

**DAVENPORT'S  
IDAHO WILLS  
AND  
ESTATE PLANNING  
LEGAL FORMS**

**written by attorneys  
Alex Russell and Robert Maxwell**

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# CHAPTER 1

## BOOK BASICS AND LIST OF FORMS

### ESTATE PLANNING CONTROLS THINGS IF LATER ABSENT, SICK, OR DEAD

This short book helps people in Idaho do legal documents to help control their health care, property, money, children, funeral, and more if later they're absent, sick, or dead (this is often called "Estate Planning"). People have a right to control these matters so judges, doctors, and other people mostly just try to determine: "Based on what a person wrote what did they want done?"

### BOOK HAS 10 READY TO USE LEGAL FORMS FOR IDAHO

This book has 10 ready to use legal forms made for Idaho. (but most people use just a few legal forms).

#### WILL RELATED FORMS

**Form 1. Will (Standard)** – a Will (also called a Last Will And Testament) lets a person control things later after their death like who gets money and property, who is Executor, and if easier legal options can be used.

**Form 2. Will (Guardian)** – Will with part added to name a Guardian to if needed (like if both parents die) care for a minor child under 18 and a Conservator to manage and spend a child's money and property.

**Form 3. Self-Proving Affidavit** – often done with a Will to later help show it was signed right so is valid.

**Form 4. Tangible Personal Property List** – lets a person later easily add some small gifts to their Will.

**Form 5. Handwritten Will** – Will which if all handwritten by person doing it can skip the need for witnesses.

#### HEALTH CARE FORMS

**Form 6. Advance Health Care Directive** – lets a person name someone to be Agent to control health care if the person is later incapacitated and, also, lets a person say that if their health gets bad and they are later incapacitated to stop giving certain medical treatments (many people this part the "Living Will").

**Form 7. Physician Orders For Scope Of Treatment** – does serious act of telling paramedics and others immediately from now on don't try certain health care like C.P.R. (this is often called a Do-Not-Resuscitate).

#### GIVING POWER FORMS

**Form 8. Idaho Statutory Form Power Of Attorney** – lets power over money, property, and more be shared with a trusted person so they can do things, like use accounts, pay bills, get records, and sell items.

**Form 9. Power Of Attorney Delegating Parental Powers** – lets a parent share power over a child under age 18 with a person including over health care and school issues so the person can later make decisions.

**Form 10. Designation Of Agent To Control Bodily Remains** – lets a person pick someone in particular to control their funeral, burial, cremation, and related matters, and also give instructions about all this.

## **BOOK ALSO HAS FORM TO TELL HELPFUL THINGS TO FAMILY AND FRIENDS**

Many lawyers, banks, and financial planners give out an unofficial form to tell family and friends helpful things on property, money, debts, helpful tips, last wishes, and more. This book's Chapter 2 has such a form.

## **ESTATE PLANNING OFTEN IS NOT VITAL AND WORTH SPENDING MUCH ON**

Despite what many people think Estate Planning often does not greatly change costs, taxes, delays, and work involved in these areas, so it often is not vital and worth spending a lot of money and energy on. Benefits seem very low for young people since only about 4% of people die by age 40, and only 0.13% of children before age 18 have both parents die. See *Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288*. Many people spend more time and money on getting good life insurance.

## **IDAHO LAW ON ESTATE PLANNING COVERS MOST PEOPLE LIVING HERE**

This book is only for Idaho since Estate Planning law and legal documents vary greatly between states. Usually a state's Estate Planning law applies if a person's primary residence is here (called their "domicile"). Many judges say "residence" occurs if a person lives in a place and for a moment has no clear plans to leave. Later plans to move don't matter till people move. People can stay under a previous state's Estate Planning laws after moving if people always plan to leave the new state. For example, people who move to a state for years for travel, school, projects, or military often keep legal ties to their old state. People often do health care forms to match the state a health facility is in. Most immigrants of any kind can do Estate Planning here.

## **BOOK IS SHORT, USES EMPHASIS, AND HAS STANDARD FORMS TO SEE**

This book is short and may read rough but can be read fast. Long books often lead to misunderstanding of the basics and skimming. This book has legal forms people can quickly see. For emphasis paragraph titles, underlining, and boxes are used. This book capitalizes some legal words like Will, Testator, and Agent but this is optional. To save space some small words are skipped and end quote marks put before punctuation.

## **THIS BOOK COVERS MAJOR LEGAL IDEAS AND SHOULD SUIT MOST PEOPLE**

This book covers the big U.S. legal ideas on Estate Planning and some ways local law is a bit different. This book can't cover all legal issues but should suit most people without some strange situations or wishes. Strange situations or wishes that may need research or a lawyer include: a) strange gift wishes for property and money, b) wealth over \$5 million, c) big medical concerns like extreme age, d) property or money going to a person with a disability or special needs, and e) wish to move or hide assets to qualify for government help.

## **LEGAL FORMS CAN HELP MANY AND THIS BOOK HAS "STANDARD FORMS"**

Legal forms are good at most things involved in Estate Planning and do make binding legal documents. Instead of using legal forms a lawyer can be used for Estate Planning but this can be costly, take months of work, and they can make mistakes. In life people often pick a cheaper option. Importantly, often a hospital, charity, agency, or legislature has made a form most people use and call the "standard form", and doctors, judges, and other people may not like to follow anything else. This book does provide most standard forms. If a person signs a document in a foreign language it is usually binding.

## **FORMS MUST BE PROPERLY FILLED IN AND SIGNED AND THEN USED**

Forms must be properly filled in though often parts can be left blank. Except for signatures most parts can be filled in by someone not doing the form with good handwriting or typing. After a form is done usually people try to keep the original and hand out copies. Some people have everyone sign multiple copies to have multiple copies with ink signatures. To be legally valid some legal documents need to be “witnessed”, which is someone watching the person doing the form sign and then the witness signs too. Some documents need to be “notarized” which means a person who is a “notary” sees it signed and uses an ink stamp and signs too. Notaries (also called a “notary public”) are at some banks, brokers, insurance agents, courts, law offices, libraries, and mailing-copying centers. Using a phonebook to find a notary willing to help is recommended. The words “subscribe” and “execute” means a person signed a document, and “acknowledgment” means a person said a signature was theirs. In a form the term “respectively” means “in the order just stated”.

## **SOME LESS COMMON OR LESS USEFUL FORMS ARE NOT IN THIS BOOK**

This book skips some possible but less common or less useful documents.

- A “Codicil” can modify a Will but it is easier and legally safer to just rewrite the whole Will.
- Some people do a “Revocable Living Trust” so a Trust entity with a Trustee holds property or money during their life, usually done to after death have faster transfer of things and avoid small delays, costs, or work of others (by “avoiding probate”). But this is rarely done as it may require moving most of a person’s things to a Trust causing maybe years of hassle, mostly to avoid later small work for people happy to be getting things.
- “Childrens Trust” papers can be done (like as part of a Will) so at a death a Trust gets money or property for a minor child to manage until 18, but this is uncommon due to possible cost and hassle, since it rarely matters (as this book explains), and since most Wills already arrange other legal help for young children.
- Some people do a “Pet Trust” to help a pet, but it’s easier to just give money in Will to person given a pet.
- Though separate forms exist usually organ donation is handled in drivers license or state ID paperwork.

## **BETTER TO DO NEW FORMS IF DIVORCE, MARRY, HAVE CHILD, OR MOVE**

Divorcing, marrying, having a new child, or moving to a new state can have big legal effects, and if any of these events occur it is recommended people do a new Will and other Estate Planning papers soon. To help a bit most states say a Will from another state is still valid if people move but this is not certain.

## **NO FEDERAL, IDAHO, OR OTHER TAX IS USUALLY OWED UPON A DEATH**

Usually no or little tax is owed as a result of a death, including estate, inheritance, or death taxes.

The Federal Estate And Gift Tax is the only Federal tax that may be owed due to a death, and it only starts when a tax credit is used up that covers \$13.99 million a person in 2025 and later.

The state of Idaho has ended the Estate Tax it use to apply if residents died with a lot of money and property. No other taxes are usually owned upon a death in Idaho. In rare cases people with valuable tangible property in another state (like over \$5,000,000) may at death have to pay that state’s estate tax.

A person’s family or Executor may have to file normal income tax returns to cover the partial year a decedent lived and earned income in before they died. Life insurance payouts are usually tax free.

# CHAPTER 2

## TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM

### THERE ARE BASIC TERMS AND IDEAS IN ESTATE PLANNING

Some legal terms and ideas are basic to Estate Planning.

- “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.
- A “person doing a legal document” and “doing a form” means the form is for and affects that person.
- A “Will” or “will” (this book uses upper case “W”) is a legal document done to control issues after death. The phrase “Last Will And Testament” is used since a “Testament” long ago was a small document done along with a Will to do some things. If no Will is done a person is described as being “intestate”.
- A person who died is called the “decedent” or “deceased”. A person getting a Will gift is called “recipient”, “beneficiary”, or “heir” if related (they “inherit”). “Survive” or “surviving” is to be alive after someone died. The term “descendants” or “issue” usually means a person’s children and grandchildren.
- A person named in a Will to handle things after someone’s death is called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The new term “Personal Representative” covers both these terms and this new term is now used in most Wills in Idaho.
- A person doing a Will is called “Testator” or “Will maker”. Before about 1995 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often said or written.
- “Probate” is a legal process to do things after someone’s death like transfer property, handle creditors, and authorize a Guardian. Due to nice changes in law probate is now often informal, faster, and less costly.
- “Property” is either: 1) “real property” which is land and buildings (“real estate”), 2) “personal property” which is things not real property, like cash, accounts, stocks, tools, clothes, cars, jewelry, and art, or 3) “fixtures” which are things tied to real property (like fences, posts, lighting, and wired-in appliances).
- A person under age 18 is usually called a “minor” and often a parent or guardian helps them do things. A minor or other person not reasonably able to make wise decisions lacks “capacity” and is “incapacitated”.
- A document giving power to someone is often called a “Power of Attorney” where the “Principal” gives power to someone called the “Agent” or “Attorney-in-Fact” (but they needn’t be a real attorney or lawyer).
- Idaho law is called the “Idaho Code”. Each law in Idaho is called a “statute” or “section” shown by a “§” or “s” mark. An Idaho law be cited a few ways, for example like: Idaho Code § 15-2-501 or I.C. 15-2-501. A legal form written into state law for people to find and use if they want is called a “statutory form”.

## **“ESTATE” MEANS PROPERTY OF DECEDENT AND ENTITY HOLDING THINGS**

The “estate” or “probate estate” means all property and money of a dead person they owned that at death didn’t automatically start to go to new owners. Estate is also the name for a temporary entity run by an Executor to do things after a death (often this holds all decedent’s stuff, e.g., “Estate of John A. Smith”).

## **PERSON CAN ONLY GIFT IN A WILL WHAT THEY OWN AT DEATH**

A person can only gift by Will things they own at death so people should research what they do own. Basically by law a person usually owns all they earn as wages and salary, owns their share of income and profit tied to property they own, and owns or partly owns any things their money buys or improves. And for property with “title” documents (real estate or vehicles) or where there is a “listed owner” (like accounts) the named persons are usually the legal owners unless evidence shows special circumstances. As this book says later married people often share 50/50 ownership of most things in Community Property law states like Idaho. A person is free to sell property, make gifts, or transfer things even if they are named in a Will, so people should also consider if they sold or gave away or lost some property named in a Will.

## **THINGS OWNED IN SPECIAL WAYS MAY LIMIT GIFTING IN WILL**

A person should consider if they own real estate or other property in special ownership ways which may limit gifting by Will. Laws vary in different states but some common special ways of ownership are:

- “joint tenant with right of survivorship” or similar legal options, so then property transfers automatically to the other named owners regardless of a Will, which in some states is often how spouses hold their home;
- papers say a “life estate” exists, so then if life of someone ends the other people in papers get item; and
- “Trust property” occurs if paperwork made a Trust entity and then property was transferred into it or this is set to occur, so then the Trust papers control where things put in the Trust go after someone’s death.

Plain “joint ownership” with many people owning a thing can occur from joint papers, if all agree to it, joint funds buy a thing, or if a gift was to many. Wills can gift joint property, like “I give my half of boat to Ed Hu”.

## **NON-PROBATE TRANSFERS THAT HAPPEN AUTOMATICALLY IGNORE A WILL**

It is vital to be aware some money or property of a decedent may automatically transfers on death or soon after to new owners if certain arrangements were made earlier. This is called “non-probate property”. Such things transfer as arranged even if a Will names the same items. Examples are: a) transfer-on-death accounts were used, b) a “designated beneficiary” form was done to name people to get an account or investment, c) real property is held by 2 people as “joint tenants with survivorship” or similar so at a death a surviving person gets things, and d) other allowed arrangements. But life insurance mostly ignores a Will and goes to a named beneficiary and property in a Trust mostly ignores a Will and goes as Trust papers say.

Trying to do non-probate transfers for all things is called “avoiding probate”, but few people try this since it can cause years of hassle, benefits are small, and often some thing is missed. When doing a Will people should consider non-probate transfers that will occur automatically on death and consider what will be left.

## **HELPFUL INFORMATION FORM CAN TELL FAMILY AND FRIENDS THINGS**

Doing information form and attaching papers lets people after death know things. Use form on next pages.

# ESTATE PLANNING HELPFUL INFORMATION

For more space attach copies of form or blank pages. Keep pages by Will or other place for Executor or family.

