

IDAHO STATUTES

TITLE 28. COMMERCIAL TRANSACTIONS CHAPTER 50. UNIFORM ELECTRONIC TRANSACTIONS ACT

28-50-111. NOTARIZATION AND ACKNOWLEDGMENT. —

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

[28-50-111, added 2000, ch. 286, sec. 1, p. 964.]

TITLE 31. COUNTIES AND COUNTY LAW CHAPTER 29. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

31-2903. VALIDITY OF ELECTRONIC DOCUMENTS. (1) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(2) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(3) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

[31-2903, added 2007, ch. 63, sec. 1, p. 155.]

TITLE 51. NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS CHAPTER 1 REVISED UNIFORM LAW ON NOTARIAL ACTS

51-101. SHORT TITLE.

This chapter shall be known and may be cited as the “Revised Uniform Law on Notarial Acts (2018).”

[51-101, added 2017, ch. 192, sec. 3, p. 441; am. 2019, ch. 160, sec. 2, p. 521.]

51-102. DEFINITIONS.

As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(3) “Electronic signature” means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) “In a representative capacity” means acting as:

- (a) An authorized officer, agent, partner, trustee or other representative for a person that is not an individual;
 - (b) A public officer, personal representative, guardian or other representative, in the capacity stated in a record;
 - (c) An agent or attorney in fact for a principal; or
 - (d) An authorized representative of another in any other capacity.
- (5) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.
- (6) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.
- (7) “Notary public” means an individual commissioned to perform a notarial act by the secretary of state.
- (8) “Official stamp” means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.
- (9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal entity.
- (10) “Personal appearance” or “appear personally” means the notarial officer is physically close enough to see, hear, communicate with and receive identification documents from the individual seeking notarization and any required witness.
- (11) “Record” means information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (12) “Sign” means, with present intent to authenticate or adopt a record by:
- (a) Executing or adopting a tangible symbol; or
 - (b) Attaching to or logically associating with the record an electronic symbol, sound or process.
- (13) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.
- (14) “Stamping device” means:
- (a) A physical device capable of affixing to a tangible record an official stamp; or
 - (b) An electronic device or process capable of attaching or logically associating an official stamp with an electronic record.
- (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
- (16) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

[51-102, added 2017, ch. 192, sec. 3, p. 441.]

51-103. APPLICABILITY.

This chapter applies to a notarial act performed on or after the effective date of this act.

[51-103, added 2017, ch. 192, sec. 3, p. 442.]

51-104. AUTHORITY TO PERFORM NOTARIAL ACT.

(1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notary public may not perform a notarial act with respect to a record to which the notary public or the notary public's spouse is a party, or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

[51-104, added 2017, ch. 192, sec. 3, p. 442; am. 2019, ch. 160, sec. 3, p. 521.]

51-105. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.

(1) A notary public who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notary public who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(3) A notary public who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and signing the record has the identity claimed.

(4) A notary public who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(5) A notary public who makes or notes a protest of a negotiable instrument shall determine the matters set forth in section 28-3-505(2), Idaho Code.

[51-105, added 2017, ch. 192, sec. 3, p. 443.]

51-106. PERSONAL APPEARANCE REQUIRED.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notary public.

[51-106, added 2017, ch. 192, sec. 3, p. 443.]

51-107. IDENTIFICATION OF INDIVIDUAL.

(1) A notary public has personal knowledge of the identity of an individual appearing before the notary public if the individual is personally known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notary public has satisfactory evidence of the identity of an individual appearing before the notary public if the notary public can identify the individual:

(a) By means of:

(i) A passport, driver's license or government-issued nondriver identification card that is current or expired not more than three (3) years before performance of the notarial act; or

(ii) Another form of government identification issued to an individual that is current or expired not more than three (3) years before performance of the notarial act, that contains the signature or a photograph of the individual, and that is satisfactory to the notary public; or

(b) By a verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of a passport, driver's license or government issued nondriver identification card that is current or expired not more than three (3) years before performance of the notarial act.

(3) A notary public may require an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

[51-107, added 2017, ch. 192, sec. 3, p. 443.]

51-108. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT.

(1) A notary public may refuse to perform a notarial act if the notary public is not satisfied that:

(a) The individual executing the record is competent or has the capacity to execute the record; or

(b) The individual's signature is knowingly and voluntarily made.

