New Hampshire Estate Planning Guidebook

Wills trusts probate and fiduciary administration

A practical guide for individuals families executors and trustees

NorthCoast Law LLC

Attorney Michael J. Miller

Federal and New Hampshire law reviewed through October 16, 2026

Understand the choices, complete the documents and transfers, and carry out the plan with clear records and responsibilities.

Educational guidance. Individual documents, circumstances, and applicable law control. Verify current forms, deadlines, and tax or benefits figures before acting.

Contents

Select a chapter in the digital version. The source references in each chapter link to the source notes.

1 Understanding your estate plan 3
2 Wills inheritance and what probate actually does 7
3 Understanding trusts and choosing an approach 12
4 Special needs insurance and protective trusts 19
5 Long term care Medicaid and the five year lookback 24
6 Taxes that affect an estate plan 30
7 Planning for incapacity and health care 34
8 A practical plan for avoiding unnecessary probate 37
9 Signing storing and updating your will 40
10 Creating signing and funding your trust 42
11 Maintaining the plan and preparing the people who will act 49
12 Administering an estate as executor 51
13 New Hampshire transfer on death deeds 59
14 Serving as trustee during incapacity and after death 62
15 Planning and administration worksheets 68
16 Plain language glossary 74
17 Source notes and official resources 77

PART ONE Understanding and choosing your plan

1 Understanding your estate plan

An estate plan is a set of decisions, legal documents, ownership arrangements, and practical instructions that work together. It should answer who can help you during incapacity, who receives your property at death, who manages it, and how the people carrying out your wishes obtain the information and authority they need. Signing documents is one stage. Coordinating accounts, recording deeds, naming beneficiaries, and maintaining records are equally important.

This guide is written for New Hampshire individuals and families who are new to estate planning, and for the people they choose as agents, personal representatives, and trustees. It covers federal law and New Hampshire law reviewed through October 16, 2026. Another state's law can govern real estate, taxes, marital rights, or trust administration when people or property are located elsewhere. The guide explains common choices; an individual's signed documents, circumstances, applicable law, and court orders determine the actual result.

The main task is to make a coordinated plan that fits your family and assets. A trust is useful when it solves a specific problem. A will, beneficiary designations, powers of attorney, and other arrangements may be enough in a simpler situation. The chapters that follow explain both approaches and the work each requires.

How to use this book

Read the planning chapters before deciding which documents to sign. Use the implementation chapters while working with your attorney and financial institutions. After a death, start with the executor and trustee chapters before moving or distributing property. The worksheets near the end turn the explanations into an organized working file.

- **Part One Understanding and choosing your plan** explains wills, trusts, specialized planning, Medicaid, taxes, and incapacity.
- **Part Two Putting your plan into effect** explains probate avoidance, document signing, trust funding, and maintenance.
- **Part Three Carrying out the plan** explains probate, real estate transfers, trustee administration, and distributions.
- **Part Four Working tools and sources** contains worksheets, examples, a glossary, and linked legal sources.

Source codes in brackets identify the authorities listed in the source notes. The sources include statutes, administrative rules, official court materials, and federal agency guidance. Examples use fictional families and simplified amounts. A filing deadline in a real matter should be entered on a calendar from the governing rule, triggering event, and court order. Filing fees, tax amounts, program limits, forms, and online procedures should be checked again when action is taken.

This is an educational guide and does not itself create a will, trust, power of attorney, attorney-client relationship, or instruction to transfer a particular asset. Personalized legal and tax review is especially

important before an irrevocable transfer, a retirement-account election, a Medicaid application, or a distribution from an estate with uncertain debts.

The first questions to answer

Begin with your priorities in plain language. Examples are keeping a spouse financially secure, giving children help at suitable ages, preserving access to your own money, arranging care during incapacity, avoiding unnecessary court administration, supporting someone with a disability, or maintaining a family business. Rank your priorities because some choices involve tradeoffs.

Next, identify the people affected. Include current and former spouses, unmarried partners, all children and descendants, people who depend on you, charities, and anyone with rights under an agreement or court order. Discuss strained relationships honestly with counsel. A plan based on incomplete family information may be difficult to administer even when the documents are carefully written.

Finally, identify what you own and how you own it. The current deed, account registration, policy ownership, and accepted beneficiary form matter more than a family member's recollection. Approximate values are useful for initial planning; actual title and beneficiary documents are necessary before implementation.

Separate the different meanings of estate

Your **probate estate** generally consists of property that must pass through court-supervised estate administration. Your **taxable estate** is a tax-law calculation and can include assets passing outside probate. Your **trust estate** means the property held under a particular trust. A family may refer to everything a person owned as their estate, but these legal categories are not interchangeable. The tax and probate chapters explain their consequences.

Likewise, probate avoidance does not answer every planning question. An asset can transfer outside probate and still carry debts, generate tax, be relevant to Medicaid, or pass outright to a person who is not ready to manage it. A legal arrangement that avoids court administration can still require extensive work after death.

Who does what

Role	When the role matters	Main responsibility
Person making the plan	During life	Chooses instructions, signs documents, and completes or authorizes transfers
Financial agent	During life under an effective power of attorney	Handles authorized financial and legal tasks for the principal
Health care agent	When the health care authority becomes effective	Makes authorized medical decisions using the person's wishes and applicable standards
Personal representative	After death and court appointment	Administers the probate estate as executor or administrator

Role	When the role matters	Main responsibility
Trustee	While serving under a trust	Manages trust assets for the beneficiaries under the trust and law
Guardian	After the relevant court appointment	Exercises the personal or property responsibilities stated in the order

One person may serve in several roles, but the authority, accounts, records, and duties remain separate. A child who handled bills under a power of attorney does not automatically have authority to administer a deceased parent's estate. The financial power of attorney ends at death; probate appointment and trust succession are different sources of authority. [1]

Choose people for honesty, availability, judgment, organization, and willingness to communicate. Ask them before naming them. Discuss backups and the possibility of a professional fiduciary if the work is complex or family relationships are strained. Naming all children together may create practical difficulties if every transaction needs multiple signatures or disagreements cannot be resolved.

Build your planning file

Collect the current versions of the following materials. Use secure delivery for private records and record only account endings in a general planning worksheet.

- Existing wills, codicils, trusts, amendments, powers of attorney, and health care directives.
- Deeds, mortgage statements, title policies, property tax information, and any life-estate or transfer-on-death documents.
- Bank, brokerage, retirement, annuity, and insurance statements, together with accepted beneficiary confirmations.
- Business agreements, ownership records, loans, guarantees, and succession arrangements.
- Marriage agreements, divorce decrees, support obligations, and relevant court orders.
- Recent tax returns, prior gift-tax returns, appraisals, and records of the original cost of major assets.
- Information about disability benefits, care needs, long-term care insurance, significant gifts, and transfers.
- A list of advisers, digital accounts, important subscriptions, pets, and practical household responsibilities.

Identify originals separately from copies. Tell the appropriate fiduciaries how to locate the originals and how to contact the attorney. Do not put passwords, full Social Security numbers, or private-key recovery phrases in a will that may later become a public court record.

A first planning meeting

Bring your inventory and describe the result you want. Ask the attorney to explain which assets each document will control, what happens if a beneficiary dies before you, who can change the plan after the first spouse dies, and how the plan works if you become incapacitated. Ask what work remains after signing and who is responsible for it.

Before approving documents, confirm that names, family relationships, successor fiduciaries, percentages, trust distribution ages, and backup beneficiaries are correct. Read explanations of discretionary powers, tax allocation, no-contest clauses, and any restrictions that will continue after death. If a provision does not make sense, have it explained before signing.

The final planning file should contain a short implementation list: the document or transfer required, the person responsible, the target date, and the evidence that completion will be checked. This list is the connection between a signed plan and an effective plan.

2 Wills inheritance and what probate actually does

What a will is

A last will and testament is your written set of instructions for property passing through your estate after death. You are the **testator**. The people or organizations receiving gifts are **beneficiaries**. The person you nominate to carry out the will is the **executor**, also called a personal representative. The court appoints the executor; being named in the document is not, by itself, a bank authorization. [2] [3]

A will remains part of an ordinary estate plan even when a living trust is the principal planning tool. It can catch overlooked assets, identify the person you want to administer your estate, and nominate guardians for minor children. A person with no living trust can use a will as the main distribution document. A person with a living trust commonly uses a **pour-over will**, directing the probate residue into that trust after administration. Property reaching the trust through probate has not avoided probate merely because its ultimate destination is a trust. [4] [5]

A **living will** is different. It concerns health-care decisions under specified conditions while you are alive. It does not distribute your home or savings. A financial power of attorney is also different: it authorizes an agent during life and terminates at death. Someone who held your power of attorney may later serve as executor, but needs the appropriate authority in that new role. [1]

What your will can accomplish

A useful will answers several connected questions:

- Who should receive particular property, such as a ring or a family photograph collection?
- Who receives the **residue**, meaning property left after applicable expenses, debts, taxes, and specific gifts?
- Who takes if a beneficiary dies before you or does not qualify to receive a gift?
- Will a child's inheritance be held in a trust, and who will manage it?
- Who should serve as executor, with at least one backup?
- Who should be considered as guardian if a minor child needs one?
- What administrative powers should the executor have, and how should taxes and expenses be allocated?

These are design decisions, not boxes to fill independently. For example, leaving a house to one child and the residue to another can produce a different result from dividing everything equally. The house may appreciate; the cash may be spent on care; and expenses may be charged differently under the document. Ask the drafting attorney to show the expected result using today's balance sheet and an alternate scenario in which your savings are much lower.

A **testamentary trust** is a trust created under a will. It can provide structured management after death, including support for children. It does not avoid the probate process needed to administer and fund it. A living trust instead exists during life and can hold property before death. Choosing between them requires considering the need for lifetime management, privacy, funding work, and ongoing expense; the presence of the word "trust" does not decide the issue. [4]

What a will cannot do

A will does not guarantee that every asset passes under its terms. First examine ownership and any effective beneficiary designation. A life-insurance contract, retirement plan, payable-on-death account, survivorship deed, or properly funded trust may direct an asset elsewhere. A New Hampshire transfer on death deed is expressly a non-testamentary transfer. A later will is not the method for changing that deed. See the funding and probate-avoidance chapters for the complete asset review. [6] [7]

A will also does not:

- Transfer ownership during your lifetime or give the executor authority to manage you during incapacity.
- Make valid estate debts disappear or give beneficiaries priority over estate expenses and creditors. [8]
- Turn an unfunded living trust into a funded trust during life.
- Guarantee that a nominated guardian will be appointed. New Hampshire permits the court to refuse the nominee for cause. [5]
- Automatically override a surviving spouse's statutory rights or all protections for children omitted in legally significant circumstances. [9] [10]
- Prevent every challenge. Execution, capacity, fraud, duress, and undue influence can be litigated. [11]

Do not rely on the will as the only place to record urgent funeral wishes. The document may not be located until arrangements have been made. Give the appropriate people a separate, accessible record of your preferences and review who has legal authority over those arrangements.

What probate is

Probate is the court process for establishing authority over a deceased person's probate estate, resolving administration issues, and transferring what remains to the proper recipients. In New Hampshire the relevant court is the Circuit Court Probate Division. When a will is to pass property, it must be proved and allowed by the probate court. An estate without a valid will can also require probate; the inheritance statute supplies the distribution instructions instead. [4] [12] [13]

The broad sequence is appointment, collection and valuation, notices and claims, taxes and accounting, distribution, and closing. The court does not ordinarily take ownership of the family's assets. It supervises the legal administration of those assets through the appointed fiduciary. The executor maintains records, handles required filings, and can request the court's direction when authority or beneficiaries' rights are disputed.

"Probate estate," "taxable estate," and "everything the person owned" are different concepts. The federal gross estate may include assets that pass outside probate, such as certain insurance proceeds, trust interests, or jointly held property. Avoiding probate does not establish that an asset is free of estate tax. [14]

Probate can be useful as well as burdensome

Probate offers an organized procedure for proving a will, establishing a fiduciary's authority, presenting claims, resolving disputes, and approving accounts. It can be appropriate for a straightforward estate where the owner prefers a will and accepts court administration.

Its tradeoffs include filing and professional expenses, required notices and reports, possible public access to filed materials, and delays while necessary work is completed. There is no responsible universal promise

that every estate will close within six months. A contested estate, sale of a difficult property, tax examination, or missing heir may take substantially longer. New Hampshire waiver and summary procedures can reduce supervision in qualifying cases; they do not eliminate honest recordkeeping or legitimate obligations. [15]

How having a will changes probate

A valid will tells the court and executor who should benefit and nominates the person to administer the estate. A properly self-proved will also supplies sworn evidence of execution, generally avoiding the need to find subscribing witnesses merely to prove the signing. It does not bypass the court, cure every defect, or prevent a contest. [16] [4] [11]

Without a will, the court still appoints an administrator under the statutory priority rules, and intestacy determines the recipients. With a will that omits part of the estate, that part may pass by intestacy. With a funded living trust, probate may be limited or unnecessary for asset transfer, but the original will still has to be delivered and filed as required. [12] [17] [18] [3]

Example: Alex's will gives everything equally to two children. Alex's house is owned alone without an effective TOD deed or trust title, so it is a potential probate asset. Alex's valid IRA designation names only one child; the will's equal-division clause does not itself change the IRA designation. The plan must be coordinated before death if Alex intends economic equality across both assets.

If you die without a will in New Hampshire

Intestacy is the statutory plan for property not effectively disposed of by a will. A surviving spouse does not always receive the entire probate estate. The following summarizes the spouse's share under RSA 561:1; "descendants" includes children and later generations. Other statutory rights and family circumstances still require review. [12]

Family at death	Spouse's intestate share
No surviving descendant or parent	All
Descendants are all shared, and spouse has no other surviving descendants	First $250,000, then half the remainder
No descendants, but a parent survives	First $250,000, then three quarters of the remainder
All decedent's descendants are shared, but spouse has other surviving descendants	First $150,000, then half the remainder
A decedent's descendant is not the spouse's descendant	First $100,000, then half the remainder

The remaining share generally moves through descendants, parents, siblings and their descendants, then further relatives under the statute. The state receives property only when there is no statutory taker. An unmarried partner is not given a spouse's share merely because the relationship was long-standing. Stepchildren are not automatically treated as the decedent's own children merely because of a remarriage. [12]

The planning consequence is simple: if the result you want depends on a partner, friend, charity, particular stepchild, or unequal family allocation, do not assume the default law reaches that result. Put the intended plan in coordinated documents.

