

# SOUTH DAKOTA ESTATE PLANNING CHECKLIST

By designating their financial and healthcare agents, and in preparing a comprehensive Living Trust, or Last Will and Testament, an individual can rest assured knowing that their estate will be divided in accordance with their wishes, and their healthcare and finances will be in good hands should they become incapacitated. While not required, it is highly recommended that an attorney be consulted when completing the below documents.

## Step 1 – Choose a Healthcare Agent

A **healthcare agent** or (attorney-in-fact) is usually a close friend or a family member of the principal who is responsible for consenting to, rejecting, or withdrawing from medical procedures on behalf of the principal. This power is to be bestowed on the agent at such a time when the principle loses decisional capacity. In accordance with State law, the agent will be required to take into account the recommendation of the attending physician, the decision the principal would have made, and the decision that would be in the best interest of the principal.

**Durable Power of Attorney for Healthcare** – The durable healthcare power of attorney form enables the principal to designate their above-mentioned healthcare agent. The term “durable” indicates that the legal document and the powers it bestows will endure beyond the incapacitation of the individual for whom it was created.

- **Signing Requirements** – ([Codified Law \(SDCL\) 59-7-2.1](#)) The Durable Power of Attorney for Healthcare must be signed by the principal and two (2) witnesses in the presence of a notary public.

## Step 2 – Choose a Financial Agent

A **Financial Agent** is an individual who will make financial decisions for the principal when the principal becomes physically or mentally incapable of making decisions for themselves. With that said, a financial agent may be able to operate immediately following the signing of a power of attorney form. In most cases, the financial attorney-in-fact will be a very close friend or relative who is capable of considering the principal’s best wishes and the principal’s financial benefit as well as that of their loved ones.

**Durable (Financial) Power of Attorney** – This document can be used to outline the scope of the attorney-in-fact’s power and define the date on which it will take effect.

- **Signing Requirements** ([SD Codified L § 59-6-11 \(2017\)](#))- A durable power of attorney is presumed to be valid if it has been signed by the principal.

### 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;
- Legal Advice and Proceedings

### **Step 3 – Make a List of All Assets and Real Estate**

There are a number of preliminary steps that should be taken prior to drafting estate planning documents. For example, a list should be created that details all personal property, assets, real estate, and businesses in which the principal has a share of the ownership. The creation of such a list is the first step in establishing which beneficiary receives which assets.

[Current Assets List](#) – This template can provide a starting point for the listing of one’s assets.

### **Step 4 – Decide on Beneficiaries**

With a comprehensive list of assets, businesses, and real estate prepared, a testator (creator of a Will) can determine who the beneficiaries will be. Once those beneficiaries have been selected, the property that will be transferred to each can be outlined. It is common practice to inform a beneficiary prior to the testator’s death that they will receive a portion of the estate in order to prepare them for any responsibility that might occur. There is no maximum or minimum number of inheritors.

### **Step 5 – Write a Living Trust or Last Will and Testament**

The principal will need to establish the manner in which they will distribute their estate to their beneficiaries. They can elect to create a Revocable Living Trust or draft a Last Will and Testament.

[Revocable Living Trust](#) – This is a legal document through which an individual will transfer their assets into a Trust which acts as a separate entity. In the document, the grantor (creator of the Trust) will name a trustee to manage the entity and the assets therein until the time of the grantor’s death. Successor trustees will also be named and, upon the death of the grantor, will assume the role of distributing the contents of the entity to the beneficiaries. The benefit of this document is that it does not pass through probate court whereas a Last Will and Testament does.

- **Signing Requirements** – No statutory definition



**Last Will and Testament** – A Last Will and Testament is written by a testator, the creator of the document, for the purposes of establishing the distribution of their property and assets following their death. As opposed to a Living Trust wherein assets are placed under the ownership of a separate entity (the Trust) and managed throughout the creator's lifetime, a Last Will and Testament simply lists to whom the assets will be distributed. A Will must pass through probate before the beneficiaries can receive their inheritance.

- **Signing Requirements** – ([§ 29A-2-502](#)) Must be signed by the testator in the presence of two (2) or more witnesses

## Step 6 – Store the Documents

Following their completion, each above-mentioned legal instruments should be stored in a fireproof and waterproof safe (or equally secure location) in the principal's home or office. It is in the principal's best interest to ensure that each agent, trustee, executor or other authorized individual receive a copy of the original document for safe keeping.

# South Dakota Estate Planning Laws

- **Healthcare Power of Attorney** – [CHAPTER 34-12C \(Health Care Consent Procedures\)](#)
- **Durable Power of Attorney** – [SD Codified L § 59-6-11 \(2017\)](#)
- **Last Will and Testament** – [Chapter 02 – Intestate Succession And Wills](#)
- **Living Trust (Revocable)** – [Chapter 01 – Classification And Creation Of Trusts](#)