

NEW HAMPSHIRE ESTATE PLANNING CHECKLIST

Before executing any of these documents, a prudent individual would seek legal counsel or hire an attorney who specializes in estate planning. There may be forms or documents that suit one person's needs but not another. The most important thing is to make sure all aspects of a person's life are covered when creating an estate plan.

Step 1 - Health Care Agent

Selecting a **health care agent** is a major component of an estate plan. A health care agent will be appointed as the principal's representative in situations where the principal requires medical treatment but is unable to make decisions for themselves. An agent should be a trustworthy, honest individual – most likely someone close to the principal – who will effectively communicate with medical professionals and health care providers on behalf of the principal.

[Advance Directive](#) – This form is comprised of two sections; a Durable Power of Attorney (POA) for Health Care section and a Living Will section. The principal can choose to complete one (1) or both of these sections. The POA appoints a health care agent to make medical decisions for the principal. The principal is given the opportunity to include specific instructions regarding different types of treatment for different situations in the POA. The Living Will portion of the form contains the principal's wishes regarding life-sustaining treatment and similar health care options. Without the POA section, and therefore with no agent appointed, health care professionals will refer directly to the Living Will.

- **Signing Requirements** ([§ 137-J:14](#)) – Principal's signature must be acknowledged by either two (2) witnesses OR a notary public (or Justice of the Peace).

Step 2 - Financial Agent

Whereas a health care agent is authorized to make medical decisions for the principal, a **financial agent** is authorized to handle all the principal's financial matters. Unless otherwise indicated, a financial agent will be given these

powers whether or not the principal is incapacitated. The benefit of such an agent is that if the principal is incapable of making important financial decisions, the agent is there to make sure the estate is running smoothly.

[Durable \(Financial\) Power of Attorney](#) – A legal document that appoints a financial agent and conveys the principal's wishes regarding the type(s) of power the agent wields.

- **Signing Requirements** ([§ 564-E:105](#)) – Principal must sign in the presence of a notary public or other authorized individual.

Financial Powers Allowed:

- Real property ([§ 564-E:204](#));
- Tangible personal property ([§ 564-E:205](#));
- Stocks and bonds ([§ 564-E:206](#));
- Commodities and options ([§ 564-E:207](#));
- Banks and other financial institutions ([§ 564-E:208](#));
- Operation of entity or business ([§ 564-E:209](#));
- Insurance and annuities ([§ 564-E:210](#));
- Estates, trusts, and other beneficial interests ([§ 564-E:211](#));
- Claims and litigation ([§ 564-E:212](#));
- Personal and family maintenance ([§ 564-E:213](#));
- Benefits from governmental programs or civil or military service ([§ 564-E:214](#));
- Retirement plans ([§ 564-E:215](#));
- Taxes ([§ 564-E:216](#)); and
- Gifts ([§ 564-E:217](#)).

Step 3 - List of Assets

Before continuing to the estate distribution documents (Step 5), a principal might want to create a list of assets. This should include any outstanding debts and liabilities that will inevitably need to be taken care of before property is bestowed upon the named beneficiaries. A [Current Assets List](#) can be a helpful organizational tool for this segment of the proceedings.

Step 4 - Beneficiaries

Beneficiaries are the individuals who will benefit from or receive a portion of the principal's estate after their death. Dividing up an estate can be a complicated process and deciding who gets what is a very personal decision as it will greatly affect the lives of those closest to the principal. Aside from family members, close friends, and colleagues, a beneficiary can also be a company or other entity.

Step 5 - Last Will and Testament / Living Trust

At this juncture, a principal must decide which document they will use to distribute their assets after death. The instruments mentioned below serve different purposes, and a principal might not need to execute both of them to cover all bases. This portion of the estate planning process should be gone over with an attorney to ensure nothing has been overlooked.

[Last Will and Testament](#) – Most people will execute a Last Will and Testament well before they die so that their affairs are in order in case something unexpected happens to them. A Will includes instructions written by the testator (principal) to an executor outlining which asset goes to which beneficiary after the testator's death. This document can be modified throughout the testator's lifetime to include any recent amendments in regard to new property or other assets. After the testator dies, the Will must be validated by probate court to confirm its authenticity. This process can be time-consuming depending on the size of the estate and the amount of debt incurred.

- **Signing Requirements** ([§ 551:2](#)) – Principal and two (2) or more witnesses.

[\(Revocable\) Living Trust](#) – The creation of a Revocable Living Trust involves the transfer of ownership of assets from the grantor (principal) to the Trust. Once the document is executed, the Living Trust becomes an entity into which assets are placed so the grantor may benefit from them during their lifetime and so a successor trustee may handle the Trust after they die. Beneficiaries will be named in the Trust to inherit the assets after the grantor's death. Unlike a Will, a Living Trust avoids the probate process after the grantor's death and remains out of public record. What a Trust does not include is instructions regarding guardianship for the grantor's children and how taxes and debts should be paid; these elements can be covered by a Last Will and Testament.

- **Signing Requirements** – Although it is not specifically mentioned in State law, a Revocable Living Trust will be easier to validate if it is acknowledged by witnesses and/or a notary public.

Step 6 - Store Documents

The original copies of all estate planning documents should be kept in a safe place at the principal's home or office; a waterproof/fireproof safe or cabinet is ideal. The principal's attorney, executor, successor trustee(s), and/or a spouse/family member should have copies of these documents as well. A safety deposit box should be avoided as a court order is needed if anyone but the account holder requires access.