Decide what happens when a beneficiary dies first

Ask the attorney to show how the plan divides property when one or more children die before you. **Per stirpes**, **by representation**, and **per capita at each generation** are distribution labels, but definitions and drafting can differ. Read the actual clause. Intestacy and statutory substitute-gift rules are separate from the deliberately drafted examples below. [12]

Assume you have three children: A is alive; B died leaving two children; and C died leaving one child. Under a branch-based per stirpes design, A receives one third, B's two children each receive one sixth, and C's child receives one third. B's and C's family branches preserve their parents' shares.

Under a per capita at each generation design using these facts, A receives one third. The two deceased children's shares are pooled, and the remaining two thirds is divided equally among the three grandchildren. Each grandchild receives two ninths. The examples produce different results even though both may initially sound like an instruction to treat descendants equally.

A gift limited to named individuals without substitute gifts raises a different question when one dies: does that share lapse, pass to the residue, or go elsewhere under the document or law? Ask specifically about adopted children, stepchildren, descendants born later, a beneficiary who dies shortly after you, and the plan if no intended family beneficiary survives. A contingent-beneficiary clause should address the end of the family line as well as the first backup.

Spouses children and blended families

A surviving spouse may elect statutory rights instead of the will's provision, subject to the required waiver of will and homestead rights. For example, where the decedent leaves children or descendants of deceased children, RSA 560:10 generally provides one third of personal property and one third of real estate after debts and administration expenses. Other family configurations use different formulas. The written election generally must be filed within six months after appointment, unless the court permits a later filing for good cause; recording is also required when real estate is involved. This is separate from the intestacy table. [9] [19]

New Hampshire's omitted-child statute was revised effective January 1, 2023. It addresses specified situations involving children born or adopted after the will and a child omitted solely because the parent believed that child was dead. Its operation depends on the will and family facts. Do not assume every omitted adult child automatically receives an inheritance, or that silence is the safest way to disinherit anyone. [10]

For a blended family, an outright gift to a spouse allows that spouse substantial control over what happens later. If the objective is both lifetime support for the spouse and eventual inheritance for children of an earlier relationship, compare a carefully drafted continuing trust with outright ownership. Discuss housing, remarriage, trustee neutrality, spending standards, and who pays repairs. The best choice depends on the intended balance between the spouse's flexibility and children's future interests.

For minors, distinguish the person raising the child from the person managing the inheritance. They may be the same individual, but need not be. Discuss each role with the nominee and choose backups. A trust can provide management beyond the child's minority; a guardian nomination alone does not write those financial instructions. [5]

Review points that prevent unpleasant surprises

Review the plan after marriage, divorce, a birth or adoption, a beneficiary's death, a major asset change, a move, or a disability diagnosis. New Hampshire law revokes certain will provisions favoring a former spouse after divorce unless the will provides otherwise, but that is no substitute for updating every document and account. Different property types and federal rules may produce different results. [20]

At a review meeting, bring the will, trust, deed, current account titles, beneficiary confirmations, and a one-page family tree. Ask the attorney to explain what happens at the first death, the survivor's later death, and if both adults die close together. Make sure the answer addresses both who receives property and who can manage it in the meantime.

3 Understanding trusts and choosing an approach

What a trust actually does

A trust is an arrangement for holding and managing property under a set of instructions. The person creating or contributing property is the **settlor**, also called the grantor or trustor. The **trustee** holds and administers the property for the **beneficiaries**. A beneficiary may receive benefits now, later, or only if a specified event occurs. The trust document explains the arrangement; the money, investments, real estate, and other property placed into it are the trust assets. [21][22]

Think of the document as the instructions for a household financial manager. Instructions without assets do not give that manager access to your bank account. Assets without clear instructions leave important decisions unresolved. A workable plan needs both.

One person can occupy several roles. In a typical revocable living trust, you create the trust, serve as its initial trustee, and receive its benefits during your life. Someone else succeeds you as trustee if the document's incapacity or death provisions apply. New Hampshire requires, among other things, capacity, intent, beneficiaries or an authorized purpose, and real trustee duties. The same person cannot be the sole trustee, sole current beneficiary, and sole remainder beneficiary. [23]

A trustee's job is a responsibility, not an inheritance. Being named trustee does not authorize personal use of the assets. The document might, for example, allow a trustee to pay a child's education expenses while requiring the remaining property to be preserved for that child's future needs. The person caring for a minor and the person managing the minor's trust can be different people. [24]

The labels describe different questions

Trust names can be confusing because several labels may apply at once.

Label	Question it answers	What it does not establish
Revocable or irrevocable	Can the settlor freely revoke or amend it under the applicable rules	Income tax treatment or protection from every creditor
Living or testamentary	Is it established during life or through a will at death	Whether it is funded or tax efficient
Grantor or nongrantor	Who is treated as the owner for income tax purposes	Whether assets are outside the taxable estate
Special purpose	What goal is it designed to serve	That every trust with that name has identical provisions

An irrevocable trust can still be a **grantor trust** for income tax purposes. In that case, income may be reported by its deemed owner even though the trust cannot simply be revoked. An irrevocable nongrantor trust may instead have its own income tax obligations, with some income taxed to beneficiaries when distributed. These are tax classifications, not descriptions of who has practical access to the money. [25]

Estate tax inclusion and basis require their own analysis. The IRS has specifically explained that assets in an irrevocable grantor trust do not receive a death-time basis adjustment merely because the deceased

grantor paid the trust's income tax when the assets are outside the grantor's gross estate in the circumstances addressed by its ruling. Ask separately about control, income tax, gift tax, estate tax, capital gains basis, and public-benefit treatment. [26]

Revocable living trusts

Benefits that often matter to ordinary families

A properly funded revocable trust can provide continuity when you become unable to handle finances and can direct the transfer of trust property after death without that property passing through your probate estate. You generally retain the ability to change your plan while you have the necessary capacity. It can also provide ongoing management for a spouse or descendants instead of paying everything outright. [27]

Its practical value increases when someone will need to manage several accounts, a rental property, a business interest, or real estate in more than one state. A single set of trust instructions can coordinate those assets, although local real estate law and institution requirements still matter. Privacy is often improved because routine trust administration generally does not require continuing court supervision, but litigation, deeds, tax filings, and required disclosures mean privacy is not absolute. [28]

While the trust is revocable and you have capacity to revoke it, NH law generally makes the trustee's duties run exclusively to you and subjects other beneficiaries' rights to your control. Naming a child as the future beneficiary therefore does not ordinarily give that child a present right to take the account. [29]

What it cannot accomplish by itself

A revocable trust is not a general shield against your creditors. NH expressly makes its property available to your creditors during life. After death, specified debts, estate administration costs, and funeral expenses may reach formerly revocable trust property when the probate estate is inadequate, subject to statutory exceptions. Probate avoidance does not cancel legitimate bills. [30]

It also does not, merely by its existence, eliminate income or estate taxes, qualify you for Medicaid, change retirement-account payout rules, or remove the need for health-care documents. It cannot manage assets never transferred to it unless another lawful mechanism later delivers those assets. A trustee manages trust assets; an agent under a power of attorney may have a separate role with assets outside the trust. [25][31]

Weaknesses and decision points

The costs include drafting, signing, transfers, follow-up, and future updates. A beautifully written trust with an unfunded house and unchanged accounts may leave the family with both a probate proceeding and a trust to administer. Administrative ease during incapacity depends on the successor provisions being understandable and institutions accepting proof that the successor can act.

Consider this option when ongoing management, controlled inheritance, or coordinated property ownership is valuable. Consider a simpler plan when assets are few, adult beneficiaries are capable, and properly coordinated beneficiary designations meet the goals. The comparison should include the cost of maintaining each approach over time, not just the cost of signing documents.

Irrevocable trusts

An irrevocable trust ordinarily removes the settlor's unrestricted ability to take the property back or rewrite the arrangement. It can be appropriate when a particular objective requires a completed gift, a restriction on access, insurance ownership outside the insured's control, benefits planning, or a continuing protected inheritance. Different objectives require different provisions; a trust designed for one may be unsuitable for another.

The first question is whether you can comfortably give up the particular access and authority the plan requires. Work through realistic scenarios: a spouse dies, care becomes expensive, a child becomes estranged, the house must be sold, or the chosen trustee resigns. Identify who can receive income and principal, who can change beneficiaries, who pays tax, and who can replace a trustee. Do not rely on a verbal assurance that the trustee will return money whenever you want it.

"Irrevocable" does not mean that no change is ever possible. NH permits specified court modifications or terminations, including certain beneficiary-consent arrangements consistent with material purposes. Its decanting statute can allow a trustee to move assets to another trust within significant restrictions, including protection of certain vested interests, tax benefits, and public-benefit eligibility. These are legal procedures, not a settlor's unlimited undo button. [32][33]

NH creditor law is unusually specific. RSA 564-B:5-505A distinguishes interests with and without spendthrift protection and includes provisions relevant to self-settled irrevocable trusts. Amendments effective August 31, 2026 address child-support and specified basic-alimony claims. Government claims, fraudulent transfers, other states' laws, and bankruptcy considerations require separate review. Never assume that adding the word "irrevocable" protects assets from all claims or makes them Medicaid-exempt. [34]

Ask your attorney for a written explanation of what rights you retain, what you surrender, and which assets should stay available outside the trust. For many households, unrestricted emergency savings are more useful than placing every available dollar in a restrictive arrangement.

Trusts created under a will

A **testamentary trust** arises through the will. It can hold an inheritance for children, a spouse, or another beneficiary after probate transfers the relevant assets. It does not prevent probate of property passing through the will. Its attraction is that the continuing management instructions can be included in a will-based plan without completing lifetime account transfers to that trust. [21]

The tradeoff is the probate step and potentially more court involvement. NH has special accounting rules for trusts created by will, including exceptions where a qualifying will expressly waives annual accountings or other statutory conditions are met. An exemption from court account filing does not necessarily eliminate beneficiary reporting. [35]

Compare this with a living trust when the primary concern is a child's inheritance but lifetime incapacity management is also important. A testamentary trust may solve the inheritance problem while leaving lifetime management to powers of attorney and other arrangements.

Separate trusts for children and other beneficiaries

A separate continuing trust allocates an identified share to one beneficiary. Its instructions can permit payments for education, housing, medical needs, or other purposes, and can specify whether the beneficiary receives outright installments at stated ages or remains in trust longer. These are design choices, not automatic legal rules.

A useful drafting conversation addresses the following:

- Should the beneficiary's other resources affect distributions?
- Is the goal basic support, equal opportunities, or broad lifetime assistance?
- Should the trustee pay providers directly, reimburse documented spending, or make a regular allowance?
- Should a beneficiary eventually become a trustee, and under what limits?
- Who receives what remains if the beneficiary dies?
- What happens after disability, addiction, divorce, creditor trouble, or a serious family conflict?

Age-based distribution is easy to explain but may release all protection at the wrong moment. Lifetime discretion offers more flexibility but requires a durable trustee arrangement and ongoing administration. A mandatory distribution and a discretionary distribution have different implications; the document needs to say what is intended.

For example, parents might want their child to receive a dependable education budget but not an unrestricted large payment at eighteen. Another family may prefer a modest outright inheritance because maintaining a small separate trust would consume too much of its value. There is no universally correct distribution age.

A **spendthrift provision** restricts the beneficiary's ability to transfer the protected interest and can limit creditors' access before distribution. NH recognizes exceptions, including specified support, protective-service, and government claims. Protection is not identical to keeping an outright distribution in the beneficiary's own account. A **discretionary trust** describes trustee authority over distributions; it is often paired with spendthrift terms, but the two labels answer different questions. Have counsel explain both the beneficiary's enforceable rights and the limits on creditor protection. [36]

Pot or family common fund trusts

A **pot trust** holds a common pool for several beneficiaries, commonly children, before dividing into separate shares at a chosen event. Its central feature is shared funding: a trustee can spend different amounts for different children when the terms permit it.

This can resemble the way parents spend while alive. A younger child might need years of ordinary support while an older child has already completed college. A common fund can address those unequal remaining needs without pretending each child has the same expenses.

The weakness is that fairness can become disputed. An older child may wait for the youngest to reach the division age. A costly need may reduce everyone's eventual remainder. The instructions should address whether prior assistance is charged against a later share, what counts as education, and whether the fund ends at the youngest child's birthday, graduation, or another event. Trustee impartiality means respecting the beneficiaries' different interests under the trust; it does not always mean identical checks. [37]

Choose a pot structure when supporting the family as a unit is the priority. Choose separate shares when beneficiaries' independence, different family branches, or predictable individual allocations are more important. A hybrid can reserve a common education fund and divide the balance immediately.

Spousal and estate tax planning trusts

A **marital trust** can support a surviving spouse while preserving the remaining property for selected beneficiaries. A **QTIP trust** is a particular arrangement that can qualify for the federal marital deduction with the required election and conditions, including the spouse's qualifying lifetime income interest. It can be useful in blended families because supporting a spouse and choosing the eventual remainder beneficiaries are separate decisions. It also constrains flexibility and requires careful administration. [38]

A **credit-shelter or bypass trust** generally uses the deceased spouse's available estate-tax exclusion and is designed to keep its assets from being taxed again in the survivor's estate when appropriately structured. Compare its control, growth, and protection objectives with portability, which can transfer unused exclusion through a qualifying estate-tax return election. Neither approach is automatically superior. [39]

The practical tradeoff involves the size and likely growth of the estate, the survivor's access, eventual beneficiaries, tax returns, and potential capital-gains basis consequences. A formula written years ago can allocate more to a restricted trust than a couple now expects. Have the formula explained with current family asset values and a hypothetical first death before relying on it.

