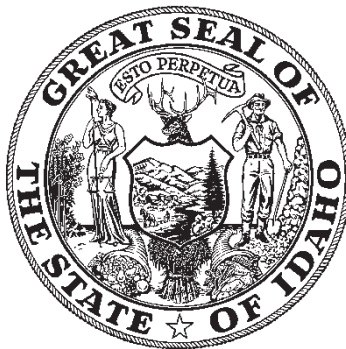


NOTARY PUBLIC
HANDBOOK
(including Notary Public Application)

State of Idaho



Written and compiled under the authority of
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2003

SECRETARY OF STATE

Boise, Idaho



FOREWORD

This handbook has been prepared to help new and existing notaries public to perform their functions under the Idaho Notary Public Act. I urge you to read it thoroughly. Your job as a notary public is a serious one, essential to the operation of business, the judicial system, and many other important arenas. If you find that this handbook does not answer your questions, please write to my office, to the attention of the Notary Clerk.

I wish you well in your service as a notary public for the State of Idaho.

Ben Yursa

BENYSURSA

INTRODUCTION

It could cost **you**, as a notary public, a great deal of money and embarrassment not to read this handbook. It may not be Hemingway or Michener, but it may be the most valuable few minutes of reading time you have ever spent.

The office of notary public is often not taken very seriously, and many notaries apply their seals and signatures to all sorts of documents with reckless abandon. That is a BIG mistake! Upon your notarial acts rests the validity of documents which involve large financial transactions or which are needed in court actions. If a document is found to be invalid because of your improper notarial act, you may be held personally liable for the loss suffered, and you may be subject to discipline under the Notary Public Act as well. In fact, one of the fastest-growing areas of litigation in the country is actions against notaries for losses caused by improper notarial acts.

On January 1, 1985, a new Notary Public Act became effective. It replaced a law which had been in effect for 118 years and which was totally inadequate to meet the needs of the modern business world. **You must read and understand the Act**, not just because the law requires it (which it does), but because you need the knowledge in order to perform your job as a notary. The Act is set out in this handbook for your convenience. All references to the Idaho Code in the explanatory portion of this handbook are included in the statutory extracts.

The terms "notary" and "notary public" will be used interchangeably throughout this handbook.

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APPOINTMENT PROCESS

Notaries are appointed by the Secretary of State for terms of six years. Each applicant for appointment must: (1) be at least 18 years old, (2) be a resident of or employed in the state of Idaho, (3) be able to read and write the English language, and (4) not have been removed from office for misconduct nor convicted of a serious crime within the last ten years. United States citizens and lawful resident aliens, may be appointed as notaries.

- 1) Complete the **application** form enclosed in the Notary Public Handbook. The applicant's signature must be notarized on the application.
- 2) Obtain a rubber stamp **seal** prior to submitting the application and bond with the Secretary of State's office. The seal may contain **ONLY** the words "Notary Public", "State of Idaho" and the notary public's name and **NOTHING MORE** (Sample seals are shown on page 29). Effective July 1, 1998 all new and renewing commissions shall obtain a rubber stamp seal.
- 3) Obtain from a bonding or surety company (Insurance Agency) a **\$10,000 notary bond** or obtain a bond from the Bureau of Risk Management if the applicant is regularly employed by the state of Idaho and the commission is required in the scope of that employment.
- 4) **\$30.00** filing fee. (As an officer of or an employee of a state, county, city or district you are exempt from the \$30.00 filing fee if the commission is used in the scope of your employment.)
- 5) Submit the completed application, signed bond and \$30.00 filing fee to the address listed below.

Submit all filings and fees to:

Secretary of State
PO Box 83720
700 W. Jefferson Street
Boise ID 83720-0080

Phone Number: 208 334-2300 or 332-2810
E-mail: dfarnsw@idsos.state.id.us
www.idsos.state.id.us

QUESTIONS AND ANSWERS

Are both my stamp and my signature required for a notarial transaction?

Yes. 51-106(3)I.C.

Whose signature can a notary notarize?

Anyone's but their own so long as there is no conflict of interest 51-108 I.C.

Where can a notary notarize?

Anywhere in Idaho and may be used outside the state only in connection with a deed or other writing to be recorded in Idaho 51-107(2) I.C.

Is a journal required?

No, only suggested.

Do I need to see the document signed in front of me?

No, the signer need not sign in the notary's presence, but must personally appear before the notary and unambiguously state that the signature on the document is his or hers and must show satisfactory identification 55-707 I.C. Case Notes: "Duties of Officer".

Is a "mark" acceptable as an individual's signature?

Yes, 73-114 I.C. Use a credible witness familiar with the signer. Have the credible witness write the marker's name by the mark. The credible witness will also sign as the witness. Have the credible witness sign the notary journal and make a special note if a journal is being used. You will be notarizing the "signer's mark".

