

IDAHO ESTATE PLANNING CHECKLIST

Idaho residents should use the following guide to both protect their personal interests in the event of a medical emergency and to ensure that their assets will be transferred properly when they die. Due to the importance of the estate planning documents, individuals are encouraged to seek legal counsel before signing any paperwork.

Step 1 - Designate a Health Care Agent

A **health care agent** is an individual with permission to make medical decisions on behalf of an incapacitated patient. The individual elected to serve as the health care agent should be someone the patient trusts who will act with their best interests in mind (e.g., spouse or other family member). Authority will be granted to the agent immediately following the execution of the power of attorney form.

[Advance Care Planning Document \(ACPD\)](#) - Includes both a **living will** and a **durable power of attorney for health care decisions**. This document provides a patient with the ability to specify the medical treatments they wish to receive when they are incapacitated. The patient will designate a health care agent who will be responsible for making important medical decisions on the patient's behalf.

- **Signing Requirements** ([§ 39-4510](#)) - State law only specifies a requirement for the patient's signature. However, it is always recommended to sign in the presence of one (1) or more adult witnesses (see page 4 of the [Advance Directive Planning for Important Healthcare Decisions](#) for more information).

Step 2 - Designate a Financial Agent

A **financial agent** acts similarly to a health care agent in that they are required to make decisions on the patient's behalf when they are no longer capable of doing so on their own. However, unlike a health care agent, the financial agent is granted the authority to manage the principal's finances while they are incapacitated. The extent of the agent's authority will be defined in a Durable (Financial) Power of Attorney form.

[Durable \(Financial\) Power of Attorney](#) - Grants an individual with the legal capacity to make financial decisions for a patient who is debilitated and unable to act on their own behalf. Specified in the document will be the range of financial power bestowed upon the designated financial agent.

- **Signing Requirements** ([§ 15-12-301](#)) - Only the patient is required to sign. If the transaction includes the designation of real property, a notary must be present and sign a statement of acknowledgment. Patients who are physically unable to sign may direct a notary to sign on their behalf. In these circumstances, the notary and one (1) witness must also sign.

Financial Powers Allowed:

- 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

Step 3 - Create a List of All Assets and Real Estate

After the individual has defined their preferred financial and medical terms, they should proceed by creating a list of their current assets. Doing so will provide the patient's financial agent with a better understanding of the items designated for distribution to the beneficiaries of the estate. The patient may use the [Current Assets List](#) to indicate this information.

Step 4 - Identify the Beneficiaries

The next step requires the individual to name those chosen to receive their assets and property. These parties, known as the "beneficiaries," will receive their portion of the estate following the individual's death. This step will also require the individual to determine which assets are to be distributed to each beneficiary. After the estate administration has been established, the individual should communicate the information to the beneficiaries.

Step 5 - Create a Living Trust or Last Will and Testament

To indicate how the individual's assets will be distributed amongst the beneficiaries, they will need to create one (1) of the following documents:

[Last Will and Testament \('Will'\)](#) - The most common instrument used to convey the transfer of an estate following an individual's death. This document allows the individual (the "testator") to name the beneficiaries as well as the parties who are excluded from the will entirely. Upon the testator's death, their estate will pass through the court-supervised probate process.

- **Signing Requirements** ([§ 15-2-502](#)) - The testator and two (2) witnesses.

[Living Trust \(Revocable\)](#) - Establishes an entity in which an individual can place their assets and other property. The trust creator (the "grantor") may continue to benefit from the assets during their lifetime. When the grantor dies, their estate will not be subject to the probate process but instead distributed directly to the beneficiaries by the trustee.

- **Signing Requirements** ([§ 15-7-102](#)) - Unless stated otherwise in the trust, the trust shall be registered at the [Local Court](#) where records are kept or, if no such place exists, at the trustee's residence.

Step 6 - Safely Store Documents

All documents pertaining to the individual's estate should be placed in a secure location after completion. The original health care and financial forms are best kept with the designated agent(s). In the case of the living trust or last will and testament, copies should be created and distributed to the individual's attorney and family members. This way, there will be no confusion regarding the distribution of the individual's estate following their death.

Idaho Estate Planning Laws

- **Advance Care Planning Document (ACPD)** - [§ 39-4510](#)
- **Durable (Financial) Power Of Attorney** - [§ 15-12-301](#)
- **Last Will and Testament** - [Title 15, Chapter 2](#)
- **Living Trust** - [Title 15, Chapter 7](#)