

# VERMONT ESTATE PLANNING CHECKLIST

The below step-by-step guide is a summary of the various preparations an estate owner could make to secure their estate. Prior to accomplishing any one of these tasks, it is recommended that one solicit the advice of an attorney who specializes in estate law.

## Step 1 - Choose a Health Care Agent

A **health care agent** is an individual selected to oversee the health care administered to the principal (creator of a medical power of attorney). More often than not, the agent is a trusted family member or friend who can accurately represent that principal's best interests with regard to the consent to or refusal of medical treatments. The agent gains the power of attorney when the principal's physician has deemed the patient incapacitated to the point of not being able to make decisions on their own.

[Advance Directive for Health Care \(Medical POA\)](#) - This legal instrument has two (2) functions; it allows the principal to elect their healthcare representative, and it provides them with the opportunity to declare their medical wishes in advance. Drafting such a document not only provides peace of mind knowing that a trusted agent will ensure one is getting the attention they require, it also provides the agent with instructions on which treatments to consent to or refuse.

- **Signing Requirements** ([18 V.S.A. § 9703](#)) - Must be signed by the principal and at least two (2) witnesses above the age of eighteen (18)

## Step 2 - Choose a Financial Agent

A **financial agent** is an individual elected through a power of attorney document to handle the principal's finances. Unless specified within the power of attorney, their authority is granted upon the execution of the legal instrument. This representative has the ability to perform any number of financial tasks for the principal including the purchasing or selling of real estate, the management of bank or investment accounts, and the filing of federal and state taxes. If the document signed is a Durable Power of Attorney, the agent will be able to continue the management of the principal's finances following their loss of decisional capacity.

[Durable \(Financial\) Power of Attorney](#) - This legal document is used to select a financial agent and determine the powers with which they can operate. The principal will have the ability to determine whether the individual's power will



be granted following the execution of the document or following the principal's incapacitation.

- **Signing Requirements** ([14 V.S.A. § 3503](#)) - Must be signed by the principal and at least one (1) witness, and it must be acknowledged before a notary public.

#### **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;
- Legal Advice and Proceedings

### **Step 3 - Make List of Assets and Real Property**

The first step many take in planning their estate is the preparation of a comprehensive list of all assets, property, business shares, debts, and investments. This preliminary measure provides the estate owner with an organized and clear inventory of their assets and liabilities, allowing them to ascertain what it is they own prior to deciding to whom they will distributed. A common template used for the delineation of one's estate is a [Current Assets List](#).

### **Step 4 - Select and Contact Beneficiaries**

With the assets and property clearly defined, the estate planner can begin to designate their heirs, or beneficiaries. Often a beneficiary will be a spouse or an immediate next of kin; however, close friends, business associates, or even charitable organizations are often selected to receive the contents of an estate. Once the estate planner has selected the recipients, they should contact all applicable individuals and organizations to inform them of their future inheritance so as to provide them with the time to adequately prepare.

## Step 5 - Created Estate Transfer Document

There are two (2) common legal instruments used to transfer an estate unto beneficiaries, the Last Will and Testament, and the Revocable Living Trust. These two documents can be used together or separately. The Will or Trust creator should, as mentioned above, adhere to the legal advice provided by an attorney before executing the legal instrument.

[Last Will and Testament](#) - A Last Will and Testament is the most commonly used legal instrument for estate planning, one that is often executed well before it is needed. This document effectively lists all assets held in an estate and provides instructions for an executor (estate manager following principal's death) on how to distribute the assets. The executor will also be responsible for the settling of any debts, and the execution of the principal's last wishes. While the creation of a Last Will and Testament is cheaper and comparatively simpler than the process of creating a trust, the transfer of ownership to heirs can be a lengthier process as the Will will have to pass through probate before anyone can receive inheritance.

- **Signing Requirements** ([14 V.S.A. § 5](#)) – A Last Will and Testament is deemed valid if signed by the testator and at least two (2) witnesses in the presence of the testator and of each other.

[Revocable Living Trust](#) - A Revocable Living Trust is another common tool used to transfer assets and property to heirs. This legal document is effective immediately after execution as opposed to a Will which becomes effective upon the death of the creator. The grantor (creator of Trust), upon signing the Trust document, has created an entity into which they can transfer items of their estate to be managed by a trustee (often the grantor selects themselves for this role). The grantor will continue to benefit from the Trust while alive and, once they pass away, the trustee or successor trustee (whichever applies) will be responsible for transferring the Trust's contents to the beneficiaries. The transfer of ownership can be done privately and outside of probate court. Often a pour-over will is employed in conjunction with a Living Trust to ensure all bases are covered.

- **Signing Requirements** - There is no statutory requirement for the signing of a Trust document but it is recommended that it be signed by Principal and notarized.

## Step 6 - Find Secure Location for all Documents



The above-mentioned documents should be kept in a safe or equally secure location until such a time that they are needed. A trusted family member or agent should be provided with the location and ability to access the power of attorney and estate planning forms. Often copies of the documents will be created and distributed to the individuals named therein as beneficiaries, trustees, agents, or executors.

## **Vermont Estate Planning Laws**

- Advance Directive - [18 V.S.A. Chapter 231](#)
- Durable Power of Attorney - [14 V.S.A. Chapter 123](#)
- Last Will and Testament - [14 V.S.A. Chapter 1](#)
- Living Trust (Revocable) - [14A V.S.A Chapter 6](#)