What is satisfactory identification?

In most cases satisfactory identification would be a photo-bearing driver's license, military identification card, or passport. Something that shows a photo and a signature.

Must I be concerned with whether the form is filled out properly, as long as the notarial certificate is correct?

No, it is not the notary's responsibility to check that the document is properly filled out, but it is the notary's responsibility to

make sure the notarial certificate is correct and complete.

What is a notarial certificate?

There is a particular form of certificate for each type of notarial act 51-109 I.C. A signature and seal of the notary public without a notarial certificate is meaningless.

If the notarial certificate is not pre-printed on the document can I attach a separate sheet of paper with the notary certificate on it?

The notary may write or type the necessary certificate on the document. If there is no room at the bottom it can be put on the back of the document. If there is absolutely no room anywhere on the actual document to affix the notary certificate you may attach the certificate on a separate sheet of paper. This should only be done as a last resort.

What is Disqualifying Interests?

If the notary public is named as a party to the transaction or shares the same beneficial interest as a party to the transaction they should not notarize the document 51-108 I.C.

What is a Notary Public?

The courts define a notary public as "a public ministerial officer, and an impartial agent for the state".

May I refuse to notarize a document for someone?

The Notary Public law does not address this question specifically, however, since you are a public servant it could be considered discrimination and therefore unconstitutional to refuse notarizing a document without some basis.

What is the difference between a jurat and an acknowledgment?

A "jurat" is that part of an affidavit in which you, the notary, state that it was sworn to before you.

"Acknowledgment" means a declaration by a person that he or she has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that he or she signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein. 51-109 I.C.

Is it legal to certify a copy of a birth, death, or marriage certificate, or a decree of divorce, as being true and correct.

No. A notary can certify copies only of documents which cannot be obtained from a recorder or custodian of public documents. 51-107(c) I.C.

How is a notary's signature authenticated on a document for use in this country or overseas?

Authenticating a Notary Public's signature can be done **only** by the Secretary of State's office. The document that needs the certification attached must be submitted to the Secretary of State's office with the request for either a "Certification" or an "Apostille". If you are not sure which type you need only indicate the country that the documents will ultimately be sent to and this office will then make the determination as to which authentication certificate to use. The fee for each certification is \$10.00.

If I leave my current job and that employer paid for my becoming a notary, am I no longer a notary?

No, you are still a notary. However, be aware that the employer may cancel your bond, thus canceling your commission and you would be required to apply for a Notary commission again. **If you are a state employee and your bond has been obtained through the Bureau of Risk Management you are required to resign your commission upon termination of your state job.** If your employer does not allow you to take your stamp with you, you should ask that it be destroyed and you can purchase a new one. If you keep a journal it is the property of the notary. 51-113 I.C.

If I move out of state is my commission still valid?

No, once you have moved out of state you have 30 days to submit notice of resignation unless still employed in Idaho. 51-113(e) and 51-115(2) I.C.

Is a specific ink color required for the Notary stamp?

No, please keep in mind that the color should be one that will fax, copy or scan clearly.

What fees may I charge?

A Notary Public **may** charge a fee not to exceed \$2.00 per notarial act. 51-110 I.C. You may also be compensated for actual and

reasonable expense of travel .

Who is covered by my bond?

The surety bond required by the state protects the signer of the document and **not** the Notary Public. An Errors and Omissions policy can be purchased which would protect the Notary Public.

Is my expiration date required whenever I notarize a document?

Yes. 51-109(6)I.C.

If I change my name or address am I required to notify the Secretary of State's office?

Yes, once you have changed your name and/or address you have 60 days to submit written notice along with a \$5.00 filing fee. If your residence has not changed but you wish to change your mailing address only you may submit written notice specifying a change of mailing address only without a fee. 51-111(2)I.C.

What does the "ss" stand for on the Venue?

s.s. is the latin word "Scilicet" meaning "in particular" or "namely".

What is a Venue?

The definition of Venue is "The clause in an affidavit naming the locality where it was made and sworn to".

If I reside in one county and I am doing a notarial transaction in another county, what county do I indicate when it says "County of"?

You indicate the county in which you are actually doing that transaction. The only time you would indicate your county of residence is if the wording is specifically asking where you reside.

Is a test required to apply as a Notary Public?

No

What information is required on the Notary Public seal?

The only information allowed on the seal is the Notary Public's name. The words "State of Idaho" and the words "Notary Public". There can be no other information or graphics on the seal.

FUNCTIONS AND POWERS OF A NOTARY PUBLIC

There is no such thing as just a “notarization.” **The seal and signature of the notary without some sort of certificate are meaningless and of no value.** A notary performs specific types of notarial acts which are listed in section 51-107, I.C. There is a particular form of certificate for each type of notarial act, and a notary must know and use the proper form for the type of act he or she is requested to perform. It is not, however, the notary’s function to determine what type of notarial act is required with regard to a request for “notarization” of a document. A brief discussion of each type of notarial act and the related certificates follow.

