and understand that such signature will be used on this online application for appointment and commission as a notary public or electronic notary as if I had signed this form personally.

(4) I authorize the Secretary of State to utilize my signature to conduct a verification to confirm the information provided in the application, including a criminal background check, if necessary.

(f) Immediately upon receiving a completed online application, the online system shall send by electronic mail a confirmation notice that the application has been received. Upon completion of the procedure outlined in subsection (c) of this Section, the online application system shall send by electronic mail a notice informing the applicant of whether the following information has been matched with the Secretary of State driver's license and Illinois Identification Card databases:

(1) that the applicant has an authentic Illinois driver's license or Illinois Identification Card issued by the Secretary of State and that the driver's license or Illinois Identification Card number provided by the applicant matches the driver's license or Illinois Identification Card number for that person on file with the Secretary of State;

(2) that the date of issuance of the Illinois driver's license or Illinois Identification Card listed on the application matches the date of issuance of that license or card for that person on file with the Secretary of State;

(3) that the date of birth provided by the applicant matches the date of birth for that person on file with the Secretary of State;

(4) that the residence address provided by the applicant matches the residence address for that person on file with the Secretary of State; and

(5) the last 4 digits of the applicant's social security number.

(g) If the information provided by the applicant matches all of the criteria identified in subsection (f) of this Section, the online application system shall retrieve from the Secretary of State's database files an electronic copy of the applicant's signature from his or her Illinois driver's license or Illinois Identification Card and such signature shall be deemed to be the applicant's signature on his or her online application.

History

Contingently enacted by 2015 P.A. 99-112, § 5, effective January 1, 2016; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/2-103 Appointment Fee.

(a) Every applicant for appointment and commission as a notary public shall pay to the Secretary of State a fee of \$15. Ten dollars from each applicant fee shall be deposited in the General Revenue Fund. Five dollars from each applicant fee shall be deposited in the Electronic Notarization Fund.

(b) Every applicant for a commission as an electronic notary public shall pay to the Secretary of State a fee of \$25. This fee is in addition to the fee proscribed for a commission as a notary

public and shall be deposited in the Electronic Notarization Fund.

(c) The changes made to this Section by this amendatory Act of the 102nd General Assembly are effective on and after July 1, 2022.

History

P.A. 85-1396; 2021 P.A. 102-160, § 5, effective July 1, 2022.

5 ILCS 312/2-104 Oath.

(a) Every applicant for appointment and commission as a notary public shall take the following oath:

“I, (name of applicant), solemnly affirm, under the penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that I have carefully read the notary law of this State; and that, if appointed and commissioned as a notary public, I will perform faithfully, to the best of my ability, all notarial acts in accordance with the law.”

(b) In the event that the applicant completes a paper application for appointment and commission as a notary public, he or she shall take the oath in the presence of a person qualified to administer an oath in this State. The printed oath shall be followed by the signature of the applicant and notarized as follows:

“ _____ (Signature of applicant)

State of Illinois

County of (name of county where the notarization is completed)

Subscribed and affirmed before me on (insert date) by (name of person whose signature is being notarized).

(Official signature and official seal of notary)”

(c) In the event that the applicant completes an online application for appointment and commission as a notary public, he or she shall affirm the oath electronically. An electronic affirmation of the oath in the online application system shall have the same force and effect as an oath sworn and affirmed in person.

History

P.A. 84-322; 91-357, § 8; 99-112, § 5; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/2-105 Bond.

(a) Every application for appointment and commission as a notary public shall be accompanied by or logically associated with an executed bond commencing on the date of the appointment with a term of 4 years, in the sum of \$5,000, with, as surety thereon, a company qualified to write surety bonds in this State. The bond shall be conditioned upon the faithful performance of all notarial acts in accordance with this Act. The Secretary of State may prescribe an official bond form.

(b) A notary public that performs notarizations either remotely or electronically and by means of audio-video communication shall obtain and maintain a surety bond in the amount of \$25,000 from a surety or insurance company licensed to do business in this State, and this bond shall be exclusively conditioned on the faithful performance of remote notarial acts or electronic notarial acts by means of audio-video communication. When a notary is required to hold both the \$5,000 bond and the \$25,000 bond, one bond totaling \$30,000 shall satisfy the provisions of this Section.

(c) The bonding company issuing the bond to a notary public or an electronic notary public shall submit verification of the bond information for the notary to the Secretary of State in a format prescribed by the Secretary of State.

History

P.A. 84-322; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/2-106 Appointment Recorded by County Clerk. [Repealed]

History

P.A. 84-322; 91-818, § 5; 2017 P.A. 100-201, § 35, effective August 18, 2017; repealed by 2021 P.A. 102-160, § 10, effective July 1, 2022.

5 ILCS 312/2-107 Notary public remittance agent.

(a) Every company, corporation, association, organization, or person that remits notary public applications to the Secretary of State on behalf of applicants for appointment and commission as a notary public, for compensation or otherwise, shall comply with standards to qualify for licensure as a notary public remittance agent.

(b) The Secretary of State shall adopt rules describing the requirements for a notary public remittance agent to be licensed in the State of Illinois.

(c) A notary public remittance agent submitting an application on behalf of an applicant for appointment and commission as a notary public shall remit the application and fee provided by the applicant within 30 days after receiving the application and fee from the applicant.

(d) The agent shall not modify a notary's application information in any way prior to submitting the application information to the Secretary of State.

(e) The agent shall not issue a notary seal or notary stamp to the notary applicant until sufficient evidence has been received that the notary applicant has received a commission from the Secretary of State.

(f) Any violation of this Act, including this Section, may result in an administrative citation, criminal complaint, or civil action arising from his or her duties as a notary public or notary public remittance agent.

(g) The provisions of this Section do not apply to units of government or private businesses that are making applications, and providing application fees for their employees.

(h) The Secretary of State shall adopt rules applicable to this Section.

History

Contingently enacted by 2019 P.A. 101-366, § 5, effective January 1, 2020; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

ARTICLE III DUTIES- FEES-AUTHORITY

5 ILCS 312/3-101 Official Seal. [For Effective Date, See Note]

(a) Notary public official seal. Each notary public shall, upon receiving the notary commission from the Secretary of State, obtain an official rubber stamp seal with which the notary shall authenticate his or her official acts. The rubber stamp seal shall contain the following information:

(1) the words "Official Seal";

(2) the notary's official name;

(3) the words "Notary Public", "State of Illinois", and "My commission expires (commission expiration date)"; and

(4) a serrated or milled edge border in a rectangular form not more than one inch in height by two and one-half inches in length surrounding the information.

(b) (Blank).

(b-5) Electronic notary public electronic seal and electronic signature. An electronic notarial act must be evidenced by the following, which must be attached to or logically associated with the electronic document that is the subject of the electronic notarial act and which must be

immediately perceptible and reproducible:

- (1) the electronic signature of the electronic notary public;
- (2) the electronic seal of the electronic notary public, which shall look identical to a traditional notary public seal;
- (3) the words “Notary Public”, “State of Illinois”, and “My commission expires (commission expiration date)”; and
- (4) language explicitly stating that the electronic notarial act was performed using audio-video communication, if applicable.

(c) Registered devices. An electronic notary shall register his or her chosen device with the Secretary of State before first use. Thereafter, electronic notary public shall take reasonable steps to ensure that any registered device used to create an electronic seal or electronic signature is current and has not been revoked or terminated by the device’s issuing or registering authority. Upon learning that the technology or device used to create his or her electronic signature has been rendered ineffective or unsecure, an electronic notary public shall cease performing electronic notarial acts until:

- (1) a new technology or device is acquired; and
- (2) the electronic notary public sends an electronic message to the Secretary of State that includes the electronic signature of the electronic notary public required under paragraph (6) of subsection (b) of Section 2-102 [5 ILCS 312/2-102] relating to the new technology or device.

(d) Electronic signature and seal security.

(1) An electronic notary public shall keep the electronic notary public’s electronic signature and electronic seal secure and under the notary public’s exclusive control. The electronic notary public shall not allow another person to use his or her electronic signature or electronic seal.

(2) An electronic notary public shall notify an appropriate law enforcement agency, the vendor of the electronic notary technology, and the Secretary of State no later than the next business day after the theft, compromise, or vandalism of the electronic notary public’s electronic signature or electronic seal.

(3) The electronic notary public shall not disclose any access information used to affix the electronic notary public’s signature and seal except when requested by law enforcement.

(e) Certificate of electronic notarial act. An electronic notary public shall attach his or her electronic signature and electronic seal with the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(f) The Secretary of State shall have the authority to adopt administrative rules to implement this Section.

History

P.A. 84-322; 95-988, § 5; contingently amended by 2017 P.A. 100-81, § 5, effective January 1, 2018; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/3-101.5 Security of electronic signature and seal.

The following requirements apply only to electronic notaries public.

(a) The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.

(b) The electronic notary public’s electronic signature and electronic seal are deemed to be reliable if the following requirements are met:

- (1) it is unique to the electronic notary public;
- (2) it is capable of independent verification;

(3) it is retained under the electronic notary public's sole control;

(4) it is attached to or logically associated with the electronic document in a tamper evident manner. Evidence of tampering pursuant to this standard may be used to determine whether the electronic notarial act is valid or invalid;

(5) the electronic notary public has chosen technology or a vendor that meets the minimum requirements established by the Secretary of State and is approved by the Secretary of State; and

(6) the technology adheres to any other standards or requirements set by the Secretary of State in administrative rule.

(c) The electronic notary public shall be prohibited from selling or transferring personal information learned through the course of an electronic notarization, except when required by law, law enforcement, the Secretary of State or court order.

(d) The Secretary of State shall have the authority to adopt administrative rules to implement this Section.

History

Contingently enacted by 2021 P.A. 102-160, § 5.

5 ILCS 312/3-102 Notarial Record; Residential Real Property Transactions.

(a) This Section shall apply to every notarial act in Illinois involving a document of conveyance that transfers or purports to transfer title to residential real property located in Cook County.

(b) As used in this Section, the following terms shall have the meanings ascribed to them:

(1) "Document of Conveyance" shall mean a written instrument that transfers or purports to transfer title effecting a change in ownership to Residential Real Property, excluding:

(i) court-ordered and court-authorized conveyances of Residential Real Property, including without limitation, quit-claim deeds executed pursuant to a marital settlement agreement incorporated into a judgment of dissolution of marriage, and transfers in the administration of a probate estate;

(ii) judicial sale deeds relating to Residential Real Property, including without limitation, sale deeds issued pursuant to proceedings to foreclose a mortgage or execute on a levy to enforce a judgment;

(iii) deeds transferring ownership of Residential Real Property to a trust where the beneficiary is also the grantor;

(iv) deeds from grantors to themselves that are intended to change the nature or type of tenancy by which they own Residential Real Property;

(v) deeds from a grantor to the grantor and another natural person that are intended to establish a tenancy by which the grantor and the other natural person own Residential Real Property;

(vi) deeds executed to the mortgagee in lieu of foreclosure of a mortgage; and

(vii) deeds transferring ownership to a revocable or irrevocable grantor trust where the beneficiary includes the grantor.

(2) "Financial Institution" shall mean a State or federally chartered bank, savings and loan association, savings bank, credit union, or trust company.

(3) "Notarial Record" shall mean the written document created in conformity with this Section by a notary in connection with Documents of Conveyance.

(4) "Residential Real Property" shall mean a building or buildings located in Cook County, Illinois and containing one to 4 dwelling units or an individual residential condominium unit.

(5) "Title Insurance Agent" shall have the meaning ascribed to it under the Title Insurance Act [215 ILCS 155/1 et seq.].

(6) “Title Insurance Company” shall have the meaning ascribed to it under the Title Insurance Act.

(c) A notary appointed and commissioned as a notary in Illinois shall, in addition to compliance with other provisions of this Act, create a Notarial Record of each notarial act performed in connection with a Document of Conveyance. The Notarial Record shall contain:

(1) The date of the notarial act;

(2) The type, title, or a description of the Document of Conveyance being notarized, and the property index number (“PIN”) used to identify the Residential Real Property for assessment or taxation purposes and the common street address for the Residential Real Property that is the subject of the Document of Conveyance;

(3) The signature, printed name, and residence street address of each person whose signature is the subject of the notarial act and a certification by the person that the property is Residential Real Property as defined in this Section, which states “The undersigned grantor hereby certifies that the real property identified in this Notarial Record is Residential Real Property as defined in the Illinois Notary Public Act [5 ILCS 312/1-101 et seq.]”.

(4) A description of the satisfactory evidence reviewed by the notary to determine the identity of the person whose signature is the subject of the notarial act;

(5) The date of notarization, the fee charged for the notarial act, the Notary’s home or business phone number, the Notary’s residence street address, the Notary’s commission expiration date, the correct legal name of the Notary’s employer or principal, and the business street address of the Notary’s employer or principal; and

(6) The notary public shall require the person signing the Document of Conveyance (including an agent acting on behalf of a principal under a duly executed power of attorney), whose signature is the subject of the notarial act, to place his or her right thumbprint on the Notarial Record. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger, and shall so indicate on the Notarial Record. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate on the Notarial Record and shall also provide an explanation of that physical condition. The notary may obtain the thumbprint by any means that reliably captures the image of the finger in a physical or electronic medium.

(d) If a notarial act under this Section is performed by a notary who is a principal, employee, or agent of a Title Insurance Company, Title Insurance Agent, Financial Institution, or attorney at law, the notary shall deliver the original Notarial Record to the notary’s employer or principal within 14 days after the performance of the notarial act for retention for a period of 7 years as part of the employer’s or principal’s business records. In the event of a sale or merger of any of the foregoing entities or persons, the successor or assignee of the entity or person shall assume the responsibility to maintain the Notarial Record for the balance of the 7-year business records retention period. Liquidation or other cessation of activities in the ordinary course of business by any of the foregoing entities or persons shall relieve the entity or person from the obligation to maintain Notarial Records after delivery of Notarial Records to the Recorder of Deeds of Cook County, Illinois.

(e) If a notarial act is performed by a notary who is not a principal, employee, or agent of a Title Insurance Company, Title Insurance Agent, Financial Institution, or attorney at law, the notary shall deliver the original Notarial Record within 14 days after the performance of the notarial act to the Recorder of Deeds of Cook County, Illinois for retention for a period of 7 years, accompanied by a filing fee of \$5.

(f) The Notarial Record required under subsection (c) of this Section shall be created and maintained for each person whose signature is the subject of a notarial act regarding a Document of Conveyance and shall be in substantially the following form:

NOTARIAL RECORD — RESIDENTIAL REAL PROPERTY TRANSACTIONS

Date Notarized:

Fee: \$

The undersigned grantor hereby certifies that the real property identified in this Notarial Record is Residential Real Property as defined in the Illinois Notary Public Act.

Grantor's (Signer's) Printed Name:

Grantor's (Signer's) Signature:

Grantor's (Signer's) Residential Street Address, City, State, and Zip:

Type or Name of Document of Conveyance:

PIN No. of Residential Real Property:

Common Street Address of Residential Real Property:

Thumbprint or Fingerprint:

Description of Means of Identification:

Additional Comments:

Name of Notary Printed:

Notary Phone Number:

Commission Expiration Date:

Residential Street Address of Notary, City, State, and Zip:

Name of Notary's Employer or Principal:

Business Street Address of Notary's Employer or Principal, City, State, and Zip:

(g) No copies of the original Notarial Record may be made or retained by the Notary. The Notary's employer or principal may retain copies of the Notarial Records as part of its business records, subject to applicable privacy and confidentiality standards.

(h) The failure of a notary to comply with the procedure set forth in this Section shall not affect the validity of the Residential Real Property transaction in connection to which the Document of Conveyance is executed, in the absence of fraud.

(i) The Notarial Record or other medium containing the thumbprint or fingerprint required by subsection (c)(6) shall be made available or disclosed only upon receipt of a subpoena duly authorized by a court of competent jurisdiction. Such Notarial Record or other medium shall not be subject to disclosure under the Freedom of Information Act [5 ILCS 140/1 et seq.] and shall not be made available to any other party, other than a party in succession of interest to the party maintaining the Notarial Record or other medium pursuant to subsection (d) or (e).

(j) In the event there is a breach in the security of a Notarial Record maintained pursuant to subsections (d) and (e) by the Recorder of Deeds of Cook County, Illinois, the Recorder shall notify the person identified as the "signer" in the Notarial Record at the signer's residential street address set forth in the Notarial Record. "Breach" shall mean unauthorized acquisition of the fingerprint data contained in the Notarial Record that compromises the security, confidentiality, or integrity of the fingerprint data maintained by the Recorder. The notification shall be in writing and made in the most expedient time possible and without unreasonable delay, consistent with any measures necessary to determine the scope of the breach and restore the reasonable security, confidentiality, and integrity of the Recorder's data system.

(k) Subsections (a) through (i) shall not apply on and after July 1, 2018.

History

P.A. 84-322; 95-988, § 5; 97-508, § 5; 98-29, § 5.

5 ILCS 312/3-103 Notice.

(a) Every notary public who is not an attorney or an accredited immigration representative who advertises the services of a notary public in a language other than English, whether by radio, television, signs, pamphlets, newspapers, electronic communications, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written or electronic material the following: notice in English and the language in which the written or electronic communication appears. This notice shall be of a conspicuous size, if in writing or electronic communication, and shall state: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS. I AM NOT ALLOWED TO DRAFT LEGAL DOCUMENTS OR RECORDS, NOR MAY I GIVE LEGAL ADVICE ON ANY MATTER, INCLUDING, BUT NOT LIMITED TO, MATTERS OF IMMIGRATION, OR ACCEPT OR CHARGE FEES FOR THE PERFORMANCE OF THOSE ACTIVITIES “. If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

A notary public shall not, in any document, advertisement, stationery, letterhead, business card, electronic communication, or other comparable written material describing the role of the notary public, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the word “notario” is prohibited under this provision.

Failure to follow the procedures in this Section shall result in a fine of \$1,500 for each written violation. The second violation shall result in permanent revocation of the commission of notary public. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(b) All notaries public required to comply with the provisions of subsection (a) shall prominently post at their place of business as recorded with the Secretary of State pursuant to Section 2-102 of this Act [5 ILCS 312/2-102] a schedule of fees established by law which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which notary services were solicited and shall contain the disavowal of legal representation required above in subsection (a), unless such notice of disavowal is already prominently posted.

(c) No notary public, agency or any other person who is not an attorney shall represent, hold themselves out or advertise that they are experts on immigration matters or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law unless they are a designated entity as defined pursuant to Section 245a.1 of Part 245a of the Code of Federal Regulations (8 CFR 245a.1) or an entity accredited by the Board of Immigration Appeals.

(c-5) In addition to the notice required under subsection (a), every notary public who is subject to subsection (a) shall, prior to rendering notary services or electronic notary services, provide any person seeking notary or electronic notary services with a written acknowledgment that substantially states, in English and the language used in the advertisement for notary services the following: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS. I AM NOT ALLOWED TO DRAFT LEGAL DOCUMENTS OR RECORDS, NOR MAY I GIVE LEGAL ADVICE ON ANY MATTER OR ACCEPT OR CHARGE FEES FOR THE PERFORMANCE OF THOSE ACTIVITIES”. The Office of the Secretary of State shall translate this acknowledgement into Spanish and any other language the Secretary of State may deem necessary to achieve the requirements of this subsection (c-5), and shall make the translations available on the website of the Secretary of State. This

acknowledgment shall be signed by the recipient of notary services or electronic notary services before notary services or electronic notary services are rendered, and the notary shall retain copies of all signed acknowledgments throughout their present commission and for 2 years thereafter. Notaries shall provide recipients of notary services or electronic notary services with a copy of their signed acknowledgment at the time services are rendered. This provision shall not apply to notary services or electronic notary services related to documents prepared or produced in accordance with the Illinois Election Code.

(d) Any person who aids, abets or otherwise induces another person to give false information concerning immigration status shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

Any notary public who violates the provisions of this Section shall be guilty of official misconduct and subject to fine or imprisonment.

Nothing in this Section shall preclude any consumer of notary public services from pursuing other civil remedies available under the law.

(e) No notary public who is not an attorney or an accredited representative shall accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(f) Violation of subsection (e) is a business offense punishable by a fine of 3 times the amount received for services, or \$1,001 minimum, and restitution of the amount paid to the consumer. Nothing in this Section shall be construed to preempt nor preclude additional appropriate civil remedies or criminal charges available under law.

(g) If a notary public or electronic notary public of this State is convicted of a business offense involving a violation of this Act, the Secretary shall automatically revoke the notary public commission or electronic notary public commission of that person on the date that the person's most recent business offense conviction is entered as a final judgment.

History

P.A. 85-593; 93-1001, § 5; contingently amended by 2017 P.A. 100-81, § 5, effective January 1, 2018; contingently amended by 2019 P.A. 101-465, § 5, effective January 1, 2020; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/3-104 Maximum Fee.

(a) Except as otherwise provided in this subsection (a), the maximum fee for non-electronic notarization in this State is \$5 for any notarial act performed and up to \$25 for any notarial act performed pursuant to Section 3-102 [5 ILCS 312/3-102].

Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the following:

- (1) \$10 per form completion;
- (2) \$10 per page for the translation of a non-English language into English where such translation is required for immigration forms;
- (3) \$5 for notarizing;
- (4) \$3 to execute any procedures necessary to obtain a document required to complete immigration forms; and
- (5) A maximum of \$75 for one complete application.

Fees authorized under this subsection shall not include application fees required to be submitted with immigration applications.

(b) The maximum fee in this State up to \$25 for any electronic notarial act performed pursuant

to this Act. An electronic notary public may charge a reasonable fee to recover any cost of providing a copy of an entry or a recording of an audio-video communication in an electronic journal maintained pursuant to Section 3-107 [5 ILCS 312/3-107].

(c) Any person who violates the provisions of subsection (a) or (b) shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

(d) Upon his own information or upon complaint of any person, the Attorney General or any State's Attorney, or their designee, may maintain an action for injunctive relief in the court against any notary public or any other person who violates the provisions of subsection (a) or (b) of this Section. These remedies are in addition to, and not in substitution for, other available remedies.

If the Attorney General or any State's Attorney fails to bring an action as provided pursuant to this subsection within 90 days of receipt of a complaint, any person may file a civil action to enforce the provisions of this subsection and maintain an action for injunctive relief.

(e) All notaries public must provide itemized receipts and keep records for fees accepted for services provided. Notarial fees must appear on the itemized receipt as separate and distinct from any other charges assessed. Failure to provide itemized receipts and keep records that can be presented as evidence of no wrongdoing shall be construed as a presumptive admission of allegations raised in complaints against the notary for violations related to accepting prohibited fees.

History

P.A. 85-593; 93-1001, § 5; 95-988, § 5; 98-29, § 5; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/3-105 Authority.

(a) A notary public shall have authority to perform notarial acts, or electronic notarial acts, if the notary holds an electronic notary public commission, throughout the State so long as the notary resides in the same county in which the notary was commissioned or, if the notary is a resident of a state bordering Illinois, so long as the notary's principal place of work or principal place of business is in the same county in Illinois in which the notary was commissioned.

(b) Except as provided under subsection (c), an electronic notary public who is physically located in this State may perform an electronic notarial act using communication technology in accordance with this Article and any rules adopted by the Secretary of State for a remotely located individual who is physically located: (i) in this State; or (ii) outside of this State, but not outside the United States.

(c) Notwithstanding subsection (b), an electronic notary public may perform an electronic notarial act for a remotely located individual outside of the United States if the record is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States or involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States.

History

P.A. 84-322; 91-818, § 5; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/3-106 Certificate of Authority.

Upon the receipt of a written request, the notarized document, and a fee of \$2 payable to the Secretary of State or County Clerk, the Office of the Secretary of State shall provide a certificate of authority in substantially the following form:

I (Secretary of State) of the State of Illinois, which office is an office of record having a seal,

certify that (notary's name), by whom the foregoing or annexed document was notarized or electronically notarized, was, on (insert date), appointed and commissioned a notary public in and for the State of Illinois and that as such, full faith and credit is and ought to be given to this notary's official attestations. In testimony whereof, I have affixed my signature and the seal of this office on (insert date).

(Secretary of State).

History

P.A. 84-322; 91-357, § 8; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6-101 Definitions

(a) "Notarial act" means any act that a notary public of this State is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature.

