

CHAPTER 3

THE OFFICE OF COUNTY CLERK/AUDITOR/RECORDER

(also Clerk of the Board of County Commissioners & Chief Elections Officer)

Constitutional and statutory laws have given one elective county officer five distinct titles: clerk of the district court, auditor, recorder, clerk of the board of county commissioners, and chief elections officer of the county. The Idaho Constitution established the position of clerk of the district court and provides for the election of this position every four years (Article 5, Section 16). A separate section of the state constitution provides that the clerk of the district court shall be ex officio auditor and recorder (Article 18, Section 6). State law provides that the clerk of the district court be ex-officio auditor, recorder and clerk of the board of county commissioners (31-2001 and 34-112). In addition the election laws specify that "County Clerk" means clerk of the district court in the electoral process (34-112).

If a county selects an optional form of county government, it could change the structure of the office of county clerk. The clerk's office could be changed from an elected to appointed position; the responsibilities could be divided into 2 or 3 offices; or the office could be eliminated entirely. However, if the office is eliminated, the duties may not be combined with or assigned to the office of the sheriff or prosecuting attorney (Title 31, Chapters 52-56, *Idaho Code*). Even though the structure of the office may change, the county must ensure that the duties and responsibilities described in sections 31-5209, 31-5307, 31-5404, 31-5506, 31-5606 and 31-5808, *Idaho Code* are fulfilled.

The county commissioners in each county establish the salary of clerk, auditor, and recorder (31-3106 and 31-816). The county clerk/auditor/recorder is authorized to appoint "as many deputies as may be necessary for the prompt and faithful discharge of the duties of the office" (31-2003). As clerk of the district court, this officer and his/her deputies are prohibited from having a private legal practice or from having a partner who is a lawyer (31-2014).

DUTIES AS EX-OFFICIO AUDITOR

The auditor acts as the county budget officer (31-1602). In this role, more fully discussed in Chapter 15, the auditor compiles budget requests and submits a budget to the board of commissioners.

As chief accounting officer of the county, the auditor is responsible for keeping a record of the appropriations made to county departments, the outstanding liabilities against these appropriations, and the expenditures made against the appropriations. These records show the unencumbered and unexpended balance in each appropriation and are used by the auditor to make sure that county departments have not overspent their budgets. The auditor also keeps accounting records on the revenues, expenditures, and balances in each county fund.

The auditor also plays an important role in the expenditure process. As bills and other evidence of debt are received by county departments, a claim is prepared with supporting documentation and submitted to the county auditor. The auditor reviews the claims and supporting data for legality and sufficiency of funds. The auditor then transmits them to the board of county commissioners with his/her comments (31-1501 and 31-3301). If the claims are allowed and approved by the board of county commissioners, the auditor prepares warrants (similar to checks) in payment (31-2301). After preparing the warrants, the county auditor posts the warrant amount on his or her expenditure records and transmits the warrant to the employee, vendor, or other person entitled to the warrant. All warrants must specify the liability for which they are drawn (31-2302), and must be consecutively numbered and show the fiscal year to which they are charged (31-2305).

The county auditor works closely with the county treasurer in many phases of the accounting activities. The auditor must keep accounts current with the treasurer (31-2304). All moneys received by the various county offices must be delivered to the county auditor. The county auditor lists the source and amount of such receipts, apportions them to the proper fund and account on an "auditor's certificate" and delivers the money and certificate to the county treasurer who is then authorized to deposit them in the bank. The auditor must also examine and settle the accounts of all persons indebted to the county or holding moneys payable to the county treasury (31-2303). The county auditor must on the second Monday of each month, transmit to the clerk of every taxing district the amount of all moneys paid into the treasury and apportioned to such taxing district on or after the second Monday of the preceding month. In the months of July and January, however, the moneys may be transmitted no later than the 25th of the month (63-1202).