Acknowledgment. The essence of taking an acknowledgment consists of positively **identifying the signer of a document.** The signer need not sign in the notary’s presence, but **must personally appear** before the notary and unambiguously state that the signature on the document is his or hers. The notary must be certain that the person who appears is in fact the person whose signature is on the document, either by personally knowing the signer, by the sworn identification of the signer by a person known to the notary, or by presentation by the signer of satisfactory identification such as a current photo-bearing driver’s license, military identification card, or passport. The requisites for taking an acknowledgment appear in section 55-707, I.C., which is set out in this handbook.

When a “husband and wife” appear before a notary to acknowledge a document such as a deed, the same degree of care is required in identifying each of them. One of the most common situations involving notary fraud is that of a husband conveying a community property without his wife’s knowledge by using an imposter to sign and acknowledge a deed in place of his wife. A notary should not, therefore, rely on a “husband’s” introduction as a means of identifying a “wife” when taking the “wife’s” acknowledgment.

When taking an acknowledgment, a notary must know in what capacity the signer acted in order to select the proper form of acknowledgment certificate. Sample forms for certificates of acknowledgment by an individual, a corporation, an attorney-in-fact, an official or fiduciary, a partnership, and by a governmental subdivision are set out at the back of the handbook.

Oath or affirmation. A notary may be called upon to administer an oath or affirmation to a person making a sworn statement either in writing or verbally. The difference between an oath and an affirmation is that an

oath (swearing) impliedly invokes a deity and an affirmation does not. The affirmation is used when the maker of a statement has religious or other objections to the use of an oath. Both forms are effective to invoke the perjury statute against the maker of a false statement.

When the statement is in writing, the notary shall, below the maker's signature, complete the oath or affirmation form (sometimes called a jurat) which appears in subsection (2) of section 51-109, I.C. by completing the form, the notary certifies: (1) that the maker personally appeared before the notary on the date and in the county indicated; (2) that the maker signed the statement in the notary's presence; and (3) that the notary administered the oath or affirmation to the maker.

On rare occasions, a notary may be asked to administer an oath or affirmation for a verbal statement. The language for the verbal oath, or affirmation appears in subsection (3) of section 51-109, I.C.

Verification. A verification is similar to an oath or affirmation, but is made on behalf of an entity other than an individual and includes a recitation of the authority of the signer to make the statement. The format for the verification certificate is set out in subsection (4) of section 51-109, I.C.

Certification of copies. The authority of a notary to certify copies is very limited, and great care should be taken not to exceed it. **A notary can certify copies only of documents which cannot be obtained from a recorder or custodian of public documents as indicated in section 51-107 subsection (c), I.C.** This means that a notary **cannot** certify copies of such things as birth certificates, deeds, marriage licenses, articles of incorporation, college or high school transcripts, military discharge papers, passports, or any other document, a certified copy of which can be obtained from an official custodian. In essence, the documents which a notary can certify include such things as his or her own notarial records, records of entities such as corporations or associations, and reports of nongovernmental bodies.

It is contrary to federal law to "print, photograph, or in any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any certificate of naturalization or any part thereof," the violation of which is made punishable by a very severe penalty. (Sec. 75, U.S. Penal Code, 18 U.S.C.A., Sec. 137.) Under this section, it is held by the Attorney General of the United States that the making of a typewritten copy of a naturalization certificate, whether for a legitimate purpose or for fraud, is prohibited by the statute. Notaries are warned, therefore, not to copy or notarize any certificate of naturalization.

Any persons requesting such service should be referred to an office of the Immigration and Naturalization Service for assistance.

When a notary certifies copies, he or she must take great care in several respects. The document of which the copy is made must be the original, not a copy; in other words, a notary cannot certify a copy of a copy of any kind. Before certifying the copy, the notary must make a careful page-for-page comparison of it with the original to ensure that it is complete and accurate. If the certification certificate cannot be put on the copy itself, it should be affixed to the copy by some permanent or semipermanent means such as a grommet or staple. The form for certification of copies is set out at subsection (5) of section 51-109, I.C.

Notation of commission expiration. No matter which form of written notarial act is performed, the notary's certificate **must be followed by** a notation of the **date of expiration** of his or her commission, as required by subsection (6) of section 51-109, I.C.

STANDARDS OF CARE

The new Act requires a notary to exercise reasonable care in the performance of his or her duties generally. However, with regard to the identification of a person whose acknowledgment is taken, the Act imposes on the notary a higher standard of care. (Section 51-111(1), I.C.) For his or her own protection, the notary should be able to show that the required standard of care was observed in each case. One way of establishing evidence of the exercise of the required degree of care is to keep a journal of notarial acts. Although a journal is not required by law, it could be used to relieve a notary from personal liability in a case where his or her negligence is alleged as the cause of a loss. The journal should include as a minimum the date of the notarial act, the name and signature of the person appearing before the notary and the type of act performed. It may also be useful to note the means of identification of the person who appeared and the type of document to which the notarial act pertained.

