

NORTH DAKOTA ESTATE PLANNING CHECKLIST

Some sections of the checklist will not apply to all estate planners, and there might be other tasks that are pertinent to some individuals that aren't covered in this guide. Therefore, it is important to consult an attorney before diving into the estate planning process.

Step 1 - Health Care Agent

A **health care agent** is a representative appointed to make medical decisions for a person who has become incapacitated. To appoint a health care agent, one must execute a Health Care Directive form (described below). The agent should be selected only if they are trustworthy and know the principal well enough to make health care decisions that would align with the principal's values and wishes. For this reason, a principal typically selects a spouse, family member, or close friend.

[Health Care Directive](#) – A legal document that is comprised of three (3) sections pertaining to medical decisions and other health care information: (i) appointment of a health care agent, (ii) health care instructions, and (iii) organ donation. This document only comes into effect when the principal is in a condition that prohibits them from making informed decisions for themselves. If no health care agent is selected, the principal can simply fill out Part II of the document and health care providers will administer medical treatment as per the principal's instructions. Should the principal choose not to complete the instruction portion of the document, a health care agent must be chosen to make medical decisions for the principal, always keeping the principal's best interests in mind.

- **Signing Requirements** ([§ 23-06.5-05](#)) – Must be signed by the principal and either a notary public OR two (2) witnesses (certain conditions apply).

Step 2 - Financial Agent

While creating an estate plan, a person might want to consider selecting a **financial agent** to manage all or a portion of their financial affairs. This



agent is appointed through execution of a Durable (Financial) Power of Attorney and they will be granted authority immediately after the document is signed. The financial agent will also maintain control over the principal's finances if they become incapacitated; hence the term "durable." As with a health care agent, one should be careful when selecting a financial agent as this individual will have all of a person's assets, investments, and financial accounts at their disposal (depending on which powers have been granted in the POA).

[Durable \(Financial\) Power of Attorney](#) – A Durable Power of Attorney is a legal instrument that appoints a financial agent to manage a person's financial affairs. This can be a very useful estate planning tool, providing peace of mind for the principal and their family. If the principal is unable to make important financial decisions for themselves, having a POA in place means a court won't have to appoint a guardian or conservator to act on the person's behalf. This avoids an expensive and time-consuming process, not to mention the fact that the court-appointed individual won't be a family member, close friend, or other trusted representative.

- **Signing Requirements** – Not mentioned in North Dakota Century Code, however, it is common for banks, hospitals, and other businesses to require that either a notary or two (2) witnesses sign the document to prove its validity.

Financial Powers Allowed:

- Banking;
- Safe deposit box;
- Lending or borrowing;
- Government benefits;
- Retirement plan;
- Taxes;
- Insurance;
- Real estate;
- Personal property;
- Power to manage property;
- Gifts; and
- Legal advice and proceedings.

Step 3 - List of Assets

Before creating any estate planning documents, it is wise to take the preliminary step of compiling a list of all assets, debts, and liabilities. This [Current Assets List](#) template will ensure that nothing gets left out of one's estate plan.

Step 4 - Decide Who Will Become a Beneficiary

Beneficiaries are the named heirs of a person's estate. While one tends to think right away of spouses, family members, close friends, and colleagues, a beneficiary can also be a business or other entity. Once the beneficiaries have been chosen, the principal would be wise to contact each of them and provide details regarding their future endowment so they can plan accordingly.

Step 5 - Wills and Trusts

The following estate planning documents are used to convey one's final wishes regarding the distribution of their estate, as well as other financial and familial matters. A Will and a Living Trust have similar characteristics and utilities but also a couple of very significant differences. One might want to discuss these options with an attorney to ensure the appropriate document has been executed.

[Last Will and Testament](#) - Perhaps the most common estate planning tool, a Last Will and Testament provides instructions for an executor to distribute the testator's (principal) estate after they die. This document also conveys the testator's wishes in regard to guardianship for their children and how to handle taxes, debts, and expenses. Before any assets can be distributed to the beneficiaries, a Will must pass through probate so a court may determine its validity. This means that the Will becomes public record and anyone can locate the file in public court records.

- **Signing Requirements** ([§ 30.1-08-02](#)) – Must be signed by the principal and either two (2) witnesses or a notary public.

[Revocable Living Trust](#) - Unlike a Will, a Revocable Living Trust becomes effective as soon as it is executed. That is, any assets placed into the Trust become property of the Trust and will no longer be under the principal's ownership. The principal, or "grantor", will name a trustee to manage the trust (typically they will name themselves) and a successor trustee to take over

once the grantor dies. The grantor will name beneficiaries to inherit portions of the estate and, if they are not yet of age, the assets can remain in the Trust until they are. Anything not placed in a Living Trust should be included in a Will to make sure there are no complications after the grantor's death. One of the main differences between a Trust and a Will is that there is no need for a Revocable Living Trust to go through probate after the grantor's death. A Revocable Living Trust also remains private and will be protected from court challenges.

- **Signing Requirements** ([§ 59-12-02](#)) - No specific signing requirements mentioned; however, certain requirements of creation must be met in order for the Trust to be in accordance with State law.

Step 6 - Storing Documents

All estate planning documents should be kept in a dry, safe place in one's home or office, preferably under lock and key. The principal's attorney, agent, representative, and/or spouse should have copies of these documents or should at the very least have access to the originals in case of an accident or if the principal dies. Safety deposit boxes should be avoided; safety deposit boxes usually need a court order to be opened if the owner is not present.