

# KENTUCKY ESTATE PLANNING CHECKLIST

Kentucky residents have several options available when planning for the distribution of their estate and the management of their end-of-life care, some of which are presented in the below guide. However, these instructions do not constitute legal advice and individuals are recommended to secure the services of a professional attorney before executing these legal instruments.

## Step 1 - Select a Health Care Agent

A **health care agent**, or "surrogate," is an individual who the principal has assigned to make medical decisions for them in the event that they become incapacitated. By appointing a surrogate, the principal can ensure that only permitted medical procedures will be employed in their treatment. The principal's surrogate should be explicitly informed about any medical treatments that they wish to prohibit.

The [Advance Directive form](#) is used to appoint the health care agent (surrogate). The principal must also assign an alternate surrogate who will act as their representative if the primary surrogate is unable or unwilling to perform their duties. This form also allows the principal to record specific instructions regarding life-sustaining treatments and the donation of body parts.

**Signing Requirements** ([§ 311.625](#)) - This form should be signed by two (2) adult witnesses who are not the principal's family members, the principal (grantor), and a notary public.

## Step 2 - Select a Financial Agent

In addition to appointing a health care agent, the principal may also want to assign a **financial agent** who will be authorized to execute financial documents on the principal's behalf in the event that they lose their decisional capacity. Having a financial agent means that the principal's assets can be used in accordance with their wishes and best interests even if they are mentally or physically incapacitated.

To appoint a financial agent, the principal will need to complete a [Durable Power of Attorney form](#) which names their chosen representative. A Durable Power of Attorney is one in which the agent is authorized to represent the principal in the event of their incapacity. There is an option for the principal as to whether the agent is given immediate authority or only in the event of their incapacity.

- **Signing Requirements** ([§ 457.050](#)) - Must be signed by the principal, two (2) disinterested witnesses, and acknowledged by a notary public.

**Financial Powers Allowed:**

- To receive and deposit funds in any financial institution, and to withdraw funds by check or otherwise to pay for goods, services, and any other personal and business expenses for the principal's benefit.
- To have access at any time or times to any safe-deposit box rented by the principal.
- To make loans, borrow money, to give promissory notes or other obligations, and to deposit or mortgage as collateral in the principal's name.
- To contribute to, select payment option of, roll-over, and receive benefits of any retirement plan or IRA the principal may own.
- To complete and sign any local, state and federal tax returns, pay any taxes and assessments due and receive credits and refunds owed, and to sign any tax agency documents necessary to effectuate these powers.
- To purchase, pay premiums and make claims on life, health, automobile and homeowners' insurance on the principal's behalf.
- To acquire, purchase, exchange, lease, grant options to sell, and sell and convey real property, or any interests therein, on such terms and conditions, including credit arrangements.
- To acquire, purchase, exchange, lease, grant options to sell, and sell and convey personal property, or any interests therein, on such terms and conditions, including credit arrangements.
- To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interests therein for the principal's benefit.
- To make gifts, grants, or other transfers.

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

The first step of planning the administration of the principal's estate is to make a list of all their personal property and valuables, real estate, financial accounts, investments, bonds, and anything else that they would like to be passed on to their inheritors. The [Current Assets List](#) can be used for organizing this list. Creating a complete list will make it easier for the principal to divide their property and ensure that they haven't missed anything in their estate transfer documents.

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

Once the principal has made a complete list of all their assets, they will need to decide how to distribute their property and to whom. Assigning beneficiaries will help to avoid disputes regarding who gets what. For more valuable items, an alternate beneficiary should be named as well in case the named beneficiary is deceased at the time that the estate is distributed. Furthermore, if there is anyone that the principal would like to exclude from their Will (or Trust) they should explicitly state this in their estate transfer documents. In addition to assigning their beneficiaries, the principal must also appoint a representative or trustee(s) who will be responsible for administering their estate after death.

## Step 5 - Execute Estate Transfer Documents

After the principal has decided how to divide their estate and who their beneficiaries will be, they will have to execute a legal instrument that puts their wishes into effect. There are **two (2) options** that are used by most individuals for the administration of their estate.

[Last Will and Testament](#) - The most widely known and used method for the division of an estate. If the testator has children or pets, they can also provide for the care of their dependents. When the testator dies, their Will must go through probate court before the individual's estate can be distributed.

- **Signing Requirements** ([§ 394.040](#)) - Must be signed by the testator and, if they did not wholly write the Will themselves, it must also be signed by two (2) witnesses.

[Revocable Living Trust](#) - With the execution of a Living Trust, the grantor's beneficiaries will not need to go through the probate process when the grantor's estate is administered. The grantor signs over the ownership of their estate to a Trust, which they can continue to benefit from during their lifetime. Unlike a Will, the Trust comes into effect during the grantor's lifetime and, furthermore, will not have to pass through probate court before being distributed.

- **Signing Requirements** (No statutes) - Although there are no precise statutory guidelines, the grantor and two (2) witnesses should sign the trust instrument(s) in each other's presence.

## Step 6 - Keep the Documents Safe

Multiple copies of all the documents should be made and the principal must carefully choose the individuals who will be given these documents for safe-keeping. In most cases, these legal instruments will only become necessary when the principal dies or becomes incapacitated. Therefore, it is more important that other individuals have the necessary document in their possession. Having multiple copies in multiple safe locations ensures the safety of the document and the endurance of the principal's wishes for their end-of-life treatment and estate management.

## Kentucky Estate Planning Laws

- Advance Health Care Directive – [§ 311.623](#) and [§ 311.625](#)
- Durable Power of Attorney – [KRS Chapter 457](#)
- Last Will and Testament – [KRS Chapter 394](#)
- Living Trust (Revocable) – [KRS Chapter 386B.6 \(Revocable Trusts\)](#)