

# TENNESSEE ESTATE PLANNING CHECKLIST

Each step of the estate plan provides further security for the individual preparing for the end of their life. It is recommended that an attorney be present during the creation and execution of all legal documents pertaining to the distribution of assets and election of healthcare/financial representatives.

## Step 1 – Select a Health Care Agent

When selecting a **health care agent**, the principal (the individual whom the agent represents) will be required to seek out someone who is trustworthy and able to act with the principal's best interests in mind. The agent must also be able to take into consideration the advice of the health care professionals assigned to the case and the demands of the principal as relayed in the Medical Power of Attorney.

**Medical (Health Care) Power of Attorney** – This legal instrument provides the principal with the ability to select their health care agent (referred to in the document as attorney-in-fact). On top of authorizing the selected person to make medical decisions on the principal's behalf, a power of attorney allows the agent to consent to withholding medical treatment or stopping the treatment should they deem it necessary.

- **Signing Requirements** ([TN Code § 34-6-203 \(2017\)](#)) – The power of attorney must be signed by the principal in the presence of a notary public **or** by the principal in the presence of two (2) witnesses.

## Step 2 – Select a Financial Agent

A **financial agent** can be selected before or after a medical attorney-in-fact. The individual defined in a Durable Power of Attorney document will be required to act on the principal's behalf should they become incapacitated by managing their finances according to the principal's wishes. The financial agent should be a trusted individual, someone who is able to make sound financial decisions and continue the administration of the principal's assets as if the principal was of full mental and physical capacity.

**Durable (Financial) Power of Attorney** – The Durable POA can be executed by the principal when they are of sound body and mind to designate a financial attorney-in-fact. The form enables the creator to determine whether the powers of attorney will be bestowed immediately following the signing of the

instrument or at such a time when the principal's physician has determined their health insufficient in handling financial affairs.

- **Signing Requirements** – No statutory definition of the signing requirements; however, it must be signed by the Principal, and it is recommended that it be signed in the presence of two (2) adult witnesses or a notary public.

**Financial Powers Allowed:** [TN Code § 34-6-109 \(2015\)](#)

### **Step 3 – Create a Comprehensive List of Assets**

The creator of a Last Will and Testament or a Living Trust would benefit from first listing all of their assets which can be transferred to the ownership of the Trust or bequeathed to beneficiaries. This includes all investments, ownership percentage of business entities, assets, real property, vehicles and the like.

[Current Assets List](#) – This list can be used as an organizational tool to ensure no item goes unchecked when detailing the contents of one's estate.

### **Step 4 – Consult Beneficiaries**

The individuals to be named in the Will or Living Trust should be contacted and informed of their future inheritance. The estate owner should detail all responsibility the inheritors will take on in having assets transfers under their ownership. This step enables all beneficiaries to financially prepare for the passing of the principal while providing them with the ability to ask the requisite questions while the owner is still alive and able to give proper instruction.

### **Step 5 – Create Legal Instrument for the Estate Transfer**

When transferring an estate, an owner will have two (2) legal instruments from which to choose; a Living Trust, and a Last Will and Testament.

[Tennessee Revocable Living Trust](#) – A Revocable Living Trust is a legal entity into which an individual can transfer the ownership of their assets. The individual creating the Trust, the grantor, is able to benefit from the Trust's assets during the remainder of their lifetime. More often than not, they'll assign themselves as trustee so that they can oversee the management of the entity. They'll then list successor trustees to which the management of the trust will be transferred upon the grantor's death. The successor trustees will

be able to transfer the Trust's contents to the beneficiaries without the living trust document passing through probate court.

- **Signing Requirements** – No statutory definition; however, it should be signed by the principal and it is recommended that the signature be notarized.

**Tennessee Last Will and Testament** – This legal instrument allows a testator (creator of the will) to outline precisely how they wish their estate to be divided among their beneficiaries following their death. The division of the contents of the estate can be a lengthy process as a Last Will and Testament must pass through probate court before the beneficiaries can receive their inheritance.

- **Signing Requirements** ([TN Code § 32-1-104 \(2017\)](#)) – A Last Will and Testament must contain the signature of the testator and at least two (2) adult witnesses.

## Step 6 – Store Documents

Following the execution of each aforementioned legal instrument, the creator should find a secure location in which to store them until they are required for review. It is further recommended that copies of the original be created and distributed to the principal's attorney and other trusted individuals.

# Tennessee Estate Planning Laws

- **Medical (Health Care) Power of Attorney** – [TN Code § 34-6-203-Part 2](#)
- **Durable Power of Attorney** – [TN Code § 34-6-Part 1](#)
- **Last Will and Testament** – [TN Code § Title 32 – Wills](#)
- **Living Trust (Revocable)** – [TN Code § 35-15 \(Revocable Trusts\)](#)