Noncitizen spouses, property outside the United States, and residence in another state require added analysis. A **qualified domestic trust**, or QDOT, addresses particular federal marital-deduction rules for a noncitizen surviving spouse; it is not an ordinary substitute for a revocable family trust. [38]

Charitable trusts and specialized wealth transfer tools

A **charitable remainder trust** generally makes payments to noncharitable beneficiaries first and leaves its remainder to charity. It can combine an income stream with a substantial charitable commitment and potential tax benefits. Its assets cannot simply be reclaimed, and payments can carry taxable income. It requires specialized drafting and annual reporting. A direct charitable gift or beneficiary designation may be simpler when no retained payment stream is needed. [40]

A **charitable lead trust** reverses the sequence: charity receives the specified payments first, with the remaining property passing to noncharitable beneficiaries. It may fit substantial charitable and family-transfer goals but creates valuation, investment, and administration demands. A **GRAT** retains an annuity for a term, and a **QPRT** concerns a retained use of a personal residence. These specialized arrangements are usually considered only after modeling the family's actual tax exposure, liquidity needs, and tolerance for restrictions. [41]

Pet trusts

NH permits a trust to care for an animal alive during the settlor's lifetime, ending when the covered animal or last surviving covered animal dies. A named enforcer can protect the animal's interests, and excessive funding can be addressed under the statute. Specify the caregiver, successor caregiver, standard of care, veterinary decisions, trustee, and destination of unused funds. [42]

For modest needs, a responsible caregiver and a carefully planned gift may be enough. A trust becomes more attractive when the animal has a long expected lifespan, unusual care costs, or a need for oversight. Calculate a reasonable budget instead of choosing an arbitrary large sum.

Choosing by the problem you need to solve

Your main goal	Approach to evaluate	Principal tradeoff
Coordinate assets during incapacity and avoid probate of funded property	Revocable living trust	Funding and ongoing maintenance
Hold a child's inheritance after probate	Testamentary or continuing trust	Administration until release or termination
Support siblings with different remaining needs	Pot trust	Shared costs and delayed division
Preserve a spouse's support and selected remainder beneficiaries	Marital or QTIP trust	Less survivor flexibility and tax coordination
Address disability benefits or long-term care planning	A specifically drafted special needs or Medicaid planning trust	Detailed eligibility and access rules
Address significant life-insurance estate exposure	ILIT	Ownership, premium, and administration restrictions
Make substantial charitable gifts while retaining or sequencing payments	Charitable remainder or lead trust	Irrevocability and specialized tax work

The later chapters address special needs trusts, ILITs, and Medicaid planning trusts in detail. Before choosing any trust, be able to complete this sentence: "This arrangement is worth its cost because it solves this particular problem for these people and these assets." If no clear problem remains after reviewing simpler alternatives, a trust may be unnecessary.

Advanced trusts for substantial wealth and multigenerational goals

These arrangements deserve consideration when projected transfer taxes, significant appreciation, or long-term family management justify their restrictions and expense. They are usually unnecessary merely to avoid probate. The descriptions below explain their planning purposes; the tax results depend on the actual terms, transfers, valuations, and administration.

Spousal lifetime access trust or SLAT. One spouse makes an irrevocable gift to a trust benefiting the other spouse and often descendants. Properly structured, it can move future growth outside the donor's estate while permitting distributions to the beneficiary spouse. That is not a retained right for the donor to withdraw money. Dependence on the spouse's access creates risk if the spouse dies or the marriage ends.

Retained enjoyment or control can cause estate inclusion. Couples creating interrelated trusts for each other must address the reciprocal-trust doctrine rather than assume two mirrored trusts work. [43][44]

Grantor retained annuity trust or GRAT. The donor transfers assets while retaining specified annuity payments for a term; the remainder can pass to others. Qualified retained interests receive special gift-tax valuation treatment. A GRAT may transfer appreciation efficiently when actual performance exceeds the assumptions built into its valuation. Poor performance can leave little remainder, and death during the retained term can produce estate inclusion. Reliable valuations, timely annuity payments, sufficient liquidity, and administration costs matter. It is an appreciation-transfer technique, not an arrangement for unrestricted access whenever needed. [45][43]

Qualified personal residence trust or QPRT. The donor places a residence in trust while retaining its use for a specified term, with the remainder passing under the trust. Special valuation can reduce the taxable gift compared with an immediate outright transfer. If the donor dies before the retained term ends, the residence is included in the donor's estate. If the donor survives, continued occupancy must be separately planned; the retained right has ended. Sale, relocation, financing, and capital-gains consequences deserve careful review before committing a home to this structure. [41][45]

Dynasty and generation-skipping planning. A dynasty trust holds property for successive generations rather than requiring an outright distribution to each generation. NH permits extended or perpetual duration when applicable requirements are met, but state-law duration does not itself create a federal tax exemption. Generation-skipping transfer tax has separate exemption-allocation and reporting rules; allocation records should follow the trust for its entire life. Ongoing trustee succession, beneficiary standards, investment costs, and changing family circumstances can be as important as tax savings. This can serve substantial multigenerational goals, but a modest fund may be better used through a shorter continuing trust. [46][47]

4 Special needs insurance and protective trusts

Begin with the person and the purpose

A specialized trust solves a particular problem. It is not an automatic improvement over an ordinary revocable trust. A parent protecting a child's disability benefits, an owner keeping life insurance outside a taxable estate, and a retiree planning for long-term care need different provisions. Using the wrong form can undermine the reason for creating the trust.

Ask three questions first: whose property will fund it; who must be able to use it; and which legal rule must the trust satisfy? The same arrangement can be outside probate, included for estate tax, ignored for income-tax purposes, and still counted for Medicaid. Each legal system asks a different question. The next chapter addresses Medicaid planning trusts in detail.

Special needs trusts preserving help while improving life

A special needs trust, also called a supplemental needs trust, holds resources for a person with a disability while seeking to preserve eligibility for means-tested benefits. The trustee manages the money and makes permitted distributions. It is not enough to add the words "special needs" to a standard family trust. Access rights, funding source, beneficiaries, termination terms, and administration matter. [48] [49] [50]

Distinguish Supplemental Security Income (SSI), which has financial eligibility tests, from Social Security Disability Insurance (SSDI), which is based on insured status and other program requirements. A beneficiary receiving SSDI and Medicare may not currently need a trust to protect those particular benefits. The person may nevertheless use Medicaid, housing assistance, or another means-tested program now or later. Identify actual programs rather than assuming all disability benefits have identical rules. [49] [51]

Third party special needs trust

This trust receives property that belongs to someone other than the beneficiary: for example, a parent's inheritance gift, grandparents' contributions, or life insurance directed to the trust. Properly structured, it can pay for enrichment and support without giving the beneficiary the right to demand the principal. It generally does not require the Medicaid repayment provision applicable to a first-party statutory trust, allowing the creator to choose remainder beneficiaries. The beneficiary's ability to revoke, terminate, or direct funds for personal support can change resource treatment. [49]

Why choose it? It is usually the preferred starting point when family members are planning gifts from their own assets for a beneficiary who needs means-tested benefits. It allows management throughout the beneficiary's life, coordinated spending, and a planned destination for remaining property.

Weaknesses and costs. Someone must administer it correctly. Professional trustee minimum fees may be substantial relative to a small fund. Family trustees need training and relief from conflicts. A rigid document may prevent spending that would improve the beneficiary's life merely because a cash benefit might decrease. The drafting should give appropriate flexibility to weigh the overall benefit of a distribution.

Funding precautions. Have relatives name the trust correctly in their own wills, trusts, and beneficiary designations. Do not leave the inheritance to a sibling with an informal promise to "take care of" the beneficiary. That money becomes exposed to the sibling's own decisions, incapacity, creditors, divorce, and death. Do not deposit the disabled person's own settlement or savings into a third-party trust without legal review; mixing sources can change the rules. [49] [50]

First party special needs trust

A first-party trust receives the beneficiary's own property, such as a personal injury settlement, accumulated savings, or an inheritance already payable outright. Under the federal exception commonly called a "(d)(4)(A) trust," the beneficiary must be disabled and under age 65 when the qualifying trust is established and funded; a qualifying trust can be established through the actions of the individual, a parent, grandparent, legal guardian, or court. The document must provide for repayment to the applicable state Medicaid programs at death, up to medical assistance paid, from remaining assets. New contributions at age 65 or later require separate analysis and can cause transfer penalties; the beneficiary's birthday does not itself disqualify assets already held in a compliant trust. [48] [50]

Why choose it? It can preserve benefits after the beneficiary has become entitled to assets that cannot be redirected into a third-party trust. It supplies accountable management and a way to spend for the beneficiary's benefit.

What it cannot do. It cannot guarantee that every purchase preserves every benefit, erase a prior period of ineligibility, or promise that relatives inherit the remainder. Medicaid repayment and authorized final expenses must be addressed before remainder gifts. Early termination provisions are restricted; closing the trust during life is not a shortcut around repayment rules. [50]

Decision points. Consider the amount, the person's age and benefits, disability findings, litigation orders, necessary court approval, trustee skill, expected spending, and whether a pooled trust is more practical. A competent adult's disability does not automatically justify taking away personal decision-making. Build supported decision-making and participation into the arrangement where possible.

Pooled special needs trust

A qualifying pooled trust is established and managed by a nonprofit association. Each beneficiary has a separate account, while funds may be pooled for investment and management. A first-party pooled account must be established for the sole benefit of a disabled individual through an authorized person's action. At death, amounts not retained by the trust must satisfy the statutory Medicaid repayment requirement before other remainder distributions. Read the nonprofit's retention and termination terms carefully. [48] [50]

Unlike the individual first-party exception, the federal pooled-trust exception does not itself impose an under-65 condition on resource exclusion. That does **not** mean a transfer at age 65 or older is penalty-free. SSI and Medicaid transfer rules still require separate evaluation. [50]

Why choose it? It can supply experienced administration where a family trustee is unavailable or the amount does not justify an individual professional trusteeship. The program's fee structure, responsiveness, investment choices, service area, distribution policies, and remainder retention may be more important than the label "pooled." Some nonprofits also offer third-party pooled arrangements; do not assume the same repayment rules apply to every program they operate.

ABLE accounts useful alongside a trust

An ABLE account is a tax-favored savings account for eligible people with disabilities. Beginning January 1, 2026, the disability must have begun before age 46, although the person can open the account later if otherwise eligible. In 2026, the standard aggregate annual contribution limit is $20,000, with a possible additional contribution for certain employed beneficiaries. The standard ABLE limit is now different from the $19,000 annual gift-tax exclusion. Contributions by multiple people must be coordinated. [51] [52]

Up to $100,000 in an ABLE account is disregarded for SSI resource purposes. Excess can suspend SSI if it causes excess countable resources; special rules can preserve Medicaid during an ABLE-related suspension if other eligibility requirements remain satisfied. Distributions for qualified disability expenses receive favorable treatment, but timing and retained withdrawals matter, especially for housing. A Medicaid claim may apply after death under the governing rules. [51]

An ABLE account can give the beneficiary convenient access for approved everyday expenses while a special needs trust holds a larger inheritance and provides long-term oversight. It may be enough for a modest amount and simple needs. It does not replace a trust when annual contribution limits, long-term management, large proceeds, or remainder planning are central.

Arrangement	Typical source	Strongest use	Main limitation
Third-party special needs trust	Other people's assets	Family inheritance planning	Requires careful drafting and administration
First-party special needs trust	Beneficiary's assets	Settlement or outright inheritance	Age/funding rules and Medicaid repayment
First-party pooled trust account	Beneficiary's assets	Nonprofit administration	Fees, retention terms, and transfer-rule analysis
ABLE account	Beneficiary or others	Flexible qualified disability spending	Eligibility, contribution limits, and balance rules

Daily administration is part of the plan

A trustee should create an individualized spending plan, identify every public benefit, keep invoices, record the purpose of payments, and seek benefits advice before unusual distributions. Cash paid directly to the beneficiary generally has different consequences from paying a vendor. Shelter payments can affect SSI. Since September 30, 2024, food is no longer counted in SSI's in-kind support and maintenance calculation, so older instructions treating food and shelter identically may be outdated. Cash gifts remain a separate issue. Other benefit programs may use different rules. [49] [53]

Keep a nonbinding letter of intent describing routines, care providers, communication needs, housing preferences, relationships, recreation, and goals. Update it when circumstances change. It should support the trustee, not contradict the legal document. Arrange a successor trustee and a method for replacing an unsuitable trustee. A trust protects resources; it does not itself provide caregiving, guardianship, or a place to live.

Spendthrift and discretionary protections

A spendthrift provision restricts a beneficiary's transfer of the trust interest and can limit a creditor's access before distribution. A discretionary trust lets the trustee decide whether, when, and how much to distribute within the document's standards. New Hampshire has specific statutory protections and exceptions, including rules concerning certain support orders. These are useful planning tools, not a promise that assets can never be reached. [36] [54]

For example, parents may prefer a continuing discretionary trust over an outright inheritance for an adult child with spending problems, a vulnerable marriage, exploitation concerns, or a profession with liability

exposure. The trustee can pay appropriate expenses, retain investments, and consider the child's circumstances. Once money is distributed outright, trust protections generally no longer govern that money. [36]

The tradeoff is reduced control and possible friction. A beneficiary may resent having to request distributions; a sibling trustee may feel pressured; administrative and tax expenses may outweigh protection for a small fund. Clearly identify permitted purposes, whether other resources should be considered, who resolves conflicts, and who can replace a trustee. Do not confuse a trust funded by someone else with putting your own assets in a trust for yourself. Self-settled creditor planning raises separate legal rules and cannot be assumed to defeat existing claims or Medicaid requirements.