(b) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(c) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

(d) "In a representative capacity" means:

(1) for and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(2) as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(3) as an attorney in fact for a principal; or

(4) in any other capacity as an authorized representative of another.

History

P.A. 84-322.

5 ILCS 312/3-107 Journal.

(a) A notary public or an electronic notary public shall keep a journal of each notarial act or electronic notarial act which includes, without limitation, the requirements set by the Secretary of State in administrative rule, but shall not include any electronic signatures of the person for whom an electronic notarial act was performed or any witnesses.

(b) The Secretary of State shall adopt administrative rules that set forth, at a minimum:

(1) the information to be recorded for each notarization or electronic notarization;

(2) the period during which the notary public or electronic notary public must maintain the journal; and

(3) the minimum security requirements for protecting the information in the journal and access to the contents of the journal.

(c) A notary or electronic notary may maintain his or her journal in either paper form or electronic form and may maintain more than one journal or electronic journal to record notarial acts or electronic notarial acts.

(d) The fact that the employer or contractor of a notary or electronic notary public keeps a record of notarial acts or electronic notarial acts does not relieve the notary public of the duties required by this Section. A notary public or electronic notary public shall not surrender the journal to an employer upon termination of employment and an employer shall not retain the

journal of an employee when the employment of the notary public or electronic notary public ceases.

(e) If the journal of a notary public or electronic notary public is lost, stolen, or compromised, the notary or electronic notary shall notify the Secretary of State within 10 business days after the discovery of the loss, theft, or breach of security.

(f) Notwithstanding any other provision of this Section or any rules adopted under this Section, neither a notary public nor an electronic notary public is required to keep a journal of or to otherwise record in a journal a notarial act or an electronic notarial act if that act is performed on any of the following documents to be filed by or on behalf of a candidate for public office:

- (1) nominating petitions;
- (2) petitions of candidacy;
- (3) petitions for nomination;
- (4) nominating papers; or
- (5) nomination papers.

The exemption under this subsection (f) applies regardless of whether the notarial act or electronic notarial act is performed on the documents described in paragraphs (1) through (5) of this subsection before, on, or after the effective date of this amendatory Act of the 103rd General Assembly, and the failure of a notary public or an electronic notary public to keep a journal of or to otherwise record such an act does not affect the validity of the notarial act on that document and is not a violation of this Act. As used in this subsection (f), "public office" has the meaning given in Section 9-1.10 of the Election Code.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022; P.A. 103-562 § 1, effective November 17, 2023.

ARTICLE IV

CHANGE OF NAME OR MOVE FROM COUNTY

5 ILCS 312/4-101 Changes causing commission to cease to be in effect.

(a) When any notary public legally changes his or her name, changes his or her residential address or business address, or email address, without notifying the Index Department of the Secretary of State in writing within 30 days thereof, or, if the notary public is a resident of a state bordering Illinois, no longer maintains a principal place of work or principal place of business in the same county in Illinois in which he or she was commissioned, the commission of that notary ceases to be in effect. When the commission of a notary public ceases to be in effect, his or her notarial seal or electronic notary seal shall be surrendered to the Secretary of State, and his or her certificate of notarial commission or certificate of electronic notarial commission shall be destroyed. These individuals who desire to again become a notary public must file a new application, bond, and oath with the Secretary of State.

(b) Any change to the information submitted by an electronic notary public in registering to perform electronic notarial acts in compliance with any Section of this Act shall be reported by the notary within 30 business days to the Secretary of State.

(c) Any notary public or electronic notary public that fails to comply with this Section shall be prohibited from obtaining a new commission for a period of not less than 5 years.

History

P.A. 85-1209; 91-818, § 5; contingently amended by 2018 P.A. 100-809, § 5, effective January 1, 2019; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

ARTICLE V
REAPPOINTMENT AS A NOTARY PUBLIC

5 ILCS 312/5-101 Reappointment.

No person is automatically reappointed as a notary public or electronic notary public. At least 60 days prior to the expiration of a commission, the Secretary of State shall mail notice of the expiration date to the holder of a commission. Every notary public or electronic notary public who is an applicant for reappointment shall comply with the provisions of Article II of this Act [5 ILCS 312/2-101 et seq.].

History

P.A. 84-322; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/5-102 Solicitation to Purchase Bond.

No person shall solicit any notary public and offer to provide a surety bond more than 60 days in advance of the expiration date of the commission of a notary public or electronic notary public.

Nor shall any person solicit any applicant for a commission or reappointment thereof and offer to provide a surety bond for the notary commission unless any such solicitation specifically sets forth in bold face type not less than 1/4 inch in height the following: “WE ARE NOT ASSOCIATED WITH ANY STATE OR LOCAL GOVERNMENTAL AGENCY”.

Whenever it shall appear to the Secretary of State that any person is engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Section, the Secretary of State may, in his discretion, through the Attorney General, apply for an injunction, and, upon a proper showing, any circuit court shall have power to issue a permanent or temporary injunction or restraining order without bond to enforce the provisions of this Act, and either party to such suit shall have the right to prosecute an appeal from the order or judgment of the court.

Any person, association, corporation, or others who violate the provisions of this Section shall be guilty of a business offense and punishable by a fine of not less than \$500 for each offense.

History

P.A. 84-322; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

ARTICLE VI
NOTARIAL ACTS AND FORMS

5 ILCS 312/6-101 Definitions

(a) “Notarial act” means any act that a notary public of this State is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature.

(b) “Acknowledgment” means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(c) “Verification upon oath or affirmation” means a declaration that a statement is true made by a person upon oath or affirmation.

(d) “In a representative capacity” means:

(1) for and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

- (2) as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- (3) as an attorney in fact for a principal; or
- (4) in any other capacity as an authorized representative of another.

History
P.A. 84-322.

5 ILCS 312/6-102 Notarial Acts.

(a) In taking an acknowledgment, the notary public must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notary public must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notary public must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary and named therein.

(d) A notary public has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(1) is personally known to the notary;

(2) is identified upon the oath or affirmation of a credible witness personally known to the notary; or

(3) is identified on the basis of identification documents. Identification documents are documents that are valid at the time of the notarial act, issued by a state agency, federal government agency, or consulate, and bearing the photographic image of the individual's face and signature of the individual.

(e) A notary public or electronic notary public shall have no obligation to perform any notarial or electronic notarial act, and may refuse to perform a notarial or electronic notarial act without further explanation.

History
P.A. 84-322; 95-988, § 5; 97-397, § 5; 98-29, § 5; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6-102.5 Remote notarial acts.

(a) Any commissioned notary public may perform any notarial act described under Section 6-102 [5 ILCS 312/6-102] remotely, after first determining, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary and named therein. A notary public has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(1) is personally known to the notary;

(2) is identified upon the oath or affirmation of a credible witness personally known to the notary; or

(3) is identified on the basis of identification documents. Identification documents are documents that are (i) valid at the time of the notarial act, (ii) issued by a State agency, federal government agency, or consulate, and (iii) bearing the photographic image of the individual's face and signature of the individual.

(b) A remote notarial action must be performed in accordance with the following audio-video communication requirements:

(1) Two-way audio-video communication technology must allow for remotely located notaries and principals to engage in direct, contemporaneous interaction between the individual signing the document (signatory) and the witness by sight and sound.

(2) The two-way audio video communication technology must be recorded and preserved by the signatory or the signatory's designee for a period of at least 3 years.

(3) The signatory must attest to being physically located in Illinois during the two-way audio-video communication.

(4) The signatory must affirmatively state on the two-way audio-video communication what document the signatory is signing.

(5) Each page of the document being witnessed must be shown to the witness on the two-way audio-video communication technology in a means clearly legible to the witness.

(6) The act of signing must be captured sufficiently up close on the two-way audio-video communication for the witness to observe.

(c) Application of the notary's seal and signature:

(1) The signatory must transmit by overnight mail, fax, or electronic means a legible copy of the entire signed document directly to the notary no later than the day after the document is signed.

(2) The notary must sign the transmitted copy of the document as a witness and transmit the signed copy of the document back to the signatory via overnight mail, fax, or electronic means within 24 hours after receipt.

(3) If necessary, the notary may sign the original signed document as of the date of the original execution by the signatory provided that the witness receives the original signed document together with the electronically witnessed copy within 30 days after the date of the remote notarization.

(d) The Secretary of State shall adopt administrative rules to implement this Section.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6-103 Certificate of Notarial Acts.

(a) A notarial act must be evidenced by a certificate signed and dated by the notary public. The certificate must include identification of the jurisdiction in which the notarial act is performed and the official seal of office.

(b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a) and it:

(1) is in the short form set forth in Section 6-105 [5 ILCS 312/6-105];

(2) is in a form otherwise prescribed by the law of this State; or

(3) sets forth the actions of the notary public and those are sufficient to meet the requirements of the designated notarial act.

(c) At the time of a notarial act, a notary public shall officially sign every notary certificate and affix the rubber stamp seal clearly and legibly using black ink, so that it is capable of photographic reproduction. The illegibility of any of the information required under this Section does not affect the validity of a transaction.

History

P.A. 84-322; 2017 P.A. 100-81, § 5, effective January 1, 2018.

5 ILCS 312/6-104 Acts prohibited.

(a) A notary public shall not use any name or initial in signing certificates other than that by which the notary was commissioned.

(b) A notary public shall not acknowledge any instrument in which the notary's name appears as a party to the transaction.

(c) A notary public shall not affix his signature to a blank form of affidavit or certificate of acknowledgment.

(d) A notary public shall not take the acknowledgment of or administer an oath to any person whom the notary actually knows to have been adjudged mentally ill by a court of competent jurisdiction and who has not been restored to mental health as a matter of record.

(e) A notary public shall not take the acknowledgment of any person who is blind until the notary has read the instrument to such person.

(f) A notary public shall not 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 understand.

(g) A notary public shall not change anything in a written instrument after it has been signed by anyone.

(h) No notary public shall be authorized to prepare any legal instrument, or fill in the blanks of an instrument, other than a notary certificate; however, this prohibition shall not prohibit an attorney, who is also a notary public, from performing notarial acts for any document prepared by that attorney.

(i) If a notary public accepts or receives any money from any one to whom an oath has been administered or on behalf of whom an acknowledgment has been taken for the purpose of transmitting or forwarding such money to another and willfully fails to transmit or forward such money promptly, the notary is personally liable for any loss sustained because of such failure. The person or persons damaged by such failure may bring an action to recover damages, together with interest and reasonable attorney fees, against such notary public or his bondsmen.

(j) A notary public shall not perform any notarial act when his or her commission is suspended or revoked, nor shall he or she fail to comply with any term of suspension which may be imposed for violation of this Section.

(k) No notary public shall be authorized to explain, certify, or verify the contents of any document; however, this prohibition shall not prohibit an attorney, who is also a notary public, from performing notarial acts for any document prepared by that attorney.

(l) A notary public shall not represent himself or herself as an electronic notary public if the person has not been commissioned as an electronic notary public by the Secretary of State.

(m) No person shall knowingly create, manufacture, or distribute software or hardware for the purpose of allowing a person to act as an electronic notary public without being commissioned in accordance with this Act. A violation of this subsection (m) is a Class A misdemeanor.

(n) No person shall wrongfully obtain, conceal, damage, or destroy the technology or device used to create the electronic signature or seal of an electronic notary public. A violation of this subsection (n) is a Class A misdemeanor.

(o) A notary public shall not sell, rent, transfer, or otherwise make available to a third party, other than the electronic notarization platform, the contents of the notarial journal, audio-video recordings, or any other record associated with any notarial act, including personally identifiable information, except when required by law, law enforcement, the Secretary of State, or a court order. Upon written request of a third party, which request must include the name of the parties, the type of document, and the month and year in which a record was notarized, a notary public may supply a copy of the line item representing the requested transaction after personally

identifying information has been redacted.

(p) The Secretary of State may suspend the commission of a notary or electronic notary who fails to produce any journal entry within 10 days after receipt of a request from the Secretary of State.

(q) Upon surrender, revocation, or expiration of a commission as a notary or electronic notary, all notarial records or electronic notarial records required under this Section, except as otherwise provided by law, must be kept by the notary public or electronic notary for a period of 5 years after the termination of the registration of the notary public or electronic notary public.

History

P.A. 85-421; contingently amended by 2017 P.A. 100-81, § 5, effective January 1, 2018; contingently amended by 2018 P.A. 100-809, § 5, effective January 1, 2019; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6-105 Short Forms

The following short form certificates of notarial acts are sufficient for the purposes indicated.

(a) For an acknowledgment in an individual capacity:

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by
_____ (name/s of person/s).

(Signature of Notary Public)

(Seal)

(b) For an acknowledgment in a representative capacity:

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by
_____ (name/s of person/s) as

_____ (type of authority, e.g., officer, trustee,
etc.) of _____ (name of party on behalf of whom instrument was executed).

(Signature of Notary Public)

(Seal)

(c) For a verification upon oath or affirmation:

State of _____

County of _____

Signed and sworn (or affirmed) to before me on _____ (date) by
_____ (name/s of person/s making statement).

(Signature of Notary Public)

(Seal)

(d) For witnessing or attesting a signature:

State of _____

County of _____

Signed or attested before me on _____ (date) by
_____ (name/s of person/s).

(Signature of Notary Public)

(Seal)

History

P.A. 84-322.

ARTICLE VI-A.
ELECTRONIC NOTARIAL ACTS AND FORMS

5 ILCS 312/6A-101 Requirements for systems and providers of electronic notarial technology.

(a) An electronic notarization system shall comply with this Act and any rules adopted by the Secretary of State.

(b) An electronic notarization system requiring enrollment shall enroll only persons commissioned as electronic notaries public by the Secretary of State.

(c) An electronic notarization vendor shall take reasonable steps to ensure that an electronic notary public who has enrolled to use the system has the knowledge to use it to perform electronic notarial acts in compliance with this Act.

(d) A provider of an electronic notarization system requiring enrollment shall notify the Secretary of State of the name of each electronic notary public who enrolls in the system within 5 days after enrollment by means prescribed by rule by the Secretary of State.

(e) The Secretary of State shall adopt administrative rules that set forth the requirements a provider of electronic notarization technology must meet in order to be approved for use in the State of Illinois. At a minimum, those administrative rules shall establish:

(1) minimum standards ensuring a secure means of authentication to be employed to protect the integrity of the electronic notary's electronic seal and electronic signature;

(2) minimum standards ensuring that documents electronically notarized be tamper-evident and protected from unauthorized use; and

(3) requirements for competent operation of the electronic platform.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6A-102 Electronic notary not liable for system failure.

An electronic notary public who exercised reasonable care enrolling in and using an electronic notarization system shall not be liable for any damages resulting from the system's failure to comply with the requirements of this Act. Any provision in a contract or agreement between the electronic notary public and provider that attempts to waive this immunity shall be null, void, and of no effect.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6A-103 Electronic notarial acts. [For Effective Date, See Note]

(a) An electronic notary public:

(1) is a notary public for purposes of this Act and is subject to all provisions of this Act;

(2) may perform notarial acts as provided by this Act in addition to performing electronic notarizations; and

(3) may perform an electronic notarization authorized under this Article.

(b) In performing an electronic notarization, an electronic notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way audio and video conference technology that meets the requirements of this Act and rules adopted under this Article. For the purposes of performing an electronic notarial act for a person using audio-video communication, an electronic notary public has satisfactory or documentary evidence of the identity of the person if the electronic notary public confirms the identity of the person by:

(1) the electronic notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote electronic presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the front and back of the government-issued identification credential and the data thereon; and

(C) a dynamic knowledge-based authentication assessment.

(c) An electronic notary public may perform any of the acts set forth in Section 6-102 [5 ILCS 312/6-102] using audio-video communication in accordance with this Section and any rules adopted by the Secretary of State.

(d) If an electronic notarial act is performed using audio-video communication:

(1) the technology must allow the persons communicating to see and speak to each other simultaneously;

(2) the signal transmission must be in real time; and

(3) the electronic notarial act must be recorded.

(e) The validity of the electronic notarial act will be determined by applying the laws of the State of Illinois.

(f) The electronic notarial certificate for an electronic notarization must include a notation that the notarization is an electronic notarization.

(g) When performing an electronic notarization, an electronic notary public shall complete an electronic notarial certificate and attach or logically associate the electronic notary's electronic signature and seal to that certificate in a tamper evident manner. Evidence of tampering pursuant to this standard may be used to determine whether the electronic notarial act is valid or invalid.

(h) The liability, sanctions, and remedies for improper performance of electronic notarial acts are the same as described and provided by law for the improper performance of non-electronic notarial acts as described under Section 7-108 [5 ILCS 312/7-108].

(i) Electronic notarial acts need to fulfill certain basic requirements to ensure non-repudiation and the capability of being authenticated by the Secretary of State for purposes of issuing apostilles and certificates of authentication. The requirements are as follows:

(1) the fact of the electronic notarial act, including the electronic notary's identity, signature, and electronic commission status, must be verifiable by the Secretary of State; and

(2) the notarized electronic document will be rendered ineligible for authentication by the Secretary of State if it is improperly modified after the time of electronic notarization, including any unauthorized alterations to the document content, the electronic notarial certificate, the electronic notary public's electronic signature, or the electronic notary public's official electronic seal.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6A-104 Requirements for audio-video communication.

(a) An electronic notary public shall arrange for a recording to be made of each electronic notarial act performed using audio-video communication. The audio-video recording required by this Section shall be in addition to the journal entry for the electronic notarial act required by Section 3-107 [5 ILCS 312/3-107]. Before performing any electronic notarial act using audio-video communication, the electronic notary public must inform all participating persons that the electronic notarization will be electronically recorded.

(b) If the person for whom the electronic notarial act is being performed is identified by personal knowledge, the recording of the electronic notarial act must include an explanation by the electronic notary public as to how he or she knows the person and how long he or she has known the person.

(c) If the person for whom the electronic notarial act is being performed is identified by a credible witness:

(1) the credible witness must appear before the electronic notary public; and

(2) the recording of the electronic notarial act must include:

(A) a statement by the electronic notary public as to whether he or she identified the credible witness by personal knowledge or satisfactory evidence; and

(B) an explanation by the credible witness as to how he or she knows the person for whom the electronic notarial act is being performed and how long he or she has known the person.

(d) An electronic notary public shall keep a recording made pursuant to this Section for a period of not less than 7 years, regardless of whether the electronic notarial act was actually completed.

(e) An electronic notary public who performs an electronic notarial act for a principal by means of audio-video communication shall be located within the State of Illinois at the time the electronic notarial act is performed. The electronic notary public shall include a statement in the electronic notarial certificate to indicate that the electronic notarial act was performed by means of audio-video communication. The statement may also be included in the electronic notarial seal.

(f) An electronic notary public who performs an electronic notarial act for a principal by means of audio-video communication shall:

(1) be located within this State at the time the electronic notarial act is performed;

(2) execute the electronic notarial act in a single recorded session that complies with Section 6A-103 [5 ILCS 312/6A-103];

(3) be satisfied that any electronic record that is electronically signed, acknowledged, or otherwise presented for electronic notarization by the principal is the same record electronically signed by the electronic notary;

(4) be satisfied that the quality of the audio-video communication is sufficient to make the determination required for the electronic notarial act under this Act and any other law of this State; and

(5) identify the venue for the electronic notarial act as the jurisdiction within Illinois where the notary is physically located while performing the act.

(g) An electronic notarization system used to perform electronic notarial acts by means of audio-video communication shall conform to the requirements set forth in this Act and by administrative rules adopted by the Secretary of State.

(h) The provisions of Section 3-107 [5 ILCS 312/3-107] related respectively to security, inspection, copying, and disposition of the journal shall also apply to security, inspection, copying, and disposition of audio-video recordings required by this Section.

(i) The Secretary of State shall adopt administrative rules to implement this Section.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6A-105 Electronic certificate of notarial acts.

(a) An electronic notarial certificate must be evidenced by an electronic notarial certificate signed and dated by the electronic notary public. The electronic notarial certificate must include identification of the jurisdiction in which the electronic notarial act is performed and the

electronic seal of the electronic notary public.

(b) An electronic notarial certificate of an electronic notarial act is sufficient if it meets the requirements of subsection (a) and it:

(1) is in the short form set forth in 6-105 [5 ILCS 312/6-105];

(2) is in a form otherwise prescribed by the law of this State; or

(3) sets forth the actions of the electronic notary public and those are sufficient to meet the requirements of the designated electronic notarial act.

(c) At the time of an electronic notarial act, an electronic notary public shall electronically sign every electronic notarial certificate and electronically affix the electronic seal clearly and legibly, so that it is capable of photographic reproduction. The illegibility of any of the information required under this Section does not affect the validity of a transaction.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/6A-106 Electronic acknowledgments; physical presence.

(a) For purposes of this Act, a person may appear before the person taking the acknowledgment by:

(1) being in the same physical location as the other person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that person; or

(2) being outside the physical presence of the other person, but interacting with the other person by means of communication technology.

(b) If the acknowledging person is outside the physical presence of the person taking the acknowledgment, the certification of acknowledgment must indicate that the notarial act was performed by means of communication technology. A form of certificate of acknowledgment as provided by the Secretary of State, which may include the use of a remote online notarial certificate, is sufficient for purposes of this subsection (b) if it substantially reads as follows: “The foregoing instrument was acknowledged before me by means of communication technology this (date) by ... (each form continued as sufficient for its respective purposes.)”.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

ARTICLE VII LIABILITY AND REVOCATION

5 ILCS 312/7-101 Liability of Notary and Surety.

A notary public and the surety on the notary’s bond are liable to the persons involved for all damages caused by the notary’s official misconduct. Upon the filing of any claim against a notary public, the entity that has issued the bond for the notary shall notify the Secretary of State of whether payment was made and the circumstances which led to the claim.

History

P.A. 84-322; 2018 P.A. 100-809, § 5, effective January 1, 2019.

5 ILCS 312/7-102 Liability of Employer of Notary

The employer of a notary public is also liable to the persons involved for all damages caused by the notary’s official misconduct, if:

(a) the notary public was acting within the scope of the notary’s employment at the time the notary engaged in the official misconduct; and

(b) the employer consented to the notary public’s official misconduct.

History
P.A. 84-322.

5 ILCS 312/7-103 Cause of Damages

It is not essential to a recovery of damages that a notary's official misconduct be the only cause of the damages.

History
P.A. 84-322.

5 ILCS 312/7-104 Official Misconduct Defined

Official Misconduct Defined. The term "official misconduct" generally means the wrongful exercise of a power or the wrongful performance of a duty and is fully defined in Section 33-3 of the Criminal Code of 2012 [720 ILCS 5/33-3]. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious.

History
P.A. 85-293; 97-1150, § 25.

5 ILCS 312/7-105 Official Misconduct

(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a Class A misdemeanor.

(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a Class B misdemeanor.

History
P.A. 84-322.

5 ILCS 312/7-106 Willful Impersonation.

(a) Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a Class A misdemeanor.

(b) Any notary public or other person who is not an electronic notary public that impersonates an electronic notary public to perform electronic notarial acts is guilty of a Class A misdemeanor.

History
P.A. 84-322; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/7-107 Wrongful Possession.

(a) No person may unlawfully possess, obtain, conceal, damage, or destroy a notary's official seal.

(b) No person may unlawfully possess, conceal, damage, or destroy the certificate, disk, coding, card, program, software, or hardware enabling an electronic notary public to affix an official electronic signature or seal.

(c) Any person who violates this Section shall be guilty of a misdemeanor and punishable upon conviction by a fine not exceeding \$1,000.

History
P.A. 84-322; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/7-108 Reprimand, suspension, and revocation of commission.

(a) The Secretary of State may revoke the commission of any notary public who, during the current term of appointment:

(1) submits an application for commission and appointment as a notary public which contains substantial and material misstatement or omission of fact;

(2) is convicted of any felony, misdemeanors, including those defined in Part C, Articles 16, 17, 18, 19, and 21, and Part E, Articles 31, 32, and 33 of the Criminal Code of 2012 [720 ILCS 5/16-0.1 et seq., 720 ILCS 5/17-0.5 et seq., 720 ILCS 5/18-1 et seq., 720 ILCS 5/19-1 et seq., 720 ILCS 5/21-1 et seq., and 720 ILCS 5/31-1 et seq., 720 ILCS 5/32-1 et seq., 720 ILCS 5/33-1 et seq.], or official misconduct under this Act; or

(3) is a licensed attorney and has been sanctioned, suspended, or disbarred by the Illinois Attorney Registration and Disciplinary Commission or the Illinois Supreme Court.

