



# IDAHO LEGAL AID SERVICES

## Senior Legal Guidebook

### Basic Information about Idaho's Laws for Seniors

Free

Available to view and print at [www.idaholegalaid.org](http://www.idaholegalaid.org)

June 2015

Seniors and their family, neighbors, friends and caregivers will find this Guide helpful. The Guide gives general information about legal issues that seniors frequently encounter and offers practical options for each situation. It will also give direction on where to look and who to call for more detailed information.

No guidebook can cover every single legal issue or give advice on your unique situation. However, we hope that this Guide will give you a better understanding of what to expect, what questions to ask, and what you can do next.

This Guide is not copyrighted. Any of its pages may be copied so the information is accessible to anyone who wants or needs it. We encourage you to view and download a copy of the Guide online at [www.idaholegalaid.org](http://www.idaholegalaid.org).

You may need to talk to a lawyer about your unique situation. This Guide gives general information on legal issues. It is not a substitute for an opinion from an attorney or legal advice about your particular case. It also does not create an attorney-client relationship with Idaho Legal Aid Services or anybody else.

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# Know About Elder Abuse

## What is “elder abuse?”

Elder Abuse has many forms. It can mean any mistreatment of a senior. Examples include confinement, neglect, abandonment, bodily injury, unwanted sexual contact, verbal intimidation and threats, and financial exploitation.

**Myth: “We don’t have that problem in our community.”**

**Fact: Abuse is often not seen or recognized.**

Some people believe that elder abuse is not a problem in their community. Unfortunately, every community, no matter the size, nationality, income, or religion, has its share of invisible seniors suffering from abuse, neglect or exploitation.

**Myth: “It’s just part of growing old.”**

**Fact: Abuse is preventable. It should not be tolerated by anyone.**

Every senior deserves respect, and no one should tolerate abuse. No senior should be physically harmed, deprived of food or medicine, sexually harassed, unreasonably coerced to live where they don’t want to, or have their money or property misused or stolen.

## Elder Abuse May Look Like:

**Civil remedies.** If you are the victim of abuse, neglect, or financial exploitation, one

- ◆ Emotional and verbal abuse
- ◆ Physical abuse or restraint
- ◆ Neglect
- ◆ Financial exploitation
- ◆ Not letting other friends or family members see the elder.
- ◆ Abusers may be: family members, caregivers, trusted friends

remedy you have is the ability to revoke a power of attorney document if the person named in that document is not acting in your interest. You also have the option of bringing a civil lawsuit against an abusive party. A civil lawsuit is a non-criminal case that seeks money to compensate for physical or financial harms. For example, if an adult child took money from a senior’s bank account without her permission, a civil lawsuit could be filed to try and get the money returned. If you are interested in pursuing a civil lawsuit, you may want to talk with an attorney about your case. Another option available to victims of physical or sexual abuse is the Civil Protection Order (CPO), which orders an abusive family member or household member to stay away from you. To get a CPO, you apply at the local courthouse and give a sworn statement. A free CPO form is also available at [idaholegalaid.org](http://idaholegalaid.org).

**Criminal remedies.** Criminal remedies are focused on punishing a person who has violated the law. Several Idaho laws protect seniors from fraud, theft, physical abuse, neglect, and unwanted sexual contact. If you suspect that you are a victim of a crime, you can call the police and they will investigate. Filing criminal charges can be helpful in ensuring your safety by getting an abuser behind bars and because you can request a No Contact Order in some criminal cases.

## What to know:

You shouldn't have to live in fear or violence.

You don't deserve abuse.

It's not your fault if someone is abusing you.

You can make decisions for yourself.

People should have your permission to make decisions for you.

You can find help.

Many people have experienced what you are going through.

## Know who to call:

If you or someone else is in danger, call 911.

If you are suffering from ongoing abuse or neglect, call Adult Protection Services. Adult Protection Investigates allegations of abuse, neglect, self-neglect, and exploitation of vulnerable adults. Adult Protection can work with the police, Health and Welfare, nursing homes, banks and lawyers to investigate and address cases of abuse and neglect.

If you, a neighbor, friend, or family member is suffering abuse or neglect at the hands of another person, call Adult Protection Services. You can learn more about Adult Protection on the Idaho Commission on Aging's website: [www.aging.idaho.gov](http://www.aging.idaho.gov).

## Get Involved:

### Justice Alliance for Vulnerable Adults

The Idaho Justice Alliance for Vulnerable Adults (JAVA) is a network of organizations and individuals working to prevent elder abuse through action and education. JAVA's vision is to help its members work together towards an Idaho where every vulnerable adult is visible and valued. You can visit their website at [javaidaho.org](http://javaidaho.org).

## Area Agency on Aging & Adult Protection Services

- ◆ **Benewah, Bonner, Boundary, Kootenai, Shoshone**
  - ◆ (208) 667-3179 or
  - ◆ 1-800-786-5536
- ◆ **Clearwater, Idaho, Latah, Lewis, Nez Perce**
  - ◆ (208) 743-5580 or
  - ◆ 1-800-877-3206
- ◆ **Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington**
  - ◆ (208) 332-1745 or
  - ◆ 1-844-689-7562
- ◆ **Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls**
  - ◆ (208) 736-2122 or
  - ◆ 1-800-574-8656
- ◆ **Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, Power**
  - ◆ (208) 233-4032 or
  - ◆ 1-800-526-8129
- ◆ **Butte, Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton**
  - ◆ (208) 522-5391 or
  - ◆ 1-800-632-4813

**For Adult Protection Emergencies  
Call 911**

# Idaho Commission on Aging Resources

The Idaho Commission on Aging (ICOA) helps provide Idaho's seniors with basic necessities like transportation, nutrition, in-home services, and respite care. ICOA helps seniors remain independent and avoid going into an institution.

## Aging and Disability Resource Center

Visit the Aging and Disability Resource Center at [www.aging.idaho.gov](http://www.aging.idaho.gov) to find helpful information for people planning long term care, to get help applying for government benefits, and to get answers to many of seniors' most common questions about their rights and options. You can also contact the ADRC by calling 1-800-926-2588.

## Area Agencies on Aging

Area Agencies on Aging in Idaho help seniors with many types of problems. Your local AAA may be able to help you with these services:

- ◆ Help with chores and homemaking
- ◆ Help for Caregivers
- ◆ Group Meals
- ◆ Home Delivered Meals
- ◆ Transportation Help
- ◆ Legal Assistance
- ◆ Respite Services

## Ombudsmen

If you suspect or observe abuse or neglect at the hands of a nursing home or assisted living facility, call the Area Agency Ombudsman. Ombudsmen protect the health, safety, welfare and rights of long term care residents.



**For more information about these services, call your local AAA office, the numbers are listed on page 3, or visit [aging.idaho.gov](http://aging.idaho.gov).**

# Do you need a lawyer?

Maybe you have just a quick question or know you'll need an attorney but can't afford to pay one. There are resources available to help you.

## Idaho Legal Aid Services

Idaho Legal Aid Services provides free civil help to persons who qualify for its services.

Seniors age 60 and older can get free legal advice through the **Senior Legal Hotline at 1-866-345-0106**. Get your documents and facts together before you call. The Hotline attorney will be able to give you better advice if you have specific and accurate information.

Depending on your unique situation, you might get legal advice over the telephone, more detailed information sent to you by mail, referral to a staff or volunteer attorney for legal representation, or a referral to another community resource or private attorney if ILAS cannot assist on your case.

Visit [www.idaholegalaid.org](http://www.idaholegalaid.org) to find free information about legal issues and free interactive legal forms. The phone numbers and addresses for ILAS's regional offices can be found on the back cover of this guide.

## Idaho State Bar Lawyer Referral Service

Attorneys at the Idaho State Bar Lawyer Referral Service will briefly meet with you for no more than \$35 to assess your legal situation. Call them at (208) 334-4500 or look online at: <http://isb.idaho.gov>.

## Public Defender's Office

You may have the right to a public defender. If you have been charged in a criminal case and you are indigent, you may qualify for representation by a public defender. ILAS cannot provide assistance in criminal cases.