DISQUALIFYING INTERESTS

There are some instances when a notary cannot act due to a legal conflict of interest. These generally involves the requested notarization of a document where the signer and the notary share an interest in the transaction to which the document relates. For example, a wife could not

take her husband's acknowledgment on a deed conveying community property, because she shares her husband's interest in the property and the transaction. For another example, a partner in a business partnership could not take another partner's acknowledgment where the other partner is executing a contract on behalf of the partnership. In such cases, the notary is held to have a disqualifying interest.

If a notary performs a notarial act despite having a disqualifying interest in the transaction, it does not automatically invalidate the transaction. However, it does make the transaction subject to attack by a party whose interest is adverse to that shared by the notary and the person for whom he or she performed the notarial act. The criteria for disqualifying interest appear in section 51-108, I.C.

NOTARY FEES AND EXPENSES

A notary may, but is not required to, charge a fee of two dollars (\$2.00) or less for each notarial act performed. If a notary is required to travel to another location to perform the act, he or she may also be paid for the actual expenses of travel.

When a notary performs notarial acts in the scope of his or her employment, his or her employer may require the notary to provide the service without charge. However, the employer cannot require the notary to charge a fee and pass all or part of it on to the employer.

The limitations on notary fees appear in section 51-110, I.C.

REMOVAL FROM OFFICE

A notary may be involuntarily removed from office on a number of grounds. Most important of these is commission of an act of official misconduct, which is defined as "the wrongful exercise of a power or a wrongful performance of a duty" (Section 51-113, I.C.). The common types of notary misconduct include fraudulent or deceptive conduct, failure to exercise the required degree of care in identifying the signer of a document, misrepresenting his or her authority, the unauthorized practice of law, and charging an excessive fee. In addition to official misconduct, the grounds for removal from office include conviction of a serious crime within the past ten years, making a false statement in the application for appointment, mental incompetence, loss of residency, and cancellation of

the notary bond (Section 51-113, I.C.). The procedure for removal of a notary is set out in section 51-114, I.C.

RESIGNATION OR DEATH

A notary may voluntarily resign at any time simply by submitting a letter of resignation to the secretary of state. If a notary becomes ineligible to hold office, he or she must within thirty days submit a letter of resignation, or, if the notary is incompetent, his or her conservator or guardian must submit the letter. When a notary dies, his or her personal representative must give written notice of the death to the secretary of state within thirty days.

CIVIL LIABILITY

A notary is held personally liable for all damages proximately caused by his or her official misconduct (Section 51-118(1), I.C.). It is a common misconception that the notary bond protects the notary against such liability. Nothing could be further from the truth, however. The bond gives protection only to the person who is damaged by the notary's misconduct. The bonding company then recovers its loss from the notary. For that reason, it may be advisable for notaries to carry errors and omissions (E & O) insurance to protect them from personal liability for acts of negligence, whether or not they amount to official misconduct. E & O coverage is quite inexpensive.

In addition to the notary, the notary's employer may be held jointly and severally liable for damages resulting from the notary's official misconduct in some cases (Section 51-118(2), I.C.). The employer will be held liable if the notary was acting in the scope of his or her employment and the employer knew or should have known of the notary's misconduct. This provision is intended to cover the all too common case of an employer ordering an employee notary to notarize a document about which the notary has no personal knowledge.

CRIMINAL PENALTIES

If a notary knowingly and willfully commits an act of official misconduct, he or she is guilty of a misdemeanor and may be punished

accordingly. The same is true of an employer who willfully induces a notary in his or her employ to commit an act of official misconduct. These and other notary-related crimes are set out in section 51-119, I.C.

CONCLUSION

The general watchword of a notary should be "Caution." Questions should be resolved by reference to the law, not by instinct or a desire to be helpful. Any doubts about whether to perform a requested notarial act should be resolved in favor of not acting. A notary must exercise particular care in identifying a person whose acknowledgment he or she takes. Remember that if you fail to exercise due care as a notary and someone suffers a loss as a result, it is your pocketbook that will be lightened.

Be sure to read the Act now to become familiar with it. Keep it with your notary seal, and refer to it as necessary.

**TITLE 51, CHAPTER 1
IDAHO NOTARY PUBLIC ACT**

51-101. SHORT TITLE. — This chapter may be cited as the “Idaho Notary Public Act.”

