

CHECKLIST

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Did you read this entire brochure? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Did you understand all of it? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Will your estate be small enough at your death to avoid significant tax consequences? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. In preparing your will, did you write in pen (not with a typewriter or computer)? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. In preparing the will, did you use clean sheets of paper without other marks on them? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Did you identify yourself in the will by giving your full name and address? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Did you express your intent that the document be your will? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Did you name a personal representative? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Did you dispose of all your property through provisions of the will? |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Did you write the will without any errors or erasures? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Did you sign and date the will? |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Did you number the pages of the will? |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Did you place the signed will in a safe place where your survivors will find it? |

If your answers to all of these questions are yes, you should have a valid will.

Idaho Legal Aid Services, Inc. Area Offices

- 310 N. 5th Street, Boise 345-0106
- 1104 Blaine, Caldwell 454-2591
- 410 Sherman Ave, Suite 303,
Coeur d'Alene 667-9559
- 482 Constitution Way, Suite 101,
Idaho Falls 524-3660
- 633 Main Street, Lewiston 743-1556
- 150 S. Arthur, Pocatello 233-0079
- 475 Polk, Twin Falls 734-7024
- Idaho Senior Legal Hotline 1-866-345-0106
- Idaho Senior Legal Hotline
(Spanish-speaking) 1-866-954-2591
- Domestic Violence Legal
Advice Line 1-877-500-2980
- TTY (Deaf & Hard of Hearing) . . 1-800-245-7573

Questions and
Answers About:

Holographic Wills

What is a will?

A will is a legal document directing the disposition of one's property (estate) after death. The person whose property is distributed in the will is called the **testator** of the will.

A will has no effect before the death of the testator. At any time before death, the testator may still give away or sell her property. The testator may also amend or revoke her will or put in effect an entirely new will at any time before her death, as long as she is mentally competent to do so.

Who should have a will?

Anyone 18 years of age or older can make a legally binding will. Generally, it is advisable for most people to have a will even if they have few possessions or most of their property is jointly owned.

If you are worried about this issue you should certainly have a will. If you have been married more than once, if you have stepchildren or your spouse has stepchildren, or if your estate is large, you do need a will. If you are the parent of minor child you should also have a will as explained below.

Why should I have a will?

A will is generally the most convenient and effective way to arrange for the distribution of your property after death. A will allows you to:

- Choose the friends and relatives you want your personal and real property to go to.
- To make a charitable bequest (gift).

- Choose a trusted and responsible person to serve as **personal representative** (PR) who will be responsible for the administration and distribution of the estate.
- Name a **guardian** to care for any **minor children** you have, and a conservator to protect their property interests.
- Take advantage of any **tax savings** which might result from a properly drawn will.

What happens if I die without a will?

When a person dies without leaving a will, Idaho laws of **intestate succession** determine which family members will receive what shares of the estate.

These laws are, in effect, a will that the state has drawn up for you. This frequently deals well with the situation of a long term marriage when the decedent is survived by a spouse or children. It does not deal well with multiple marriage situations, stepchildren, or children with special needs.

- Preference is given to the spouse and children, then to the grandchildren, and then to the parents.
- If there are no relatives (spouse, children, descendants of children, parents, siblings, descendants of siblings, grandparents, or descendants of grandparents), the property **escheats** (goes to the state of Idaho).

What property passes under a will?

In your will, you can decide the disposition of any property you **own by yourself**. This includes one-half

of the community property (if your spouse survives you) and all your separate property.¹

What property does not pass under a will?

You cannot dispose of some forms of property through a will. These include:

- Your spouse's share of the community property.
- Your spouse's separate property.
- Property that exists in the form of a contract right (such as trusts, life insurance proceeds, death benefits under an insurance plan).
- Property you own in "joint tenancy" with someone else or pursuant to a "Community Property Agreement" or "Devolution on Death Agreement" with your spouse. (You can dispose of property held under "tenancy in common.")

How do I prepare a will?

Prepare a list of all your property--including real estate, bank accounts, stocks and bonds, insurance policies, valuable belongings, and debts. List all the persons you want to share in your estate. Make note of any particular items you wish to go to specific persons.

¹ Community property is, generally, property acquired during a marriage. If you have questions about separate versus community property, consult an attorney.