

# LEGAL TRAINING FOR RECORDERS — HIGHLIGHTS AND DISCUSSIONS



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## STATUTORY AUTHORITY

- Idaho Code 31-2401
  - Recorder “has the custody of and must keep all books, records, maps and papers deposited in his office.”
  - This sentence is the sole statutory authority found for recorders



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## FILING V. RECORDING V. INDEXING

- What's the difference?
- What items need filed and which need recorded?
- UCC—file or record?



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## WHAT DOES IT MEAN TO RECORD SOMETHING?

- Idaho Code 31-2402
  - The recorder shall "record separately, in large and well- bound separate books or through approved electronic storage systems, in legible handwriting, typewriting, photographic reproduction," the recordable documents.
- Court:
  - To record an instrument means to transcribe it, repeat it, or recite it in a book of record kept for the purpose of perpetuating the terms and recitals contained in the instrument or document so recorded.
    - Lincoln Cnty. vs. Twin Falls Land Co., 23 Idaho 433, 130 P. 788 (1913)
- Historically interpreted to mean recording/copying the original document



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## FILING V. RECORDING V. INDEXING

- 31-3205. RECORDER'S FEES.
  - (4) All instruments delivered to the county recorder for record shall be recorded rather than filed **with the exception of plats, surveys, cornerstone markers and instruments under the uniform commercial code.**
  - **BUT:**
  - 31-2404
  - (27) An index, labeled "Financing Statements" as required under Part 4 of the Uniform Commercial Code – Secured Transactions
  - (28) In lieu of the above-named indexes, **a recorder may create an electronic management system** into which all of the above-named indexes are file names. Each of these files shall segregate the above-referenced records and permit search and retrieval capabilities of each file type under each of the above-enumerated categories.
- **This section overrides the need to "File" in a paper file**
- **So in essence, Record UCC's.**



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## OTHER ITEMS TO FILE

- 57-301 – County treasurer shall file a list of ***bonds issued by political subdivisions of the state***
- 45-1804 – ***Agricultural commodity lien*** can be extended by "filing" a claim of lien with the county recorder
- 31-2007 The ***appointment of county deputies and subordinate officers*** must be documented and filed in the office of the county recorder.



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# WHAT IF RECORD HAS PII?



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## PII PROTECTION METHODS

- Consult with county prosecutor
- Consult with other counties on best practices
- Thoughts:
  - Issue warning to searcher before allowing them to access records
  - Require users to sign acknowledgement for certain types of documents with PII
    - Won't use information for unauthorized/illegal use
- Other ideas/practices?



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## SUGGESTIONS:

- 1. Clean up the UCC Statutes to better reflect;
  - recording vs filing
  - No longer need continuations
  - Signature requirements
  
- 2. IACRC Adopt Standard forms and practices for consistency in all Counties
  - Death Certificates
  - DD214's
  - Personally identifiable information



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## INDEXING

- Idaho Code 31-2404 - - LOTS of stuff to be indexed
  - Typically interpreted to mean filing for the sake of easy retrieval and to provide constructive notice to the public



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## SUGGESTION

- IACRC create an Indexing Standard for consistency
- Name formatting standard for consistency
- Training for Deputy Recorders



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## ACKNOWLEDGMENT

- 55-805. ACKNOWLEDGMENT NECESSARY TO AUTHORIZE RECORDING. Before an instrument may be recorded, unless it is otherwise expressly provided, its execution **must be acknowledged** by the person executing it
- What is an acknowledgment?
  - 51-102(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.



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## ACKNOWLEDGMENT

- Some documents that DON'T have to be acknowledged
  - Patens and other title instruments recorded by the US (55-803)
  - Authenticated judgments (55-802)
  - Notices of location (55-804)
  - Notice of Lis Pendens (55-505)
  - Mechanics liens (45-509) (Why not? More requirements? Statute Change?)
  - Master forms (45-1004)
  - Cornerstones (55-1604)
  - IRS Liens



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## LIABILITY

- 31-2415 FAILURE TO RECORD INSTRUMENT PROPERLY — LIABILITY AND PENALTY. If any recorder neglects or refuses or fails to record any instrument, paper or notice authorized by law to be recorded, in the manner provided for in sections [31-2412 \(stamped number\)](#), [31-2413 \(reception book\)](#) and [31-2414 \(certificate of time of reception\)](#), Idaho Code, **he shall be liable** to the party aggrieved for the amount of the damages which may be occasioned
- 31-2417 Liable if you:
  - Fail to record within reasonable amount of time without any legal justification
  - Records the record untruly
  - Fails to keep indexes and records that are supposed to be indexed
  - Alters or destroys the record



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## REJECTING A RECORD/FILE

- Isn't this essentially a form of legal advice?
- What's the difference between rejecting a document and issuing legal advice?



