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## **I.R.C.P. 17. Plaintiff and Defendant; Capacity.**

### **Idaho Rules of Civil Procedure Rule 17. Plaintiff and Defendant; Capacity.**

#### **(a) Real Party in Interest.**

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a personal representative

(D) a guardian;

(E) a bailee;

(F) a trustee of an express trust;

(G) a party with whom or in whose name a contract has been made for another's benefit; and

(H) a party authorized by statute.

(2) *Action in the Name of the State of Idaho for Another's Use or Benefit.* When a statute of the State of Idaho so provides, an action for another's use or benefit must be brought in the name of the State of Idaho.



(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

**(b) Capacity to Sue or be Sued.** The capacity of a party, who is not acting in a representative capacity, to sue or be sued, is determined by the law of this state.

**(c) Minor or Incompetent Person.**

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is unrepresented in an action.

**(d) Unknown Owners or Heirs as Parties.** All persons who are or may be interested in the subject matter of an action whose names are unknown to the plaintiff may be made parties by being named and described as unknown owners or unknown heirs or unknown devisees of any deceased person. The unknown parties may be designated in the complaint, counterclaim or cross-claim, or in an amendment of any of these. This rule applies in all actions or proceedings:

(1) to obtain title or possession,



- (2) to remove adverse claim or title or to quiet title,
- (3) for partition,
- (4) for sale,
- (5) to foreclose any incumbrance,
- (6) to enforce any trust,
- (7) for specific performance of any contract, or
- (8) for any other disposition of any property, real, personal, or mixed, situated within the State of Idaho, including causes of action, either situated within or due or claimed to be due from persons, firms or corporations resident within the State of Idaho.

(Adopted March 1, 2016, effective July 1, 2016.)

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