(b) Whenever the Secretary of State believes that a violation of this Article has occurred, he or she may investigate any such violation. The Secretary may also investigate possible violations of this Article upon a signed written complaint on a form designated by the Secretary.

(c) A notary's failure to cooperate or respond to an investigation by the Secretary of State is a failure by the notary to fully and faithfully discharge the responsibilities and duties of a notary and shall result in suspension or revocation of the notary's commission or the electronic notary's commission.

(d) All written complaints which on their face appear to establish facts which, if proven true, would constitute an act of misrepresentation or fraud in notarization or electronic notarization, or misrepresentation or fraud on the part of the notary, may be investigated by the Secretary of State to determine whether cause exists to reprimand, suspend, or revoke the commission of the notary.

(e) The Secretary of State may deliver a written official warning and reprimand to a notary, or may revoke or suspend a notary's commission or an electronic notary's commission, for any of the following:

(1) a notary's official misconduct, as defined under Section 7-104 [5 ILCS 312/7-104];

(2) any ground for which an application for appointment as a notary may be denied for failure to complete application requirements as provided under Section 2-102 [5 ILCS 312/2-102];

(3) any prohibited act provided under Section 6-104 [5 ILCS 312/6-104]; or

(4) a violation of any provision of the general statutes.

(f) After investigation and upon a determination by the Secretary of State that one or more prohibited acts have been performed in the notarization or electronic notarization of a document, the Secretary shall, after considering the extent of the prohibited act and the degree of culpability of the notary, order one or more of the following courses of action:

(1) issue a letter of warning to the notary, including the Secretary's findings;

(2) order suspension of the commission of the notary or electronic commission of the notary for a period of time designated by the Secretary;

(3) order revocation of the commission of the notary or electronic commission of the notary;

(4) refer the allegations to the appropriate State's Attorney's Office or the Attorney General for criminal investigation; or

(5) refer the allegations to the Illinois Attorney Registration and Disciplinary Commission for disciplinary proceedings.

(g) After a notary receives notice from the Secretary of State that his or her commission has been revoked, that notary shall immediately deliver his or her official seal to the Secretary. After an electronic notary public receives notice from the Secretary of State that his or her electronic commission has been revoked, the electronic notary public shall immediately notify the electronic notary's chosen technology provider, and to the extent possible, destroy or remove the software used for electronic notarizations.

(h) A notary whose appointment has been revoked due to a violation of this Act shall not be eligible for a new commission as a notary public in this State for a period of at least 5 years from the date of the final revocation.

(i) A notary may voluntarily resign from appointment by notifying the Secretary of State in writing of his or her intention to do so, and by physically returning his or her stamp to the Secretary. An electronic notary public may voluntarily resign from appointment by notifying the Secretary of State in writing of his or her intention to do so, and by notifying the electronic notary's chosen technology provider, and to the extent possible, destroy or remove the software used for electronic notarizations. A voluntary resignation shall not stop or preclude any investigation into a notary's conduct, or prevent further suspension or revocation by the Secretary, who may pursue any such investigation to a conclusion and issue any finding.

(j) Upon a determination by a sworn law enforcement officer that the allegations raised by the complaint are founded, and the notary has received notice of suspension or revocation from the Secretary of State, the notary is entitled to an administrative hearing.

(k) The Secretary of State shall adopt administrative hearing rules applicable to this Section that are consistent with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(l) Any revocation, resignation, expiration, or suspension of the commission of a notary public terminates or suspends any commission to notarize electronically.

(m) A notary public may terminate registration to notarize electronically and maintain his or her underlying notary public commission upon directing a written notification of the change to the Secretary of State within 30 days.

History

P.A. 84-322; contingently amended by 2018 P.A. 100-809, § 5, effective January 1, 2019; contingently amended by 2019 P.A. 101-81, § 20, effective July 12, 2019; contingently amended by 2021 P.A. 102-160, § 5, effective January 1, 2022.

5 ILCS 312/7-109 Action for Injunction, Unauthorized Practice of Law

Upon his own information or upon complaint of any person, the Attorney General or any State's Attorney, or their designee, may maintain an action for injunctive relief in the circuit court against any notary public who renders, offers to render, or holds himself or herself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this State may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this State. These remedies are in addition to, and not in substitution for, other available remedies.

History

P.A. 84-322.

5 ILCS 312/7-110 Applicable law; conflict of law.

(a) The validity of any notarization, including an electronic notarization, shall be determined by applying the laws of this State, regardless of the physical location of the principal at the time of a remote notarization.

(b) An electronic notary public authorized to perform electronic notarizations is subject to and must comply with this Act.

(c) If a conflict between a provision of this Section and another law of this State, this Section controls.

History

Contingently enacted by 2021 P.A. 102-160, § 5, effective January 1, 2022.

**ARTICLE VIII.
REPEALER AND EFFECTIVE DATE**

5 ILCS 312/8-101 [Repealer]

Section 2 of “An Act to increase the fee for issuing commissions to notaries public”, approved June 3, 1897, as amended, is repealed.

History

P.A. 84-322.

5 ILCS 312/8-102 [Repealer]

Section 28 of “An Act concerning fees and salaries, and to classify the several counties of this State with reference thereto”, approved March 29, 1872, as amended, is repealed.

History

P.A. 84-322.

5 ILCS 312/8-103 [Repealer]

“An Act to provide for the appointment, qualification and duties of notaries public and certifying their official acts and to provide for fines and penalties for the violation thereof”, approved April 5, 1872, as amended, is repealed.

History

P.A. 84-322.

5 ILCS 312/8-104 [Effective date]

This Act takes effect July 1, 1986.

History

P.A. 84-322.

**CHAPTER 755. ESTATES.
ARTICLE 11. ELECTRONIC NONTTESTAMENTARY ESTATE PLANNING
DOCUMENTS**

755 ILCS 6/11-35 Notarization and acknowledgment.

If other law of this State or a will or the terms of a trust require or permit a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied with respect to an electronic nontestamentary estate planning document if an individual authorized to perform the notarization, acknowledgment, verification, or oath attaches or logically associates the individual’s electronic signature on the document together with all other information required to be included under the other law.

His

2023 P.A. 103-301, § 10, effective January 1, 2024.

**CHAPTER 765. PROPERTY
ACT 30. UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT**

765 ILCS 30/1. Short title.

This Act may be cited as the Uniform Recognition of Acknowledgments Act.

History

P.A. 76-1105.

765 ILCS 30/2. Recognition of notarial acts performed outside this State.

For the purposes of this Act, “notarial acts” means acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this State:

- (1) a notary public authorized to perform notarial acts in the place in which the act is performed;
- (2) a judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
- (3) an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;
- (4) a commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States, or any other person serving with or accompanying the Armed Forces of the United States; or
- (5) any other person authorized to perform notarial acts in the place in which the act is performed.

History

P.A. 76-1105.

765 ILCS 30/3. Authentication of authority of officer.

(a) If the notarial act is performed by any of the persons described in paragraphs 1 to 4, inclusive of Section 2, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

- (1) either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;
- (2) the official seal of the person performing the notarial act is affixed to the document; or
- (3) the title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(c) If the notarial act is performed by a person other than one described in subsections (a) and (b), there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(d) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

History

P.A. 76-1105.

765 ILCS 30/4. Certificate of person taking acknowledgment.

The person taking an acknowledgment shall certify that:

- (1) the person acknowledging appeared before him and acknowledged he executed the instrument; and
- (2) the person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

History

P.A. 76-1105; 91-357, § 267.

765 ILCS 30/5. Recognition of certificate of acknowledgment.

The form of a certificate of acknowledgment used by a person whose authority is recognized under Section 2 shall be accepted in this State if:

- (1) the certificate is in a form prescribed by the laws or regulations of this State;
- (2) the certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (3) the certificate contains the words “acknowledged before me” or their substantial equivalent.

History

P.A. 76-1105; 91-357, § 267.

765 ILCS 30/6. Certificate of acknowledgment.

The words “acknowledged before me” means

(1) that the person acknowledging appeared before the person taking the acknowledgment in a manner prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken,

(2) that he acknowledged he executed the instrument,

(3) that, in the case of:

- (i) a natural person, he executed the instrument for the purposes therein stated;
- (ii) a corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;
- (iii) a partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(iv) a person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(v) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(4) that the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

History

P.A. 76-1105; 2021 P.A. 102-500, § 5, effective January 1, 2022.

765 ILCS 30/7. Short forms of acknowledgment.

(a) The forms of acknowledgment set forth in this Section may be used and are sufficient for their respective purposes under any law of this State, whether executed in this State or any other State. The forms shall be known as “Statutory Short Forms of Acknowledgment” and may be

referred to by that name. The authorization of the forms in this Section does not preclude the use of other forms.

(1) For an individual acting in his own right:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(2) For a corporation:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(3) For a partnership:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(4) For an individual acting as principal by an attorney in fact:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(5) By any public officer, trustee, or personal representative:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(b) This amendatory Act of 1981 (P.A. 82-450) is to clarify that any uses of the short form of acknowledgment as herein provided within the State of Illinois prior to the effective date of this

amendatory Act have been valid.

History

P.A. 82-450; 90-655, § 181.

765 ILCS 30/8. Acknowledgments not affected by this Act.

A notarial act performed prior to the effective date of this Act is not affected by this Act. This Act provides an additional method of proving notarial acts. Nothing in this Act diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this State.

History

P.A. 76-1105.

765 ILCS 30/9. Uniformity of interpretation.

This Act shall be so interpreted as to make uniform the laws of those states which enact it.

History

P.A. 76-1105.

765 ILCS 30/10. Time of taking effect.

This Act shall take effect on January 1, 1970.

History

P.A. 76-1105.

ACT 33. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

765 ILCS 33/3. Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this Act.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

History

P.A. 95-472, § 3.

5 ILCS 312/3.5. Electronic documents certified by notary public.

(a) A paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy under subsection (b) satisfies any requirement of law that, as a condition for recording, the document:

(1) be an original or be in writing;

(2) be signed or contain an original signature, if the document contains an electronic signature of the person required to sign the document; and

(3) be notarized, acknowledged, verified, witnessed, or made under oath, if the document contains an electronic signature of the person authorized to perform that act, and all other information required to be included.

(b) A notary public duly appointed and commissioned under Section 2-101 of the Illinois Notary Public Act may certify that a paper or tangible copy of an electronic document is a true

and correct copy of the electronic document if the notary public has:

- (1) reasonably confirmed that the electronic document is in a tamper evident format;
- (2) detected no changes or errors in any electronic signature or other information in the electronic document;
- (3) personally printed or supervised the printing of the electronic document onto paper or other tangible medium; or
- (4) not made any changes or modifications to the electronic document or to the paper or tangible copy thereof other than the certification described in this subsection (b).

(c) A county recorder shall accept for recording a paper or tangible copy of a document that has been certified by a notary public to be a true and correct copy of an electronic document under subsection (b) as evidenced by a notarial certificate.

(d) A notarial certificate in substantially the following form is sufficient for the purposes of this Section:

“State of
County of

On this(date), I certify that the foregoing and annexed document [entitled ,] (and) containing pages is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document since its creation or execution.

(Signature of Notary Public)
(Seal)“

(f) If a notarial certificate is attached to or made a part of a paper or tangible document, the certificate is prima facie evidence that the requirements of subsection (c) have been satisfied with respect to the document.

(g) A paper or tangible copy of a deed, mortgage, or other document shall be deemed, from the time of being filed for record, as notice to subsequent purchasers and creditors, though it may not be certified in accordance with the provisions of this Section.

(h) This Section does not apply to any map or plat governed by the Plat Act, the Judicial Plat Act, or the Permanent Survey Act, or to any monument record governed by the Land Survey Monuments Act.

History

Contingently enacted by 2021 P.A. 102-160, § 25, effective January 1, 2022.

CHAPTER 815. BUSINESS TRANSACTIONS ACT 815. UNIFORM ELECTRONIC TRANSACTIONS ACT

815 ILCS 333/11 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History

2021 P.A. 102-38, § 11, effective June 25, 2021.

ACT 505. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

815 ILCS 505/2AA. Immigration services.

(a) “Immigration matter” means any proceeding, filing, or action affecting the nonimmigrant, immigrant or citizenship status of any person that arises under immigration and naturalization law, executive order or presidential proclamation of the United States or any foreign country, or that arises under action of the United States Citizenship and Immigration Services, the United States Department of Labor, or the United States Department of State.

“Immigration assistance service” means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

“Compensation” means money, property, services, promise of payment, or anything else of value.

“Employed by” means that a person is on the payroll of the employer and the employer deducts from the employee’s paycheck social security and withholding taxes, or receives compensation from the employer on a commission basis or as an independent contractor.

“Reasonable costs” means actual costs or, if actual costs cannot be calculated, reasonably estimated costs of such things as photocopying, telephone calls, document requests, and filing fees for immigration forms, and other nominal costs incidental to assistance in an immigration matter.

(a-1) The General Assembly finds and declares that private individuals who assist persons with immigration matters have a significant impact on the ability of their clients to reside and work within the United States and to establish and maintain stable families and business relationships. The General Assembly further finds that that assistance and its impact also have a significant effect on the cultural, social, and economic life of the State of Illinois and thereby substantially affect the public interest. It is the intent of the General Assembly to establish rules of practice and conduct for those individuals to promote honesty and fair dealing with residents and to preserve public confidence.

(a-5) The following persons are exempt from this Section, provided they prove the exemption by a preponderance of the evidence:

(1) An attorney licensed to practice law in any state or territory of the United States, or of any foreign country when authorized by the Illinois Supreme Court, to the extent the attorney renders immigration assistance service in the course of his or her practice as an attorney.

(2) A legal intern, as described by the rules of the Illinois Supreme Court, employed by and under the direct supervision of a licensed attorney and rendering immigration assistance service in the course of the intern’s employment.

(3) A not-for-profit organization recognized by the Board of Immigration Appeals under 8 CFR 292.2(a) and employees of those organizations accredited under 8 CFR 292.2(d).

(4) Any organization employing or desiring to employ a documented or undocumented immigrant or nonimmigrant, where the organization, its employees or its agents provide advice or assistance in immigration matters to documented or undocumented immigrant or nonimmigrant employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.

Nothing in this Section shall regulate any business to the extent that such regulation is prohibited or preempted by State or federal law.

All other persons providing or offering to provide immigration assistance service shall be subject to this Section.

(b) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) Completing a government agency form, requested by the customer and appropriate to the customer's needs, only if the completion of that form does not involve a legal judgment for that particular matter.

(2) Transcribing responses to a government agency form which is related to an immigration matter, but not advising a customer as to his or her answers on those forms.

(3) Translating information on forms to a customer and translating the customer's answers to questions posed on those forms.

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms.

(5) Translating documents from a foreign language into English.

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public of the State of Illinois.

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter.

(8) Preparing or arranging for the preparation of photographs and fingerprints.

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results.

(10) Conducting English language and civics courses.

(11) Other services that the Attorney General determines by rule may be appropriately performed by such persons in light of the purposes of this Section.

Fees for a notary public, agency, or any other person who is not an attorney or an accredited representative filling out immigration forms shall be limited to the maximum fees set forth in subsections (a) and (b) of Section 3-104 of the Illinois Notary Public Act (5 ILCS 312/3-104). The maximum fee schedule set forth in subsections (a) and (b) of Section 3-104 of the Illinois Notary Public Act shall apply to any person that provides or offers to provide immigration assistance service performing the services described therein. The Attorney General may promulgate rules establishing maximum fees that may be charged for any services not described in that subsection. The maximum fees must be reasonable in light of the costs of providing those services and the degree of professional skill required to provide the services.

No person subject to this Act shall charge fees directly or indirectly for referring an individual to an attorney or for any immigration matter not authorized by this Article, provided that a person may charge a fee for notarizing documents as permitted by the Illinois Notary Public Act.

(c) Any person performing such services shall register with the Illinois Attorney General and submit verification of malpractice insurance or of a surety bond.

(d) Except as provided otherwise in this subsection, before providing any assistance in an immigration matter a person shall provide the customer with a written contract that includes the following:

(1) An explanation of the services to be performed.

(2) Identification of all compensation and costs to be charged to the customer for the services to be performed.

(3) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the person for any purpose, including payment of compensation or costs.

This subsection does not apply to a not-for-profit organization that provides advice or assistance in immigration matters to clients without charge beyond a reasonable fee to reimburse the organization's or clinic's reasonable costs relating to providing immigration services to that client.

(e) Any person who provides or offers immigration assistance service and is not exempted from this Section, shall post signs at his or her place of business, setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least 11 inches by 17 inches, and shall contain the following:

(1) The statement "I am not an attorney licensed to practice law and May not give legal advice or accept fees for legal advice."

(2) The statement "I am not accredited to represent you before the United States immigration and naturalization service and the immigration board of appeals."

(3) The fee schedule.

(4) The statement that "You may cancel any contract within 3 working days and get your money back for services not performed."

(5) Additional information the Attorney General may require by rule.

Every person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN ILLINOIS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

Any person who provides or offers immigration assistance service and is not exempted from this Section shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney. To illustrate, the words "notario" and "poder notarial" are prohibited under this provision.

If not subject to penalties under subsection (a) of Section 3-103 of the Illinois Notary Public Act (5 ILCS 312/3-103), violations of this subsection shall result in a fine of \$1,000. Violations shall not preempt or preclude additional appropriate civil or criminal penalties.

(f) The written contract shall be in both English and in the language of the customer.

(g) A copy of the contract shall be provided to the customer upon the customer's execution of the contract.

(h) A customer has the right to rescind a contract within 72 hours after his or her signing of the contract.

(i) Any documents identified in paragraph (3) of subsection (c) shall be returned upon demand of the customer.

(j) No person engaged in providing immigration services who is not exempted under this Section shall do any of the following:

(1) Make any statement that the person can or will obtain special favors from or has special

influence with the United States Immigration and Naturalization Service or any other government agency.

(2) Retain any compensation for service not performed.

(2.5) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(3) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer.

(4) Represent or advertise, in connection with the provision of assistance in immigration matters, other titles of credentials, including but not limited to “notary public” or “immigration consultant,” that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided that a notary public appointed by the Illinois Secretary of State may use the term “notary public” if the use is accompanied by the statement that the person is not an attorney; the term “notary public” may not be translated to another language; for example “notario” is prohibited.

(5) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(6) Make any misrepresentation of false statement, directly or indirectly, to influence, persuade, or induce patronage.

(k) (Blank).

(l) (Blank).

(m) Any person who violates any provision of this Section, or the rules and regulations issued under this Section, shall be guilty of a Class A misdemeanor for a first offense and a Class 3 felony for a second or subsequent offense committed within 5 years of a previous conviction for the same offense.

Upon his own information or upon the complaint of any person, the Attorney General or any State’s Attorney, or a municipality with a population of more than 1,000,000, may maintain an action for injunctive relief and also seek a civil penalty not exceeding \$50,000 in the circuit court against any person who violates any provision of this Section. These remedies are in addition to, and not in substitution for, other available remedies.

If the Attorney General or any State’s Attorney or a municipality with a population of more than 1,000,000 fails to bring an action as provided under this Section any person may file a civil action to enforce the provisions of this Article and maintain an action for injunctive relief, for compensatory damages to recover prohibited fees, or for such additional relief as may be appropriate to deter, prevent, or compensate for the violation. In order to deter violations of this Section, courts shall not require a showing of the traditional elements for equitable relief. A prevailing plaintiff may be awarded 3 times the prohibited fees or a minimum of \$1,000 in punitive damages, attorney’s fees, and costs of bringing an action under this Section. It is the express intention of the General Assembly that remedies for violation of this Section be cumulative.

(n) No unit of local government, including any home rule unit, shall have the authority to regulate immigration assistance services unless such regulations are at least as stringent as those contained in Public Act 87-1211. It is declared to be the law of this State, pursuant to paragraph (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that Public Act 87-1211 is a limitation on the authority of a home rule unit to exercise powers concurrently with the State. The limitations of this Section do not apply to a home rule unit that has, prior to January 1, 1993

(the effective date of Public Act 87-1211), adopted an ordinance regulating immigration assistance services.

(o) This Section is severable under Section 1.31 of the Statute on Statutes.

(p) The Attorney General shall issue rules not inconsistent with this Section for the implementation, administration, and enforcement of this Section. The rules may provide for the following:

(1) The content, print size, and print style of the signs required under subsection (e). Print sizes and styles may vary from language to language.

(2) Standard forms for use in the administration of this Section.

(3) Any additional requirements deemed necessary.

History

P.A. 87-1211, § 2-1; 88-45, § 2-65; 88-644, § 5; 93-1001, § 10; 94-238, § 5; 99-679, § 5; 2018 P.A. 100-863, § 675, effective August 14, 2018; 2022 P.A. 102-1030, § 140, effective May 27, 2022.

ILLINOIS ADMINISTRATIVE CODE

TITLE 14: COMMERCE

SUBTITLE A: REGULATION OF BUSINESS

CHAPTER I: SECRETARY OF STATE

PART 176

NOTARY PUBLIC RECORDS

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- 176.ILLUSTRATION A Nonresident Notary Public Affidavit of Applicant
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AUTHORITY: Implemented and authorized by Section 1-104 of the Illinois Notary Public Act [5 ILCS 312].

SOURCE: Adopted at 11 Ill. Reg. 19705, effective December 1, 1987; amended at 13 Ill. Reg. 5197, effective April 1, 1989; amended at 45 Ill. Reg. 6274, effective April 28, 2021; amended at 47 Ill. Reg.8640, effective June 5, 2023.

SUBPART A: NOTARY PUBLIC RECORDS

Section 176.10 Definitions

For purposes of this Section, all words and terms shall have the same meanings as set forth in 5 ILCS 312/1-104:

“Act” means The Illinois Notary Public Act. [5 ILCS 312]

“Biometric data” or “biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include

biological materials regulated under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening. [740 ILCS 14/10]

“Biometric information” means any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers. [740 ILCS 14/10]

“Notary public” or “notary” means an individual commissioned to perform notarial acts. [5 ILCS 312/1-104]

“Personal information” or “personally identifiable information” means either of the following:

An individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted or are encrypted or redacted but the keys to unencrypt or unredact or otherwise read the name or data elements have been acquired without authorization through the breach of security:

Social Security number;

Driver’s license number or State identification card number;

Account number or credit or debit card number, or an account number or credit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account;

Medical information;

Health insurance information;

Unique biometric data means data generated from measurements or technical analysis of human body characteristics used by the owner or licensee to authenticate an individual, such as a fingerprint, retina or iris image, or other unique physical

representation or digital representation of biometric data. [815 ILCS 530/5]

User name or email address means information provided in combination with a password or security question and answer that would permit access to an online account when either the user name or email address or password or security question and answer are not encrypted or redacted or are encrypted or redacted but the keys to unencrypt or unredact or otherwise read the data elements have been obtained through the breach of security.

“Personal information” does not include publicly available information that is lawfully made available to the general public from federal, State, or local government records. [815 ILCS 530/5]

“Physical location” means real property, non-movable structure, brick and mortar building affixed to a permanent location.

“Secretary” – means the Illinois Secretary of State.

“X.509” means the standard format of a public key certificate derived from the International Telecommunication Union, “Series X: Data Networks, Open System Communications and Security Directory” (<https://www.itu.int/rec/T-REC-X.509-201910-I>) (2019) (no later editions or amendments included).