Financial Reports

The county auditor shall publish a brief financial summary of the total amount spent from each county fund during the month with the monthly statement of the acts and proceedings of the board of county commissioners. (31-819)

A full and complete audit is to be prepared annually by an independent auditor engaged by the board of county commissioners (31-1701). Within thirty (30) days of the annual audit's preparation and submission to the board of county commissioners, the county auditor shall publish a summary of the balance sheet and a summary of the statement of revenues and expenditures (31-819). A copy of the completed audit report shall be filed with legislative services within nine (9) months after the end of the audit period (67-450B).

The county clerk shall notify each local governing entity within the county jurisdiction of the requirements of Section 67-450E, Idaho Code.

Tax Administration Responsibilities

The county assessor prepares an abstract of real and personal property entered on the county assessment rolls and the county auditor signs and transmits this to the state tax commission (63-509(1); 63-510) The auditor extends and computes taxes due on the assessment rolls and calculates

the percent of market value equivalent of tax levies (63-811). The auditor also certifies the new construction roll, which is prepared by the county assessor (63-301A). The auditor performs other tax administration functions as discussed in Chapter 14 of this handbook.

Prior to the first Monday in August, the auditor must notify the state tax commission and the clerk of each taxing unit in the county of the taxable valuation of all the taxable property located within that taxing district. The auditor must also furnish the valuation from the current operating property roll upon receipt from the state tax commission (63-1312(2)).

Prior to the fourth Monday of March, the auditor must notify every taxing district or authority as well as the state board of education of the total taxable valuation of all the taxable property located within the districts (63-1312(1)) for the preceding calendar year as provided by the State Tax Commission on the December Value Worksheet for that year.

Miscellaneous Responsibilities

For services as county auditor, the fees fixed by the statute requiring the service shall be charged and collected, or the same fee as allowed the county recorder as provided by Section 31-3205, shall be charged and collected (31-3207).

DUTIES AS EX-OFFICIO CLERK OF THE BOARD OF COMMISSIONERS

The county auditor is designated by law as ex officio clerk of the board of county commissioners (31-707). The clerk of the board must (31-708):

1. Record all proceedings of the board;
2. Record resolutions and decisions on questions concerning the raising of money and allowance of accounts against the county;
3. Record the vote of each member on any question on which there is a division, or at the request of any member of the board of county commissioners present;
4. Sign all orders made and warrants issued by the board of county commissioners for the payment of money;
5. Record the reports of the county treasurer of receipts and disbursements of money;
6. Preserve and file all accounts acted upon by the board;
7. Preserve and file all petitions and applications for franchises, and recording the action of the board on these petitions and applications;
8. Record all orders levying taxes;

9. Perform all other duties required by law or by any rule or order of the board.

Clerks (or their deputies) prepare the agenda for meetings of the county commissioners and attend the meeting to provide information and advice. After the meeting, they prepare the formal record of the proceedings and are required to publish monthly statements clearly giving notice to the public of all the board's acts and proceedings, including a brief financial summary indicating the total amount expended from each county fund during the month (31-819). They may also write letters and make telephone contacts in accordance with the instructions of the board.

Tax law requires the clerk of the board of commissioners to keep a record of all proceeding of the board relating to the levy of taxes and to prepare four (4) certified copies of the record of tax levies authorized by the board of county commissioners (63-808). One copy is delivered to the assessor, one to the tax collector, one to the state tax commission and one copy must be filed in the office of the county auditor.

The clerk or their designee is required to take applications for any indigent person desiring aid from the county (31-3404; 31-3502; 31-3504), and to immediately investigate or cause to be investigated the grounds of such application (31-3406; 31-3505A). More information is found in Chapter 11.

DUTIES AS EX-OFFICIO RECORDER

The recorder is responsible for recording, filing, and indexing a large number of documents. This may be done by electronic scanning and storage systems. The recorder procures these documents, as the business of his/her office requires. The recorder has custody of, and must keep all books, records, maps, and papers deposited in his/her office (31-2401). These documents are essential for many types of legal transactions and are frequently referred to by attorneys, title companies, real estate brokers, and others in the county. County records are classified as permanent, semi-permanent, and temporary (31-871). The recorder collects fees for recording and providing copies of legal documents that go into the county treasury (31-3205). State agencies, counties, municipal corporations and districts or their officials are exempt from paying filing and recording fees (67-2301; 31-3206; 31-3212(2); 55-1611).