Irrevocable life insurance trust the ILIT

An ILIT is an irrevocable trust designed to own life insurance and receive the death benefit. The trustee administers the policy during life and the proceeds after death. Proper design can keep insurance proceeds outside the insured's federal taxable estate while retaining structured benefits for family members. Whether this produces meaningful tax savings depends on the projected estate, prior gifts, available exclusion, insurance amount, and future circumstances. [38]

Ownership and beneficiary status are different

The **owner** controls policy rights, such as changing beneficiaries, borrowing against cash value, surrendering, assigning, or pledging the policy. The **insured** is the person whose death triggers payment. The **beneficiary** receives proceeds. Simply naming an irrevocable trust as beneficiary while retaining ownership does not remove the insured's incidents of ownership for federal estate tax purposes. Proceeds payable to the estate present another inclusion issue. [38]

Life insurance death benefits are generally excluded from federal income, subject to exceptions such as certain transfers for value; interest paid on proceeds may be taxable. Estate-tax inclusion is a separate question. A family can owe no income tax on the death benefit yet have that benefit counted when measuring the insured's taxable estate. [55]

The three year problem

If the insured transfers an existing policy or relinquishes relevant policy rights and dies within three years, federal law can bring the death proceeds back into the taxable estate. It is the death benefit, not merely the policy's cash value at transfer, that can be implicated. A new policy properly applied for and owned by the trust from inception generally avoids this particular transfer-of-an-existing-policy problem, but the insured must not retain prohibited rights. Purchases, premium financing, transfers for value, and policy exchanges need separate tax review. [38]

Establishing and funding an ILIT

1. Calculate the insurance need and compare an ILIT with a personally owned policy payable to a revocable or continuing family trust. A need for management alone does not always justify irrevocable ownership.
2. Have counsel draft the trust and select a trustee who can carry out ownership and administration independently within its terms.

3. Determine whether the trustee should apply for new coverage or receive an existing policy. Obtain the insurer's ownership documents and any required gift-tax valuation, commonly involving Form 712 for existing insurance. [38] [56]
4. Establish the appropriate trust account and tax reporting arrangements. Transfer premium funds to the trustee under the agreed contribution procedure.
5. If annual exclusions depend on beneficiary withdrawal rights, administer those rights faithfully before using the funds for premiums.
6. Obtain written insurer confirmation of ownership and beneficiary designations. Keep it with the policy, trust, assignments, contribution records, and tax returns.
7. Review policy performance and premium adequacy regularly. A legal document cannot prevent an underfunded policy from lapsing.

Crummey notices are real administration

Many ILITs use temporary withdrawal rights, commonly called Crummey powers, to support treatment of contributions as present-interest gifts eligible for the annual gift-tax exclusion. The trustee gives the required beneficiaries notice of contributions and a genuine opportunity to exercise their rights under the document. The rights cannot be a fiction supported by an agreement that nobody may exercise them. Notice timing, available liquidity, minors' representatives, lapses, gift splitting, and generation-skipping allocation require professional administration. There is no universal rule that a notice bearing a particular number of days fixes every trust. [57] [56]

An ILIT may be attractive for an estate with a likely estate-tax exposure, a business or real estate portfolio needing liquidity, or deliberate long-term management of substantial proceeds. It may be unnecessary when tax exposure is remote and a simpler beneficiary trust meets the management objective. Its weaknesses include loss of personal policy access, recurring premiums, trustee work, tax filings, and inflexibility if relationships or insurance needs change. Review an old ILIT before replacing a policy, changing ownership, or allowing coverage to lapse; do not assume it is obsolete solely because the federal exclusion increased.

Choose the least burdensome arrangement that meets the need

Before approving a specialized trust, write a one-paragraph explanation of its purpose. Identify what must happen for it to work, what the family gives up, the annual duties, and the exit or replacement options. Compare the expected benefit with the cost of drafting, investment management, tax preparation, and trustee services. A well-funded, consistently administered trust can be valuable. A sophisticated document nobody understands or maintains can create more problems than it solves.

5 Long term care Medicaid and the five year lookback

Plan for care before planning an inheritance

Long-term care planning starts with where and how you want to receive care, who can help, and what income, savings, insurance, housing, and public benefits may support that care. Protecting a spouse's independence and preserving choices can matter more than preserving a particular inheritance. Do not transfer away the funds needed to pay for ordinary living expenses, emergencies, housing repairs, or care during a waiting period.

Medicaid is a joint federal-state benefits program with different eligibility categories. This chapter focuses on New Hampshire Medicaid for nursing-facility care and qualifying home and community-based waiver services. These rules are not the same as every other Medicaid category. Financial eligibility, clinical eligibility, service availability, application documentation, and ongoing requirements must all be satisfied. A trust does not establish a medical need or guarantee a place in a particular facility. [48] [58]

Medicare and Medicaid are different programs. Do not build a long-term custodial-care budget on the assumption that ordinary Medicare pays indefinitely. Review actual coverage, any long-term care policy, and the client's care assessment before choosing a funding strategy.

Four questions that must be answered separately

1. **Is an asset countable while the applicant is alive?** Eligibility rules distinguish available property from excluded resources.
2. **Was there a penalized transfer?** Giving away property can cause a period without Medicaid payment for covered long-term care even when the applicant now has very little money.
3. **How much income must contribute toward care?** Eligibility does not necessarily mean the recipient keeps all monthly income.
4. **Can the state recover after death?** Property excluded during life may still be relevant to estate recovery. [48] [58] [59]

These are separate tests. A home can receive favorable eligibility treatment without being immune from every later claim. An irrevocable trust can fail because retained access makes its assets countable, regardless of how long ago it was signed. A transfer can avoid gift tax and still produce a Medicaid penalty.

What the 60 month lookback means

The lookback is the period examined for transfers of assets for less than fair market value. For present-day long-term care planning, the federal period is 60 months; New Hampshire examines transfers within its applicable 60-month review period and transfers during receipt of the relevant benefits. The applicant's spouse's transfers also matter. For an institutionalized individual, the federal starting reference is the first date the person is both institutionalized and has applied for Medicaid. Covered home and community-based services also require review under the applicable federal definitions and NH program rules. Let counsel calculate the actual review dates rather than counting five birthdays from signing. [48] [58]

Giving cash to children, deeding away a house, adding an owner who removes money, forgiving a loan, disclaiming an inheritance, selling property below market value, or funding an irrevocable trust may require review. The issue is what value the applicant gave up and what fair compensation was received. A transaction may count even if the applicant never physically received the property before directing it elsewhere. [48] [58]

Each new contribution has its own transfer date and value. Signing an empty trust in 2026 and placing the house into it in 2028 does not make the house a 2026 transfer. Later contributions, amendments removing access, payments from a trust to other people, and changes in beneficial rights require their own analysis. Investment growth within an existing properly structured trust is not simply the same event as a new gift, but tracing and administration records remain essential. [48] [58]

The lookback clock is not the penalty clock

The lookback asks whether a transfer must be examined. A transfer penalty asks how long Medicaid payment for specified long-term care services is unavailable because of an uncompensated transfer. For transfers governed by current federal rules, the penalty does not ordinarily run out harmlessly while a healthy person is still financially ineligible at home. Its start depends on the statutory later-of rules, including when the applicant is otherwise eligible and would receive the relevant level of care but for the transfer penalty; overlapping penalties and state calculation rules also matter. [48] [58]

New Hampshire calculates the penalty using the uncompensated transfer value and the applicable statewide average private nursing-facility rate, with rules for full and partial months. The rate is updated; it is not necessarily the bill from the applicant's actual facility. Confirm the current divisor and effective date with DHHS before relying on any calculation. [58]

Illustration only: assume an uncompensated $120,000 gift and a hypothetical monthly divisor of $12,000. Dividing produces ten months. The $12,000 figure is invented for explanation and is **not a statement of New Hampshire's current divisor**. Actual dates, aggregation, partial-month calculations, returned property, exceptions, and eligibility findings can change the result. The dangerous consequence is a care bill at a time when the applicant has already given the money away.

Five years is not a guarantee

A transfer falling outside the applicable lookback may no longer produce a transfer penalty for that application. It does not cure a trust that still makes property available, an undisclosed asset, an invalid deed, a continuing income right, a later transfer, failure to meet care criteria, or another eligibility defect. It also does not answer every estate-recovery question. Avoid assurances that "everything is protected automatically after five years." [48] [58] [59]

What a Medicaid planning trust can and cannot do

"Medicaid asset protection trust" is a planning description, not a government-issued guarantee or one universally approved form. The arrangement is usually irrevocable and aims to make specified principal unavailable to the person whose assets funded it. In exchange, the creator gives up legally enforceable access that would otherwise defeat the objective. Proper planning must consider federal law, NH rules, retained rights, distribution provisions, tax treatment, and actual administration. [48] [58]

For a self-funded irrevocable trust, federal law asks whether **any circumstances** permit payment from a portion of the trust to or for the individual's benefit. Such a portion can be treated as available even if the trustee says distributions are discretionary or presently intends not to pay. Payments to or for the individual can be treated as income; payments to others and portions from which no payment can be made can implicate transfer rules. A revocable trust's assets generally remain available to the creator. Labels do not override these rules. [48] [58]

Some plans retain an income interest while prohibiting access to principal. That income can still affect eligibility or the recipient's contribution to care. Retained occupancy, powers to change beneficiaries, tax-reimbursement provisions, loans, trustee-removal powers, and sale/reinvestment arrangements must be examined together. A promise that children will return money whenever requested can defeat the intended legal separation or simply leave the parent without an enforceable safety net.

Benefits when appropriate: the trust may preserve a planned remainder for family, supply ongoing management, avoid probate for properly titled assets, and permit carefully structured housing and tax arrangements. It can provide more organized management than an outright gift to a child.

Weaknesses: the creator cannot retain all the control and access of outright ownership; funding may start a transfer review period; trustee cooperation becomes important; account administration and taxes continue; sales and refinancing may be harder; and future needs may exceed the funds kept outside the trust. The family must understand who pays for expenses and what happens if the trustee dies, resigns, or disagrees with the creator.

When it may be unnecessary or unsuitable: adequate care funding or insurance, a small estate, unstable housing, a strong need for flexible principal access, insufficient reserves, or an immediate care need can make another strategy more appropriate. The right answer may be a revocable trust for management plus a realistic care budget, rather than an irrevocable transfer.

Transfers that may qualify for exceptions

Federal law provides important exceptions, but the details and documentation matter. A relationship alone is not always enough. Some exceptions concern a home only; others reach broader assets. Transfers to trusts require careful compliance with sole-benefit and other applicable requirements. [48] [58]

Possible exception	Core condition	Documentation issue
Transfer to a spouse	Federal exception for spouse/sole-benefit transfers, as applicable	Ownership, marital status, and any trust terms
Transfer to a blind or disabled child	Must meet the applicable statutory disability/blindness standard	Formal findings and compliant recipient arrangement
Home to child under 21	Home-transfer exception	Age, deed, ownership, and timing
Home to sibling	Sibling has equity interest and lived there at least one year immediately before institutionalization	Equity evidence and continuous qualifying residence

Possible exception	Core condition	Documentation issue
Home to caregiver son or daughter	Lived there at least two years immediately before institutionalization and provided care permitting residence at home instead of an institution	Medical/care evidence, residence, and exact period

The caregiver-child exception does not automatically extend to a helpful grandchild, niece, friend, or child who only visits. The sibling rule is not satisfied merely because a sibling stayed at the house; the equity and residence conditions must be met. A disabled-child exception should be coordinated with the child's own public benefits so that an otherwise exempt transfer does not cause a separate problem for the child. [48]

There are also rules for qualifying sole-benefit trusts for certain disabled people under age 65, transfers for fair value, transfers made exclusively for another purpose, return of transferred assets, and undue hardship. Proof is required; ordinary family generosity does not automatically establish a non-Medicaid purpose. Hardship waivers are limited relief, not a dependable funding plan. Partial return of property may lead to recalculation under NH rules, while returned property may itself become countable again. [48] [58]

Protecting the spouse at home

Spousal impoverishment rules are intended to prevent the spouse remaining in the community from being left without reasonable resources and income. They involve a resource assessment, a community-spouse resource allowance, an income allowance when applicable, and procedural rights to seek appropriate adjustments. Limits and formulas change. The result depends on the couple's assets, income, shelter costs, timing, and covered program. [60] [58]

Do not assume assets are ignored because an account is titled only in the healthier spouse's name, or that the couple must spend everything down to one small individual limit. Likewise, do not assume all property transferred to a spouse may immediately be given to the children without consequence. The spouse's transfers can affect eligibility. Request a written analysis identifying the applicable snapshot date, countable and excluded property, allowed retention, income allocation, and implementation steps. [48] [60]

Review the healthier spouse's estate plan at the same time. If that spouse dies first, an outright inheritance or an automatic trust distribution can disrupt the care recipient's benefits. Testamentary and trust planning for this possibility must address NH spousal rights and Medicaid rules together. Do not disclaim an inheritance or waive a legal entitlement without reviewing whether it is itself a transfer.

The home eligibility ownership tax and recovery

A principal residence may receive an exclusion while particular occupancy, intent, family, and other conditions apply. Federal law also imposes a home-equity limitation for certain long-term care eligibility, with exceptions and inflation-adjusted limits. That is different from a guarantee that a house of any value is permanently protected. NH's real-property rules and the applicant's actual situation must be checked. [48] [58]

Before transferring a home, evaluate all of the following:

- Who will have the enforceable right to live there, and who pays taxes, insurance, utilities, repairs, and accessibility modifications?
- Does the deed accurately transfer the intended interest, and has it been properly recorded?
- What happens if the home must be sold and a different home purchased?
- Will the mortgage, homeowner's insurance, title insurance, local tax relief, or current-use status be affected?
- Is the transfer a completed taxable gift, is a gift-tax return needed, and will the recipient receive carryover basis or a later basis adjustment?
- Can the owner still qualify for an available home-sale gain exclusion, and which retained rights affect estate inclusion?
- What happens if a child dies, divorces, becomes insolvent, or refuses to cooperate?

An outright gift often carries the donor's tax basis, while property qualifying as acquired from a decedent may receive a fair-market-value basis adjustment. Grantor-trust income taxation alone does not establish that adjustment. Tax and Medicaid objectives must be analyzed together; the best Medicaid treatment is not automatically the best capital-gains result. [61] [62]

For NH estate recovery, RSA 167:14 and 167:16-a must be read together. The current limitation statute generally addresses correctly paid assistance for a recipient who was at least 55 when assistance was received, with recovery only after a surviving spouse's death and subject to protections involving a surviving child under 21 or who is blind or permanently and totally disabled. Separate provisions govern liens and qualifying family occupants. The existence of an exception, deferral, or protection requires an individual review. [59] [63]

Avoiding probate does not by itself establish that property is beyond every Medicaid-related claim or lien. Counsel must identify the applicable recovery authority, ownership interests, trust provisions, and protections. Do not assume a particular deed, life estate, joint account, or beneficiary designation resolves recovery simply because it changes the probate path.