## Court Assistance Office

Every county courthouse in Idaho has a Court Assistance Office (CAO) to help people who don't have a lawyer in civil cases. The CAO has court approved legal forms, videos, and brochures to assist *pro se* litigants. CAO staff can also answer questions about how to use their forms, but cannot answer legal questions.

## Idaho Volunteer Lawyers Program

If you are low income and need a lawyer for a civil matter, the Idaho Volunteer Lawyers Program (IVLP) may be able to help you in some types of cases. IVLP works to find volunteer attorneys to take cases for free.

Call: 1-800-221-3295 or (208) 334-4510 (Boise area).

## Legal Clinics

At legal clinics, volunteer attorneys donate their time to answer legal questions. The number and types of clinics change frequently. As of the date of publication, some Idaho clinics include:

The Idaho Trial Lawyers Association holds Street Law and Family Law clinics in Boise, you can get more information by calling 208-345-1890.

The Legal Link Clinic is held in Coeur d'Alene, call 208-416-4778 for more information.

The IVLP holds senior and veteran clinics across the state, call 334-4510 for more information or call 208-422-1000 for the Veteran's Clinic.

Idaho Falls Senior Clinic can be reached at 208-22-4357

# Protecting Your Money

**“I noticed my neighbor is giving lots of her money away...now she hasn’t been able to buy food.”**

**“My brother is taking mom’s Social Security and buying things for himself.”**

## Financial Elder Abuse:

Not all elder abuse involves physical harm. Financial exploitation is a form of abuse. Examples include scams, undue influence, misuse of a senior’s property, and outright theft. Common signs of financial exploitation include:

- ◆ A senior has a sudden, unexplained inability to pay bills or buy necessities
- ◆ A senior transfers an unusual amount of money or property to others or has withdrawals or transfers from his account that he cannot explain
- ◆ A senior has a new “best friend” with an unusual or suspicious interest in his or her finances and assets
- ◆ The senior makes large withdrawals of cash or checks written to “Cash”
- ◆ Changes are made to a senior’s advanced directives that they can’t explain or understand
- ◆ Someone assists the senior with their finances, but refuses to provide copies of bank statements or an accounting of how funds are being spent.
- ◆ Property is missing or being sold without the senior’s consent

An attorney may be able to help a senior recover some money from an abuser through a civil lawsuit. Some of these actions may be considered a crime (theft or fraud). You can call Adult Protection or the police if you suspect financial abuse and would like it to be investigated; or you can call Idaho Legal Aid’s Senior Hotline if you have legal questions related to financial exploitation.



## Be smart about Scams:

New scams are created every day and many target seniors. Be wary and don't buy anything under pressure. **YOU CAN SAY NO!** Don't give your credit card number, Social Security number or other personal information to anyone who contacts you over the phone. Don't pay for anything that comes in the mail if you didn't order it. The Idaho Attorney General's Consumer Protection Division prints a Senior Citizens Manual that describes many common types of scams that target seniors, such as:

- ◆ Telemarketing & Online shopping scams
- ◆ Identify Theft & Password problems
- ◆ Sweepstakes & Prize scams
- ◆ Home Repair & Contractor scams
- ◆ Prescription Drug & Medical Aid scams
- ◆ Living Trust & Legal scams
- ◆ Charity & Church scams

Get a copy of the Manual by calling the Consumer Protection Division 1-800-432-3545 or online at [www.ag.idaho.gov](http://www.ag.idaho.gov). Have you been defrauded? If someone defrauds you, call Idaho Legal Aid's Senior Hotline. You can also file a complaint with the Attorney General Consumer Protection Division and the Better Business Bureau at 1-800-218-1001.

## Be smart about Contracts:

Contracts are legally enforceable promises. Some contracts are written and some are spoken. Sometimes people enter into contracts without knowing everything that they've promised. Unless you were greatly pressured or deceived about what's in the contract, a court will probably hold you to the contract. Idaho does not have a "cooling off" period to get out of a contract except for telemarketing and certain door-to-door sales. That's why seniors should take care to protect themselves from problems with contracts before they sign.

Before you sign any type of contract, **READ ALL OF IT.**

If you don't understand anything, **ASK QUESTIONS.**

**DON'T SIGN IT** until you understand it.

If the contract has un-filled-in blanks, **DON'T SIGN IT!**

**GET A COPY** of the contract and take it home before you sign it!

You can sleep on it! If someone won't give you a copy,

**DON'T SIGN IT!**

# Did somebody break a contract?

## Contracts

If someone has broken a promise that was made to you in a contract, that is called a breach of contract. You can write them a demand letter (send it certified mail, receipt requested), stating what you want them to do (pay you money, finish work, etc.). If that doesn't work, you may bring a suit for damages (money) that you are owed, but you have to start your lawsuit within a certain time from the date the other party breached the contract. In Idaho, for oral (spoken) contracts, you have four years. For written contracts, you have five years.

## Warranties

A warranty is a type of contract that comes when you buy a product and can be express (written or spoken) or implied (something you can assume, like a product will work in the way it's supposed to). Implied warranties come along with most products, unless they are marked with a disclaimer (tagged "as is" for example). If a company's product has not performed as promised, that may be a breach of an express or implied warranty, and you may have the right to ask them to honor the warranty and fix the problem or to bring a suit against the product manufacturer or seller of the product; If they won't honor the warranty, you should discuss your case with a lawyer right away.

## Do you have a complaint about merchandise?

You can write a demand letter (certified mail, receipt requested) to the business. Specifically describe your complaint and include a copy of your purchase receipt, contract, warranty or other documents. Keep a copy of your demand letter. If you do not receive a satisfactory response within a reasonable time, you can take follow-up actions such as filing complaints with the Better Business Bureau or the Attorney General's Consumer Protection Division ([www.ag.idaho.gov](http://www.ag.idaho.gov)). If the amount in dispute is less than \$5,000 you can sue in small claims court. The Idaho Consumer Protection Act protects seniors (over 62) and disabled consumers. You may recover triple damages (three times the money that you actually lost) from deceptive merchants in a civil lawsuit. Learn more about filing demand letters and lawsuits on page 40. If the amount of your claim is more than \$5,000, then you may want to contact a private attorney to discuss your case.



# Be Smart about Loans and Credit

You may get a loan or credit card offer that sounds like a great deal. Or you may seek out a loan because you need cash, and want to sign the loan in a hurry. Be careful, because credit can sometimes cause more problems than it solves. Loan products are often created to make the lender as much money as possible and seniors are often targeted by predatory lenders. Seniors should be very cautious before they use a credit card or sign a loan, especially if they plan to secure the loan with their home, a car title or other property.

## **KNOW before you sign:**

KNOW how many payments you'll have to make and when the payments are due. Some loans have large "balloon" payments due later that are hard to pay.

## **Think twice before co-signing a loan:**

Many seniors get into trouble because they agree to co-sign on loans for children, grandchildren or other loved ones. This often turns into a disaster as the person they are trying to help fails to make the loan payments and the senior is held fully responsible for the debt.

## **KNOW your budget:**

Can you really make the loan payments and still comfortably afford important living expenses such as rent, food, utilities and medicine?

## **Don't hesitate to get help:**

Ask an attorney to review the terms of a loan if you are unsure whether they are fair or if you can't understand the loan documents. Taking a little more time before you sign may save a lot of difficulty later!

## **Falling behind? Check the facts about the Debt!**

You are not legally excused from debts because you have lost your job, get sick, or can't afford to pay for some other reason. If you owe a creditor, they may report your default to a credit bureau and sue you to collect the debt. The creditor may also sell the debt to a debt buyer or a collection agency to pursue collection.

Collection letters or bills sometimes have errors in them. Keep all records of your debt. Pay attention to the numbers. If you dispute that you owe the debt or the amount of a debt, send a letter to the creditor or collection agency. Keep copies of all the letters that you send and receive about the debt. Contact an attorney to help review the disputed debt. If it has been more than four or five years since you made a payment or charge on the account, then the statute of limitations (time the creditor can legally enforce the debt) may have passed, which could be a defense if a creditor sues you. If you think this may be the case, consult with an attorney.

