

NEW MEXICO ESTATE PLANNING CHECKLIST

The following guide can assist a person in creating a functional and effective estate plan. We highly recommend hiring an attorney before beginning this process; even the smallest of errors or missteps can have major consequences.

Step 1 - Appoint Health Care Agent

A **health care agent** is an individual chosen by the principal to make medical decisions for them if they do not have the capacity to do so for themselves. This designation only comes into effect when/if the principal is disabled or incapacitated in some way. The agent is obligated, by execution of an Advance Directive form, to act on behalf of the principal's best interests. A health care agent should be someone close to the principal, someone who knows and understands their values. This familiarity will help the agent make health care decisions that would be inline with the principal's wishes.

[Advance Health Care Directive](#) – This legal instrument outlines a principal's wishes regarding the health care and medical treatment they do and do not wish to receive in varying circumstances. An Advance Directive is comprised of two sections: Durable Power of Attorney for Health Care (Part 1) and a Living Will (Part 2). Part 1 appoints a health care agent, while Part 2 conveys instructions regarding preferred treatments for potential afflictions and illnesses.

- **Signing Requirements** ([§ 24-7A-2](#)) – None, although it is recommended that two (2) witnesses acknowledge and sign the document.

Step 2 - Appoint a Financial Agent

A **financial agent** is an individual designated to handle the principal's property, assets, and other financial matters. Unlike a health care agent, a financial agent has the authority to act as the principal's representative as soon as a Durable Power of Attorney is executed. The decisions to appoint a financial agent stems from a person wanting to plan for their future, i.e., to prepare for an unexpected mental or physical disability.



[Durable \(Financial\) Power of Attorney](#) – A Durable Power of Attorney appoints a financial agent to manage all (or a portion of) the principal’s assets, property, investments, and other financial matters pertaining to their estate. This is a very impactful document, and it should be executed with great care and consideration. The financial agent is awarded power of attorney as soon as the document is signed, and the power of attorney remains in full effect regardless of the principal’s state of mental and physical health.

- **Signing Requirements** ([§ 45-5B-105](#)) – Must be acknowledged and signed by a notary public.

Financial Powers Allowed:

- Real property ([§ 45-5B-204](#));
- Tangible personal property ([§ 45-5B-205](#));
- Stocks and bonds ([§ 45-5B-206](#));
- Commodities and options ([§ 45-5B-207](#));
- Banks and other financial institutions ([§ 45-5B-208](#));
- Operation of entity or business ([§ 45-5B-209](#));
- Insurance and annuities ([§ 45-5B-210](#));
- Estates, trust and other beneficial interests ([§ 45-5B-211](#));
- Claims and litigation ([§ 45-5B-212](#));
- Personal and family maintenance ([§ 45-5B-213](#));
- Benefits from governmental programs or civil or military service ([§ 45-5B-214](#));
- Retirement plans ([§ 45-5B-215](#));
- Taxes ([§ 45-5B-216](#)); and
- Gifts ([§ 45-5B-217](#)).

Step 3 - Make a List of Assets

Creating an estate plan will involve assembling a multitude of documents, files, and other items, so staying organized throughout the process is essential. With help from a [Current Assets List](#), individuals creating an estate plan can keep track of all assets and property, ensuring that everything has been accounted for.

Step 4 - Choose Who Will Receive an Inheritance

When a person dies, their estate is divided as per their wishes (conveyed through a Will or Trust document). The individuals designated to inherit all or a portion of the principal's estate are called "**beneficiaries**." If no one is named beneficiary of a principal's estate, the process for distributing their assets and other property becomes lengthy and complicated.

Step 5 - Execute a Will and/or a Living Trust

There are two (2) documents most commonly used for conveying one's wishes regarding the distribution of one's estate after death. A Last Will and Testament and a Revocable Living Trust share a few characteristics but they are ultimately very different instruments. While a Trust is a very useful estate planning tool, it is recommended that everyone create a Will to ensure that there is no room for interpretation when it comes time to handle the principal's affairs after they die.

[Last Will and Testament](#) – A Will is a document executed by a principal, or "testator" as they are referred to, that contains directions for the distribution of their estate and all assets under their name after they die. An executor is named as the individual who will oversee the distribution process. As mentioned in Step 4, beneficiaries are to be named in the Will unto which property and other assets will be bestowed. A Will doesn't just contain who gets what, it can also include instructions regarding debts and taxes, guardianship for children, and property management for children that are too young to handle such matters. After the testator's death, a Will must go through probate court to ensure that the document was executed in accordance with State law.

- **Signing Requirements** ([§ 45-2-502](#)) – At least two (2) witnesses.

[\(Revocable\) Living Trust](#) – A Revocable Living Trust becomes an entity into which property can be transferred once the appropriate documents have been executed. This is a very effective estate planning tool for protecting property, avoiding lengthy court proceedings, and maintaining privacy. These are benefits that would be especially appealing to those with large estates or those who anticipate disagreements between family members or challenges from third parties. To execute a Living Trust, the grantor (principal) must appoint a trustee, a successor trustee, and one (1) or more beneficiaries. A trustee (usually the grantor) manages the Trust, and the successor trustee takes over after the grantor's death, providing the grantor is also the trustee. The named beneficiaries will receive the portion of the grantor's estate that

was allotted to them as per the instructions of the Trust document. A Revocable Living Trust can be amended at any time during the grantor's lifetime and will not have to go through probate after they die, therefore, it will remain out of public record.

- **Signing Requirements** ([§ 46A-4-402](#)) – A Trust can be created only if the requirements set forth in § 46A-4-402 are met.

Step 6 - Safely Store Documents

The best place to keep all important estate planning documents is in a safe or locked filing cabinet at one's home or office. A spouse, financial agent, attorney, or other representative should be able to access these documents in case of emergency or in the event of the principal's death. The principal could also provide copies of these documents to the aforementioned parties.