Funding a planning trust the implementation checklist

1. Complete a care and household budget and identify reserves to remain available outside the trust.
2. Obtain a written explanation of what the creator may and may not receive and who has authority over each asset.
3. Prepare an asset-by-asset funding schedule. Record owner, value, debt, tax basis, proposed transfer, and anticipated transfer date.
4. Have counsel prepare and review real-estate transfers and any business-interest restrictions. Obtain required consents and record deeds.
5. Retitle eligible bank and brokerage assets using institution-approved paperwork and the correct trustee name. Keep acceptance confirmations.
6. Review retirement accounts, annuities, and insurance individually. Do not retitle an IRA to an ordinary living trust as if it were a checking account or liquidate it without tax and eligibility analysis.
7. Obtain tax advice on gifts, valuations, income reporting, and any required returns.

8. Maintain a permanent ledger of every contribution and distribution, with statements, deeds, valuations, and supporting documents.
9. Review annually and before any new transfer, amendment, home sale, major distribution, or Medicaid application.

Trust funding is a series of legal transactions. A property list attached to the agreement is not necessarily a substitute for a recorded deed or accepted account transfer. Never backdate documents or omit transfers from an application.

When care is needed now

Prompt advice may still reveal lawful options, including proper spending for the applicant's benefit, documented debt payments, necessary home work, permitted burial arrangements, spousal protections, an applicable transfer exception, recovery of an earlier gift, or a benefits appeal. It does not mean an immediate irrevocable gift is safe. Annuities, promissory notes, caregiver agreements, and purchase of another person's interest have detailed rules and are not interchangeable substitutes for paying for care. [48] [58]

Gather five years of account statements and transfer records, current balances, deeds, tax returns, insurance and annuity contracts, marriage information, benefit letters, care assessments, and every existing trust. Preserve proof of payments for actual services and fair value. Ask for a written action list, application calendar, care-payment plan during any gap, and person responsible for each task.

There can be consequences for recipients of transferred property as well. NH RSA 151-E:19 provides potential liability to a long-term care facility when a transfer results in a final Medicaid transfer disqualification, subject to statutory conditions and exceptions. Receiving a parent's assets is not always free of later obligations. [64]

After applying, respond to information requests, report required changes, review the written decision and calculation, and seek timely review if something is wrong. Approval does not end recordkeeping. The ongoing plan should preserve the applicant's care, the spouse's stability, and compliance with the trust and benefits rules.

6 Taxes that affect an estate plan

Estate planning can involve several different taxes. A plan that avoids probate does not necessarily reduce any of them. Separate the tax on transfers, the tax on income, and the tax consequences of a later sale. Have your tax adviser consider the entire family balance sheet rather than evaluating a trust in isolation.

The main tax questions

Tax question	What is being measured	Why the distinction matters
Estate tax	Certain property and interests included at death	Nonprobate property may still be included
Gift tax	Certain transfers during life	A reporting requirement does not always mean tax is payable
Generation skipping transfer tax	Certain transfers to later generations or relevant trusts	Separate exemption allocation may be needed
Income tax	Income earned or received by a person, estate, trust, or beneficiary	Trust distributions can carry taxable income
Capital gains tax	Gain when property is sold	The asset's tax basis can be as important as its value

Federal estate and gift tax in 2026

For 2026, the federal basic estate and gift tax exclusion is **$15 million per individual**. The gift and estate systems are coordinated: use of exclusion for taxable lifetime gifts generally reduces what remains available at death. The 2026 annual exclusion for qualifying present-interest gifts is **$19,000 per recipient per donor**. These are different concepts, and neither is a Medicaid safe-harbor amount. The 2026 generation-skipping transfer exemption is also $15 million, with its own rules. [52] [65]

A gift exceeding the annual exclusion can require a Form 709 even when no gift tax is immediately payable because exclusion remains available. Some transfers require reporting for other reasons, including gift splitting or generation-skipping matters. Future interests generally do not qualify for the ordinary annual exclusion. Direct payments of qualifying tuition to an educational institution or qualifying medical expenses to the provider have separate rules; reimbursing a family member is not the same transaction. [56]

Before making a large gift, ask whether you can afford it, whether it affects Medicaid, whether the recipient has benefit or creditor concerns, and what tax basis accompanies the property. Keep the transfer records and any gift-tax returns permanently with the planning file. The annual exclusion is not a maximum amount that a person is legally permitted to give.

Married couples and portability

An eligible surviving spouse can benefit from the deceased spouse's unused federal exclusion through **portability**, but the appropriate estate-tax return election is needed. Form 706 is generally due nine

months after death; an extension to file is distinct from an extension to pay. Do not assume no return is useful merely because no estate tax is due. [38]

For qualifying estates not otherwise required to file Form 706, Revenue Procedure 2022-32 provides a simplified method for a late portability election by the fifth anniversary of death, subject to its conditions and required filing language. This is relief for eligible cases, not a general five-year filing deadline. Ask the adviser about the election early, while values and documents are easier to obtain. [66]

Portability does not replace every reason for a credit-shelter or marital trust. Family control, protection of a remainder, growth after the first death, state tax exposure, basis, and generation-skipping planning may point to different choices. A noncitizen spouse adds special rules; the ordinary marital-deduction assumptions should not be used without review.

New Hampshire and other states

NH's inheritance and estate tax history can be confusing because older forms and tables remain searchable. The Department of Revenue Administration states that its legacy and succession tax was repealed for deaths on or after January 1, 2003, and that an NH estate tax return is not required for deaths on or after January 1, 2005. NH's Interest and Dividends Tax was repealed for taxable periods beginning after December 31, 2024. These facts do not eliminate federal taxes or every possible NH business, property, or transfer tax. [67] [68]

Property, residency, business activity, or trust connections outside NH can create another state's filing or tax obligations. A move to NH does not automatically erase every tax connection with the prior state. Review real estate and trust administration across state lines before relying on NH's tax treatment.

Basis and the cost of giving property away

Tax **basis** is the starting figure used to calculate gain or loss. Property received by lifetime gift often carries the donor's basis, with important loss-basis and other qualifications. Property acquired from a decedent generally receives a basis tied to fair market value at death or another applicable valuation date, subject to statutory exceptions. An adjustment can be downward as well as upward. [62]

Example: assume a parent bought an investment for $40,000 and it is worth $140,000 when transferred. A lifetime gift may leave the recipient with a $40,000 gain basis. If the recipient immediately sells for $140,000, the simplified gain is $100,000. If the property instead qualifies for a death-time basis of $140,000, an immediate sale at that value has no gain before transaction costs. This illustration excludes exceptions, subsequent value changes, and state tax. It explains why avoiding probate or making a gift should not be the only consideration.

An irrevocable grantor trust does not automatically receive a basis adjustment when the person paying its income tax dies. Revenue Ruling 2023-2 rejects that conclusion where the assets are outside the deceased grantor's gross estate in the circumstances described. Income-tax ownership and estate-tax inclusion are separate questions. [61]

Traditional retirement benefits and other income in respect of a decedent have different treatment and should not be assumed to receive the ordinary inherited-property basis adjustment. Preserve cost,

depreciation, and valuation records for each asset and obtain advice before a sale or in-kind distribution. [55]

Income taxes for trusts and estates

An ordinary revocable trust is generally a grantor trust during its creator's life. Income is commonly reported by the deemed owner under an allowed reporting method. Some irrevocable trusts are also grantor trusts. A nongrantor trust or probate estate may file Form 1041 and issue Schedule K-1 to beneficiaries. An EIN identifies the tax entity but does not decide who owes tax or whether the trust is effective. [25]

Distributable net income, often called DNI, helps determine how much income can carry out to beneficiaries and the related distribution deduction. A cash distribution is not automatically tax-free principal, and a trust does not necessarily avoid income tax by distributing everything. Capital gains, principal distributions, charitable payments, expenses, and timing require separate analysis. A beneficiary should receive the appropriate tax information before preparing a return. [25]

Trust and estate tax brackets are compressed compared with individual brackets. For 2026, the top 37 percent ordinary federal bracket begins above $16,000 of taxable income for estates and trusts. Other taxes and different capital-gain rates may apply. Tax efficiency should be considered alongside the trust's legal distribution standard and beneficiary needs; a trustee should not violate the instrument simply to shift a tax bill. [52]

Retirement benefits after death

Beneficiary choices affect both control and taxation. The rules depend on the account type, date of death, whether the owner had reached the required beginning date, and the beneficiary's category. Many individual beneficiaries who are not eligible designated beneficiaries must empty the account by December 31 of the tenth year following the year of death. For example, a death in 2026 produces a December 31, 2036 deadline when that rule applies. [69] [70]

For an inherited traditional IRA subject to that ten-year rule, annual required minimum distributions generally also apply when the owner died on or after the required beginning date. When the owner died before that date, the ten-year rule generally does not require annual withdrawals in years one through nine. Earlier voluntary withdrawals may nevertheless reduce a later tax spike. A ten-year rule is therefore not a universal permission to postpone all withdrawals until year ten. Any unpaid required distribution for the owner's year of death is a separate responsibility that should be addressed promptly. [69]

Eligible designated beneficiaries include a surviving spouse, the account owner's minor child, a disabled or chronically ill individual meeting the tax-law standards, and an individual not more than ten years younger than the owner. Different options and transition rules apply; the owner's minor-child category does not extend to every young beneficiary. An estate or a trust that does not qualify for look-through treatment can have a different and less favorable payout schedule. [70]

Naming a trust can serve an important management purpose, but its provisions and required documentation must be reviewed for retirement-tax treatment. A conduit arrangement and an accumulation arrangement can distribute or retain retirement withdrawals differently. Coordinate the

trust, exact beneficiary designation, and custodian's procedures before death; after death, obtain advice before accepting a check payable personally or attempting a rollover. [69]

Refusing an inheritance requires planning

A beneficiary considering a disclaimer should obtain advice before accepting the property or its benefits. A federally qualified disclaimer generally requires an irrevocable written refusal delivered to the appropriate person within nine months after the later of the transfer creating the interest or the beneficiary's twenty-first birthday. The beneficiary must not have accepted the interest or its benefits, and the property must pass without the beneficiary directing its destination, subject to the statutory requirements. A request to give your inheritance to a chosen relative is not automatically a qualified disclaimer. [71]

State-law effectiveness, creditor rights, and Medicaid consequences require separate review. A refusal that qualifies for federal transfer-tax treatment can still have other consequences. The executor or trustee should identify the issue before making a distribution, rather than trying to undo an accepted payment later.

The fiduciary tax work plan

At the start of administration, give the tax preparer the date of death, marital status, family tree, prior returns, gift returns, trust documents, asset inventory, beneficiary records, and appointment documents. Ask which returns and elections are required, who is responsible, and when information must be delivered. Distinguish the decedent's final income-tax return from income earned by the estate or trust afterward.

Typical work can include the final Form 1040, estate or trust Form 1041, beneficiary K-1s, Form 706 if required or elected, gift-tax matters, state filings, and fiduciary notices such as Form 56. Consider whether an available election coordinating a qualified revocable trust and estate is useful. Maintain reserves until returns, expected liabilities, and necessary closing steps have been addressed. [25] [55]

Ask for a written tax checklist and preserve evidence of filings and payments. Tax responsibilities can continue after assets have been distributed. An executor or trustee should not treat an empty bank account as proof that the tax work is complete.

7 Planning for incapacity and health care

A will concerns death. Planning also needs to address a period when you are alive but cannot manage money, sign paperwork, or make medical decisions. A revocable trust can provide management of property held in it, but it does not replace every function of a financial power of attorney or health care directive.

Financial powers of attorney

A financial power of attorney appoints an agent to act within the authority granted by the document. In New Hampshire, a power of attorney under RSA 564-E is durable unless it expressly ends on incapacity. It ordinarily becomes effective when executed unless the document provides a later date, event, or condition. An immediately effective document and an incapacity-triggered document therefore have different practical consequences. [72] [73]

Immediate authority can simplify assistance, but it requires confidence in the agent. Authority triggered by incapacity may require proof that the triggering condition has occurred. Ask who makes the determination and what medical information or written findings are needed. Durable means the authority can survive incapacity; it does not mean the authority continues after death. [1] [73]

A general NH power of attorney requires the principal's non-electronic signature, or a properly directed signature in the principal's conscious presence, and acknowledgment before a notary or other authorized official. The required principal disclosure must also bear a non-electronic signature and be attached. Before acting under a general power of attorney, the agent must sign the statutory acknowledgment non-electronically and attach it; that acknowledgment need not be signed at the same time as the principal's document. These requirements differ from those for a will. [74] [75]

Discuss the following powers individually with counsel. They are not merely routine bill-paying powers: creating or changing a trust, making gifts, changing beneficiary designations, changing survivorship rights, and accessing the content of electronic communications require express grants under the statute. Certain gifts that could leave the principal dependent on Medicaid or public assistance require additional express authority or court approval. Self-benefiting transactions have additional limitations. [76]

Practical implementation

1. Select an agent and at least one successor, and discuss compensation, recordkeeping, and conflicts.
2. Decide when authority begins and which sensitive powers should be permitted or limited.
3. Execute the complete document and statutory attachments using the correct signing procedure.
4. Ask major financial institutions to review it while you can resolve questions personally. Obtain any institution-specific requirements without casually replacing a carefully drafted document with a narrower form.
5. Store the original safely and give the agent access instructions. If the agent may act immediately, decide who receives copies now.
6. Review the appointment after a death, divorce, move, significant illness, or change in trust arrangements.