**If you dispute that you owe a debt, write a letter to the collection agency within 30 days of receiving a collection notice to explain why you dispute the debt.**

# Debt Collectors cannot harass you!

**A federal law, the Fair Debt Collection Practices Act prohibits lenders, collection agencies and their lawyers from:**

- ◆ Harassing, scaring, or threatening you with violence or criminal prosecution
- ◆ Calling you at work if your boss doesn't allow it.
- ◆ Calling your friends or neighbors
- ◆ Calling before 8:00 am or after 9:00pm
- ◆ Calling or writing you after you send them a "cease communication letter."

If a collection agency violates the Fair Debt Collection Practices Act, you should report the agency to the Idaho Department of Finance (1-888-346-3378). You also have the right to sue collection agencies for \$1,000 for each violation of the Fair Debt Collection Act. If you are interested in bringing this type of lawsuit, contact a consumer law attorney.

## **Writing a Cease Contact Letter:**

- ◆ Include your account number
- ◆ Ask for written proof of the amount you owe
- ◆ Ask for a copy of the agency's Idaho Collection Agent permit
- ◆ Request that they stop contacting you.

Even if you do send a cease communication letter, the agency may still sue to collect the debt. ***You don't need a lawyer to write this letter. Contact Idaho Legal Aid's Senior Hotline for a sample letter or visit [idaholegalaid.org](http://idaholegalaid.org) to download a sample form for free.***

## **You can negotiate with the creditor**

You can avoid harassment before it starts by contacting the creditor and explaining your situation. If you offer to make a small payment each month, the creditor may accept the offer and not turn your debt over to a collection agency. If the creditor accepts a lower payment plan, ask them to send you a written agreement showing the new arrangement. If you need help paying debts, you may think about going to a Debt Counseling Service which can counsel you about debt and possibly help work out a new payment plan with your creditor. However, be wary of "Debt Consolidation" companies and some counseling services-- some are scams! Call the Idaho Attorney General's Office (1-800-432-3545) if you aren't sure about a particular debt consolidation or a debt counseling service.

# Are you being sued over debt?

If you owe a debt, the creditor may bring a collection suit against you to get a judgment so they can collect what they're owed. Sometimes a store or credit card company will sell the right to collect the debt to a debt buyer and the debt buyer will sue you. If you've never heard of the company suing you, it might be a debt buyer.

## 20 days to file an Answer

If you are sued, you will typically receive a Summons (a court document telling you that you are being sued) and a Complaint (a court document that says why you're being sued). After you receive the Complaint, you have 20 days to file a written Answer with the court. If you have a valid defense to the collection suit, you should bring it up in your Answer. State if you think that the debt isn't yours, if the amount they are asking for is wrong or if the statute of limitations on the debt has passed.

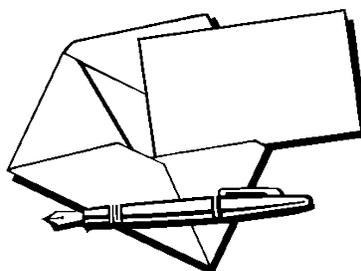
### Some common defenses:

- ◆ Statute of Limitations. If it's been over 4-5 years since you last made a payment or charge on the account, the creditor can't sue to collect the debt.
- ◆ Mistaken or Stolen identity. "I didn't run up this debt!"
- ◆ Debt already discharged. "I paid that!" or "I discharged that in bankruptcy!"

Some collectors have inaccurate records. The collector will have to prove you owed the debt and it may be hard for them to do so. Talk to an attorney about defenses available in your particular case. Answer forms are available through your local Court Assistance Office ([courtsselfhelp.idaho.gov](http://courtsselfhelp.idaho.gov)).

### What if I don't have a defense?

If you don't dispute that you owe the debt and you have no other defenses, then you may lose the collection suit, whether you file a written Answer or not. In fact, filing an Answer may increase the collector's attorneys' fees awarded against you. If you lose your case or do not file an Answer, you will receive a paper called a "Judgment," which is the court's decision that you owe the money. The creditor may then try to collect the money from you either by asking your employer to garnish your wages (take some of your earnings), asking your bank to give the creditor funds from your bank account, or even taking some of your personal property to sell and collect the money. However, creditors cannot take "exempt" property or income.



# A lot of your property and money may be “exempt”

## To collect on a judgment, the creditor has to go through a legal process:

After a creditor has a court judgment against you, they can go to the Sheriff and get a “Writ of Execution.” This is a legal paper that allows a creditor to try to take some of your wages, bank account, or property, or put a lien on your real estate (so if you sell it, some of the money goes to the creditor). However, the state of Idaho has declared that some of your property and income is exempt from collections, and cannot be taken or garnished, even if the creditor has a judgment against you!

## 14 days to claim your exemptions

The sheriff will typically provide you with the Writ of Execution and a Claim of Exemption form. The Claim of Exemption form is your opportunity to tell the creditor what income and assets you have that are protected from being seized.

You **MUST** fill out and return this form to the Sheriff within 14 days, listing all the items that you claim are exempt.

## Here some examples of income or property that are exempt (protected from creditors) under Idaho Law:

- ◆ Social Security income value up to \$7000.
- ◆ Retirement benefits, pension funds, IRA’s, and 401k’s
- ◆ Veterans Benefits
- ◆ Unemployment Benefits
- ◆ Public Assistance (AABD, TAFI)
- ◆ A motorcycle, car, or truck with a net value up to \$7500.
- ◆ \$7500 worth of appliances, furniture, books, clothing (if none of the things are worth more than \$750 by itself)
- ◆ \$800 worth of miscellaneous other personal property
- ◆ Visit [idaholegalaid.org](http://idaholegalaid.org) for a complete list

**Be careful not to mix exempt income or funds with non-exempt money like gifts or your wages.** Having the funds mixed together can make the entire amount available to a creditor. Therefore, it is a good idea to keep non-exempt funds in a separate bank account from exempt money or income.

## Can a creditor take my home?

Up to \$100,000 of the net value (the value of the property minus how much you owe on it) of a house or manufactured home is protected from creditors. This is called a “homestead exemption.” There are many additional exemptions not discussed above. Contact Idaho Legal Aid Services for a detailed list of exemptions and how to claim them. Also, find a free Claim of Exemption form and more information at [www.idaholegalaid.org](http://www.idaholegalaid.org).

# Bankruptcy

If you've fallen behind on debt, you might have considered declaring bankruptcy. When you file for bankruptcy, the court will issue an "automatic stay" which is an order that will stop most collection activity against you, such as collection calls or garnishment of your wages.

## Chapter 7 versus Chapter 13

In a Chapter 7 bankruptcy, the Court will appoint a Trustee who will sell any non-exempt property you may own, but will allow you to keep exempt property. After a Chapter 7 bankruptcy is finalized, you will receive a discharge of most of your debts (there are some debts that cannot be discharged, such as student loans and tax debts). In a Chapter 13 bankruptcy, you enter into a repayment plan set by the court and lasting 3-5 years prior to receiving the discharge of remaining debts.

## Costs

The filing fee that you must pay the court to start your case is \$310 for a Chapter 13 and \$335 for a Chapter 7 case (in 2015). If you want to hire an attorney to help you with your case, there will be an additional fee for the attorney. However, many bankruptcy lawyers will let you make payments to pay their fee and the court will sometimes allow you to make payments on the filing fee as well.



Because bankruptcy damages credit score, you need to be

get credit or loans after you file, and any credit or loans you do qualify for after a bankruptcy will likely have higher interest rates and cost you more.

your credit and reduces your aware that it will be harder to

The timing of when you file your bankruptcy can be very important. If you are considering getting married, getting divorced, or anticipate additional debts in the near future, you should consult with a bankruptcy lawyer before you file. You can contact the Idaho State Bar Lawyer Referral Service at (208) 334-4500 or look online for an attorney at: <http://isb.idaho.gov>.