(2) A notary public may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

[51-108, added 2017, ch. 192, sec. 3, p. 443.]

51-109. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notary public to sign the individual's name on the record. The notary public shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

[51-109, added 2017, ch. 192, sec. 3, p. 444.]

51-110. NOTARIAL ACT IN THIS STATE.

(1) A notarial act may be performed in this state by:

(a) A notary public of this state; or

(b) Any other individual authorized to perform the specific act by the law of this state.

(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notary public described in subsection (1)(a) or (b) of this section conclusively establish the authority of the officer to perform the notarial act.

[51-110, added 2017, ch. 192, sec. 3, p. 444.]

51-111. NOTARIAL ACT IN ANOTHER STATE.

(1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notary public of this state if the act performed in that state is performed by:

(a) A notary public of that state;

(b) A judge, clerk or deputy clerk of a court of that state; or

(c) Any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) or (b) of

this section conclusively establish the authority of the officer to perform the notarial act. [51-111, added 2017, ch. 192, sec. 3, p. 444.]

51-112. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY RECOGNIZED INDIAN TRIBE.

(1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notary public of this state if the act performed in the jurisdiction of the tribe is performed by:

- (a) A notary public of the tribe; or
- (b) Any other individual authorized by the law of the tribe to perform the notarial act.

(2) The signature and title of an individual performing a notarial act under the authority and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) or (b) of this section conclusively establish the authority of the officer to perform the notarial act. [51-112, added 2017, ch. 192, sec. 3, p. 444.]

51-113. NOTARIAL ACT UNDER FEDERAL AUTHORITY.

(1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notary public of this state if the act performed under federal law is performed by:

- (a) A judge, clerk or deputy clerk of a court;
- (b) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (c) An individual designated as a notarizing officer by the United States department of state for performing notarial acts overseas; or
- (d) Any other individual authorized by federal law to perform the notarial act.

(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of an officer described in subsection

(1)(a), (b) or (c) of this section conclusively establish the authority of the officer to perform the notarial act.

[51-113, added 2017, ch. 192, sec. 3, p. 444.]

51-114. FOREIGN NOTARIAL ACT.

(1) As used in this section, “foreign state” means a government other than the United States, a state or a federally recognized Indian tribe.

(2) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notary public of this state.

(3) If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(4) The signature and official stamp of an individual holding an office described in subsection (3) of this section are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(5) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(6) A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

[51-114, added 2017, ch. 192, sec. 3, p. 445.]

§ 51-114A. NOTARIAL ACT PERFORMED BY REMOTELY LOCATED INDIVIDUAL.

(1) As used in this section:

(a) “Communication technology” means an electronic device or process that:

(i) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(ii) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(b) “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(c) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(e) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual may comply with the provisions of section 51-106, Idaho Code, by appearing before a notary public by means of communication technology.

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(i) Has personal knowledge under section 51-107(1), Idaho Code, of the identity of the individual;

(ii) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under section 51-107(2), Idaho Code, or under this section; or

(iii) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two (2) different types of identity proofing.

(b) The notary public is able reasonably to confirm the record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(c) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(d) For a remotely located individual located outside the United States:

(i) The record:

1. Is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or

2. Involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and

(ii) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(4) If a notarial act is performed under this section, the certificate of notarial act required by section 51-115, Idaho Code, and the short form certificate provided in section 51-116, Idaho Code, must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in section 51-116, Idaho Code, for a notarial act subject to this section is sufficient if it:

(a) Complies with rules adopted under subsection (8)(a) of this section; or

(b) Is in the form provided by section 51-116, Idaho Code, and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(6) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public, shall retain the audio-visual recording created under subsection (3)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. The recording must be retained for at least ten (10) years after the recording is made or as otherwise required by rule adopted under subsection (8)(d) of this section.

(7) Before a notary public performs the notary public’s initial notarial act under this section, the notary public shall notify the secretary of state that the notary public will be performing notarial acts facilitated by communication technology and identify the technology. If the secretary of state has established standards for approval of communication technology or identity proofing under subsection (8) of this section and section 51-127, Idaho Code, the communication technology and identity proofing must conform to the standards.