An agent should maintain receipts, a transaction ledger, and a record of the reason for significant decisions. The principal's money should not be treated as the agent's money. When death occurs, the agent should stop using the power of attorney and preserve records for the appropriate executor or trustee. [75] [1]

Advance directives and living wills

An advance directive allows you to name a health care agent and state treatment wishes. In the NH statutory form, the health care power of attorney and living will serve related functions: one appoints a decision-maker and can limit authority; the other provides guidance about life-sustaining treatment. Review the disclosure and form with attention to your own values, medical circumstances, and religious or cultural preferences. [77]

Talk with your agent about what makes treatment worthwhile to you, how you understand comfort care, and what burdens you would find unacceptable. Examples may include prolonged unconsciousness, inability to recognize loved ones, or treatment that only extends dying. Discuss uncertainties with a medical professional. A brief checkmark cannot communicate every situation, so written explanation and conversation are helpful.

Under NH law, the directive is signed in the presence of either two eligible subscribing witnesses or a notary public or justice of the peace. Witness exclusions include the agent or surrogate, spouse, heir, person entitled to property at death, attending practitioner, and someone acting under that practitioner's direction or control. At most one witness may be a health or residential care provider or its employee. The witnesses must affirm the principal's apparent sound mind, freedom from duress, awareness of the document, and voluntary signing. A person physically unable to sign can expressly direct another person to sign the principal's name in the principal's physical presence. [78]

The statutory form and disclosure should be used in their current versions. Do not assume that the rules for witnesses to a will are identical to those for witnesses to a health care document. Store the signed directive where it is accessible, and give copies to the agent, alternate agent, primary care clinician, and relevant facilities.

Medical information and portable medical orders

Medical decision-making authority and permission to receive medical information are related but distinct. NH law provides an acting health care agent or surrogate with information needed for authorized decisions, subject to applicable limitations. HIPAA also recognizes legally authorized personal representatives, with exceptions. A separate appropriately drafted authorization can help identify people with whom providers may communicate while you retain capacity or outside the scope of an agent's decision-making authority. [79] [80]

An advance directive is not automatically a portable medical order such as a DNR or POLST. A person with serious illness should discuss those orders with the treating clinician. Give emergency responders and care facilities the appropriate current documents; an inaccessible directive cannot guide an urgent decision. NH addresses DNR and POLST compliance separately in its medical-decision statute. [81]

Children and other dependents

Parents should identify proposed guardians and backups, discuss values and practical ability to care for a child, and coordinate money management. The person caring for a child need not be the same person managing the child's inheritance. Court appointment and the rights of a surviving parent remain relevant; naming a guardian is not a guarantee that the nominee can immediately override another parent's rights. NH's guardianship statute addresses the child's interests, appointment, and parental rights. [82]

Prepare a practical care letter covering school, health providers, medications, routines, contacts, and the location of necessary documents. Keep it current and separate from legal instruments when frequent changes are expected. For an adult dependent, consider supported decision-making arrangements, powers of attorney if the person has sufficient capacity, benefits planning, and whether a guardianship question requires individual review.

What a complete incapacity plan accomplishes

The trustee should know how to document succession for trust property. The financial agent should know how to activate and use the power of attorney for other matters. The health care agent should understand medical wishes and know where the directive is stored. Each should know the attorney and other key advisers and how to obtain necessary information securely.

The goal is continuity of care and responsible management. Periodically walk through a hypothetical hospitalization: who pays the mortgage, who cares for pets, who communicates with the hospital, and who can find the relevant documents? Any unanswered question is a practical gap to resolve.

PART TWO Putting your plan into effect

8 A practical plan for avoiding unnecessary probate

Probate avoidance works asset by asset. The goal is to arrange lawful ownership or beneficiary transfers that match your intended distribution, while preserving appropriate control and the money needed to carry out the plan. A trust is one method. Beneficiary designations, survivorship ownership, and a properly prepared NH transfer on death deed may also be appropriate.

Step 1 Make an ownership map

List every asset, the exact legal owner, any loan, and the current primary and contingent beneficiaries. Separate retirement accounts from ordinary investments. Include small accounts, refunds, business interests, real estate in other states, and property received after your documents were signed. For each asset, ask who could obtain authority if you became incapacitated and who would receive it if you died tomorrow.

Do not assume that a married couple owns a home with survivorship rights solely because both names appear on the deed. Do not assume that a bank account's online nickname identifies its legal owner. Obtain the actual registration, deed, and beneficiary confirmation.

Step 2 Identify who needs continuing management

An outright transfer may be suitable for an adult who can manage money and whom you intend to own the property without continuing restrictions. It may be unsuitable for a minor, someone receiving means-tested benefits, someone vulnerable to financial exploitation, or a beneficiary whose inheritance should remain under continuing management.

Choose the intended destination before choosing the transfer method. If a child's share should be held in trust, a direct beneficiary form naming that child may undermine the trust plan. If a spouse needs flexible access, compare that preference with any goal of preserving a remainder for children from a prior relationship. These decisions belong in the same planning conversation.

Step 3 Use beneficiary designations deliberately

For eligible deposit accounts, ask the bank about a payable-on-death designation. NH's depository-bank statute gives the owner lifetime control and requires beneficiary changes to use the bank's prescribed form and manner. If no beneficiary survives, the balance can fall back into the last owner's estate. Obtain confirmation and ask about the institution's claim procedure and payment timing. A POD entry is not a substitute for a living trust's management instructions. [83]

For taxable securities, a transfer-on-death registration may be available under the NH security registration statute and the custodian's rules. Identify primary and alternate recipients and any restrictions on the available beneficiary format. The owner retains control during life; the death transfer is a different mechanism from a will. [84]

For retirement benefits and insurance, obtain current provider forms. Review spouse rights, divorce orders, contingent beneficiaries, percentages, and the consequences of naming a trust or estate. Many employer

retirement plans require a spouse's written consent to a different beneficiary or payment form. Do not assume that a prenuptial agreement or a will substitutes for the plan's requirements. [85]

Step 4 Review survivorship ownership carefully

Survivorship ownership can simplify transfer at the first owner's death. It can also give another person present rights, affect tax and gift analysis, expose property to problems involving the co-owner, or defeat the intended allocation among children. Adding an adult child to a deed or bank account is therefore a substantive transfer decision, not merely administrative assistance.

Distinguish authority to assist with an account from ownership of the account. A financial agent may be able to help without becoming a co-owner. Ask what happens at the second death: a joint account that passes easily to a surviving spouse can still require a new plan for that spouse's later death.

Step 5 Choose the method for each parcel of real estate

Compare trust ownership, an appropriate survivorship deed, and an NH transfer on death deed where suitable. A trust can coordinate ongoing management and multiple beneficiaries. A TOD deed may be suitable for a direct transfer when the recipient should own the property outright. Neither choice automatically resolves taxes, debts, Medicaid, mortgage, or insurance issues.

The dedicated TOD chapter explains NH's execution and recording rules and the work required after death. Never use a deed from another state as a shortcut. Have the existing title, legal description, ownership interests, and local recording requirements reviewed before signing.

Step 6 Fund the trust if you choose one

Complete the asset-by-asset funding process in the funding chapter. A signed trust schedule, a promise to transfer a house, or an instruction in a will is not necessarily a completed lifetime transfer. Deeds, assignments, account registrations, and beneficiary forms each do different jobs.

Retirement accounts generally remain under their retirement-account ownership structure and are coordinated through beneficiary designations. An ordinary trust-account transfer should not be used to move an IRA out of its tax-qualified structure. Life insurance ownership changes require separate analysis from beneficiary changes.

Step 7 Keep a will and a plan for expenses

Discuss a will even when you expect most property to avoid probate. It can cover overlooked assets and nominate an executor and guardians. A pour-over will directs probate property into a trust but still requires the appropriate probate process for that property.

Also identify how expenses will be paid. If every account passes immediately to different individuals and the executor receives no accessible cash, the family may face reimbursement requests, disputes, or the sale of property. Coordinate the will, trust, liquidity, and tax-allocation provisions so the person charged with administration can obtain funds lawfully.

Step 8 Check the result in writing

For every asset, keep the recorded deed, updated statement, accepted designation, or other completion evidence. Ask your attorney to review exceptions and unresolved items. Retest the plan after a death, divorce, new account, property purchase, refinance, business change, or relocation.

Situation	Approach to compare	Main question
Few accounts and capable adult recipients	Will plus coordinated designations	Is ongoing management unnecessary and are all assets covered
Several properties or incapacity concerns	Funded revocable trust plus supporting documents	Will centralized management justify funding and maintenance work
Minor children of different ages	Pot or separate continuing trusts	Should support follow family needs or separate shares
Beneficiary receiving disability benefits	Appropriate special needs planning	Whose assets are involved and which benefits must be preserved
Long term care planning	Elder-law review of available options	Can the owner afford restrictions and survive any transfer penalty
Family conflict or a business	Neutral fiduciary and tailored management provisions	Who has authority and how are disagreements resolved

Two examples

A relatively simple plan. Pat has modest savings, a retirement account, and two financially capable adult children. Pat wants equal outright inheritances. Counsel may compare a will, effective financial and health care documents, and coordinated beneficiary arrangements with the cost of a living trust. The review still needs to address the home, personal property, backup beneficiaries, and expenses. Having a modest estate does not eliminate the need for an organized plan.

A plan needing continuing management. Morgan has a rental property, taxable investments, and children aged 8 and 19. Morgan wants one person to manage the property during incapacity and support both children after death according to need. A funded living trust with a carefully chosen trustee may serve those goals better than a collection of direct beneficiary designations. The plan still needs a will, incapacity documents, tax review, and instructions for insurance and retirement benefits.

The best approach is the one whose legal consequences match the goals and whose required maintenance will actually be completed. No arrangement can responsibly promise that a court will never be involved or that a creditor can never assert a claim.

9 Signing storing and updating your will

The New Hampshire legal requirements

The person making the will must be at least 18, or be a married person under 18, and have the mental capacity required by RSA 551:1. For a New Hampshire will or codicil, RSA 551:2 requires a writing, the testator's signature or a signature made at the testator's express direction in the testator's presence, and signatures of at least two credible witnesses who attest to the testator's signature at the testator's request and in the testator's presence. [2] [86]

The practical signing procedure below deliberately uses a single, in-person ceremony. It is easier to document and also accommodates the self-proving acknowledgment. It should be organized by the drafting attorney when capacity, physical limitations, an interpreter, unusual family circumstances, or a likely contest creates additional concerns.

Witnesses and the notary have different jobs

The witnesses attest to execution. A notary or other authorized officer administers the sworn acknowledgment used to make the will self-proved. A notary's stamp alone does not replace the required witnesses. The will can be valid without being self-proved, but proof after death may require additional evidence. [86] [16]

Use two competent adults who are not receiving gifts under the will and are not married to beneficiaries. RSA 551:3 can void a beneficial gift to a witness or the witness's spouse unless there are two other subscribing witnesses. Avoid creating that issue rather than trying to fit an exception. [87]

A practical signing appointment

1. **Confirm the final document.** Read the complete will. Check names, relationships, gifts, backup beneficiaries, executor appointments, guardian nominations, and any reference to a trust. Confirm that all pages belong to the same final version. Resolve blanks and unclear language before signing.
2. **Choose a suitable setting.** Arrange a quiet appointment, without beneficiary pressure or interruptions. Bring current identification. Tell the attorney about medication, fatigue, vision or hearing limitations, language needs, or any reason you may have trouble reading, understanding, or signing. Schedule for a time when you can participate fully.
3. **Use the planned witnesses and authorized officer.** Keep the testator, both witnesses, and the officer together for the ceremony. The testator should identify the document as the will and request the witnesses' participation. A beneficiary should not direct answers or answer questions about the testator's wishes.
4. **Sign as instructed.** The testator signs the final paper document, with the witnesses observing. If another person must sign at the testator's direction, arrange the legal procedure in advance; do not improvise a signature or simply write "power of attorney." The witnesses then sign in the testator's presence. In the recommended ceremony, everyone remains together until the signing and acknowledgment are complete. [86]
5. **Complete the self-proving acknowledgment.** The testator and witnesses take the required oath before the authorized officer. They confirm the voluntary execution, the witnesses' signing at the testator's request and in the presence of the testator and each other, and the stated age, capacity, and absence of

undue influence. The officer completes the certificate. Do not sign a certificate reciting events that did not happen. [16]

6. **Check the completed original before anyone leaves.** Confirm signatures, dates, identification of the parties, and the officer's completed certificate. Correct errors under the attorney's direction. Copy or scan the complete executed document after the ceremony; a clean scan helps later review but does not remove the need to protect the original.

Remote witnessing is a specialized procedure

New Hampshire permits simultaneous sight-and-sound participation under RSA 551:2, III, with a qualifying notarial officer: the New Hampshire attorney who drafted the instrument, another qualifying attorney under that attorney's supervision, or a supervised paralegal. The statute allows counterparts and certain witnesses outside New Hampshire, but expressly does not authorize an electronic will. A casual video call with friends and a general electronic signature service is not this procedure. Have counsel arrange remote execution from beginning to end and satisfy the related notarial requirements. [86]

Protect the original and tell someone where it is

Keep the original in a secure location that can be accessed promptly after death. Ask the drafting firm whether it offers original-document storage; do not assume it does. If you use a safe or safe-deposit box, plan lawful access and make sure the executor knows where to begin. Avoid a system in which the only key or access information is locked inside the same container.

Give the executor a document-location sheet and current advisor contacts. Keep a copy in your estate-planning binder. Label copies as copies. Do not casually remove staples, separate pages, write notes on the signed original, or combine pages from different versions. Store asset inventories and passwords separately from the will so routine updates do not create questions about alteration.

After death, the person with custody generally must deliver the will to the probate court or named executor within 30 days after learning of the death. The named executor has a separate filing obligation, including when there are no estate assets to administer. [17] [18]

Change the will formally

A **codicil** is a formal amendment and must meet the will-execution requirements. For substantial or repeated changes, a new will often makes the instructions easier to follow. Adding handwritten changes, replacing one page, or signing a separate note can create uncertainty or fail to accomplish the intended result. New Hampshire recognizes specified methods of revocation, including another valid will or codicil and certain intentional destructive acts. Coordinate replacement and revocation with counsel so you are not left unintentionally without an effective plan. [86] [20]

Moving to New Hampshire does not automatically invalidate every out-of-state will. RSA 551:5 recognizes a will valid under the law where it was executed and recognizes qualifying out-of-state self-proof. Have local counsel review it for your present circumstances, state-specific procedures, and consistency with account and property arrangements. [88]

At the end of the appointment, you should be able to identify the signed original, explain the basic distribution, name the primary and backup fiduciaries, and state which assets still require separate funding or beneficiary work. Signing is one milestone in completing the plan, not the end of implementation.

