



# The Commission Connection

Tips, recommendations, and information for notaries,  
from the Idaho Secretary of State

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## Notarial Powers...

*Acknowledgement*

*Oath or  
Affirmation*

*Copy Certification*

*Certify Affidavits*

*Certify Signature  
by mark*

*Sign for those who  
are physically  
unable*



## The Powers Vested in Me...

As an Idaho notary public it is very important to understand where one's boundaries lie. The Idaho Legislature granted notaries public very specific powers, but the Legislature also provided several prohibitions. As a notary moves along the path of his or her career there may be situations that arise

which cause the notary to question whether he or she has the authority to act. Understanding the powers and restrictions of a notary public will go a long way toward resolving these situations.

## What can a notary do?

As stated in 51-107, Idaho Code, An Idaho notary public may:

1. Take acknowledgements.
2. Administer oaths and affirmations.
3. Certify the validity of a copy of an original document
4. Certify affidavits and depositions of witnesses
5. Certify a signature by mark (provided other requirements are met).
6. Sign the name of a person who is physically unable to sign (provided other requirements are met).

[Volume 1 of The Commission Connection](#) provides a great deal of information about how to exercise the above powers.

It is essential that all notaries public understand that they are required by 51-111, Idaho Code, to use reasonable care in the performance of these powers. According to Black's Law Dictionary "reasonable care" is defined as, "The degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances."

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*"Your job as a notary is a serious one, essential to the operation of business, the judicial system, and many other important arenas." ~ Ben Ysursa – Idaho Secretary of State*



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## *Disqualifying Interest...*

*Notary is a party to the transaction.*

*Notary has beneficial interest in the transaction.*

## *Official Misconduct...*

*Engage in fraud or deception.*

*Ignoring the required degree of care.*

*State or imply authority not provided to the notarial office.*

*Practice law.*

*Charge more than statutory fees.*

*Using title or seal for endorsements.*

## What can't a notary do?

✚ **Disqualifying Interest** – A notary may not perform a notarial act in which he or she has a disqualifying interest. Idaho Code 51-108 states that a notary has a disqualifying interest if:

1. The notary is named as a party to the transaction; or
2. The notary has the same beneficial interest as a party to the transaction.

The Idaho Notary Public Handbook addresses the issue of conflicts of interest (disqualifying interests). As an example, a husband could not notarize his wife's signature on a deed if they are purchasing the property together. Both husband and wife receive the same benefit from the purchase, which creates a conflict of interest should the husband attempt a notarization for his wife.

✚ **Official Misconduct** – Idaho Code, 51-112 helps to clarify what a notary can not do. This chapter of the Idaho Notary Public Act says that a notary may not:

### **1. Engage in fraud or deception.**

*Fraud is an intentional deception (including lies and half-truths) that causes a person to suffer a loss. Deceit (deception) is a misrepresentation made by someone, who knows it to be false, with the intent to deceive someone who justifiably relies on the information (Nolo's Plain-English Law Dictionary).*

### **2. Ignore the required degree of care to identify a signer.**

*Idaho Code, 51-111 states that a notary must exercise a great care when identifying a signer. Black's Law Dictionary defines "great care" as, "The degree of care that a prudent person exercises in dealing with very important personal affairs. As such, identifying a signer may be the most important duty of a notary public – to protect the integrity of the notarial office, and to help protect the notary from civil liability.*

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*“A notary can’t rent a private jet stocked with caviar to get to Mountain Home and then charge the client for it.”*

### **3. State or imply that he or she has authority beyond the scope of the notarial appointment.**

*Idaho notaries are authorized to provide and complete notarization certificates for specifically requested notarial acts. They have no other powers and it is illegal to state or imply otherwise. As stated on the Idaho Secretary of State’s website, “It is illegal for a notary or a notary signing agent to give legal advice, explain legal documents or aid customers in completing legal or immigration forms.” This statement provides just a few examples where a notary may be tempted to cross this boundary.*

### **4. Practice law (unless authorized).**

*The practice of law is limited to those persons granted the privilege to practice law pursuant to Title 3, Idaho Code. A notary, in the performance of her duties, who states or implies that she can provide legal assistance, without being authorized to do so by the state, may be subject to the penalties stated in 3-420, Idaho Code.*