Deeds

In any land transfer, it is the duty of the buyer to have the deed recorded in the county in which the land is located (55-808). This serves notice to the public that this transfer has been made. The complete mailing address of the grantee is required on any instrument (55-601 and 55-818).

People purchasing property normally conduct a search of the title before accepting a deed to the property. This is done through an attorney or an abstract or title guarantee company who use the county records to determine the status of the title. Their search is facilitated by two alphabetical indexes of deeds and miscellaneous land transfers that are kept by the county recorder. One index is entitled "grantors" and lists the information concerning the deed under the names of those selling,

granting, giving, or transferring property. A second index is entitled "grantees" and lists the same information ~~but it lists it~~ alphabetically by the name of the person *receiving* the property (31-2404). Thus a person conducting a title search can find the location of a deed by knowing either the name of the grantor or the name of the grantee. All of these records are for the use of the public.

The recorder collects a fee for the recording of land transactions (31-3205 and 55-807), placing an exact copy of the deed in an approved electronic storage system, and recording the information concerning the deed in the grantor and grantee indexes (31-2402). The deeds may be copied by hand, typewriter, photographic reproduction process, or digitized image (31-2402; 9-331A). All Idaho counties scan and electronically store deeds and other legal documents (31-2402(1)).

Marriage Licenses

The county recorder's office is the only office in Idaho authorized to issue a marriage license. The recorder may issue marriage licenses to any persons applying for them, regardless of their home addresses, if the persons are entitled to marry under Idaho law (32-401). Idaho law requires that both male and female must be 18 or more years of age to be married. Persons under this age limit may marry under certain conditions, such as the consent of a father, mother, or guardian (32-202). A court order is required if either party is under the age of sixteen (32-202). The recorder must provide both the male and the female applying for a marriage license with a "Premarital AIDS Education Pamphlet" and they must certify to the recorder that they have read the pamphlet or had it read to them (32-412A). Also, the couple applying for a license must not be close relatives, as defined by Sections 32-205 and 32-206, and neither party may be married at the time a license is issued (32-207).

Parties applying for a marriage license shall include the social security numbers of the applicants, except in the case where an applicant has not been issued a social security number (32-403). If a party has not been issued a social security number, he/she must present proof of this from the social security administration, proof of identify issued by an entity that is not a state or the US, and proof that the party is lawfully in the United States (32-403(2)).

If the county recorder has personal knowledge that the couple applying meets state requirements, she/he may issue a license (32-403). If she/he is not sure, as is usually the case, she/he takes written affidavits that these conditions have been met (32-403).

The recorder receives a fee for issuing a marriage license as set forth in Sections 31-3205 and 32-408. Two copies of the license and marriage certificate are issued. One copy of the license and certificate is to be signed by the minister or official solemnizing the marriage, and it must be returned to the county recorder within 30 days (32-402). A fee shall be paid for each marriage certificate that is first recorded with said recorder, and then forwarded to the state registrar. A Domestic Violence Project Account has been created and shall receive such fees and for such purposes as specified by Sections 39-5210 and 39-5212. The recorder is required to keep a record of all marriage certificates returned in a book kept for that purpose (32-407), and also two alphabetical indexes, which may be electronic, one under the names of the men who were married and the other under the maiden names of the women (31-2404(10) and (11)). They shall receive a

fee for indexing certificates as set forth in Section 31-3205.

