

# UTAH ESTATE PLANNING CHECKLIST

The below step-by-step guide sets forth the process of planning one's estate. It is highly recommended that those planning their estate seek the guidance of an attorney who is well-versed in estate law to ensure that all documents completed will remain effective following their death or incapacitation.

## Step 1 – Select a Health Care Representative

A **health care representative**, referred to as an agent or attorney-in-fact, is an individual selected specifically to oversee the medical treatment of the principal (patient) in the event that they become incapacitated to the point of not being able to communicate their wishes (statutory definition of incapacitation can be found here: [§75-2a-S104](#)). While the document used to elect the trusted individual allows the principal to pre-determine their medical treatment, the health care agent will often have to make decisions on the principal's behalf.

[Advance Health Care Directive \(Medical POA\)](#) – The Advance Health Care Directive is the document through which the health care agent is selected and the principal's wishes for future treatment are defined.

- **Signing Requirements** ([§75-2a-106\(c\)](#)) – A healthcare directive must be signed by the principal in the presence of an adult witness.

## Step 2 – Select a Financial Representative

The financial representative, or agent, is much like a health care attorney-in-fact in that they can be elected to make decisions for the principal in the event they are unable to do so themselves. The individual selected should be trustworthy and able to carry out financial transactions with the best interests of the principal in mind. A financial agent's authority to handle property on the principal's behalf becomes effective immediately following the signing of a power of attorney unless otherwise specified therein. The representative will not have the authority to make healthcare decisions for the principal.

[Durable \(Financial\) Power of Attorney](#) – This legal instrument provides an agent with the authority to make decisions relating to the principal's finances. The authority granted upon the agent can be defined within the document, and any special instructions the principal wishes to include can be detailed to ensure that the agent can carry out their responsibility as effectively as possible.



- **Signing Requirements** (§75-9-105) – A power of attorney must be signed by the principal before a notary public or other individual with the authority to take acknowledgments.

**Financial Powers Allowed:**

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

### **Step 3 – List all assets**

In the preliminary stages of preparing an estate plan, it is crucial that all property and assets be accounted for. This step ensures that nothing goes unchecked in the division of the estate following the estate owner's death. It also provides the owner with the ability to effectively organize their affairs. A [Current Assets List](#) template can be used for this function.

### **Step 4 – Select Beneficiaries**

Beneficiaries of an estate are the individuals selected by the estate owner to inherit all property and assets upon the principal's death. More often than not, these individuals are the closest family members or relatives, but they can also be friends and business associates. It is prudent of the grantor or settlor (creator of a Will or Living Trust) to contact the beneficiaries to inform them of the assets they will receive. This will provide the beneficiary with the opportunity to financially and mentally prepare.

### **Step 5 – Draft Will and/or Revocable Living Trust**

The conveyance of an estate following the principal's death can be carried out in accordance with the instructions found in a Last Will and Testament, or a Revocable Living Trust. There are fundamental differences between these two



legal instruments, and deciding which is most suitable to the principal's needs can be based on a number of variables.

**Last Will and Testament ('Will')** – This is the most common document used to relay one's wishes for the division of one's estate following death. The testator (principal) will designate an executor to carry out the instructions relayed within the document. If the testator has children under the age of eighteen (18), they will be required to leave instructions regarding guardianship. Unlike a Trust, a Last Will and Testament passes through probate court before the beneficiaries can receive their inheritance.

**Signing Requirements** – ([§75-2-502](#)) A Last Will and Testament must be signed by the testator and two (2) witnesses.

**Living Trust (Revocable)** – A living trust is an entity created by a grantor to which they can transfer the ownership of assets and real property. The grantor will designate a trustee to manage the trust, although more often than not, the grantor will elect themselves. Once the grantor dies, the assets in the estate will be distributed to the beneficiaries listed within the Trust document by a trustee or successor trustee without having to pass through probate court.

**Signing Requirements** – While not specified in the state statutes, it is recommended that the document be signed by the principal and the signature notarized.

## Step 6 – Store Estate Planning Documents

The estate planning documents should be kept safe, in a location that is protected but easily accessible by the principal's trusted representative when the time comes. Copies of the documents can be created and distributed to beneficiaries and agents named therein. It is not recommended that one use a safety deposit box as these will require a court order to open.

## Utah Estate Planning Laws

- **Durable Power of Attorney** -([Title 75 Chapter 9 \(Uniform Probate Act\)](#))
- **Advance Health Care Directive** – ([Title 75 Chapter 2a \(Advance Health Care Directive Act\)](#))
- **Living Trust** – ([Title 75 Chapter 7 \(Utah Uniform Trust Code\)](#))
- **Last Will and Testament** – ([Title 75 Chapter 7 \(Intestate Succession of Wills\)](#))