

MISSISSIPPI ESTATE PLANNING CHECKLIST

Planning for the future is a complicated process and should be carried out with great care, preferably with the assistance from an attorney. The following guide can be used in conjunction with legal advice to stay focused on the tasks at hand.

Step 1 - Choose a Health Care Agent

A **health care agent**, also known as a health care proxy, is a person who makes important medical decisions for someone (principal). The agent's duties only come into effect when the principal has become disabled and is unable to make decisions for themselves. A health care agent must always act with the principal's best interests in mind; for this reason, a family member or close friend should be selected as an agent.

[Advance Health Care Directive](#) – This form will establish what type of medical treatments and care the principal wishes to receive in the event of an accident or other debilitating occurrence. A health care agent is appointed to convey the principal's decisions to the medical staff. Also included in the Directive are sections pertaining to organ donation and the principal's designated physician. (An Advance Health Care Directive may also be referred to as a Medical Power of Attorney and Living Will.)

- **Signing Requirements** ([§ 41-41-205](#)) – Two (2) witnesses OR a notary public.

Note: Witnesses cannot be the health care agent or an employee of the health care facility or provider. Furthermore, at least one (1) of the witnesses cannot be related by blood, marriage, or adoption, nor can they be a beneficiary of the principal's estate.

Step 2 - Choose a Financial Agent

A **financial agent** should be chosen by the principal to take care of all the principal's financial affairs. This agent will have the authority to manage the principal's finances as soon as a Power of Attorney is executed, and these powers will remain in effect even if the principal becomes incapacitated

(hence “durable”). Just like a health care agent, merits such as loyalty, credibility, and responsibility should be kept in mind while appointing a financial agent.

[Durable \(Financial\) Power of Attorney](#) – A Durable POA is a document appointing a financial agent to manage a principal’s affairs should the principal become incapacitated.

- **Signing Requirements** (Not statutorily mentioned) – The POA form provided above contains empty signature fields for two (2) witnesses and a notary public, in addition to the principal and the attorney-in-fact.

Financial Powers Allowed:

- Banking;
- Safe deposit box;
- Lending or borrowing;
- Government benefits;
- Retirement plan;
- Taxes;
- Insurance;
- Real estate;
- Personal property;
- Power to manage property;
- Gifts; and
- Legal advice and proceedings.

Step 3 - Make a List of All Assets

To maintain organization while creating an estate plan, one should consider making a list of all assets, including personal property, real estate, accounts, and investments, as well as liabilities. A [Current Assets List](#) can be used for this exact purpose.

Step 4 - Choose Beneficiaries for Will and/or Trust

After a person dies, their estate and all other assets will be bestowed upon one (1) or more individual(s) - “**beneficiaries**”. A principal should take some

time to think about who most deserves a portion of their estate. Typically, the named beneficiaries will be a spouse, children, relatives, or close friends.

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

In order for the beneficiaries to receive their endowment, the principal must create a document outlining what each beneficiary is entitled to.

[Last Will and Testament](#) – Perhaps the most common estate planning tool, a Will is a detailed document that includes instructions regarding the distribution of the principal's assets. The principal, or testator as they are referred to in a Will, will choose an executor to carry out their requests as per the Will's instructions. A Last Will and Testament will have to go through probate court before the estate can be settled.

- **Signing Requirements** ([§ 91-5-1](#)) – Two (2) witnesses must sign in the presence of the testator.

[Revocable Living Trust](#) – A Trust is an entity created by a grantor (principal) into which a portion, or the entirety, of their estate is placed in order to avoid probate after they die. During the grantor's life, their estate is still accessible and will continue to benefit them. The grantor must name a trustee (usually they appoint themselves) and at least one (1) successor trustee. The trustee will be in charge of managing the Trust while the grantor is alive, and the successor trustee(s) will take over the Trust after the grantor's death.

- **Signing Requirements** ([§ 91-8-402](#)) – Although Mississippi Code does not specifically mention the signing requirements for a Trust document, they do cover certain requirements for the creation of a Trust generally.

Step 6 - Storing the Documents

Originals of all estate planning documents should be kept at the principal's home or office in a fire and waterproof safe. The principal would be wise to share the location of these documents with their financial agent, (successor) trustee/executor, and/or a beneficiary. Alternatively, copies of these forms can be delivered to said parties.

