

MINNESOTA ESTATE PLANNING CHECKLIST

This guide can be used to devise an estate plan in accordance with one's wishes. The following instructions pertain to medical decisions, financial arrangements, and estate distribution that will benefit a person in the present and in the future.

Step 1 - Choose a Health Care Agent

A **health care agent** is selected by an individual (principal) to make medical decisions on their behalf if they are no longer capable of making sound judgments. This representative has a very important task, and in many cases the principal's life will be in their hands. For this reason, a health care agent should be selected based on their trustworthiness, availability, and ability to make difficult decisions.

[Health Care Directive](#) - A written instrument that includes a list of health care instructions, a Medical Power of Attorney, or both.

- **Signing Requirements** ([§ 145C.03](#)) - A notary public OR one (1) witness (notary and witness cannot be a health care agent appointed to the Directive or a health care provider caring for the principal).

Step 2 - Choose a Financial Agent

Appointing a **financial agent** is just as important as finding the right health care agent, as this person will be in charge of managing a principal's assets and other finances if they have an unfortunate accident or are unable make well-informed decisions. A financial agent should be understanding, readily available, and trustworthy.

[Durable \(Financial\) Power of Attorney](#) - A legal instrument that appoints a financial agent and contains instructions regarding how said agent should manage the principal's finances. This document comes into effect as soon as it is executed, granting power of attorney to the agent. The term "durable" means the agent remains in power even if the principal becomes incapacitated.



- **Signing Requirements** ([§ 523.01](#)) - Principal, notary public, and the attorney-in-fact.

Financial Powers Allowed (at the Principal's behest):

- Real property transactions;
- Tangible personal property transactions;
- Bond, share, and commodity transactions;
- Banking transactions;
- Business operating transactions;
- Insurance transactions;
- Beneficiary transactions;
- Gift transactions;
- Fiduciary transactions;
- Claims and litigation;
- Family maintenance;
- Benefits from military service;
- Records, reports, and statements; and
- All of the powers listed above and all other matters, other than health care decisions under a health care directive that complies with State statutes.

Step 3 - Make a List of All Assets and Real Estate

It helps to have a written account of all the Principal's accounts, investments, policies, personal property, and even debts and liabilities so that the principal and their financial agent don't leave anything out when drafting a Will or Trust. The [Current Assets List](#) can be used for this purpose.

Step 4 – Designate Beneficiaries

Once a Current Assets List has been completed, the principal will have to decide who will receive a part of their estate after they die. An estate can be divided into portions, where each family member, relative, or friend receives a percentage, or the whole estate and all assets can be left to one **beneficiary**. It is imperative to clearly define who gets what on a Last Will and Testament

or Living Trust; any discrepancy can lead to months or even years in probate court due to challenges or disputes between beneficiaries.

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

Whether to draft a Last Will and Testament or a Revocable Living Trust depends entirely on the principal's financial situation and intentions regarding distribution of their assets. Regardless, it's important that a document is created before the Principal's death to allow for a smooth transfer of property thereafter.

[Last Will and Testament](#) - A document containing instructions regarding the distribution of the testator's (principal) assets after they die. An executor is appointed as the representative of the Will to see that each named beneficiary receives what was passed on to them by the Testator.

- **Signing Requirements** ([§ 542.2-502](#)) - The testator and two (2) witnesses.

[Revocable Living Trust](#) - The execution of this document establishes the Living Trust as an entity, to which the grantor (principal) transfers ownership of their assets. A trustee will be appointed to handle the Trust's affairs (typically the grantor) and successor trustees will be selected to handle the assets after the grantor's death. The Grantor continues to benefit from the assets during their lifetime and names beneficiaries to inherit the estate after they die.

- **Signing Requirements** - Not statutorily mentioned; however, the grantor, trustee and successor trustees must sign, and it is recommended that they do so in the presence of a notary public.

Main Difference - A Revocable Living Trust is easy to amend and has the added benefit of avoiding probate court. A Last Will and Testament (unless containing a [Self-Proving Affidavit](#)) could take months or even years to process in probate, depending on the size of the principal's estate and the amount of debt they owe.

Step 6 – Safely Store the Documents

Copies of each document can be presented to the involved parties if so desired. Originals of the documents, especially a Will and Trust, should be kept in a safe place in one's home or office, preferably in a safe that is incombustible and water proof. The principal's attorney, financial agent, and one (1) or more beneficiaries should be given the location of the documents, so they can gain access to them quickly in the event of the principal's death.