

1 AN ACT concerning civil notaries.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 ARTICLE 1. GENERAL PROVISIONS

5 Section 1-1. Short Title. This Act may be cited as the
6 Illinois Civil Law Notary Act.

7 Section 1-5. Purposes and rules of construction.

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

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

12 (1) to establish the office of civil law notary in
13 this State; and

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

16 Section 1-10. Definitions. As used in this Act, unless
17 the context otherwise requires:

18 "Authentic act" is an instrument executed by a civil law
19 notary referencing this Act that is imbued by the state with
20 the legal acceptance of the certainty that comes from the
21 presumption of truth that accompanies the document and that
22 includes the particulars and capacities to act of transacting
23 parties, a confirmation of the full text of instrument of any
24 necessary instrument, the signatures or their legal
25 equivalent of any transacting parties, the signature and seal
26 of a civil law notary, and such other information as may be
27 prescribed by the Secretary of State.

28 "Brevet" is a private document in which the civil law
29 notary attests to the authenticity of the signature or

1 signatures, a fact, or a contract. Brevets may be used, among
2 other things, to certify signatures, prescribe oaths, certify
3 a translation or a copy of a document that is not part of the
4 civil law notary's protocol, or certify the identity of any
5 object or thing.

6 "Civil law notary" is a person who is admitted to the
7 practice of law in this State, who has practiced law in a
8 United States jurisdiction for at least 5 years, and who is
9 appointed by the Secretary of State as a civil law notary.

10 "Minute" is an authentic act written by a civil law
11 notary that contains the exact narration of a finding of fact
12 or facts influencing the rights of private parties of which
13 the civil law notary has personal knowledge and that due to
14 the nature of the authentic act does not constitute a
15 contract or juridical business. Types of minutes include, but
16 may not be limited to:

17 (1) General minutes. A minute providing
18 certification of general facts known to the civil law
19 notary.

20 (2) Minutes of notoriety. A minute providing a
21 certification that a fact is generally known by the
22 people who have a direct or close relationship with the
23 factual situation or its consequences, or who belong to
24 the social or economic environment of the person affected
25 by a particular fact.

26 (3) Minutes of correction. A minute for the purpose
27 of rectifying minor errors in form or omissions made by
28 the civil law notary in prior authentic acts.

29 (4) Minutes of addition. A minute for the purpose
30 of including a document in the civil law notary's
31 protocol in order to provide for preservation of the
32 document, limited memorialization of domestic private
33 documents, or execution of foreign legal documents.

34 "Notarial deed" is an authentic act that contains a

1 contract, transaction, or other juridical act and that may
2 also include the certification of facts. Notarial deeds may
3 involve either a single party, as in the case of a will, or
4 multiple parties, as with a contract.

5 "Protocol" is a registry maintained by a civil law notary
6 in which the acts of the civil law notary are archived.

7 ARTICLE 5. APPOINTMENT PROVISIONS

8 Section 5-5. Appointment. The Secretary of State has the
9 power to appoint civil law notaries and administer this Act.

10 ARTICLE 10. AUTHORITY AND OBLIGATION

11 Section 10-5. Authority.

12 (a) A civil law notary is authorized to issue brevets,
13 minutes, and notarial deeds and thereby may authenticate or
14 certify any document, transaction, event, condition, or
15 occurrence. The contents of an authentic act and matters
16 incorporated therein shall be presumed legal and accurate but
17 that presumption may be rebutted in litigation by clear and
18 convincing evidence. A civil law notary may also administer
19 oaths and make certificates thereof when necessary for
20 execution of any writing or document to be attested,
21 protested, or published under the seal of a civil law notary.
22 A civil law notary may also take acknowledgments of deeds and
23 other instruments of writing for record, and solemnize the
24 rites of matrimony, as fully as other officers of this State.

25 (b) The authentic acts, oaths, and acknowledgements of a
26 civil law notary must be chronologically recorded in the
27 civil law notary's protocol in a manner prescribed by the
28 Secretary of State.

29 (c) The civil law notary may, without prejudice to his
30 or her duty to ensure professional confidentiality, issue

1 certified copies of authentic acts to individuals who, in his
2 or her opinion, have a legitimate interest in the contents of
3 an authentic act. Certified copies of authentic acts have the
4 same effect as the original.

5 (d) The powers of civil law notaries include, but are
6 not limited to, all of the powers of a notary public under
7 the laws of this State.

8 (e) The Secretary of State may not regulate, discipline,
9 or attempt to discipline any civil law notary for, or with
10 regard to, any action or conduct that would constitute the
11 practice of law in this State, except by agreement with the
12 Attorney Registration and Disciplinary Commission of the
13 Supreme Court of Illinois.

14 (f) This Act shall not be construed as abrogating the
15 provisions of any other law relating to notaries public,
16 attorneys, or the practice of law in this State.