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.11 Record Contents, Request Procedures, and Fees

- a) The Secretary maintains Illinois Notary Public appointment records in its computer database. The computer records contain the notary's name, address, city, state, zip code, county, commission number, and the date the commission took effect.
- b) All requests for this information shall be in writing, signed before a notary by the person requesting the information. The request shall include the person's address, the purpose of the request, the specific information requested, the name and address of any organization represented by the requestor, and the position of the requestor in the organization. Approved requests shall be formalized in a written agreement.
- c) All requests shall be accompanied by the appropriate fee and sent to the following address: Office of the Secretary of State, Index Department, 111 E. Monroe Street, Springfield, Illinois 62756.
- d) A list of all current notaries or all notaries in a particular county will be furnished for a fee of \$ 3,600. Weekly update lists will be furnished for \$ 1,000 per year paid in advance. The fee for a list of notaries commissioned during a specific calendar year is \$ 900 and the fee for a list of notaries commissioned during a specific month of a specific year is \$ 75.
- e) State, federal, and local law enforcement agencies will receive information at no charge if the information is needed for an official investigation. All other governmental agencies, including county clerks, will receive a list of all current

notaries for a fee of \$ 500 if requested for governmental purposes; weekly updates will be furnished for \$ 1,000 per year paid in advance. A list of all notaries in one particular county will be furnished for a fee of \$ 200 and weekly updates will be furnished for \$ 500 per year paid in advance.

- f) The fees shall be paid by cashier's check, money order, certified check, or a check drawn on the account of the business or government agency making the request. Once the information is made available to the requestor, then no refunds will be made.
- g) Record layouts and field definitions will be supplied by the Secretary with the information.

(Source: Amended at 13 Ill. Reg. 5197, effective April 1, 1989; amended at 45 Ill. Reg. 6274, effective April 28, 2021.)

SUBPART B: APPOINTMENTS

Section 176.100 Appointment and Reappointment of Notaries Public

- a) Every applicant for an initial appointment or reappointment as a notary public must present satisfactory evidence of the applicant's identity as set forth in the Act at 5 ILCS 312/2-102.
- b) Before issuance of an appointment as a notary public or electronic notary public, the applicant for appointment must:
 - 1) execute the oath of office as set forth at 5 ILCS 312/2-104;
 - 2) submit a bond as set forth at 5 ILCS 312/2-105; and
 - 3) complete all application requirements found at 5 ILCS 312/2-102(a) and, if applying for an electronic notary public commission, at 5 ILCS 312/2-102(c).
- c) Upon a determination that an applicant meets all requirements of the Act and this Part, the Secretary of State will appoint or reappoint the applicant to the office of notary public or electronic notary public, as applicable, and issue a notary public or electronic notary public commission certificate.
- d) Reappointment
 - 1) A current notary public may apply for reappointment 60 days before the expiration of an existing commission. The date of the new commission will be the date immediately after the expiration date of the current commission.
 - 2) To avoid any gaps between notary public or electronic notary public commissions, applications for a notary public should be filed at least 30 days before the expiration of the commission under which the notary public is acting.
- e) Any applicant can request the cancellation of an appointment and the cancellation will become effective upon receipt by the Secretary of State of the notice requesting cancellation of the appointment.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.110 Term of Commission

The term of a notary public or electronic notary public commission begins on the date that the notary is commissioned by the Secretary of State and not the date the bond was obtained. The electronic notary public commission, if any, will have the same term of commission as the

traditional notary public commission.
(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.120 Requirements to Qualify as a Resident of the State of Illinois

An applicant must be a resident of the State of Illinois pursuant to 5 ILCS 312/2-101 before applying for a notary public or electronic notary public commission, unless applying for a nonresident application or appointment pursuant to 5 ILCS 312/2-101 and Section 176.130. A notary public or electronic notary public must maintain residency in the State of Illinois during the term of the appointment and must immediately resign the notary public or electronic notary public commission if the notary public’s residency in Illinois ends.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.130 Nonresident Application for Appointment

The form in Illustration A must be used by an applicant for notary public who resides in a state bordering Illinois whose place of work or business is within a county in Illinois, but only if the laws of the applicant’s state of residence authorize residents of Illinois to be appointed and commissioned as notaries public in that state. [5 ILCS 312/2-101(a)]

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART C: COURSE OF STUDY AND EXAMINATION

Section 176.200 Definitions

Unless otherwise noted, the following definitions apply to this Subpart only:

“Applicant” means a person or entity applying for certification as a notary public course of study provider and examination provider.

“Certification” means a document issued by the Department that authorizes the entity named in the document to offer a live classroom or webcast course of study and examination required by 5 ILCS 312/2-101.5.

“Consumer information” means the name, address, date of birth, email address and payment information, including credit card and bank account numbers or electronic payment data of students who are enrolled in or have completed a notary public course of study and examination.

“Department” means the Index Department of the Office of the Secretary of State.

“Instructor” means the person charged with providing instruction to notary applicants.

“Live certified proctors” means a person or persons who monitor students in real time in a live classroom setting.

“Multimedia” means a method or methods of technology meant to convey information including, but not limited to animation, graphics, and video displays.

“Provider” means an entity or person certified by the Secretary of State to provide

a notary public course of study and examination required by 5 ILCS 312/2-101.5.

“Shareware” means copyrighted software for which the copyright owner sets certain conditions for the software’s distribution and use, including requiring payment to the copyright owner after a person who has secured a copy of the software decides to use the software.

“Webcast” means either a live synchronous online or interactive asynchronous course of study and examination as required by 5 ILCS 312/2-101.5.

“Web video conference proctor” means a person or persons who monitor students in real time during a video conference and/or examination.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.205 Course of Study and Examination

- a) Beginning January 1, 2024, applicants seeking a commission as either a notary public or an electronic notary public must first successfully complete a course of study and acquire a passing score on the examination, as required by 5 ILCS 312/2-101.5. The applicant will have 2 years from the date of the examination to apply for a notary public or electronic notary public commission. Once the course of study and examination have been successfully completed and the commission has been issued, the certificate or other proof of successful completion of the course of study and examination will remain valid for the duration of the notary’s four-year commission.
- b) The Secretary of State may authorize the provision of a course of study for the mandatory training of notaries public and electronic notaries public by qualified third parties subject to this Subpart.
- c) To be accepted by the Secretary, the course of study must be taught by a provider or instructor certified by the Secretary.
- d) The course of study and examination must consist of the instruction and questions identified in Section 176.225.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.210 Course of Study and Examination – Provider Certification Required

- a) No person, firm, association, partnership, or corporation may operate as a provider or engage in the business of providing a notary public course of study and examination unless the provider holds a certification issued by the Secretary.
- b) No provider may remain in operation if its certification to operate as a provider is suspended, revoked, canceled, or not renewed.
- c) The Secretary must provide contact information of each provider on its official website. (<https://www.ilsos.gov/departments/index/notary/home.html>)
- d) Every officer, owner, director, partner, and manager for a provider is subject to the requirements of this Subpart C.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.215 Applicants’ and Providers’ Requirements for Notary Public Course of Study and Examination

- a) The Secretary will deny, suspend, or revoke a provider certification when:
- 1) The Secretary determines that the applicant/provider is not of good moral character. In determining good moral character, the Department is not limited to but may consider the following:
 - A) Whether the applicant/provider has been convicted of a felony or a misdemeanor. The Department will consider:
 - i) The relationship of any crime of which the applicant/provider has been convicted to the ability to operate a notary public course of study and examination;
 - ii) The length of time that has elapsed since the applicant's/provider's last criminal conviction;
 - iii) Whether the applicant/provider successfully completed any sentence imposed with the convictions;
 - iv) Whether the applicant/provider has multiple convictions for felony or misdemeanor offenses.
 - B) Whether the applicant/provider has been indicted, formally charged, or otherwise charged with a felony or a misdemeanor. In this case, the certification will be temporarily either denied or revoked.
 - i) If the applicant/provider whose certification has been denied or revoked under this Part is adjudicated "guilty" by the court, the denial or revocation previously entered on the person's record in accordance with this Section will stand. This action does not preclude further suspension or revocation of the certification under another Section of this Subpart or the Act.
 - ii) If the applicant/provider whose certification has been denied or revoked under this Part is adjudicated "not guilty" by the court, the denial or cancellation previously entered on the person's record in accordance with this Section will be rescinded. This action does not preclude further suspension or revocation of the certification under another Section of this Subpart C or the Act.
 - iii) If the applicant/provider whose certification has been denied or revoked under this Part is granted a disposition of "court supervision" by the court, the denial or revocation previously entered on the person's record in accordance with this Section will be rescinded. This action does not preclude further suspension or revocation of the certification under another Section of this Subpart C or the Act.
 - 2) Any owner or employee of the provider who, while interacting with students:
 - A) Engaged in an activity that puts the student in danger; or
 - B) Engaged in reckless behavior; or
 - C) Failed to maintain a professional relationship with students at all

times.

- 3) The applicant/provider fails to file and maintain with the Department a continuous surety bond in the principal sum of \$50,000, underwritten by a company authorized to do business in the State of Illinois, for the protection of the contractual rights of students. However, the aggregate liability of the surety for all breaches of the condition of the bond in no event will exceed the principal sum of \$50,000. The surety on any bond may cancel the bond upon giving 30 days' notice in writing to the Secretary of State and will be relieved of liability for any breach of any conditions of the bond that occurs after the effective date of cancellation. All bonds filed under this provision must be in substantially the same form as Illustration B.
- 4) The Secretary is not satisfied that the applicant/provider has established adequate procedures for verifying the identity of the student taking the course and ensuring that the student completes the course in its entirety;
- 5) The applicant fails to submit a copy of its course content, conforming with this Section, to the Department for review and approval, including the questions and answers on the quizzes and final examination;
- 6) The provider fails to immediately report to the Department any unauthorized access to consumer information, including computer breaches, or fails to comply with the Illinois Personal Information Protection Act [815 ILCS 530];
- 7) The applicant/provider is an Illinois corporation that is not in good standing with the Illinois Secretary of State, Department of Business Services;
- 8) The applicant/provider is a foreign corporation that is not authorized to transact business in Illinois, as evidenced by the submission of an Application for Authority to Transact Business in Illinois and acceptance of that application by the Illinois Secretary of State, Department of Business Services;
- 9) The applicant/provider is a foreign limited liability company that is not authorized to transact business in Illinois, as evidenced by the submission of an Application for Admission to Transact Business and acceptance of that application by the Illinois Secretary of State, Department of Business Services;
- 10) The owner or any employee of the applicant/provider is a current salaried or contractual employee of the Secretary of State;
- 11) An applicant/provider, owner, or manager engages in fraudulent activity;
- 12) An applicant, owner, or employee has been found to have engaged in fraudulent activity within the 5 years before applying for certification;
- 13) An applicant/provider or owner owes outstanding fees to the Secretary of State in either a personal, official, or professional capacity;
- 14) An applicant/provider sells or discloses any consumer information or fails to post a statement indicating consumer information will not be sold or disclosed on its website, except as authorized by Section 176.240(e);
- 15) An applicant/provider requests the Social Security number of students, except as authorized by Section 176.240(e);

- 16) The provider fails to provide a toll-free customer service hotline that is answered, at a minimum, between the hours of 9:00 am and 5:00 pm Central Time, Monday through Friday;
 - 17) The applicant/provider fails to supply the Department with a detailed description of each position involved in every facet of the notary public course of study and examination, with contact information for each employee. If the course is taught in person, the provider must report any staffing changes to the Department within 5 business days after the change. If the course is taught online, the provider must report any change in the person responsible for creating and managing the online course to the Department within 5 business days;
 - 18) The provider uses voice recognition as a method of verification, unless the provider furnishes a toll-free number for providing the required voice exemplars.
- b) The Secretary of State may deny, suspend or revoke a certification:
- 1) For any violation of the Act;
 - 2) For any violation of this Part;
 - 3) If the provider's certification to provide any type of notary public course of study and examination has been denied, suspended, or revoked by any other state or jurisdiction;
 - 4) For misrepresentation of a notary public's duties and authority under Illinois law;
 - 5) For deviation from the lesson plan for an approved course of instruction;
 - 6) For making representations that the Secretary of State endorses, recommends, or mandates the use of any of the vendor's products, goods, or services;
 - 7) For conviction of any entity, person, or principal closely associated with any provider for any felony or misdemeanor involving fraudulent activity;
 - 8) For engaging in any fraudulent activity or deceptive business practices; or
 - 9) For failure to timely respond to the Secretary of State's request for communication or otherwise cooperate with an investigation.
- c) Only one provider certification will be issued to any one individual, group, association, partnership, or corporation, and the Department will deny an application for certification as a course provider if any of the applicants are unqualified, are already certified, or have applied as another provider.
- d) Course providers must comply with the following requirements:
- 1) If the course provider seeks certification for an in-person course of study at the course provider's physical location, the location of the course provider's premises and facilities must be adequate, safe, and sanitary and shall comply with all relevant statutory provisions, rules, regulations and local ordinances concerning fire, health, safety, and sanitation.
 - 2) The equipment, supplies, and instructional materials of the course provider must be satisfactory and adequate in type, quality, and amount, and shall be suitable for use in administering the course of instruction. They must also comply with all relevant statutory provisions and local ordinances concerning fire, health, safety, and sanitation.

- e) Before being certified, each applicant must provide the Department with all necessary information to allow the Department to participate in a complete course, without fee to the Department, so that the Department may determine if the course complies with this Part. If the proposed course content meets the requirements of this Subpart, it will be approved by the Department.
- f) The requirements of subsection (d) are not intended to limit the ways course providers may offer courses of study or the locations at which course providers may offer courses of study. Live webinars with real-time instruction and courses provided at an employer or business location with an in-person instructor may also be considered for certification by the Secretary of State.
- g) When determining whether to approve a submitted course of study, the Department will consider and review the following:
 - 1) The course lesson plan and syllabus or storyboard.
 - 2) A detailed description of how the final examination will be administered. The entity administering the final exam may use either a paper test or an online format. The entity must notify the Department which format they will be using. A notary public course of education provider must offer multiple curriculum tests so that there is not one uniform test in circulation.
 - 3) The process for grading students.
 - 4) How the course educates students regarding the notary public or electronic notary public commission application process, forms, and procedures.
 - 5) A list of course instructors, if applicable.
 - 6) A description of the interaction capabilities between the instructor and the students in an electronic environment or another means of ensuring that students actively participate, if the course of study and examination are to be conducted electronically.
 - 7) Actual time spent by students and instructors online and in class.
 - 8) A video, CD, or DVD of the course, or a copy of or access to any text-based course, or in the case of an interactive asynchronous online course of study and examination, a uniform resource locator (URL) and login credentials to access the course.
- h) Upon receipt of a properly executed application for certification, the Department will investigate the qualifications of the applicant to determine whether the application should be granted or denied.
- i) Certifications may only be issued by the Department.
- j) Providers must follow the course content submitted to and approved by the Department at the time of application for certification.
- k) If a provider wishes to substantially change the course content, a copy of the proposed revisions must be sent to the Department for approval. The provider shall also provide the Department with all necessary information to allow the Department to participate in a complete course, as revised, without fee to the Department. After review, the Department will send a letter to the provider either approving or rejecting the proposed changes.
- l) An entity whose certification has been denied, suspended, or revoked under this Subpart may request an administrative hearing under Subpart K.

- m) A certificate issued to a course of study and examination provider will be valid for one year. The course provider must submit the course of study to the Department for approval annually. Department approval of the course of study will extend from January 1 through December 31. A course provider desiring to be approved must submit an application for course approval or renewal on or before October 1 of each year. The application shall be accompanied by the following information:
 - 1) All information required as part of an application for initial certification as set forth in Sections 176.205, 176.210, 176.215, 176.235, 176.240, and 176.255; and
 - 2) Any supplemental information necessary to bring information on the course provider up to date.
- n) A provider may elect not to provide training that includes electronic notarization only if the application of the provider clearly and conspicuously states that the course submitted for approval will not include training with response to electronic notarizations and the provider includes a statement on its website that its training will not include electronic notarizations and will not suffice for an electronic notary public commission application.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.220 Notary Public Course of Study and Examination – Provider Names

- a) No provider may adopt, use or conduct any business under a name that is not distinguishable upon the records of the Department from a name used by another provider, as distinguishable is defined in 14 Ill. Adm. Code 150.440.
- b) No provider may incorporate under its own or another name unless the name of the proposed corporation is submitted by the Department of Business Services of the Office of the Secretary of State for a final determination of the availability of the name, along with the fee required by Section 15.10 of the Business Corporation Act of 1983 [805 ILCS 5/15.10].
- c) No provider’s name may contain, separate and apart from any other word or abbreviation in the name, the word “corporation”, “company”, “incorporated”, or “limited”, or an abbreviation of one of these words, unless so licensed by the Secretary of State.
- d) No provider may operate under an assumed name unless the provider complies with all provisions of the Assumed Business Name Act [805 ILCS 405].
- e) No provider may change its name unless 30 days’ prior written notice is given to the Department stating the change of name. Upon receipt of a notice of name change, the Department will, without an application fee, require the provider to complete an amended application for certification in the form and manner prescribed for original applicants.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.225 Notary Public Course of Study and Examination – Required Instruction and Content

- a) Providers must provide 3 hours of notary public instruction in accordance with the course content requirements set forth in subsection (e) in addition to the following requirements:
 - 1) A minimum of 180 minutes of instruction as defined in subsection (b);

- 2) The course must allow a maximum of 30 days for a student to complete the course;
 - 3) The material presented in the course must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from its subject matter;
 - 4) Advertisement of goods and services or any material not related to the topic being presented must not appear during instructional time; and
 - 5) An online course must be designed and well-suited for students with minimal keyboard or computer skills.
- b) To demonstrate that the course contains a minimum of 180 minutes of instruction, the following calculation shall be used:
- 1) For written material that is read by the student, count the total number of words in the written section of the course. Divide the word count by 180, the average number of words that a typical student reads per minute. The result equals the time associated with the material for the written sections;
 - 2) For multimedia presentations, including simulators, videos, and animation, calculate the total amount of time it takes for all multimedia presentations to play. The length must not exceed 120 minutes;
 - 3) Assign one minute for each chart or graph; and
 - 4) The total minutes of instruction in the written material, the multimedia presentations, and the charts and graphs altogether must equal or exceed 180 minutes for the course to meet the minimum content time required.
- c) Instead of the calculation method in subsection (b), a provider may submit an alternate methodology or otherwise demonstrate that the course contains a minimum of 180 minutes of instruction.
- d) Materials. All material appearing on the screen to be read by the student must also be spoken aloud to the student unless this function is manually disabled by the student.
- e) Substance required. The educational objectives of a notary public course of study must include, but not be limited to:
- 1) Promoting respect for and encouraging the observance of the duties and requirements of a notary public under the Act;
 - 2) Identifying potential damages and economic losses that could result from notarial misconduct;
 - 3) Motivating continuing development of notarial competencies through education, including, but not limited to adherence to the Act; and
 - 4) Providing knowledge of the Act, this Part, and other laws related to or affecting notarial work.
- f) Providers must monitor the Illinois General Assembly and update their course content to include any new amendments to the Act. This update must be submitted to the Department for review and approval within 60 days after the effective date of the law change.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.230 Notary Public Course of Study and Examination – Student Contracts

- a) Before instruction begins and any fees are collected, each student shall be informed of the amount of all fees or charges relative to the notary public course

of study, including but not limited to enrollment, tuition, equipment, textbooks, and instruction manuals. The provider shall not require mandatory purchase of the provider's proprietary software or shareware unless this fee was expressly included in the disclosure of fees made before the student's enrollment in the course.

- b) If a provider requires the installation of a free or trial version of its proprietary software, it must be bundled with an uninstallation shortcut that will completely remove that software and any associated registry entries.
- c) All contracts or agreements between any provider and any individual or group for the sale, purchase, barter, or exchange of any notary public course of study instruction, must contain the following:
 - 1) A statement that the agreement constitutes the entire contract between the provider and the student and that no verbal assurances or promises not contained in this agreement will bind the provider or the student.
 - 2) A statement indicating that all disputes under this Section must be directed to the Secretary of State.
- d) The term "no refund" and a no-refund policy concerning student payments are not permitted in any notary public course of study contract. A provider may use the phrase: "The provider will not refund any fees if the provider is capable and willing to perform its part of the contract."
- e) If a provider fails to comply with the provisions of a contract or agreement between the provider and any of its students, the provider must refund all monies paid by the students as the consideration for performance of the contract or agreement by the provider unless the student has violated the provisions of the contract or agreement.
- f) Any provider that subcontracts any portion of the course of study or examination must notify the Index Department before entering into the subcontracting relationship.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.235 Course Provider Verification of Student Identity and Course Completion

- a) Before being certified, providers must submit procedures to the Secretary of State for verifying the identity of the student taking the course, which may include, but are not limited to, the following:
 - 1) If the course is to be taken in person, an examination of a government-issued photo identification card, including an Illinois driver's license or Illinois Identification Card;
 - 2) If the course is to be taken online:
 - A) Web video recording accompanied by an examination of the student's government-issued photo identification card;
 - B) Dynamic knowledge-based authentication;
 - C) Web video proctoring with screen monitoring by live certified proctors; or
 - D) Any method, or combination of methods, of identity verification submitted by a provider and approved by the Department that reasonably establishes the identity of the student and the student's presence during the online course.
- b) If the method of verification is challenge questions, the student must be asked a

minimum of two questions per hour, during each hour of the course, at random intervals. The answer to the verification challenge question must be verifiable by the course provider or a third party. Students shall have only 60 seconds to respond. Students who fail to respond to the question or who fail to respond within the specified time period must be returned to the place in the course where the student last successfully passed a verification. A student who, for a second time, fails to respond to a challenge question or who fails to respond within the specified time period will be considered to have failed the course. If a student answers a question incorrectly, another challenge question must be asked. If the student correctly answers the challenge question, the student may proceed with the course. If the student incorrectly answers a third challenge question, the student is considered to have failed a course.

- c) Providers must incorporate a course content validation process that verifies student participation, comprehension of course material, and course completion, including the following:
- 1) Built-in timers to ensure that 180 minutes of instruction have been viewed and completed by the student. Timers must prevent the student from scrolling, skipping, or advancing through the course without reading the material and must not allow the student to take section quizzes or the final examination without viewing or reading the course content. If a student attempts to take a quiz or the final examination without having spent the minimum time required for a single section or the course, the student must be returned to the place in the course where the student last spent the minimum time required.
 - 2) At least one course validation question must be asked following each multimedia clip that exceeds 60 seconds.
 - 3) Students must complete a final examination at the end of the course, which shall consist of 50 questions from a test bank of a minimum of 100 questions. Questions may be multiple-choice, true/false, or a combination of both, but in no event may more than one-half of the questions be true/false. Questions must be randomized and of such difficulty that the answers may not be easily determined without having participated in the entire course.
 - 4) A student must score at least 85% on the final examination. If a student scores less than 85%, the student must be re-tested using different questions from the test bank. The student is not required to repeat the course but shall be allowed to review the course before retaking the examination. The examination may be retaken at any time by agreement between the student and the course provider. If the student fails the comprehensive final examination 3 times, the student has failed the course.
 - 5) A student who fails the examination may choose to take a different course before retaking the examination.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.240 Notary Public Course of Study – Provider Website and Security Requirements

- a) Each provider's website must display the following information on its homepage:
 - 1) the provider's Secretary of State certification number; and
 - 2) a statement that complaints regarding the provider may be directed to the Secretary of State's Index Department. Contact information for the Index Department must be included with the statement.
- b) A provider offering an online course must offer the course from a single domain. The course may accept students that are redirected to the online course domain, as long as the provider's certification number appears on the source that redirects the students to the online course domain. The student must be redirected to a webpage that clearly identifies the certified provider offering the course before the student begins the registration process, supplies any information, or pays for the course.
- c) A provider offering an online course may choose an existing webinar system or create its own webinar system.
- d) Providers are prohibited from selling or disclosing any consumer information provided by the student unless the provider is disclosing the consumer information with a third party solely for the purpose of providing dynamic knowledge-based identity verification. The provider's contract with the student must clearly state whether the provider is disclosing consumer information for the purpose of providing dynamic knowledge-based identity verification. A statement concerning the prohibition on the sale or disclosure of student consumer information must be posted on the provider's website in a conspicuous location.
- e) Providers are prohibited from requesting the Social Security numbers of students, except for a request from a third-party process or service used by a provider to verify the identity of students taking a provider's course, in which case the third-party process or service must not share the Social Security number data with the provider.
- f) Providers must take all necessary measures to prevent unauthorized access to consumer information, either in printed or electronic form. Upon discovery of a breach or unauthorized access, the provider must immediately report any unauthorized access to the Department.
- g) Provider servers must be located in a secure location, with access restricted to only those employees or persons who have a business need to access the server.
- h) Providers may use a third-party payment processing merchant for processing payments only if the provider's contract clearly indicates to the student, before payment is made, the name of the third-party payment processing merchant to be used and the fee, if any, charged by the payment processor

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.245 Enforcement

- a) **Duty to Respond to the Secretary of State's Written Request.** Any person or entity providing courses of study or examinations must respond in writing within 10 business days of receiving a written request from the Secretary of State for any information relating to a complaint about a course of study or examination.
- b) **Inspections.** Approved providers must permit the Secretary of State or the Secretary's designee, at the Secretary's sole option, to attend any approved course of instruction, whether in person or online, without prior notice at no charge to observe, monitor, audit, and investigate.

