

ALABAMA ESTATE PLANNING CHECKLIST

Following this guide will allow a resident of Alabama to plan their medical treatment in the latter years of life as well as safeguard their assets to ensure they transfer to the intended individuals after their death.

Step 1 - Choose a Health Care Proxy

A **health care proxy** is an individual that is legally allowed to make medical decisions on a patient's behalf if they cannot speak for themselves. This only comes into effect in the chance a person is in the hospital and is not able to make decisions for themselves. This allows the health care proxy, which is usually a spouse or family member, to give direction to medical staff that is in the best interests of the patient.

[Advance Directive](#) - This combines the **medical power of attorney** and **living will** so an individual may choose their end-of-life treatment options as well as being able to elect a health care proxy.

- **Signing Requirements** ([§ 22-8A-4 \(c\)\(4\)](#)) - At least two (2) witnesses 19 years of age or older and they cannot be the health care proxy or be related to the principal by blood or marriage or be a part of their estate.

Step 2 - Choose a Financial Agent

For the same reasons an individual should want a health care agent ('health care proxy'), a financial agent should be selected as well. Most often, this agent is the same person as the health care proxy. The financial agent will have the ability to handle all assets, if requested, of the principal.

[Durable \(Financial\) Power of Attorney](#) - Allows an individual (the 'Principal') to select someone else to handle all or a portion of their financial activity.

- **Signing Requirements** ([§ 26-1A-105](#)) - Must be authorized with the principal and agent(s) in the presence of a notary public.

Financial Powers Allowed:

- Real property ([§ 26-1A-204](#));
- Tangible personal property ([§ 26-1A-205](#));



- Stocks and Bonds ([§ 26-1A-206](#));
- Commodities and Options ([§ 26-1A-207](#));
- Banks and Other Financial Institutions ([§ 26-1A-208](#));
- Operation of Entity or Business ([§ 26-1A-209](#));
- Insurance and Annuities ([§ 26-1A-210](#));
- Estates, Trusts, and other Beneficial Interests ([§ 26-1A-211](#));
- Claims and Litigation ([§ 26-1A-212](#));
- Personal and Family Maintenance ([§ 26-1A-213](#));
- Benefits from Governmental Programs or Civil or Military Service ([§ 26-1A-214](#));
- Retirement Plans ([§ 26-1A-215](#));
- Taxes ([§ 26-1A-216](#)); and
- Gifts ([§ 26-1A-217](#)).

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

A list of all an individual's assets, real estate, and liabilities should be entered on a [Current Assets List](#). Not only will this help any financial agent that is selected, but this will help to coordinate 'who gets what' after death.

Step 4 - Decide 'Who Gets What'

The next step will be to identify who will be the beneficiaries of the estate. These are the individuals that will be receiving the property after the individual dies. Most people either decide to give each beneficiary a percentage (%) of their entire estate or will give each person specific assets.

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

Depending on the preference of the individual, a document will need to be created that allows the transfer assets and property in the estate to the beneficiaries.

Choose One (1)

[Last Will and Testament \('Will'\)](#) - The most traditional way to transfer an estate after death. The estate will still have to go through the probate process which usually takes 6-8 months if no one contests.

- **Signing Requirements** ([§ 43-8-131](#)) - Required to be signed in the presence of two (2) witnesses.

[Living Trust \(Revocable\)](#) - Creates an entity with the creator being the trustee and the beneficiaries being the successor trustees. Therefore, the creator benefits from the assets in the trust until their death. Afterward, the successor trustees become the owners of the trust.

- **Signing Requirements** ([§ 19-3B-1202](#)) - No witnesses required by State law. Although, it's recommended the creator (the 'Grantor') authorize the attached [Self-Proving Affidavit](#) which acknowledges the signature in front of either two (2) witnesses and a notary public.

Main Difference - A Last Will and Testament must undergo the probate process while a Living Trust does not.

Step 6 - Storing the Documents

In the case of medical and durable power of attorney, original copies should be given to the agent(s) selected. For estate forms, the creator's attorney should receive a copy along with the beneficiaries. This will ensure that an heir or family member will have a copy at the time of death.

It is recommended, to have the completed documents reviewed by a licensed estate attorney in Alabama.