Other Recorded Documents

In addition to deeds and marriage licenses, the county recorder is responsible for recording and indexing the following legal documents upon payment of the necessary fee (31-3205):

1. Agreements and bonds affecting the title of real estate (31-2404);
2. Certificates of sale (31-2406);
3. Certificates of prospecting and mining partnerships (53-411);
4. Certified copies of any petitions, orders, and decrees under the National Bankruptcy Act (31-2402);
5. Financing statements required under Part 4 of the Uniform Commercial Code (31-2404);
6. Homesteads (31-2404);
7. Hospital liens (45-703);
8. Instruments describing or relating to separate property of married women (31-2404);
9. Leases which have been acknowledged or proved (31-2402);
10. Logger's liens (45-409);
11. Financial statements under the Uniform Commercial Code which cover timber to be cut and minerals (31-2402);
12. Mechanic's liens (45-509 and 31-2402);
13. Mining claims (47-604 and 47-606);
14. Mortgages of real estate, releases of mortgages, and powers of attorney to convey real estate (31-2402). Assignments of mortgages and leases (31-2404);
15. Notices of preemption claims (31-2402);
16. Notices of pending actions affecting real estate, the title thereto, or the possession thereof (31-2402);
17. Notices of attachments upon real estate (31-2402);
18. Official bonds (31-2402);
19. Possessory claims (31-2404);
20. Transcripts of judgments which by law are made liens upon real estate (31-2402);
21. Water rights (31-2404);
22. Notice of order commencing a general adjudication of water rights (31-2404 and 42-1408);
23. Wills admitted to probate (31-2404);
24. Record list of delinquency entries where redemption's not made (43-711) Filing Fee: \$2.00;
25. Record redemption certificate in county in which the land is located (43-712 and 31-3205);
26. Secured transactions under the Uniform Commercial Code (28-9-401);
27. Indigent lien (31-3504(4); 31-3510A(4)).
28. Such other writings as are required or permitted by law to be recorded. (31-2402(n))

As of July 1, 1990, fixture filings must be recorded in the real property records and not filed. Fixture filings dated prior to 7-1-90 will remain in full force and effect until they lapse. Any amendments or continuation statements required for filings prior to 7-1-90 must be recorded from a certified copy of the original filing. The fees for recording security interests are the same as for any other recording.

The county recorder is responsible for recording, but not indexing numerous other documents, such as the tax numbers used to identify land parcels from the metes and bounds descriptions kept in the assessor's office (63-210(1)). Other duties include:

1. Recording of certified copies of final judgments, decrees or transcripts of judgments or decrees affecting the title or possession of real property including water rights (31-2407);
2. Providing a certificate to people in the title abstract business showing that they have posted the proper bond with the county (54-102 and 54-105);
3. Recording armed services discharges and performing other official services for veterans (65-301). No fee may be charged for certificate services provided to veterans (65-301).

All documents brought for recording must be stamped with an instrument number (31-2412) and the day, hour, and minute the document was received in the office (31-2414). The instrument number and day, hour, and minute received must also be recorded in a reception book immediately after numbering (31-2413). This book also lists the name of the grantor (the person executing the instrument), the name of the grantee (the person to whom the instrument is granted), the character of the instrument, the book and page where the instrument is recorded, a brief description of the property (if property is involved), and the name of the person to whom the instrument is delivered (31-2413). -After the recording is finished, the original document is returned to its owner.

Section 45-1701 and 45-1702, *Idaho Code*, defines a “Nonconsensual Common Law Lien” and provides that such a lien is specifically not recordable or valid. These liens are:

1. Not provided for by a specific state or federal statute;
2. Do not depend upon the consent of the owner of the property affected for its existence;
3. Not a court-imposed equitable or constructive lien; and
4. Not of a kind commonly utilized in legitimate commercial transactions.

The statutes provide for the recording of a notice of invalid lien by legal counsel representing state or local officials or employees who are liened by an improper common law lien that is recorded.

Recorded Documents

Other documents are recorded in the recorder's office in their original form. These include bulk sales affidavits, bonds of county officeholders, United States federal income tax liens (45-202), Idaho state income tax liens (63-3053 and 63-3054), and the designation of county officer's senior deputies.

For additional information see the Idaho Recorder's Law Manual published by the Office of the Idaho Attorney General, Idaho Association of County Recorders and Clerks and the Idaho Association of Counties.

Miscellaneous Responsibilities

The recorder must make all records on file in his/her office available without charge for any person wishing to inspect them (31-2419).

