OKLAHOMA ESTATE PLANNING CHECKLIST

Residents of Oklahoma can use the following guide to maintain control over their assets both during their lifetime and after death. Before finalizing the paperwork made available below, it may benefit individuals to obtain legal advice to be sure that the documents are best suited for the protection of their estate.

Step 1 – Appoint an Attorney-In-Fact for Health Care

An **attorney-in-fact** is an individual chosen by the principal (the estate owner) to represent them and make decisions on their behalf. The primary purpose of the attorney-in-fact is to communicate the principal's wishes when they are unable to speak or make competent decisions. For example, if the principal in unconscious or disabled, the attorney-in-fact can relay their medical preferences to the attending physician.

Durable Power of Attorney for Health Care – This document is used to appoint an attorney-in-fact who can make health care decisions for the principal. The attorney-in-fact's authority will remain effective even after a physician determines that the principal is incapacitated or disabled.

Signing Requirements (§ 1072.2) – The principal and two (2) adult witnesses must appear before a notary public and sign. The witnesses may not be related to the principal by marriage, blood, or adoption, nor may the witnesses be the attorney-in-fact or related to the attorney-in-fact by marriage, blood, or adoption.

Step 2 – Appoint an Attorney-In-Fact for Finances

The principal will need to nominate a second attorney-in-fact that will be responsible for managing the principal's finances. The **attorney-in-fact for finances** will be entrusted with powers that remain effective when the principal is disabled, incompetent, or away for an extended period. Such powers may include, but are not limited to, the management of real estate, banking, business operations, and income tax.

Durable (Financial) Power of Attorney – This form can be used to nominate an attorney-in-fact who will make financial decisions for the principal. The principal will be able to indicate the specific financial powers bestowed upon the selected individual.

- **Signing Requirements** (§ 1072.2) – Must be signed by the principal and two (2) witnesses in the presence of a notary public. The witnesses must be at least eighteen (18) years of age and may not be related to the

principal by marriage, blood or adoption, nor can they be the attorney-in-fact or related to the attorney-in-fact by marriage, blood, or adoption.

Financial Powers Allowed

- Real Property Transactions;
- Tangible Personal Property Transactions;
- Stock and Bond Transactions;
- Commodity and Option Transactions;
- Banking and Other Financial Institution Transactions;
- Business Operating Transactions;
- Insurance and Annuity Transactions;
- Estate, Trust, and Other Beneficiary Transactions;
- Claims and Litigation;
- Personal and Family Maintenance;
- Benefits from Social Security, Medicare, Medicaid, or Other Governmental Programs, or Military Service;
- Retirement Plan Transactions;
- Tax Matters.

Step 3 – Create Assets List

The principal should create a list that outlines the items in their estate and provides a description for each asset. This report allows for a more coordinated approach when deciding on which of the principal's assets are to be transferred to the selected beneficiaries. The Current Assets List should be used for this purpose and completed before proceeding.

Step 4 – Choose the Beneficiaries

After the principal has made a list describing the assets in their estate, they will need to nominate the recipients (a.k.a. the beneficiaries) who will inherit the assets after the principal passes away. The principal must then consider which of their assets are going to be given to each individual. Once this information has been determined, the beneficiaries should be contacted and informed of the property they will inherit once the estate has been settled.

Step 5 – Decide How the Assets Will be Transferred

The principal will need to draft a legal document that identifies the beneficiaries and describes the assets each party will inherit following the principal's death. For this purpose, the principal must complete one (1) or both of the following:

Last Will and Testament ('Will') – This is the most widely used instrument that enables individuals to choose beneficiaries and describe the assets being transferred after death. After the principal dies, the form **must go through**

probate to determine whether the document is in fact the last will and testament of the principal, and to present others with an opportunity to submit claims to recover debts. The probate process often results in additional fees and an extended administration period.

- **Signing Requirements** (§ 84-55) – The principal must sign or acknowledge the Will in the presence of two (2) attesting witnesses. Each witness must sign at the end of the Will in the principal's presence.

Living Trust (Revocable) – A Living Trust, once created, is an entity unto itself wherein the principal (grantor) can transfer the ownership of assets and property. A trustee will be required to manage the assets while the principal is alive (the principal and trustee are often the same person). The principal will nominate the beneficiaries of the assets in the same manner as a Last Will and Testament. However, unlike a Will, the Living Trust **does not go through probate** following the grantor's death thus allowing the beneficiaries to receive their assets immediately.

- **Signing Requirements** (§ 175.6) – There are many ways to create a Living Trust. State law does not specify how the document must be signed. However, it is general practice to sign the document in the presence of a notary public and two (2) witnesses.

Step 6 – Keep Estate Documents Safe

Following the execution of the estate planning documents, the paperwork should be stored in a safe location that's protected from damage and from individuals that might attempt to alter the documents for their benefit. The original Power of Attorney forms should be given to the parties elected to serve as the attorneys-in-fact. The principal's attorney should keep the Living Trust and Last Will and Testament until the principal's death or until requested by the principal for revisions.

Oklahoma Estate Planning Laws

- **Durable Power of Attorney for Health Care** – Title 58, Chapter 17A
- **Durable (Financial) Power of Attorney** – Title 58, Chapter 17A
- **Last Will and Testament** – Title 84, Chapter 2
- **Revocable Living Trust** – Title 60, Chapter 4, Oklahoma Trust Act