51-102. DEFINITIONS. As used in this chapter:

- (1) The masculine gender includes the feminine.
- (2) “Notarial act” means any official act performed by a notary public under provisions of section 51-107, Idaho Code.
- (3) “Resident” means a natural person who has fixed his habitation in the state of Idaho and who, whenever absent, intends to return to that place of habitation in Idaho.
- (4) “Serious crime” includes any felony and any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, the unauthorized practice of law, deceit, bribery, extortion, misappropriation, theft, or an attempt, a conspiracy or the solicitation of another to commit a serious crime.
- (5) “Affidavit” means a declaration in writing, under oath, and sworn to or affirmed by the declarant before a person authorized to administer oaths.
- (6) “Verification” means an affidavit of the truth of the facts stated in the instrument to which it relates.

51-103. POWER OF APPOINTMENT - TERM - REAPPOINTMENT. (1) The secretary of state shall appoint in and for the state of Idaho as many notaries public as he shall deem necessary.

(2) Each notary public so appointed shall serve for a term of six (6) years except as otherwise provided in this chapter.

(3) A notary public may be reappointed upon submission of a new application not earlier than ninety (90) days prior to the expiration of his term.

51-104. QUALIFICATION FOR APPOINTMENT. — Each person appointed and commissioned as a notary public;

- (1) Shall be at least eighteen (18) years of age;
- (2) Shall be a resident of the state of Idaho or a nonresident who is employed in or doing business in the state of Idaho;
- (3) Must be able to read and write the English language; and
- (4) Must not have been removed from the office of notary public for official misconduct nor have been convicted of a serious crime as

defined in section 51-102, Idaho Code, within the ten (10) year period immediately preceding his appointment nor be serving a sentence for conviction of a serious crime, without regard to when convicted.

51-105. APPOINTMENT PROCEDURE - OATH. — (1) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application shall include such information as the secretary of state shall deem proper and shall include that the applicant:

- (a) Is at least eighteen (18) years of age;
- (b) Is a resident of the state of Idaho or a nonresident who is employed in or doing business in the state of Idaho;
- (c) Is able to read and write the English language; and
- (d) Has not been convicted of a serious crime nor removed from office for official misconduct during the immediately preceding ten (10) year period.

The applicant shall also take the following oath, which shall appear on the application form:

“I, _____, solemnly swear (or affirm) that the answers to all questions in this application are true, complete and correct; that I have carefully read the notary laws of this State and I am familiar with their provisions; that I will uphold the Constitution of the United States and the Constitution and laws of the State of Idaho; and that I will faithfully perform, to the best of my ability, the duties of the office of notary public.”

The oath shall be signed and sworn to (or affirmed) by the applicant in the presence of a notary public or other person authorized to administer oaths in this state.

(2) Each person to be appointed a notary public shall execute and append to the application a bond to the state of Idaho in the amount of ten thousand dollars (\$10,000.00). The surety which provides the bond shall be:

- (a) A bonding or surety company authorized to do business in this state; or
- (b) The bureau of risk management for the state of Idaho if the applicant is regularly employed by the state and the commission is required in the scope of that employment.

51-106. SEAL. — (1) Each notary public whose current commission became effective prior to July 1, 1998, shall provide and keep an official seal which shall conform to one of the following configurations:

- (a) A seal embosser engraved with the words “Notary Public”, the notary public’s name, and the words “State of Idaho.”
- (b) A rubber stamp with a serrated or milled edge border in

rectangular or circular form, which contains the same information required for the seal embosser.

(2) Each notary public whose current commission became effective on or after July 1, 1998, shall provide and keep an official seal which shall be a rubber stamp with a serrated or milled edge border in a rectangular or circular form, which includes the words "Notary Public", the notary public's name, the words "State of Idaho", and nothing more.

(3) The seal shall be impressed below or near the notary public's official signature on each notary certificate which he administers.

51-107. POWERS AND JURISDICTION. — (1) Each notary public is empowered to:

- (a) Take acknowledgments;
- (b) Administer oaths and affirmations;
- (c) Certify that a copy of an original document is a true copy thereof, only if a certified copy of such original cannot be obtained from an official custodian of such document;
- (d) Certify affidavits (to include verifications) or depositions of witnesses; and
- (e) Perform such other acts as may be specifically permitted by law.

(2) The powers of a notary public commissioned pursuant to the provision of this chapter may be exercised anywhere within the state of Idaho and may be exercised outside the state only in connection with a deed or other writing to be admitted to record in the state of Idaho.

51-108. DISQUALIFYING INTERESTS. — (1) As used in this section, the term "transaction" shall not include judicial proceedings.

(2) A notary public who has a disqualifying interest, as hereinafter defined, in a transaction may not legally perform any notarial act in connection with the transaction.

(3) For the purposes of this chapter, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he is named as a party to the transaction or shares the same beneficial interest as a party to the transaction.

