FREE GUIDE

The Florida Estate Planning Checklist

What a complete plan contains, what to bring to your first meeting, and the Florida rules that catch families off guard

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Verified against the Florida Statutes on August 18, 2026. Florida has no estate tax and no inheritance tax, and the federal estate tax exclusion is $15 million per person for 2026. Federal figures change every January, so check this date before relying on any number here.

KEY TAKEAWAYS

- A complete Florida plan is seven documents working together, not just a will.
- Florida's power of attorney rules are strict: two witnesses, a notary, and powers that work only if you initial each one.
- A power of attorney signed today takes effect immediately. The old springing version no longer works here.
- Beneficiary designations and deeds override your will, and homestead follows constitutional rules a will cannot change.
- A trust only avoids probate for assets actually retitled into it. Funding is the step that matters.

If you are the one your family calls when something goes wrong, you have probably thought about getting your documents in order, then set the thought back down. A Florida plan does two jobs: it protects you while you are living, especially if you get sick, and it protects your family after you are gone.

What a complete Florida plan contains

- **Will.** Names your personal representative, Florida's term for an executor, and a guardian for minor children. You sign at the end before two witnesses, who sign in front of you and each other.
- **Revocable living trust, when it fits.** Assets retitled into it skip probate, and a successor trustee steps in when you cannot manage things.
- **Durable power of attorney.** The best protection there is against a guardianship.
- **Designation of health care surrogate.** Who decides and receives medical information when you cannot.
- **Living will.** Your own instructions on life-prolonging procedures, so nobody has to guess.
- **HIPAA authorization.** Without it, the call your daughter makes from the hospital goes nowhere.
- **Preneed guardian designation.** Tells the judge who you would have chosen.

The durable power of attorney is where Florida is strictest

It must be signed by you, witnessed by two subscribing witnesses, and acknowledged before a notary. Miss one and the bank can turn your agent away at the counter.

A power of attorney signed today is effective the moment you sign it. The old springing version, the one that wakes up only when two doctors declare you incapacitated, has been ineffective since October 1, 2011. Florida also lists powers your agent does not have unless you separately sign or initial next to each one:

- Create an inter vivos trust
- Amend, modify, revoke, or terminate a trust, when the trust allows it
- Make a gift
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Waive the right to be a beneficiary of a joint and survivor annuity, including a retirement plan survivor benefit
- Disclaim property and powers of appointment

Nobody finds a defective power of attorney on a calm afternoon

Families find out at the bank, at a closing, or at the nursing home admissions desk, on the day it has to work. By then the signer may no longer have the capacity to sign a better one, and the only road left is a court-supervised guardianship.

Health care: three documents, three jobs

Your health care surrogate designation must be written and signed before two adult witnesses, at least one of whom is not your spouse or a blood relative, and the surrogate cannot be a witness. You may state that the surrogate can act immediately, without waiting for anyone to declare you incapacitated. The living will follows the same witness rule. The preneed guardian designation needs two witnesses present at the same time; filed with the clerk of court, it creates a rebuttable presumption that your choice is entitled to serve.

The parts of your plan that are not documents at all

How an account is titled, and who is on the beneficiary line, overrides your will every time. A perfect will next to a stale beneficiary form is how most Florida estates land in the wrong hands.

- **Retirement accounts and life insurance.** They pass by beneficiary designation. Pull the actual form; a rollover can reset it.
- **Joint, payable-on-death, and transfer-on-death accounts.** They pass automatically, and are easy to forget you set up.
- **Deeds.** What the deed says controls, and a marriage, refinance, or transfer into a trust may have changed it.
- **Digital assets.** Florida has a fiduciary access statute, and most platforms have a legacy contact setting that usually wins. Set it, then make your documents agree.
- **Retirement withdrawals.** Required minimum distributions start at age 73, rising to 75 for people who turn 73 after 2032.