10 Creating signing and funding your trust

Treat signing and funding as separate projects

Signing creates the written instructions. Funding puts particular property under those instructions. A complete plan also coordinates assets that should pass through beneficiary designations rather than lifetime trust ownership. The aim is an accurate asset-by-asset plan, not an instruction to put everything into one account.

Consider a homeowner who signs a trust but leaves the deed and savings account solely in an individual name. Writing those assets on an informal list may not complete the transfers required for clear legal ownership. The family can still face a probate proceeding. Conversely, moving an IRA into an ordinary trust brokerage account can create serious tax problems. Each asset needs the correct method. [89][90][91]

Step 1 Decide the operating rules before signing

Prepare a short decision sheet with your attorney. Include the initial and successor trustees; how incapacity is determined; who receives income and principal while you are alive; who benefits after death; when outright distributions occur; and what happens if a beneficiary or trustee dies first. For a joint trust, identify each person's contributions and which terms become fixed after the first death.

Ask for a plain-language explanation of the powers that deserve particular attention: authority to sell a home, make gifts, lend money, continue a business, divide shares, reimburse taxes, change trustees, or modify administrative provisions. Clarify whether two trustees must act together and how disagreements are resolved.

For an irrevocable trust, obtain an asset-specific tax and benefits analysis before transferring anything. Record the intended purpose of each transfer, available outside resources, and any limitations on future access. A signing appointment should confirm already-understood choices, not introduce major restrictions for the first time.

Step 2 Follow the correct execution rules

NH permits trusts to arise through transfer, declaration of trust, a power of appointment, or a court decree. Its Trust Code does not impose a universal two-witness or notarization requirement on every lifetime trust; it even recognizes oral trusts in limited circumstances, subject to other statutes and a demanding proof standard. That does not make an informal oral plan a sensible substitute for signed documents. The instrument's own requirements, property-specific laws, and any relevant other jurisdiction still matter. [21][92]

For a trust concerning land, NH separately requires a signed instrument, except for trusts arising or resulting by implication of law. This is one reason the oral-trust rule must not be treated as a shortcut for transferring a home. [93]

The capacity standard for creating, changing, revoking, or adding property to a revocable trust is the same NH standard required to make a will. Capacity, coercion, and undue influence can become central issues when a signing occurs during serious illness or family conflict. Arrange the signing while decisions can be made and documented clearly. [94][95]

A useful supervised signing process is:

1. Confirm names, trust date, trustees, beneficiaries, percentages, and successor provisions against the decision sheet.
2. Review the final document and all schedules, certifications, assignments, and deeds before signatures.
3. Follow the attorney's instructions for each signer, witness, acknowledgment, and acceptance. A will and a deed have their own formalities; signing a trust does not satisfy them.
4. Use the intended original documents and approved signing method. Do not substitute an online signature process simply because it is convenient.
5. Make a complete signed copy, including schedules and acknowledgments. Identify where originals will be stored and how a successor can obtain them.
6. Start the funding checklist immediately, with a responsible person and completion evidence for every item.

A notary's acknowledgment does not prove that the trust is appropriate, tax effective, properly funded, or immune from challenge. It performs a particular authentication function. Follow the full signing instructions rather than treating a notarized signature as the entire task.

Step 3 Establish the exact identity used for transfers

Use the trust name, execution date, and trustee identification consistently. An illustrative registration might read: **Jordan Example, Trustee of the Jordan Example Revocable Trust dated October 16, 2026**. This is an example of identifying a fiduciary capacity, not a deed form or a direction that every institution must use that wording. The actual document and institution's requirements control.

A **certification of trust** can provide relevant information without disclosing all inheritance provisions. NH specifies information such as existence, date, settlor, current trustee, powers, revocability, cotrustee authority, taxpayer identification, and how title is held. Recipients may request relevant excerpts establishing the trustee's identity and authority. The certification must remain accurate after amendments or trustee changes. [96]

Keep a funding packet containing the certification, required excerpts, identification documents, and a secure contact list. Provide full trust documents when legally or operationally appropriate, but avoid emailing Social Security numbers or sensitive financial records through unsecured channels.

Step 4 Use the correct tax identification number

Many ordinary revocable grantor trusts can use the grantor's taxpayer identification number under an allowed reporting method. IRS instructions state that certain grantor trusts do not need a separate EIN when the specified owner information is furnished to payers. An irrevocable trust is not automatically a nongrantor trust, so determine the reporting method rather than guessing from its name. [97]

When an EIN is required, obtain it through the IRS, retain the assignment notice, and match the legal name and fiduciary information to the tax reporting plan. The IRS provides EINs without charge. Apply once for the correct entity; do not create multiple numbers to solve an institution's clerical problem. [97]

A revocable trust becoming irrevocable commonly requires a new EIN. A trustee change alone does not. At the first death under a joint trust, identify whether there are continuing revocable and separate irrevocable

shares before changing all accounts to one new number. The estate's EIN and a trust's EIN serve different entities; consult the tax preparer about any available coordinated filing election. [98]

Step 5 Complete a funding plan for every asset

Use a secure inventory. Record the current owner, account type, approximate value, beneficiary, debt, intended treatment, action owner, and evidence of completion. Use only the last four account digits on shared planning worksheets. Review statements and actual deeds rather than relying on memory.

Asset category	Typical method to evaluate	Evidence to obtain
Ordinary bank and taxable investment accounts	Retitle or transfer to a trust account	Accepted forms and statement showing registration
Real estate	Attorney-prepared deed and related filings	Recorded deed and recording information
Household and other personal property	Appropriate assignment or title transfer	Signed assignment and any updated title
Retirement accounts	Coordinated beneficiary designation	Provider acknowledgment of beneficiaries
Life insurance	Beneficiary change or specialized ownership transfer	Insurer confirmation of the exact change
Business interests	Permitted assignment and company records	Consent, assignment, and updated ownership ledger

"Submitted" is not "completed." A rejected form, an unrecorded deed, or an old beneficiary entry can defeat an otherwise sensible plan. Assign a follow-up date until the evidence is in the file.

Bank accounts and certificates of deposit

Contact the institution's trust or account-maintenance department. Ask whether it retitles an existing account or requires a new one. Obtain its document checklist, trustee-signature rules, taxpayer-identification requirements, and handling of existing beneficiary designations. Confirm that the chosen registration gives your successor an understandable route to access under the trust.

For a checking account, map direct deposits, automatic payments, debit cards, checks, transfers, and online access before moving funds. Keep enough liquidity to prevent missed bills while changes are processed. If new account numbers are required, update each payment source and monitor both accounts until all expected activity has moved. Do not close the old account while checks remain outstanding.

For a certificate of deposit, ask whether retitling affects the term, interest, early-withdrawal penalty, or account number. Ask the institution to explain deposit-insurance treatment for the proposed ownership and beneficiaries. Do not assume that creating multiple trust accounts at the same bank automatically increases coverage.

Afterward, obtain a statement or signed confirmation showing the correct trustee registration. A display nickname such as "family trust savings" in online banking is not sufficient proof of the legal ownership record. Record the completion date and keep the institution's contact information for future successor-trustee questions.

Taxable brokerage accounts

Use the custodian's trust account or change-of-registration process. As an example of institution-specific requirements, Fidelity's account-change materials distinguish trust accounts, require supporting trust information, and direct clients through its own registration forms. Another firm may use a different process; use the form supplied by your actual custodian. [99]

Request an **in-kind transfer** when appropriate, meaning existing securities move without first being sold. Ask whether any holdings, margin borrowing, pledged collateral, options permissions, restricted securities, or alternative investments prevent a straightforward transfer. Do not authorize sales merely to make paperwork easier without understanding gains, losses, fees, and investment consequences.

Verify that cost-basis and acquisition-date records follow the assets. Preserve historical statements for older holdings with incomplete basis information. Confirm who can trade, receive statements, request withdrawals, and access the account. Review whether any prior transfer-on-death registration is being removed, replaced, or rendered irrelevant by trust ownership.

Real estate

Have a qualified attorney review the current deed and prepare the transfer. The street address alone does not establish the correct legal description or ownership interest. Review liens, mortgages, homestead rights, co-ownership, title insurance, property insurance, local tax benefits, rental arrangements, and any out-of-state requirements before signing.

For NH real estate, a deed or other conveyance must be signed by the grantor and acknowledged before an authorized officer and show the grantee's mailing address. Recording protects the conveyance against others under NH law. Retain the recorded deed with its registry information; an unsigned draft or a trust asset schedule is not equivalent. [89][90]

Federal law protects certain transfers into an inter vivos trust from exercise of a due-on-sale clause when the borrower remains a beneficiary and occupancy rights are not transferred, for covered residential property. This protection is conditional. It is not a blanket rule for every property, loan, or irrevocable trust. Have counsel check the loan and transaction before relying on the exception. [100]

NH real estate transfer tax rules also distinguish transaction types and trust arrangements. Do not assume that a transfer is exempt solely because no cash changes hands or the trust uses your name. Counsel should identify the applicable consideration, exemption or tax treatment, and required declarations. The state rules specifically address transfers involving revocable trusts and noncontractual transfers. [101]

After recording, confirm with the insurer that the ownership and coverage are properly coordinated. Preserve proof that property-tax bills reach the correct person. Review again after refinancing: if a lender required a temporary transfer out of the trust, confirm the intended restoration was actually completed.

Personal property vehicles and valuable collections

An appropriately drafted assignment can transfer certain untitled tangible property, but titled or regulated assets need their own process. Identify valuable art, jewelry, collections, equipment, and intellectual property separately so the trustee can locate and value them. Record insurance and storage arrangements.

For a car, boat, or other titled asset, ask counsel and the relevant titling authority whether trust ownership is appropriate and what documentation is required. Review loan and insurance consequences. Do not

assume that a general assignment changes a state title record. Firearms and other regulated property require specialized advice before any transfer.

An inheritance list is also different from present ownership. A memorandum stating which child should receive a painting at death may describe a future gift without transferring that painting into the trust now. Keep dispositive directions and evidence of present funding clearly identified.

Business interests

Before assigning an LLC, partnership, or corporate interest, review the operating agreement, partnership agreement, shareholder agreement, buy-sell terms, loan documents, and licenses. Ask whether the transfer requires consent or affects management rights, a purchase option, insurance, or a professional ownership restriction. An assignment of economic rights may not provide all the management rights the plan expects.

Update the appropriate company ownership records after a permitted transfer and provide the successor trustee with accessible copies. Coordinate the trust with the business succession plan: a trustee who can receive distributions may not be the right person to run daily operations.

S corporation interests require tax review. Only eligible shareholders, including specified types of trusts, can hold the stock without jeopardizing the election. A trust's eligibility can change after a death, and QSST or ESBT elections may be relevant. Do not assume that an ordinary family-trust provision is sufficient. [102]

Retirement accounts

Do not retitle an IRA, 401(k), or similar retirement benefit into an ordinary living-trust account as routine funding. These accounts have their own tax-qualified ownership and distribution rules. An IRA's use of a bank or custodian as "trustee" does not mean it is your estate-planning trust. A transfer to an ordinary trust can be treated as a distribution instead of a protected retirement-account transfer. [91]

Plan instead through the provider's beneficiary designation, subject to applicable spouse and plan rules. Compare naming an individual directly with naming an appropriately drafted trust. Individual designation can be simpler; a trust may be justified for minor beneficiaries, disability planning, control, or protection goals, but can produce less favorable payout or tax results.

Special requirements govern when trust beneficiaries are treated as designated beneficiaries for required-distribution purposes. IRS guidance addresses validity, irrevocability at the relevant time, identifiable beneficiaries, and required documentation. The trust's actual terms matter; a label such as "IRA trust" is not sufficient. [69]

Have counsel approve the exact primary and contingent beneficiary entries. Check percentages, the trust date, which share should receive the benefit, and the result if a beneficiary dies first. Obtain provider confirmation. Do not name the estate merely because the will then leaves the estate to a trust without first analyzing the retirement-tax consequences.

Life insurance and annuities

Separate the **owner**, **insured**, and **beneficiary**. Changing the beneficiary of a policy is different from transferring its ownership. A revocable trust can sometimes be the appropriate death-benefit recipient when it should manage proceeds for children or other beneficiaries. An ILIT requires its own ownership, premium, gift, and tax procedures, discussed in its dedicated chapter.

Ask the insurer to confirm the exact beneficiary and any ownership change in writing. Review contingent beneficiaries, employer-provided coverage, and replacement policies. Keep premium-payment arrangements working during the transition.

Treat annuities separately. Ownership changes and trust beneficiaries can affect contract rights and income-tax treatment. Ask for a written analysis before assigning an annuity or changing its owner. A form that an insurer is willing to process does not establish that the change is tax appropriate.

Savings bonds and digital property

TreasuryDirect has specific procedures for moving savings bonds to a trust and for later trustee changes and distributions. Its current instructions provide for electronic reissue of eligible EE and I bonds, require the appropriate forms, and require a trustee who can act alone for the TreasuryDirect trust account. Use the current instructions for the particular bond rather than writing a trust name on a paper bond. [103]

For digital property, inventory the service, type of asset, ownership terms, and lawful access mechanism. Distinguish cryptocurrency from ordinary online accounts and licensed digital content. Coordinate estate documents, provider tools, and secure access records. Do not put passwords or recovery phrases into a publicly recorded document or circulate them in a general funding worksheet.

Step 6 Verify and maintain the plan

At the end of funding, conduct a document-to-record comparison. A suggested log is:

Asset and last four digits	Required action	Completion evidence	Review date
Home	Deed to intended trustee	Recorded copy and registry reference	_____
Savings account	Trust registration	Statement or bank confirmation	_____
IRA	Approved beneficiaries	Provider acknowledgment	_____
Life insurance	Approved beneficiary or ownership action	Insurer confirmation	_____
Business interest	Approved assignment	Consent and ownership ledger	_____

Review the log annually and after marriage, divorce, a birth, a death, a move, refinancing, a substantial asset purchase, or an institutional merger. Ask how every new account and acquired property should be held before completing the transaction. Keep proof that transfers were accepted, not only proof that forms were mailed.

