



A GUIDE TO WRITING YOUR WILL

Under Idaho law, any person may write a Last Will and Testament ("Will") if that person is over the age of 18 years and is mentally competent. To be mentally competent means, among other things, that the person who is writing a Will knows what property he or she owns and is aware of their immediate family members. The person writing a Will must be a resident (have a home or be domiciled in Idaho) at the time of writing the Will. A Will that is valid in Idaho should be enforceable if you move to another state. Unfortunately, Holographic Wills are not permitted in every state. If you move to another state and wish to change or rewrite your Will, you will want to contact a lawyer in that state.

Most people who chose to write a Will without the assistance of an attorney write a Holographic Will. This is a Will that is in the handwriting of the person creating the Will. Idaho Code Section 15-2-503 recognizes handwritten or Holographic Wills, "whether or not witnessed, if the signature and the material provisions are in the handwriting of the Testator." It is best to have all provisions in your own handwriting.

If you cannot write your own Will or you believe your Will would be contested, then you should seek the advice and assistance of an attorney. Professionally prepared Wills are printed, witnessed and notarized, and contain provisions not included here. An attorney is also helpful if the net value of your estate is over \$100,000 or you own real property. The net value is calculated by subtracting all debts from the total assets.

All Wills should contain the following information:

- I. A statement that the document is intended to be a Will.

Susan M. Graham, Attorney • Certified Elder Law Attorney • Estate Planning • Estate Administration

ph: 208-344-0375 • fax: 208-344-1510 • 1009 W. Fort St., Boise, ID 83702 • www.SeniorEdgeLegal.com

2. The name of the person writing the Will. This is called a "Testator" for a man, and "Testatrix" for a woman.

3. The creator of the Will must be domiciled, have a place of abode, or be a resident of Idaho at the time of writing a Will in Idaho.

4. A personal representative should be selected along with an alternate if the first named personal representative is not available. The duties of the personal representative include: (1) petitioning a Court to accept the Will in order to formally appoint the personal representative, (2) determining the assets owned and the debts owed by the decedent at the time of his or her death, (3) paying the debts, taxes and expenses, and (4) distributing the remaining assets to the people or charities designated. The personal representative is entitled to be paid for the time it takes to handle the estate matters.

5. There are limitations on what property can be given away in a Will. In Idaho, a person may give all of his or her separate property and one-half of the community property in a Will. Separate property is anything that was owned by a person before the present marriage or received as a gift or inheritance to that person since the date of the present marriage. Community property is all other property acquired after a marriage no matter whose paycheck was used to buy those assets and no matter in whose name an asset is titled. Therefore, if a car is bought after a marriage with a husband's wages only, and the car is titled in the husband's name, the asset is still community property. The law allows a person to give away one-half of the community property upon death. The other one-half automatically belongs to the surviving spouse. Idaho law provides for exceptions to the above rules. If you have any questions about your own situation, it is recommended that you see a lawyer before writing a Will.

6. Specific gifts are given first in a Will after the debts, taxes and expenses are paid. An example of a specific gift may be, "I give my wedding ring to my oldest child," or "I give my Idaho Power stock to my niece, Linda Johnson."

7. The next gifts that are given are cash gifts. For example, "I give \$1,000 to the Idaho Humane Society of Boise, Idaho."

8. The last gifts relate to the residue or remainder. This means that those assets not specifically referred to earlier in the Will should be given to one or more persons. "I give the rest, residue and remainder of my estate to my spouse."

9. Many people choose to name an alternate person to inherit if someone named in the Will dies first. "If my spouse fails to survive me for five (5) days, I give

his share to my children who survive me, to be divided equally between my children." Be specific in this area because the law is strictly interpreted.

10. A guardian and an alternate guardian may be named to care for any children who may be under the age of 18 years at the time of your death.

If you choose to write your own Will, you can use the following clauses as guides. Remember the Holographic Will must be in your own handwriting and signed by you. Therefore, each spouse must write his or her own Will.

The following is a sample of what you might want to include in your Will.

1. OPENING STATEMENT

I, (name), a legal resident of Idaho, being of sound mind, do make, publish, and declare this to be my Last Will and Testament, hereby revoking all prior Wills and Codicils made by me.

2. PAYMENT OF DEBTS, FUNERAL EXPENSES AND TAXES

I direct that all my just debts, funeral expenses, and taxes be paid as soon after my death as practical.

3. APPOINTMENT OF PERSONAL REPRESENTATIVE

I appoint (name) to serve as Personal Representative of this Will to serve (choose one: with/without) bond. If my first named person is not available, then I appoint (name) as Personal Representative of this Will also to serve (choose one: with/without) bond.

4. APPOINTMENT OF GUARDIAN

If my spouse fails to survive me then I appoint (name) as the guardian of any child of mine who at the time of my death is a minor. The guardian is to serve without bond.

If for any reason my first name guardian is unable to serve as guardian, I appoint (name) to serve without bond, as guardian of any child of mine who is a minor at the time of my death.

5. SPECIFIC PERSONAL PROPERTY DISTRIBUTION

I hereby give the following specific personal property to the following individuals:

Diamond ring Jane Doe, my daughter

Antique French clock June Snyder, my aunt

6. GENERAL PROPERTY DISTRIBUTIONS

I hereby give the rest residue and remainder of my property to

 (name #1) , if he/she survives me. If (name #1) does not survive me, then I give the rest, residue, and remainder of my property to (name #2) if he/she survives me.

OR

I hereby give the rest, residue, and remainder of my property in the following portions to the following individuals;

1/2 of my estate to : Jane Doe, if she survives me, and if not, to her children in equal shares.

1/2 of my estate to: Mary Doe, if she survives me, and if not, to her children in equal shares.

The following is an example of what a complete Will may look like. This sample is typed for easy reading, but in order for a Holographic Will to be valid, it must be handwritten.

LAST WILL AND TESTAMENT OF
JOHN DOE

I, JOHN DOE, of Boise, Idaho, being of sound mind, do make, publish, and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me.

I direct that all my just debts, funeral expenses and taxes be paid as soon after my death as practical.

I appoint JANE DOE to serve as Personal Representative of this Will to serve without bond. If Jane Doe is not available, then I appoint FRANK DOE as Personal Representative of this Will also to serve without bond.

I declare that I am married to JANE DOE, and it is my intent to confirm to my wife her one-half share of our community property and to dispose of my one-half share of our community property and all my separate property.

I give \$5,000.00 to the Idaho Humane Society of Boise, Idaho.

I intentionally make no provision for my son, JOSEPH DOE.

I hereby give the rest, residue and remainder of my property to JANE DOE, if she survives me. If JANE DOE does not survive me, then I give the rest, residue and

remainder of my property as follows: One-half to Frank Doe, my son; and one-half to Sally Doe Smith, my daughter, or the survivor of the two.

DATED: December 1, 2020

JOHN DOE

NOTE: This information is not intended as legal advice. It is recommended that you contact a lawyer to assist you in creating an estate plan that meets your needs.