# Social Security and SSI Benefits

There are three types of Social Security benefits, 1) Retirement, 2) Disability, and 3) Supplemental Security Income (SSI). All are run by the Social Security Administration (SSA). Contact the SSA at 1-800-772-1213 or visit their website at [www.ssa.gov](http://www.ssa.gov) for more information. You can find out what benefits you may be eligible for by using SSA's Benefit Eligibility Screening Tool (BEST) available at [ssabest.benefits.gov](http://ssabest.benefits.gov).

**Social Security Retirement.** When you work and pay taxes, you earn credits toward qualifying for Social Security retirement. You must earn 40 credits (10 years of work) and have reached retirement age (65-67 depending on the year you were born). Before you can begin collecting retirement benefits. The amount of money you get depends on how much you earned over your career. You can get early retirement benefits as early as age 62, but your benefit will be reduced. If you delay your retirement, your benefit amount will be higher.

**Social Security Disability.** If you are unable to work due to a disability that is expected to last more than one year or until your death, and have worked during 5 out of the last 10 years, you may qualify for Social Security disability. You can apply for Social Security disability on your own or with the help of an attorney. Most people receive an annual statement which projects their Social Security retirement and disability benefits.

## **Supplemental Security Income (SSI).**

You can qualify for SSI benefits even if you don't have enough work "credits" to qualify for Social Security retirement or disability, but you must be able to show:

- ◆ You are over 65 or blind or disabled
- ◆ You are low-income (your income is lower than \$733 monthly or \$1100 per month if married; these amounts are for 2015, and typically go up annually).
- ◆ You have few assets (less than \$2000 for single person or \$3000 if married, not counting your house).

**If your application for disability or SSI is denied you can request a reconsideration, but you have a limited time to do so, so contact a lawyer right away if you need assistance with your request. A free brochure explaining this process is available on the Idaho Legal Aid Services website at [www.idaholegalaid.org](http://www.idaholegalaid.org).**

# Other Benefits

## Veterans' Benefits

Disabled veterans may receive compensation for injuries and diseases they received during military service. Veterans may also receive pensions if they are low income, have few assets and are permanently disabled. There are other veterans' benefits including payment for medical aids, prosthetics, education and loans. If you are denied VA benefits, you can request a hearing, but must do so quickly. Contact the Veteran's Affairs regional office nearest you or visit [www.va.gov](http://www.va.gov).

## Unemployment Benefits

Unemployment benefits are collected from the state after a job loss, such as a layoff or plant closure. The amount you get is based on how much you earned when working. You have 14 days from the time you are denied to protest your denial and request a hearing. Additional information about unemployment benefits, how to apply and appeal forms is available at <http://labor.idaho.gov>. Or you can call the Idaho Dept. of Labor at 208-332-3570.

## Aid to the Aged, Blind & Disabled (AABD)

AABD is a state program that provides cash assistance to individuals who are 65 or older, blind, or disabled. This cash benefit of up to \$53 (in 2015) can be used to help cover everyday living expenses. To qualify, your income has to fall below the limit set by the state (below \$786 for an individual and \$1120 for a couple in 2015). Contact your regional Idaho Dept. of Health and Welfare (IDHW) office to apply for AABD.

## Supplemental Nutrition Assistance Program (SNAP)

SNAP helps low income families by providing funds to buy food. In order to qualify, your income has to be below \$1,265 for a single person or \$1,705 for a couple (2015) and your resources or assets have to be below \$5,000. You also have to be a citizen, a resident of Idaho, and either employed, in a training program, elderly (age 60+), or disabled. Contact your regional IDHW office to apply for SNAP benefits.

## General Tips About Government Benefits

Apply early. Apply for benefits programs well before the time you think you'll need the financial help. The application process can be confusing, and you may need to gather lots of personal and financial information to fill out the application.

Write it down! Keep every written statement you get from a government agency in a special file. Read everything carefully and pay attention to dates! Keep a written record of every time you call a government agency when you are applying. Write down the person's name, what they tell you and what you tell them.

Appeal denials. If you've been improperly denied a benefit, or if your payment is reduced or cut off, you may want to appeal that decision. You can appeal on your own or with the help of an attorney. Don't wait to take action, because there are short time limits for requesting appeals!

# Health Care for Seniors: Medicare versus Medicaid

**Medicare.** Medicare is federal health insurance for people who: 1) are age 65 and over or, 2) have received Social Security disability benefits for over 2 years. Medicare, like other health insurance, has premiums, co-payments, and deductibles.

## **Medicare covers certain health expenses:**

- ◆ reasonable and necessary hospital stays
- ◆ short stays in skilled nursing facilities
- ◆ certain home health care needs
- ◆ hospice services
- ◆ certain doctor visits, ambulance rides, medical aids and prosthetics.
- ◆ Long term care is only covered by Medicare in very limited circumstances and only for a short amount of time

If you are in a hospital or nursing facility, and you are told that Medicare will no longer pay for you to stay there, you have a right to appeal. It's important to ask for an appeal quickly. When you are denied coverage for a medical service or expense, you should receive written notice of non-coverage from the doctor or hospital. This notice, called a Medicare Summary Notice, will explain how to appeal.

**If you have questions about Medicare, call 1-800-MEDICARE or visit [medicare.gov](http://medicare.gov)**

**Medicaid.** Medicaid is a federal health program for people with low income, regardless of whether they have worked or not.

## **Are you eligible for Medicaid?**

Medicaid helps many low-income people pay for medical necessities. Medicaid can provide full health coverage such as for physician visits and hospital stays, but only for qualifying children under age 19, pregnant women, adults with a child under 19, seniors age 65 or older, or persons who are blind or disabled.

Medicaid can also pay the costs of long term care such as in-home nursing, assisted living, or nursing home care.

## **You may be eligible for Medicaid to cover long term care costs if:**

- 1) Your income is less than Medicaid's income cap (\$2,199 for a single person in 2015); and
- 2) Your assets (property) are below the Medicaid asset cap (\$2,000 for a single person, but much higher for a married couple, meet with an attorney to discuss asset requirements for a married couple); and
- 3) You have a demonstrated medical need for the long term care.

## Medicaid's Limit on Income

Many people discover that they do not have enough income or savings to pay the high costs of long term care; yet they may have too much income to qualify for Medicaid. If your income is above the income cap, you can still qualify for Medicaid long term care coverage through use of a special type of trust, called a "Miller Trust." "Miller Trusts" are basically agreements where one person (called the "trustee") agrees to hold and manage money for another person who needs long term care (called the "beneficiary"), and promises to spend the money only in ways approved by Idaho Dept. of Health & Welfare (primarily paying long term care costs). Income that goes into the trust is not counted and therefore the trust can help a person become eligible for Medicaid. Because Miller Trusts can be confusing, and can be ineffective if not done correctly, it is important to contact an attorney if you need a Miller Trust or have questions about qualifying for Medicaid.

## Medicaid's Limit on Assets

If you have too many "non-exempt" assets to qualify for Medicaid, you can "spend down" your assets in order to qualify. However, if your assets significantly exceed the \$2,000 cap, or if you are married, you should not spend down without first talking to a lawyer. If your assets are only slightly over the cap, your spend down options could include: paying for long term care out of pocket; purchasing exempt assets such clothing and personal items, a vehicle, or an irrevocable burial fund; or spending the money on other goods or services. Spending down can be very complex and may have tax consequences. If you are married or have significant assets, you should consult with an attorney.

### Transfer Penalty

Many people think that they can just give away assets to meet Medicaid's asset cap. However, this may cause a penalty, disqualifying you from receiving Medicaid benefits for a period of time. For example, if you give away a house to a daughter or son, Medicaid will calculate the value of the gift and divide that by the number of months that it thinks you could have paid for your own long term care. It will then disqualify you for Medicaid for that number of months. For a house worth about \$150,000, the penalty can be over two years. Medicaid looks back five years from the time you apply to see if you gave away (transferred) any assets for less than market value. If you want to gift property away, but are concerned about future Medicaid eligibility, you should meet with a lawyer to discuss your case.