- c) Complaints. Any person may file a complaint against any provider with the Secretary of State alleging a violation of the Act or this Part. The person must submit a written and dated complaint to:

Secretary of State Index Department
111 E. Monroe Street
Springfield, IL 62756

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.250 Hearings

- a) Before denying the certification of an applicant or existing provider, the Department will send written notice to the provider. If a formal hearing is requested in writing under 92 Ill. Adm. Code 1001.Subpart A, the denial shall stand pending the outcome of the hearing. The denial of a certification will contain the specific reasons why the certification has been denied. The notice of denial contains information about the availability and timeline of an appeal and where rules governing the appeal can be found.
- b) Before suspending or revoking a provider's certification, the Secretary of State Department of Administrative Hearings will conduct a hearing using 92 Ill. Adm. Code 1001.Subpart A, in which the Department will present competent evidence to establish violations of any regulations or laws governing providers and seek the appropriate sanctions under Subpart K. Sanctions for violations of the Act or this Part may include, but are not limited to, denial, suspension, or revocation.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.255 Denial, Suspension, and Revocation of a Notary Public Course of Study and Examination Provider Certification

The Department may revoke the certification of a course of study when the Department finds that a course of study or a course provider has failed to comply with the Act or this Part. An affected course provider may appeal the Department's decision to revoke the certification of the provider's course of study through an administrative hearing with the Secretary of State Department of Administrative Hearings under Subpart K.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART D: NOTARY PUBLIC APPLICATION REQUIREMENTS

Section 176.300 Application for Notary Public and Electronic Notary Public Commissions

- a) Applications for a traditional notary public commission. All individuals applying for a traditional notary public commission shall use the application prescribed by the Secretary of State and shall include, at a minimum, the information required by 5 ILCS 312/2-102.
- b) Remote notarization. Any notary appointed under subsection (a) shall have the authority to conduct remote notarizations. [5 ILCS 312/2-102(b)]
- c) Application for electronic notary public commission. An application for an electronic notary public commission must be filed with the Secretary of State as required by this Subpart D [5 ILCS 312/2-102(c)]. In addition, an applicant for an electronic notary public commission must provide the following:
 - 1) The notary public commission number assigned to the person by the

- Secretary of State, unless the applicant is applying for the notary public commission and electronic notary public commission at the same time under 5 ILCS 312/2-101(c);
- 2) The names of all electronic notarization system providers that the applicant intends to use to perform electronic notarial acts;
 - 3) A copy of the electronic signature of the person that is:
 - A) an exact representation of the handwritten signature of the person already on file or currently being filed with the Secretary of State; and
 - B) in a format that can be read without additional software and be compared for authentication purposes to the person's handwritten signature on file or being filed with the Secretary;
 - 4) A statement certifying that the applicant:
 - A) Will comply with the standards set forth by Section 176.835 relating to identity proofing and credential analysis;
 - B) Will use a third-party provider who has been certified to act as an electronic notarization system provider in the State of Illinois by the Secretary; and
 - C) Will, upon request by the Secretary, promptly provide any necessary instructions or techniques supplied by a provider that will allow the electronic notary public's digital certificate and electronic seal to be read and authenticated.
 - 5) A disclosure of all disciplinary actions, convictions, or administrative actions taken against the applicant;
 - 6) A certificate or other proof of successful completion of the course of study required under 5 ILCS 312/2-101.5(a), which indicates successful completion of the course within the 2 years preceding the submission of the application for an electronic notary public commission; and
 - 7) A statement certifying that the person will comply with the applicable provisions of the Act, including Article VI-A.
- d) A person may not perform an electronic notarial act, unless:
 - 1) The Secretary has approved the applicant's application for an electronic notary public commission; and
 - 2) The Secretary has approved the registration of the proposed electronic notarization system provider.
 - e) Incomplete applications. If an application for appointment as a notary public or electronic notary public is incomplete, the Secretary of State will retain the application for at least 1 year from the date of receipt of the application. If the applicant does not complete the application within 1 year from the date of receipt of the application, the Secretary of State may deny the application and mail a notice of denial to the applicant.
 - f) Assignment of Commission Number.
 - 1) The Secretary of State will assign a unique commission number to each original commission certificate. The commission number, which will be used to identify the notary public whose name appears on the commission certificate, must remain assigned to the notary public throughout the

period of the appointment and must be included on each duplicate or amended commission certificate issued to the notary public by the Secretary of State.

- 2) If a notary public applies for a subsequent period of appointment, a new number must be assigned.
 - 3) A notary public that is also commissioned as an electronic notary public will have the same commission number for both commissions.
- g) After an application for an electronic notary public commission has been approved, the electronic notary public will be required to notify the Office of the Secretary of State, on a form designated by the Secretary, if the electronic notary public elects to add any other electronic notary system provider.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.310 Approval of Application, Authority of Secretary of State to Deny Commission, and Effective Date of Commission

- a) If an applicant who is applying for an electronic notary public commission satisfies all of the requirements for such a commission pursuant to this Part and 5 ILCS 312/2-102, the Secretary of State will:
 - 1) Approve the application for a commission as an electronic notary;
 - 2) Update the processing system maintained by the Office of the Secretary of State to indicate the commission of the person as an electronic notary; and
 - 3) Notify the applicant of the approved application and commission as an electronic notary.
- b) If a person who is applying for an electronic notary public commission does not meet all of the requirements for application set forth in this Part and 5 ILCS 312/2-101, the Secretary of State will not commission the person as an electronic notary public. If the Secretary of State denies a commission as an electronic notary under this subsection, the Secretary of State will notify the person of that refusal.
- c) The commission of a person as an electronic notary public becomes effective at the time the processing system maintained by the Secretary of State has been updated pursuant to subsection (a)(2) to indicate such a commission.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.320 Appointment Fee

- a) No commission will be issued until the fee required by 5 ILCS 312/2-103 has been paid in full.
- b) Authority of the Secretary of State to deny or revoke commission if payment is dishonored or stopped. If any method of payment submitted by an applicant to the Secretary of State pursuant to 5 ILCS 312/2-103 is returned to the Secretary of State or otherwise dishonored upon presentation of payment because the applicant has insufficient money or credit, or because the person stopped payment on the method of payment, the Secretary of State may immediately and without a hearing deny to commission the applicant as a notary public or electronic notary public or immediately revoke the applicant's commission if the commission has already been granted. An applicant whose commission is denied or revoked under this subsection (b) must resubmit an application for commission as a notary public or electronic notary public. A notary public or electronic notary public whose

commission is revoked under this subsection (b) must reapply for a commission.
(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.330 Oath

- a) Notaries public and electronic notaries public must file an oath of office with the Secretary of State, affirming the notary's or electronic notary's intent to follow the laws and constitutions of the United States of America and the State of Illinois.
- b) The legal name on the applicant's oath of office must exactly match the applicant's driver's license or state identification card and the name on the notary public application. Unless proven otherwise, the name shall consist of the applicant's first personal name (first name), additional name or names, if applicable, and surname (family or last name)

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.340 Bond

- a) Applicants for a notary public commission or electronic notary public commission must indicate at the time of application whether the applicant will perform only traditional in-person notarizations or remote notarizations.
- b) An applicant for a notary public commission or electronic notary public commission must purchase a bond in the following amounts:
 - 1) Applicants seeking to perform only traditional, in-person notarizations – \$5,000;
 - 2) Applicants seeking to perform traditional, in-person notarizations and remote or electronic notarizations – \$25,000 in addition to the bond required by subsection (b)(1) for traditional notaries, or a combined bond of \$30,000, pursuant to 5 ILCS 312/2-105(b).
- c) A copy of the original bond must be filed with the Illinois Secretary of State Index Department.
- d) The bond shall contain, on its face, the oath of office for the notary public or electronic notary public as specified in 5 ILCS 312/2-104. The applicant must endorse the oath on the face of the bond, immediately below the oath, by signing the applicant's name under which the person has applied to be commissioned as a notary public or electronic notary public and exactly as it appears on the notary application form or electronic notary application form filed with the Secretary of State's Office.
- e) In making a claim against a combined bond, as described in subsection (b)(2), a claimant will only be entitled to either a maximum of \$5,000 of the bond if the notarization at question was a traditional, in-person, physical notarization or a maximum of \$25,000 if the notarization was electronic or remote. In no event may a single claim be eligible for payment of the entirety of the \$30,000 bond.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.350 Reappointment

- a) A current notary public and a current electronic notary public may apply for reappointment 60 days before an existing commission expires. The date of the new commission will be the date immediately after the expiration date of the current commission.

- b) To prevent a gap between commissions, a notary public and electronic notary public should apply for reappointment at least 30 days before the commission under which the notary public is currently acting expires.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART E: NOTARY PUBLIC REMITTANCE AGENT

Section 176.400 Definitions

For purposes of this Subpart, the following definitions apply:

“Applicant” means a person requesting that a remittance agent license be issued in the applicant’s name or the name of a business entity the applicant controls.

“Department” means the Secretary of State Department of Index.

“Financially sound” means solvent and able to pay expenses and debts as due, as evidenced by the surety bond obtained pursuant to Section 176.410(c).

“Fraudulent activity” means any action calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of the truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, as the action or inaction applies to the remittance agent’s obligations found in 5 ILCS 312/2-107.

“Good business integrity” means soundness or good moral principles and character in business dealings as evidenced by the surety bond or bonds obtained under Section 176.410(c).

“Immediate family” means spouse, offspring, sibling, or parent.

“Licensee” means a licensed remittance agent.

“Remittance Agent” means any person who self-represents to the public as being engaged in or who engages in accepting notary public or electronic notary public applications and fees for submission to the Secretary of State, whether the person renders any other service in connection with the making of any such remittance or is engaged in any other endeavor. The term “remittance agent” also includes any person who self-represents to the public as being engaged in or who engages in accepting money for consulting or advising the public on matters concerning applications for Illinois notarial commissions. The term “remittance agent” does not include any licensed attorney providing advice to clients or the general public.

“Revocation” means the termination by formal action of a person’s license to operate as a remittance agent.

“Secretary” means the Illinois Secretary of State.

“Suspension” means the temporary withdrawal by formal action of the Secretary

of a person's license to operate as a remittance agent for a period of time determined by the Secretary.

“Transaction” means an application for a notary public or electronic notary public commission and fees for remittance to the Department.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.410 Application for Remittance Agent's License and Renewal

- a) If a person wishes to become a remittance agent, an application and bond as described in subsection (c) must be filed with the Office of the Secretary of State in accordance with subsection (e).
- b) The application, which must be notarized, shall contain the following information:
 - 1) The previous year's license number if the person is currently licensed as a remittance agent;
 - 2) The name of the business;
 - 3) The location of the business. A licensee shall not do business at a location not identified in the license and must maintain a physical location in Illinois or name an agent for service of process with a physical location in Illinois;
 - 4) The applicant's home address, home telephone number, business telephone number, email address, and website, if any;
 - 5) The applicant's business, occupation, or profession;
 - 6) The total amount of cash, checks, electronic payments, or money orders received by and made payable to the remittance agent for remittance to the State in the highest 15-day period in the preceding year if the person is currently licensed;
 - 7) Whether the applicant, a member of the applicant's immediate family, or any employee of the applicant is an employee of the Secretary of State; and
 - 8) Whether the applicant has ever been involved in civil or criminal litigation including bankruptcy proceedings, and if so, the type of litigation, the date and suit or charge, the court in which the matter was heard, the style or caption of the case, the disposition of the matter, and if the judgment has been satisfied.
- c) A surety bond shall be posted for each location where the applicant intends to do business as a remittance agent. Each bond must be for \$5,000 or the amount of cash, checks, electronic payments or money orders received by and made payable to the remittance agent for remittance to the Department during the highest 15-day period in the year preceding the year for which the license is applied, whichever is greater. The bond must be issued by a bonding or insurance company authorized to do business in Illinois. The Department will use a list issued by the Department of Insurance to determine if the bonding or insurance company is authorized to issue the bond.
- d) A remittance agent wishing to renew the agent's license must submit the material required by this Section to the Department between September 1 and December 31 of the year before the new license will become effective.
- e) All remittance agent license applications and corresponding materials must be

submitted to:

Office of the Secretary of State
Index Department
111 E. Monroe Street
Springfield, IL 62756

- f) The Department will make available the application form to any person who requests one. Only the Department's form will be accepted for a license to operate as a remittance agent.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.420 Denial of Application for Remittance Agent's License

- a) Pursuant to 5 ILCS 312/2-107, the Department will deny an application for a remittance agent's license unless the applicant complies with that Section. If a person's application is denied, the person will be sent the application submitted and a notice of the denial by certified mail within 30 days after the date the application was submitted. The notice will contain the reason for the denial and inform the applicant of the opportunity to request an administrative hearing to contest the denial under Subpart K.
- b) Renewal of a remittance agent's license shall be denied if upon investigation it is discovered that the remittance agent is not financially sound and of good business integrity or is otherwise ineligible for a license as provided in 5 ILCS 312/2-107. The Index Department may audit the remittance agent at any time during the term of the license. Any further investigation will be conducted by the Secretary of State Department of Police.
- c) The Department will consider written complaints regarding remittance agents. Upon receipt of a complaint, Secretary of State police must investigate the matter. If, upon this investigation, it is discovered that a basis for denial exists under any Section of the Act or this Part, the remittance agent's current license will be suspended or revoked as provided in Section 176.430.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.430 Suspension and Revocation of Remittance Agent's License

- a) The Department shall suspend a remittance agent's license under the following circumstances:
 - 1) the licensee fails to keep records detailing transactions with the Secretary of State;
 - 2) the licensee fails to furnish information requested by the Department; or
 - 3) it is discovered that the licensee or a member of the person's immediate family is an employee of the Secretary of State.
- b) The suspension will remain in effect for 60 days, during which an audit shall be conducted to determine compliance with the Act. If the remittance agent has come into compliance, the suspension will be lifted. If the remittance agent has not come into compliance during the 60-day suspension, the remittance agent's privileges will be revoked.
- c) A remittance agent's license will be revoked under the following circumstances:
 - 1) the licensee attempts to do business or does business as a remittance agent while privileges are suspended;

- 2) the licensee fails to remit to the Department the fees provided by applicants as required by 5 ILCS 312/2-107, or the check submitted is returned by the bank because of insufficient funds, or the payment submitted electronically is dishonored for any reason, and the licensee fails to submit the proper fees within 10 days after a written request by the Department;
 - 3) the licensee engages in fraudulent activity or forgery while operating as a remittance agent, as determined by the Department after the investigation;
 - 4) the Department determines that the licensee has been adjudicated by a court of law or an administrative hearing officer as guilty of violating any provision of the Act;
 - 5) the licensee has been suspended 2 or more times in one year; or
 - 6) the licensee has been convicted of any felony.
- d) The Department will consider written complaints in determining whether a remittance agent's license shall be suspended or revoked. Upon receipt of a complaint, the Secretary of State Department of Police will investigate the matter to determine if a basis exists under this Section for a suspension or revocation.
- e) Revocation. The remittance agent will be notified by certified mail that the license to operate as a remittance agent is being revoked. The notice shall contain the effective date of the revocation, the violation that is the cause of the revocation, and how the applicant can contest the revocation. The remittance agent will be given 10 business days from the date of the notice before the revocation will become effective. A revocation shall be entered for no less than a period of two years. After that date, the former licensee may reapply for reinstatement. To be reinstated following a revocation, the licensee must request an administrative hearing as provided in Subpart K. The remittance agent's license will not be restored until the Secretary is satisfied that the licensee will comply with the provisions of the Act and is financially sound and of good business integrity.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.440 Processing Transactions

- a) All applications for notary public or electronic notary public commissions submitted to the Department by persons acting as remittance agents must be submitted electronically or by regular mail.
- b) All transactions must be submitted to the Department within 30 days after receipt by the remittance agent as required by 5 ILCS 312/2-107(c). Transactions sent by regular mail will be considered submitted to the Department on the date of postmark. Depending on the severity of the violation, failure to comply with this Section will be grounds for suspension or revocation.
- c) No remittance agent shall employ any individual, or any member of that individual's immediate family, who is employed by the Office of the Secretary of State.
- d) All applications must include the remittance agent's assigned number in the designated position on the form.
- e) The fee submitted to the Department must be done so in a manner that associates the payment with a specific application. Failure of the remittance agent to associate the payment with the proper application will result in the rejection of the

transaction.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.450 Recordkeeping Requirements

- a) Each person licensed as a remittance agent as defined in 5 ILCS 312/2-107 must maintain for three years a record of each transaction.
- b) The records must be maintained in ledger form or be computerized. All records should be available to employees from the Secretary of State or the officers from the Secretary of State Department of Police within 60 minutes, Monday through Friday during business hours, after a request. For purposes of this subsection (b), Secretary of State Police will only make records requests between 11:00 am and 4:00 pm Central Time. The records must contain the following information:
 - 1) The name and address of the remittance agent. If the remittance agent has more than one licensed location, the records must reflect the location where the transaction was received or processed or where the records are kept.
 - 2) The name and address of the applicant submitting the transaction. If a remittance agent does not make the initial contact with the applicant but receives a transaction from another remittance agent, the second remittance agent must record the original applicant's name and that of the initiating remittance agent.
 - 3) The amount of fee received by the remittance agent for delivery to the Department for each transaction. The funds must be identified as "cash", "check", "electronic payment" or "money order" payable to the Secretary of State, or "check", "electronic payment" or "money order" payable to the remittance agent.
 - 4) The date the fee and transaction were received by the remittance agent.
 - 5) The date the fee and transaction were submitted to the Department and the method of delivery.
 - 6) If the application was approved, the date that the remittance agent license was approved by the Department.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.460 Severability Clause

If any clause or Section of this Part or the application of any provision of this Part to any person or circumstance is rendered unconstitutional, the remainder of this Part or its application to other persons and circumstances shall not be affected. Each clause shall be severable without rendering the rest of the Part invalid. Likewise, each application of the Part shall be severable without rendering future applications invalid.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART F: DUTY, FEES, AUTHORITY

Section 176.500 Use of Official Seal and Electronic Seal

- a) A notary public must use the notary public's official seal, affixed using a rubber stamp, to perform a notarial act. An electronic notary public must use the electronic notary public's electronic seal, affixed using a mechanical stamp, to perform an electronic notarial act.

- b) A notary public must place a legible imprint of the notary public's official seal on a notarial certificate for a tangible record at the time of the performance of the notarial act.
- c) An electronic notary public must attach or logically associate the electronic notary public's electronic seal with the electronic notarial certificate on an electronic record.
- d) A notary public must not place an imprint of the notary public's official seal, and an electronic notary public must not attach or logically associate the electronic notary public's electronic seal, over any signature in a record to be notarized or over any writing in a notarial certificate.
- e) When a notarial certificate is on a separate piece of paper attached to the tangible record to be notarized, or when there are attachments to the tangible record to be notarized, a notary public may use one additional imprint of the notary public's official seal for identification of the tangible record and notarial certificate attached to the tangible record, if the imprint does not make any part of the record or attachment illegible. The additional seal must be partially stamped together on the notarial certificate, and on the signature page or attachment to the notarized record.
- f) A notary public may not use the notary public's official seal, and an electronic notary public may not use the electronic notary public's electronic seal, for any purpose other than to perform a notarial act.
- g) A notary public may not permit any other person to use the notary public's official seal, and an electronic notary public may not permit any other person to use the electronic notary public's electronic seal, for any purpose.
- h) A notary public may not use any other notary public's official seal or any other object in place of the notary public's official seal to perform a notarial act.
- i) An electronic notary public may not use any other electronic notary public's electronic seal or any other object in place of the electronic notary public's electronic seal to perform a notarial act.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.510 Acquiring the Official Seal and the Electronic Seal

- a) A notary public may purchase an official seal, and an electronic notary public may purchase an electronic seal, only after receiving a commission certificate from the Department under Section 176.550(a), and providing a copy of the commission certificate to the notary public's or electronic notary public's chosen seal vendor.
- b) The official seal of a notary public, and the electronic seal of an electronic notary public, is the exclusive property of the notary public or electronic notary public and may not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the official seal or electronic seal, the bond, or the appointment fees.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.520 Description of the Official Seal and Electronic Seal

- a) The reasonably legible imprint of an official seal of a notary public must contain:
 - 1) A serrated or milled edge border in a rectangular form not more than one inch in height by two and one-half inches in length surrounding the following information in descending order:

- A) The words “Official Seal”;
 - B) The notary’s official name, printed;
 - C) The words “Notary Public, State of Illinois”;
 - D) The words “Commission No.” immediately followed by the notary public’s commission number; an
 - E) The words “My Commission Expires”, immediately followed by the notary public’s commission expiration date, expressed in terms of the month, one- or two-digit day, and complete year (e.g., January 1, 2024). [5 ILCS 312/3-101(a)]
- 2) The imprint of an official seal of a notary public on a tangible record must be an imprint capable of being photocopied or reproduced.
- b) The electronic seal of an electronic notary public on an electronic record must look identical to a traditional notary public seal and be accompanied by the electronic signature of the electronic notary public and language explicitly stating that the electronic notarial act was performed using audio-video communication, if applicable. [5 ILCS 312/3-101(b-5)].
 - c) A notary may continue to use any seal in effect before July 1, 2023 through the expiration of the notary’s current commission.
 - d) If the notary’s official seal appears illegible on the document, a notary public may reapply a second, or subsequent, official seal to the document. Application of a second or subsequent seal must not make any other portion of the document unreadable.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.530 Replacement of Lost, Compromised, Destroyed, or Stolen Official Seal or Electronic Seal

- a) When a physical official seal is lost or stolen, the notary public must notify the Department in writing the next business day after discovering the seal was lost or stolen. When an electronic official seal is lost or stolen, the notary public must notify the Department the next business day under 5 ILCS 312/3-101(d)(2).
- b) A replacement official seal or electronic seal must contain a distinct difference from the original seal.
- c) If the lost or stolen official or electronic seal is found or recovered after a replacement has been obtained, the original seal must be destroyed.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.540 Notary Public and Electronic Notary Public Fees

- a) A notary public or electronic notary public may charge the fees prescribed in 5 ILCS 312/3-104.
- b) Neither a notary public nor an electronic notary public is required to charge a fee. A notary public or electronic notary public who charges a fee shall not charge more than the maximum fee allowed by 5 ILCS 312/3-104.
- c) Before performing any notarial act, the notary public or electronic notary public must inform the requestor of the notary’s or electronic notary’s fee, if any, that will be charged.
- d) A notary public or electronic notary public who advertises notarial services in a language other than English or performs services as described in 5 ILCS 312/3-

103 must post a schedule of the fees listed in 5 ILCS 312/3-104 in a conspicuous location at all times, as required by 5 ILCS 312/3-103(b).

