

Definitions

- Decedent – a person who has died
- Heir – someone legally entitled to inherit the property of another on that person's death
- Personal Representative – the executor or administrator of the estate of a deceased person
- Testator/testatrix – a person who has made a will
- Estate – the money and property owned by a person at death
- Probate – the judicial process of proving a will or settling the estate of a deceased person
- Incapacitated – lacking sufficient understanding or capacity to make or communicate responsible decisions (see Idaho Code Section 15-5-101)



For More Information

This brochure is intended to provide general legal advice, if you need specific legal advice, please apply for assistance through Idaho Legal Aid online at our website: idaholegalaid.org or by calling: (208) 746-7541.



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End of Life Planning Brochure

This brochure provides an overview of some practical steps you can take to ensure your end of life wishes are followed. Effective end of life planning can reduce stress and worry while also helping to prevent fraud and exploitation.

Create a Financial Factsheet.

A financial factsheet lists the details of any accounts you have in your name (bank accounts, pensions, utilities, etc.). Don't include passwords or account numbers on the factsheet. Simply list the type of account and which company holds the account. A financial factsheet provides your heirs all of the information they will need to locate accounts after you pass away.

Consider Powers of Attorney and A Living Will.

Powers of attorney (POA) designate someone who can make medical or financial decisions for you. POAs allow you to plan for future incapacity and only remain in effect during your lifetime. Proper POA planning can avoid a future appointment of a court-ordered guardian or conservator if you become incapacitated. There are several types of POA documents: Financial POA, Health Care POA, or Parental POA. A Living Will is a document that outlines your wishes regarding the use of life-prolonging medical care in the event you are unable to make such decisions and treatment would only prolong your life artificially. Typically, a health care POA and a living will are drafted together.

For more information about powers of attorney or living wills, see our brochure: "Decision-Making As We Age." Self-help forms are also available on our website at: <https://www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms>.

Do You Need a Will?

While a will is not required for property to pass on to natural heirs, such as a spouse and children, there are several advantages to having a will in place.

- Provides a clear statement of who gets what property
- Can include a person's wishes regarding burial or cremation
- Allows a person to name a Personal Representative they trust to handle their affairs
- Allows a person name a guardian for minor children

When a person doesn't have a will, their property will pass via "intestate succession," which means it will be passed down following rules set forth in Idaho Code, Title 15, Chapter 2.

There are two ways to draft a valid will under Idaho law, the first of these is a typed, formal will. Typed wills must be signed and dated by the testator and two witnesses who can swear that the testator signed the will. The second option for drafting a will is to do a holographic will. In order for a holographic will to be valid, all of the important parts of the will must be in the testator's handwriting and the will must be signed and dated by the testator.

All wills in Idaho must be in writing, cannot be signed under duress, and the testator must be 18 or older and competent when the will is signed. For more information about wills, see our brochure: "Questions and Answers About Wills."

Debts After Death

Under Idaho law, family members and heirs are not automatically responsible for a decedent's debts. A family member would only be responsible for a debt if they were jointly responsible for it during your lifetime. This responsibility could be triggered because a family member co-signed on the debt or because the debt was a community debt of both spouses, (a community debt is, generally, a debt that was incurred during the marriage). Debts that were the sole responsibility of the decedent are paid out of their estate.

Understand the Probate Process

Probate is the court process of transferring a decedent's property to their heirs. If there is a will, the will guides the probate process. If there is no will, the probate court will look to Idaho's intestate succession laws to determine who inherits property.

People sometimes try to avoid probate out of fears related to taxes, cost, or complexity of the process. However, for smaller estates, using planning tools, such life estates, living trusts, or other methods to try to avoid probate, can often be more costly than probate itself. For some small estates, probate can be accomplished through a simple form. Small estate probate forms are available on our website: <https://www.idaholegalaid.org/topics/2569/small-estates>. For larger or more complex estates, contact an attorney to discuss estate planning and probate options. For more information about probate, see our brochure: "Questions and Answers About Probate."