1. Personal Information (Name, Birthdate, Social Security number, special family details, other):

2. Real estate, vehicles, and other major tangible property (especially if people may not find them):

3. Non-tangible assets like stocks, accounts, investments, loans owed you, and business interests:

4. Possible income or insurance like pensions, retirement, disability, insurance, or contracts:

5. Debts owed by you like credit card, loan, student loan, mortgage, car loans, and accounts payable:

6. Names and information of professionals used (attorneys, accountants, brokers, doctors, others):

7. Computer passwords and helpful files, document places, and safes or safe-deposit boxes code/key:

8. Other helpful things, wishes for funeral, special requests, and last messages to family and friends:

# CHAPTER 3

## WILL BASICS

### WILL LETS A PERSON CONTROL THINGS AFTER THEIR DEATH

A Will is a legal document done by a person to control some things after their death. The person doing a Will is called the “Testator” or “Will maker”. A Testator when signing must be at least 18 years old, of sound mind (rational with sufficient memory), and not be under duress (unfair pressure or threat).

### A WILL USUALLY MUST BE SIGNED WITH 2 WITNESSES

#### WILL MUST SHOW IT'S A WILL AND BE SIGNED WITH 2 WITNESSES

Under Idaho law a document to be a Will usually must show it's a Will by its words and the person doing it must sign a Will in front of at least 2 persons as witnesses who sign too. See *Idaho Code § 15-2-502*. A Will just spoken on a video or audio recording with no signed and witnessed writing usually has no legal effect in Idaho. Note, this book shows later how 2 witnesses be skipped if a person handwrites all of a Will.

#### WITNESSES SHOULD AT LEAST AGE 18 AND OFTEN NOT GETTING WILL GIFTS

A person to witness a Will must be at least age 18. It is better but not required that witnesses not be extremely old, not live far away, and not be named in the Will as Executor, Guardian, or similar job. In Idaho unlike some states a Will is valid even if a witness is getting Will gifts, and Will gifts to a witness are valid. See *Idaho Code § 15-2-505*. But many people to avoid the appearance of misconduct pick witnesses so they or their spouse will not benefit by the Will. Often witnesses are friends, strangers, and distant family.

#### TESTATOR AND 2 WITNESSES SIGN THE WILL WHEN TOGETHER IN 1 ROOM

The person doing a Will should sign it with at least 2 witnesses who then also sign while all are in 1 room and see others sign. People showing others an I.D. is not required but common. A Testator need not initial Will pages. A Testator or witness should use their full legal name unless they greatly dislike and rarely use it. Witnesses only read the 1 paragraph they sign. Most Wills have people also print their names and put their addresses. Disabled people who can't sign by hand should see a lawyer. Legally a Testator need not say anything but often they say a thing like, “My name is \_\_\_\_\_ and this is the Will I want and do voluntarily and want witnessed”. Some Testators chat a few minutes with witnesses to help show they are of sound mind.

#### KEEP WILL IN SAFE PLACE IT CAN BE FOUND AND MAYBE FILE AT REGISTRY

A Will should be kept so it is found within weeks of a death, like a desk, drawer, safe, with a person, or less often a safe deposit box. It may help for a person to tell people how to get a Will. A Will can't be filed at any official place before death. Note, some people use the Idaho Secretary Of State “Will Registry” to file their name, date of a Will, and place a Will is stored, and after a death family and friends can go here for information.

#### NEW WILL USUALLY CANCELS (REVOKES) OLD WILLS

So a new Will is followed old Wills should be canceled (“revoked”) which is easy. Wills often say old Wills are revoked and this book's Will forms do this. Or people put on Will pages “cancelled”, “void”, or “X”, often with 1 witness. Often crossing out part of a Will has no effect. Revoking a Will doesn't bring back earlier Wills.

## **MOST WILLS SAY TO SKIP COSTLY BOND FOR EXECUTOR AND OTHERS**

Helpfully, most Wills say no “bond” or “surety” is required for any Executor, Guardian, or similar person. A bond is costly insurance from a company to insure against misconduct. A Testator usually doesn’t want a bond since any person the Testator named is trusted and them needing a bond will cost the estate money.

## **USUALLY AT START OF WILL A PERSON NAMES ANY SPOUSE AND CHILDREN**

Very importantly, many Wills including this book’s Will forms start with a place for a Testator to name any current living spouse and living children of theirs. Natural or adopted child should be written here, including usually any children born outside marriage. A person without these people can skip this part or write “none”. Under local law not doing this may invalidate the Will by indicating a person lacks sufficient mental ability or memory, or may let a spouse or child not listed ask a judge give them a share or all of the estate by claiming a Testator forgot them. After listing a person in a Will a Testator is mostly legally free to give them nothing.

## **A WILL NAMES AN EXECUTOR TO DO THINGS AFTER DEATH**

### **WILL NAMES SOMEONE AS “EXECUTOR” TO DO THINGS AFTER A DEATH**

Most Wills name someone as “Executor” to after a death do things like collect and give decedent’s money and property to new owners, handle decedent’s debts, and do probate. The law gives an Executor many legal powers to do things. If a Will fails to name an Executor a judge can pick a person, but family may argue over who to suggest. The same 1 person can be named to be Executor, Guardian, and other positions.

### **THE TERM “PERSONAL REPRESENTATIVE” IS NOW USE IN WILLS**

Importantly, the term “Personal Representative” and not Executor is now mostly used in Idaho Wills, but these terms mostly mean the same thing. Will gifts can go to an Executor. Very often a spouse is Executor.

### **EXECUTOR CAN BE PAID AND ESTATE PAYS ALL OF EXECUTOR’S COSTS**

An Executor can ask to be paid for their work from estate funds. Pay is whatever a judge later thinks is reasonable. For example, a judge may find an Executor spent 40 hours and \$50/hour is fair so pay is \$4000. Idaho law unlike some other states does not pay an Executor a percentage of the entire estate. But some Testators do not want any pay at all for an Executor so add a Will line saying to not pay them. In reality most Executors later just skip asking for pay to not owe income tax on pay and leave more to carry out Will gifts. Costs an Executor has like insurance, repairs, mortgages, utilities, funeral, attorneys, and probate are paid with estate money or property. Any lawyer an Executor hires usually is paid an agreed hourly or fixed sum.

### **EXECUTOR IS PERSON AT LEAST 18 AND SECOND PERSON RARELY NEEDED**

A person to be an Executor in Idaho must be at least age 18 and not have a bad criminal record or similar history so they later seem too unsuitable to a judge. They needn’t be an Idaho resident but being local can make work easier. Naming 2 people to both be Executor is rare due to risks of arguments or long delay, and since any 1 person named is trusted. People can name a 2nd person to be Executor if the 1st person isn’t later available but many skip this since it’s rarely needed or a judge can just name a person. If a fallback person is wanted a Will can say: “or if they’re reasonably unable to serve I name \_\_\_\_\_ to serve”.

# **CHAPTER 4**

## **WILL GIFTS INCLUDING RESIDUE CLAUSE**

### **MAIN USE OF A WILL IS TO SAY GIFTS TO HAPPEN AFTER DEATH**

Most people use a Will mainly to say what happens to their property and money after their death, usually by writing down various Will gifts to occur when they die. Verbal and even writings about this are not usually valid if not in a written Will. A Will can control property acquired after it was signed. The very end of this Chapter covers “intestate law” which says where a person’s things go at death if no valid Will handles this.

### **GIFTING IN A WILL USING SIMPLE WORDS OFTEN IS BEST**

Making gifts in a Will using simple words is often best, using words like “I give to” and “I gift to”. This is legally fine and avoids confusing legal words like “bequest”, “devise”, and “legacy” which few people know.

### **A PERSON IS MOSTLY FREE TO GIFT THEIR THINGS AS WANTED**

A person is mostly free to give at death their money and property as they want. But creditors a decedent owed money, a spouse, and minor children under age 18 may have some rights which this book later covers.

### **IN WILL CAN DO “SPECIFIC GIFTS” TO GIFT PARTICULAR PROPERTY**

Most Wills have “specific gifts” to gift particular things. Specific gifts can be any property, like “I give boat to Ed Blom” and “I give UBank account #84553873 to Sue Wu”. If a gift is not clear the law assumes all of a kind of thing is given, like “I give jewelry to Ann Po” means all jewelry. But gifting specific property can have surprises like value of items can change, or a Will gift may later fail to occur if property is not owned at death.

### **IN WILL CAN DO “GENERAL GIFTS” LIKE OF MONEY**

Wills can do “general gifts” where what is gifted is not particular property but can be flexibly chosen, like “I give 1 of my 3 cars to Ed Po” which lets an Executor pick which car. The usual general gift is money, like “I give \$5 to Ed Hu”. Money gifts are easy to write, let equal gifts be made, and are legally safer for many reasons. To carry out money gifts an Executor usually uses accounts or sells some property in the estate.

### **“RESIDUE CLAUSE” IS CATCH-ALL THAT HELPFULLY GIFTS ANYTHING LEFT**

Most Wills by their end have a Residue Clause to gift property or money not already gifted in a Will or used other ways, often called a “catch-all” or “left-over” clause. This is covered later in this Chapter.

### **CONDITIONS ON WILL GIFTS ARE RARE DUE TO POSSIBLE PROBLEMS**

Putting conditions on a gift, like “I give Ann Poe \$90 if she graduates college”, can cause problems like years of delay, risk of lawsuits, and big attorney’s fees. Due to all this conditions are rarely put on Will gifts.

### **PROPERTY OR MONEY IN A “JOINT GIFT” GOES TO MULTIPLE PEOPLE**

The same property or money in a “joint gift” can go to many people to each get a part. For example, “I give boat and all hats to Ann Baxter and Mary Ann Swanson” means each person owns part of every item. People later can split things by agreement or an Executor can decide how to divide items. If a person in a joint gift has died their part usually is left to transfer under a Residue Clause.

## **GIFT BENEFICIARIES CAN GET PERCENTAGE RATHER THAN EQUAL SHARE**

If a Will gift goes to multiple people the law assumes equal shares, but if wanted percentages can be used to make unequal gifts, like “I give boat 90% to John Smith and 10% to Mary Baker”.

## **GIFTS IN WILL CAN GO TO A GROUP OR CLASS OF PEOPLE**

To save work a Will gift can go to a group or class of people like certain family if who is meant is later easy to determine. People can say roughly how much in total is gifted to be clearer. Examples are: “I give \$10 to each person on my 2018 soccer team” and “I give \$10 to each of my grandkids so this is about \$100 in total.”

## **AFTER A DEATH FAMILIES OFTEN LET PEOPLE TAKE ITEMS UNOFFICIALLY**

Many families unofficially let people take items in ways a dead person said, showed with stickers, or put on a note, and this is often fine. If people object a judge often has a Will and law be followed fully but later people can voluntarily retransfer items. Later this book covers how to do gifts with a Tangible Personal Property List.

## **PERSON NAMED IN WILL GIFT DYING IS RARE AND NOT A BIG WORRY**

### **GIFT RECIPIENTS DYING BEFORE TESTATOR IS RARE AND USUALLY IGNORED**

Having a person named to get a gift die before a Testator is rare. If it occurs most people do nothing and let a Residue Clause handle it. Some people if they notice re-do a Will to replace a dead person in the Will.

### **PERSON IN WILL GIFT USUALLY MUST SURVIVE OR GIFT DOES NOT OCCUR**

Many Wills like this book's Will forms say a person named in a Will gift must survive (live past) the Testator for the gift to occur unless Will gift language specifically says different. Some Wills are different. People should consider how Will gifts to people who later die before the Testator usually will have no effect. Laws in most states say a person dying within 120 hours of someone is seen as having died earlier, so often a Will gift to them is ignored. This book's Wills also say this. This helps avoid big legal problems like need to know exact time of death and, also, having an item go through many probate legal cases over years.

### **PEOPLE CAN ADD AN ALTERNATE BENEFICIARY LIKE FOR SPECIAL ITEMS**

Some people for the small risk a recipient in a Will gift dies before Testator, and maybe for special items, add a bit to put an “alternate beneficiary”, like “I give boat to Ed Fox but if they don't survive me to Ann Fox”.

### **WILL CAN SAY GIFT INSTEAD GOES TO “LINEAL DESCENDANTS PER STIRPES”**

A Will gift can say it goes to a person but if they don't survive (live past the Testator) then the gift goes to their “lineal descendants per stirpes”. Descendants are a person's children and grandchildren. Often a Residue Clause uses “lineal descendants” wording. Also, the term “per stirpes” is often used which basically means give to each family branch equally. An example shows how “lineal descendants” wording works:

A Will may say: “All clothes to Sue Wu but if they don't survive to their lineal descendants per stirpes”, and this means if Sue Wu has died and her son Ken Wu is living and her other son Ben Wu has died but left 2 children then, legally, Ken Wu himself gets 50% and Ben Wu's 2 children each get 25%.

## RESIDUE CLAUSE GIFTING ALL LEFT IS MAIN WAY USED TO GIFT THINGS

### THE “RESIDUE CLAUSE” IS CATCH-ALL THAT HELPS GIFT ANYTHING LEFT

Most Wills by their end have a Residue Clause to gift any property or money not gifted earlier in a Will or used in other ways. Things transferred this way is called the “Residue”. Many people gift most their money and property this way by intentionally not mentioning in a Will most things so the Residue Clause handles it. Using the Residue Clause to give things avoids need to describe things and has less legal risk. Many people with a spouse or young children mostly use a Residue Clause and don’t do many other gifts. After applying a Residue Clause if anything is somehow left then a decedent’s closest heirs get things (this is closest family).

### USUAL RESIDUE CLAUSE HAS 2 PARTS

A short 2 part Residue Clause is usual and is used in this book’s Will forms, and it has:

- 1) 1st space to name 1 or more persons to get things if they survive Testator (many name a spouse or closest family here), and if several people are named but only some survive then survivors split things, and
- 2) 2nd space to name persons to get things if all in the 1st space don’t survive (many people name next close family or friends in this space), and if a person in 2nd space has died their descendants get their share.

### EXAMPLE OF 2 PART RESIDUE CLAUSE:

**“RESIDUE CLAUSE: I give money and property not gifted earlier:**

**A) to my husband John Paul Doe if they survive me, then**

**B) to Sam Doe my son, Beth Wu my daughter, and Greta Fisher my friend and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.”**

In this example if John Paul Doe has survived then he gets all things, but if John Paul Doe hasn’t survived and also Sam Doe hasn’t survived and he left 2 daughters then those 2 daughters split the 1/3 share of Sam Doe so get 1/6 each and other 2 persons in second part Beth Wu and Greta Fisher get 1/3 each.