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.550 Commission Certificate

- a) Upon appointment as a notary public or electronic notary public, the Secretary of State shall send a commission certificate to the person appointed as a notary public or electronic notary public, with which the person appointed may obtain an official seal or electronic seal.
- b) Only upon presentation by the notary public or electronic notary public of the Commission Certificate is a vendor authorized to provide the notary with an official seal described in Section 176.520 or an electronic notary with an electronic seal as described in Sections 176.520 and 176.810.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART G: NOTARIAL ACTS

Section 176.600 Notarial Certificates

- a) **Minimum requirements.** For a notarial certificate to be sufficient, it must contain the information required under 5 ILCS 312/6-103.
- b) **Additional Information.** A notarial certificate may contain additional or other information as may be required to satisfy any legal requirements, ethical or legal concerns, or the business needs of the parties to the transaction.
- c) **Permanently and Securely Attached.** A notarial certificate must be stamped, stapled, grommited, or otherwise permanently bound to the tangible document in a tamper-evident manner. The use of tape, paper clips, or binder clips is not permitted.
- d) **Legible Signature Required.** When signing a paper certificate, the notary public shall use a legible, recognizable handwritten signature that can be attributed to the notary public performing the notarial act by anyone examining or authenticating the signature. If a notary public's preferred signature is not legible and recognizable, the notary public must also legibly print the notary public's name immediately adjacent to the signature. In this chapter, a signature is legible and recognizable if the letters are distinct and easily readable, and the notary public's full name may be clearly discerned by looking at the signature.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.610 Persons Physically Unable to Sign Documents

- a) If a person cannot physically sign a document that is presented to a notary public and directs a person other than the notary to sign the person's name on the document, both the person who cannot physically sign the document and the person directed to sign the person's name on the document shall appear before the notary and be identified under 5 ILCS 312/6-102(d), 6-102.5(a), or 6A-103(b), as applicable, at the time the document is signed.
- b) A notary public who performs a notarial act for a person who cannot physically sign shall type, print, or stamp the following, or a substantially similar statement, near the signature "Signature affixed by (name of individual) at the direction of (name of person physically unable to sign) in accordance with 14 Ill. Adm. Code

176.610”.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART H: REMOTE NOTARIAL ACTS

Section 176.700 Standards for Remote Notarial Acts Using Audio-Video Communication

- a) Pursuant to Section 3-107 of the Act, a notary performing a remote notarization shall maintain an accurate and reliable record of each remote notarial act performed by the notary public.
- b) Before performing a remote notarial act using audio-video communication, a remote notary public must confirm the identity of the remotely located principal by:
 - 1) Personal knowledge;
 - 2) The oath of a credible witness who personally knows the remotely located principal and who is personally known to the remote notary public; or
 - 3) Remote presentation by the remotely located principal of a government-issued identification credential that contains a photograph and the signature of the remotely located principal and otherwise conforms to the requirements of 5 ILCS 312/6-102.5(a)(3).
- c) If a remote notary public can neither determine that a credential presented by a remotely located principal is a valid identification of the remotely located principal nor match the physical features of the remotely located principal with the credential presented by the remotely located principal, the remote notary public must not take any further action to complete a remote notarial act by using that credential to confirm the identity of the remotely located principal.
- d) A remote notary public may perform a remote notarial act using audio-video communication only if the remote notary public and the remotely located principal agree to the performance of the remote notarial act using audio-video communication.
- e) Standards for Audio-Video Communication Technology.
 - 1) Communication technology, as defined in 5 ILCS 312/1-104, must provide synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the remote notary public and remotely located principal to see and speak with each other. The process must provide a means for the remote notary public reasonably to confirm that a record presented for a notarial act is the same record in which the remotely located principal made a statement or on which the principal executed a signature.
 - 2) A remote notary public performing a remote notarial act using audio-video communication must verify that the communication technology is sufficient to protect the act and the recording of the act made under Section 176.710 and that any personally identifiable information disclosed during the performance of the remote notarial act is protected from unauthorized access, except as may be required to comply with the Act and Section 176.710(d), including unauthorized access to:
 - A) the live transmission of the audio-video feeds;
 - B) the methods used to perform identity verification; and
 - C) the recorded audio-video communication that is the subject of the

remote notarization.

- f) If a remotely located principal must exit the workflow before completing the identity verification process, the remotely located principal must restart the identity verification process from the beginning.
- g) A remote notary public performing a remote notarization must identify a remotely located principal using the means specified in 5 ILCS 312/6-102.5(a). Nothing in this Part shall prohibit a remote notary public from using enhanced identity verification. (i.e., dynamic knowledge-based assessments).

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.710 Remote Notarial Acts – Recording

- a) A notary public in the State of Illinois may perform a remote notarial act for remotely located principals under 5 ILCS 312/6-102.5
- b) A remotely located principal may comply with the requirement to appear personally before a remote notary public by appearing remotely before the remote notary public using audio-video technology.
- c) A remote notary public has satisfactory evidence of the identity of a remotely located principal if the remote notary public has personal knowledge of the identity of the remotely located principal or if the remote notary public has satisfactory evidence of the identity of the remotely located principal by oath or affirmation of a credible witness.
 - 1) **Personal Knowledge.** A remote notary public has personal knowledge of the identity of the remotely located principal appearing before the remote notary public if the remotely located principal is personally known to the remote notary public through dealings sufficient to provide reasonable certainty that the remotely located principal has the identity claimed.
 - 2) **Credible Witness.** To be a credible witness under Section 6-102.5(a)(3) of the Act, the witness shall have personal knowledge of the remotely located principal who has made a statement in or executed a signature on the record that is the subject of the remote notarial act. The remote notary public must have personal knowledge of the credible witness or shall have verified the identity of the credible witness. A credible witness may be a remotely located principal if the remote notary public, credible witness, and remotely located principal whose statement or signature is the subject of the notarial act can communicate by using audio-video technology.
 - 3) **Identity Verification.** Remote presentation by a remotely located principal of a government-issued identification credential that contains a photograph and the signature of the remotely located principal and otherwise conforms to the requirements of 5 ILCS 312/6-102.5(a)(3).
- d) The recording of a remote notarial act performed using audio-video communication, as required by this Part, must be made available upon request to the following persons or entities:
 - 1) To the remotely located principal for whom the remote notarial act was performed;
 - 2) To the Secretary of State;
 - 3) To a law enforcement or federal, state, or local governmental agency in the course of an enforcement action or the performance of any lawful duty;

- 4) Pursuant to a court order or subpoena;
- 5) To the remote notary public who performed the remote notarial act;
- 6) To the employer of the remote notary public to ensure compliance with this Part or the Act; or
- 7) To any other person who is authorized to obtain the recording by the remotely located principal to the remote notarial act.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.720 Requirement to Restart Performance of Act Under Certain Circumstances

- a) A remote notary public who is performing a remote notarial act using audio-video communication must restart the performance of the remote notarial act from the beginning, including and without limitation confirming the identity of the remotely located principal in accordance with Section 176.700, if at any time during the performance of the remote notarial act:
 - 1) The remotely located principal or the remote notary public exits the session;
 - 2) The audio-video communication link is broken; or
 - 3) The remote notary public believes that the process of completing the remote notarial act has been compromised and cannot be completed, for any reason, including poor resolution or quality of the audio or video transmission, or both.
- b) As used in this Section, “session” means the performance of one or more remote notarial acts using audio-video communication on a single set of documents as a single event by a single remote notary public with one or more remotely located principals and any applicable witnesses.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.730 Remote Notarial Certificates

- a) A form of notarial certificate for a remote notarization complies with Sections 6-103 and 6-105 of the Act if it is in the form provided by applicable law and contains a statement substantially as follows: “This remote notarization involved the use of audio-video technology”.
- b) A short form of acknowledgment prescribed in 5 ILCS 312/6-105 or other form of notarial certificate required by law complies with 5 ILCS 312/6-103 if it follows substantially one of the forms in this subsection (b):
 - 1) For an acknowledgment in an individual capacity:
 State of Illinois
 County of _____
 The foregoing instrument was acknowledged before me using audio-video technology on (date)____ by ____ (name(s) of individual(s))____.
 (Signature of notary public)
 Notary Public
 (Notary seal)
 (My commission expires: _____)
 - 2) For an acknowledgment in a representative capacity:
 State of Illinois
 County of _____

The foregoing instrument was acknowledged before me using audio-video technology on (date)____ by ____ (name(s) of individual(s))____ as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).

(Signature of notary public)

Notary Public

(Notary seal)

(My commission expires: _____)

3) For a verification on an oath or affirmation:

State of Illinois

County of _____

Signed and sworn to (or affirmed) before me using audio-video technology on (date)____ by ____ (name(s) of individual(s))____ making statement).

(Signature of notary public)

Notary public

(Notary seal)

(My commission expires: _____)

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART I: ELECTRONIC NOTARIZATIONS

Section 176.800 Electronic Notary Public Commission Required

- a) A person may not perform an electronic notarial act unless the Secretary of State has approved the electronic notary public commission of a person under 5 ILCS 312/2-102 and the traditional notary public commission is in effect.
- b) The Secretary of State may suspend or revoke the commission of a notary public who performs or offers to perform an electronic notarial act without an electronic notary public commission that has been approved by the Secretary of State, as required by Section 176.980(b).

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.802 Definitions

Unless otherwise noted, the following definitions apply to this Subpart I:

“Electronic notarization system” or “system” means any combination of technology that enables a notary public to perform a notarial act remotely; that allows the notary public to communicate by sight and sound with the principal or witnesses, if applicable, using audio-video communication; and that includes features to conduct credential analysis and identity proofing.

“Electronic notarization system provider” or “provider” means the third-party vendor that operates, maintains, and sells access to an electronic notarization system. Providers may be manufacturers of the system, authorized representatives of a manufacturer, or other business entities.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.805 Electronic Notarization System Provider Registration, Information Submitted for Registration, and Confidentiality of Certain Information

- a) Certification Required to Provide Electronic Notarization Systems. No person or entity may provide electronic notarization systems under 5 ILCS 312/6A-101 unless certified as a provider by the Secretary of State. All certified providers must apply for certification on an annual, calendar-year basis, with applications for recertification due in the Secretary's office not later than September 1 of each year. Nothing in this Part is intended to prohibit a governmental entity from developing an internal electronic notarization system that complies with the requirement in this Part for certification.
- b) Who May Provide Electronic Notarization Systems. Without regard to the specific business operations of the provider, all certified system providers under this Section shall be responsible for ensuring that all of the duties and responsibilities of the system provider are carried out in accordance with this Part. System providers may provide these services through their own resources, through a subsidiary, or through contractual relationships with third parties.
- c) The Secretary of State shall be solely responsible for certifying providers that apply for certification with the Secretary. Persons or entities desiring to be certified as providers may apply for certification at any time. An application for certification or recertification as a system provider must include the following information:
 - 1) The legal name of the provider;
 - 2) The type of business organization of the provider;
 - 3) The mailing address, physical address, email address, and website address of the provider;
 - 4) The name and phone number of a contact person for the provider;
 - 5) If the applicant is a business entity, proof that the applicant is in good standing with the Illinois Secretary of State, Business Services Department;
 - 6) An attestation that the technology used by the applicant is in compliance with the provisions of this Part and Article VI-A of the Act relating to the performance of electronic notarial acts, with a copy of all manuals and information guides made available to Illinois electronic notaries;
 - 7) A certification that the vendor shall comply with the Illinois Notary Public Act and this Part regarding retention and storage and the disposition of documents, the electronic journal, and audio-video recordings if the provider no longer makes its system available to electronic notaries public for any reason;
 - 8) Copies of publicly available policy and procedure manuals and training materials that are used for training or usage in Illinois;
 - 9) Proof of liability insurance. The provider must maintain general commercial liability or product liability insurance with minimum liability limits of \$1 million per occurrence and \$3 million aggregate total. The Secretary will accept other commercially acceptable insurance arrangements, in the same minimum amounts, if the Secretary determines that they provide an equivalent level of coverage; and

- 10) A declaration that the system complies with the laws of the State of Illinois governing electronic notarial acts.
- d) An electronic notarization system provider may assert a claim that the information provided to the Secretary of State under subsection (b)(7) by an entity applying for certification with the Secretary of State is the provider's confidential, proprietary information and a trade secret of the system provider and is not a public record nor subject to subsection 7(g) of the Freedom of Information Act [5 ILCS 140].
- e) The Secretary of State will certify a system if it meets all of the following requirements:
 - 1) Provides secure access to the system by two-factor verification or another secure means that identifies the electronic notary public accessing the system;
 - 2) Takes all reasonable steps to ensure that an electronic notary public using its system is duly commissioned by the Secretary of State and that the commission is in active status;
 - 3) Provides for uninterrupted, continuous, and simultaneous audio-video communication between an electronic notary public and a principal;
 - 4) Provides audio-video communication with a video resolution and audio quality that ensures that:
 - A) An electronic notary public and a principal can see, hear, and communicate with each other in real time; and
 - B) An electronic notary public can match the appearance of a principal with the credential presented by the principal;
 - 5) Provides a secure communication link for audio-video communication that ensures that only the parties to an electronic notarial act and those persons authorized by each party to the electronic notarial act are part of the audio-video communication;
 - 6) For systems providing an electronic journal of electronic notarial acts, ensures it complies with the provisions of this Subpart J and 5 ILCS 312/3-107 governing the requirement that an electronic notary public keep an electronic journal for each electronic notarial act;
 - 7) Provides for the recording of an electronic notarial act performed by audio-video communication that complies with 5 ILCS 312/6A-104 and that is of sufficient quality to ensure verification of the recorded electronic notarial act;
 - 8) Enables an electronic notary public to be satisfied that an electronic document presented for the performance of an electronic notarial act is the same electronic document on which the electronic notarial act was performed;
 - 9) Enables an electronic notary public to affix the wording of a notarial certificate required by 5 ILCS 312/6A-105, as applicable, and the electronic official notary seal of the electronic notary public required by 5 ILCS 312/3-101;
 - 10) Enables a person viewing an electronic document on which an electronic notarial act was performed to view the electronic signature and electronic

- seal of the electronic notary public who performed the electronic notarial act;
- 11) Provides a method for determining whether an electronic document on which an electronic notarial act was performed has been altered after the electronic seal of the electronic notary public who performed the electronic notarial act has been affixed to the electronic document and the electronic notarial act was completed;
 - 12) Prevents unauthorized access to:
 - A) An audio-video communication between an electronic notary public and a principal;
 - B) The recording of an electronic notarial act required by 5 ILCS 312/6A-104 for an electronic notarial act performed using audio-video communication;
 - C) Any personally identifiable information used in a credential analysis, identity proofing, or any other part of an audio-video communication, including without limitation:
 - i) A method of credential analysis and the output of that analysis;
 - ii) Any credential presented to an electronic notary public;
 - iii) The questions and answers used to conduct a dynamic knowledge-based authentication assessment; and
 - iv) The principal's birthdate, Social Security number, and other personally identifiable information;
 - D) The electronic document on which an electronic notarial act was performed; and
 - 13) Provides a method of generating a paper copy of the electronic journal or journal entry of an electronic notary public and an electronic document on which an electronic notarial act was performed, including, without limitation, the electronic notarial certificate for the electronic document, the electronic signature and electronic seal of the electronic notary public who performed the electronic notarial act and any other document associated with the electronic document.
- f) The Secretary will notify the applicant to be certified or recertified as a system provider in writing whether the application has been approved or denied. Before denying an application due to minor typographical or clerical errors, the Secretary will advise the applicant of the error and give the applicant 10 business days to correct the error.
 - g) If an original or amended application to be certified or recertified as a system provider is denied, the applicant may not reapply until 12 months after the date of the denial or the date of the final order of the Secretary upholding the denial if the decision is reviewed in a formal administrative hearing. Before denying an application based on errors, the Secretary of State shall advise the applicant of the error and give the applicant 30 business days to correct the error.
 - h) In deciding whether to grant or deny an application, the Secretary of State will take into consideration the applicant's past performance in Illinois and other jurisdictions, whether the applicant's license or certification has ever been

suspended, revoked, denied, canceled, or withdrawn, and whether another state has denied the applicant's application to operate as a provider in that state.

- i) An applicant that has been certified under this Section may at any time submit an amended application seeking certification to provide systems in addition to the systems previously certified for use by the applicant.
- j) If there is any change after a provider's certification that affects the ability of an electronic notary public to comply with this Part when performing an electronic notarial act, the provider must immediately notify the Secretary of State of the change. Upon receiving notice of the change, the Secretary of State will determine whether the provider continues to comply with this Part. If the Secretary of State determines that the provider no longer complies with this Part, a provider shall not allow the use of the system to perform an electronic notarial act in this State.
- k) **Services That Must Be Provided.** After certification or recertification by the Secretary, providers shall provide the following services and meet the following requirements:
 - 1) The provider shall only allow the use of systems that have been authorized in Illinois under this Section;
 - 2) The provider shall provide a toll-free customer service/question/complaint hotline, online chat feature, or a dedicated email address that is answered, at a minimum, between 9:00 am and 5:00 pm, Central Time, Monday through Friday;
 - 3) The provider must provide a course of training and written instructions for electronic notaries on operation, maintenance, and safeguards against improper operations for use of the system and, if providing electronic journal capability, instruct the electronic notary on maintaining the required journal of notarial acts performed on the system (see Subpart J). The provider must give the Secretary of State copies of all materials used in the course of this training and available to Illinois electronic notaries;
 - 4) Upon an inquiry from the Secretary of State, providers must verify to the Secretary of State within 7 days whether an Illinois electronic notary has been enrolled in the system and provide the Secretary, upon request, with additional reports including but not limited to records of usage in Illinois;
 - 5) The provider must notify the Secretary of State in writing within 10 business days if the provider or the manufacturer becomes unable to provide systems in Illinois or if the provider has been suspended or decertified in any other jurisdiction;
 - 6) The Secretary of State may designate the form, format, and method of delivery (e.g., facsimile, electronic transfer, etc.), for any reports, information, or data required to be filed with the Secretary under this Section, including but not limited to, noncompliance report forms, tampering, or certifications;
 - 7) Upon an allegation that the system provider failed to comply with a material provision of this Part, the Director of Index will notify the system provider, in writing, of the allegations. Within 30 days after receiving the written notice from the Director, the provider must respond to the allegations in writing, and provide an explanation of any corrective action

taken. If the provider fails to correct any noncompliance found, the Secretary will deny, suspend, or revoke the certification. This penalty will be in addition to any private causes of action that may exist for an electronic notary that has been aggrieved by the noncompliance of the provider;

- 8) Upon the request of the Secretary of State, the provider shall, at no cost to the Secretary of State, provide the Secretary with an online demonstration and allow the Secretary of State to ask any relevant questions. The system provider shall also provide to the Secretary a publicly available, detailed description of the system, including complete instructions for operation provided to notaries public.
- 9) Providers must maintain records related to enrolled electronic notaries for 7 years after the electronic notary disenrolls from the system.
- l) **Criteria for Certification of Systems.** Only systems that have been certified for use in Illinois under this Section may be used by Illinois electronic notaries. Certification of a system will be based on whether the system complies with any nationally recognized standards and this Part.
- m) **Decertification or Suspension of Providers.** The Secretary of State may suspend or decertify a provider from providing electronic notarization systems in Illinois. The Secretary shall provide a written warning, and 30 days to come into compliance, to a provider regarding any violation of this Section that may lead to suspension or decertification. The provider shall respond in writing to the Secretary describing the course of corrective action. If the Director of the Index Department determines that the course of corrective action does not bring the system provider into full compliance with the Act and this Part, or there are recurring instances of the violations, the Secretary may decertify the provider from providing systems in Illinois or suspend the provider from allowing any new enrollments for 3 months. The following are considered actions warranting decertification or suspension:
 - 1) Failure to provide information, as requested, to the Secretary of State in a timely manner;
 - 2) Failure to maintain liability insurance as required;
 - 3) Failure to comply with the duties and obligations contained in this Part;
 - 4) Failure to provide Illinois electronic notaries with correct information regarding the requirements of this Section
 - 5) Failure to report enrollments and disenrollments to the Secretary within 7 days after the enrollment or disenrollment;
 - 6) Failure to inform the Secretary of suspension or decertification from service in another jurisdiction within 30 days;
 - 7) Giving any instruction, codes, procedures, technological information, or advice to a notary that results in or could result in the system being circumvented by a user or third party;
 - 8) Allowing enrollment by a person that is not commissioned as an electronic notary in Illinois;
 - 9) Failure to meet any of the requirements of the Act or this Subpart; and
 - 10) Solicitation of an Illinois electronic notary for any service or product other than the system that has been certified.

- n) Notification of Decertification or Decision Not to Recertify. When the Secretary decides not to recertify or to decertify a provider or a provider ceases to operate, the Secretary will notify all affected electronic notaries public in writing. The notifications shall be sent not less than 30 days after the decision or, if the provider requests a formal administrative hearing within that 30-day period to review the decision, notification will not be sent until the entry of a final order of the hearing officer upholding the decision.
- o) Applicants Who Are Denied. Applicants whose applications for certification or recertification have been denied and providers that have been suspended or decertified may request an administrative hearing under Subpart K. Decisions not to recertify or to suspend or decertify will not be carried out until at least 30 days after the notice of the decision has been sent to the applicant or provider or, if the applicant or provider requests a hearing within that 30-day period, until the entry of a final order of the hearing officer upholding that decision. The hearings held under this Part shall be conducted in accordance with all the rights, privileges, and procedures set forth in Subpart K. A request for a hearing to contest a decision to deny certification or recertification or to decertify must be made in writing and must be sent to the Office of the Secretary of State, Department of Administrative Hearings, Michael J. Howlett Building, Room 207, Springfield, Illinois 62756, (217) 524-0124.
- p) Solicitation by Provider. Any solicitation sent from a provider to a potential user must conspicuously and in bold font include the following statements: “(name of provider) is a privately owned entity and is not owned, operated, or endorsed by the Illinois Secretary of State or any other Illinois government agency” and “(name of provider) is not the sole provider authorized by the Secretary of State”. The solicitation or any correspondence from the provider may not be attached to or have the appearance of any official correspondence sent by the Illinois Secretary of State, may not state or otherwise indicate that the provider is the sole or only provider in Illinois. A system provider may not use any personal information (including the name, address, telephone number, or email address) provided by a notary to solicit the notary for any service or product other than the certified electronic notarization system.
- q) Publication of Provider Lists. A list of certified electronic notarization system providers, in no particular order, will be published on the Illinois Secretary of State’s website (<https://www.ilsos.gov/departments/index/notary/home.html>) upon certification.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.810 Information Required in Electronic Seal, Electronic Documents Made Tamper-Evident, and Notation Required if Audio-Video Communication Is Used to Perform Notarial Acts

- a) The electronic seal of an electronic notary public must have the information required to be included in an official seal under Section 176.520 and 5 ILCS 312/3-101(a) and must generally conform to the size and other requirements in Section 176.520 and 5 ILCS 312/3-101(a) and (b-5).
- b) After the electronic seal and electronic signature are affixed or attached to or logically associated with an electronic notarial certificate of an electronic

document and the electronic notarial act is thereby made complete, the electronic seal and electronic signature of the notary public must be capable of independent verification and the electronic document must be rendered tamper-evident.

- c) If an electronic notary public performs an electronic notarial act using audio-video communication, the electronic notary public must include adjacent to the electronic seal or in the electronic notarial certificate a notation indicating that the electronic notarial act was performed using audio-video communication. The notation required by this subsection must be the following statement or a substantially similar statement: “Notarial act performed by audio-video communication”

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.815 Access and Use of Electronic Notary Seal and Electronic Signature

- a) Neither the employer of an electronic notary public nor any of the employer’s employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the authorized electronic notary public to whom it is registered.
- b) Access to electronic notary signatures and electronic notary seals must be protected using biometric authentication, password authentication, token authentication, or other form of authentication approved by the Secretary according to the Act and this Part.
- c) Report of Theft or Vandalism
 - 1) An electronic notary public must report, in writing to the Secretary, the theft or vandalism of the notary’s electronic signature, electronic notary seal, electronic record or journal, including the backup record, backup journal, and audio-video recordings within the next business day after discovering the theft or vandalism.
 - 2) Failure to report the theft or vandalism is grounds for revocation of an electronic notary public’s commission.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.820 Changes to Digital Certificate and Electronic Seal of Electronic Notary

- a) An electronic notary public shall at all times maintain an electronic seal and at least one digital certificate that includes the electronic notary’s electronic signature. Both the electronic seal and digital certificate must comply with the Act and this Part.
- b) An electronic notary may use more than one digital certificate in accordance with this Part.
- c) An electronic notary public shall replace an electronic seal or digital certificate under the following circumstances:
 - 1) The electronic seal or digital certificate has expired;
 - 2) The electronic seal or digital certificate has been revoked or terminated by the device’s issuing or registering authority; or
 - 3) The electronic seal or digital certificate is for any reason no longer valid or capable of authentication.
- d) An electronic notary public who replaces an electronic seal or digital certificate must provide the following to the Secretary of State within 10 days after the replacement:

- 1) The electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;
 - 2) The electronic notary's new digital certificate, if applicable;
 - 3) A copy of the electronic notary's new electronic seal, if applicable; and
 - 4) Any necessary instructions or techniques supplied by the vendor that allow the electronic notary's electronic seal or digital certificate to be read and authenticated.
- e) Digital certificates used by an electronic notary shall conform to the X.509 standard to ensure that the document has been rendered tamper-evident.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.825 Standards for Communication Technology

- a) Communication technology must provide synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the electronic notary public and the individual to see and speak with each other in real time. The process must provide a means for the electronic notary reasonably to confirm that an electronic record before the electronic notary public is the same record in which the individual made a statement or on which the individual executed a signature.
- b) Communication technology must provide reasonable security measures to prevent unauthorized access to:
 - 1) The live transmission of the audio-video feeds;
 - 2) The methods used to perform identity verification;
 - 3) The electronic record that is the subject of the electronic notarization; and
 - 4) Any electronic notary public's journal or audio-video recordings maintained or stored as a function of the communication technology.
- c) If an individual must exit the workflow before completing the identity verification process, the individual must restart the identity verification process from the beginning.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.830 Duties of Electronic Notary Public

An electronic notary public must take reasonable steps to:

- a) Ensure the integrity, security, and authenticity of each electronic notarial act performed by the electronic notary public;
- b) Maintain a secure backup of the electronic journal kept in accordance with 5 ILCS 312/3-107; and
- c) Ensure that any audio-video communication while performing an electronic notarial act, and any journal records and audio-video recordings stored as a function of the communication technology, are secure from unauthorized access or interception.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.835 Standards for Identity Verification

- a) If an electronic notary public does not have satisfactory evidence of the identity of a remotely located principal pursuant to 5 ILCS 312/6A-103(b)(1), the electronic

notary public must reasonably verify the principal's identity through a multi-factor authentication procedure as provided in this Section. The procedure must analyze the principal's identification credential presented remotely against trusted third-person data sources, bind the principal's identity following a successful dynamic knowledge-based authentication assessment, and permit the electronic notary public to visually compare the identification credential and the principal. Credential analysis and identity proofing must be performed by a reputable third party who has provided evidence to the electronic notary public of the ability to comply with this Section.

