

PENNSYLVANIA ESTATE PLANNING CHECKLIST

Executing legal documents that deal with an individual's eventual death and the possibility of a medical emergency is often a laborious process. However, it remains important to properly prepare for such eventualities, not only for the best interests of the implicated individual but for their family and loved ones who will be directly affected by their passing or incapacitation. The below guide briefly describes some of the steps and forms that can be followed to get started on planning for the future. It is recommended to consult a professional attorney before executing any of these legal instruments.

Step 1 – Select a Health Care Agent

When an individual is considering their options for how to handle their affairs as they approach the end of their life, it will be worthwhile for them to appoint a **health care agent**. A health care agent is an individual who will be given the authority to make decisions regarding medical treatment if the principal becomes incapacitated. Whether due to a coma or dementia, any individual at some point may be incapable of making decisions for themselves. By appointing a health care agent, individuals can rest assured knowing that their best interests will be taken into account.

[Health Care Power of Attorney](#) – This form is used to appoint a health care agent for the principal. In the document, the principal will be able to express their wishes regarding health care treatments and other medical decisions. The principal may also appoint an alternative health care agent in case the first agent is unavailable when the time comes for them to assume their role.

Signing Requirements ([§ 5452](#) and [§ 5471](#)) – To be considered valid, the principal and two (2) witnesses must sign the Health Care Power of Attorney form. It is also recommended to have a notary public sign as well.

Step 2 – Select a Financial Agent

A **financial agent** may also be appointed in a similar fashion to a health care agent for the purpose of making financial decisions for the principal if they become incapacitated. A financial agent is an individual who has been given the power of attorney to execute legal instruments and making other decisions on the principal's behalf, including withdrawing funds, creating a trust, and filing taxes.

[Durable Power of Attorney](#) – The principal can appoint their financial agent using the Durable Power of Attorney form on which they may specify the scope of the agent's powers. In accordance with [§ 5601.1](#) and [§5.604](#), all powers of attorney in the State are considered "durable" unless the principal explicitly states the opposite on their Power of Attorney form.

- **Signing Requirements** ([§ 5601\(b\)](#)) – The form must be signed by the principal, two (2) witnesses, and acknowledged before a notary public, who must sign as well.

Financial Powers Allowed:

- To create a trust for the principal's benefit;
- To make additions to an existing trust for the principal's benefit;
- To claim an elective share of the estate of the principal's deceased spouse;
- To renounce fiduciary positions;
- To withdraw and receive the income or corpus of a trust;
- To engage in real property transactions;
- To engage in tangible personal property transactions;
- To engage in stock, bond, and other securities transactions;
- To engage in commodity and option transactions;
- To engage in banking and financial transactions;
- To borrow money;
- To enter safe deposit boxes;
- To engage in insurance and annuity transactions;
- To engage in retirement plan transactions;
- To handle interests in estates and trusts;
- To pursue claims and litigation;
- To receive government benefits;
- To pursue tax matters;
- To operate a business or entity;
- To provide for personal and family maintenance.

Step 3 – Make a List of All Estate Items

When an individual wishes to start planning for the distribution of their estate after they die, they will need to begin by making a list of their current assets and property. This list should include all of the principal's real estate, personal property, financial accounts, and investments. By making a [Current Assets List](#), the principal ensures that none of their property and accounts are left out of their Will or Trust.

Step 4 – Beneficiaries

Beneficiaries are the individuals who the principal names as the inheritors of their estate. After the principal dies, the ownership of their property will be transferred to these beneficiaries according to the principal's specifications. The more clear the principal is regarding who they will be including and excluding from their Will or Trust, the less potential there will be for disagreements and dispute amongst inheritors.

Step 5 – Execute Estate Transfer Documents

For the principal to ensure that their assets are distributed to their beneficiaries when they die, they must execute an estate transfer document that is the legally recognized in the state. The **two (2) options** that are most commonly used to plan the administration of an individual's estate are provided below.

[Last Will and Testament](#) – A Will is a legal document by which the principal (called the testator) can leave their final instructions on how their estate should be divided. After the

principal dies, the Will must pass through probate court before the principal's estate can be distributed.

- **Signing Requirements** ([§ 2502](#)) – A Will must be signed by the testator and two (2) witnesses, who must sign in the presence of the testator.

[Revocable Living Trust](#) – A Trust is often chosen as an alternative to a Will because the estate of a Trust does not need to pass through probate court before being distributed. To make a Living Trust, the principal (called the settlor) will need to transfer the ownership of their property to a separate entity (the Trust). While they are still alive, the settlor can maintain control of their property as Trustee and when they die, their estate will be distributed as instructed in the Trust document.

- **Signing Requirements** ([§ 7732](#)) – The settlor must sign the Trust document and a notary public will need to sign a notary acknowledgment for the settlor's signature. If the settlor signs by mark or if a representative signs at their direction, two (2) witnesses must sign as well.

Step 6 – Keep the Documents Safe

Each of these legal documents, once executed, must be kept in a secure place that is accessible to the principal's representatives and other trusted individuals to ensure that it is on hand when the time comes. Ideally, important legal instruments should be kept in a fire and water-proof safe. Copies of these signed forms can also be distributed to concerned individuals, such as family members, representatives, trustees, and beneficiaries for safe-keeping.

Pennsylvania Estate Planning Laws

- **Health Care Power of Attorney** – [Chapter 54 – Health Care \(Subsections C and D\)](#)
- **Durable Power of Attorney** – [Chapter 56 – Powers of Attorney](#)
- **Last Will and Testament** – [Chapter 25 – Wills](#)
- **Living Trust (Revocable)** – [Chapter 77 – Trusts](#)