### Estate Recovery: Medicaid gets paid back

You may have heard that Medicaid will put a lien on your house or take your property. This is partially true: Medicaid does not take anything during your lifetime, but after you pass away, they can make a claim against your estate for the amount they paid for your care. Medicaid will not go after an estate, though, until after both the Medicaid recipient and his spouse have passed away. Also, if you have children with disabilities, you should consult with an attorney regarding rights they may have.

# Senior Health Care Issues

## County Assistance

If you cannot afford hospital and medical care, including medications, or basic necessities such as rent, food, and utilities, then the county may assist you in paying for them. This is a "last resort" program. This means that the county will pay for these services or necessities only if you have no other way of paying for them on a temporary basis. Additionally, the County can put a lien your property until such assistance is repaid.

## Should I get Long Term Care Insurance?

Long-term care insurance may help pay for long-term care services if you buy it in advance and pay the premiums for a certain time. Long-term care insurance may not be a good option for you if: you cannot afford premiums; you have very limited assets; your only income is Social Security or Supplemental Security Income (SSI); or you often have trouble paying for utilities, food, medicine, or other basic needs. However, long term care insurance can be quite beneficial for people with significant assets. If you are interested in purchasing long term care insurance, consider a policy that is part of Idaho's Long-Term Care Insurance Partnership Program. These policies earn credit for benefits paid out by the insurer, so the insured person could qualify for Medicaid without having to spend down all of her assets.

## Institutional Elder Abuse

*"When we went to visit mom at the nursing home, she had bruises and hadn't eaten for two days. I don't think she's being taken care of."*

Sadly, seniors may experience abuse while in the care of nursing homes and other institutions. Friends and family members should monitor if their loved ones:

- ◆ haven't eaten enough
- ◆ have bedsores or other injuries
- ◆ aren't getting their medicine
- ◆ are missing personal items
- ◆ complain about verbal or physical abuse from the staff
- ◆ seem mistreated

## The Ombudsman Responds to Institutional Abuse

Ombudsmen advocate for the elderly. They investigate complaints and respond to requests for assistance from older individuals living in long-term care facilities as well as from those living in the community in residential care or assisted living facilities. Ombudsman services are free. Check **page 3** of this Guidebook for your local Ombudsman's phone number.



# Renter's Rights

## Tenants have certain rights under Idaho law:

- ◆ The right not to be discriminated against when looking for a place to rent or during the tenancy.
- ◆ The right to have a rental properties that is not dangerous or unhealthy.
- ◆ The right to request needed repairs and have the landlord address the repairs within 3 days.
- ◆ Landlord cannot evict without going through the proper court process.
- ◆ Landlords cannot unfairly keep the renters' security deposit if there is no damage
- ◆ Discrimination in Housing

Landlords cannot discriminate against you because of your sex, race, color, religion, disability, national origin, or familial status (whether you have children or not). These are called the protected classes. This applies when you are looking for a rental and when you already are living in one.

**If you think you might have suffered discrimination because you belong to a protected class, call one of these numbers:**

Idaho Human Rights Commission (888) 249-7025 or (208) 334-4751 (TTY)

Intermountain Fair Housing Council 383-0695 or 1-800-717-0695 (TTY)

HUD / Fair Housing and Equal Opportunity Office 1-800-877-0246

## You may request a reasonable accommodation

A "reasonable accommodation" allows you as a tenant to request a change to a landlord or rental agency's rules or policies (like requesting a first floor unit). A "reasonable modification" is a change to the physical structure (like building a ramp or lowering a countertop) that allows a person with a disability to fully use and enjoy their housing.

The accommodation that you ask for must be reasonable, which means it cannot place an undue financial or administrative burden on the housing provider. For example, asking your landlord to help pay your bills or drive you to appointments might be an undue burden and unreasonable. However, asking your landlord to relax a "no pets" policy so you can live with your assistive animal would likely not be an undue burden and is likely reasonable. You may have to ask a qualified health professional to write a letter stating that you are disabled and that your disability is connected to the accommodation you are requesting. The letter should not discuss details about your disability, which is confidential health care information. Contact Idaho Legal Aid Services or Intermountain Fair Housing Council if you have questions. You can also download free, interactive forms at [www.idaholegalaid.org](http://www.idaholegalaid.org), including Reasonable Accommodation request forms.

# More Renters' Rights

## Repairs

Idaho law (Code Sections 6-320 and 6-321) gives tenants the right to sue a landlord if he has failed to make certain repairs within 3 days of a written request. These repairs are:

- ◆ Water-proofing, weather-protection
- ◆ Electrical & Plumbing
- ◆ Heating, Ventilation, Cooling
- ◆ Sanitary facilities
- ◆ Installation of a smoke detector
- ◆ Other conditions hazardous to health or safety

If you need repairs, send your landlord a written demand letter. Keep a copy of the letter for your records and send it by certified mail or hand deliver it with a witness. If the landlord does nothing, you can sue them for any damages and costs you suffered because he didn't make the repair, or you can sue to get a court order forcing him to make the repairs. Idaho law does not allow tenants to make repairs and deduct the repair costs from rent. You can download a free interactive form to request repairs from your landlord and learn more about your right to live in a safe, healthy rental property at [www.idaholegalaid.org](http://www.idaholegalaid.org).

## Security Deposit

When you move out of a rental, make sure to take lots of pictures to show the condition of the property. Your landlord has 21-30 days from the date you move out to return your deposit or to provide you an itemized list of charges. If your landlord fails to return your deposit, or you disagree with charges the landlord is claiming, send them a demand letter. If you and the landlord cannot reach an agreement, you can sue the landlord in small claims court (for up to \$5,000) and can ask the judge for triple your deposit amount back.

## Manufactured Home Owners

If you own a manufactured home and are renting a lot, you have unique rights, spelled out in Idaho's Manufactured Home Residency Act (Idaho Code Sections 55-2001 through 55-2019). For example, the landlord has to give you 90 days written notice if she: does not intend to renew your lease, wants to raise your rent, or wants to change the Community's Rules. The landlord also cannot evict you for complaining about the health and safety of the community or for joining a Tenants' Association.

**For help finding a rental property:**

**1-877-428-8844**

**[www.housingidaho.com](http://www.housingidaho.com)**

# Evictions

Receiving an eviction notice or just a threat of eviction can be terrifying. Know that you have a right to a proper eviction notice before your landlord evicts you. Often a landlord may have to give you a chance to fix a mistake you made or pay rent if your rent is late.

## The landlord has a right to evict you for only certain reasons:

- ◆ If you don't pay rent on time (even if you have a good reason like you lost your job or the place needs repairs)
- ◆ If you violate the lease agreement
- ◆ If you have a month-to-month lease and the landlord gives you 30 days' notice

## The landlord cannot evict you for any of these reasons:

- ◆ Because you request repairs
- ◆ Because you complain about housing code violations
- ◆ Because you join a tenants' association
- ◆ Because you request a reasonable accommodation or modification
- ◆ Because you are a member of a protected class

If a landlord wants to evict you, she has to give you a proper eviction notice. If you violate the lease agreement or you are behind on rent, the landlord has to give you a notice that gives you 3 days to “cure” (fix) the violation or pay your rent. If you “cure” the lease violation in those 3 days, then you can't be evicted. If you don't cure and don't move out, your landlord can bring an eviction suit against you. Your landlord cannot, however, try to force you out by turning off utilities or locking you out.

If you think you are being treated unfairly or evicted illegally, contact Idaho Legal Aid Services. You can find more information and a free, interactive form to use when you need to respond to an eviction notice at: [www.idaholegalaid.org](http://www.idaholegalaid.org).



# Housing Issues

## Federal Housing Programs

There are several kinds of Federal Housing Programs. Some give tenants “vouchers” to help pay rent for houses and apartments owned by private landlords. In other programs, a government agency charges rent at a reduced rate, based on a tenant’s ability to pay. You have to apply to get into one of the programs. Many have a waiting list before you are accepted.