### PEOPLE CAN PUT SAME THING IN PARTS, OR SKIP PART, OR USE PERCENTAGE

Some people put the same 1 person in both parts of a 2 part Residue Clause to better ensure that 1 person or if they later die their descendants get things. Or a person with no spouse often skips and leaves blank the Residue Clause 1st part and in the 2nd part puts their children (including any who died who had a child), to make clear all family branches get an equal share. See Appendix. Often many people use percentages in a Residue Clause, like to give a large percentage to a child and give a small percentage to a cousin.

### SOME PEOPLE CHANGE A RESIDUE CLAUSE TO HAVE 1 PART

Some people change a Residue Clause to have just 1 part since this can gift more equally and be easier to understand. See example in Appendix. For example a Residue Clause can be made to say:

**“The rest, residue, and remainder of my estate, and anything else, I give to \_\_\_\_\_ who survive me and if any of those just named don’t survive me their part goes to their lineal descendants per stirpes.”**

## **MUST SUFFICIENTLY DESCRIBE NAMES AND PROPERTY IN A WILL**

### **PUTTING NAMES OF PEOPLE OR GROUPS IN A WILL IS FAIRLY EASY**

Putting names in Wills is fairly easy. A judge or Executor assume a person in a Will meant people they know, so common names are OK unless 2 friends or family have the same name. Details can help if names won't be recognized or to be friendly, like "I give \$5 to my nurse Sue Ax" and "I give \$5 to loyal pal Ed Lee". If people used a nickname "also known as" or "a/k/a" may help, like "I give \$5 to Dan Smith a/k/a Old Fishy". Gifts can go to a charity, government, or group, like "I give \$80 to The Salvation Army, "I give \$10 to the Ada Co., Idaho Public Library", and "I give \$5 to Wix Church, Hill, TX". People can phone to get a charity's name.

### **PUTTING DESCRIPTIONS OF ITEMS IN WILL GIFTS IS FAIRLY EASY**

Describing items in gifts is easy since people rarely own similar items. Often fine are gifts like: "I give ax to Ed Wu" and "I give big table to Ann Fox". It's OK to gift by category or list, like: "I give tools to Sam Lee" and "I give cow, van, and harp to Sue Hill". Financial assets can use plain words, like "bank accounts" or "stocks", but details can help, like: "US Bank account ending #1511". Gifting using a location is riskier as judges will ignore Will gifts if it seems items were placed to affect gifting and no "independently significant" life reason. So, "I give Ed Po items in safe and desk" judges might not follow, but "I give Ed Po hats in attic" likely is OK.

### **GIFTING REAL PROPERTY IS HARD SO MANY PEOPLE USE RESIDUE OR DEED**

The easier and legally safer way to gift real property (real estate) at death is: 1) do nothing specific so it is handled by a Will Residue Clause, or 2) have a land broker or lawyer put names in a deed or similar document so the named persons will get the real property at someone else's death.

Gifting real property other ways is harder though possible. Helpfully a Will gift of real property described by location legally does gift all land, buildings, and fixtures located there with no need to describe what's there.

It is possible to gift real property at a particular address with very plain words, like a house, fixtures, and land can be fully given by something like: "I give 81 Maxwell Street, Boise, Idaho, to Mary Ann Brown".

People can do a blanket gift giving all of a kind of property, like, "I give all real property and fixtures in Bonner County, Idaho to Ann Marie Hill " or "I give all furniture and all bank accounts to John Paul Smith".

Giving real property in a Will using a "legal description" is how many lawyers do it, but this can be hard to do. If using a legal description people must copy without mistakes the full legal description of maybe many lines into a Will with no abbreviation at all. A legal description might be found on a deed or on mortgage papers. Legal descriptions may refer to a "lot" or "blocks" on a map which is recorded in land records of a county, or it may refer to a path around the land borders with various angles, distances, and iron stakes.

### **CAN LEAVE SOME WILL GIFT LINES BLANK OR WRITE THING LIKE "SKIPPED"**

A person writing a Will can choose to not use some gifts lines in a Will legal form, like by just leaving them blank, writing things like "SKIPPED" or "NONE" in them, or using a computer to delete some gift lines. Judges and others usually do not care about neatness or empty spaces in Wills.

## **MOST WILLS HAVE A “MISCELLANEOUS” PART WITH HELPFUL LANGUAGE**

Most Wills have a “Miscellaneous” page with paragraphs of legal language to avoid some legal problems. This can help if later legal problems occur. A person doing a Will need not understand these paragraphs.

## **MOST WILLS SAY FAMILY MAY LATER DO “INFORMAL PROBATE”**

Helpfully, most Wills say after a death the family and friends may do “informal probate” which can avoid costs and delays. Informal probate often is done with just 1 court hearing and completed in under 1 year.

## **LATER DIVORCE OR MURDER CANCELS WILL GIFTS**

Idaho. law says a person divorcing or murdering a Testator usually cancels all Will gifts to the person.

## **SIMPLE WILL WITH MOST GIFTING DONE BY RESIDUE CLAUSE OFTEN IS BEST**

Writing a simple Will without many gifts, much left blank, and mostly using a Residue Clause is often best.

If there is a spouse often a person does small gifts to friends and family, then uses the Residue Clause of the Will to gift all remaining to the spouse, and then names a few fallback persons in the Residue Clause.

If there is no spouse and no children often a person does a few small gifts, and then names some family or friends in the Residue Clause to get everything remaining.

A parent with young children if married to the other parent often does small gifts to friends and family, then in the Residue Clause gives mostly to a spouse, and then names children as fallbacks in the Residue Clause.

A parent with young children if not married or close to the other parent often does small gifts to friends and family, and then uses the Residue Clause to gift all remaining to the children.

## **INTESTATE LAW CONTROLS THINGS NOT COVERED BY A WILL**

### **“INTESTATE LAW” CONTROLS THINGS NOT HANDLED BY A WILL OR SIMILAR**

Local “intestate law” starting at Idaho Code § 15-2-101 basically says if a person dies with no valid Will or if anything is left after Will and other transfers are done then certain surviving (living) family get the decedent’s money and property. “Descendants” are a person’s children and grandchildren, and if a person died who’d get an intestate share their descendants by law usually get that share. Idaho law says in order:

- 1) if decedent left a surviving spouse but no surviving descendants (like a child or grandchild) and also no surviving parents, then the spouse gets all property and money of the decedent;
- 2) if decedent left a surviving spouse and also surviving descendants, then the spouse gets all community property and 1/2 of the separate property of the decedent, and the surviving descendants get the rest;
- 3) if decedent left a surviving spouse and some surviving parents of decedent but no surviving descendants, then the spouse get all community property and 1/2 of the separate property of the decedent, and any parents of the decedent get the rest;
- 4) if decedent left no surviving spouse, no surviving parents, and no surviving descendants, then things go to next closest family starting with decedent’s brothers and sisters and then proceeding from there; and
- 5) in the very rare case that none of the above persons survive then things go to the Idaho government.

# CHAPTER 5

## DEBT, MARRIAGE, AND CHILD ISSUES

This Chapter covers some debt, marriage, and child issues, and some people can skip parts of this.

### DEBT ISSUES

#### PAYING DECEDENT'S DEBTS MAY USE UP RESOURCES AND REDUCE GIFTS

If a decedent had a lot of debts any creditors may ask a judge to be paid from decedent's money or property before Will gifts and certain transfers occur. How debts are paid is set by state law and a Will need not describe this. Funds to pay debts comes from decedent's money and property so may affect (in order) the Will Residue, Will general gifts, Will specific gifts, and non-probate transfers. Probate costs, health care, and funeral debts by law have some priority to be paid first. For certain reasons often not all debts are paid. People should consider how paying debts may use up money or property, leaving less to carry out Will gifts. A spouse and family usually aren't liable for decedent's debts unless they actually guaranteed or co-signed.

#### "FAMILY RIGHTS" MAY BE USED TO GET FAMILY THINGS BEFORE DEBTS

Most U.S. places have "Family Rights" a decedent's surviving spouse or young children can claim, and this helpfully may let them get something even before most debts of decedent are paid and before Will gifts.

First, in the U.S. often a surviving spouse or young children can use an "Exempt Property" right to get some of a decedent's clothing, vehicles, furnishings, and appliances for family to use to live. In Idaho the exempt property amount is set at \$10,000. See *Idaho Code § 15-2-403*. Plus, often family can keep more of decedent's small items by claiming a decedent gave them to family or not showing Executor them.

Second, in the U.S. often a surviving spouse or young children have a right to get (or stay in for years) a home owned by a decedent under a "Homestead Law". Idaho is different and instead it says family can use the "Homestead Allowance" to get \$50,000 from a decedent's money and property. *Idaho Code § 15-2-402*. Of course a family home is often owned jointly or is community property so each spouse may have rights in it.

Clearly if a spouse or children use these rights (which can add to a lot) this leaves less property and money of a decedent to do Will gifts or other transfers so may interfere with these. So family don't bother to use Family Rights often a person gives mostly to a spouse or young children (like over 50% and family house).

#### SECURED DEBTS LIKE MORTGAGE OR VEHICLE LIEN ARE NOT PAID OFF

Laws in most places say do not pay off secured debts on property of a decedent like a house mortgage or vehicle lien even if other debts are paid by Executor or in probate. This avoids using up estate resources on paying big debts. All this book's Will forms say do not usually pay off any secured debts. If a Testator wants they can 1) put in a Will an order to pay (like, "Executor pay off the house mortgage"), or 2) gift enough money to pay off a secured debt to the person getting the property. Most banks let new owners continue a mortgage.

## MARRIAGE ISSUES

### “COMMUNITY PROPERTY” LAW APPLIES TO SPOUSES IN IDAHO

Nine states mostly in the West for married people use “Community Property” law, including Idaho, Texas, and California. Other states use “Separate Property” law. Things can be complex if people recently moved. People can do a pre-marital or post-marital contract from lawyers on community property issues but this is rare.

### MARRIED SPOUSES MAY OWN MOST THINGS 50/50 EVEN WAGES AND SALARY

Community Property law says residents if married share 50/50 and have a half-interest in money and property either spouse gets which is related in any major way to physical or mental effort while married. Shared things are called “community property” and all else is called “separate property”. This law is from Spanish and other traditions, seeing marriage like a partnership, and so if a person’s spouse dies the person has something to live on. Many states have laws to give a spouse a lot so they have resources to live on. Often wages, salary, and income related to labor are community property no matter what spouses think. Other kinds of joint ownership can arise in other ways, like by agreement, both spouses paying part of the purchase price, if a gift was to both spouses, or if paperwork calls a thing jointly owned.

### HARD TO PROVE SEPARATE PROPERTY AND NOT COMMUNITY PROPERTY

If a person is married the law presumes property and money is community property (jointly owned) unless it can be proven to be separate property. Good records, separate accounts, or discussing ownership with witnesses can help but is rare. Putting 1 name on an account or title to a thing does not change its nature. A married person often ends up with all of their property and money legally being community property. Some examples of separate property are a gift or inheritance given to 1 spouse, personal injury lawsuit money, engagement and wedding rings, and anything owned before marriage like savings and any property. Separate property can come from tracing property and money to previous separate property. If pre-marriage money pays half an item’s price then it is half separate. If pre-marital property is sold the money is separate. But using physical or mental effort while married on separate property can make items be partly community property, like doing repairs or remodeling, managing a business, or actively trading stocks or a collection.

### MARRIED PEOPLE FACE ISSUES AND HAVE SOME OPTIONS WHEN GIFTING

Married people face some issues with gifting by Will and other ways things, including as this book has said due to community property, family rights, and other issues. Married people have some options. First, to avoid issues some people just give everything wholly to their spouse by Will or other ways. Second, some people are careful to only gift separate property to persons not their spouse by Will and other ways, and then have all community property go to a spouse. But this can be hard to do with certainty. Third, some people trust if they give most money and property to a spouse and family (like over 90% and a family home) a spouse won’t object or start a lawsuit about a small part of community property a decedent gives to others despite half being legally owned by a spouse. They instead cooperate to do as the Will says.

## CHILD ISSUES

### WILL CAN NAME “GUARDIAN” TO CARE FOR YOUNG CHILD

If a parent dies with a child under 18 then any other natural or adopted parent (but not a step-parent) almost always automatically gets control of the child's care (including health care, school, and home issues). This won't occur only if the other parent will be unavailable a long time or is proven unfit in court which is rare. But just in case it is later needed (like later both parents die) a Will often names a healthy willing relative or friend as “Guardian” to give this care for a young child. Some states call this a “Guardian Of The Person”.

### WILL CAN NAME “CONSERVATOR” TO MANAGE CHILD'S PROPERTY

Since a child till age 18 can't legally control property and money a Will often names a person to manage a child's property including money. Most people in Idaho call this a “Conservator” or less often a “Guardian Of The Estate”. This person decides how to use up property and money on a child's costs (like school, living, and health care) till usually age 18 when anything left goes to the child. A judge often holds a yearly hearing on this. A person paying for things can ask to be paid back from a child's funds (including a Conservator). As a 2nd option to avoid much work and costs most Wills also say an Executor may later name a person as “Custodian” (including themselves) to manage a child's things under the “Uniform Transfers To Minors Act”.

### MOST WILLS NAME 1 PERSON TO CARE FOR CHILD AND THEIR PROPERTY

This book's Will forms and most people name the same 1 person to be Guardian caring for a child and Conservator caring for a child's property and money. People can modify a Will to name different people for the 2 positions, but this is rarely worth it since parents dying is rare, rarely does a child get much, a person able to handle a child often can handle finances, and naming different people can lead to arguments and lawsuits between Guardians. Will gifts can go to a person named to be a Guardian or Conservator.