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## PUBLIC ACCESS V. PUBLIC RECORDS



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## PUBLIC ACCESS

- Idaho Code 31-2419
  - RECORDS OPEN TO INSPECTION. All books of record, maps, charts, surveys and other papers on file in the *recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them*, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection. The recorder may provide one (1) or more public access terminals through which the public may access electronically stored versions of recorded documents. Any person inspecting the records who makes any attempt to alter any record in any way shall be guilty of a misdemeanor.



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## PUBLIC RECORDS

- 74-102. PUBLIC RECORDS — RIGHT TO EXAMINE. (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that *all public records in Idaho are open at all reasonable times for inspection* except as otherwise expressly provided by statute.
- (2) The *right to copy public records* shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.
- (3) Additionally, the custodian of any public record shall give the person, on demand, a *certified copy* of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.
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## LIMITS ON PUBLIC ACCESS

- Adams County Abstract Co. v. Fisk, 117 Idaho 513, 1990
  - Court held that public access doesn't allow title company to set up its own equipment/employees in recorder's office to avoid paying recorder's copy fees.
  - Recorder, as custodian, can restrict handling of original documents to protect integrity of the documents.



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## PUBLIC RECORDS

- Idaho Code 74-106(8) exempts:
  - Any personal records, other than names, business addresses and business phone numbers, such as **parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition** submitted to any public agency or independent public body corporate and politic **pursuant to a statutory requirement for licensing, certification, permit or bonding.**
  - Has to be statutory requirement for licensing, certification, permit, bonding
    - What types of records would fall under this?
    - What would not?
  - "Such as" – implies that personal record exemptions are not limited to these items.



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# VITAL STATISTICS



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## WHAT IS A VITAL STATISTIC?

- 39-241. DEFINITIONS.
  - (21) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of ***data pertaining to births, adoptions, legitimations, deaths, stillbirths, induced terminations of pregnancy, marital status*** and data incidental thereto.



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## VITAL STATISTICS: PUBLIC RECORD OR NOT?

- Not public records
- Public Records Law exemption for vital statistics
  - 74-106. RECORDS EXEMPT FROM DISCLOSURE — PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records **are exempt from disclosure**:
    - (4) Records of a personal nature as follows:
      - (e) Vital statistics records;



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## THOSE WITH DIRECT AND TANGIBLE INTEREST IN VITAL RECORD

- I.C. 39-290
- Must provide the record to those who have a “**direct and tangible interest**” in the record;
- IDAPA 16.05.01.011 – those with D & T interest include:
  - a. **(Family)** The registrant and that person's spouse, children, parents, grandparents, grandchildren, siblings, or guardian;
  - **(Those with property interest)** Any other person who demonstrates that the record is needed for the determination or protection of that person's property right;
  - An **authorized representative** of any of these individuals;
  - The **surviving next-of-kin** if a deceased registrant has no other surviving family member listed in this subsection;
  - **(Attorneys with Affidavits)** The Idaho Attorney General, and state and federal prosecuting attorneys, if such attorney submits an affidavit affirming that the record is necessary in the furtherance of the attorney's official law enforcement duties, is not reasonably available from another source, and that reasonable steps will be taken to preserve the confidentiality of the record;
  - **(Someone with court order)** Any person, upon the order of an Idaho court of competent jurisdiction, where the court finds that disclosure of the record is necessary in the interests of justice;
  - **(Executor of an estate)** Any person with the right to control the disposition of remains of a deceased person or to determine provisions not clearly covered in a prearranged funeral plan as authorized in Section 54-1142(1) Idaho Code, in accordance with Section 39-270(b), Idaho Code.



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## IS AFFIDAVIT CONSIDERED PART OF VITAL STATISTIC?

- Maybe.
  - I.C. 39-241 (21) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, stillbirths, induced terminations of pregnancy, marital status and **data incidental thereto.**
- There's no legal guidance on "data incidental thereto."
  - Could potentially include affidavits; ask prosecuting attorney
- I.C. 39-270 – Personal information State Registrar



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## ARE REDACTED VITAL STATISTICS ACCEPTABLE?

