

# KANSAS ESTATE PLANNING CHECKLIST

Residents of Kansas can follow the step-by-step guide provided below to create a good foundation for preparing for end-of-life care and the management of their affairs. Although there are many options for end-of-life planning, the legal instruments described below provide a solid foundation for making these plans. It is recommended that individuals consult a professional attorney before executing any of these documents.

## Step 1 – Select a Health Care Agent

A **health care agent** is an individual who has been appointed by another individual (the principal) to make health care decisions on the principal's behalf in the event that they become unable to communicate or make conscious decisions. This individual must be at least eighteen (18) years of age and cannot be related to the principal.

[Health Care Power of Attorney](#) – The Health Care Power of Attorney form must be completed in order for the principal to appoint a health care agent. The agent only assumes this authority in the event of the principal's incapacity (as determined by a health care practitioner). On this document, the principal can specify the types of medical care that they wish to allow or prohibit.

- **Signing Requirements** ([§ 58-632](#)) – Must be acknowledged by a notary public or witnessed by two (2) unconcerned adults (not family members or financially connected to the principal).

## Step 2 – Select a Financial Agent

A **financial agent** is someone who has been given the authority to execute financial and legal documents on behalf of another individual (the principal). In the event that the principal has lost decisional capacity, the agent will be able to execute instruments and generally oversee the principal's property and assets. The principal will be able to determine exactly what powers they wish to allow their agent and whether the agent will have the authority to act as their agent immediately or only if the principal becomes incapacitated.

[Durable Power of Attorney](#) – To appoint a financial agent, the principal must complete and sign this form. A "durable" power of attorney means that the principal's agent will be able to act on their behalf even in the event of the principal's incapacitation.

- **Signing Requirements** ([§ 58-652](#)) – Required to be signed by the principal (or their representative) in the presence of a Notary Public, who must also sign.

### Financial Powers Allowed:

- To execute, amend or revoke any trust agreement;
- To fund with the principal's assets any trust not created by the principal;
- To make or revoke a gift of the principal's property in trust or otherwise;  
To disclaim a gift or devise of property to or for the benefit of the principal;

- To create or change survivorship interests in the principal's property or in property in which the principal may have an interest. The inclusion of the authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled and seeking to act in the principal's own behalf;
- To designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;
- To give or withhold consent to an autopsy or postmortem examination;
- To make a gift of, or decline to make a gift of, the principal's body parts under the revised uniform anatomical gift act;
- To nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney-in-fact may nominate such attorney in fact's self as such;
- To give consent on behalf of the principal to the sale, gift, transfer, mortgage or other alienation of the principal's homestead or interest therein;
- To designate one or more substitute or successor or additional attorneys in fact;
- To delegate any or all powers granted in a power of attorney pursuant to subsection (a) of K.S.A. 58-660, and amendments thereto;
- To pay reasonable expenses incurred for the funeral and burial or other disposition of the body of the principal.

### **Step 3 – Make a List of All Estate Items**

Before an individual decides how to distribute their property, they should make an organized list of all the real estate, financial holdings, bank accounts, and personal property currently in their possession (the [Current Assets List](#) form can be used to accomplish this). By listing all the individual's assets by category, it will be easier to decide how the assets will be divided. Furthermore, this step helps ensure that all of the individual's property is included in their estate management.

### **Step 4 – Designate Beneficiaries and Other Roles**

The principal (the grantor/settlor) will need to assign beneficiaries and nominate the individuals necessary to complete the transfer of one's estate. For a Will, the settlor will need to appoint a representative and for a Living Trust, at least one (1) Trustee must be named to administrate their estate. The beneficiaries will be the recipients of the principal's estate and it is recommended that they be informed that they're named in the Will/Trust.

### **Step 5 – Execute Estate Transfer Documents**

There are **two (2) options** that an individual may elect to choose when planning the distribution of their estate:

The [Last Will and Testament](#) is the most commonly employed option for divesting an estate as it allows an individual to leave specific instruction on how their estate and other personal matters should be dealt with when they die. Before the estate is divided, the Will must be proven in probate court.

- **Signing Requirements** ([§ 59-606](#)) – Required to be signed by the principal (settlor), two (2) witnesses, and a Notary Public.

In a [Revocable Living Trust](#), the principal will place their property and assets into a Trust. During their lifetime, the individual can still benefit from their assets. When they die, the trustee (or successor trustee if grantor assigned themselves as trustee) will distribute the estate to the beneficiaries named in the living trust document.

- **Signing Requirements** ([§ 58a-112](#)) – Same requirements as a Will – the settlor, two (2) witnesses, and a Notary Public must sign.

## **Step 6 – Keep the Documents Safe**

After executing each document, the principal should make copies of all the instruments and safely store them. Ideally, these instruments should be in a safe that is both fireproof and waterproof. Representatives and trustees should also be given copies (or originals) of any documents that they are named within. Furthermore, beneficiaries, representatives, and trustees should also be told what the location of the original documents is.

# Kansas Estate Planning Laws

- **Health Care Power of Attorney** – [§ 58-632](#)
- **Durable Power of Attorney** – [§ 58-654](#)
- **Last Will and Testament** – [Chapter 59 – Probate Code](#)
- **Living Trust (Revocable)** – [Chapter 58a Uniform Trust Code](#)