### PERSON TO HELP A CHILD MUST BE AT LEAST 18 AND NOT BE UNSUITABLE

A person to be any kind of Guardian or similar must be age 18 or older. They needn't live in Idaho but being local makes work easier. A judge may later stop a person from serving if they seem unsuitable like a bad criminal record. The choice of a person for a position by the last living parent is usually followed. If no Will names a person or they're unavailable a judge can pick someone, but family may argue on who to pick. A Will naming 2 people for 1 position to act at the same time is rare since they may argue and any 1 person named is often capable enough. It is a bit common for a married couple to be named for the same position, but there can be issues if they disagree or divorce. Some Wills add a 2nd person to act if the 1st person is unavailable, like: “or if they are later unable to serve I name \_\_\_\_ to serve”). But many people skip adding a fallback since it's rarely needed, if a problem is seen a Will can be redone, and a judge can pick someone.

### NAMING A GUARDIAN OR SIMILAR PERSON TO HELP RARELY MATTERS

A child under age 18 having parents die is rare so parents shouldn't worry that much about Guardians for children. A good U.S. study found of people under age 18 just 2.78% had lost 1 parent and just 0.13% had lost 2 parents (so 99.87% will not lose both parents by age 18). *Parent Mortality Census SIPP Paper #288.*

# CHAPTER 6

## BASIC IDEAS ABOUT CONTROLLING HEALTH CARE

### BASIC IDEAS HELP PEOPLE UNDERSTAND CONTROLLING HEALTH CARE

Some ideas help people understand health care forms.

■ By law people control their own health care by telling doctors and others what they want unless they're "incapacitated" by insufficient ability to a) communicate verbally or by notes, b) be rational, or c) be conscious. In actuality most people keep control of health care till death or till no big treatment options remain, but people may worry they may be incapacitated a long time so they want to do health care forms.

■ If an adult 18 or older becomes incapacitated the adult's closest family like spouse or adult child can make emergency decisions but they usually must then rush to a judge to get further power if no legal document gives them full power over health care.

■ In forms a person can be named to have control of health care if needed who is often called "Agent". Forms about control of health care if people are later incapacitated are often called "Advanced Directives".

■ In forms people can give written health care instructions doctors, family, Agent, and others must obey.

■ Parents do have power over health care of their child under age 18.

■ Some **young married people** give a spouse power over health care in case they are ever incapacitated. Some **young adults** give this power to parents. **Young people** are less often ill so often skip doing things.

■ Pain relief like pain drugs and comfort care is usually given even if forms say to stop or limit other care.

■ Most people only do a single long health care form that has a spot to give someone power over health care and a spot for instructions (this is often called a "Health Care Power of Attorney" though names vary).

■ For the rare times stopping health care ("pulling the plug") likely matters due to extreme illness or old age:

-- most people do nothing special and trust family or Agent for health care to decide on stopping care based on many factors like pain, cost, hassle, suffering and time of treatment, beliefs, and chances of recovery;

-- a few people do a serious document to say to stop most health care if later doctors decide a person is incapacitated, has an irrevocable terminal condition or likely won't regain good consciousness, and more medical care won't help (this document to stop care is often called a "Living Will" though names vary);

-- a few people do a serious document to starting immediately block certain health care (and this often is called a "Do-Not-Resuscitate" if about resuscitation or called a "Physician's Order" if about many treatments).

# CHAPTER 7

## FORM 1: WILL (STANDARD)

### FORM 1 IS A STANDARD WILL THAT IS FLEXIBLE AND WITHOUT A GUARDIAN

Form 1 is a Will that is flexible and can control many things after their death. This form has no part about a Guardian so is for a person with no child under age 18. The word “Testament” is used in the Will’s name since long ago this was a document often done with a Will. The person doing a Will is called the “Testator”.

### THIS FORM IS A WILL WITH SEVERAL PARTS

The form starts with lines for a person to put their name (a full legal name is best but not required) and place of main residence (most put a county but some put a city). The Will is still valid if people later move.

**Paragraph 1, “List Of Spouse And Children”,** lets a person write the names of any living spouse and children they have, or if none maybe write “none”. This helps show a Testator has enough mental ability and memory to do a Will. Not listing a living spouse or child here can let an omitted person ask a judge to give them a share or all of a Testator’s property and money by claiming they were accidentally forgotten.

**Paragraph 2, “Gifts”,** has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

**Paragraph 3, “Separate Writings”,** says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

**Paragraph 4, “Residue”,** has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

**Paragraph 5, “Administration”,** names a person to be Personal Representative to do things after a person’s death (in the past the similar term “Executor” was usually used in Idaho for the person doing this).

**Paragraph 6, “Miscellaneous”,** has paragraphs of legal language to help avoid certain legal issues.

Last is paragraphs for Testator and 2 witnesses to date, sign, put addresses, and print their names.

### USUAL RESIDUE CLAUSE HAS 2 PLACES TO NAME PERSONS TO GET THINGS

In a Will “Residue Clause” anything left over after other Will parts is transferred as the clause directs. Many people use a Residue Clause to gift most their things. In this Will form’s Residue Clause there is:

- 1) a 1st space to name 1 or more persons to get the Residue, and if any named here have died before the Will maker then other persons named here in this 1st space take the dead person’s share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to “lineal descendants” like their children.

People often put in the 1st space a spouse or closest family or friends, and in 2nd space next closest people.

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the “Testator”) in front of at least 2 persons acting as witnesses at least 18 who then also sign.

# LAST WILL AND TESTAMENT

I am \_\_\_\_\_ of \_\_\_\_\_, Idaho, and I revoke any prior Will or testamentary document and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and act voluntarily.

**1. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

\_\_\_\_\_  
\_\_\_\_\_.

**2. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.

**3. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**4. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the "residue"), as follows:

a) to \_\_\_\_\_ who survive me with persons just named who survive me taking the share of non-survivors, then

b) to \_\_\_\_\_ and if any of those just named do not survive me their part goes to their lineal descendants per stirpes.

**5. ADMINISTRATION.** I name, nominate, and appoint \_\_\_\_\_ as Personal Representative including for me, my Will, and my estate.

**6. MISCELLANEOUS.** The following applies to this Will and generally.

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Idaho state law to apply to this Will and my estate.

I direct my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

Priority of Will gifts of the same type is based on the order they are written.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, and c) no recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts in the time and manner they in their sole discretion choose.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

Any Guardian of any type, Conservator, Custodian, or other person managing a minor’s property or money may use or invade the principal and sell property without court action.

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian of any type like for a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Idaho Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

### **TESTATOR**

IN WITNESS WHEREOF, I, \_\_\_\_\_, the Testator, publish, declare, seal, and sign this document as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Testator Signature

### **WITNESSES**

We, \_\_\_\_\_ and \_\_\_\_\_, the Witnesses, being first duly sworn do hereby declare to all that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly, and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name and Residence of Witness

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name and Residence of Witness

# CHAPTER 8

## FORM 2: WILL (GUARDIAN)

### FORM 2 IS BASIC WILL WITH GUARDIAN CLAUSE FOR YOUNG CHILD

Form 2 is a Will with a Guardian part to be used by a person with a minor child under age 18. The word “Testament” is used in the Will’s name since long ago this was a legal document often done with a Will.

### FORM IS A WILL WITH SEVERAL PARTS INCLUDING A GUARDIAN PART

The form starts with lines for a person to put their name (a full legal name is best but not required) and place of main residence (most put a county but some put a city). The Will is still valid if people later move.

**Paragraph 1, “List Of Spouse And Children”,** lets a person write the names of any living spouse and children they have, or if none maybe write “none”. This helps show a Testator has enough mental ability and memory to do a Will. Not listing a living spouse or child here can let an omitted person ask a judge to give them a share or all of a Testator’s property and money by claiming they were accidentally forgotten.

**Paragraph 2, “Gifts”,** has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

**Paragraph 3, “Separate Writings”,** says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

**Paragraph 4, “Residue”,** has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

**Paragraph 5, “Administration”,** names a person to be Personal Representative to do things after a person’s death (in the past the similar term “Executor” was usually used in Idaho for the person doing this).

**Paragraph 6, “Guardian”,** names a person to if needed be Guardian to care for any minor child under age 18, and also be Conservator to if needed manage a minor child’s property and money.

**Paragraph 7, “Miscellaneous”,** has paragraphs of legal language to help avoid certain legal issues.

Last is paragraphs for Testator and 2 witnesses to date, sign, print their names, and put addresses.

### USUAL RESIDUE CLAUSE HAS 2 PLACES TO NAME PERSONS TO GET THINGS

In a Will “Residue Clause” anything left over after other Will parts is transferred as the clause directs. Many people use a Residue Clause to gift most their things. In this Will form’s Residue Clause there is:

- 1) a 1st space to name 1 or more persons to get the Residue, and if any named here have died before the Will maker then other persons named here in this 1st space take the dead person’s share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to “lineal descendants” like their children.

People often put in the 1st space a spouse or closest family or friends, and in 2nd space next closest people.

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the “Testator”) in front of at least 2 persons acting as witnesses at least 18 who then also sign.

# LAST WILL AND TESTAMENT

I am \_\_\_\_\_ of \_\_\_\_\_, Idaho, and I revoke any prior Will or testamentary document and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and act voluntarily.

**1. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

\_\_\_\_\_  
\_\_\_\_\_.

**2. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.  
I give \_\_\_\_\_ to \_\_\_\_\_.

**3. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**4. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the "residue"), as follows:

a) to \_\_\_\_\_ who survive me with persons just named who survive me taking the share of non-survivors, then  
b) to \_\_\_\_\_ and if any of those just named do not survive me their part goes to their lineal descendants per stirpes.

**5. ADMINISTRATION.** I name, nominate, and appoint \_\_\_\_\_ as Personal Representative including for me, my Will, and my estate.

**6. GUARDIAN.** I name, nominate, and appoint \_\_\_\_\_ to be if needed the Guardian of any minor child under age 18 of mine and to have care, authority, custody, and other control of them. I also name, nominate, and appoint this same person to be Conservator and to have care, control, and power over the property, money, and estate of any minor under age 18 (including as Guardian of the Estate).

**7. MISCELLANEOUS.** The following applies to this Will and generally.

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Idaho state law to apply to this Will and my estate.

I direct my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

Priority of Will gifts of the same type is based on the order they are written.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

The words "give" and "gift" also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, "they" can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, and c) no recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts in the time and manner they in their sole discretion choose.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

Any Guardian of any type, Conservator, Custodian, or other person managing a minor's property or money may use or invade the principal and sell property without court action.

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and

Custodian are interchangeable, and residue and residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian of any type like for a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Idaho Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

### **TESTATOR**

IN WITNESS WHEREOF, I, \_\_\_\_\_, the Testator, publish, declare, seal, and sign this document as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Testator Signature

### **WITNESSES**

We, \_\_\_\_\_ and \_\_\_\_\_, the Witnesses, being first duly sworn do hereby declare to all that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly, and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name and Residence of Witness

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name and Residence of Witness

## **CHAPTER 9**

### **FORM 3: SELF-PROVING AFFIDAVIT**

#### **FORM IS SOMETIMES DONE WITH WILL TO REDUCE LATER LEGAL WORK**

This form can be done after a Will is done to help with the work of using a Will after the Testator dies. This form must be done with a notary. This form is not required to have a valid Will and is often skipped. This book's form is 1 of 2 similar statutory forms found at Idaho Code § 15-2-504 for people to use.

#### **FORM HELPS TO LATER SHOW A WILL WAS PROPERLY SIGNED**

This form can help when trying to use a Will after a death prove it was properly signed. If a Self-Proving Affidavit form isn't done more work may be needed later, like later witnesses to the Will signing must testify in probate court or submit a writing (or if these people aren't available usually other proof can be used). Also, if this form is not done there is slightly more risk a Will won't be followed later by a judge or others. Of people doing Wills about half skip doing a Self-Proving Affidavit mostly due to the hassle of using a notary each time a Will is done, and since it mostly just saves later work of people who are probably happy to do work to get things using a Will. Some states have no Self-Proving Affidavit for Wills and manage fine.

#### **FORM IS DONE BY TESTATOR AND 2 WITNESSES SIGNING WITH A NOTARY**

To complete the form a person who is notary (also called "notary public") must see the Self-Proving Affidavit form signed by the Testator and the 2 witnesses to the Will signing, and then the notary signs and notarizes it. This form is usually done within a few minutes of when a Will is signed, but this form also can be done later even years later when Testator and 2 witnesses can meet with a person who is a notary. This form may not be done before the Will it supports is done. When filling in the form it may help to know "respectively" means "in the order just stated". Once it is done the Self-Proving Affidavit is then usually stapled or just paper-clipped to the Will it supports.

# SELF-PROVING AFFIDAVIT

THE STATE OF IDAHO

COUNTY OF \_\_\_\_\_

We, \_\_\_\_\_, \_\_\_\_\_,  
and \_\_\_\_\_, the Testator and the Witnesses,  
respectively, whose names are signed to the attached or foregoing instrument, being  
first duly sworn do hereby declare to the undersigned authority that the Testator signed  
and executed the instrument as the Testator's Will and that the Testator had signed  
willingly (or willingly directed another to sign for him), and that the Testator executed  
it as the Testator's free and voluntary act for the purposes therein expressed, and that  
each of the Witnesses in the presence and hearing of the Testator and each other  
signed the Will acting legally as witness and that to the best of the knowledge of each  
Witness the Testator was at that time 18 years of age or older, of sound mind and  
under no constraint or undue influence.