Federal housing programs sometimes offer additional tenant protections. For example, you might get to have special notice before your landlord attempts to raise rent or evict you. Or your lease might require that you cannot be evicted except for “good cause.” Make sure to read your lease agreement carefully so you are aware of any additional rights you may have. If you have questions about federal housing programs, you can contact your local housing authority or Idaho Legal Aid office.

## I’m getting foreclosed upon. Do I have any rights?

Millions of people, including seniors, have found themselves facing foreclosure in the last few years. There are often options to help you avoid foreclosure, such as a loan modification to reduce your interest rate, or a short sale or deed in lieu of foreclosure if you no longer want the home. You may qualify for free legal services from Idaho Legal Aid Services if you are a homeowner facing foreclosure. Make sure to act quickly because there are time limits for requesting certain types of assistance.

Housing counselors are also available to help homeowners avoid foreclosure:

- ◆ Idaho Housing & Finance Association 1-877-888-3135
- ◆ Boise Neighborhood Housing Services 208-343-4065 ex. 100
- ◆ Pocatello Neighborhood Housing Services 208-232-9468 ex. 105
- ◆ Community Action Partnership Agency in Lewiston 208-746-3351 ex. 4187 or 1-800-326-4843

## Reverse Mortgages

Many seniors have heard about reverse mortgages as a way to pay off other debts, avoid a foreclosure, or have extra income in retirement. A reverse mortgage allows a person age 62 or older to convert equity in their home into cash without having to sell the home or re-pay the loan in monthly payments. The reverse mortgage is paid off when you move out of the home or upon your death. Before you take out a reverse mortgage, it’s important to understand that the costs and fees can be high, there may not be any equity in your home to leave to your heirs, interest rates may be variable and change over time, and you should consider what will happen to your spouse, especially if he or she isn’t included on the reverse mortgage loan agreement. For more information about reverse mortgages, you can call the U.S. Dept. of Housing & Urban Development (HUD) at 1-800-CALL-FHA or AARP at 1-800-209-8085.

# Family Law Issues

## Filing for Divorce

Idaho is a “no fault” divorce state, which means that you don’t have to prove that your spouse did anything wrong in order to get a divorce and you do not need your spouse’s consent to file. You just need to prove that there are “irreconcilable differences” between you and your spouse.

Residency. You must live in Idaho for six full weeks in a row before filing for divorce.

Community Property & Debt. In Idaho, a court will assume that both spouses contributed equally to the marriage, even if only one spouse worked. The property earned by either spouse during the marriage is called “community property” and will usually be split 50/50 at divorce. The community’s debts will also be divided equally. However, you can ask for a different arrangement if your unique situation (income, age, illness, etc.) justifies a different division.

Pro se. You can file divorce “pro se” (by yourself, without an attorney). All of the forms you will need are available at the Court’s Assistance Office of your local county’s courthouse, and also online at: [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov). Find more information and download free, interactive legal forms you can use to file for divorce at: [www.idaholegalaid.org](http://www.idaholegalaid.org).

## Grandparents Raising Grandchildren

Grandparents sometimes have difficulty proving to hospitals or schools they have authority to make decisions for a grandchild. If you are taking care of your grandchild, even for a short time, you should get written permission (called a parental power of attorney) from at least one of the child’s parents. The parental power of attorney form is available at [idaholegalaid.org](http://idaholegalaid.org). If you are raising your grandchild for a longer period of time, you may ask a court to declare that you are your grandchild’s permanent legal guardian. This will give you legal authority to care for a grandchild and will often let you place your grandchild on your health insurance.

## Petitioning for Guardianship of a Minor

To become a child’s guardian, you have to show a judge that you are qualified to be the child’s guardian and that a guardianship is in the best interest of the child. You also have to show the court that the child’s parents have abused, neglected or abandoned the child or cannot provide a stable home environment. If the parent fails to keep a “normal parental relationship” for six months without a good excuse, the court will assume that the parent has abandoned the child. You will have to send notices to the child’s parents that you are petitioning for a guardianship. The court will likely appoint a Guardian ad litem (an attorney) to speak for the child during the process. If you are appointed guardian, you will have to file an Annual Report with the court. An attorney is generally needed to successfully pursue a guardianship case. You can find resources for grandparents raising a grandchild at: [idhocareline.org/kincare/](http://idhocareline.org/kincare/).

# Guardianships & Conservatorships

If a person loses the ability to take care of their own health and safety, a concerned friend or family member may ask the Court to appoint a Guardian (someone to make personal decisions about matters such as health care and housing) and/or a Conservator (someone to make decisions about money) for the protected person. In order for a court to grant a guardianship or conservatorship, it must find that the protected person is incapacitated. If there is an urgent risk that the person will be greatly harmed (by themselves or others), a temporary guardian can be appointed. This kind of emergency guardianship only lasts 90 days, during which time a permanent guardianship can be pursued.

The Court will take precautions to make sure that the protected person is taken care of and actually needs someone to make decisions for her. The protected person has to receive notice about the proposed guardianship. The court will appoint a court visitor who interviews the protected person and the proposed guardian, visits where the protected person will live, and makes a report for the court. The court will also appoint a physician to examine the protected person and give a written opinion regarding whether she is incapacitated. Finally, the court will appoint a Guardian ad litem (an attorney) to represent the protected person's interests. The court will review the recommendations of the physician, court visitor, and Guardian ad Litem and hold a hearing to determine whether a guardianship and/or conservatorship is needed. The protected person has the right to attend this hearing, and the right to hire their own private attorney.

Guardians must pass an online training course and submit a yearly report to the court about the protected person's health and living situation and Conservators must submit annual accountings to the Court about the protected person's income, expenses and assets. You can find free Conservator and Guardian reporting forms at [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov), and a free Guardian's Annual Report form at [www.idaholegalaid.org/SelfHelp/GuardianAnnualReport](http://www.idaholegalaid.org/SelfHelp/GuardianAnnualReport).

## Complaints

If you have reason to believe that a guardian or conservator is not fulfilling their duties to the protected person (e.g., stealing money, withholding medical treatment, failing to provide necessary food or shelter, etc.), then you can file a Guardianship-Conservatorship Complaint with the court. The form is available at [idaholegalaid.org](http://idaholegalaid.org) or through your local Court Assistance Office.

# Advance Directives

You may have had a doctor or friend tell you that you need a legal document called a “power of attorney.” Sometimes these documents are called “advance directives.” There are several different kinds of “power of attorney” documents but they all have a similar purpose: they let you decide who will make important decisions for you if you can’t. Because this is a very important power, you should take care that you know what you are signing and talk to an attorney if you have any questions or concerns.

## **Capacity: know what you’re doing**

To make a “power of attorney” document, you must have legal “capacity.” That is, you must know what it is you’re signing, and why you’re signing it. You must also know who you’re picking to have your legal powers, what powers they’ll have, and when.

## **Durable: Lasting your whole life**

Before signing any type of “power of attorney,” you should make sure that it is “durable.” Durable means that it will last even beyond the point where you cannot make decisions (when you lack capacity).

## **Immediate vs. Springing: Now vs. Later**

You can decide if you want your powers of attorney to be “immediate” or “springing.” Immediate means exactly that: the agent will have power to decide about your health care or finances right after it is signed. You might want to have the document be “springing” however. That is, it will “spring” into action when some condition happens. Most commonly, people will make their power of attorney become effective only after a doctor has stated in writing that they are no longer competent to make those decisions themselves.

## **Revocability: You can change your mind.**

You can change the person who you name as power of attorney at any time, as long as you have capacity. You can simply revoke your current document or execute a new one, dating it so it is clear that it replaces the first document. These are your legal powers, so you should be the one to choose who gets to have them! If you revoke or change a power of attorney document, make sure that anyone who may have dealt with the old document, gets copies of your new or updated power of attorney or revocation

## **Who should you pick as your agent?**

The person you choose to have your Powers of Attorney should be a trusted friend or family member. It is a very important decision and you should not be pressured into choosing someone against your wishes. You should have serious talks with your agent so you know they understand what your wishes and beliefs are and are capable and comfortable acting in your best interest.

