

LOUISIANA ESTATE PLANNING CHECKLIST

By following this brief guide, an individual can ensure that they have made the necessary preparations for the end of their life and the distribution of their estate. When reviewing these instructions, the individual who is creating the documents is referred to variously as the principal, the testator, and the grantor, depending on the document in question. It is recommended that an individual obtains the services of a professional attorney before executing these instruments.

Step 1 – Select a Health Care Agent

A **health care agent** is an individual who is appointed by the principal to represent them in making medical decisions if the principal is incapable of making decisions themselves (as determined by a physician). By selecting a health care agent, the principal ensures that their wishes will be carried out with regard to the consenting to, or refusal, of life-sustaining treatments and the like

The principal appoints the agent through a [Health Care Power of Attorney](#) form on which they will be able to specify any unpermitted medical treatments. An alternate health care agent should also be named in case the other agent is unavailable.

Signing Requirements ([§ 28:224](#)) – The principal is required to sign along with two (2) witnesses. Furthermore, the form must be accompanied by a psychiatric evaluation that certifies that the principal is capable of making reasoned decisions at the time that the representative was appointed.

Step 2 – Select a Financial Agent

A **financial agent** is a representative for the principal who is granted the authority to act on their behalf in the execution of legal documents. In addition to being able to execute instruments in the principal's stead, a financial agent can manage the principal's finances if the principal is incapacitated. Assigning this role to a trusted individual is especially important given the fact that the principal may need someone to secure finances for their medical treatment at a time in which they are incapacitated.

To appoint a financial agent, the principal must complete a [Durable Power of Attorney](#) form. A “durable” power of attorney meaning one in which the representative can act on the principal's behalf even if they are incapacitated. The authorized acts that the agent can carry out can be detailed in the power of attorney document.

- **Signing Requirements** ([CC 2993](#)) – No specific requirements. However, it is recommended to have the principal, two (2) witnesses, and a notary public sign the document.

Financial Powers Allowed:

- The principal may confer on the mandatary general authority to do whatever is appropriate under the circumstances ([CC 2994](#)).

Step 3 – Make a List of All Estate Items

Before deciding how their property should be divided, the principal should make a [Current Assets List](#) to organize their assets and property. Items that should be included are personal property, liquid assets (financial accounts, bonds, investments, etc.), and real estate. It will be worthwhile for the principal to go through all of their belongings to ensure that all of their valuables are included on the list. In regards to personal property, due to the fact that Louisiana is a “community property” state, half of the principal’s personal property must go to their spouse if they are married ([CC 2334](#)).

Step 4 – Designate Beneficiaries and Other Roles

Next, the principal will need to select the individuals who will inherit their estate as beneficiaries, as well as appoint the individual(s) who will be acting as the representative(s) or trustee(s) for the administration of the principal’s estate. It is prudent to also elect alternate beneficiaries in case the principal is not survived by their beneficiary.

Step 5 – Execute Estate Transfer Documents

After deciding how they would like to divide their estate, the principal must choose the method by which they will transfer their estate. There are **two (2) legal instruments** that are most commonly used for estate planning.

[Last Will and Testament](#) – Drafting a Will is usually the simpler option for the testator (principal/creator), however, the document must pass through the probate process before the testator’s estate is distributed. A Last Will and Testament allows the testator to leave instructions on how their estate should be divided amongst their beneficiaries, as well as any other final instructions they would like to have carried out.

- **Signing Requirements** ([CC 1577](#)) – Must be signed by the testator, two (2) witnesses, and a notary public.

[Revocable Living Trust](#) – Unlike a Will which is effective upon the death of the principal, a Living Trust becomes effective immediately after the grantor signs the document. Following the execution of the trust form, the principal (called the grantor) can transfer the ownership of assets in their estate to the entity. During their lifetime the grantor can still use and benefit from their property and assets. When they die, the grantor’s Trust estate will be distributed without probate.

- **Signing Requirements** ([CC 2003](#) and [CC 1833](#))- All individuals who have appointed roles in the trust must sign (trustees, grantor, beneficiaries) in the presence of notary public, who also must subscribe (doesn’t need to be the same notary). The trustees are also permitted to sign their consent on a separate form. If a notary is not present for the principal’s signature, the signature of two (2) witnesses are required.

Step 6 – Keep the Documents Safe

The time between the execution of a legal instrument and the moment when it is used can span decades. Therefore, it is extremely important to keep these documents stored in a

secure location that is both fireproof and waterproof, such as a safe. Copies of the documents should also be given to the people who are in the best position to ensure that the principal's wishes are carried out, especially the appointed agents, attorneys-in-fact, representatives, or trustees. Following these steps to storing estate documents will ensure that they will be easily located and safely preserved when the time arrives for them to be put to use.

Louisiana Estate Planning Laws

- **Advance Health Care Directive** – [Title 28 – Mental Health](#)
- **Durable Power of Attorney** – [CC 2985](#) to [CC 3034](#)
- **Last Will and Testament** – [CC 1577](#) to [CC 1582.1](#)
- **Living Trust (Revocable)** – [Louisiana Trust Code – § 9:1721 et seq.](#)