

NEW YORK ESTATE PLANNING CHECKLIST

The following steps provide instructions on how to carry out each estate planning task. Every person, estate, and situation is unique; therefore, we highly suggest that everyone retain legal counsel before executing these estate planning documents.

Step 1 - Health Care Proxy

The execution of a Health Care Proxy involves the appointment of a **health care agent**, a person who will make medical decisions on behalf of a principal (individual executing the document). A health care agent will gain power only if the principal becomes incapacitated; that is, should they at any point be incapable of making important medical decisions for themselves. The principal should appoint an individual who is close to them, who knows their values, and, more importantly, who will take these values into consideration when making any health care choices for the principal.

[Health Care Proxy](#) – A Health Care Proxy, or Medical POA, contains instructions regarding the type of medical treatment and health care a principal will receive in the event of incapacitation. A health care agent is also appointed through execution of this document and they are in charge of communicating the principal's health care wishes to medical professionals and health care providers. A Health Care Proxy can include limitations regarding the agent's authority, otherwise the agent will have carte blanche in regard to the types of medical treatment the principal will receive.

- **Signing Requirements** ([PBH § 2981](#)) – The principal and two (2) witnesses.

Step 2 - Durable (Financial) Power of Attorney

A **financial agent**, or simply “agent” as per the Power of Attorney document mentioned below, is authorized to make financial decisions on behalf of the principal who executed the POA. Unlike a health care agent, a financial agent gains power as soon as the POA document is signed. Appointing a financial agent is an important step because it means the principal's estate will be looked after even if they become mentally or physically incapacitated. A



financial agent wields a great deal of power; therefore, the principal should appoint a trustworthy individual.

[Durable \(Financial\) Power of Attorney](#) – A legal document that appoints a financial agent to the principal's estate. A Durable POA contains instructions on how the principal would like the agent to handle certain assets, accounts investments, and other financial matters. The agent's power is limited to finances, and they cannot make health care decisions for the principal. This document can be amended or revoked at any time by the principal.

- **Signing Requirements** ([GOB § 5-1501B](#)) – Signatures of principal and agent must be acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property; i.e., a justice of the supreme court, an official examiner of title, an official referee, or a notary public.

Financial Powers Allowed:

- Real estate transactions ([GOB § 5-1502A](#));
- Chattel and goods transactions ([GOB § 5-1502B](#));
- Bond, share and commodity transactions ([GOB § 5-1502C](#));
- Banking transactions ([GOB § 5-1502D](#));
- Business operating transactions ([GOB § 5-1502E](#));
- Insurance transactions ([GOB § 5-1502F](#));
- Estate transactions ([GOB § 5-1502G](#));
- Claims and litigation ([GOB § 5-1502H](#));
- Personal and family maintenance ([GOB § 5-1502I](#));
- Benefits from governmental programs or civil or military service ([GOB § 5-1502J](#));
- Health care billing and payment matters ([GOB § 5-1502K](#));
- Retirement benefit transactions ([GOB § 5-1502L](#));
- Tax matters ([GOB § 5-1502M](#)); and
- All other matters ([GOB § 5-1502N](#)).

Step 3 - List Assets

To make sure that all assets have been covered in one or more estate planning document, the principal should make a list of all property, assets, debts, and liabilities so that nothing gets left out. A [Current Assets List](#) can be a helpful organization tool for this task.

Step 4 - Beneficiaries

“**Beneficiary**” is another word for an heir, a person (or entity) who will inherit all or a part of the principal’s estate after they die. Each beneficiary will be named in an estate planning document (covered in Step 5) with the corresponding assets/portion of the estate they will receive written beside their name. The principal may want to inform each beneficiary of their role in the estate plan.

Step 5 - Wills and Trusts

Each estate planning document mentioned below provides different benefits for the principal. Regardless of whether one or both of these tools are used, the principal may want to confer with an attorney to make sure that no part of the estate has been left out. Leaving property or assets out of an estate plan will cause complications when the times comes for the estate to be distributed after the principal’s death.

[Last Will and Testament](#) – A document executed by the principal (testator) with the intent of conveying clear instructions regarding the distribution of their estate after death. This document appoints an executor to handle the distribution of assets to the named beneficiaries, but this authority only comes into effect after the testator dies. A Will may cover provisions such as guardianship for their children, an agent for their children’s inherited assets, and taxes and debt management. Before any of the testator’s instructions can be implemented, the Will must be reviewed in probate court.

- **Signing Requirements** ([EPT § 3-2.1](#)) – The testator and two (2) witnesses.

[Revocable Living Trust](#) – Once a Living Trust document is executed, it becomes an entity into which assets and property can be placed. A Revocable Living Trust can be amended, altered or revoked at any point during the grantor’s (principal) lifetime. A trustee is appointed to manage the Trust; typically, the grantor appoints themselves trustee. A successor trustee is appointed to manage the Trust after the grantor’s death. Beneficiaries included in the Trust will receive the property or assets once the grantor dies, in accordance with the terms of the Trust. The main difference between a Revocable Living Trust and a Will is that the former does not have to go through probate court after the grantor’s death, nor does it become public record. A Trust also continues to benefit the grantor during their lifetime,



protecting their assets and property, whereas a Will is not enforced until the principal's death.

- **Signing Requirements** ([EPT § 7-1.17](#)) – The grantor and either two (2) witnesses OR in the manner required by the laws pertaining to the recording of a conveyance of real property; i.e., a justice of the supreme court, and official examiner of title, an official referee, or a notary public.

Step 6 - Safely Store Documents

After all documents have been properly executed, the principal should retain copies for safekeeping, as well as provide copies to their attorney, agent or other representative(s). These documents should be stored in a fire and waterproof safe or cabinet. The principal would be wise to provide the key or combination/access code to their spouse or trusted representative so they can locate the documents should anything happen to the principal.