(8) In addition to adopting rules under section 51-127, Idaho Code, the secretary of state shall adopt rules under this section regarding performance of a notarial act. The rules:

(a) Shall prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(b) Shall establish standards for communication technology and identity proofing;

(c) May establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(d) May establish standards and a period for the retention of an audio-visual recording created under subsection (3)(c) of this section.

(9) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the national association of secretaries of state;

(b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(c) The views of governmental officials and entities and other interested persons.

[51-114A, added 2019, ch. 160, sec. 4, p. 521.]

51-115. CERTIFICATE OF NOTARIAL ACT.

(1) A notarial act must be evidenced by a certificate. The certificate must:

- (a) Be executed contemporaneously with the performance of the notarial act;
- (b) Be signed and dated by the notary public;
- (c) Identify the jurisdiction in which the notarial act is performed; and
- (d) Indicate the date of expiration, if any, of the notary public’s commission.

(2) If a notarial act regarding a tangible or electronic record is performed by a notary public, an official stamp must be affixed to the certificate.

(3) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) of this section and:

- (a) Is in a short form set forth in section 51-116, Idaho Code;
- (b) Is in a form otherwise permitted by the law of this state;
- (c) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(d) Sets forth the actions of the notary public and the actions are sufficient to meet the requirements of the notarial act as provided in sections 51-105, 51-106 and 51-107, Idaho Code, or law of this state other than this chapter.

(4) By executing a certificate of a notarial act, a notary public certifies that the notary public has complied with the requirements and made the determinations specified in sections 51-105, 51-106 and 51-107, Idaho Code.

(5) A notary public may not affix the notary public’s signature to, or logically associate it with, a certificate until the notarial act has been performed.

(6) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to section 51-127, Idaho Code, for attaching, affixing or logically associating the certificate, the process must conform to the standards.

[51-115, added 2017, ch. 192, sec. 3, p. 445.]

51-116. SHORT FORM CERTIFICATES.

The following short form certificates of notarial acts are sufficient for the purposes indicated if completed with the information required by section 51-115(1) and (2), Idaho Code:

(1) For an acknowledgment in an individual capacity:

State of _____

County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

Signature of notary public

(Stamp)

My commission expires: _____

(2) For an acknowledgment in a representative capacity:

State of _____

County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

as _____ (type of authority, such as officer or trustee) of
_____ (name of party on behalf of whom record was executed)

Signature of notary public
(Stamp)

My commission expires: _____

(3) For a verification on oath or affirmation:

State of _____

County of _____

Signed and sworn to (or affirmed) before me on _____ by _____
Date Name(s) of individual(s)
making statement

Signature of notary public
(Stamp)

My commission expires: _____

(4) For witnessing or attesting a signature:

State of _____

County of _____

Signed (or attested) before me on _____ by _____
Date Name(s) of individual(s)

Signature of notary public
(Stamp)

My commission expires: _____

(5) For certifying a copy of a record:

State of _____

County of _____

I certify that this is a true and correct copy of a record in the possession of _____

Dated _____

Signature of notary public
(Stamp)

My commission expires: _____

(6) If the notarial act is performed on behalf of a remotely located individual and utilizing communication technology under section 51-114A, Idaho Code, the certificates in this section shall include a statement substantially as follows: “This notarial act involved the use of communication technology.”

[51-116, added 2017, ch. 192, sec. 3, p. 446; am. 2019, ch. 160, sec. 5, p. 523.]

51-116A. ACKNOWLEDGMENT BY ENTITY ON BEHALF OF ANOTHER ENTITY.

(1) As used in this section:

(a) A corporation, partnership, limited liability company, trust or other legal entity that is the party executing an instrument and the party, or one of the parties, to be bound thereby shall be referred to as the “maker” of the instrument;

(b) A corporation, partnership, limited liability company, trust or other legal entity that is a partner, manager, member, trustee or other authorized representative of the maker shall be referred to as the “constituent entity” of the maker;

(c) The natural person who signs the written instrument as an officer, partner, manager, member, trustee or other authorized representative of the constituent entity shall be referred to as the “signer”; and

(d) An acknowledgment of an instrument executed by a maker acting through a constituent entity shall be referred to as a “compound acknowledgment.”

(2) A compound acknowledgment of an instrument shall be made in a form that substantially conforms to the statutory form of acknowledgment for an entity of the same legal form as either the maker or the constituent entity; provided, however, that any acknowledgment that satisfies the requirements of subsection

(3) of this section shall suffice.