17 Section 10-10. Obligation. A civil law notary is
18 obligated to:

19 (a) Perform or draw up authentic acts in accordance with
20 his or her knowledge and comprehension. Those documents must
21 clearly reflect the wishes of the contracting parties duly
22 adapted to legal requirements necessary for the documents to
23 have full effect.

24 (b) Represent the transaction itself in the creation of
25 the authentic act. For this purpose, the civil law notary
26 acts as an intermediary when there are multiple parties to a
27 transaction.

28 (c) Use his or her best efforts to advise all parties to
29 the transaction equally, accurately, fully, and impartially
30 regarding the nature and legal consequences of the
31 transaction.

32 (d) Refrain from representing any party in any matter
33 arising from or related to the civil law notary's authentic

1 act.

2 Section 10-15. Rules. The Secretary of State may adopt
3 rules prescribing:

4 (a) The form and content of authentic acts, oaths,
5 acknowledgements, and signatures and seals or their legal
6 equivalents.

7 (b) Procedures for the permanent archiving of authentic
8 acts, procedures for maintaining records of acknowledgments
9 and oaths, and procedures for the administration of oaths and
10 taking of acknowledgments.

11 (c) The charging of reasonable fees to be retained by
12 the Secretary of State for the purpose of administering this
13 Act.

14 (d) Educational requirements and procedures for testing
15 an applicant's knowledge of all matters relevant to the
16 appointment, authority, duties, or legal or ethical
17 responsibilities of a civil law notary.

18 (e) Procedures for the disciplining of civil law
19 notaries, including, but not limited to, the suspension and
20 revocation of appointments for failure to comply with the
21 requirements of this Act or the rules of the Secretary of
22 State, or for misrepresentation or fraud regarding the civil
23 law notary's authority, the effect of the civil law notary's
24 authentic acts, or the identities or acts of the parties to a
25 transaction.

26 (f) Bonding or errors and omissions insurance
27 requirements, or both, for civil law notaries.

28 (g) Other matters necessary for administering this Act.

29 Section 10-20. Certificate of authority; apostilles. Any
30 certification of a civil law notary's authority necessary for
31 a particular document or transaction may be issued only by
32 the Secretary of State. Upon receipt of a written request

1 from a civil law notary and the fee prescribed by the
2 Secretary of State, the Office of the Secretary of State
3 shall issue a certification of the civil law notary's
4 authority on a form prescribed by the Secretary of State. The
5 form must include a statement explaining the legal
6 qualifications and authority of a civil law notary in this
7 State. The fee prescribed for the issuance of the
8 certification under this Section or an apostille shall not
9 exceed \$20 per document. The Secretary of State may adopt
10 rules to implement this Section.

11 ARTICLE 15. LIABILITY AND REVOCATION

12 Section 15-5. Official misconduct defined. The term
13 "official misconduct" generally means the wrongful exercise
14 of a power or the wrongful performance of a duty and is fully
15 defined in Section 33-3 of the Criminal Code of 1961. The
16 term "wrongful" as used in the definition of official
17 misconduct means unauthorized, unlawful, abusive, negligent,
18 reckless, or injurious.

19 Section 15-10. Official misconduct; penalty.

20 (a) A civil law notary who knowingly and willfully
21 commits any official misconduct is guilty of a Class A
22 misdemeanor.

23 (b) A civil law notary who recklessly or negligently
24 commits any official misconduct is guilty of a Class B
25 misdemeanor.

26 Section 15-15. Willful impersonation. Any person who
27 acts as, or otherwise willfully impersonates, a civil law
28 notary while not lawfully appointed and commissioned to
29 perform authentic acts is guilty of a Class A misdemeanor.

1 Section 15-20. Wrongful possession. Any person who
2 unlawfully possesses a civil law notary's official seal is
3 guilty of a Class C misdemeanor.

4 Section 15-25. Revocation of commission. The Secretary
5 of State may revoke the commission any civil law notary who,
6 during the current term of appointment:

7 (a) submits an application for commission and
8 appointment as a civil law notary that contains a substantial
9 and material misstatement or omission of fact; or

10 (b) is convicted of official misconduct under this Act
11 or any felony.

12 Section 15-30. Injunction; unauthorized practice. Upon
13 his or her own information or upon complaint of any person,
14 the Attorney General or any State's Attorney, or the designee
15 of either, may maintain an action for injunctive relief in
16 the circuit court against any person who renders, offers to
17 render, or holds himself or herself out as rendering or
18 performing any acts or services constituting unauthorized
19 practice as a civil law notary. Any organized bar or civil
20 law notary association in this State may intervene in the
21 action, at any stage of the proceeding, for good cause shown.
22 The action may also be maintained by an organized bar or
23 civil law notary association in this State. These remedies
24 are in addition to, and not in substitution for, other
25 available remedies.

26 ARTICLE 95. MISCELLANEOUS

27 Section 95-5. Severability. The provisions of this Act
28 are severable under Section 1.31 of the Statute on Statutes.

29 Section 95-10. Applicability; inconsistent laws. To the

1 extent that the provisions of any other law are inconsistent
2 with this Act, the provisions of this Act control.