\_\_\_\_\_  
Signature of Testator

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

**NOTARY OR OFFICER:** Subscribed, sworn to and acknowledged before me by  
\_\_\_\_\_, the Testator, and subscribed and sworn  
to before me by \_\_\_\_\_ and \_\_\_\_\_,  
Witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signed)

Official capacity of officer: \_\_\_\_\_

# CHAPTER 10

## FORM 4: TANGIBLE PERSONAL PROPERTY LIST

### LETS GIFTS OF SOME PROPERTY BE EASILY MADE OUTSIDE A WILL

This form lets people easily add to a Will some gifts of property they want to occur at their death. This form is often called by people a Memorandum, Gift List, or just a List.

### FORM GIVES EASY QUICK WAY TO WRITE MORE GIFTS

This List form lets a person easily write more gifts of certain property to occur at their death without having to re-do a Will. To use this form Idaho law just requires a valid Will says that Lists can be used, and all this book's Will forms say this. If a List and a Will gift the same item then by law the Will is followed. To help avoid later delay this book's form says a List not found within 90 days of a death will be ignored. If multiple Lists gift the same item the more recently done page controls. People can modify an existing List page if they write a new date and signature. Some people end up with dozens of List pages to follow.

### FORM CAN ONLY GIFT "TANGIBLE PERSONAL PROPERTY"

By law the form can only gift tangible things (touchable), so usually not accounts or investments where ownership is tied to papers, accounts, or entities like a company. The form can only gift personal property so not real property (land or buildings). The form can't give money, whether coin or paper currency, even if it is antique and no longer used as money. The form can't give property used in a trade or business which can include a small business and can cover tools, inventory, vehicles, and furniture used in a business. Improper property written in a List is later just ignored. Lists often are used to give clothes, furniture, vehicles, tools, antiques, jewelry, electronics, appliances, art, and similar items.

It may help understanding to show the Idaho law allowing Lists, which in its main part says:

#### **15-2-513. SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY.**

[A] will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business.

To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty.

The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

### TO COMPLETE A LIST A PERSON JUST SIGNS AND DATES IT

The form must be signed and usually dated by person doing the form. Often List forms are kept with a Will. To cancel a List form it can be destroyed, crossed out, or just thrown away so it isn't found later.

# **TANGIBLE PERSONAL PROPERTY LIST**

In this writing are gifts of tangible personal property to occur at my death, but this writing if not found by someone within 90 days of my death is canceled.

I may do many pages of these writings which should all be seen as one document. If there are conflicts among such writings the provisions of the more recent writing will revoke the inconsistent provisions of a prior writing.

If a person getting a gift below does not survive me such gift is void and canceled.

## **PROPERTY ITEMS**

## **NAMES OF RECIPIENTS**

|       |          |
|-------|----------|
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |
| _____ | to _____ |

**DATE:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_

# CHAPTER 11

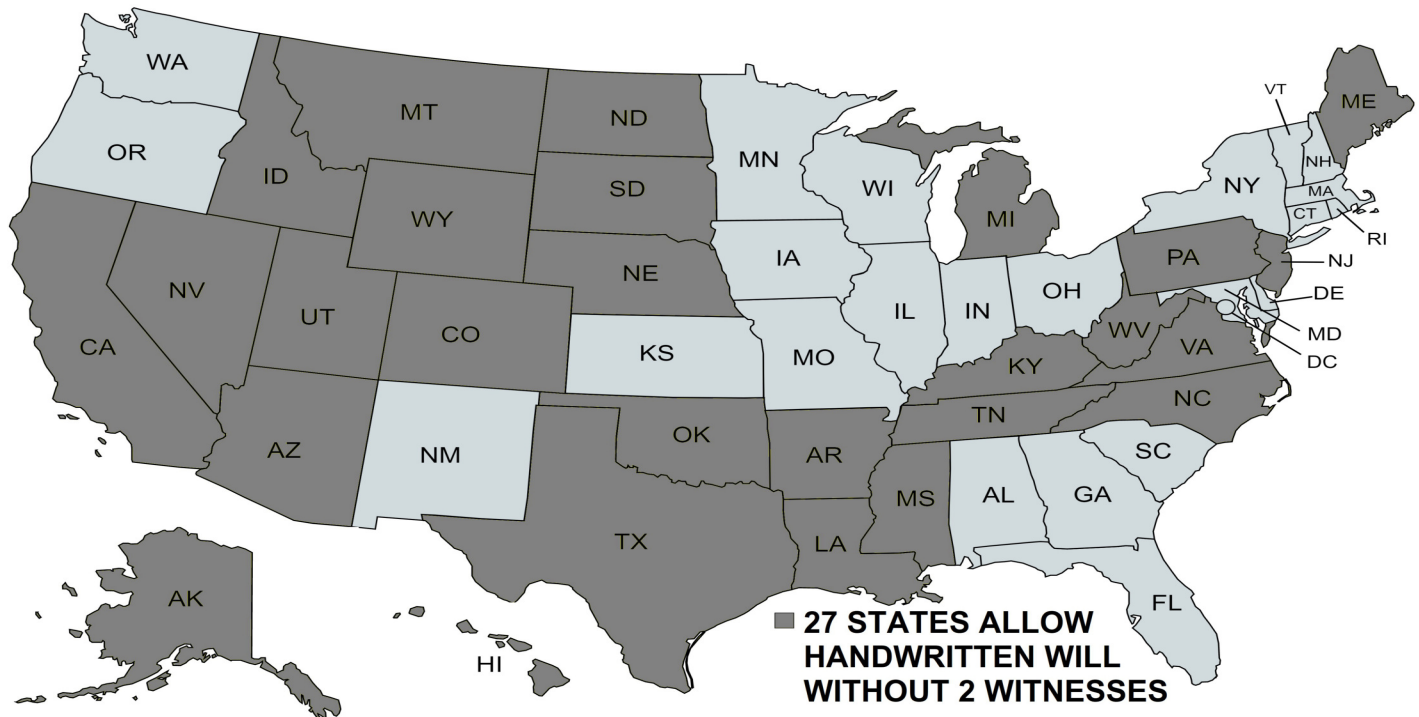
## FORM 5: HANDWRITTEN WILL

### WILL CAN SKIP USING THE NORMAL 2 WITNESSES IF IT'S ALL HANDWRITTEN

A “Handwritten Will” (called a “Holographic Will” by lawyers) is a Will that is easier to do since it does not need the usual 2 witnesses if it is all handwritten by person doing a Will. See *Idaho Code* § 15-2-503.

### HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN IDAHO

In 27 states including Idaho a person doing a Will can skip having the usual 2 witnesses for a Will if: 1) it is all handwritten by the person doing the Will (not photocopied, typed, computer printed, or handwritten by anyone else), and 2) it is signed and dated. Many people call it a “Handwritten Will”, and lawyers call it a “Holographic Will” (Holo means Whole and Graph means Image in the Greek language). State lawmakers allow this since handwriting is harder to fake, people may be in emergency or rush, witnesses may be scarce in the countryside or emergencies, it is private, it can be cheap by skipping complexity and people, and it is traditional especially in rural places. The U.S. states that allow Handwritten Wills have about 55% of the U.S. population so Handwritten Wills are familiar to judges, lawyers, and other people in many places. Lawmakers want people to have this easy option. See states with Handwritten Wills on map below in dark.



### HANDWRITTEN WILLS ARE USUALLY FINE BUT REQUIRE LATER WORK

Some lawyers warn against Handwritten Wills saying they often read confusingly, skip legal words that help in some cases, and are found invalid more often – but some studies show they are liked and usually fine. To use a Handwritten Will later after a death some people must in writing or in testimony say the handwriting looks like the Testator's, which can be a hassle. But a normal Will if no Self-Proving Affidavit was done also needs similar proof like from a witness to the signing or other proof of signing. Handwritten Wills tend to be done by people who are young so unlikely to need a Will soon, who are in a hurry, who want to fix a mistake, who before a trip want to pick a Guardian, who moved to a new state, or who plan to do a better Will later.

## THE WORDS BELOW ON THIS PAGE CAN BE USED FOR A HANDWRITTEN WILL

People can do a Handwritten Will in a sentence that is legal but may leave out helpful parts, for example: *"As my Will I give my estate and all else to Ann Baker who shall be Executor. - Dan Baker"* But it is recommended people use more complex words for a Handwritten Will shown on this page below. To do this people should change the names and words below on this page to match what they want done. The words below mainly say property and money goes to the persons whose names are written in the Will. If some people named to get things later die it is usually best to re-do the Will and name different people. The last paragraph about a Guardian and Conservator can be skipped if a person has no child under age 18. This Will must be all handwritten and signed by person doing it on some paper, and using pencil is fine.

### W I L L

1. *I am John David Baker and I currently live in Canyon County, Idaho. I revoke any prior Wills and Codicils and declare this to be my Will.*
2. *I give my estate and all else to Jane Eve Baker and Wendy Sue Hill. My not giving to some other family of mine is intentional.*
3. *I name Jane Eve Baker as Personal Representative for me, my Will, and my estate. I request informal probate.*
4. *No bond or similar is needed of any Personal Representative, Guardian, or Conservator.*
5. *If ever needed for a minor child I name Mary Ann Dodd as Guardian to have care, custody, and control of them, and I name this same person as Conservator with control and power over any minor's property, money, and estate.*

*May 8, 2023      John David Baker*

# CHAPTER 12

## FORM 6: IDAHO DURABLE POWER OF ATTORNEY FOR HEALTHCARE AND LIVING WILL

### FORM CAN NAME HEALTH CARE AGENT AND GIVE INSTRUCTIONS

This form lets a person name someone to control health care and also give some health care instructions. It also can cover what to do if a person is so ill that many people want to stop health care, which many call “Living Will” issues. Sometimes people do these things in 2 separate forms. This book’s form is the form at the Department Of Health And Welfare at <https://healthandwelfare.idaho.gov>. A similar form is also available at Legal Aid at [www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms](http://www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms). Note, in the past there was a statutory form but this seemed out of date and was removed by the legislature.

### IN FIRST PART AN AGENT FOR HEALTH CARE CAN BE NAMED

In the “Durable Power Of Attorney For Healthcare” part a person can be named as “Agent” to control health care if a person is incapacitated. Durable means the form still has power if a person is incapacitated. Often named Agent is a spouse, adult child, relative, or a friend. Picking an Agent may help avoid family later having to rush to a judge for more power over health care. Additional persons can be named to act if the 1st person doesn’t, but this is rarely needed and often skipped. Health care workers usually shouldn’t be Agent.

### IN SECOND PART “LIVING WILL” WISHES ON STOPPING CARE CAN BE SAID

The second part, “Living Will: Directive To Withhold Or Provide Treatment”, covers whether to stop treatment when in very bad health. But many people skip this since it is stressful to do, rarely needed, and an Agent or family are trusted to say when to stop care. This part only legally matters when a person is in awful health including a person is a) incapacitated so can’t say what care to do, and b) has an incurable illness or injury that is terminal (will cause death) and any life-sustaining care will only prolong artificially dying and with or without care death is imminent (usually this means within 1 year). Importantly, in the form a person can check a box and initial to say if in this awful health, either, 1) stop most care, 2) stop most care except for certain selected things, 3) keep most care going, 4) if pregnant stop or continue certain care, and 5) if death is not imminent but things won’t improve (like if in a “vegetative state”) still stop most care. Also in the form a person can say if they’ve done a POST form (often called a Do-Not-Resuscitate form).

### PERSON SIGNS FORM SOMETIMES WITH A NOTARY AND CAN USE REGISTRY

The form just must be signed to be valid. Some lawyers also recommend the form be signed with a notary, especially if a person will get care outside Idaho or family likely will disagree with what the form does. The form when done is usually quickly shown to places that may give care to be in a person’s medical file, and family often keep copies to show others. Idaho also has a Health Care Directive Registry where this form and the POST form can be filed which is at [healthandwelfare.idaho.gov](http://healthandwelfare.idaho.gov). This can help if health care personnel helping don’t already know about forms, if family don’t just directly hand over a copy of a form, and personnel remember to check the Registry. Most people skip the Registry and few states have this. Some people keep a Registry wallet card on their body where emergency contact info can be written but cross out the part saying they filed anything (see the form’s last page with 1 card). To cancel the form a person tells places that saw the form that it’s canceled and also if it’s filed removes it from the Registry.

# IDAHO DURABLE POWER OF ATTORNEY FOR HEALTHCARE AND LIVING WILL

Print Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_ Birth Date: \_\_\_\_\_

An Advance Directive is a general term used to describe this document. There are two parts: 1) the Durable Power of Attorney for Healthcare and 2) the Living Will. The purpose of this form is to help you plan ahead so your loved ones and healthcare team know what care you want if you experience a medical crisis and cannot speak for yourself.

## DURABLE POWER OF ATTORNEY FOR HEALTHCARE

This portion of my Advance Directive creates a durable power of attorney for healthcare. This power of attorney will remain in effect if I become incapacitated and shall be effective **only** when I am unable to communicate or make my own healthcare decisions.

For the purposes of this Advance Directive, "healthcare decision" means:

- Consent
- Refusal of consent; or
- Withdrawal of consent

to any care, treatment, or procedure to maintain, diagnose or treat an individual's medical condition.