- b) Credential analysis must use public or private data sources to confirm the validity of the identification credential presented electronically by a principal and will, at a minimum:
 - 1) Use automated software processes to aid the electronic notary public in verifying the identity of each principal;
 - 2) Require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;
 - 3) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credentials; and
 - 4) Enable the electronic notary public to visually compare for consistency the information and photograph on the identification credential and the principal as viewed by the electronic notary public in real time through communication technology.
- c) Identity proofing must be performed using a dynamic knowledge-based authentication assessment. The assessment is successful if it meets the following requirements:
 - 1) The principal must answer a quiz consisting of a minimum of five questions related to the principal's personal history or identity formulated from public or private data sources;
 - 2) Each question must have a minimum of five possible answer choices;
 - 3) At least 80% of the questions must be answered correctly;
 - 4) All questions must be answered within two minutes;
 - 5) If the principal fails the first attempt, the principal may retake the quiz one time within 24 hours;
 - 6) During a retake of the quiz, a minimum of 40% of the prior questions must be replaced;
 - 7) If the principal fails the second attempt, the principal is not allowed to retry with the same electronic notary public within 24 hours of the second failed attempt; and
 - 8) The electronic notary public must not be able to see or record the questions or answers.
- d) An electronic notary public has satisfactory evidence of the identity of the principal if:
 - 1) The electronic notary public has personal knowledge of the identity of the

principal; or

- 2) The requirements of 5 ILCS 312/6A-103(b)(2) are satisfied.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.840 Maintenance of Record of Electronic Notarial Act

Pursuant to 5 ILCS 312/3-107, an electronic notary public shall maintain an accurate and reliable journal record of each electronic notarial act performed by the electronic notary public. The record must be maintained for at least 7 years and must be made available to the Secretary upon request.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.845 Electronic Notarial Act Using Audio-Video Communication – Duty of Electronic Notary and System Provider to Protect Recordings and Personally Identifying Information from Unauthorized Access

An electronic notary public performing an electronic notarial act using audio-video communication, and the provider whose system is used, must ensure that the recording of the electronic notarial act made under 5 ILCS 312/6A-104 and any personally identifiable information disclosed during the performance of the electronic notarial act is protected from unauthorized access.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.850 Use of System Provider to Store Electronic Journals and Recordings

- a) An electronic notary public may use a system provider to store the electronic journal of the electronic notary public and the recording made under 5 ILCS 312/6A-104 of an electronic notarial act performed using audio-video communication if the provider has registered with the Secretary of State and the provider’s certification is in effect.
- b) Except as otherwise provided in this subsection, a provider that stores the electronic journal of an electronic notary public and the recording made under 5 ILCS 312/6A-104 of an electronic notarial act performed using audio-video communication must allow the electronic notary public sole control of the electronic journal and the recording. The provider may allow access to the electronic journal of an electronic notary public or a recording if the electronic notary public has authorized such access or the access to the electronic journal or recording is authorized by the Act or this Part.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.855 Availability of Recordings and Documents to Certain Persons and Entities

The recording made under 5 ILCS 312/6A-104 of an electronic notarial act performed using audio-video communication may be made available:

- a) To the principal for whom the electronic notarial act was performed;
- b) To the Secretary of State;
- c) To a law enforcement or federal, state, or local governmental agency in the course of an enforcement action;
- d) Pursuant to a court order or subpoena;
- e) To the electronic notary public who performed the electronic notarial act for any purpose listed in subsections (a) through (d), inclusive;

- f) To any other person who is authorized by the parties to the electronic notarial act to obtain the recording; or
- g) For any authorized purpose and to ensure compliance with the provisions of this Part and Article VI-A of the Act governing electronic notarial acts, the employer of an electronic notary public who performs an electronic notarial act using audio-video communication or the provider whose system was used to perform such an electronic notarial act, or both, may access the recording made under 5 ILCS 312/6A-104 of the electronic notarial act.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.860 Electronic Notarial Acts

- a) An electronic notary public may perform an electronic notarial act using audio-video communication only if the electronic notary public and the principal agree to the performance of the electronic notarial act using audio-video communication at the outset of the electronic notarization and before the identity of the principal has been confirmed.
- b) Before performing an electronic notarial act using audio-video communication, an electronic notary public must confirm that the electronic document that is the subject of the electronic notarial act is the same document on which the principal made a statement or executed a signature and the identity of the principal. The identity of the principal shall be confirmed by:
 - 1) Personal knowledge;
 - 2) The oath of a credible witness who personally knows the principal and the notary public; or
 - 3) Each of the following:
 - A) Remote presentation by the principal of a government-issued identification credential that contains a photograph and the signature of the principal;
 - B) Credential analysis of the government-issued credential and the data on the credential that complies with 5 ILCS 312/6A-103; and
 - C) A dynamic knowledge-based authentication assessment that complies with 5 ILCS 312/6A-103 or identity proofing under 5 ILCS 312/6A-103.
- c) If an electronic notary public cannot determine that a credential presented by a principal is a valid identification of the principal or cannot match the physical features of the principal with the credential presented by the principal, the electronic notary public must not take any further action to complete an electronic notarial act by using that credential.
- d) An electronic notary public who is performing an electronic notarial act using audio-video communication must restart from the beginning, including, without limitation, confirming the identity of the principal, if, at any time during the performance of the electronic notarial act:
 - 1) The principal or the electronic notary public exits the session;
 - 2) The audio-video communication link is broken; or
 - 3) The electronic notary public believes that the process of completing the electronic notarization has been compromised and cannot be completed because of the resolution or quality of the audio or video transmission, or

both.

- e) An electronic notarial act will have the same force and effect as a notarial act performed in the physical presence of a notary public.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.865 Electronic Notarial Certificates

- a) A form of notarial certificate for an electronic notarization complies with 5 ILCS 312/6A-105 if it is in the form provided by applicable law and contains a statement substantially as follows: “This electronic notarization involved the use of an electronic system provider”.
- b) A short form of acknowledgment prescribed in 5 ILCS 312/6A-105 or other form of notarial certificate required by law complies with the Act if it is in substantially the same form as one of the following statements:
 - 1) For an acknowledgment in an individual capacity:
State of Illinois
County of
The foregoing instrument was acknowledged before me using an electronic notarization system provider on (date) by (name(s) of individual(s)).
(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires:)
 - 2) For an acknowledgment in a representative capacity:
State of Illinois
County of
The foregoing instrument was acknowledged before me using an electronic notarization system provider on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).
(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires:)
 - 3) For a verification on oath or affirmation:
State of Illinois
County of:
Signed and sworn to (or affirmed) before me using an electronic notarization system provider on (date) by (name(s) of individual(s) making statement).
(Signature of notary public)
Notary public
(Electronic seal)
(My commission expires:)
 - 4) For witnessing or attesting a signature:
State of Illinois
County of:

Signed or attested before me on (date) by (name(s) of persons(s))
(Signature of notary public)
(Electronic seal)
(My commission expires:)

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.870 Prohibited Acts

- a) An electronic notary public shall not:
 - 1) Engage in any fraudulent activity, deceptive practice, or inequitable act in connection with the Act.
 - 2) Engage in any activity prohibited by 5 ILCS 312/6-104.
 - 3) Fail to record an electronic notarial act performed using audio-video communication or fail to keep such a recording as required by 5 ILCS 312/6A-104.
 - 4) Use an electronic seal or digital certificate that is invalid or fails to comply with this Subpart or Article VI-A of the Act during the performance of an electronic notarial act.
 - 5) Fail to notify the Secretary of State of a change in the electronic seal or digital certificate.
 - 6) Use one's own electronic seal, alone or together with the electronic signature, except in the performance of an electronic notarial act.
 - 7) Allow unauthorized access to the electronic journal kept by the electronic notary public under 5 ILCS 312/3-107, the electronic notary public's electronic signature or the digital certificate, or to the electronic notarization solution used by the electronic notary public to perform an electronic notarial act.
 - 8) Violate any other provision of this Subpart I or Article VI-A of the Act relating to the performance of an electronic notarial act.
- b) The penalties, prohibitions, liabilities, sanctions, and remedies for the improper performance of an electronic notarial act are the same as provided by law for the improper performance of a notarial act that is not an electronic notarial act.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART J: JOURNAL

Section 176.900 Journal Requirements

- a) Every notary public, whether or not also an electronic notary public, must record each notarial act in a journal at the time of notarization to comply with 5 ILCS 312/3-107 and this Subpart J.
- b) Each journal of a notary public, whether maintained on a tangible medium or in an electronic format, must contain all of the following information in any order:
 - 1) The name of the notary public as it appears on the commission;
 - 2) The notary public's commission number;
 - 3) The notary public's commission expiration date;
 - 4) The notary public's office address of record with the Secretary of State;
 - 5) A statement that, upon the death or adjudication of incompetency of the notary public, the notary public's personal representative or guardian or

- any other person knowingly in possession of the journal must deliver or mail it to the Secretary of State;
- 6) The meaning of any abbreviated word or symbol used in recording a notarial act in the notarial journal; and
 - 7) The signature of the notary public.
- c) If a notary public's name, commission expiration date, or address changes before the notary public stops using the notarial journal, the notary public shall add the new information after the old information and the date on which the information changed.
 - d) An electronic journal kept by a notary public or an electronic notary public under 5 ILCS 312/3-107 must comply with the requirements of subsections (a) and (b) and must also:
 - 1) Prohibit the electronic notary public or any other person from deleting a record included in the electronic journal or altering the content or sequence of such a record after the record is entered into the electronic journal except to redact personally identifiable information as required by Section 176.910(d);
 - 2) Be securely backed up by the electronic notary public and the electronic notarization system provider whose electronic notarization system was used by the electronic notary, if applicable; and
 - 3) Omit all personally identifiable information, as defined in Section 176.10.
 - e) A notary public shall allow for the inspection of the journal or electronic journal as required by Section 176.950.
 - f) Notwithstanding any other subsection of this Part to the contrary, a notary employed by an attorney or law firm is not required to keep a journal of notarizations performed during the notary's employment if the attorney or law firm maintains a copy of the documents notarized. No attorney or law firm shall be required to violate attorney-client privilege by allowing or authorizing inspection of any notarizations that are recorded in a notary's journal. Journals of notarizations performed solely within the course of a notary's employment with an attorney or law firm are the property of the employing attorney or firm.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.910 Journal Entries and Prohibited Entries

- a) Required Entries. Each entry shall contain at least the following information:
 - 1) The name of the principal;
 - 2) The name of each credible witness relied upon to verify the identity of the principal;
 - 3) The name of any other person that signed for the principal;
 - 4) The title or a description of the document notarized;
 - 5) The date of the notarization;
 - 6) Whether the notarization was conducted in person, remotely, or electronically;
 - 7) The fee charged, if any; and
 - 8) The physical location of the notary and the principal.
- b) Optional Entries. In addition to the entries required under 5 ILCS 312/3-107 of the Act and this Part, a journal may contain the signature of the individual for

whom the notarial act is performed and any additional information about a specific transaction that might assist the notary public to recall the transaction.

- c) Prohibited Entries. A notary public must not record in the notary's journal the following:
- 1) An identification number that was assigned by a governmental agency or by the United States to the principal that is set forth on the identification card or passport presented as identification;
 - 2) Any other number that could be used to identify the principal of the document;
 - 3) A biometric identifier, including a fingerprint, voice print, or retina image of the principal;
 - 4) An individual's first name or first initial and last name in combination with and linked to any one or more of the following data elements when the data elements are not encrypted or redacted:
 - A) Social Security number;
 - B) Driver's license number or a State identification card number; or
 - C) Financial account information; and
 - 5) An electronic signature of the person for whom an electronic notarial act was performed or any witnesses. [5 ILCS 312/3-107]
- d) Inadvertent or Accidental Entries. A notary public who inadvertently records information prohibited under subsection (c) must redact such information before providing public access to or copies of the journal.
- e) Fees. Each notarial fee charged should correspond to the notarial act performed. If a fee is waived or not charged, the notary public shall indicate so in the journal entry using notarizations such as "n/c", "0" (zero), or " – " (dash). Clerical and administrative fees, if charged, shall be separately itemized in the journal.
- f) Address. For journal entries, address means the city and state only.
- g) Transitional Provision. A notary public who holds a commission on July 1, 2023, may continue to use the notary public's journal until the completion of that journal or the expiration of that commission, whichever may occur first

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.920 Form and Content of Journals Maintained on a Tangible Medium

- a) A journal maintained on paper or any other tangible medium may be in any form that meets the physical requirements in this Section and the entry requirements in Section 176.910.
- b) The cover and pages inside the journal must be bound together by any binding method that is designed to prevent the insertion, removal, or substitution of the cover or a page. This includes glue, staples, grommets, or another binding, but does not include the use of tape, paper clips, or binder clips.
- c) Each page must be consecutively numbered from the beginning to the end of the journal. If a journal provides two pages on which to record the required information about the same notarial act, both pages may be numbered with the same number or each page may be numbered with a different number. Page numbers must be preprinted.
- d) Each line, or entry if the journal is designed with numbered entry blocks, must be consecutively numbered from the beginning to the end of the page. If a line extends across two pages, the line must be numbered with the same number on

- both pages. A line or entry number must be preprinted.
- e) The journal of a notary public must remain within the exclusive control of the notary public at all times.
 - f) A notary public who performs multiple notarizations for the same principal within a single transaction may abbreviate the entry of those notarizations in the notary journal after first including all the information required by the Act. The abbreviated entry must indicate the type of transaction and the number of documents notarized as part of that single transaction.
 - g) A journal maintained in a tangible format must be retained for a minimum of 7 years after the final notarial act chronicled in the journal.
 - h) The retention requirements for this Part do not apply to notaries in the course of their employment with a governmental entity.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.930 Form and Content of an Electronic Notarial Journal

- a) A journal maintained in electronic format may be in any form that complies with this Section and the entry requirements in Section 176.910.
- b) A journal maintained in an electronic format must be designed to prevent the insertion, removal, or substitution of an entry.
- c) A journal maintained in an electronic format must be securely stored and recoverable in the case of a hardware or software malfunction.
- d) Entries from the notarial journal must be available upon request by the Secretary of State in a PDF format.
- e) The journal of a notary public shall remain within the exclusive control of the notary public at all times.
- f) A notary public who performs multiple notarizations for the same principal within a single transaction may abbreviate the entry of those notarizations in the notary journal after first including all of the information required by the Act. The abbreviated entry must indicate the type of transaction and the number of documents notarized as part of that single transaction.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.940 Custody and Control of the Journal and Notification of a Lost, Compromised, Destroyed, or Stolen Journal

- a) The notary public must maintain custody and control of the journal at all times during the term of the notary public's commission. When not in use, the journal must be kept in a secure location and accessible only to the notary public. A secure location includes the notary public's sole possession or a locked location to which only the notary public has access.
- b) Notification of a lost, compromised, destroyed, or stolen journal under 5 ILCS 312/3-107 must be made in writing or electronically the next business day after the date the notary public or personal representative or guardian discovers the loss or theft of the journal. The notification must include all of the following:
 - 1) A statement of whether the journal is lost, compromised, destroyed, or stolen;
 - 2) An explanation of how the journal became lost, compromised, destroyed, or stolen;

- 3) The date the notary public discovered that the journal was lost, compromised, destroyed, or stolen;
- 4) A statement that the journal has been destroyed or that the notary public does not possess the journal and does not know who possesses it or where it is located; and
- 5) A statement that, if the notary public subsequently acquires possession of the lost or stolen journal, the notary public shall file a written statement with the Secretary of State within 10 business days after the date the notary public reacquires possession of the lost or stolen journal, including a written explanation of how the journal was recovered.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.950 Inspection of a Journal, Response to Subpoenas and Investigative Requests, and Public Information

- a) In the notary’s presence, any person may inspect an entry in the official journal of notarial acts during the notary’s regular business hours, but only if:
 - 1) The person’s identity is personally known to the notary or proven through satisfactory evidence;
 - 2) The person affixes a signature in the journal in a separate, dated entry;
 - 3) The person specifies the month, year, type of document, and the name of the principal for the notarial act or acts sought; and
 - 4) The person is shown only the entry or entries specified.
- b) If the notary has a reasonable and explainable belief that a person has a criminal or harmful intent in requesting information from the notary’s journal, the notary may deny access to any entry or entries.
- c) Subpoenas and investigative requests. A request for inspection or certified copies of a journal made through an investigative request by law enforcement or by the Secretary of State or in a subpoena in the course of criminal or civil litigation, or administrative proceeding shall be complied with in the manner specified in the request or subpoena.
- d) If any portion of the audio-video recording of an electronic or remote notarization includes biometric information or includes an image of the identification card used to identify the principal, that portion of the recording is confidential and shall not be released without consent of the individual whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the Secretary of State.
- e) Failure of a notary public to promptly and adequately respond to a request for public information in accordance with this Part may be good cause for suspension or revocation of a notary public or electronic notary public commission or other disciplinary action against the notary.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.960 Electronic Journal Record Retention and Depositories

- a) A notary public must retain the electronic journal required and any audio-video recording created under 5 ILCS 312/6A-104 in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The recording must be created in an

- industry-standard, audio-visual file format and must not include images of any electronic record that was the subject of the electronic or remote notarization.
- b) An electronic journal must be retained for at least 7 years after the last electronic or remote notarial act chronicled in the journal. An audio-visual recording must be retained for at least 7 years after the recording is made.
 - c) A notary public must take reasonable steps to ensure that a backup of the electronic journal and audio-visual recording exists and is secure from unauthorized use.
 - d) Upon the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of an electronic journal or audio-visual recording must:
 - 1) Comply with the retention requirements of this Section;
 - 2) Transmit the journal and recording to one or more depositories under subsection (e); or
 - 3) Transmit the journal and recording in an industry-standard readable data storage device to the Illinois Secretary of State, Index Department at 111 E. Monroe St., Springfield, IL 62756.
 - e) A notary public, guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public may, by written contract, engage a third person to act as a depository to provide the storage required by this Section. A third person under contract under this Section shall be considered a depository. The contract must:
 - 1) Enable the notary public, guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of this Section even if the contract is terminated; or
 - 2) Provide that the information will be transferred to the notary public, guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public if the contract is terminated.
 - f) The retention requirements for this Part do not apply to notaries in the course of their employment with a governmental entity.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.970 Complaints of Alleged Violations

For purposes of this Section, "notary public" includes an electronic notary public and remote notary public.

- a) A person may file a complaint in writing with the Secretary of State alleging that a notary public has violated one or more of the provisions of the Act or any provision of this Part. The complaint should include as much information as possible, including:
 - 1) The name of the notary public, and the employer or business name of the notary;
 - 2) If known, the name of the county in which the notary resides;
 - 3) If known and assigned, the notary public commission number assigned to the notary;
 - 4) An explanation of the reason for the complaint;
 - 5) A copy of relevant documents related to the matter;

- 6) Whether the notarial act was an electronic or remote notarial act performed using audio-video communication; and
 - 7) Additional information that the person considers relevant to the complaint or notarization.
- b) The complaint may be filed in person or by mail to the Illinois Secretary of State, Index Department at 111 E. Monroe St., Springfield, IL 62756, or by electronic mail (enotary@ilsos.gov).
 - c) Upon receipt of the complaint, the Secretary will notify the notary who is the subject of the complaint in writing. The notice shall be sent by regular mail to the address of the notary on file with the Secretary of State. The notice sent to the notary public who is the subject of the complaint will include:
 - 1) A statement of the statutory provision which the notary public is alleged to have violated;
 - 2) An explanation of the disciplinary actions that may be taken against the notary public;
 - 3) Instructions for the notary public to respond to the complaint by regular mail or by email; and
 - 4) A statement that the notary public must respond to the complaint within 10 days after receiving the notice.
 - d) If, after receiving the response from the notary, the Secretary of State determines that further action is not warranted, the Secretary will notify the notary public of that decision.
 - e) Either after receiving the response from the notary or if no response is received, the Secretary of State may further investigate the complaint of alleged misconduct against the notary public by considering the totality of the offense, facts, and circumstances of the individual case.
 - f) When evaluating an allegation of notarial misconduct to determine if action should be taken, the Secretary may consider a variety of factors, including but not limited to, the following:
 - 1) Nature and severity of the act, offense, or crime under consideration;
 - 2) Number and variety of current violations;
 - 3) Evidence of the requisite honesty, credibility, truthfulness, and integrity of the notary public;
 - 4) Actual or potential harm to the general public, group, individual, or customer;
 - 5) History of complaints received by the Secretary of State;
 - 6) Prior disciplinary record or warning from the Secretary of State;
 - 7) Any felony or misdemeanor convictions involving fraudulent activity;
 - 8) Fraudulent, deceptive, or inequitable business acts;
 - 9) The disbarment or professional discipline of a notary that is also an attorney;
 - 10) The revocation of any financial, real estate, or securities licenses; or
 - 11) Failure to pay any Illinois tax.
 - g) If the Secretary determines that a crime may have been committed, the Secretary will refer the allegations to law enforcement for further investigation or prosecution.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.980 Revocation, Suspension, and Reprimand

For purposes of this Section, “notary public” includes an electronic notary public and remote notary public.

- a) Revocation. A notary public’s commission may be revoked for any of the foregoing acts or omissions:
 - 1) The notary public demonstrates the notary public lacks the honesty, integrity, competence, or reliability to act as a notary public; or
 - 2) The notary public fails to maintain a residence or place of employment in Illinois.
- b) Suspension. A notary public’s commission may be suspended for any actions contrary to the Act, other laws of the State of Illinois, and this Part.
- c) Other Remedial Actions. The Secretary of State may deliver a written official warning to cease misconduct, misfeasance, or malfeasance to any notary public whose actions are determined to violate this Part, the Act, or other laws of the State of Illinois.
- d) Before suspending or revoking a notary public’s commission, the Secretary of State must inform the notary public of the basis for the suspension or revocation and that the suspension or revocation takes effect on a particular date unless a request for an administrative hearing is filed with the Secretary of State under 5 ILCS 312/7-108(j) and Section 176.990 before that date.
- e) Resignation or expiration of a notary public’s commission does not terminate or preclude an inquiry into the notary’s conduct by the Secretary of State. Whether the finding would have been grounds for revocation will be made a matter of public record.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.990 Appeals

Appeals should be addressed to the Secretary of State Department of Administrative Hearings and comply with Subpart K.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

SUBPART K: ADMINISTRATIVE HEARINGS

Section 176.1000 Definitions

“Act” means the Illinois Notary Public Act [5 ILCS 312].

