

# HAWAII ESTATE PLANNING CHECKLIST

The guide below should be used to ensure that one's medical and financial interests are protected throughout their lifetime, and to build a plan for the distribution of their estate after death. While not legally required, it is recommended that an attorney be consulted while completing any of the below-mentioned documents.

## Step 1 - Nominate a Health Care Agent

A **health care agent** is an individual chosen to act on the principal's behalf in medical emergencies where the principal is incapacitated and unable to make competent decisions. The agent should be someone trustworthy who will act in the principal's best interests. Generally, the agent will be a spouse, child, or other close friend or relative.

[Advance Health Care Directive \(Medical POA\)](#) - Allows the principal to nominate a health care agent and an alternative health care agent. In addition, the principal can specify the circumstances under which the agent's authority becomes effective as well as the medical decisions excluded from the agent's authorization.

- **Signing Requirements** ([§ 327E-3](#)) - Must be signed by the principal and witnessed through one (1) of the following methods:
  - The signatures of two (2) or more witnesses; or
  - Acknowledged by the principal before a notary public.

## Step 2 - Nominate a Financial Agent

Similar to a health care agent, a **financial agent** will make important decisions for the principal when they can no longer do so under their own volition. The financial agent, however, will act on behalf of the principal's financial interests exclusively. This will involve handling bank accounts, real estate, bills, and managing other facets of the principal's affairs.

[Durable \(Financial\) Power of Attorney](#) - Grants an individual with the authority to control the principal's finances while they are incapacitated and unable to act.

- **Signing Requirements** ([§ 551E-51](#)) - Must be signed by the principal or another individual directed by the principal to sign on their behalf. The

signature is presumed to be authentic if acknowledged before a notary public.

### **Financial Powers Allowed:**

- Real Property ([§ 551E-34](#));
- Tangible Personal Property ([§ 551E-35](#));
- Stocks and Bonds ([§ 551E-36](#));
- Commodities and Options ([§ 551E-37](#));
- Banks and Other Financial Institutions ([§ 551E-38](#));
- Operation of Entity or Business ([§ 551E-39](#));
- Insurance and Annuities ([§ 551E-40](#));
- Estates, Trusts, and Other Beneficial Interests ([§ 551E-41](#));
- Claims and Litigation ([§ 551E-42](#));
- Personal and Family Maintenance ([§ 551E-43](#));
- Benefits from Governmental Programs or Civil or Military Service ([§ 551E-44](#));
- Retirement Plans ([§ 551E-45](#));
- Taxes ([§ 551E-46](#));
- Gifts ([§ 551E-47](#)).

### **Step 3 - Make a List of Current Assets**

After the health care and financial agents have been selected, it will be necessary for the principal to itemize their assets and decide how their estate should be distributed when they die. The principal should begin by gathering ownership certificates and other documents proving their claim to items in the estate. The principal should then record the information in a [Current Assets List](#).

### **Step 4 - Choose the Beneficiaries**

The next step will be to nominate the individual(s) who will benefit from the principal's estate after they pass away. Those selected as beneficiaries are typically relatives such as a spouse or child, though it's not uncommon for the beneficiary to be a close friend or distant relative. Once the beneficiaries are chosen, the information should be relayed to the selected individuals and thoroughly discussed.

## Step 5 - Create a Living Trust or Last Will and Testament

After the beneficiaries have been chosen, the principal will need to create a document that outlines the manner in which their estate will be distributed. The document they use will be determined by their financial situation and personal preferences.

[Last Will and Testament \('Will'\)](#) - A legal document that allows the principal to dictate how their estate will be distributed upon their death. The principal, or "testator," can designate specific items for each beneficiary (e.g., real estate, vehicles, stock). When the testator dies, the last will and testament **will go through the probate process** before being distributed to the beneficiaries.

- **Signing Requirements** ([§ 560:2-502](#)) - Must be signed by the testator and two (2) witnesses. If the testator is unable to sign, they may direct another individual to sign in their presence.

[Living Trust \(Revocable\)](#) - Allows the principal to create an entity in which they can place their assets. The principal, or "grantor," will name a trustee to control the assets during the principal's lifetime. A living trust permits the principal to act as trustee and retain control over their assets. With a revocable living trust, the grantor can alter the provisions at any point before their death. When the principal dies, the assets designated to the trust **will not go through the probate process** and will be distributed to the beneficiaries without delay.

- **Signing Requirements** ([§ 560:7-101](#)) - The trustee will need to register the trust at a [courthouse](#) in the judicial circuit of the principal location of administration of the trust or, if the trust is specific to land only, of the location where the land is situated.

## Step 6 - Safely Store Documents

It is of the utmost importance that the documents be kept in a secure location after they are signed and completed. The only item retained on file with a government office is the revocable living trust. All other documents should be photocopied and held by the principal's family members and personal attorney. This process will allow for easy access in the event of the principal's incapacitation or death.

## Hawaii Estate Planning Laws

- **Advance Health Care Directive (Medical POA)** - [Title 19, 327E](#)
- **Durable (Financial) Power of Attorney** - [Uniform Power of Attorney Act](#)
- **Last Will and Testament** - [Title 30A, Article II](#)
- **Revocable Living Trust** - [Title 30A, Article VII](#)