1. **DESIGNATION OF AGENT.** I designate and appoint the following individual as my healthcare agent to make healthcare decisions for me as authorized in this Advance Directive:

Name of Healthcare Agent: \_\_\_\_\_

Relationship: \_\_\_\_\_ Phone Number of Healthcare Agent: \_\_\_\_\_

Address: \_\_\_\_\_

2. **DESIGNATION OF ALTERNATE AGENTS.** If the person designated as my healthcare agent in paragraph 1:

- Is not available or becomes ineligible to act as my agent to make a healthcare decision for me; or
- Loses the mental capacity to make healthcare decisions for me; or
- If I revoke that person's designation or authority to act as my agent to make healthcare decisions for me,

then I designate and appoint the following person to serve as my agent to make healthcare decisions for me as authorized in this Advance Directive (*You are not required to designate any alternate agents, but you may do so. Any alternate agent you designate will be able to make the same healthcare decisions as the agent you designated in paragraph 1 above, in the event that person is unable or ineligible to act as your agent.*)

A. Name of First Alternate Agent: \_\_\_\_\_

Relationship: \_\_\_\_\_ Phone Number of Alternate Agent: \_\_\_\_\_

Address: \_\_\_\_\_

B. Name of Second Alternate Agent: \_\_\_\_\_

Relationship: \_\_\_\_\_ Phone Number of Alternate Agent: \_\_\_\_\_

Address: \_\_\_\_\_

*If any of the agents designated above is my spouse, and our marriage is dissolved (divorce or annulment) after creation of this Advance Directive, appointment of that agent is automatically revoked as of the date of the dissolution.*

*None of the following may be designated as your agent or alternate agent:*

- *Your treating healthcare provider.*
- *A non-relative employee of your treating healthcare provider.*
- *An operator of a community care facility; or*
- *A non-relative employee of an operator of a community care facility.*

**3. GENERAL STATEMENT OF AUTHORITY GRANTED.** I hereby grant to my agent full authority to make healthcare decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. My agent shall make healthcare decisions that are consistent with my desires as stated in this Advance Directive or otherwise made known to my agent verbally or in writing. This includes, but is not limited to, my desires concerning obtaining, refusing, or withdrawing life-sustaining care, treatment, procedures. This authority includes following my desires as stated in a living will or similar document executed by me.

**4. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.**

A. General Grant of Power and Authority. Subject to any limitations in this Advance Directive, my agent has the power and authority to do all of the following:

- Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records.
- Execute on my behalf any releases or other documents that may be required in order to obtain this information.
- Consent to the disclosure of this information; and
- Consent to the donation of any of my organs for medical purposes.

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160

through 164. I authorize any physician, healthcare professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered healthcare provider, any insurance company, and the Medical Information Bureau, Inc. or other healthcare clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my healthcare providers to restrict access to or disclosure of my individually identifiable health information.

5. **SIGNING DOCUMENTS, WAIVERS AND RELEASES.** When necessary to implement the healthcare decisions that this Advance Directive authorizes my agent to make, my agent has the authority to execute on my behalf all of the following:

- a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital against Medical Advice"; and
- b) Any necessary waiver or release from liability required by a hospital or physician.

6. **PRIOR DESIGNATIONS REVOKED.** I revoke any prior durable power of attorney for healthcare.

Continue to Living Will  
on next page.

**LIVING WILL**  
**Directive to Withhold or to Provide Treatment**

This portion of my Advance Directive creates my Living Will which allows me to make choices about any life-sustaining medical treatment I want or do not want. This Advance Directive shall be effective only if I am unable to communicate my instructions and:

- A. I have an incurable injury, disease, illness or condition AND a medical doctor who has examined me has certified:
- i. That such injury, disease, illness, or condition is terminal; and
  - ii. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and
  - iii. That my death is imminent, whether or not artificial life-sustaining procedures are utilized.

**OR**

- B. I have been diagnosed as being in a persistent vegetative state.
- 

**IF I AM IN ONE OF THE ABOVE SITUATIONS, my choices are as follows:** (*Choose Box 1, 2, or 3 below, check the box, and initial the line after the box you checked*).

**Regardless of the box chosen, pain and symptom management (comfort care) will be provided.**

1. ☐ \_\_\_\_\_ If my death is imminent, I do not want life-sustaining medical treatment or procedures to be started and, if already started, I want all such treatment and procedures to be withdrawn, including withdrawal of artificial nutrition (such as feeding tube) and hydration.

**OR**

2. ☐ \_\_\_\_\_ If my death is imminent, I do not want any artificial life-sustaining medical treatment, care or procedures except for artificial nutrition and hydration as follows:

Check **one** box and initial the line after the box you checked:

- A. ☐ \_\_\_\_\_ Only artificial hydration
- B. ☐ \_\_\_\_\_ Only artificial nutrition
- C. ☐ \_\_\_\_\_ Both artificial hydration and nutrition

**OR**

3. ☐ \_\_\_\_\_ If my death is imminent, I want all medical treatment, care, and procedures necessary to sustain my life, including artificial nutrition and hydration.

## SPECIAL PROVISIONS (OPTIONAL)

The following are additional statements of my wishes. *Check all boxes that apply and initial on the line after the boxes you checked:*

### IF I AM DIAGNOSED AS PREGNANT:

☐ \_\_\_\_\_ This Advance Directive shall be honored in its entirety during the course of my pregnancy.

**OR**

☐ \_\_\_\_\_ I direct the following treatment ☐ shall ☐ shall not be withheld or withdrawn:

---

---

**OR**

☐ \_\_\_\_\_ My instructions regarding medical care shall have no force during my pregnancy except that my Healthcare Agent is authorized to make such decisions for me.

- ☐ \_\_\_\_\_ If I have a medical condition from which I am not imminently dying, and from which I will not likely recover, am unable to think or communicate, and am dependent on others for my care, I do not want life-sustaining medical treatment or procedures to be started. If already started, I want all such treatment and procedures to be withdrawn, including withdrawal of artificial nutrition (such as feeding tube) and artificial hydration. In such condition, I want care to be focused on my comfort.
- ☐ \_\_\_\_\_ Other situations as described in the box below (*If needed, attach, and sign additional pages.*):

*This section is not required but can be used to describe any additional desires or wishes. For example: no admission to the intensive care unit, time limits to treatment options, and funeral/burial wishes, etc.*

**IDAHO POST FORM VERIFICATION.** *Check one box and initial the line after the box you checked:*

☐ \_\_\_\_\_ I have completed a Physician Orders for Scope of Treatment (POST) form that contains directions that may be more specific than, but are compatible with, this Advance Directive. I hereby approve of those orders and make them a part of this Advance Directive.

**OR**

☐ \_\_\_\_\_ I have not completed a Physician Orders for Scope of Treatment (POST) form. If I complete a POST form at a later date, then this Living Will shall be deemed modified to be compatible with the terms of the POST form.

**SIGNATURE OF PRINCIPAL.** *You must sign this Durable Power of Attorney for Healthcare and Living Will for it to be valid.*

I understand the full importance of this Advance Directive and am mentally competent to make this Advance Directive. No participant in the making of this Advance Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing.

I sign my name below to this Idaho Durable Power of Attorney for Healthcare and Living Will, effective on the date below.

---

Signature

---

Effective Date

# ADVANCE DIRECTIVE & EMERGENCY CONTACT NOTIFICATION CARD

USE OF THIS CARD IS OPTIONAL

It is important that your healthcare provider, or any treating provider, is aware that you completed and registered your healthcare advance directive with the Idaho Healthcare Directive Registry. One way to do that is by using this notification card. Fill out and print the card, cut it out, and carry it with you.

To fit into your wallet or purse, fold the card on the dotted lines so the words "Advance Directive Notification" are seen on both sides.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div><b>IDAHO HEALTHCARE DIRECTIVE REGISTRY</b><br/><small>Your Voice. Your Future.</small></div> <div>ADVANCE DIRECTIVE NOTIFICATION</div> <div>Name: _____</div> <div>My Advance Directive is registered at <a href="https://idaho-app.wmcahealth.com">https://idaho-app.wmcahealth.com</a></div> <div>If I am unable to speak for myself, please contact:<br/>Name: _____ Phone Number: _____<br/>Name: _____ Phone Number: _____<br/>Name: _____ Phone Number: _____</div> | <div><b>IDAHO HEALTHCARE DIRECTIVE REGISTRY</b><br/><small>Your Voice. Your Future.</small></div> <div>ADVANCE DIRECTIVE NOTIFICATION</div> <div>Notes (optional): _____<br/>_____<br/>_____</div> <div>For registry questions, please contact:<br/><b>Idaho Healthcare Directive Registry</b><br/>Idaho Department of Health and Welfare<br/>450 W. State Street, 4<sup>th</sup> Floor, PO Box 83720<br/>Boise, Idaho 83720-0036<br/>Telephone: 208-334-5501 • Email: <a href="mailto:IHDR@dhw.idaho.gov">IHDR@dhw.idaho.gov</a><br/>Office Hours: Monday - Friday from 8:00 a.m. to 5:00 p.m. Mountain Time</div> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# CHAPTER 13

## FORM 7: PHYSICIAN ORDERS FOR SCOPE OF TREATMENT

### FORM SAYS STARTING IMMEDIATELY DON'T TRY CERTAIN HEALTH CARE

This form (often called the "POST" form) lets a person do the serious step of saying starting immediately don't try certain treatments. The form is short and can be read fast (like by paramedics) and is often used by a person outside a health facility, but it can be used inside places too. This book's form is the standard form from an Idaho agency. The POST form is sometimes called the "Do-Not-Resuscitate" form but this actually is an older form the POST has mostly replaced (this older form was similar but only covered resuscitation).

### FORM SAYS TO IMMEDIATELY NO LONGER TRY CERTAIN HEALTH CARE

In the POST form a person can say starting immediately certain medical care shouldn't be tried if they are later incapacitated and health personnel are deciding what care to give. A doctor or similar health professional must also sign the form and think it proper, like a person has a terminal illness and more care likely won't help. The main thing the form says is don't try "resuscitation" to restart or help the heart or breathing including cardio-pulmonary resuscitation (CPR) and electric shocks (defibrillation) to the heart. There are other treatment options the form can say to not try, like tube feeding and mechanical ventilation. Of course a person with capacity still thinking OK can override the form by verbally requesting care or just not showing the form to paramedics or others. If a person falls ill even if they have done this form they are still usually taken to a hospital to get pain relief and other comfort care. But in general this POST form is rarely done since these kinds of health situations often don't occur, it can be stressful to decide this issue, and many people just trust their family and others to consider all factors and wisely say when to stop care. Health personnel can help explain the form and options to a person.

### FORM IS SIGNED BY PERSON AND A DOCTOR, AND REGISTRY CAN BE USED

The form must be signed by the person doing the form or someone with authority for them, and also signed by a doctor or similar health professional. Doctors often have nice color copies of this form. Once done the form usually is shown to all doctors and places that may give health care so it is followed. Some people keep copies handy for themselves or family to show to paramedics and others who may want to try to give care. The form is sometimes kept on bedside table, on a home fridge, pinned to a shirt or in a pocket, or some people wear a special bracelet or necklace that doctors can help order. Idaho also has a Health Care Directive Registry where the POST form and some similar forms can be filed. This is optional and at <https://healthandwelfare.idaho.gov>. This can help if health care personnel helping do not know about forms, if family don't tell personnel about forms, and personnel remember have time to check the Registry. Most people doing a POST form skip using the Registry and few states have this. To cancel the form usually a person tells places that saw the form that they have decided to cancel it.

## IDAHO POST Form: Portable Medical Orders

Health care professionals should only complete this form after a conversation with their patient or the patient's representative. The POST decision-making process is for patients who are at risk for a life-threatening clinical event because they have a serious life-limiting medical condition, which may include advanced frailty ([www.polst.org/guidance-appropriate-patients-pdf](http://www.polst.org/guidance-appropriate-patients-pdf)).

### Patient Information.

### Note to Patients: Having a POST form is always voluntary.

**This is a medical order, not an advance directive. For information about POST and to understand this document, visit: [www.polst.org/form](http://www.polst.org/form)**

Patient First Name: \_\_\_\_\_  
Middle Name/Initial: \_\_\_\_\_ Preferred name: \_\_\_\_\_  
Last Name: \_\_\_\_\_ Suffix (Jr, Sr, etc): \_\_\_\_\_  
DOB (mm/dd/yyyy): \_\_\_\_/\_\_\_\_/\_\_\_\_ State where form was completed: IDAHO  
Gender: ☐ M ☐ F ☐ X Social Security Number's last 4 digits (optional): xxx-xx-\_\_\_\_

### A. Cardiopulmonary Resuscitation Orders. Follow these orders if patient has no pulse or is not breathing.

Pick 1

☐ **NO CPR: Do Not Attempt Resuscitation.**  
(May choose any option in Section B)

☐ **YES CPR: Attempt Resuscitation, including mechanical ventilation, defibrillation and cardioversion.** Requires choosing Full Treatments in Section B)

### B. Treatment Orders: Follow these orders if patient has a pulse and/or is breathing.

Reassess and discuss interventions with patient or patient representative regularly to ensure treatments are meeting patient's care goals. Consider a time-trial of interventions based on goals and specific outcomes.

Pick 1

☐ **Comfort-focused Treatments.** Goal: Maximize comfort through symptom management; allow natural death. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Avoid treatments listed in full or select treatments unless consistent with comfort goal. Transfer to hospital **only** if comfort cannot be achieved in current setting.

☐ **Selective Treatments.** Goal: Attempt to restore function while avoiding intensive care and resuscitation efforts (ventilator, defibrillation and cardioversion). May use non-invasive positive airway pressure, antibiotics and IV fluids as indicated. Avoid intensive care. Transfer to hospital if treatment needs cannot be met in current location.

☐ **Full Treatment (required if you choose CPR in Section A).** Goal: Attempt to sustain life by all medically effective means. Provide appropriate medical and surgical treatments as indicated to attempt to prolong life, including intensive care.

### C. Additional Orders or Instructions. These orders are in addition to those above (e.g., blood products, dialysis).

[EMS protocols may limit emergency responders ability to act on orders in this section]

### D. Medically Assisted Nutrition (Offer food by mouth if desired by patient, safe and tolerated)

Pick 1

☐ Provide feeding through new or existing surgically-placed tubes

☐ No artificial means of nutrition desired

☐ Trial period for artificial nutrition but no surgically-placed tubes

☐ Not discussed or no decision made (standard of care provided)

### E. SIGNATURE: Patient or Patient Representative (eSigned documents are valid)

I understand this form is voluntary. I have discussed my treatment options and goals of care with my provider. If signing as the patient's representative, the treatments are consistent with the patient's known wishes and in their best interest.

 (required)

Date: (mm/dd/yyyy): Required

If other than patient,  
print full name:

The most recently completed valid POST form supersedes all previously completed POST forms.