(4) Neither the notary public nor any party sharing the same beneficial interest as the notary public in the transaction may raise the issue of disqualifying interest in an attempt to invalidate the transaction. The issue of disqualifying interest may not be raised between parties neither of whom shares the same beneficial interest as the notary public.

51-109. FORMS FOR NOTARIAL ACTS. — (1) Certificates of acknowledgment shall substantially conform to the forms set forth in section 55-710 through 55-715, Idaho Code.

(6) On each notary certificate, the notary public shall immediately following his signature state the date of the expiration of his commission in substantially the following form:

“My commission expires on _____, 19__ ”

51-110. NOTARY FEE. — (1) A notary public may, for any notarial act, charge a fee not to exceed two dollars (\$2.00).

(2) In addition to the fee, a notary public may be compensated for actual and reasonable expense of travel to a place where a notarial act is to be performed.

(3) An employer shall not require a notary public in his employment to surrender to him a fee, if charged, or any part thereof. An employer may, however, preclude such notary public from charging a fee for a notarial act performed in the scope of his employment.

51-111. DUTIES. — (1) Each notary public shall exercise reasonable care in the performance of his duties generally, and shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial act.

(2) Any notary public whose name or residence changes during his term of office shall within sixty (60) days after such change submit written notice thereof to the secretary of state.

51-112. OFFICIAL MISCONDUCT. — Official misconduct is the wrongful exercise of a power or the wrongful performance of a duty. In this context, wrongful shall mean unauthorized, unlawful, abusive, negligent, or reckless. Official misconduct by a notary public shall include, but not be limited to:

(a) Engaging in any fraudulent or deceptive conduct which is related in any way to his capacity as a notary public;

(b) Failure to exercise the required degree of care in identifying a person whose identity is an essential element of a notarial act;

(c) Representing or implying by the use of his title that he has qualifications, powers, duties, rights, or privileges that by law he does not possess;

(d) Engaging in the unauthorized practice of law;

(e) Charging a fee for a notarial act which is in excess of that provided by section 51-110, Idaho Code; or

(f) Endorsing or promoting any product, service, contest or other offering if the notary public's title or seal is used in the endorsement or promotional statement.

51-113. GROUNDS FOR REMOVAL. — A notary public may be removed from the office upon any of the following grounds:

(a) Conviction of a serious crime within the immediately preceding

ten (10) year period;

- (b) Any action which constitutes official misconduct;
- (c) Any material misstatement of fact in his application for appointment as a notary public;
- (d) Failure of a conservator or guardian to submit a timely resignation after a notary public becomes incompetent;
- (e) Failure of a notary public to submit a timely resignation when he becomes disqualified by virtue of no longer: (1) being a citizen of the United States; or (2) being a resident of Idaho;
- (f) Cancellation of the notary bond by the bonding or surety company; or
- (g) Cancellation of the notary bond by the state of Idaho when the notary public's bond has been provided by the bureau of risk management of the state of Idaho and the notary's employment with the state is terminated.

51-114. REMOVAL PROCEDURE. — (1) If a notary public is convicted of a serious crime in any court of this state, the clerk of the court, if he knows that the convict is a notary public or upon the request of any person, shall forward to the secretary of state a certified copy of the judgment of conviction. If a notary public is convicted of a serious crime in a federal court or a court of another state, any person may obtain a certified copy of the judgment of conviction and forward it to the secretary of state. Upon receipt of a certified copy of a judgment of conviction of a serious crime in the preceding ten (10) year period, the secretary of state shall forthwith cancel the commission of the notary public.

(2) If in any civil or criminal case the court finds that a notary public has committed any act which constitutes official misconduct under section 51-112, Idaho Code, the clerk of the court, upon the request of any person, shall forward a certified copy of the findings of fact, or relevant extract therefrom, to the secretary of state. Upon receipt of the certified copy of the findings of fact or extract therefrom the secretary of state shall, if he finds that the act of the notary public as found by the court constitutes official misconduct, forthwith cancel the commission of the notary public.

(3) Upon receipt of proof on the public record of a material misstatement of fact in the application of a notary public, certified by the custodian of such record, the secretary of state shall forthwith cancel the commission of the notary public.

(4) If the conservator or guardian of a notary public who has been adjudged incompetent fails to submit a timely resignation as required by

subsection (3) of section 51-115, Idaho Code, the clerk of the court which found the notary public to be incompetent shall, upon the request of any person, forward to the secretary of state a certified copy of the order adjudging the notary to be incompetent. Upon receipt of such order, the secretary of state shall forthwith cancel the commission of the notary public.

(5) If the secretary of state receives credible information that a notary public is no longer a resident of Idaho or employed in or doing business in the state of Idaho, the secretary of state shall send to the notary public at his last known address by certified return receipt mail a statement setting forth such information and a notice of opportunity to rebut. If the statement and notice cannot be delivered or if no rebuttal is received within forty-five (45) days after mailing the notice, the secretary of state shall cancel the commission of the notary public. If the statement is rebutted by statements which indicate that the notary public is not disqualified on residency, business, or employment grounds, the secretary of state shall take no further action.