“Contested case” means an adjudicatory proceeding conducted by the Department of Administrative Hearings in which the individual legal rights, duties, or privileges of a party are required by law to be determined by the Secretary of State only after an opportunity for a hearing. [5 ILCS 100/1-30]

“Continue a hearing” means to reschedule a hearing to another date certain. A decision to continue a hearing is a continuance.

“Department of Administrative Hearings” means the Department of Administrative Hearings of the Office of the Secretary of State of Illinois.

“Director” means the Director or Acting Director of the Department of Administrative Hearings.

“Formal Hearing” means a hearing authorized to be held by the Department of Administrative Hearings under the Act or this Part.

“Hearing Officer” means any person designated by the Secretary of State to preside at any hearing conducted under this Subpart.

“Order of Default” means an Order entered by the Department of Administrative Hearings which denies all relief because a petitioner fails to appear for a hearing at the time, date, and place specified in the Notice of Hearing or Notice of a continued hearing date without prior notification to the Department of the petitioner’s inability to appear.

“Party” means any person named or admitted as a participant in any hearing conducted under this Subpart, including the Secretary and the Department of Administrative Hearings.

“Person” includes any individual, corporation, partnership, association, or firm legally capable of either seeking the action of the Office of the Secretary of State or being the subject of the action.

“Petitioner” is the party who by written request seeks or applies for any relief from the Secretary under the Act or this Part.

“Respondent” means a person against whom a complaint or petition is filed, or who, because of interest in the subject matter of a petition or application or the relief sought in the petition or application, is made a respondent or to whom an order or complaint is directed by the Department of Administrative Hearings.

“Secretary” means the Illinois Secretary of State.

“Withdrawal from a hearing” means to terminate a hearing upon the motion or at the request of the petitioner.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1005 Right to Counsel

- a) Attorneys Must be Licensed or 711 Students. Any party may appear and be heard through an attorney at law licensed to practice in the State of Illinois, or any law student licensed under Supreme Court Rule 711, in any hearing in any matter involving the exercise or legal skill of knowledge.
- b) Pro Hac Vice. Attorneys admitted to practice in states other than the State of Illinois may appear and be heard in a specific hearing, upon the attorney’s verbal representations or written documentation as to the attorney’s admittance, by

special leave of the Director of Administrative Hearings or a designee, pursuant to an Order pro hac vice, as authorized by Supreme Court Rule 707 and Rule 5.5 of the Illinois Rules of Professional Conduct.

- c) Pro Se. A natural person may appear and represent oneself instead of representation by an attorney.
- d) Corporations, Limited Liability Companies, and Partnerships. A corporation, association, limited liability company, or partnership must appear by legal counsel licensed to practice in the State of Illinois or appearing pro hac vice.
- e) The standard of conduct shall be the same as before all Courts of Illinois.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1010 Appearance of Attorney

An attorney appearing in a representative capacity shall file a written notice of appearance with the Department of Administrative Hearings office where the formal hearing is requested or pending, providing a name, address, email address, website, facsimile number, telephone number, Supreme Court registration number, and identification of the party represented.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1020 Special Appearance

Before filing any other pleading or motion, a special appearance may be made either in person or by an attorney for the limited purpose of objecting to jurisdiction. Every appearance not expressly designated a special appearance will be considered to be a general appearance. If the reasons for objecting to jurisdiction are not apparent from the papers on file in the proceeding, the special appearance shall be supported by an affidavit setting forth the reasons. In ruling upon any objection at any hearing, the hearing officer may consider all matters apparent from the papers on file, affidavits submitted by any party, and any other evidence offered upon disputed issues of fact. No determination of any issue of fact in connection with the objection is a determination of the merits of the case or any aspect thereof. A ruling adverse to the movant does not preclude the making of any motion or defense which might otherwise have been made. If the hearing officer sustains the objection, an appropriate ruling shall be entered on the record. Error in ruling against the objection is not waived by the objector's taking part in further proceedings in this matter.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1030 Substitution of Parties

A hearing officer shall, upon motion, rule on a request for the substitution of parties in cases in which a party has died, resigned, been moved, or otherwise succeeded to the interest of a previously named party.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1040 Commencement of Actions – Notice of Hearing

- a) Notice of Hearing. A contested case is begun when the Office of the Secretary, upon either the written request of the petitioner or its own initiative, serves a Notice of Hearing upon the respondent. "Written request" means a petition via facsimile, electronic transmission, or regular mail. The Notice of Hearing must be sent by electronic transmission if the petitioner agrees to receive the Notice of Hearing and Decision or Order via electronic transmission.

- b) The Notice of Hearing shall include:
 - 1) The names and addresses of all known parties, including the department initiating the hearing;
 - 2) Whether the hearing is at the request of the petitioner or a department;
 - 3) The time, date, and place of the hearing. The Department of Administrative Hearings will try to accommodate a party's request regarding the location of a hearing, but reserves the discretion to schedule a hearing at a site that is mutually convenient for all parties involved, including witnesses, and subject to the constraints imposed by budgetary and personnel considerations;
 - 4) A concise statement of facts (as distinguished from conclusions of law or a mere recitation in the words of the statute):
 - A) the alleged act or acts done by each petitioner or, when appropriate, the respondent;
 - B) either the time, date, and place each such act was done or a concise statement of the matters asserted;
 - C) the rule, statute, or constitutional provision, if any, alleged to have been violated or otherwise involved in the proceeding; and
 - D) the relief sought by the petitioning party; and
 - 5) A statement to each party that:
 - A) each party may be represented by legal counsel and may present evidence, cross-examine witnesses, and otherwise participate in the hearing;
 - B) failure to appear shall constitute a default, unless a party has, upon due notice to other parties, moved for and obtained a continuance from the hearing officer; and
 - C) delivery of notice to the designated representative of a party constitutes service upon that party.
- c) Filing Fee
 - 1) A petition for a hearing will not be accepted for filing unless it is accompanied by a filing fee of \$50. This filing fee must be submitted in the form of a money order or check made payable to the Secretary of State, or credit charge (with a preapproved card).
 - 2) This filing fee will not be refunded to the party requesting a hearing if the hearing proceeds, the party submits multiple petitions for a hearing to different hearing locations simultaneously, the party withdraws from the hearing or an order of default is entered. The party will be required to submit another filing fee before another hearing will be scheduled.
 - 3) When a hearing is continued, the party requesting the hearing will not be required to submit another filing fee.
 - 4) When the party requesting a hearing withdraws or defaults, the party will be required to submit another filing fee before another hearing will be scheduled.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1050 Motions

- a) Form of Motions. All motions must be made in writing and must set forth the

relief or order sought and must be filed with the Department of Administrative Hearings at the earliest time to be considered by the hearing officer. Motions may be hand delivered or sent by regular mail, courier, or facsimile transmission. Motions must be sent to the hearing location designated in the notice of hearing and are considered received on the date that they are file-stamped by Department of Administrative Hearings personnel. Motions based on information that does not appear on the record must be supported by an affidavit. Motions may be presented by a party to obtain appropriate relief, such as dismissing the proceedings, adding necessary parties, or extending time to comply with an order.

- b) Motions to Correct or Reconsider. The Department will not consider motions to correct a material misstatement of fact or to reconsider a decision made or an Order entered in a formal hearing. The proper avenue for relief is to file a complaint under the Administrative Review Law. [735 ILCS 5/Art. III]

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1060 Form of Documents Filed – Original Documents Required

- a) Form of Papers
 - 1) All papers filed in any proceeding must:
 - A) be clearly written or typewritten;
 - B) contain a caption showing the title of the proceeding with a case number;
 - C) be signed or verified by the party filing the papers or that party’s authorized representative or attorney; and
 - D) contain the party’s address, telephone number, website, and email address, if available.
 - 2) An original and one copy shall be filed by each party, except as provided in subsection (b).
- b) Original Documents Required. If a document submitted under this Part has not been previously submitted to the Department of Administrative Hearings, only the original document will be accepted or admitted into evidence. “Original document” means bearing the original signature of the petitioner or author of the document, as applicable. Documents that are composed or created solely to submit to the Secretary of State at a formal hearing must be submitted as originals.
- c) Documents Sent by Facsimile or Electronic Transmission. Documents that must be submitted as an original but are instead sent by facsimile or electronic transmission will be accepted at the time of the hearing. However, the originals of the documents must be submitted at a later date. The hearing officer will grant leave to submit the originals within not more than 14 calendar days after the hearing. The hearing officer will determine the specific number of days within which the petitioner is allowed to submit the original, based on the individual circumstances of each case.
- d) Failure to Submit. The petitioner’s failure to submit an original document as required in this Section will not in and of itself constitute, under any circumstance, the sole basis for denying relief.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1070 Conduct of Formal Hearings

- a) All hearings conducted in any proceeding will be open to the public.
- b) Every hearing will be presided over by a hearing officer duly appointed by the Secretary. The hearing officer will have the authority to conduct the hearing, rule on all motions, administer oaths, subpoena witnesses or documents at the request of any party, examine witnesses, and rule upon the admissibility of testimony and evidence. The Secretary may also appoint a representative to appear and participate in the hearing on the Secretary's behalf. Before evidence is taken, the petitioner or respondent may request disqualification of the hearing officer by making a motion for disqualification on the record that states the specific grounds upon which it is alleged that the hearing officer cannot provide a fair and impartial hearing. The hearing officer will rule upon the motion. If the motion is denied, the hearing will proceed, or the petitioner may withdraw from the hearing. If the motion is granted, the case will be transferred to another hearing officer for a hearing on the same day if possible. If it is not possible to schedule a hearing on the same day, the Secretary will assign another hearing officer, who will schedule a new hearing date.
- c) Depositions and Interrogatories
 - 1) Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department, may take, at its own expense, the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action in a contested case (for example, when the witness is not available because of distance, time, cost to the party using the testimony, sickness, infirmity, imprisonment, the witness being out of state, or similar factors). The notice, order, or stipulation to take a deposition must specify whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification, a deposition is a discovery deposition only. If both discovery and evidence depositions are desired of the same witness, they must be taken separately, unless the parties stipulate otherwise or the hearing officer orders otherwise upon notice and motion. The deposition must be taken in the manner provided by law for discovery and evidence depositions in civil actions in the Circuit Courts of Illinois.
 - 2) Any party may direct written interrogatories to any other party. Interrogatories must be restricted to the subject matter of the case to avoid undue detail and the imposition of any unnecessary burden or expense on the answering party. Sworn answers or objections to interrogatories directed to the Index Department or the Secretary of State may be made by a designated agent, including the Department's counsel, who shall furnish such information as is available. Written interrogatories must be served on the opposing party not later than 15 business days before the hearing. Objections to questions or refusals to answer will be heard as motions at the hearing before the hearing officer, who will rule on the objection or refusal. Answers shall be sworn. If an answer to an interrogatory can be obtained from documents in the possession or control of the party on whom the interrogatories are served, it is a sufficient answer to specify the

documents and make them available to the inquiring party to inspect and copy at the asking party's expense. This subsection (c)(2) does not apply to objections or refusals to answer interrogatories.

- d) Rules of Evidence. The technical rules of evidence shall not apply. Any relevant evidence may be admitted if it is the sort of evidence relied upon by reasonably prudent people in the conduct of their affairs. The existence of any common law or statutory exclusionary rule that might make improper the admission of the evidence over objections in civil or criminal actions shall not be a bar to the admissibility of otherwise relevant evidence. The rules of privilege shall be followed to the same extent that they are now or may be recognized in later civil actions. Irrelevant, immaterial, or unduly repetitious evidence may be excluded upon objection. Objections to evidentiary offers may be made and will be noted in the record and ruled upon by the hearing officer. Any party may make an offer of proof following an adverse evidentiary ruling. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Subject to the evidentiary requirements of this subsection, a party may conduct cross-examination required for a full and fair disclosure of the facts.
- e) List of Witnesses and Bill of Particulars. Upon written request made at least 10 business days before the hearing, a party shall furnish to the other parties a list of the names and addresses of prospective witnesses or written answers to a written demand for a bill of particulars.
- f) Inspection of Documents and Interview of Parties
 - 1) Any party or its representatives shall have the right, upon the filing of a written motion with proper proof of service, to inspect any relevant document in the possession of or under the control of any other party before the formal hearing. The inspection of documents shall occur at the location the formal hearing is scheduled.
 - 2) Any party may file a written motion seeking to interview parties or persons having knowledge of relevant facts, subject to any statutory or constitutional privileges. Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department of Administrative Hearings, may interview at its own expense, parties or persons having knowledge of relevant facts. Interviews of persons and inspection of documents shall be at times and places reasonable for the persons and the custodian of the document.
- g) Admissions. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact in the request or for the admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.
- h) Right to Call Witnesses, Cross-Examine, Subpoena Documents and Introduce Exhibits. Each party shall have the right to request the subpoena of witnesses, to call and examine witnesses, to introduce exhibits, and to cross-examine witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination. Applications to the hearing officer assigned to the case for

subpoenas duces tecum must specify the books, papers and documents desired to be produced.

- i) Pre-hearing Conference. At the request of any party or upon the hearing officer's own motion, the hearing officer may call a pre-hearing conference. At the conference, the parties or their representatives shall appear as the hearing officer directs. Matters that may be considered at a pre-hearing conference include, but are not limited to:
 - 1) The simplification of the issues;
 - 2) Amendments to the grounds for action;
 - 3) The possibility of obtaining admissions, stipulations of fact, and documents that will avoid unnecessary proof;
 - 4) The limitation of the number of expert witnesses; and
 - 5) Any other matters that may aid in the disposition of the contested case.
- j) Order from Pre-hearing Conference. After a pre-hearing conference, the hearing officer will enter an order reciting any action taken, any agreements made by the parties as to any of the matters considered, and the issues to be heard.
- k) Oath. Testimony shall be taken only on oath or affirmation.
- l) Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing.
- m) Official Notice. The hearing officer may take official notice of past hearings and of any matter of which the Circuit Courts of Illinois may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts with the Department's specialized knowledge. Parties will be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including staff memoranda and data, and they will be given an opportunity to contest the material so noticed. The Department's and the hearing officer's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.
- n) Rights of Parties. Each party shall have the right to rebut the evidence against that party, to appear in person, and to be represented by counsel. If a party does not testify on its own behalf, it may be called by the Secretary of State's representative and examined as if under cross-examination.
- o) Opening and Closing Statements. Upon the opening of the hearing, the hearing officer will allow the parties to make opening statements. Opening statements may not be made at any other time, except at the discretion of the hearing officer. Upon the close of the hearing, each party may make a closing statement orally, by written brief, or both, at the discretion of the hearing officer, incorporating arguments of fact and law. A written brief may be required when the hearing officer determines that the facts and issues are complicated and the parties must plead their cases in writing for the record.
- p) Exhibits. All exhibits must be clearly marked for identification and admitted into evidence by the hearing officer.
- q) Cross-examination of Witnesses. In the hearing of any case, any party may call any other party or its agent as an adverse witness and examine that witness as if under cross-examination. The adverse party calling for the examination is not bound by the testimony of the adverse witness, but may rebut the testimony given

and impeach the witness by proof of prior inconsistent statements. If the hearing officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination. The party calling an occurrence witness may, upon showing that the party called the witness in good faith but is surprised by the testimony, impeach the witness by proof of prior inconsistent statements.

- r) Burden of Proof. The general burden of proof is upon the petitioner for any relief in a hearing. The standard of proof is the preponderance of the evidence.
- s) Interpreters and the Deaf and Hard of Hearing. The Secretary will provide, upon prior written request, an interpreter for parties who are deaf or hard of hearing and wish to testify. Providing a language interpreter, however, is the responsibility of the petitioner or respondent.
- t) Report of Proceedings and Obtaining a Copy of Record
 - 1) The Department of Administrative Hearings will, at its expense, have present at each formal hearing an electronic or digital recording device or a qualified court reporter to make a permanent and complete report of the proceedings, including evidence admitted or tendered and not admitted, testimony, offers of proof, objections, remarks of the hearing officer and of the parties and their representatives, and all rulings of the hearing officer.
 - 2) Upon written request and at the party's own expense, any party may obtain a copy of the report of proceedings from the court reporter or the electronic device from the Department of Administrative Hearings. The party must pay \$25 to the Secretary of State, in advance, to cover the cost of making an electronic or digital copy and mailing.
- u) Motions to Continue and Withdraw and Leave to Submit Original Documents
 - 1) Motions to Continue by a Petitioner or Respondent and Grounds. Hearings before the Department of Administrative Hearings will be continued only pursuant to a motion that complies with Section 176.1050 and is filed on or before the date of the hearing, made over the telephone before or on the date of the hearing, or made in person on the day of the hearing. The movant shall set forth the grounds for the motion, which are limited to unforeseen, unavoidable, or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the movant, a member of the movant's immediate family, or the movant's legal counsel, or if the movant can demonstrate some other real and compelling need for additional time. A Motion to Continue may be supported by evidence that tends to prove the grounds alleged, including sworn testimony taken at a motion hearing on the day of the hearing. The inability to obtain transportation to the hearing site or a party's failure or inability to obtain the documentation required to fulfill the minimum requirements to be issued relief are not circumstances that justify continuing a hearing.
 - 2) Continued to a Date Certain. A formal hearing will not be continued "generally". A continuance, if granted, will state a date certain on which the hearing shall reconvene. If the petitioner is not prepared to go forward after the first continuance, a request to withdraw must be submitted or an

Order of Default shall be entered.

- A) Written Motions to Continue filed at least 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date will be given priority in rescheduling over motions filed or made less than 15 days before the date of the hearing or made on the date of the hearing. The Department will rule upon Motions to Continue filed at least 15 days before the date of the hearing and, when possible, notify the movant of its ruling before the date of the hearing. If the motion is denied, the movant must appear at and proceed with the hearing or withdraw from the hearing or an Order of Default shall be entered.
 - B) Motions to Continue made by telephone less than 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date must also be filed in writing and received or postmarked no more than 5 days after the date of the hearing to be considered. A Motion to Continue made in writing less than 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date must be received and postmarked no more than 5 days after the date of the hearing. The Department of Administrative Hearings cannot assure the movant that it will rule upon these motions before the date of the hearing.
 - C) It is the responsibility of the movant to inform the Department of Administrative Hearings, in the Motion to Continue or during a telephone conversation, what course of action the movant wishes to take if the motion is denied (either to appear and proceed with the hearing, withdraw, or default). In all cases, it is also the responsibility of a movant who has not been notified of the Department's ruling to contact the Department of Administrative Hearings on or before the day of the hearing to determine whether the hearing officer has ruled on the motion. A movant's failure to appear after a Motion to Continue is denied will result in the entry of an Order of Default.
- 3) Motions Made by the Secretary or the Index Department. The Department may also make or file a Motion to Continue for unforeseen, unavoidable, or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the hearing officer, the attorney representing the Secretary of State, a witness, or a member of the immediate family of one of these entities, or if the Department can demonstrate some other real and compelling need for additional time.
 - 4) Motions to Withdraw. Except as provided in this subsection (u)(4), a petitioner may withdraw from a hearing for any reason. A Motion to Withdraw made in person or by telephone on or before the day of the hearing must be followed up with a written motion that is received no more than 10 days after the date of the hearing. A Motion to Withdraw

made in writing must be received or postmarked not more than 10 days after the date of the hearing. Failure to do so will result in an Order of Default. Once a petitioner is placed under oath, a request to withdraw from a hearing that, in the hearing officer's judgment, is based upon surprise evidence presented or adverse evidence shall not be granted. Upon withdrawal, the requested relief will not be considered and the petition is dismissed. Should the petitioner request another hearing, it must be done in writing and it will be treated as any other request for a hearing.

- 5) Motions for Leave to Submit Original Document. As provided in this subsection (u), the petitioner may request leave to submit original documents if the petitioner proceeds with the hearing, offering copies of documents when originals are required. The hearing shall be completed and the petitioner shall be granted leave to submit the original documents.
- 6) Attorney's Appearance on File. A Motion to Continue or Withdraw made by any attorney on behalf of a petitioner or respondent will not be considered unless the attorney has filed a written notice of appearance as provided in Section 176.1010.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1080 Orders, Notifications, and Time Limits on Obtaining Relief

- a) The Department shall prepare a written order for all final determinations, which shall include the Findings of Fact, Conclusions of Law, Recommendations of the hearing officer, and the Order of the Secretary.
- b) The hearing officer shall prepare the Findings of Fact, Conclusions of Law, and Recommendations to the Secretary. The Findings of Fact and Conclusions of Law must be stated separately.
- c) The Order of the Secretary shall be the decision of the Office of the Secretary of State upon the application for relief.
- d) The Department of Administrative Hearings shall notify all parties or their agents personally, by facsimile, regular mail, or electronic transmission, of the Findings of Fact, Conclusions of Law, Recommendations, and the Order. If it is the Order of the Secretary to grant the petitioner relief, then the Department of Administrative Hearings will also provide instructions on what steps the petitioner must take to obtain the relief. The failure to follow and complete these instructions will result in the denial of relief.
- e) An Order of Default will be entered against the petitioner or respondent who fails to appear for a hearing at the scheduled time and has failed to request or been granted a continuance under Section 176.1070(u).
- f) Orders resulting from formal hearings are final administrative orders within the meaning of the Administrative Review Law [735 ILCS 5/Art. III].

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1090 Record of Hearings

- a) The record of the hearing in a contested case shall include:
 - 1) All pleadings (including all pre-hearing and post-hearing notices and responses thereto, admissions, stipulations of facts, motions, and rulings thereon);

- 2) All documentary evidence;
 - 3) A statement of matters officially noticed;
 - 4) A transcript of the proceedings;
 - 5) The Findings of Fact, Conclusions of Law, and Recommendations of the hearing officer; and
 - 6) The Order of the Secretary of State, which shall constitute a final administrative decision within the provisions of the Illinois Administrative Review Law [735 ILCS 5/Art. III].
- b) The record will be certified by the hearing officer or the Director of Administrative Hearings upon any complaint for administrative review. The Department will prepare an index of the record, with each page of the record numbered in sequence.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.1095 Invalidity

If any portion of this Subpart shall be held by a court of competent jurisdiction to be invalid, that holding shall not affect the remaining portions.

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.ILLUSTRATION A: Nonresident Notary Public Affidavit of Applicant

NONRESIDENT NOTARY PUBLIC
AFFIDAVIT OF APPLICANT

STATE OF
COUNTY OF

I, (name), being first duly sworn, state upon personal knowledge and under penalty of perjury as follows:		
1. The address of my residence is:		
2. I am employed by:		
3. The address of my employer is:		
4. The telephone number at my place of employment is:		
5. The email address at my place of employment is:		
6. The web address at my place of employment is:		
Dated this	day of	, 20
Signature of Applicant:		

Signed and sworn before me on	day of	, 20	By
(Printed Name of Applicant)			
(seal)			
Signature of Notary Public			

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)

Section 176.ILLUSTRATION B: Notary Public Course of Study and Examination Provider Surety Bond Form

Know All Persons by These Presents, That We, _____, hereinafter referred to in this document as Principal and _____, a corporation organized and existing to do business in the State of Illinois, for the use and benefit of all persons who may be damaged by breach of this bond, as Obligees, in the penal sum of \$50,000, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our executors, administrators, successors, and assigns, firmly by these presents. The condition of this obligation is such that the principal has applied to the Illinois Secretary of State for certification as a provider of a notary course of study and examination provider.

If the Principal faithfully complies with the Illinois Notary Act and all rules and regulations that have been or may hereafter be in force concerning the certification and shall save and keep harmless the Obligees from all loss or damage that may be sustained as a result of the issuance of the license or permit to the Principal, this obligation shall be void; otherwise, this obligation shall remain in full force and effect. The bond will expire but may be continued by a renewal certificate signed by the Principal and Surety. The Surety may at any time terminate its liability by giving 30 days' written notice to the Index Department, 111 East Monroe, Springfield, Illinois 62756, and the Surety shall not be liable for any default after that 30-day notice period, except for defaults occurring before the notice period.

Signed, Sealed and Dated this ____ day of _____, 20____.
Principal _____
Surety _____
By _____ (Attorney-in-fact)

(Source: Added at 47 Ill. Reg. 8640, effective June 5, 2023)