### F. SIGNATURE: Health Care Provider (eSigned documents are valid)

Verbal orders are acceptable with follow up signature.

I have discussed this order with the patient or his/her representative. The orders reflect the patient's known wishes, to the best of my knowledge. [Note: Only licensed health care professional authorized by law to sign POST form in state where completed may sign this order]

 (required)

Date: (mm/dd/yyyy): Required

Printed Full Name:

Phone Number:  
( )

License/Cert. Number

Patient's Full Name:

**Contact Information (Optional but helpful)**

Patient's Emergency Contact.

(Note: Listing a person here does not grant them authority to be a legal representative. Only an advance directive or state law can grant that authority.)

|                             |                                                                                                   |                                                 |
|-----------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Full Name:                  | <input type="checkbox"/> Legal Representative<br><input type="checkbox"/> Other emergency contact | Phone Number:<br>Day: (     )<br>Night: (     ) |
| Primary Care Provider Name: |                                                                                                   | Phone Number:<br>(     )                        |

☐ Patient is enrolled in hospice

Name of Agency:

Agency Phone Number: (     )

**Form Completion Information (Optional but helpful)**

|                                                                                                                                                     |                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Reviewed patient's advance directive to confirm no conflict with POST orders:<br>(A POST form does not replace an advance directive or living will) | <input type="checkbox"/> Yes; date of the document reviewed: _____<br><input type="checkbox"/> Conflict exists, notified patient (if patient lacks capacity, noted in chart)<br><input type="checkbox"/> Advance directive not available<br><input type="checkbox"/> No advance directive exists |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Check everyone who participated in discussion: ☐ Patient with decision-making capacity ☐ Court Appointed Guardian ☐ Parent of Minor  
☐ Legal Surrogate / Health Care Agent ☐ Other

|                                                                               |                    |                          |
|-------------------------------------------------------------------------------|--------------------|--------------------------|
| Professional Assisting Healthcare Provider w/ Form Completion (if applicable) | Date: (dd/mm/yyyy) | Phone Number:<br>(     ) |
| Full Name:                                                                    |                    |                          |

This individual is the patient's: ☐ Social Worker ☐ Nurse ☐ Clergy ☐ Other:**Form Information & Instructions**

- **Completing a POST form:**
  - Provider should document basis for this form in the patient's medical record notes.
  - Patient representative is determined by applicable state law and, in accordance with state law, may be able to execute or void this POST form only if the patient lacks decision-making capacity.
  - Only licensed health care providers authorized to sign POST forms in their state or D.C. can sign this form. See [www.polst.org/state-signature-requirements-pdf](http://www.polst.org/state-signature-requirements-pdf) for who is authorized in each state and D.C.
  - Original (if available) is given to patient; provider keeps a copy in medical record.
  - Last 4 digits of SSN are optional but can help identify / match a patient to their form.
  - If a translated POST form is used during conversation, attach the translation to the signed English form.
- **Using POST form:**
  - Any incomplete section of POST creates no presumption about patient's preferences for treatment. Provide standard of care.
  - No defibrillator (including automated external defibrillators) or chest compressions should be used if "No CPR" is chosen.
  - For all options, use medication by any appropriate route, positioning, wound care and other measures to relieve pain and suffering.
- **Reviewing POST form:** This form does not expire but should be reviewed whenever the patient:
  - (1) is transferred from one care setting or level to another;
  - (2) has a substantial change in health status;
  - (3) changes primary provider; or
  - (4) changes his/her treatment preferences or goals of care.

**Professional Assisting Healthcare Provider w/ Form Completion (if applicable)**  
Full Name:
- **Modifying POST form:** This form cannot be modified. If changes are needed, void form and complete a new POST form.
- **Voiding a POST form:**
  - **If a patient or patient representative (for patients lacking capacity) wants to void the form:** destroy paper form and contact patient's health care provider to void orders in patient's medical record (and POST registry, if applicable). State law may limit patient representative authority to void.
  - **For health care providers:** destroy patient copy (if possible), note in patient record form is voided and notify registries (if applicable).
- As permitted by law, this form may be added to a secure electronic registry so health care providers can find it.

State Specific Info

For Barcodes / ID Sticker

# CHAPTER 14

## FORM 8: IDAHO STATUTORY FORM POWER OF ATTORNEY

### FORM LETS POWER GO TO A PERSON OVER PROPERTY, MONEY, AND MORE

This form lets a person share power with someone to do things with the person's property, money, and other things. Many people call the form other names, like a "Durable Power Of Attorney For Financial Affairs". This form is a statutory form found at Idaho Code § 15-12-301. The form is available many places like Idaho Legal Aid at [www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms](http://www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms). The form is often called "Durable" since it still is effective if the person who did it is later incapacitated.

### FORM LETS POWER BE SHARED WITH SOMEONE TO LET THEM DO THINGS

This form lets a person share power to do things involving their money, property, records, and more with someone trusted like a spouse, other family, or a friend. The form can avoid need for more serious legal options like an Adult Guardianship from a judge. The person giving power is called the "Principal" and the person getting power is called the "Agent" or sometimes "Attorney in Fact". Additional people can be named to later act as Agent if needed but this is rarely needed and often skipped. This form can help if a person is sick, busy, or even unconscious, and it can let someone else pay bills, use accounts, buy or sell items, hire people, borrow, sign contracts, and get records. Most people let the form be effective immediately to avoid some legal issues. A person who isn't incapacitated can overrule or fire their Agent. The form also lets a person say who'd they want as Guardian and Conservator to help them if a judge ever finds this is needed.

### IN FORM CAN SELECT NORMAL POWERS AND MORE RISKY POWERS TO GIVE

A person can initial some boxes to say which of more normal powers are given in the "General Authority" part of the form. Most people give all these powers. Then later in the form is the "Specific Authority" part of the form, and in this part some more risky and less often needed powers can be given, and most people skip all these powers. Instructions can be written to follow but most people after naming an Agent skip giving instructions since if these are unclear a bank or other parties may delay or refuse to obey an Agent.

### DUE TO RISKS MANY SKIP THIS FORM OR CONSULT A LAWYER

Many people skip this form or first see a lawyer. Using this form is risky and can lead to harm since the Agent can be wasteful with money, commit fraud or theft, by carelessness allow other harms, or do worse. A person acting as Agent has a duty to be loyal and act reasonably and can be sued for any harm, but they may later be out of money to pay. Usually banks and others can't be blamed for obeying an Agent's orders. The law is complex and basic acts may be fine for Agent like paying bills but some acts may be improper like making gifts, risky investments, or unusual acts. It is best if a person not their Agent does anything unusual.

### PERSON SIGNS FORM IN FRONT OF A NOTARY

A person must sign the form in front of a notary who then notarizes it. When completed often the form goes to the Agent to hold and use if needed. To cancel the form a person usually tells the Agent and takes back copies and maybe tells places that saw the form. Later a bank or other parties may ask Agent sign the Agent's Certification which is found at Idaho Code § 15-12-302. If ever an Agent signs a contract using the form they should sign like, for example: "John Alan Smith signing as Agent under a Power of Attorney for Ann Ivy Hill".

# IDAHO STATUTORY FORM POWER OF ATTORNEY

## IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent can make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the uniform power of attorney act, chapter 12, title 15, Idaho Code.

This power of attorney does not authorize an agent to make health care decisions for you.

You should select someone you trust to serve as your agent. The agent's authority will continue until your death unless you revoke the power of attorney or the agent resigns.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of 1 agent. If you wish to name more than 1 agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

## **DESIGNATION OF AGENT**

I, \_\_\_\_\_ (Name of Principal), name the following person as my agent:

Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Agent's Phone Number: \_\_\_\_\_

## **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

Successor Agent's Phone Number: \_\_\_\_\_

## **GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the uniform power of attorney act, chapter 12, title 15, Idaho Code:

*(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)*

- ( \_\_\_\_\_ ) Real Property
- ( \_\_\_\_\_ ) Tangible Personal Property
- ( \_\_\_\_\_ ) Stocks and Bonds
- ( \_\_\_\_\_ ) Commodities and Options
- ( \_\_\_\_\_ ) Banks and Other Financial Institutions
- ( \_\_\_\_\_ ) Operation of an Entity or Business
- ( \_\_\_\_\_ ) Insurance and Annuities
- ( \_\_\_\_\_ ) Estates, Trusts, and Other Beneficial Interests
- ( \_\_\_\_\_ ) Claims and Litigation
- ( \_\_\_\_\_ ) Personal and Family Maintenance
- ( \_\_\_\_\_ ) Benefits from Governmental Programs or Civil or Military Service
- ( \_\_\_\_\_ ) Retirement Plans
- ( \_\_\_\_\_ ) Taxes
- ( \_\_\_\_\_ ) **All Preceding Subjects**

## **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

*(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)*

- ( \_\_\_\_\_ ) Create, amend, revoke, or terminate an inter vivos trust
- ( \_\_\_\_\_ ) Create, amend, revoke, or terminate a "Miller Trust" for Medicaid long-term care eligibility purposes
- ( \_\_\_\_\_ ) Make a gift, subject to the limitations of the uniform power of attorney act, chapter 12, title 15, Idaho Code, and any special instructions in this document

- ( \_\_\_\_\_ ) Make gifts without limitation except any special instructions in this document
- ( \_\_\_\_\_ ) Create or change rights of survivorship
- ( \_\_\_\_\_ ) Create or change a beneficiary designation
- ( \_\_\_\_\_ ) Authorize another person to exercise authority granted under this document
- ( \_\_\_\_\_ ) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ( \_\_\_\_\_ ) Exercise fiduciary powers that the principal has authority to delegate

### **LIMITATION ON AGENT'S AUTHORITY**

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

### **SPECIAL INSTRUCTIONS (OPTIONAL)**

On the following lines you may give special instructions:

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---

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---

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(attach additional pages if necessary)

### **EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

### **NOMINATION OF CONSERVATOR (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator of my estate, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Phone Number: \_\_\_\_\_

## **RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it is terminated or invalid.

## **SIGNATURE AND ACKNOWLEDGMENT**

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Your Name Printed: \_\_\_\_\_ Your Phone: \_\_\_\_\_

Your Address: \_\_\_\_\_

## **NOTARY - REQUIRED FOR RECORDING AND FOR REAL PROPERTY**

STATE OF IDAHO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year above written.

\_\_\_\_\_  
Notary Public for Idaho

Residing at \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## **IMPORTANT INFORMATION FOR AGENT**

### **AGENT'S DUTIES**

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by signing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in principal's best interest;
- (3) Act with care, competence and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions conducted for the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

## **TERMINATION OF AGENT'S AUTHORITY**

You must stop acting on behalf of principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) A legal action is filed with a court to end your marriage to the principal, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

## **LIABILITY OF AGENT**

The meaning of the authority granted to you is defined in the act. If you violate the act or you act outside the authority granted, you may be liable for any damages caused by your violation.

**IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.**

# CHAPTER 15

## FORM 9: POWER OF ATTORNEY DELEGATING PARENTAL POWERS

### FORM LETS PARENT SHARE POWER WITH SOMEONE OVER CHILD UNDER 18

This form lets a parent share power with someone else over a child under age 18. The form is written to comply with Idaho law allow this form. This form or a similar form is available many places like Idaho Legal Aid at [www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms](http://www.idaholegalaid.org/node/2225/powers-attorney-and-advanced-directives-self-help-forms).

### FORM CAN GIVE POWER TO SOMEONE OVER CHILD UNDER AGE 18

This form lets a parent share power over a child under 18 with someone they then name in the form. The person getting power is sometimes called the “Agent” and “Attorney-in-Fact”. Often receiving power is a relative, friend, or teacher now helping watch a child or who is willing to do this if later this is ever needed. This form can be used if parent and child are apart for work, school, training, rehab, sports, prison, military, immigration, or long visits. The form is usually not done for normal daily or brief situations like a babysitter, daycare, short family visits, or any times a parent can come quickly. Power over health care and school is normally given by this form, but no power over adoption or marriage can be given. The person who did the form usually can overrule a decision or fire the person they named. Though rarely done some people write a sentence to say only power over a certain thing is being given. This form is not usually filed at any court. Normally the power of this form can last for up to 6 months, or up to 12 months if the parent is in the military and being deployed overseas.

### FORM CAN LAST FOR 3 YEARS IF POWER GOES TO CERTAIN CLOSE FAMILY

If power over a child goes to a grandparent of a child, brother or sister of a child, or brother or sister of either parent of a child then under Idaho law the power can last for 3 years and not the usual 6 months. If people want they can modify a form to describe this relationship and say power will last for 3 years, or Idaho Legal Aid has a legal form that already makes this change (see link at top of this page).

### PERSON SIGNS FORM IN FRONT OF A NOTARY

A person doing the form just must sign it for it to be valid, but it is common for the person to sign using a notary to make it likelier doctors, schools, and others will follow the form. Some people modify the form so a 2nd parent has room to and can sign the form, and this also tends to make others follow the form. Once completed usually the form is given to the person given power to use if needed. To cancel the form a person usually tells the person given power it is canceled and takes back copies and, also, maybe tells places that saw the form it's cancelled. Note, rather than a parent a guardian can also use this form.

# **POWER OF ATTORNEY DELEGATING PARENTAL POWERS**

\_\_\_\_\_, a parent or guardian of the following minor child/ren:

\_\_\_\_\_, born \_\_\_\_\_,  
\_\_\_\_\_, born \_\_\_\_\_,  
\_\_\_\_\_, born \_\_\_\_\_,

pursuant to Idaho Code Section 15-5-104, delegates his/her parental powers to:

\_\_\_\_\_ [name(s)], of  
\_\_\_\_\_ [current address].

This delegation of power includes all powers regarding the care, custody, and property of the minor child(ren) except the power to consent to marriage or adoption of the minor child(ren).

This power expressly allows my delegate to travel outside the United States with the minor child/ren.

