

MAINE ESTATE PLANNING CHECKLIST

Without the execution of estate planning documents, an individual's incapacitation or death can put their family into a difficult situation. In the below guide, different options are described that can help individuals start preparing for the future. These instructions do not constitute legal advice and only provide an introductory guide to estate planning.

Step 1 – Select a Health Care Agent

A **health care agent** is an individual, usually a family member, who is given the authority to make medical decisions for the principal if the principal becomes incapacitated. By electing a health care agent, the principal can be sure that someone will be able to carry out their wishes concerning health care and end-of-life medical procedures. The health care agent only assumes their authority if a health care professional has determined the principal mentally incapacitated, and they lose their authority if the principal regains their capacity.

[Advance Health Care Directive](#) – The document by which a health care agent is appointed. The principal will indicate their preferences regarding medical treatments and procedures on this form.

Signing Requirements ([§ 5-802\(b\)](#)) – An Advance Health Care Directive must be signed by the principal and two (2) witnesses.

Step 2 – Select a Financial Agent

A **financial agent** is an individual who is able to execute legal instruments on the principal's behalf and manage their financial affairs. The term "durable" indicates that the agent's authority will persist following the incapacitation of the principal. The principal can also decide that the agent is only given representative powers only in the event of their incapacity. It should be noted that all powers of attorney in Maine are considered durable unless otherwise stated within the document by which the agent is appointed ([§ 5-904](#)).

[Durable Power of Attorney](#) – This form can be used by the principal to appoint a financial agent. On the document, the principal will be able to specify which powers they allow.

- **Signing Requirements** ([§ 5-905](#)) – The principal must sign the document and acknowledge their signature before a notary public, who must sign as well.

Financial Powers Allowed:

- Real property ([§5-934](#))
- Tangible personal property ([§5-935](#))
- Stocks and bonds ([§5-936](#))
- Commodities and options ([§5-937](#))
- Banks and other financial institutions ([§5-938](#))
- Operation of entity or business ([§5-939](#))
- Insurance and annuities ([§5-940](#))

- Estates, trusts and other beneficial interests ([§5-941](#))
- Claims and litigation ([§5-942](#))
- Personal and family maintenance ([§5-943](#))
- Benefits from governmental programs or civil or military service ([§5-944](#))
- Retirement plans ([§5-945](#))
- Taxes ([§5-946](#))
- Gifts ([§5-947](#))

Step 3 – Make a List of All Estate Items

To prepare for the administration of their estate, the principal should carefully take note of all their assets. This list will include any valuables, real estate, bank accounts, financial investments, businesses, and other personal property that the principal currently owns. By making a complete and orderly list of their assets and belongings, the principal can ensure that their estate transfer documents do not leave out any of their property.

[Current Assets List](#) – This document may be used to organize a list of the principal's assets as described above.

Step 4 – Beneficiaries

In addition to listing their assets, the principal must also select the individuals that will benefit from their estate following their death (known as beneficiaries). The more specific the principal is in how their estate is to be divided amongst their beneficiaries, the less chance there will be of any disputes when their estate is administered. If there is anyone that the principal wishes to explicitly exclude from their estate, they should express this in their estate transfer documents as well.

Step 5 – Execute Estate Transfer Documents

The principal will have to execute at least one (1) estate transfer document in order to plan the administration of their estate. Here are the two most commonly used options that individuals choose from for this purpose:

[Last Will and Testament](#) – A Will allows the principal (called the “testator”) to detail instructions on how their property is to be divided after they die. A Will must be put through probate court before the principal's estate can be distributed.

- **Signing Requirements** ([§ 2-502](#)) – The state requires that a Will be signed by the testator (or their representative), at least two (2) witnesses, and a notary public (who must sign a notary acknowledgment).

[Revocable Living Trust](#) – To make a Living Trust, the principal has to transfer the ownership of all their assets to that of a Trust. Any property that is not put into the Trust should be included in a “pour-over Will” (a Will made up of any assets not included in a Trust). A Living Trust does not have to pass through probate court before the Trust estate is distributed to its beneficiaries.

- **Signing Requirements** ([§ 18B-112](#)) – A Trust should be signed in the same fashion as a Will and be signed by the principal, two (2) witnesses, and a notary public.

Step 6 – Keep the Documents Safe

It is extremely important that the original copy of a Last Will and Testament or Revocable Living Trust is kept in a secure location. By storing the legal instrument in a fireproof and waterproof place such as a safe or lockbox, the principal ensures that the document will be available when it is needed and their estate will be administered in accordance with their instructions. Copies of the documents (and the location of the originals) should also be shared with the principal's chosen representatives and trustees to help expedite the application of said documents.

Maine Estate Planning Laws

- **Advance Health Care Directive** – [§ 5-802 \(Advance Health Care Directives\)](#)
- **Durable Power of Attorney** – [Title 18A, Article 5, Part 9 \(Maine Uniform Power of Attorney Act\)](#)
- **Last Will and Testament** – [Title 18-A, Article 2 \(Intestate Succession and Wills\)](#)
- **Living Trust (Revocable)** – [Title 18-B, Chapter 6 \(Revocable Trusts\)](#)