

NEW JERSEY ESTATE PLANNING CHECKLIST

Before jumping into the very complicated and detail-oriented process that is estate planning, it is strongly advised that an attorney be consulted. This guide can be referred to while creating an estate plan but is best used in conjunction with legal counsel.

Step 1 - Execute Advance Directive

A **health care representative** should be selected by executing an Advance Directive form (explained below). The representative will have the power to make health care decisions for the principal should they be unable to do so themselves. In the event of physical or mental incapacitation, the principal's health care representative will be the person with whom the physicians discuss medical treatments, services, and procedures for the principal. A representative should be trustworthy, honest, and capable of acting with the principal's best interests in mind.

[Advance \(Proxy\) Directive](#) – Also referred to as a Durable Power of Attorney for Health Care, an Advance Directive form outlines the extent of a health care representative's power and authority regarding medical decisions for a principal. This document only comes into effect if the principal is unable to make these decisions on their own.

- **Signing Requirements** ([§ 26:2H-56](#)) – Principal and two (2) witnesses.

Step 2 - Execute Durable (Financial) Power of Attorney

To protect one's finances, investments, properties, and other assets, a person should look into appointing a **financial agent** using a Durable Power of Attorney. An individual appointed as a principal's financial agent will be in charge of all their financial affairs. The term "durable" means that the agent will continue to hold power even if the principal becomes incapacitated. The principal will have peace of mind knowing that a trusted individual is authorized to keep their financial matters in order no matter what happens to them.

[Durable \(Financial\) Power of Attorney](#) – This legal instrument appoints a financial agent to handle a principal’s financial matters and details which powers the agent is permitted to exercise.

- **Signing Requirements** ([§ 46:2B-8.9](#)) – Must be prescribed by the principal and acknowledged in the manner prescribed by [§ 46:14-2.1](#).

Financial Powers Allowed:

- Real property transactions;
- Tangible personal property transactions;
- Stock and bond transactions;
- Commodity and option transactions;
- Banking and other financial institution transactions;
- Business operating transactions;
- Insurance and annuity transactions;
- Estate, trust, and other beneficiary transactions;
- Claims and litigation;
- Personal and family maintenance;
- Benefits from governmental programs or military service;
- Retirement plan transactions; and
- Tax matters.

Step 3 - Compile List of Assets

To stay organized during the estate planning process, a principal might want to create a list of assets and outstanding debts – this [Current Assets List](#) can be a helpful tool. With all the property, investments, accounts, debts, and liabilities laid out before them, the principal will have an easier time discerning how their estate will be disseminated after their death.

Step 4 - Beneficiaries

After a person dies, their estate is distributed to **beneficiaries** that have been named in a Last Will and Testament or Living Trust (see Step 5) More often than not, a principal will name their children, spouse, family members, or close friends as beneficiaries of their estate. Beneficiaries should be contacted if

they are to receive a portion of an estate so they can make the necessary preparations.

Step 5 - Execute Primary Estate Planning Document

At this juncture, a person must consider which document is better suited to their needs; a Last Will and Testament or a Living Trust. Since these instruments are quite different, it is possible that the principal will want to implement both. The ultimate objective is to have specific instructions written out for a representative to distribute the principal's estate to the intended beneficiaries without overlooking any assets. Any portion of the principal's estate not mentioned in an estate planning device will cause delays and complications for the representative in charge of distributing the estate.

Last Will and Testament – Will is a document executed by a principal (referred to as a testator) containing specific instructions for an executor (representative of testator) to distribute assets to named beneficiaries. A Last Will and Testament does not affect the estate during the testator's lifetime, it only comes into effect after they die. Furthermore, this document can be amended throughout the testator's life. After the testator's death, a Will must be reviewed in probate court (unless it is Self-Proved), meaning a court will examine the authenticity and validity of the document. The estate will be distributed by the executor after the court deems it a legally binding instrument.

- **Signing Requirements** (§ 3B:3-2) – Must be signed by all parties involved as well as two (2) witnesses.

(Revocable) Living Trust – A Living Trust document, once executed by a principal ("grantor" for the purposes of this instrument), creates an entity into which assets can be placed. Ownership of the assets is transferred to the Trust and a trustee is put in charge of the entity. Typically, the grantor will name themselves trustee, meaning they can maintain control of the assets and benefit from them during their lifetime. After they die, the Trust is put into the hands of a successor trustee (unless the grantor did not appoint themselves trustee). This individual will follow the instructions created by the grantor that outline how the assets should be distributed to the beneficiaries. A revocable Living Trust has certain advantages over a Will, such as the ability to avoid probate court and, thus, avoid public record. One thing a Trust does not cover is guardianship arrangements for the grantor's children and

instructions regarding the settlement of debts and taxes; these issues can be covered in a Will.

- **Signing Requirements** – Signing requirements are not specifically mentioned in the NJ Revised Statutes; however, the rules of creation of a Trust document are often the same or similar to that of a Last Will and Testament.

Step 6 - Store Documents

Original copies of all estate planning documents should be kept in a safe place at the principal's home or office (i.e., a fireproof/waterproof cabinet or safe). Copies of important documents can be presented to an agent, representative, attorney, or other trusted individual (spouse, family member, etc.) so that when the principal dies, arrangements can be made in a timely manner. One or more of the above-mentioned individuals should at the very least be provided the location of the principal's original estate planning documents as well as the key/combination to any locked safe or cabinet.