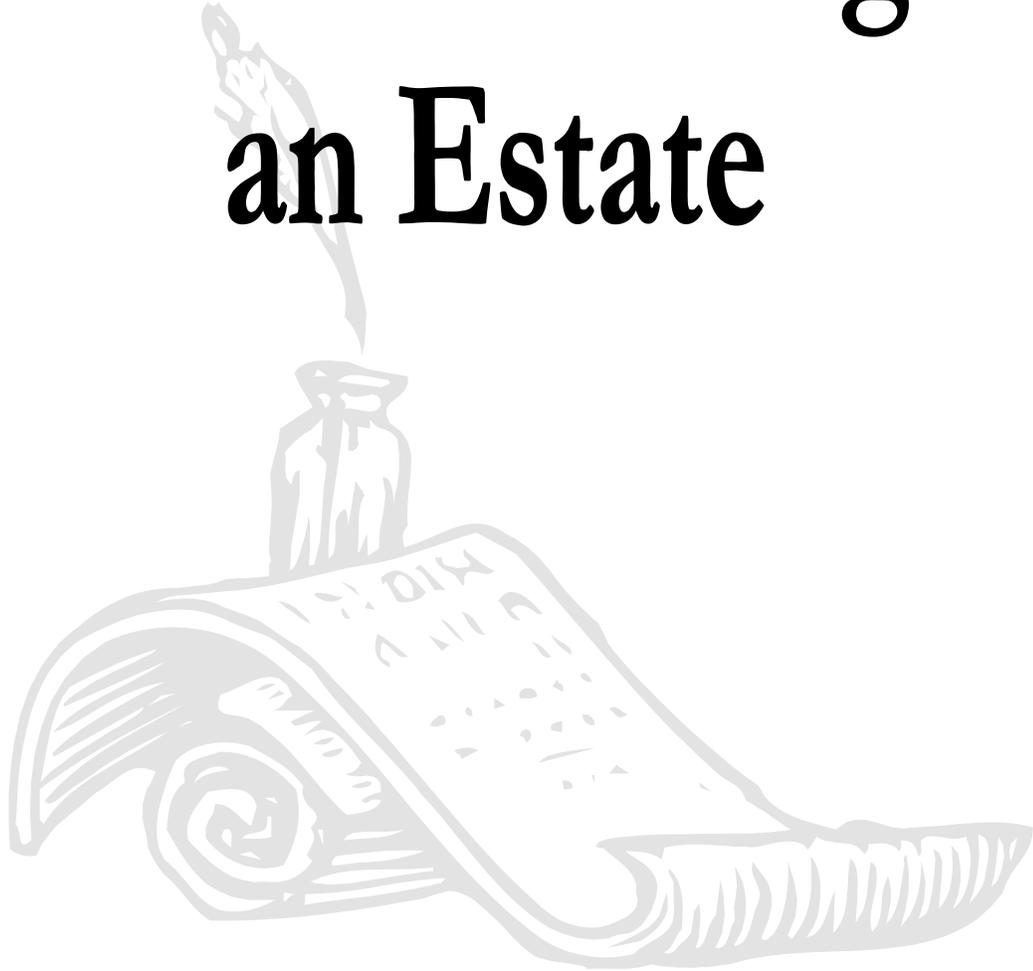


For additional information, you may wish to consult these resources from the New Hampshire Bar Association.

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# Administering an Estate



Prepared by  
the Public Information committee of the NH Bar Association  
And the Administrative Judge of the Probate Court  
Revised January 2007



**New Hampshire**  
**BAR ASSOCIATION**  
*Equal Justice Under Law*

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INFO CURRENT AS OF OCTOBER 2004

## WILLS, TRUSTS & ADVANCE DIRECTIVES

*This column is published in conjunction with the New Hampshire Bar Association as a public service. It is not presented as specific advice, which may only be provided by an attorney based upon each individual situation. If you need a referral to an attorney, the NHBA Lawyer Referral Service is available to assist you. Call 229-0002 or visit our website at [www.nhbar.org](http://www.nhbar.org) for more information.*

**QUESTION:** What is the purpose of estate planning? What are some of the considerations and documents a person should look into when doing estate planning?

**ANSWER:** Estate planning is among the most important things you can do. Proper estate planning enables you to do a number of things, such as designate the person(s) who would handle your financial affairs and make medical decisions for you, should you become unable to make those decisions yourself; express your wish concerning sustaining your life by artificial means; pass your assets to the people or the organizations that you wish to benefit after your death; nominate guardian(s) for your minor children or for yourself; and minimize estate taxes.