(3) A compound acknowledgment shall:

(a) Identify the signer;

(b) State the signer’s official title, capacity or authority to sign on behalf of the constituent entity, or recite that the signer is authorized to sign on behalf of the constituent entity;

(c) Identify the constituent entity or constituent entities;

(d) Recite the constituent entity’s official title, capacity or authority to act on behalf of the maker, or the relationship of the constituent entity to the maker, or the position the constituent entity holds in or with the maker, or that the constituent entity is authorized to act on behalf of the maker; and

(e) Identify the maker.

(4) As an example only, a compound acknowledgment for a maker that is a partnership, acting through a constituent entity that is a corporation, may take the following form:

STATE OF _____
_____) ss.

COUNTY OF _____

On this ___ day of _____, _____, before me, _____, a Notary Public in and for said State, personally appeared _____ (signer), known or identified to me (or proved to me on the oath of _____) to be the (officer title) of _____ (constituent entity) a corporation, one of the partners in the partnership of (maker), a partnership, and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the within instrument on behalf of said corporation, and that such corporation executed the same in said partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
My commission expires _____
[51-116A, added 2017, ch. 192, sec. 3, p. 448.]

51-117. OFFICIAL STAMP.

The official stamp of a notary public:

(1) Must include the notary public’s name, the words “Notary Public,” the words “State of Idaho,” and the notary’s state-issued commission number;

(2) Must include a serrated or milled-edge border in a rectangular or circular form;

(3) May include the words “my commission expires:” followed by the notary’s current commission expiration date;

(4) Must be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated; and

(5) May not include anything more than that which is allowed in subsections (1) through (3) of this section.

[51-117, added 2017, ch. 192, sec. 6, p. 453; am. 2018, ch. 77, sec. 1, p. 174.]

51-118. STAMPING DEVICE.

(1) The stamping device for tangible records must be an inked stamp that provides an image of the notary's official stamp that meets the requirements of section 51-117, Idaho Code, and that is readily visible upon copying. The stamp shall not exceed two and one-fourth (2.25) inches by one (1) inch if rectangular or one and three-fourths (1.75) inches in diameter if circular.

(2) The stamping device for electronic records must be an electronic device or process that provides an image of the notary's official stamp that meets the requirements of section 51-117, Idaho Code, and that is readily visible upon copying.

(3) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(4) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall promptly notify the commissioning officer or agency on discovering that the device is lost or stolen.

[51-118, added 2017, ch. 192, sec. 7, p. 453; am. 2018, ch. 77, sec. 2, p. 174.]

51-119. [RESERVED.]

[51-119, added 2017, ch. 192, sec. 3, p. 449.]

§ 51-120. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC RECORD -- SELECTION OF TECHNOLOGY -- ACCEPTANCE OF TANGIBLE COPY OF ELECTRONIC RECORD.

(1) A notary public may select one (1) or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to section 51-127, Idaho Code, the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

(3) A recorder shall accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

[51-120, added 2017, ch. 192, sec. 3, p. 449; am. 2019, ch. 160, sec. 6, p. 525.]

51-121. COMMISSION AS NOTARY PUBLIC QUALIFICATIONS NO IMMUNITY OR BENEFIT--REAPPOINTMENT.

(1) An individual qualified under subsection (2) of this section may make application to the secretary of state for a commission as a notary public. The application shall be in a form and manner prescribed by the secretary of state and shall include an oath of office to be taken by the applicant. The applicant shall comply with and provide the information required by the secretary of state and pay any application fee.

(2) An applicant for a commission as a notary public must:

- (a) Be at least eighteen (18) years of age;
- (b) Be a citizen or permanent legal resident of the United States;
- (c) Be a resident of or have a place of employment or place of practice in this state; and
- (d) Be able to read and write.

(3) At the time of submitting the application, the applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of ten thousand dollars (\$10,000).

(a) The assurance must be issued by:

- (i) A surety or other entity licensed or authorized to do business in this state; or
- (ii) The risk management office in the department of administration 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.

(b) The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty (30) days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state no later than thirty (30) days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

(4) On compliance with this section, the secretary of state shall review and may issue a commission as a notary public to an applicant for a term of six (6) years or may deny the application pursuant to section 51-123, Idaho Code.