The recorder must keep in his/her office a book called "Certificates of Sale," and record in this book all certificates of sale of real estate sold under execution or under order made in any judicial proceeding (31-2406). All books, records, maps, charts, surveys, and other papers on file or record in the recorder's office must, during office hours, be open for inspection of any person who may desire to inspect them. They may be inspected without charge (31-2419). However, there are certain records that are exempt from public disclosure, including blueprints of buildings and facilities housing public agencies, security operations, emergency evacuation plans, and vulnerability assessments, where such information would jeopardize public safety (9-340B). Recorders may be penalized for failure to record a legal instrument properly (31-2415) or for neglecting their duties (31-2417).

Legal descriptions of new and altered taxing districts, including urban renewal agencies, and maps of the districts and of altered portions of existing districts must be filed with the county assessor, the county recorder, and the state tax commission within thirty days after the change is made but no later than the tenth day of January following the formation or alteration of the districts (63-215).

CLERK OF THE DISTRICT COURT DUTIES

The clerk of the district court performs duties prescribed in the Idaho Rules of Civil Procedure (a volume of the *Idaho Code*) and in the rules and practices of the court (1-1001). The clerk or a deputy must attend in person every term of the district court in the county (1-1002). In medium and larger counties in Idaho, the clerk of the district court usually designates a deputy to handle the duties and responsibilities of the district court. The deputy maintains court records, makes entries, collects fees, sends notices, and acts as the clerical arm of the court by performing duties as directed by the Judge. See Chapter 9 for more information about Idaho's Court System.

The clerk of the district court also acts as ex officio auditor and recorder and ex officio clerk of the board of county commissioners (31-2001). Clerks of the district court are liable on their official

bond for injury resulting from any wrongful act or omission by themselves or their deputies (1-1003). The court clerk also collects and remits court fees (1-2003), (31-3101A), including *Idaho Code* fund fees (73-213).

Jury Selection Responsibilities

The Uniform Jury Selection and Service Act (2-201 through 2-221) prescribes the role of the clerk of the district court in the jury selection process. The clerk, or a duly appointed deputy, is the member of the jury selection commission which selects prospective jurors (2-205). The jury commission has only one other member, a jury commissioner appointed by the administrative judge. The jury commission must prepare a master list consisting of all voter registration lists for the county supplemented with names from other lists of persons living within the county (2-206). These other lists are designated by the Supreme Court, and might include lists of utility customers, property taxpayers, motor vehicle registrations, and drivers' licenses. Names or numbers of prospective jurors taken from this master list are placed into a master jury wheel (2-207). -In this case, the names to be placed in the master jury wheel are to be selected at random according to a method prescribed by law. The master jury wheel is to be emptied and refilled in December of each odd-numbered year or as frequently as determined by the administrative judge of a judicial district (2-207).

Under the instruction of the administrative judge, the jury commission from time to time draws names of prospective jurors from the master jury wheel (2-208). The clerk must mail to each person whose name is chosen a juror qualification form, which must be filled, out and returned to the clerk within ten days. This qualification form, which must be approved by the supreme court, must request the following information:

1. Name, address of residence, and age of the prospective juror;
2. Whether he/she is a citizen of the United States and a resident of the county;
3. Whether he/she is able to read, speak and understand the English language;
4. Whether he/she has any physical or mental disability impairing his/her capacity to render satisfactory jury service;
5. Whether he/she has lost the right to vote because of a criminal conviction.

The prospective jurors must complete these forms, and methods are provided to enforce compliance (2-208).

The names of prospective jurors who are not disqualified under the terms of the Uniform Jury Selection and Service Act are placed by the jury commission into a qualified jury wheel (2-210). The jury commission may be directed to draw and assign qualified jurors by the court or any state or county official having the authority to conduct a trial or hearing with a jury within the county. The clerk then causes each person whose name is so chosen to be served with a summons requiring him to report for jury service at a specified time and place (2-210).