(6) A bonding or surety company, or in the case of a state employee, the bureau of risk management, shall file prompt written notice of cancellation of a notary's bond with the secretary of state who shall forthwith cancel the commission of the notary public. The cancellation of the bond shall be effective only upon receipt by the secretary of state of notice of cancellation.

51-115. RESIGNATION OR DEATH. — (1) A notary public may voluntarily resign by mailing or delivering to the secretary of state a letter of resignation.

(2) Any notary public who becomes ineligible to hold such office for any reason shall within thirty (30) days thereafter resign by mailing or delivering to the secretary of state a letter of resignation.

(3) If a notary public becomes incompetent, his conservator or guardian shall within thirty (30) days after the finding of incompetency mail or deliver to the secretary of state a letter of resignation on behalf of the notary public.

(4) If a notary public dies in office, his personal representative shall within thirty (30) days thereafter mail or deliver to the secretary of state notice thereof.

(5) Upon receipt of a letter of resignation or notice of death, the secretary of state shall forthwith cancel the commission of the notary public.

51-116. CANCELLATION PROCEDURE. — Whenever the secretary of state is required by the provisions of section 51-114 and 51-115, Idaho Code, to cancel the commission of a notary public, he shall:

- (a) Mark the notary public's record "cancelled" and append thereto the supporting document; and
- (b) Mail written notice to the resigned or removed notary public or to the conservator, guardian, or personal representative, as appropriate, instructing him to destroy the notary public commission and seal.

51-117. CONDITIONS IMPAIRING VALIDITY OF NOTARIAL ACT. — Without excluding other conditions which may impair the validity of a notarial act, the following conditions invalidate the notarial act:

- (a) Failure of the notary public to require a person whose acknowledgment is taken to personally appear before him;
- (b) Failure of the notary public to administer an oath or affirmation when the notary certificate indicates that he has administered it;
- (c) As to only the notary public who performs the notarial act and any party who shares the same beneficial interest in the transaction, the existence of a disqualifying interest.

51-118. CIVIL LIABILITY OF NOTARY PUBLIC AND EMPLOYER. — (1) A notary public shall be liable for all damages proximately caused by his official misconduct.

(2) The employer of a notary public shall be jointly and severally liable with such notary public for all damages proximately caused by the official misconduct of such notary public if:

- (a) The notary public was acting within the scope of his employment; and
- (b) The employer had actual knowledge of, or reasonably should have known of, the notary public's official misconduct.

51-119. CRIMINAL PENALTIES. — (1) Any notary public who knowingly and willfully commits an act of official misconduct under the provision of section 51-112, Idaho Code, shall be guilty of a misdemeanor.

(2) Any employer of a notary public who willfully induces such notary public to commit an act of official misconduct under the provision of section 51-112, Idaho Code, shall be guilty of a misdemeanor.

(3) Any person who shall willfully act as or otherwise impersonate a notary public while not lawfully commissioned as such nor otherwise officially authorized to perform notarial acts shall be guilty of a misdemeanor.

(4) Any person who shall steal or wrongfully possess a notary public's seal with the intent to use it in the commission of any crime shall be guilty of a felony.

(5) The penalties prescribed in this section shall not be exclusive.

51-120. NOTARY HANDBOOK. — The secretary of state shall prepare a handbook for notaries public which shall contain the provisions of this chapter and such other information as the secretary of state shall deem proper. A copy of the handbook shall be given to each applicant for appointment as a notary public.

51-121. FILING FEES. — The fee for filing an application for appointment as a notary public shall be thirty dollars (\$30.00).

(2) There shall be no fee charged for filing a letter of resignation, a certified copy of a judgment of conviction, a certified copy of findings of fact or extract therefrom, public record of proof of material misstatement of fact in an application, certified copy of order adjudging incompetency, or notice of death.

(3) The fee for filing notice of change of name or address, shall be five dollars (\$5.00).

(4) The fee for filing notice of cancellation of a notary bond shall be five dollars (\$5.00).

51-122. SEVERABILITY. — If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional.

**Selected sections of
TITLE 55, CHAPTER 7
ACKNOWLEDGMENTS**

55-701. BY WHOM TAKEN - ANY PLACE WITHIN STATE. —

The proof or acknowledgment of an instrument may be made at any place within this state, before a justice or clerk of the Supreme Court, or a notary public, of the secretary of state, or United States commissioner.