[ \_\_\_\_ ] Yes [ \_\_\_\_ ] No

This power of attorney shall remain in full force and effect for six (6) months [this can change to 12 months for military personnel serving beyond territorial limits of the United States], unless earlier revoked by me in writing.

\_\_\_\_\_  
Signature of Parent or Guardian

**Notary:**

**STATE OF IDAHO** )  
 ) ss.  
**County of** \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission expires: \_\_\_\_\_

## CHAPTER 16

# FORM 10: DESIGNATION OF AGENT TO CONTROL BODILY REMAINS

### CAN NAME PERSON AND GIVE INSTRUCTIONS TO HANDLE DEAD BODY

This form lets someone be named by a person to control their body after death (their “remains”) and related things like funeral, burial, cremation, ceremonies, and buying things for all this, and also if wanted lets instructions be given on all this. This book’s form is based on a form some Idaho funeral homes use.

### FORM CAN NAME PERSON TO CONTROL DEAD BODY AND RELATED ISSUES

A person doing the form can name someone (called the “Agent”) to control things with their dead body and related issues like funeral, burial, cremation, food, music, readings, pastor, tombstone, or ceremonies. If this form isn’t done then under state law control of all this is by the closest family member (in order this means a spouse, adult children, parents, then siblings). Instructions can be written about all these things but many people skip this and trust the Designee or family to do what a person mentioned they wanted. In actuality people rarely do this form, like only if it seems family would do a bad job due to being too upset while mourning, due to being bad with money, or due to different and strong wishes on just what to do. Payment for burial, cremation, ceremonies, and related things will come from pre-paid funeral accounts, insurance, and the dead person’s money and property. A person’s Executor and family are required by law to help arrange payment for these things, including whatever the Agent later decides to do, so long as the dead person’s estate can afford it.

### PERSON SHOULD SIGN THE FORM USING 1 WITNESS

A person just must sign the form for it be valid, but it is common for people to sign using 1 person as a witness who then also signs. The witness can’t be the person named to be getting power in the form. Once done the form can be given to someone to hold and use when needed, or it can be put in a place where it can be gotten quickly within a few days of a death (like in a file cabinet, a safe, or desk drawer). Note, instead of this form these funeral and related issues can be handled in a Will.

## DESIGNATION OF AGENT TO CONTROL BODILY REMAINS

I, \_\_\_\_\_, do hereby name  
\_\_\_\_\_ as my Agent to have the  
right to determine and decide the disposition of my remains after my death  
(including any funeral, burial, or cremation), the arrangements including purchase  
of goods and services related to this, and all related matters of any kind.

I hereby make (or attach) some specific directions concerning these matters:

*(if wanted attach pages with specific directions)*

If I have provided directions all persons shall substantially comply with the specific directions provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

(sign your name)

(date)

(print your name)

**Witness** (*optional*)

---

(sign your name)

(date)

# **APPENDIX: SAMPLE FILLED OUT FORMS**

TO GET FORMS TO USE PEOPLE CAN:

- (1) PHOTOCOPY BOOK PAGES,
- (2) TEAR OUT PAGES FROM A BOOK, OR
- (3) DOWNLOAD BOOK WITH FORMS FROM WWW.DAVENPORTPUBLISHING.COM  
AND USING A PDF FORM IS BEST TO AVOID SPACING/FORMAT CHANGES.

EMAIL ANY COMMENTS TO DAVENPORTPRESS@GMAIL.COM.

On the next pages to show how it can be done are some sample filled out legal forms.

People can add words to legal forms by computer or typewriter to be neater, but many people just by hand use pen, marker, or pencil to handwrite words into forms.

It is not required but is bit better if signatures are in ink or marker not pencil.

Many parts of the forms especially Will gifts can be left empty and unfilled.

Anyone can fill in words in legal form not just the person doing the form, like a friend with neat writing can fill in all the words, addresses, and dates that are needed.

Only the final signatures must be done by each person who wants the form.

To add words in form by pen, pencil, typewriter, or computer any of these is fine:

"I appoint John Doe as Agent" ,

"I appoint John Doe as Agent",

"I appoint John Doe as Agent".

When doing forms it may help to know "respectively" means "in order just stated".

People need not worry about neatness or small mistakes, and a document is usually fine if those people who knew a decedent in life can tell the likely meaning.

Sample Filled Out Form: Last Will and Testament (Standard)  
with Gifts section skipped to not bother making small gifts

## LAST WILL AND TESTAMENT

I, Paul Samuel Maxwell, of Canyon County, Idaho do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am now of sound mind and under no duress or undue influence and acting voluntarily.

**1. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

none

**2. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

*SKIPPED*

**3. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**4. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to Susan Lee Maxwell my sister who survive me with persons just named who survive me taking the share of non-survivors, then

b) to Oscar David Maxwell and Jennifer Judy Tabor and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.

**5. ADMINISTRATION.** I nominate and appoint Susan Lee Maxwell  
as Personal Representative including for me, my Will, and my estate.

**6. MISCELLANEOUS.** The following applies to this Will and generally.

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Idaho state law to apply to this Will and my estate.

I direct my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

Priority of Will gifts of the same type is based on the order they are written.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, and c) no recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts in the time and manner they in their sole discretion choose.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

Any Guardian of any type, Conservator, Custodian, or other person managing a minor’s property or money may use or invade the principal and sell property without court action.

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian of any type like for a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Idaho Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

### TESTATOR

IN WITNESS WHEREOF, I, Paul Samuel Maxwell, the Testator, publish, declare, seal, and sign this document as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 8th day of June, 20 22.

Paul Samuel Maxwell

Testator Signature

### WITNESSES

We, Eve Mable Rogers and Mary Ann Moon, the Witnesses, being first duly sworn do hereby declare to all that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly, and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence, on the 8th day of June, 20 22.

Eve Mable Rogers

Witness Signature

Eve Mable Rogers, 14 2nd St., Boise, Idaho 83641

Printed Name and Residence of Witness

Mary Ann Moon

Witness Signature

Mary Ann Moon, 35 Buffalo Road, Denver, Colorado 80101

Printed Name and Residence of Witness

**Sample Filled Out Form: Last Will and Testament (Guardian)  
with Many Specific Gifts, Guardian Clause used, and Residue Given By Percentages**

## LAST WILL AND TESTAMENT

I, Paul Brian Baker, of Kootenai County, Idaho, do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

Ruth May Baker wife Oscar Elliot Baker young son  
Karen Lisa Lundy daughter Derek Rupert Baker son.

**2. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give big oak table to Anne J. Smith.

I give \$5,000 and Ford Truck to Loretta Marsha Baxter.

I give buildings, land, and fixtures at 63 Wentworth Road, Little Falls, Idaho  
to Kenneth Alan Ford.

I give all real property and fixtures I own in Bonneville County, Idaho to  
Amy Marie Fox and Pamela Sue Fox.

I give 903 Iceberg Road, Anchorage, Alaska to James Eric Hanson.

I give Irish jewelry and my wedding ring to Mary Natalie Swanson.

I give all jewelry not given above to Kay Baxter and Mary Baxter.

I give \$781.35 to Mary Natalie Swanson and Kevin Kilby.

I give Wells Fargo acct ending in #8923 to Lawrence Deer a hunting buddy.

I give all spare tires and auto parts to Victor Perez my mechanic.

I give \_\_\_\_\_ to \_\_\_\_\_.

**3. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**4. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to Ruth May Baker who survive me with persons just named who survive me taking the share of non-survivors, then

b) to 45% to Oscar Elliot Baker, and 45% to Karen Lisa Lundy, and 10% to Oscar Sanchez my friend and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.

**5. ADMINISTRATION.** I nominate and appoint Ruth May Baker as Personal Representative including for me, my Will, and my estate.

**6. GUARDIAN.** I name, nominate, and appoint Amanda Sue Brubaker my sister to be if needed the Guardian of any minor child under age 18 of mine and to have care, authority, custody, and other control of them. I also name, nominate, and appoint this same person to be Conservator and to have care, control, and power over the property, money, and estate of any minor under age 18 (including as Guardian of the Estate).

**7. MISCELLANEOUS.** The following applies to this Will and generally.

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Idaho state law to apply to this Will and my estate.

I direct my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

Priority of Will gifts of the same type is based on the order they are written.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, and c) no recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

I request and authorize any informal, summary, and quick probate or similar action.

Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

Any Guardian of any type, Conservator, Custodian, or other person managing a minor's property or money may use or invade the principal and sell property without court action.

Any Personal Representative, Executor, Administrator, Guardian of any type like for a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Idaho Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, Paul Brian Baker, the Testator, publish, declare, seal, and sign this document as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 30th day of December, 2021.

*Paul Brian Baker*

Testator Signature

### **WITNESSES**

We, Olivia Anna Paulson and Matthew John Paulson, Witnesses, being first duly sworn do hereby declare to all that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly, and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence, on the 30th day of December, 2021.

*Olivia Anna Paulson*

Witness Signature

Olivia Anna Paulson, 82 Forest Road, Nampa, ID 83201

Printed Name and Residence of Witness

*Matthew John Paulson*

Witness Signature

Matthew John Paulson, 82 Forest Road, Nampa, ID 83201

Printed Name and Residence of Witness

**Sample Filled Out Form: Last Will and Testament (Standard)**  
**with Will modified to have a 1 Part Residue Clause**

## LAST WILL AND TESTAMENT

I, John David Smith, of Ada County, Idaho do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am now of sound mind and under no duress or undue influence and acting voluntarily.

**1. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

my son Adam Michael Dodd

**2. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \$200 to each of my nieces and nephews so about \$2,800 in total.

I give \$400 to Garner Food Shelf in Boise, Idaho by the interstate

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

**3. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**4. RESIDUE.** The rest and residue and remainder of my estate, my property of any kind and nature, and anything I have an interest in, I give to Adam Michael Smith and Judy Paula Ford who survive me and to lineal descendants per stirpes of a person just named who did not survive me.

**5. ADMINISTRATION.** I nominate and appoint Judy Paula Ford my sister as Personal Representative including for me, my Will, and my estate.

**6. MISCELLANEOUS.** The following applies to this Will and generally.

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Idaho state law to apply to this Will and my estate.

I direct my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

Priority of Will gifts of the same type is based on the order they are written.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, and c) no recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts in the time and manner they in their sole discretion choose.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

Any Guardian of any type, Conservator, Custodian, or other person managing a minor’s

property or money may use or invade the principal and sell property without court action.

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian of any type like for a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Idaho Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

### TESTATOR

IN WITNESS WHEREOF, I, John David Smith, the Testator, publish, declare, seal, and sign this document as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 21st day of June, 2021.

John David Smith

Testator Signature

### WITNESSES

We, John Elliot Potter and Ann Paula Blom, the Witnesses, being first duly sworn do hereby declare to all that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly, and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence, on the 21st day of June, 2021.

John Elliot Potter

Witness Signature

John Elliot Potter, 2 Spruce St, Sherwood, ID 83213

Printed Name and Residence of Witness

Ann Paula Blom

Witness Signature

Ann Paula Blom, 70 Rocky Road, Clarksville, ID 83646

Printed Name and Residence of Witness

Sample Filled Out Form: Self-Proving Affidavit  
**SELF-PROVING AFFIDAVIT**

THE STATE OF IDAHO

COUNTY OF ADA

We, John David Smith, John Elliot Potter and Ann Paula Blom, the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn do hereby declare to the undersigned authority that the Testator signed and executed the instrument as the Testator's Will and that the Testator had signed willingly (or willingly directed another to sign for him), and that the Testator executed it as the Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses in the presence and hearing of the Testator and each other signed the Will acting legally as witness and that to the best of the knowledge of each Witness the Testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

John David Smith

Testator

John Elliot Potter

Witness

Ann Paula Blom

Witness

Subscribed, sworn to, and acknowledged before me by John David Smith, the Testator, and subscribed and sworn before me by John Elliot Potter, and Ann Paula Blom, Witnesses, this 21st day of June, 2021.



William P Jefferson

Signed

Official capacity of officer: \_\_\_\_\_

## Sample Filled Out Form: Tangible Personal Property List

### TANGIBLE PERSONAL PROPERTY LIST

In this writing are gifts of tangible personal property to occur at my death, but this writing if not found by someone within 90 days of my death is canceled.

I may do many pages of these writings which should all be seen as one document. If there are conflicts among such writings the provisions of the more recent writing will revoke the inconsistent provisions of a prior writing.

If a person getting a gift below does not survive me such gift is void and canceled.

#### PROPERTY ITEMS

#### NAMES OF RECIPIENTS

|                                        |    |                              |
|----------------------------------------|----|------------------------------|
| 1998 Ford Truck                        | to | Samantha Bell                |
| 1.3 carat diamond ring + Irish rings   | to | Ann Sue Reed                 |
| 14 ft power boat + kayak + paddles     | to | Laura Wheeler                |
| Amish style bench                      | to | Reba Stewart                 |
| glass table, telescope, umbrellas      | to | Rebecca Stewart              |
| Irish wood cups, oak platter, red vase | to | Mary and Cindy Lott          |
| painting of sailboat in storm          | to | Mary Lott                    |
| chainsaw marked with 382937            | to | Mary Lott                    |
| chainsaw marked with 89930             | to | Matt Smith                   |
| antique lanterns + repair kits         | to | Sue Wu maid at Hart Hotel    |
| oak lamp kept on porch                 | to | Mary Kay Poppler             |
| sewing machines                        | to | Mary Kay Poppler             |
| rocking chair bought in Oregon         | to | Don Winkler boat mechanic    |
| all fishing poles and fishing nets     | to | Joe "Fish" Hoss, fishing pal |
| hats at cabin                          | to | Ken Baker                    |
|                                        | to |                              |
|                                        | to |                              |
|                                        | to |                              |
|                                        | to |                              |

DATE: 8-15-2022

SIGNED: John David Smith