Miscellaneous Responsibilities

Other duties of the clerk of the district court are:

1. Collecting and remitting court fees (31-3201A), including fees upon civil actions (73-213), and other revenues (1-2003);
2. Certifying a transcript of any judgment of the court (10-1110);
3. Processing and forwarding applications for passports to the United States State Department (some counties have relinquished this function to the US Postal Service);
4. Processing naturalization declarations of interest and applications in cooperation with the United States Department of Immigration and Naturalization. Some counties have relinquished this function to area offices of the federal department;
5. Taking acknowledgments (55-702); and
6. Mailing written notice of forfeiture of bail, within five days of the forfeiture. Said bail or money deposited instead of bail shall be refunded if the defendant appears, or is brought before the court within ninety (90) days of the entry of the forfeiture (19-2927). Said written notice shall be mailed to the last known address of the person posting bail. Failure to give timely notice will exonerate said bail. At the end of ninety (90) days after the date of forfeiture, the clerk shall deposit said bail with the county treasurer (19-2929). See also Enforcement, (19-2928).

CHIEF ELECTIONS OFFICER DUTIES

Election Responsibilities

State law establishes the county clerk or clerk of the district court as the chief elections officer of the county (34-305). In carrying out the duties of chief election officer, the county clerk is guided and supervised by the secretary of state (34-202 through 34-206). The county clerk instructs and supervises local election officials, and has the authority and the means to enforce compliance by local election officials with these instructions (34-206; 34-208). The county clerk appoints election clerks and election judges, who are selected from lists of persons recommended by the precinct committee (34-303).

The “Democracy Fund” was established in 2002 for the purpose of providing funding to improve election systems in Idaho (67-916). The fund was established under the secretary of state and consists of moneys appropriated by the legislature, federal moneys with the purpose of improving election systems in Idaho, and funds from any other source (67-916).

Registration of electors is one of the county clerk's most important duties. In order to register, an elector must provide certain information (34-411), which is recorded on a registration card signed

by the elector and retained and filed by the county clerk (34-416). The county clerk or official registrar shall register without charge any elector that personally appears in the office of the county clerk or before the official registrar. Also, upon written application to the county clerk, persons who are ill or physically incapacitated may request that the county clerk or a registrar come to their home for registration (34-407). The county clerk must grant a hearing on the qualifications of any person refused registration if the person so requests (34-412). Each week the county clerk, or the Secretary of State, through the statewide voter registration system examines registration cards of newly registered electors in order to determine if they were previously registered in another county or state. If they were, the other county or state must be notified of their new registration (34-418).

Any elector may also register by mail for any election. The provisions for mail registration are specified in section 34-410. Mail registrations must be postmarked no later than 25 days prior to an election to be timely (34-410) and no elector may register in the office of the county clerk within 24 days preceding any election for the purpose of voting at that election (34-408). An individual who is eligible to vote and who has not previously registered may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence (34-408A).

The county clerk must correct the register of electors with respect to deaths of electors (34-433), electors not voting for four (4) years (34-435), challenged electors (34-432), precinct boundary changes (34-417), registration of people who are not United States citizens (34-419). For a fee, a list of registered electors can be supplied to any individual requesting such a list (34-437). The Secretary of State in conjunction with the county clerk shall develop and implement a single, uniform official statewide voter registration system (34-437A).

The county clerk has extensive responsibilities in preparation for elections. He/she must publish notices of elections, including information regarding accessibility (34-602), prepare and print ballots (34-210; 34-713; 34-902), prepare and distribute stickers to correct vacancies occurring on the ballots after printing (34-912), provide an official election stamp (34-901), prepare and display instructions for the guidance of voters (34-911), prepare and provide sufficient election supplies and ballots to the election boards (34-209 and 34-910), and deliver the combination election record and poll book to the chief election judge in each precinct (34-111). The county clerk is also responsible for providing each polling place with a sufficient number of handbooks, prepared by the secretary of state, that specify voter qualifications (34-1112).