> **Funding is the step families skip**
>
> A trust only avoids probate for the assets actually inside it. Signing is the ceremony, retitling the house and the accounts is the work. A trust signed years ago and never funded still lands your family in probate.

Your homestead follows its own rules

The Florida Constitution says the homestead cannot be devised at all if you are survived by a spouse or a minor child, except to your spouse when there is no minor child. Write something else and Florida rewrites the result: your spouse takes a life estate with a vested remainder to your descendants, unless the spouse elects an undivided one-half interest as a tenant in common within six months of the death.

This is where the Lady Bird deed, formally an enhanced life estate deed, earns its Florida reputation. You deed the property to the people you choose while keeping the right to live in it, sell it, or take it back. Because you keep the power to revoke, Florida does not treat it as a devise, your homestead exemption stays in place, and the property passes outside probate. A mortgage or a blended family changes the answer.

When to pull the plan back out

- [ ] Marriage, divorce, or the death of a spouse
- [ ] A birth or adoption in the family
- [ ] A child turning 18, which ends your authority over their medical and financial matters
- [ ] A move into or out of Florida
- [ ] Buying, selling, or refinancing a home, or any change to a deed
- [ ] A serious diagnosis, in you or in a parent
- [ ] An agent, trustee, or personal representative who has died, moved, or is no longer right
- [ ] An inheritance, a business sale, or a retirement rollover
- [ ] A family member becoming disabled, which calls for special needs planning
- [ ] Five years since your last review

Bring these to your consultation

Do not wait until you have all of it. Come with what you have.

- [ ] Photo ID, and both spouses' names as on the deeds
- [ ] Any existing will, trust, power of attorney, or health care document
- [ ] The deed for every property you own, in Florida and elsewhere
- [ ] A one-page list of accounts and rough balances
- [ ] The latest beneficiary confirmations for retirement accounts and insurance
- [ ] Life insurance and annuity policies, with any long-term care rider
- [ ] Business paperwork: operating and shareholder agreements
- [ ] Names and contacts for your personal representative, trustee, agent, surrogate, and guardian
- [ ] A prenuptial agreement, divorce judgment, or support order
- [ ] Where your family could find your online accounts
- [ ] Your questions. They are the easiest thing to forget in the room.

Mistakes we see most often

1. **An out-of-state or downloaded form.** Florida's witness rules, notary requirement, and initialed powers are easy to miss.
2. **Beneficiary forms nobody has read in a decade.** A former spouse still named on a 401(k) inherits it no matter what your will says.
3. **Naming a minor, or an adult on benefits, directly as beneficiary.** It can force a court-supervised guardianship of the property, or cost an adult with a disability the benefits they rely on.

Questions families ask

Do I need a trust, or is a will enough?

A will is simpler and less expensive up front, and enough for many families, especially when the homestead passes to a spouse and the rest by beneficiary designation. A trust earns its cost with property in more than one state, a need for privacy, or a beneficiary who should not receive everything at once.

What happens if I die without a will in Florida?

The intestacy statutes decide for you. If all of your descendants are also your spouse's, your spouse takes everything. Once there are children from an earlier relationship, the estate splits.

Is the will I signed in another state still valid here?

Generally yes, if it was valid where you signed it. Handwritten wills without proper witnesses, and oral wills, are not valid here. It is still worth a review: Florida bars a nonresident from serving as personal representative unless they are related to you by blood, adoption, or marriage.

My mother already has memory loss. Is it too late?

Maybe not. Capacity is measured at the moment of signing, and it is not all or nothing. Many people early in a diagnosis can still sign a valid power of attorney and health care documents, which keeps the family out of guardianship later.

Let's finish your plan together

We offer a free consultation, in English or in Spanish. Bring this checklist filled in as far as you got, and call (407) 610-5595. Both of our attorneys are Board Certified in Elder Law by The Florida Bar, and you will sit with an attorney, not a form. This guide is general information about Florida law, not legal advice.

BOOK YOUR FREE CONSULTATION

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SOURCES

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