55-705. BY WHOM TAKEN - MEMBERS OF THE ARMED

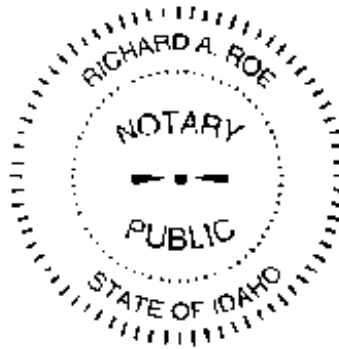
FORCES. — Any officer of any component of any branch of the armed forces of the United States as may be designated to take a deposition, shall have the general powers of a notary public in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents and all other forms of notarial acts to be executed by persons in any of the armed forces of the United States or subject to military or naval law and/or their wives and/or dependents.

Such an acknowledgment or oath, whether heretofore or hereafter so taken within or without the state of Idaho or the United States and whether with or without seal or stamp, shall have the same force and effect as an acknowledgment or oath before a notary public duly commissioned by and residing in the state of Idaho. Recital in the certificate of such officer that he holds the office stated in the certificate and that the affiant is a member of the armed forces or subject to military or naval law, or wife or dependent of such member, shall be prima facie evidence of such facts.

55-707. REQUISITES OF ACKNOWLEDGMENT. —

The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence from a credible source, that the person making such acknowledgment is the individual who is described in, and who executed, the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or vice president or secretary or assistant secretary of such corporation; or other person who executed on its behalf; or if executed in the name of the state of Idaho or that of any county, political subdivision, municipal or quasi-municipal or public corporation, that the person making such acknowledgment is one (1) of its officers executing the same; or if executed in a partnership name, that the person making the acknowledgment is the partner or one (1) of the partners subscribing the partnership name to such instrument; or, if executed by a limited liability company, that the person making such acknowledgment is a manager or member of such limited liability company or other person who executed on its behalf.

SAMPLE SEALS





STATE OF IDAHO
APPLICATION FOR APPOINTMENT AS NOTARY PUBLIC

PLEASE READ CAREFULLY AND COMPLETE ALL ITEMS.
FAILURE TO COMPLETE THE ENTIRE FORM WILL CAUSE REJECTION OF YOUR APPLICATION.
Mail to: Secretary of State, Notary, P.O. Box 83720, Boise, Idaho 83720-0080.

I, _____, hereby apply for appointment to a commission as Notary Public for the State of Idaho. I make the following statements in support of the application:

- (1) I am on this date at least eighteen (18) years of age.
(2) My gender is Male [] Female [] (check appropriate box).
(3) Former Name (if you have previously been commissioned in Idaho under another name): _____
(4) Have you previously been commissioned in Idaho?: No [] Yes [] If so, what is the file number _____
(5) I reside at:

(Street Address)
(City) (State) (Zip Code) (Day Time Phone Number)

(6) If I am not a resident of Idaho, I am employed or doing business in Idaho at _____ (Name of Business)
(Street Address) (City) (State) (Zip Code)

(7) The mailing address to which the certificate should be sent (if different from (5)) is
(Street Address or PO Box) (City) (State) (Zip Code)

(8) Name, address and phone number of insurance agency writing the new notary bond: _____ (Name of Agency)
(Street Address or PO Box) (City) (State) (Zip Code) (Phone Number)

(9) Name of bonding company and bond number for new bond: _____ (Name of Bonding Company) (Bond Number)

- (10) I am able to read and write the English language.
(11) I have not been convicted of a serious crime nor removed from the office of Notary Public for official misconduct within the past ten (10) years.

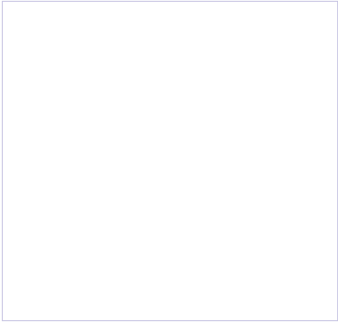
NOTE: If the applicant cannot truthfully make the statements in Items (1), (6), (10), and (11) above, he or she is ineligible to hold the office of Notary Public, and should proceed no further with this application.

APPLICANT: Affix specimen of your seal here
(Rubber Stamp Seal can be purchased from office supply, stationery or stamp company)

OATH OF OFFICE

I _____, solemnly swear (or affirm) that the answers to all questions in this application are true, complete and correct; that I have carefully read the notary laws of this State and I am familiar with their provisions; that I will uphold the Constitution of the United States and the Constitution and laws of the State of Idaho; and I will faithfully perform, to the best of my ability, the duties of the office of Notary Public.

Applicant signature
State of Idaho)
County of _____) ss
Subscribed and sworn (or affirmed) before me
this ____ day of _____, 20__
Notary Public signature
My commission expires on _____, 20__



FOR SECRETARY OF STATE'S OFFICE USE ONLY

DETACH AND RETURN THIS FORM ALONG WITH
THE \$30.00 FILING FEE AND ORIGINAL NOTARY BOND.