The county clerk receives and files declarations of candidacy from all candidates for county offices and for offices of precinct committeemen or committeewomen (34-617 through 34-625A; 34-705). If these declarations pertain to a primary election, the county clerk certifies to the county central committee of each political party a list of the candidates who have filed and are qualified (34-706). Write-in candidates must file required declarations (50-432). The county clerk receives applications for absentee ballots, issues them, and receives them (34-1002; 34-1003; 34-1005; 34-1011). The clerk must provide one or more absent electors polling place(s) as determined necessary (34-1006). Anyone eligible to vote may register at the absent electors' polling place, upon proof of residence (34-408). The county clerk shall deliver to the polls a list of those absentee ballots received. The

county clerk delivers the returned absentee ballots to the election judges or central location (34-1007).

A precinct within the county which contains no more than one hundred twenty-five (125) registered electors at the last general election may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners. Having designated a mail ballot precinct, there shall be no voting place established within the precinct. The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct, and shall affix to the return envelope, postage sufficient to return the ballot. The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election (34-308).

Initiative and referendum petitions are checked by the county clerk against the register of electors, and he/she certifies the genuine signatures to the secretary of state for statewide initiatives(34-1807). County initiatives are handled pursuant to Section 31-717, *Idaho Code*.

Following an election, the county clerk receives the combination election record and poll book and all election supplies from the election judges (34-1204), serves as the secretary of the county board of canvassers (34-1205), and makes abstracts of the election returns and forwards them to the secretary of state (34-1207; 34-1217; 34-1813).

After a primary election, the county clerk issues certificates of nominations, and certificates of election to successful candidates for the position of precinct committee person. To be elected, a precinct committee person must receive a minimum of five votes. If no candidate received the minimum, a vacancy exists and is filled as provided by law (34-1208). The county clerk also certifies the election results to the secretary of state (34-1208). After a general election, certificates of election are issued to successful candidates for county offices (34-1209). Tie votes in county elections are decided before the county clerk by a toss of a coin (34-1210).

Where voting machines or vote tally systems are used, the county clerk must have the machines or tally systems properly prepared, and must see that the election board is properly instructed in their use (34-2413). For any voting machine to be certified in Idaho it must be certified by the Secretary of State for use in Idaho (34-2409). Except for functions or capabilities unique to this state, voting machines and vote tally systems shall be tested and the results certified by an independent testing authority designated by the secretary of state prior to certification (34-2409). Each political party is allowed to have a representative observe the testing, and preparation of the machines or tally systems, and the party and its representative must certify to the county clerk that they witnessed the preparation (34-2417). The county clerk provides forms and supplies for use by election boards (34-2414), makes provisions for absentee voting (34-2423), publishes facsimile ballots and provides sample ballots (34-2425), publicly displays voting machines and familiarizes the voters with the machines or with the tally system if it is used (34-2426).

The current recall election law was enacted in 1972 and modified in 2011, and assigns important responsibilities to the county clerk in recall petitions and elections directed at county and state

officials (34-106). In cases of recalls of state officials (both elected executive officers and members of the legislature), petitions must be filed with the secretary of state, who sends them to the county clerks for examination and certification of signatures (34-1702 and 34-1706). If the petitions are sufficient, the secretary of state orders a special recall election, which is conducted by the county clerks in a manner similar to general elections (34-1707).

When county officials are named in recall petitions, the county clerk has larger responsibilities. Under the *Idaho Code*, all county officials are subject to recall. Before or when they begin to circulate the petition, petitioners shall send or deliver a copy of a prospective petition in the proper form with twenty eligible signatures with the clerk. The county clerk must approve the form of the petition, which is specified in the *Idaho Code* (34-1703), and must note on the prospective recall petition that he/she approved it and the date of approval. The petitioners then have seventy-five ~~sixty~~ days in which to complete the petition with the required number of signatures (34-1704). To be sufficient, a recall petition must have signatures equal to twenty percent of the number of electors registered to vote in the last general election for county officers at which the officer was elected (34-1702). A signer may remove his own name from the petition at any time prior to the time when the petition is filed with clerk (34-1713).