### Disability Planning

What is the purpose of estate planning? What are some of the considerations and documents a person should look into when doing estate planning? Estate planning is among the most important things you can do. Proper estate planning enables you to do a number of things, such as designate the person(s) who would handle your financial affairs and make medical decisions for you, should you become unable to make those decisions yourself; express your wish concerning sustaining your life by artificial means; pass your assets to the people or the organizations that you wish to benefit after your death; nominate guardian(s) for your minor children or for yourself; and minimize estate taxes.

All of us dread the lack of control that results from physical and mental incapacity. The way to maintain some control over our lives when we are faced with those unfortunate circumstances is to decide now, while we are still competent, just who we want to handle our financial affairs and make medical decisions for us when we are no longer able to do so. The documents by which we designate the people that we wish to act for us are called durable powers of attorney. New Hampshire has statutes that apply to durable powers of attorney for financial affairs and durable powers of attorney for health care.

In addition to the durable powers of attorney, estate planning also involves the use of some or all of the following documents: living will, nomination of guardian, wills, and trusts.

A living will is the document by which you express your wish that you do not want to be kept alive by artificial means if two physicians, including your attending physician, determine that you are terminally ill or permanently unconscious. Unlike the durable power of attorney for health care, the living will does not take effect unless you are *permanently* incapable of participating in decisions about your health care.

If you have executed a durable general power of attorney for financial affairs and a durable power of attorney for health care, it is likely that you will not have to be placed under guardianship if you were to become incompetent. However, there are some cases in which a guardianship is necessary, even if you have executed those documents. For example, if the people that you designate as your agents are not able to serve, or misuse their authority, or if you should refuse the medical treatment authorized by your health care agent, someone will have to petition the Probate Court to be appointed your guardian. Your guardian will then have the authority to make financial and health care decisions for you.

New Hampshire law permits you, while competent, to designate the person(s) whom you would like to serve as your guardian, if that should become necessary. Even more importantly, you may designate people who you do not wish to serve as your guardian. The law directs that the court may not appoint as guardian anyone whom you have excluded.

For many people, durable general powers of attorney for financial affairs and durable powers of attorney for health care are the most important estate planning documents. Many people assume that in the event of their incapacity, their spouse would have the legal right to make medical decisions for them and to handle their financial affairs. People also assume that they may act on behalf of their children for as long as their children are dependent on them. Neither assumption is legally correct. Once a young person reaches age eighteen, he or she is a legal adult, and if he or she should become incapacitated, a parent has no right to make decisions unless the parent has been appointed guardian by the court, or has been designated as an agent under durable powers of attorney.

### Planning for Death

While some of us may escape the affliction of mental incapacity, none of us will escape death. Planning for the transfer of assets at death is the focus of most estate plans. Assets may be transferred at death by will, by trust, or by will substitutes. "Will substitutes" is not a legal term, but a term of convenience that describes a variety of means by which assets may be transferred upon death. The most commonly used forms of will substitutes are beneficiary designations, such as those on life insurance policies, annuities, or retirement accounts, "in trust for" bank accounts, "payable on death" securities or investment accounts, and accounts held as joint tenants with rights of survivorship.

As you can see, planning for your disability and for the transfer of assets either during your lifetime or after your death is not simple; yet such planning is one of the most important things you can do. Although facing the issue of your own mortality can be difficult, and sometimes painful, there is a tremendous sense of satisfaction once you complete the process and sign your estate planning documents. You know that even if you should lose the ability to direct what happens to you or to your assets, you have chosen trusted people who will act on your behalf, and you have made things as easy as possible for them.

You should not attempt to create your own estate plan using form documents from a book or from the Internet, nor should you attempt to draft your own estate planning documents. The cost of obtaining expert assistance is relatively small in comparison to the extraordinarily costly mistakes and complications for your loved ones that could result if you attempt to do your own estate and financial planning. Depending on your circumstances, your planning should include consultation with an attorney experienced in handling trusts and estates, a tax accountant, a financial planner and your primary care physician. The most important thing is to get started on the process as soon as possible.

Information provided by the Public Information Committee of the New Hampshire Bar Association, and contained in a booklet titled "Wills, Trusts & Advance Directives." For a free copy of this booklet, contact the NH Bar Association at (603) 224-6942.

Should you have any questions or wish to receive more information, please contact Jed, Carlos, or any member of the Planned Giving Committee, at any time.