

# **NEAL & LEROY, LLC**

## **New Illinois Notary Laws Increase Responsibility and Expand Liability**

The State of Illinois has introduced a pilot program which brings major changes to how Notaries must perform their duties. The program, effective from June 2009 until 2013, is designed to combat the high incidence of mortgage related fraud in Cook County by increasing security for property conveyances. The new law includes requirements for proper identification of the signer, which must be adhered to for every Notary Act, not just when title is transferred. Whenever title of residential property is transferred, the law also requires Notaries to create a Notarial Record, complete with the signer's thumbprint. In addition to the Public Act, an Appellate Court ruling has expanded the liability for negligent Notaries and their employers.

### **Identification Law**

The Identification Law states that "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." 5 ILCS 312/6-102(a). If the notary does not have personal knowledge to identify the person, then an oath or affirmation of a credible witness will suffice, as will a current and valid identification document issued by the state or federal government. The document must have a valid signature and photographic image of the person's face. An Illinois driver's license, a state issued identification card, or a US military identification card are all valid forms of identification. Social Security cards and new passports issued by the U.S. Department of State are not valid identification documents.

The Identification Law applies to every acknowledgment, verification upon oath or affirmation or signature witnessing performed by the Notary, not just to those Notarial Acts for which a Notarial Record must be created.

### **Record Law**

The Record Law, however, specifically addresses instances of residential mortgage fraud in Cook County. It "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.” 5 ILCS 312/3-102(a). For every such notarial act, a Notarial Record must be created. The Notarial Record must contain information on the property involved in the document of conveyance, on the person/s who bears his or her signature on the document, and on the Notary who identifies the signer. The Notary may charge up to \$25 for the Notarial Record and must provide receipts. Further, the right thumbprint of the principal signer or agent acting on behalf of the signer must be placed on the Record, unless a physical condition prevents the signer from providing such a print.

If the Notary is a principal, employee or agent of a title insurance company, title insurance agent, financial institution or attorney, the Notary must deliver the Notarial Record to the Notary’s employer or principal. 5 ILCS 312/3-107(d). Otherwise the Notary must deliver the Notarial Record to the Cook County Recorder of Deeds. 5 ILCS 312/3-107(e). The Cook County Recorder of Deeds will charge a \$5 filing fee. The Notary must deliver the record within 14 days after performance of the notarial act. The Notary is not allowed to retain a copy of the record or to give a copy of the record to any other person. However, the employer may retain copies of Notarial Records as part of its business records, subject to confidentiality standards. The Notary’s employer must retain the Notarial Record for a period of 7 years.

The statute includes a Notarial Record form that Notaries may use. However the law allows the use of forms that are substantially similar to the form specified in the statute.

It should be noted that the Notarial Record, including the signer’s thumbprint, is not subject to the Freedom of Information Act. The Record cannot be disclosed without a court subpoena.

### **Illinois Appellate Court Ruling**

In *Vancura v. Katris*, Richard Vancura was defrauded when an Assignment of Mortgage document containing Vancura’s forged signature was notarized at a Kinko’s store without Vancura present. Either the Notary notarized the signature without properly identifying the signer or he allowed someone else to affix his seal on the

Assignment of Mortgage. Either error is considered misconduct as Notaries must properly identify the signer and they must always have direct control of their seals. The Notary was in the practice of only identifying the signer by making sure the signature on the Assignment matched a signature found on a picture-less form of identification. The Notary believed this to be an acceptable means of identification because of negligent training and supervision by his employer. *Vancura v. Katris*, 391 Ill. App. 3d 350 (Ill. App. Ct. 2009).

The court held that an employer has a duty to train and supervise its Notaries according to a reasonable standard of care, which includes protecting the public from harm. Notaries must thoroughly understand what is required of them. Not only does this case expand Notary liability, but it ruled that an employer can have direct liability for negligent Notary training and supervision. *Vancura v. Katris*, 391 Ill. App. 3d 350 (Ill. App. Ct. 2009).

For more information and training materials, go to [www.nationalnotary.org/IL/Lawchanges](http://www.nationalnotary.org/IL/Lawchanges).

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