

Insights

Indiana Witness Proof No Longer Required on Recorded Documents

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By: David A. Adams and

A collective sigh of relief could be heard from recording offices, title companies, and lenders across the state of Indiana as House Enrolled Act 1056 (**HEA 1056**) was signed into law at record speed. On Thursday, February 18, 2021, Governor Holcomb signed into law HEA 1056 which ultimately reversed the changes to Indiana's recording process that were made by Senate Enrolled Act 340 (**SEA 340**), effective July 1, 2020, and which caused mass confusion among recording offices, attorneys, lenders, and title companies. HEA 1056 confirms and clarifies that an instrument to be recorded in Indiana requires either the notarial act of acknowledgement or the notarial act of proof, but not both. HEA 1056 became effective upon the Governor's signing.

Although the biggest change is that noted above—removing the requirement that recorded instruments contain both an acknowledgement and a proof—HEA 1056 also went a step further to clarify and spell-out specifically what constitutes a notarial act of acknowledgement and a notarial act of proof, and added a new section to Indiana Code §32-21-2 to define what "proof" means with respect to a notarial act required by the chapter.

Perhaps equally important are the changes made to Indiana's statute governing the priority of recorded transactions (Indiana Code §32-21-4). HEA 1056 added a new section regarding the General Assembly's findings, one being that it is in the public interest for any conveyance or mortgage recorded in Indiana to "not be attacked due to technical deficiencies," and another being that the changes made to section one of the chapter will apply retroactively. HEA 1056 revised section one to state that a conveyance or mortgage takes priority according to the time of its recording (rather than filing) and that the subsection applies even if the instrument was recorded but does not comply with the recording requirements in Indiana Code §32-21-2-3, which includes whether there was both an acknowledgement and proof on the instrument as was temporarily required by last year's change. These changes were likely made to harmonize with the legislative intent that constructive notice is given when the instrument is recorded and that minor technical deficiencies in the recording requirements, including those that may have occurred due to SEA 340, will not invalidate the conveyance document.

If you have any questions regarding the changes in Indiana's recording requirements discussed above or any information in this article, please contact **Kelsie L. Breit, Nicole R. Finelli, Julia A. Carpenter** or a member of the **Krieg DeVault LLP Commercial and Real Estate Lending team**.

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