(5) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

(6) A notary public may be reappointed upon submission of a new application no earlier than ninety (90) days prior to the expiration of his term.

[51-121, added 2017, ch. 192, sec. 3, p. 449; am. 2018, ch. 77, sec. 3, p. 175.]

51-122. COURSE OF STUDY.

The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures and ethics relevant to notarial acts.

[51-122, added 2017, ch. 192, sec. 3, p. 450.]

51-123. GROUNDS TO DENY, REVOKE, SUSPEND OR CONDITION COMMISSION OF NOTARY PUBLIC.

(1) The secretary of state may deny, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

- (a) Failure to comply with the provisions of this chapter;
 - (b) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary of state;
 - (c) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;
 - (d) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;
 - (e) Failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the secretary of state or any federal or state law;
 - (f) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;
 - (g) Violation by the notary public of a rule of the secretary of state regarding a notary public;
 - (h) Denial, revocation, suspension of, or placing a condition on a notary public commission in another state; or
 - (i) Failure of the notary public to maintain an assurance as provided in section 51-121, Idaho Code.
- (2) If the secretary of state denies, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 52, title 67, Idaho Code.
- (3) The authority of the secretary of state to deny, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.
[51-123, added 2017, ch. 192, sec. 3, p. 450; am. 2018, ch. 77, sec. 4, p. 176.]

51-124. DATABASE OF NOTARIES PUBLIC.

The secretary of state shall maintain an electronic database of notaries public:

- (1) Through which a person may verify the authority of a notary public to perform notarial acts; and
- (2) That indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

[51-124, added 2017, ch. 192, sec. 3, p. 450.]

51-125. PROHIBITED ACTS.

- (1) A commission as a notary public does not authorize an individual to:
 - (a) Assist persons in drafting legal records, give legal advice or otherwise practice law;
 - (b) Act as an immigration consultant or an expert on immigration matters;
 - (c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or
 - (d) Receive compensation for performing any of the activities listed in this subsection.
- (2) A notary public may not engage in false or deceptive advertising.
- (3) A notary public, other than an attorney licensed to practice law in this state, may not use the term "notario" or "notario publico."
- (4) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice or otherwise practice law. If a notary public who is not an

attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.” If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(5) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person who seeks performance of a notarial act by the notary public.

[51-125, added 2017, ch. 192, sec. 3, p. 451.]

51-126. VALIDITY OF NOTARIAL ACTS.

Except as otherwise provided in section 51-104(2), Idaho Code, the failure of a notary public to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notary public. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this chapter or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

[51-126, added 2017, ch. 192, sec. 3, p. 451.]

51-127. RULES.

(1) The secretary of state may adopt rules to implement this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may include but are not limited to the following:

(a) Prescribing the manner of performing notarial acts regarding tangible and electronic records;

(b) Including provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(c) Including provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;

(d) Prescribing the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(e) Including provisions to prevent fraud or mistake in the performance of notarial acts;

(f) Establishing the process for approving and accepting surety bonds and other forms of assurance under section 51-121, Idaho Code; and

(g) Providing for the course of study under section 51-122, Idaho Code.

(2) In adopting, amending or repealing rules about notarial acts with respect to electronic records, the secretary of state may consider, as far as is consistent with the

provisions of this chapter:

- (a) The most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;
- (b) Standards, practices and customs of other jurisdictions that substantially enact this chapter; and
- (c) The views of governmental officials and entities and other interested persons.

[51-127, added 2017, ch. 192, sec. 3, p. 451; am. 2018, ch. 77, sec. 5, p. 176.]

51-128. NOTARY PUBLIC COMMISSION IN EFFECT.

A commission as a notary public in effect on the effective date of this act continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after the effective date of this act is subject to and shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this act, shall comply with the provisions of this chapter.

[51-128, added 2017, ch. 192, sec. 3, p. 452.]

51-129. SAVINGS CLAUSE.

This chapter does not affect the validity or effect of a notarial act performed before the effective date of this act.

[51-129, added 2017, ch. 192, sec. 3, p. 452.]

51-130. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[51-130, added 2017, ch. 192, sec. 3, p. 452.]

51-131. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

[51-131, added 2017, ch. 192, sec. 3, p. 452.]

51-132. FILING FEES.

