

WASHINGTON ESTATE PLANNING CHECKLIST

Residents of Washington state can execute the below steps in accordance with the Washington Revised Code to prepare their estate for distribution and to elect attorneys-in-fact to represent their needs when a physician deems it necessary. It should be noted that due to the importance of the below-mentioned documents, an attorney who specializes in estate law should be consulted prior to their execution. The instructions on this page should not replace sufficient legal counsel.

Step 1 – Select a Health Care Agent

A **Health Care Agent**, frequently referred to as a health care proxy or a health care attorney-in-fact, is an individual selected through a Durable Power of Attorney document to make health care decisions on behalf of the patient when the patient has been diagnosed by their acting physician as incapable of making health care decisions on their own. The scope of the agent's power can be defined with precision within the POA form. Generally, an agent will be a close family member or friend that can accurately represent the patient's wishes after they become incapacitated.

Durable (Health Care) Power of Attorney – A Durable (Health Care) Power of Attorney provides a health care agent the authority to act on a patient's behalf. It is created and signed while the grantor (principal) has decisional capacity, and is often drafted alongside an Advance Directive, a document used to communicate a patient's wishes with regard to the consent or refusal of medical treatments following incapacitation. A Health Care POA document will contain a section wherein a grantor can relay special provisions regarding the power with which the agent is able to act.

- **Signing Requirements** ([WA Rev Code § 11.125.050 \(2017\)](#)) – A power of attorney must be signed by the principal or an authorized representative, and the signature must be acknowledged before a notary public or two (2) witnesses.

Step 2 – Choose a Financial Agent

A **Financial Agent** is a person selected to manage an individual's finances and estate following the signing of a Financial Power of Attorney. If the Power of Attorney is durable, meaning it remains effective following the creator's incapacitation, the agent may be instructed to manage the individual's finances only when said individual is mentally unfit to do so themselves. The



agent's ability to perform business transactions on the individual's behalf will be determined by the type of financial powers they are granted within the power of attorney document.

Durable (Financial) Power of Attorney – This legal instrument is the one used to elect a financial agent, a trustworthy individual selected to manage finances for the principal. Within the document will be the option to make the power of attorney effective immediately following the execution of the power of attorney document. Alternatively, the power of attorney can become effective only when the principal has lost decisional capacity.

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Financial Powers Commonly Allowed:

- Banking;
- Safe Deposit Box;
- Lending or Borrowing;
- Government Benefits;
- Retirement Plan;
- Taxes;
- Insurance;
- Real Estate;
- Personal Property;
- Power to Manage Property;
- Gifts;
- Legal Advice and Proceedings

Step 3 – Make a Current Assets List

The [Current Assets List](#) provides estate owners with a practical way of organizing the contents of their estate. Prior to creating an estate planning document, individuals are encouraged to draft a comprehensive account of all assets, property, business ownership percentages, bank accounts, debts, liabilities and the like for a number of reasons. One is to ensure that no item remains unaccounted for following their death, another is to enable them to visualize the extent of their estate in order to accurately administer each item to the appropriate beneficiary.

Step 4 – Select and Contact Beneficiaries

A beneficiary is an individual chosen by an estate owner to receive all or a portion of their estate after death. It is most common that a spouse or child of the estate owner be chosen as a beneficiary; however, it can be anyone the individual wishes. Once the inheritors have been selected, and their portion of the estate accounted for, an estate owner will often contact their heirs to inform them of what they can expect to inherit, and what responsibilities they will adopt once an estate planning document becomes effective.

Step 5 – Draft Will or Living Trust

A Last Will and Testament, and a Living Trust are two documents which fundamentally perform the same function (with a few significant differences) which is to divide one's estate following their death. It is not uncommon for those creating a Living Trust to also employ a pour-over will; however, they can be used independently. Which one is chosen is often dependent on the size of the estate in question.

Last Will and Testament ('Will') – A Last Will and Testament is the most common estate planning document, one which becomes effective following the estate owner's death. Its primary purpose is to declare all beneficiaries and provide instructions for an estate manager, referred to as a Will executor, on how to divide the estate. A Will will also provide instructions concerning the handling of debt and more importantly the selection of a guardian should the testator (Will creator) leave behind any children. Before beneficiaries can receive their due inheritance, the Will must pass through probate court to ensure its validity.

- **Signing Requirements** ([WA Rev Code § 11.12.020 \(2017\)](#)) Must be signed by the principal and attested before two (2) or more witnesses.

Living Trust (Revocable) – A Revocable Living Trust document is also used to divide an estate, only this legal instrument becomes effective immediately after it has been signed. The document creates an entity into which the grantor (Trust creator) can transfer assets from which they can benefit throughout their lifetime. Following the grantor's death, the trustee or successor trustee will be responsible for dividing the Trust contents to beneficiaries. The distribution process occurs outside of probate court, thus out of the public eye, and can take considerably less time than that associated with a Last Will and Testament.

- **Signing Requirements** – There are no signing requirements for a trust document as defined in the State statutes. However, it is recommended that the grantor sign and that the signature be acknowledged.

Step 6 – Secure All Documents

Each of the above-mentioned documents is incredibly sensitive in nature and should be kept in a secure location accessible only by those who have been made aware of their whereabouts (e.g. a waterproof and fireproof safe, attorney’s office). Often, individuals will create copies and give them to their financial/health care agents, trustees, executor, agents, or beneficiaries.

Washington Estate Planning Laws

- **Advance Directive** – [WA Rev Code § 11.125 Uniform power of attorney act.](#)
- **Durable Power of Attorney** – [WA Rev Code § 11.125 Uniform power of attorney act.](#)
- **Last Will and Testament** – [WA Rev Code § 11.12 Wills](#)
- **Living Trust (Revocable)** – [WA Rev Code § 11.98 Trusts](#)