## **Powers over Health, Powers over Money**

There are two main types of “power of attorney” documents: Power of Attorney for Health Care and Power of Attorney for Financial Affairs. The first document lets everyone know who you want to make decisions about your health when you cannot communicate with your health care providers. For example, the person you name could make the decision about whether or not to allow a surgery if you were unconscious. A power of attorney for finances gives your agent powers over your financial and legal matters such as accessing bank accounts, paying debts, signing contracts, signing up for government benefits, etc. You get to choose which specific powers to give to your agent and which powers she will not need to have. If your agent will deal with real property (a house or land) for you, make sure to have the power of attorney notarized.

## **Living Will**

A “Living Will” is often made at the same time and in the same document as a power of attorney for health care. A Living Will gives your health care providers instructions regarding what life sustaining systems you want to have provided or withheld, in the event you are unable to express your own wishes due to an incurable and terminal condition or persistent vegetative state. A Living will allows you to decide ahead of time what will happen in these situations. You have three main options: 1) provide all life sustaining measures; 2) remove life sustaining measures except to provide hydration (via an IV) and/or nutrition (via feeding tube); or 3) remove all life sustaining measures. A Living Will form is available at [idaholegalaid.org](http://idaholegalaid.org), or you can discuss this document with your doctor.

## **Durable Power of Attorney for Health Care**

A Durable Power of Attorney (DPOA) for health care is a document where you declare who you want to make health care decisions when you are unable to make them. A common example is when you are unconscious after an auto accident. It tells your doctors who to talk to about different medical options or procedures on your behalf. If you wish, you can leave specific, special instructions about your care for your agent.

The living will and DPOA for health care do not have to be witnessed or notarized. After you sign, keep the original and give copies to your agents and doctors. You can also register the documents for free with the Idaho Secretary of State. Low income seniors may be able to get free help drafting advance directives and powers of attorney by contacting Idaho Legal Aid Services.

# Leaving a Will or Dying “Intestate”

Most people know that it’s important to create a will to show who should get their property when they die. Yet most people do not have a will. If you die in Idaho without a will (that is, you die “intestate”), the state will determine how your property will be distributed through laws called “intestacy statutes.” These laws are the state’s attempt to distribute your property as you would have probably wanted. It’s easy to imagine that the laws might distribute your property in a way that you wouldn’t necessarily have wanted. That’s why having a valid will is important as it will carry out your wishes and determine who gets what. You do not necessarily need a lawyer to help write your will. However, it may be best to ask for help from a lawyer, especially if you own significant assets like land or a house, or you have family members who don’t get along with each other.

## Requirements for a typed will:

- ◆ A statement of testamentary intent (basically, a sentence saying you want this to be your final will)
- ◆ Capacity (you are over 18, of sound mind, not signing under duress)
- ◆ Your signature and date
- ◆ Two witnesses who swear that you signed the will and then must sign the will themselves.

## Requirements for a handwritten (“holographic”) will:

- ◆ All the important parts of the will must be in your handwriting (not typed).
- ◆ A statement of testamentary intent (basically, a sentence saying you want this to be your final will)
- ◆ Capacity (you are over 18, of sound mind, not signing under duress)
- ◆ You must sign it.
- ◆ You must date it.

## Changing your Will

You can add something to a valid will or change it by doing a “codicil.” You can make a codicil in the same way you execute a will. (For example, signing, dating, having two witnesses).

## Revoking a Will

- ◆ Tearing it up (along with all copies)
- ◆ Writing “revoked” on it
- ◆ Writing a new will dated after the old one

These requirements are VERY general. The laws of wills and probate are complex. Contact an attorney if you have any questions.

# Avoiding Probate?

Probate is a court process where the estate of someone who has died is administered. Probate has a bad reputation and many people think they should “avoid probate.” Probate does not have to be time-consuming or expensive, especially for people with relatively small estates (less than \$100,000). In rare cases, however, (often involving family disputes over large estates), probate can be expensive and take years. You also may believe that you need to avoid probate to avoid estate taxes. However, estate taxes only apply to estates valued at over \$5 million (in 2015) and therefore are not a concern for most Idahoans.

**In some circumstances, simplified probate procedures can be used:**

- ◆ If your spouse dies, and you were the sole heir, you may be able to use an Affidavit in Lieu of Probate or Summary Administration for a Surviving Spouse.
- ◆ If an estate is smaller than \$100,000 and contained no real property, \$100,000, the heir(s) can fill out an Affidavit for Collection of Personal Property that allows him or her to collect personal belongings and documents of the deceased person.

It's probably best to contact an attorney with questions about probate if your spouse or relative dies because there are many variables. If you do use a lawyer to go through probate, it is usually preferable to have them charge you a flat fee (for very small estates) or an hourly rate or and not a “percentage fee.” Don't be afraid to go to a different attorney if you think you're being charged too much.

## Should I get a living trust?

Property placed into living trusts does not have to go through probate, so this may simplify transfers of ownership after your death.

Because factors such as the size of your estate and your unique estate planning goals, you should consult with a licensed Idaho attorney if you have questions about living trusts. Living Trusts are not for everybody. Take time to make decisions about your estate and talk to a trusted attorney before buying a living trust.



# Age & Disability Discrimination

Employment discrimination means treating people differently in the workplace (hiring, firing, promotions, wages, training opportunities, etc.) because of their age or disability. There are two main laws that protect older people from discrimination by employers. The Federal Age Discrimination in Employment Act (ADEA), found at 29 U.S. Code Section 621, protects workers against age discrimination by employers who have 20 or more employees.

Idaho's anti-discrimination law is found at Idaho Code Section 67-5909 and it prohibits employment discrimination based on age (being age 40 and older) or disability. However, if a person has a particular disability that prevents a person from performing the work required by that employer, even with a reasonable accommodation, then the employer is not required to hire that person.

If you think you might have been discriminated against in the workplace because of your age, you should call the Idaho Human Rights Commission as soon as possible. Under federal law, you must file your complaint within 300 days (a little less than a year) from the date you were discriminated against. You do not need a lawyer to file a complaint.

## **If you were denied a job because of your age or disability, you can file a complaint with:**

Idaho Human Rights Commission  
317 W. Main St., Boise, Idaho 83735  
(208) 334-2873 or 1-888-249-7025  
TTY: (208) 334-4751

IHRC's website also has lots of information about  
state and federal anti-discrimination laws:

[www2.state.id.us/ihr/](http://www2.state.id.us/ihr/)

## **If you or your employer need help coming up with an accommodation to help you perform your job tasks, contact:**

Job Accommodation Network  
1-800-52607234  
1-877-781-9403 (TTY)  
askjan.org

# Defending Your Rights

You may find it necessary to use the court system to enforce one of your rights described in this Guidebook. In many cases, it will be a good idea to have a lawyer to help you in court.

**However, you can take steps to defend your rights with or without an attorney. Practice “legal self-defense.” Remember these “tricks of the trade”:**

- ◆ Get it in writing
- ◆ Make copies
- ◆ Keep records
- ◆ Don't sign what you don't understand
- ◆ Feel free to say no
- ◆ Take along a witness
- ◆ Take photos or videos if you can
- ◆ Look up the law
- ◆ Ask what the other person knows about the law
- ◆ Write reasonable demand letters
- ◆ Be aware of time limits and statutes of limitations

If you have a disagreement with someone, writing a letter stating your rights or referencing the applicable law can have powerful effect. Send it “certified mail” or hand deliver it with a witness to prove the other person received it. Even if the person doesn't respond, a copy of your letter may help your case if you have to sue.

**Small Claims Court** is available for disputes less than \$5000. If your demand letter doesn't work, you may have to sue in Small Claims Court. Neither side can have an attorney in Small Claims Court, so you will have to sue “pro se,” which means by yourself. However, you can prove your case to the judge by bringing witnesses, photographs, documents, and other evidence, just like an attorney. There is a fee to file in Small Claims Court, but if you can't afford it, you can apply for a fee waiver.

