

Should I have a Will?

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"Do I really need a Will?" "Won't my kids be able to take care of things?" "Can't I just tell the bank what I want?" These questions come up in my law practice quite a bit. The truth is a handshake and a smile used to be enough to allow your doctor or bank, for example, to speak to someone else on your behalf or manage your property and accounts. However, times have changed.

Increasingly, institutions, banks, hospitals, and other entities require that certain legal documents be in effect before they will speak to anyone other than you, about your affairs, regardless of the other individual's relationship. Below is a guide to the different types of documents that exist in Idaho; the guide makes clear that, yes, you do need to have an estate plan in place to ensure that your wishes regarding important issues, such as who makes decisions on your behalf or where your property goes, are fulfilled in the event of illness or death.

Powers of Attorney for Health and Finances, Living Wills, POST Forms These documents, when executed, are in effect during your lifetime if you become unable to make or communicate your decisions.

Powers of Attorney for Health Care - A Power of Attorney for Health is a document which nominates someone (called an Attorney in Fact) to make health care and living situation decisions if you cannot make or communicate your own decisions. It is usually paired with a document called the Living Will which directs how you want to be treated in an end of life situation. The Living Will allows you to tell your doctor how much life-saving medical intervention you desire in the event of a terminal illness or injury. You can also separately fill out a POST (Physician's Orders on Scope of Treatment) form with your physician; the POST is comparable to a "do not resuscitate" order. It is best for a person to have all three of the above-mentioned health care documents executed so that all medical situations are covered. In an emotional, high stress situation, it is helpful to family members to have your preferences documented, freeing them of making these tough decisions.

Powers of Attorney for Finances - The Power of Attorney for Finances, also called the General Durable Power of Attorney, is a document which nominates someone (also called an Attorney in Fact) to make financial, business, and monetary decisions for you. The document can take effect immediately, or you can specify that it becomes effective when a doctor says you can no longer make reasonable decisions regarding your finances. This document is generally necessary for someone else to assist with writing checks, paying bills, filing taxes, transferring property, and performing other financial transactions.

Wills, Probate, Trusts, and Community Property Agreements While Powers of Attorney are in effect during your lifetime, other estate planning documents determine how your assets are handled after you have passed away.

Will - Wills can be either very simple or more complicated, depending on your wishes. Wills have two main jobs: (1) nominating someone to be responsible for managing your affairs after you have passed away, and (2) determining the distribution of your assets. If you are concerned about distribution of your property after you pass away, a Will can resolve doubt for you and your beneficiaries. Wills allow you to: choose friends and relatives to receive your property, make charitable bequests, select a trusted and responsible person to be your personal representative, name a guardian for minor children or incapacitated adults, and take advantage of tax savings which may result from a properly drawn Will. However, Probate may be necessary to administer your estate in some situations (see below).