

ACCESS TO THE TRUST ACCOUNT

As mentioned above, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally, or emotionally unable to conduct your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until the court takes jurisdiction over your practice and your accounts, pursuant to Idaho Code §15-5-401 et seq. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, Client Assistance Fund claims, malpractice complaints, or other civil suits.

On the other hand, as emphasized above, allowing access to your trust account is a serious matter. You must give careful consideration to whom you give access and under what circumstances. If someone has access to your trust account and that person misappropriates money, your clients will suffer damages. In addition, you may be held responsible.

There are no easy solutions to this problem, and there is no way to know absolutely whether you are making the right choice. There are many important decisions to make. Each person must look at the options available to him or her, weigh the relative risks, and make the best choices he or she can.

You should check and assure that adding an Assisting Attorney or Authorized Signer to your general or lawyer trust account is consistent with and permitted for the form of entity you use for practicing law.