

Indiana Land Title Association

FAQs on Indiana Acknowledgements and Proofs Effective July 1, 2020

DISCLAIMER:

This Frequently Asked Questions (FAQs) document and the answers provided herein are for informational purposes only and do not represent any type of formal underwriting guidelines and/or procedures endorsed or approved by the Indiana Land Title Association and the members of the Indiana Land Title Association. You should contact your underwriter for specific underwriting guidelines and procedures that have been approved for use by your underwriter as a result of the recent changes to IC 32-21-2-3(a).

What law changed the requirements for a recorded instrument?

Senate Enrolled Act 340 changed an “or” to an “and” in Indiana Code 32-21-2-3(a), as follows:

SECTION 1. IC 32-21-2-3, AS AMENDED BY P.L.14-2019,
SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 3. (a) Except as provided in subsection (c), a conveyance, a mortgage, or an instrument of writing to be recorded must be:

- (1) acknowledged by the grantor; (*or* was deleted) **and** (was added)
- (2) proved before a:
 - (A) judge;
 - (B) clerk of a court of record;
 - (C) county auditor;
 - (D) county recorder;
 - (E) notary public;
 - (F) mayor of a city in Indiana or any other state;
 - (G) commissioner appointed in a state other than Indiana by the governor of Indiana;
 - (H) minister, charge d'affaires, or consul of the United States in any foreign country;
 - (I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;
 - (J) clerk-treasurer for a town; or
 - (K) person authorized under IC 2-3-4-1.

Are there now two (2) notarizations required on each paper or electronic instrument submitted for recording?

YES: an acknowledgement and a proof.

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Will documents or instruments signed before July 1, 2020 that only have an acknowledgment be accepted by the Recorder and recorded after July 1, 2020?

At the time of publishing these FAQs, the Indiana Recorder's Association has not issued any formal directives or guidance on its [Indiana Recorder's Association's website](#). If the recording date is on or after July 1, 2020 but the instrument to be recorded was executed prior to July 1, 2020, it is unknown whether each recorder will follow the change to I.C. §32-21-2-3(a) or require something else.

Will documents or instruments signed and notarized on and after July 1, 2020 (without a Proof) be accepted by the Recorder on and after July 1, 2020?

I.C. §32-21-2-3(a), requires both an acknowledgment and a proof should be on any instrument being recorded on or after July 1, 2020. At the time of publishing these FAQs, the Indiana Recorder's Association has not issued any formal directives or guidance on its [Indiana Recorder's Association's website](#).

If a document or instrument is recorded after July 1, 2020 and does not have a Proof, is it insurable?

If an instrument is recorded without the required proof it may not be insurable by your Underwriter, or subsequent Underwriters, for that real property interest and/or mortgage. In addition, your underwriter can aid with your questions of an instrument recorded without a proof on or after July 1, 2020 that is disclosed in the chain of title for your current transaction: that instrument may not meet subsequent Underwriters requirements under the Mutual Indemnity Agreement.

Please check with each of your Underwriters for their insuring requirements.

Can a mobile Notary still complete a closing / notarization?

A Witness must also be present to witness the execution of any recordable instrument and must sign the instrument with a notarial officer completing a notarial certificate related to that witness to have a proper Proof.

Can a remote notarization eClosing (RON closing) still be completed?

A Witness must also be present by audio visual communication to witness the execution of any recordable instrument and must electronically sign the instrument with a RON notarial officer completing the related notarial certificate to that witness to have a proper Proof.

If the electronic signing of the document or instrument involves remote notarization, remember the remote Notary should remember to reference the electronic notarial certificate matters of [I.C. § 33-42-17-7](#).

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If a deed is recorded with an acknowledgment, but no proof, can it be invalidated for not complying with I.C.32-21-2-3?

For the conveyances and instruments described in I.C. §32-21-4-1(c) that do not comply with I.C. §32-21-2-3 or other technical recording requirements, those described conveyances and instrument are potentially still “validly recorded and provides constructive notice of the contents of the instrument as of the date of filing.” **HOWEVER**, I.C. §32-21-4-1(c) has not been tested with this recent change to I.C. §32-21-2-3(a) requiring an acknowledgment **AND** proof; therefore, both an acknowledgment **AND** a proof must be included on any recordable instrument (paper and electronic record).

ACKNOWLEDGMENTS

What is an “Acknowledgment”?

A formal declaration before a notary public or other notarial official that the instrument presented is the free and voluntary act of the party executing or signing that instrument and that signature is genuine. [[Indiana Notary Public Guide \(Revised 4-30-2019\)](#)]

What is a Notary, notarization and notarial act?

A Notary is a notarial official responsible for independently verifying signatures and oaths. A notarization, or notarial act, officially documents the identity of a party to a document or transaction and the occasion of the signing that others can rely upon. [[Indiana Notary Public Guide \(Revised 4-30-2019\)](#)]. Various notarial officers are referenced in [I.C. § 33-42-9](#) may perform a notarial act including taking an acknowledgment.

PROOFS

What is a “Proof” or “Proved”?

