

NOTICE OF SUBSTANTIVE CHANGE IN THE ILLINOIS NOTARY PUBLIC ACT LEGISLATION (5 ILCS 312/ et seq.)

EFFECTIVE JUNE 1, 2009.

BACKGROUND:

In the spring of 2007, representatives from law enforcement and the real estate industry drafted legislation intended to reduce the significant problem of real estate/mortgage fraud in Cook County. Too often homeowners (particularly the elderly) are victimized by criminals that fraudulently transfer property to themselves and then sell the property to complicit buyers. The properties are then mortgaged by the "buyer" and the proceeds of the sale are shared between the criminals. Homeowners only find out about the scam when they are served with mortgage foreclosure documents. These cases are difficult to prosecute. The criminals are rarely identified because there is little evidence tying them to the commission of the crime. It is the belief of the drafters that changes to the Notary Act, requiring the fingerprinting of certain parties to real estate transactions, will substantially deter this type of crime and provide law enforcement the means to locate and prosecute the criminals who commit these acts. Other states, such as California, have a similar program that has been very successful in deterring real estate fraud.

WHAT DOES THE NEW LAW REQUIRE?

- *The Notary Public shall create a Notarial Record for the notarization of every Document of Conveyance that transfers or purports to transfer title to residential real property located in Cook County.*

WHAT IS A DOCUMENT OF CONVEYANCE?

- *A written instrument that transfers or purports to transfer title effecting a change in ownership to Residential Real Property.*
- **EXCLUDING:**
 - *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;*
 - *Judicial sales deeds relating to Residential Real Property, including without limitation, sales deeds issued pursuant to proceedings to foreclose a mortgage or execute on a levy to enforce a judgment;*
 - *Deeds transferring ownership of Residential Real Property to a trust where the beneficiary is also the grantor;*
 - *Deeds from grantors to themselves that are intended to change the nature or type of tenancy by which they own Residential Real Property;*
 - *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;*
 - *Deeds executed to the mortgagee in lieu of foreclosure of a mortgage; and*
 - *Deeds transferring ownership to a revocable or irrevocable grantor trust where the beneficiary included the grantor.*

NOTE: This legislation does not apply to mortgages.

WHAT IS RESIDENTIAL REAL PROPERTY?

- *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.*

WHAT MUST BE CONTAINED IN THE NOTARIAL RECORD?

- *The date of the notarial act;*
- *The type, title, or a description of the Document of Conveyance being notarized, and the property index (“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;*
- *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.”;*
- *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;*
- *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*
- *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.*

Please see ATG form 4162 for use as a statutorily compliant Notarial Record.

HOW IS THE NOTARIAL RECORD TO BE KEPT?

- *If the notarial act 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.*
- *If the 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 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 \$5.00.*
- *The Cook County Recorder of Deeds will be promulgating instructions regarding the manner that such records are to be presented to them.*

CONFIDENTIALITY OF THE NOTARIAL RECORD

- *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 Record as part of its business records, subject to applicable privacy and confidentiality standards.*
- *The Notarial Record or other medium containing the thumbprint or fingerprint shall be made available or disclosed only upon receipt of a subpoena duly authorized by a court of competent jurisdiction.*

WHAT EFFECT DOES THE FAILURE OF THE NOTARY TO COMPLY WITH THE ACT HAVE ON THE DOCUMENT?

- *Failure of a notary to comply with the procedure set forth 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.*

HOW SHOULD FINGERPRINTS BE OBTAINED?

- *The notary may obtain the thumbprint by any means that reliably captures the image of the finger in a physical or electronic medium.*
- For example it would be acceptable to use an inkless thumbprint pad.

WHAT ARE SATISFACTORY IDENTIFICATION DOCUMENTS?

- *If identification is based on identification documents, until July 1, 2013, identification documents are documents that are valid at the time of the notarial act, issued by a state or federal government agency, and bearing the photographic image of the individual's face and signature of the individual.*

HOW MUCH CAN A NOTARY CHARGE PER NOTARIAL ACT?

- *A notary may charge up to \$25 for any notarial act performed pursuant to this section.*
- *\$1 is the maximum fee for other notarial acts not requiring a notarial record.*
- *All notaries public must provide receipts and keep records for fees accepted for services provided.*

HOW LONG DOES THIS PILOT PROGRAM LAST?

- Unless otherwise extended this Act will only be effective until July 1, 2013.

Please log on to www.atgf.com to view a free ON Demand presentation entitled "Understanding Changes to the Notary Act." The presentation is available 24/7 and does not require advance registration. If you have any addition questions, please contact Arden Miner at 312-752-1407 or email at aminer@atgf.com.