The Court Assistance Office in each County Courthouse has all the forms you will need to help file your Small Claims Lawsuit and information on how to collect your money if you win. These forms are also available online at [www.idaholegalaid.org](http://www.idaholegalaid.org).

**Mediation** may also be a good option: it can take less time and be less hostile than a lawsuit. Mediators are available in the phone book or through the Idaho Mediation Association.

Small claims court is only available for limited types of cases. If your case is not the type that is heard in small claims court, it will be filed in an Idaho Magistrate Court, an Idaho District Court, or, less frequently, in a Federal Court. Although having an attorney is not required in these cases, you may need a lawyer to bring your suit successfully because the rules regarding your witnesses and evidence are not as relaxed as in Small Claims Court and the judge is required to hold you to the same standards as an attorney.

### **What if someone is suing you?**

If you receive a Complaint and Summons, the Court Assistance Office at the county courthouse has forms available so you can file an Answer as a defendant in a lawsuit. In many cases, you must file your Answer within 20 days. Carefully read the plaintiff's claims in the Complaint. You will have to admit or deny each of the claims in your Answer, and state any defenses you have. You then must sign the Answer in front of a notary and have it properly served on the other party and filed with the court. The Answer form should come with instructions, which you should follow carefully.

You can find a private attorney through the Idaho State Bar Private Attorney Referral Service or through Idaho Volunteer Lawyers Program if you are low income and have a qualifying case.

**Idaho Lawyer Referral Service: [isb.idaho.gov](http://isb.idaho.gov) or 208-334-4500**

**Idaho Volunteer Lawyers Program: 208-334-4510 or 1-800-221-3295**

### **What to expect when you meet your lawyer:**

#### **Your lawyer should explain to you:**

- ◆ Your lawyer will ask you a lot of questions about your case and what results you want
- ◆ Be prepared with a timeline of relevant events and copies of all relevant documents

- ◆ Duty of Confidentiality (which means that your lawyer cannot discuss your case with others without your permission)
- ◆ Your role
- ◆ The lawyers role
- ◆ The steps in the legal process
- ◆ Your legal options
- ◆ Your chances of getting what you want
- ◆ The risks you may face, if any
- ◆ The limits of the representation

# Get a Legal “Check Up”

Avoid serious legal problems later by “checking up” on your legal documents and finding out more about your options today. You can check some of these boxes yourself but should also talk to an attorney or options counselor if you have questions or concerns.

- ◆ Check your “Living Will.”
  - ◆ Have you stated what kinds of measures you want your doctors to take if you are in a permanent coma?
  - ◆ Do your trusted friends and family and doctors know your wishes?
  - ◆ Do your doctors have a copy of your document?
- ◆ Check your Durable Power of Attorney for Health Care.
  - ◆ Have you named someone you trust to make medical decisions in an emergency if you can’t?
  - ◆ Did you name a substitute person in case your first choice is not available?
  - ◆ Do the people you chose know your wishes about health decisions?
  - ◆ Do the people you chose know each have a copy of your document?
  - ◆ Do your doctors have a copy?
  - ◆ Check to make sure your Power of Attorney document is durable.
- ◆ Decide whether to create a Durable Power of Attorney for Financial Affairs.
  - ◆ Is there someone you can trust to act as your agent?
  - ◆ Have you named a trusted person to make financial decisions for you if you can’t?
  - ◆ Do you know what kinds of powers the agent will have or has?
  - ◆ Does the agent have too much or too little decision-making power?
  - ◆ Do you know if the agent has the power right now, or does it “spring” into action if you lose capacity?
  - ◆ Check to make sure your Power of Attorney document is notarized.
  - ◆ Does your agent know where the Power of Attorney document is located?
- ◆ Check your Will.
  - ◆ Do you have a valid, updated will?
  - ◆ Is it kept in a safe place?
  - ◆ Does a person you trust know where it is?
  - ◆ Does your will still accurately spell out who should get your property?

- ◆ Check your Lease.
  - ◆ Do you have a copy of your lease?
  - ◆ Do you understand your rights and responsibilities under the lease?
  - ◆ Do you know when the lease ends?
  - ◆ Do you know all of your other housing options, including potential eligibility for federal housing programs?
- ◆ Be Aware of Identity Theft and Financial Exploitation
  - ◆ Review your bank and credit card statements monthly
  - ◆ Review your credit report annually
  - ◆ Use strong passwords and don't share them with anyone
  - ◆ Do not share your Social Security or Medicare numbers unless absolutely necessary
- ◆ Check your eligibility for health care and other public benefits?
  - ◆ Have you talked to an options counselor or an attorney about how to pay for health care (especially long term care) in the future?
  - ◆ Do you qualify for Medicaid programs to help pay your Medicare premiums (QMB or SLMB)?
  - ◆ Do you qualify for SNAP (food stamp) assistance?
  - ◆ Do you qualify for cash assistance (AABD)?



# Helpful Resources for Idaho Seniors

## 2-1-1

Free community information and referral service. Just dial 2-1-1

### **Community Action Partnerships**

Non-profit that provides help for low income Idahoans, such as food, telephone, or weatherization assistance.  
[www.idahocommunityaction.org](http://www.idahocommunityaction.org)

### **Consumer Financial Protection Bureau**

A resource for filing consumer complaints and getting information about consumer financial laws.

[www.consumerfinance.gov](http://www.consumerfinance.gov)

### **Court Assistance Office**

Provides tools and information for people representing themselves in court.

[www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov)

### **DisAbility Rights Idaho**

Advocacy agency servicing people with disabilities in Idaho.

[disabilityrightsidaho.org](http://disabilityrightsidaho.org)

### **Idaho Attorney General Consumer Protection**

Enforces consumer laws, provides information about consumer rights, and can take consumer complaints.

208-334-2424

### **Idaho Commission on Aging**

Services for seniors, including the Aging & Disability Resource Center

[www.aging.idaho.gov](http://www.aging.idaho.gov)

### **Idaho Department of Health & Welfare**

Application for assistance

<http://healthandwelfare.idaho.gov/Portals/0/FoodCashAssistance/ApplicationForAssistance1.pdf>

### **Idaho Senior Legal Hotline**

Free legal advice on civil matters for any Idaho senior age 60+

1-866-345-0106 or

Español (866) 954-2591

### **Idaho State Bar Attorney Referral**

Referrals to private attorneys in Idaho that practice in the area of law you need.

208-334-4500

### **Idaho Volunteer Lawyers Program**

Recruits and places pro bono attorneys for low income, qualifying Idahoans

208-334-4510

### **Intermountain Fair Housing Council**

Information and assistance on Fair Housing Act discrimination

1-800-717-0695

### **Rental Housing**

Searchable database of rental housing  
[housingidaho.com](http://housingidaho.com)

### **Senior Health Insurance Benefits Advisors**

Advice and information regarding Medicare benefits

1-800-247-4422

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**Idaho Legal Aid Services (ILAS)** is a non-profit law firm serving low-income individuals with civil legal issues through seven local offices across Idaho.

***Local Service Offices***

Boise 310 N. 5th St. (208) 345-0106

Caldwell 1104 Blaine St. (208) 454-2591

Coeur d'Alene 410 Sherman Ave., #303 (208) 667-9559

Idaho Falls 482 Constitution Way, # 101 (208) 524-3660

Lewiston 633 Main St., # 103 (208) 743-1556

Pocatello 150 S. Arthur Ave., # 203 (208) 233-0079

Twin Falls 475 Polk St., # 4 (208) 734-7024

***Statewide Hotlines***

Idaho Senior Legal Hotline 1-866-345-0106

(en español 1-866-954-2591)

Idaho Domestic Violence Legal Hotline 1-877-500-2980

TTY (Deaf and Hearing Impaired) 1-800-245-7573

Looking for more information?

Visit [www.idaholegalaid.org](http://www.idaholegalaid.org) to find more free forms and information.



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