(1) The fee for filing an application for appointment as a notary public shall be thirty dollars (\$30.00).

(2) The fee for filing an application for electronic notarization authorization shall be twenty dollars (\$20.00).

(3) 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 an order adjudging incompetency, or notice of death.

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

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

(6) The fee for a notary public database extraction shall be twenty-five dollars (\$25.00).

(7) The fee for a certified copy of a notary public record shall be ten dollars (\$10.00) plus twenty-five cents (25¢) per page.

[51-132, added 2017, ch. 192, sec. 3, p. 452.]

51-133. NOTARY FEE.

(1) A notary public may, for any notarial act, charge a fee not to exceed five dollars (\$5.00).

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

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

[51-133, added 2017, ch. 192, sec. 3, p. 453.]

IDAHO ADMINISTRATIVE CODE

34.07.01 – RULES GOVERNING NOTARIAL ACTS PERFORMED FOR REMOTELY LOCATED INDIVIDUALS

000. LEGAL AUTHORITY. In accordance with Sections 51-127 and 51-114A, Idaho Code, the Secretary of State has authority to promulgate administrative rules in order for notaries public to perform notarial acts for remotely located individuals by use of communication technology not inconsistent with the Revised Uniform Law on Notarial Acts (2018) enacted as Title 51, Chapter 1, Idaho Code. (3-31-22)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 34.07.01, “Rules Governing Notarial Acts Performed for Remotely Located Individuals.” (3-31-22)

02. Scope. These rules will govern the performance of notarial acts for remotely located individuals by use of communication technology under Title 51, Chapter 1, Idaho Code. Only notaries public who have been authorized to perform notarial acts with respect to electronic records and by the Secretary of State under this chapter for remotely located individuals are governed by this chapter. Additional specifications for the use of tamper-evident technologies are required for notarial acts performed with respect to electronic records as described in Title 51, Chapter 1, Idaho Code. (3-31-22)

002. -- 009. (RESERVED)

010. DEFINITIONS. For all terms used here but not otherwise defined, the meaning will be the same as in Sections 51-102 and 51-114A, Idaho Code.

01. Knowledge-Based Authentication. An identity assessment used by a notary public to identify an individual that is based on a set of questions formulated from public or private data sources that does not contain a question for which the individual provided a prior answer to the person doing the assessment. (3-31-22)

011. REQUIRED NOTIFICATION TO SECRETARY OF STATE.

01. Qualification Requirements. An individual qualifies to perform notarial acts for remotely located individuals by: (3-31-22)

- a. Being duly commissioned as a notary public under Section 51-121, Idaho Code; (3-31-22)
- b. Being authorized by the Secretary of State to perform electronic notarizations; and (3-31-22)
- c. Providing notice by application to the Secretary of State that the notary public will be performing notarial acts facilitated by communication technology that meets the requirements of this chapter. (3-31-22)

02. Notification Form. The notification required under this section must be on a form as prescribed by the Secretary of State. (3-31-22)

03. Submission of Notification. The notification must be submitted to the Secretary of State in writing or as otherwise provided by information posted on the Secretary of State's website. (3-31-22)

04. Renewal of Commission. The renewal of the commission of a notary public who has previously qualified to perform notarial acts for remotely located individuals under this section constitutes renewal of the notary public's qualification without the necessity of submission of another notification under this section. (3-31-22)

05. Updated Technology. This section does not prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Subsection 011.02 of this chapter if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified. (3-31-22)

012. USE OF ELECTRONIC RECORDS.

01. Tamper-Evident Technology Required. A notary shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to use a technology that the notary public has not selected. (3-31-22)

02. Digital Certificate. Tamper-evident technology shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public shall attach or logically associate the notary public's electronic signature and official stamp to an electronic record that is the subject of a notarial act by use of a digital certificate. A notary public may not perform a notarial act with respect to an electronic record if the digital certificate: (3-31-22)

- a. Has expired; (3-31-22)
- b. Has been revoked or terminated by the issuing or registering authority; (3-31-22)
- c. Is invalid; or (3-31-22)
- d. Is incapable of authentication. (3-31-22)

013. IDENTITY PROOFING. If a notary public does not have satisfactory evidence of the identity of a remotely located individual under Section 014 of this chapter, the notary public must reasonably verify the individual's identity through two (2) different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notary public visually to

compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements: (3-31-22)

01. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and, at a minimum: (3-31-22)

a. Use automated software processes to aid the notary public in verifying the identity of each remotely located individual; (3-31-22)

b. Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified; (3-31-22)

c. Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and (3-31-22)

d. Enable the notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the notary public in real time through communication technology. (3-31-22)

02. Knowledge-Based Authentication. A knowledge-based authentication is successful if it meets the following requirements: (3-31-22)

a. The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources; (3-31-22)

b. Each question must have a minimum of five (5) possible answer choices; (3-31-22)

c. At least eighty percent (80%) of the questions must be answered correctly; (3-31-22)

d. All questions must be answered within two (2) minutes; (3-31-22)

e. If the remotely located individual fails the first attempt, the individual may retake the quiz one (1) time within twenty-four (24) hours; (3-31-22)

f. During a retake of the quiz, a minimum of forty percent (40%) of the prior questions must be replaced; (3-31-22)

g. If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same notary public within twenty-four (24) hours of the second failed attempt; and (3-31-22)

h. The notary public must not be able to see or record the questions or answers. (3-31-22)

014. OTHER METHODS OF IDENTITY PROOFING. A notary public has satisfactory evidence of the identity of a remotely located individual if the notary public has personal knowledge of the identity of the individual or if the notary public has satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notary as provided in Section 51-107, Idaho Code. A credible witness may be a remotely located individual if the notary public, credible witness, and individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. A remotely located credible witness must meet the same requirements for identity proofing found in Section 013 of this

chapter, or the notary public must have personal knowledge of the identity of the remotely located credible witness. (3-31-22)

015. COMMUNICATION TECHNOLOGY.

01. Audio-Video Feeds. Communication technology shall: (3-31-22)

a. Provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other; and (1-20-20)T

b. Provide a means for the notary public reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature. (3-31-22)

02. Security Measures. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audio-visual feeds, the methods used to perform the identity proofing process under Sections 013 or 014 of this chapter, and the electronic record that is the subject of the notarial act. (3-31-22)

03. Workflow. If a remotely located individual must exit the workflow, the remotely located individual must restart the identity proofing process under Sections 013 or 014 of this chapter from the beginning. (3-31-22)

016. RECORD RETENTION AND REPOSITORIES.

01. Optional Journal. A notary public may maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs with respect to remotely located individuals. A journal may be created on a tangible medium or in an electronic format using an industry-standard data file format. If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. An entry in a journal must be made contemporaneously with the performance of the notarial act. (3-31-22)

02. Retention Requirements. A notary public shall retain an audio-visual recording required under Section 51-114A, Idaho Code, in a computer or other electronic storage device that protects the audio-visual recording against unauthorized access by password or cryptographic process. The recording must be created in an industry-standard audio-visual file format and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature. The recording must be retained for at least ten (10) years after the recording is made. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of a recording shall: (3-31-22)

a. Comply with the retention requirements of this subsection; (3-31-22)

b. Transmit the recording to one or more repositories under Subsection 016.03 of this chapter; or (3-31-22)

c. Transmit the recording in an industry-standard readable data storage device to the Secretary of State. (3-31-22)

03. Repositories. A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Subsection 016.02 of this chapter. A third person under contract under this Subsection shall be deemed a repository under Section 51-114A, Idaho Code. The contract shall: (3-31-22)

a. Enable the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of Subsection 016.02 of this chapter even if the contract is terminated; or (3-31-22)

b. Provide that the information will be transferred to the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public if the contract is terminated. (3-31-22)

017. FEES AND EXPENSES. Third-Person Expenses: Section 51-133, Idaho Code, shall not be construed to prevent a third person who provides technologies or storage capabilities to aid the notary public in the performance of a notarial act or in the fulfillment of duties under this chapter from separately charging and collecting any additional fee for the services provided. (3-31-22)

018. CERTIFICATE OF NOTARIAL ACT. Additional Language for Use of Communication Technology: As per Section 51-114A, Idaho Code, a certificate for a notarial act for a remotely located individual, whether in standard or short form, will include additional language to indicate that the notarial act was performed using communication technology and will be sufficient if it is substantially as follows: “This notarial act involved the use of communication technology.” (3-31-22)

019. -- 999. (RESERVED)