- Unclear; no real guidance on this;
- Talk to your prosecuting attorney on case-by-case basis
  - **I know this is the standard answer when it comes to legal questions, but as we all know, we don't get a standard answer as PA's are as different as the questions.**



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## CAN A RECORDER REDACT VIATL STATISTICS?

- Original vital statistics, NO
  - 39-250 and 39-273
- Copies of vital statistics? Still probably not a good idea.
  - Better to have client redact and then record
- Could still be open to public view
  - 39-241(21)



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## SUGGESTIONS

- **Use one resource for answers to get consistency in legal questions.**
- **IAC Resource? AG's office doesn't want to be that resource.**
- **IACRC develop standard forms and practices for consistency in Counties**



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# NOTARIZAION



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## REMOTE AND E-NOTARIZATION

- What is e-notarization?
  - Electronic notarization (e-notarization) is the act of notarizing an electronic document such as a PDF or Microsoft Word document. To complete this type of notarization, the notary adds an **electronic signature and seal** to the electronic document using specialized software, or other technology.
  - Technology approved by SOS
  - Present to view electronic document.



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## REMOTE AND E-NOTARIZATION

- 51-102. DEFINITIONS. As used in this chapter:
  - (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.
  - (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.
  - (12) "**Sign**" means, with present intent to authenticate or adopt a record by:
    - (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**.



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## REMOTE AND E-NOTARIZATION

- What is remote notarization?
  - Remote notarization is performing notarial acts for remotely located individuals through communication technology. Remote notarizations must be recorded and retained for 10 years.
  - Technology approved by the SOS
  - Not present
  - 51-102 (2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities



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## REMOTE AND E-NOTARIZATION

- Idaho Code 51-114A (new as of 2019)
  - (3) A notary public can do remote notarizations with communication technology if:
    - (a) The notary public:
      - (i) Has personal knowledge of the ID of the person
      - (ii) Has satisfactory evidence from a credible witness
      - (iii) Has satisfactory evidence of the identity of the remote person using at least two types of identity proofing.
    - (b) The notary public can confirm the record is the same record in which the remotely person made a statement or executed a signature;
    - (c) The notary public creates an audio-visual recording of the performance of the notarial act; and
    - (d) Additional requirements for people located outside of US.



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## NOTARIZATIONS FROM OUT OF STATE / NON-NOTARIES?

- Can you accept notarization from out of state? Idaho Code 51-111
- Tribal notary or equivalent? 51-112
- Federal notary or equivalent? 51-113
- Foreign notary or equivalent? 51-114



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## FOREIGN NOTARIZATION

Idaho Code section 51-114. FOREIGN NOTARIAL ACT.

- (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.***
- (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. (**Certification of a foreign notary authentication**)



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## POWER OF ATTORNEY



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## WHAT IS POA?

- Basically a written document in which person A appoints person B to act as person A's attorney-in-fact. This means person B can sign a document on behalf of person A.
  - Doesn't necessarily mean that person A cannot still sign on their own.
- POA and Mortgages
  - POA has to be recorded before a document signed by the attorney-in-fact can be recorded.
  - If POA is recorded, revocation of the POA must be recorded to be effective.



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# RECAP



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## RECORDING FEES (AGAIN!!)

- 1. Still not consistent in fees that are charged. Many questions.
  - Need a more comprehensive, working document name list with fees
  - Start creating a document list with the names of every document that is recorded in question
  - IACRC determine the standard fee for each document by categorizing the documents into the current fee schedule
  - **Try legislation again for a single recording fee?**
    - **ADA County Lead Deputy Recorder will help**



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## SUGGESTION

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- Name formatting standard for consistency
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- **IAC Resource? AG's office doesn't want to be that resource.**
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## **SUGGESTIONS – MUCH MORE TO BE DONE**

- **Continuing education with annual training for all Deputy Recorders**
  - Knowledge is lost through attrition
  - Suggest the entire Recording Committee attend all trainings
- **IACRC to develop standards for more consistency**
- **Recorders Manual needs to be reviewed and updated. Training to manual needs to be included.**
- **Start a local PRIA Chapter for all Deputy Recorders**



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## **THANK YOU ALL FOR YOUR MENTORING AND FRIENDSHIP**

- **I will miss you all and our get together's and our IO group discussions.**
  - **You are all great!!**
- **Come see me in my new 'Cabin on the Prairie'**
  - **30 E. Prairie Rd, Prairie, ID 83647**
- **208-308-8213 – Just to make sure we're not off fishing. Txt is best (phone still sketchy)**



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