A recall petition cannot be circulated until the officer involved has held office for ninety days, and no officer can be subjected to recall twice during a term in office unless petitioners for the second recall reimburse the county for the costs of the first recall election. The specific reason for the second recall must not be the same as for the first recall petition (34-1713). The petitioners must submit the completed petitions to the county clerk. The county clerk will examine the petitions to verify whether or not the petition signers are qualified electors, as provided in section 34-1807, Idaho Code. The examination shall not exceed fifteen business days from the date of receipt of the petitions. If the examination shows a sufficient number of certified signatures, the county clerk must notify the officer being recalled and the petitioners by certified mail (34-1707). The officer being recalled may resign within five days, and the resulting vacancy is filled like any vacancy in the office involved. If the official does not resign within five days, the county clerk must order a special election to be held on the nearest date authorized in subsection (1) (third Tuesday in May of each year; Tuesday following the first Monday in November of each year) and in subsection (7) (second Tuesday in March of each year; last Tuesday in August of each year) of section 34-106 which falls more than forty-five days after the clerk orders that such election shall be held.

The special recall election is to be conducted like a general election. In order for the officer to be recalled, a majority of the votes cast must be in favor of recall and the number of votes cast in favor of the recall must equal or exceed the votes cast in the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall (34-1712). The board of county commissioners shall meet within ten days after said election to canvass the votes cast. Then the results are immediately proclaimed by the county clerk (34-1711). If the election results favor recall, the officer is recalled as of the time when the results are proclaimed (34-170 and 34-1712).

The county clerk of each county must provide, and the secretary of state must maintain a current and accurate report of the following:

1. A list of all the precincts within the county;
2. A map of all the precincts within the county;
3. The number of voters registered in each precinct for the most recent general election; and
4. The number of votes cast in each precinct at this election.

After January 1, 2011 there shall be no more than two elections conducted in a county in any year, except as provided in section 34-106, Idaho Code

Polls are open from 8:00 A.M. to 8:00 P.M.; however, the county clerk may open the polls at 7:00 A.M. (34-1101).

The county clerk shall administer all elections on behalf of any political subdivision, subject to the provisions of chapter 14, title 34, Idaho Code, including all special district elections and elections of special questions submitted to the electors as provided in this chapter (34-1401). In Joint districts, the clerk of the home county shall exercise such powers as are necessary to coordinate the election. "Home County" shall be defined as the county in which the business office for the district or political subdivision is located.

On and after January 1, 2011, no county shall charge any taxing district, as defined in section 63-201, Idaho Code, for expenses associated with conducting any election on behalf of any taxing district, with the exception of expenses associated with conducting municipal runoff elections, which shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code. Expenses associated with conducting taxing district elections shall include:

- (a) Costs of ballot preparation, distribution, printing and counting, including absentee ballots.
- (b) Costs of printing poll books and costs of tally books, stamps, signs and any other voting supplies, publications and equipment.
- (c) Wages or other compensation for election judges and clerks or any county employees or officials performing duties associated with conducting taxing district elections.
- (d) Costs paid for renting polling facilities.
- (e) Acquisition, repair, maintenance or any other costs associated with voting machines or vote tally systems as defined in subsections (9) and (10) of section 34-2401, Idaho Code.
- (f) Costs of publishing and printing election notices and ballots.

Counties shall not be responsible for any election expenses prior to the time any taxing district orders an election, such as notice and costs for public hearings and notice and costs for public hearings on ballot measures.

Notwithstanding the provisions of subsection (1) of this section, all ballot questions shall be limited to two hundred fifty (250) words or less. If a ballot question is in excess of two hundred fifty (250) words, the entity proposing a ballot question that is not a state constitutional

amendment shall be required to pay the ballot printing costs associated with the ballot question 34-1411).

DESTRUCTION OF DOCUMENTS

1. An original document of not less than one (1) year old as provided in section 9-331, can be destroyed upon order of the district court having jurisdiction (9-332); and
2. County records can only be destroyed after a specific time period has elapsed. For permanent records, the time is not less than 10 years; semi-permanent, not less than 5 years; and temporary, not less than 2 years. In addition, records may only be destroyed by a resolution by the board of county commissioners (31-871). See the IAC Records Retention Manual accompanying Records Retention Schedule for a complete explanation regarding the retention and destruction of county documents and a listing of retention periods of the records maintained by each county office.

NOTES