### **5. Charge fees greater than those stated in Idaho Code, 51-110.**

*Chapter 51-110, Idaho Code, authorizes notaries public to charge \$2.00 for each notarial act. A notary may also charge for **actual, reasonable expenses**, if the notary must travel to provide notarial services. In other words, if a notary must travel to provide notarial services, the notary may charge for actual expenses incurred for travel so long as the expenses incurred are reasonable. For example, a notary can’t rent a private jet stocked with caviar to get to Mountain Home and then charge the client for it. Actual expenses are to be reasonable.*

### **6. Use his or her notary public title or seal to as a method of endorsement for products, services, contests, or other offerings.**

*The National Notary Association’s “Notary Public Code of Professional Responsibility” provides the following example:*

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*“Honesty, integrity, and fairness in public service are essential to the notarial office.”*

*“The notary is a volunteer for a charity that will raffle off a new car to raise funds. So that the raffle is perceived as honest and aboveboard, the president of the charity wants to advertise that the contest will be “Notary-Supervised and Guaranteed,” using the name of the notary.”*

*Essentially, a notary may not use the notarial office or notarial seal to state or imply credibility or integrity, regardless of any noble intent.*

Honesty, integrity, and fairness in public service are essential to the notarial office. As such, notaries public are ministerial officers. A ministerial officer is defined as one who “follows explicit instructions in a statute, or other legal authority, or directions given from a superior, without exercising discretion or independent judgment” (Nolo’s Plain-English Law Dictionary). Idaho notaries are provided with these instructions in Title 51, Chapter 1, Idaho Code, and in the Idaho Notary Public Handbook. A complete understanding of the statutes and the handbook are necessary for notaries public to fully grasp the boundaries – the powers and prohibitions – of the notarial office. By understanding these boundaries the notary can easily perform the duties of the office with honesty, integrity, and fairness.



## Reader Questions

The Secretary of State’s office welcomes any information or questions you may have on the notarial process. This type of involvement is helpful for everyone.

The following questions come from the Kootenai County Recorder’s Office:

- ✚ If a document does not have an acknowledgement or jurat attached, should a notary offer to provide one? If we offer to provide that wording, couldn’t it be construed as providing legal advice?

**Answer:** *The notarial certificate is the notary’s responsibility. If the certificate has not been provided on the document the notary must provide the certificate. Offering to provide wording for a certificate would not likely be construed as legal advice because Idaho law seems to make clear that the notarial certificate (including its form/wording) is the notary’s responsibility, not that of the person seeking notarization. (See Idaho Code 51-107 and 51-109(3)).*

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“Unless there is no other option the notarial certificate should never be on a different page than the notarized signature.”

- ✚ If a party wants to sign on behalf of a company, trust, or other entity, is the basic jurat verbiage sufficient (without adding the additional corporate verbiage, for example) since it requires an oath.

**Answer:** *The basic jurat is not sufficient. The signer needs to identify their authority for signing on behalf of the company, trust, or other entity (Idaho Code, 55-707A, and 55-715).*

- ✚ Is a notary in Idaho required to fill in the “residing at” line, if included on the certificate? If the notary does not wish to indicate where they reside, can they write in the city where the notarization took place or the county of residence?

**Answer:** *Most notarial certificates that are shown in statute do not have that line. If the line is there you can simply indicate the county or city where you reside – not the county or city where the notarization took place.*

- ✚ When a signature is on one page of the document and the notary certificate is on another page, can the notary initial and/or stamp the page with the signature to indicate that was the signature they witnessed?

**Answer:** *Unless there is no other option the notarial certificate should never be on a different page than the notarized signature. However, if the notary must put the certificate on a different page, there would be nothing wrong with the notary stamping, initialing, or writing something on the signature page.*



## HELP!

The Secretary of State’s office hopes to continue the “Commission Connection” as a quarterly newsletter. To make this happen, we need your help.

- Do you have any interesting notary stories or anecdotes?
- Do you have any questions that you and other notaries would like answers to?
- Are there any legal issues with notarization that you would like to make others aware of?
- Do you have any tips on making the notarization process easier?

If so, please send them to Debbie Farnsworth at [dfarnsworth@sos.idaho.gov](mailto:dfarnsworth@sos.idaho.gov).