The term “proved” is found in I.C. §§32-21-2-3, 32-21-2-6, and 32-21-2-11. One form of common law “proof” was and is to have a disinterested person (witness) watch the grantor or other signer sign a document or instrument. The witness then signs his or her name on the document or instrument and appears before a notarial officer so the notarial officer can indicate in a notarial certificate that the witness, under oath, disclosed signing his or her name to the document or instrument and seeing a certain grantor or other signer execute or sign the document or instrument.

Who can execute the “Proof”?

A notarial officer, or anyone authorized under I.C. § 32-21-2-3, in relation to the witness who has signed the document or instrument.

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What / Who is a “Signer”?

The person who has executed the instrument with his or her signature.

What / Who is a “Principal “Principal in a Representative Capacity Signer”?

A person for whom another acts as an agent or representative (Dictionary Definition): see also the definitions of “principal” at [I.C. § 33-42-0.5-23](#) and “in a representative capacity” at [I.C. § 33-42-0.5-17](#). In the title industry and lay terms, the “Principal Signer” or “Principal in a Representative Capacity” is typically associated with the person who has given a written power of attorney (the “Principal”) to another person (the attorney-in-fact”) or a written authorization or order for another person to sign on behalf of a business entity, trust, or some other court authorized capacity.

For instrument notarization when the Principal Signer is unable to be present before the Notary, it is the Principal in a Representative Capacity Signer who has signed the document or instrument on behalf of the Principal Signer .

What is a “Witness”?

The third party to witness the Signer’s and/or Principal in a Representative Capacity’s signing or acknowledgment of an instrument to a Notary.

The Witness signs on the same instrument as the Signer and takes the notarial oath or affirmation before the Notary. The Witness should be personally known by the Notary, identified by a credible witness, or acceptable identification.

The Witness is a disinterested third person who does not have an interest in the transaction being notarized. Sometimes this witness is referred to as a “subscribing witness” because the witness subscribes or writes their signature on the document or instrument.

Who can be a “Witness” for a “Proof”?

The Witness for a Proof is a disinterested third person who does not have a financial / ownership / contract interest in the transaction being notarized. The Witness must be over the age of 18; not related to a transaction party; and is not the buyer / seller /real estate agent / lender in the transaction. This witness should appear before a notarial officer as described in [I.C. § 33-42-0.5-3](#).

How does the Notary identify a Signer?

In the same manner as in the past – current, acceptable government issued identification or other methods allowed under [I.C. § 33-42-9-4](#), including personal knowledge and a credible witness. HOWEVER, a lender may require in the lender’s closing instructions that only government issued identification be used to identify the Signer and Witness.

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What is the Witness saying / affirming?

The Witness takes an oath and is affirming that he / she:

1. knows the Signer to be the person described in the instrument;
2. was present when the instrument was signed by the Signer;
3. saw the Signer execute the instrument;
4. signed his or her name as a Witness; and
5. if appearing before the remote notarial officer by audio visual communication, the witness should also provide their physical location during the remote notarization signing event.

How does the Witness identify the Signer?

In the same manner as described in these FAQs as to how a Notary identifies a Signer.

Who verifies the Signer is of sound mind and not under any influence or force to sign?

The Witness and Notary.

Does the Notary have to identify the Witness?

Yes, because the notary is providing a notarial certificate related to the witness' identity and signature as part of the Proof.

NOTE: The terms "document" and "instrument" used herein are meant to refer to the same recordable instrument that is subject to the notarization requirement.

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Signer 's (Individual Capacity) Signature Block and related Acknowledgment
Notarial Certificate and Witness' Signature Block and Related Notarial
Certificate with Notary Public as the Notarial Officer

Notes: Highlighted portions are informational
Highlighted Information to be completed on the document

SIGNATURE BLOCK:

Dated: _____

Grantor/Signer's Signature _____

Grantor/s / Signer/s Typed or Printed Name

WITNESS to the above signature(s):

Witness' Signature _____

Witness' Typed or Printed Name

ACKNOWLEDGMENT NOTARIAL CERTIFICATE:

STATE OF INDIANA

COUNTY OF _____

Before me, a Notary Public in and for said County and State, on DATE, personally appeared Grantor / Signer Name, who acknowledged the execution of the above and foregoing instrument. I have, in witness thereof, subscribed my name and affixed my official seal.

Notary Signature _____

NOTARY PUBLIC TYPED OR PRINTED NAME

NOTARY SEAL / STAMP Requirements:

Notary Name exactly as Commission

Notary Public - State of Indiana

Seal

My Commission Expires: _____

Commission No. _____

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PROOF NOTARIAL CERTIFICATE:

STATE OF INDIANA

COUNTY OF _____

Before me, a Notary Public in and for said County and State, on **DATE**, personally appeared the above named WITNESS to the foregoing instrument, who, being duly sworn by me, did depose and say that he/she knows **Grantor / Signer Name** to be the individual(s) described herein and who executed the foregoing instrument; that said WITNESS was present and saw said **Grantor / Signer Name** execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto.

Notary Signature
NOTARY PUBLIC TYPED OR PRINTED NAME

NOTARY SEAL / STAMP Requirements:

Notary Name exactly as Commission
Notary Public - State of Indiana
Seal
My Commission Expires: _____
Commission No. _____