Trustees must maintain adequate records and separate trust property from their own property. Clear third-party ownership records are part of making the arrangement workable for successors as well as meeting applicable duties. [104]

Amendments restatements and revocation

Follow the document's amendment and revocation method. NH allows substantial compliance with a stated method and, in specified circumstances, another method supported by clear and convincing evidence of intent. Informal notes can therefore create disputes rather than clarity. For joint noncommunity property trusts, each settlor's contribution and the instrument's terms require review. [105]

An amendment changes selected provisions; a restatement rewrites the terms while generally seeking to continue the existing arrangement. Ask whether the name, date, taxpayer identification, certification, account registration, or beneficiary forms need updating. Revocation requires a coordinated plan for the property; do not destroy the document and assume deeds and accounts revert automatically.

An agent's power to revoke, amend, or direct trust property under NH law requires express authorization in both the power of attorney and the trust. Agent-made amendments or revocations also have statutory method and notice requirements. A broad financial power of attorney should not be assumed sufficient. [105]

Sample administrative requests

The following are starting points for communications after your attorney has approved the intended action. They are not transfer instruments and do not replace institution forms.

Request for an ordinary account registration change

"Please provide the requirements and forms for transferring or registering my nonretirement account ending ____ in the name of the trustee of my trust. The trust's exact name and date are ____. Please identify required certifications, signatures, taxpayer information, changes to account features, and how you will confirm completion. Do not liquidate investments or change beneficiaries until I provide separately approved instructions."

Request to confirm a beneficiary update

"Please confirm that the beneficiary designation submitted on ____ for account or policy ending ____ has been accepted. Please provide the current primary and contingent beneficiaries, percentages, and the recorded trust name and date, if applicable. Please identify any missing information or rejected entries so I can correct them."

The most useful final question is practical: if your successor had to act tomorrow, could that person identify the assets, prove authority, and find evidence that the plan was completed?

11 Maintaining the plan and preparing the people who will act

Estate planning continues after signing. A good maintenance process is short, repeatable, and supported by documents. Put a yearly review on your calendar and conduct an additional review after significant changes. The yearly interval is a practical suggestion, not a legal deadline.

A yearly review

Compare your current family circumstances, assets, and priorities with the plan. Confirm that named agents, executors, trustees, and guardians are alive, willing, able to serve, and reachable. Review successor appointments and whether co-fiduciaries will work effectively together. Ask whether a beneficiary now has a disability, receives benefits, has creditor concerns, or needs different management arrangements.

Review account titles and accepted beneficiary forms against the funding log. Add new assets and remove closed accounts. Check the result of refinancing, mergers, employer changes, insurance replacements, and retirement rollovers. Maintain records of asset cost and improvements, not only current values. Preserve documentation of gifts and other transfers relevant to later tax or Medicaid analysis.

Major review triggers include marriage, divorce, birth or adoption, death, incapacity, a move to another state, inheritance, business sale, new real estate, significant changes in health, and changes in law. Do not rely on an automatic statutory change after divorce to fix all documents and beneficiary forms.

Digital assets and access

Make an inventory of important email accounts, cloud storage, photographs, domain names, online businesses, financial platforms, social media, subscriptions, and cryptocurrency. Note which items have monetary value, sentimental value, recurring charges, or security implications. Identify where lawful access instructions are kept without putting passwords or recovery phrases in the inventory itself.

NH's digital-assets statute gives priority to certain changeable online tools over contrary estate-document directions. Where no such tool has been used, a will, trust, power of attorney, or other record may direct disclosure, subject to federal law and other limits. Consent to access the content of communications matters; authority over an account list is not necessarily the same as authority over message contents. [106]

Review provider legacy-contact tools and coordinate them with the documents. A fiduciary should use the provider's lawful process and should not impersonate the deceased user. For cryptocurrency, custody and recovery arrangements require particular attention: a valid legal right is not enough if the authorized person cannot recover access, while disclosure of a recovery phrase to the wrong person may permit theft. [106]

A practical letter for the family

Keep a separate letter identifying advisers, document locations, emergency contacts, household responsibilities, and personal wishes. It can explain why a decision was made, describe a pet's care, list sentimental property, or identify charitable interests. Distinguish a personal explanation from a legally effective amendment. Have counsel review changes intended to alter inheritance or fiduciary authority.

A useful letter tells the successor where to begin without exposing private financial credentials. Store it securely and tell the appropriate people how it can be found. If you use a password manager, review its emergency-access function and recovery arrangements and document the lawful process.

Prepare fiduciaries before they are needed

Ask the proposed executor or trustee whether the person understands the workload. Provide a general description of assets, advisers, and special circumstances without necessarily sharing every inheritance detail. Discuss whether assistance from a lawyer, accountant, investment adviser, property manager, or professional trustee will be needed.

A fiduciary should understand that the role brings duties to others. Beneficiaries may have different interests. Documentation, separate accounts, consistent communication, and an orderly distribution process protect everyone. A person who cannot serve should tell you while you can name a substitute.

Family situations needing individual attention

Blended families. Discuss housing rights, remarriage, whether the survivor can change beneficiaries, and whether children of a prior relationship should have independent protections. Explain who pays taxes, insurance, and repairs on a home used by a surviving spouse.

Unmarried partners. Identify desired inheritance and decision-making authority expressly. Do not assume that being an emergency contact gives ownership, medical authority, or authority over probate property.

Unequal inheritances. Examine the actual projected values and tax consequences. A retirement account and a taxable brokerage account with the same statement value may produce different after-tax inheritances. Consider a neutral fiduciary if one beneficiary will also make discretionary decisions affecting others.

Family businesses and rental properties. Separate authority to own an interest from the skill and authority to operate the business. Maintain insurance, contracts, operating information, and cash reserves. Consider a buy-sell agreement or management transition with the appropriate advisers.

Property outside NH or noncitizen family members. Identify the issue at the planning meeting. Another state's or country's probate, property, tax, and marital rules may require coordinated documents or specialized advice. Avoid signing a foreign will or deed without checking whether it affects the rest of the plan.

Veterans and federal employees. Review benefit-specific beneficiary forms, survivor benefit elections, retirement plans, and any former-spouse obligations with the administering agency. An estate document does not replace a required federal benefit election.

Documents to preserve

Keep the signed originals, current trust amendments or restatement, recorded deeds, accepted beneficiary confirmations, funding records, tax identification notices, relevant tax returns, appraisals, and fiduciary contact information. Retain older instruments as directed by counsel, clearly marked so they are not mistaken for the current plan. Do not alter, remove pages from, or write changes onto a signed instrument without legal guidance.

Review storage for fire, water, theft, and access during incapacity or after death. A safe deposit box or digital vault is useful only if the appropriate person can lawfully obtain access when needed. Keep an off-site or secure electronic copy and a record of where each original is located.

At a review meeting, ask one practical question: if the people named in this plan had to act tomorrow, could they find the documents, prove their authority, locate the assets, and understand their responsibilities? Resolve gaps while you can participate.

PART THREE Carrying out the plan

12 Administering an estate as executor

Start by identifying the job you actually hold

An executor administers the probate estate after appointment. A trustee administers property held under a trust. A beneficiary claims property payable directly to that beneficiary. One person may occupy several roles, but each has its own authority, accounts, expenses, and records. Do not deposit trust money into an estate account merely because you hold both offices.

This chapter follows an ordinary New Hampshire estate from the first days through closing. Use the signed documents, current court instructions, and orders in the actual case. A contested will, insolvent estate, business, nonresident decedent, minor beneficiary, or uncertain real-estate title may require additional proceedings. The calendar below is a starting framework, not a guarantee that all claims expire or administration ends on those dates.

Step 1 Preserve people property and records

Arrange immediate care for dependents and pets. Locate funeral instructions and the appropriate decision-maker. Order several certified death certificates; ask each institution whether it requires an original certified copy before ordering excessive quantities.

Secure the home, vehicles, valuables, mail, and digital devices. Photograph rooms and valuable contents before items are removed. Inventory keys and access devices. Tell the insurer about the death and any vacancy, and confirm coverage before cancelling policies. Keep heat, essential utilities, taxes, and necessary property protection under review. Preserve records before cancelling a phone or email account that may contain important administration information.

Locate the original will and every codicil, the complete trust and amendments, recorded deeds, account statements, beneficiary confirmations, marital agreements, divorce orders, tax returns, loan records, business agreements, and insurance policies. Start a contact list and a log of calls, documents received, expenses, and urgent deadlines.

Do not continue using the decedent's power of attorney after you know of the death. It terminates at death. Preserve assets and obtain the authority needed for transactions instead of signing in the decedent's name or using the decedent's access credentials as a substitute for institutional fiduciary procedures. [1]

Step 2 Deliver and file the original will promptly

The custodian of a will must deliver it to the probate court or the named executor within 30 days after learning of the death. The named executor must file within 30 days after death or within 30 days after learning that the executor was named, whichever is later. These are distinct statutory clocks. If there are assets, the nominee must seek to prove the will or file a written refusal to serve. If there are no estate assets, the statute requires the death certificate and filing of the will without administration. [17] [18]

Keep the original intact. If it is missing, appears altered, or only a copy exists, tell counsel immediately. Do not reconstruct a signed instrument from loose pages. Preserve envelopes and correspondence that explain where it was found. If multiple wills exist, provide all of them to counsel rather than choosing one yourself.

Step 3 Separate probate property from other transfers

Create an asset list with legal owner, beneficiary, date-of-death value, debt, supporting document, and person authorized to act. Verify the actual account or deed rather than relying on the family description of ownership.

Asset situation	First question	Likely person to act
Sole ownership without effective transfer arrangement	Is this probate property?	Court-appointed executor or administrator
Trust-titled property	What trust and current trustee hold title?	Acting trustee
Account or policy with beneficiary	Is the designation valid and beneficiary living?	Named beneficiary under institution's procedure
Joint property	Does title actually create survivorship?	Survivor if applicable
Recorded TOD deed	Were requirements met and transfer triggered?	TOD beneficiary, with title counsel

Keep nonprobate property on a separate working schedule. The executor may need its value for taxes or claims even though it is not collected into the probate bank account. A TOD transfer can remain exposed to allowed estate claims when probate property is insufficient. [14] [107]

Do not assume that the existence of a trust means no estate needs opening. A refund, sole-name account, lawsuit, unassigned asset, or failed beneficiary designation may require probate authority. Conversely, do not open a full administration solely because someone owned valuable property if all of it passes through effective nonprobate arrangements and no other legal reason requires appointment.

Step 4 Choose the court and administration route

For a New Hampshire resident, venue generally follows the county where the decedent was last an inhabitant. The statute supplies different rules for a nonresident with New Hampshire property or an applicable cause of action. Real estate in another state may require advice and proceedings there. [108]

The main choices are full administration, waiver of full administration when available, and summary administration as a later closing method. Waiver eligibility depends on the statutory circumstances, assents, and court discretion; it is not simply a small-estate dollar exemption. Summary administration generally becomes available only after at least six months and when its remaining conditions are satisfied. [15]

Before accepting, estimate the work, family dynamics, travel, recordkeeping, and need for professional help. You can decline nomination through the appropriate filing. If willing to serve, ask counsel to identify any conflicts, such as a debt you owe the decedent, a purchase you want to make from the estate, or a claim for reimbursement that other beneficiaries dispute.

Step 5 Petition for appointment

Use the Judicial Branch's current estate filing process. Estate matters generally use electronic filing unless an exception is granted. The petition is **NHJB-2145-Pe, Petition for Estate Administration**. Gather the

required facts before starting the filing interview or form. Follow current instructions for sending the original will and codicils and the certified death record; uploading a scan does not replace every original-document requirement. [13] [109]

The packet commonly includes the petition, death documentation, will and codicils if any, beneficiary and heir information, and any required assents, declinations, resident-agent appointment, or out-of-state-will materials. A trust named as beneficiary may require appropriate trust certification. Do not file the complete private trust unless the applicable procedure or court requires it.

The statute requires the surviving spouse and known heirs at law to be identified, with relationships and known addresses, even if the will leaves property to someone else. A certified death record generally precedes appointment unless the judge grants a waiver. The named executor has statutory priority, but qualification and appointment still matter. [110] [15] [3]

A nonresident fiduciary may need a New Hampshire resident agent for service and claims. Address that requirement in the opening packet. [15] The court decides bond and security requirements. Outside an applicable waiver, RSA 553:13 includes a personal-bond rule for estates with gross value of $25,000 or less and judicial discretion to waive or alter security. A will's request concerning bond should be presented to the court; do not treat it as automatic permission to ignore the appointment order. [111]

Pay the current filing and publication charges, respond promptly to deficiencies, and wait for appointment. Obtain the **Certificate of Appointment** and certified copies as needed. Read the restrictions and dates on the order before presenting it to financial institutions. A submitted petition is not an issued appointment.

Step 6 Establish financial controls for the estate

Apply for the estate's EIN when required, using the IRS's free official process. Retain the confirmation permanently with the estate's tax records. Open an estate account with the institution's required death, appointment, identity, and EIN documents. Confirm the exact fiduciary title and authorized signers. [112]

Deposit estate receipts in that account. Pay authorized estate expenses from it. Never use a personal checking account as the estate's clearing account. For any necessary personal advance, keep the receipt and a separate advance ledger; obtain proper authorization before reimbursing yourself.

Set up four working registers:

- **Assets:** ownership, valuation evidence, collection date, sale or distribution, and remaining balance.
- **Transactions:** date, payor or payee, amount, purpose, account, and supporting record.
- **Claims:** claimant, reason, amount, date received, evidence, priority, status, and action taken.
- **Deadlines:** legal trigger, due date, responsible person, filing method, and proof of completion.

Reconcile the account each month. Keep statements and receipts in a structure someone else could audit without interviewing you. An estate ledger should explain both cash movements and noncash distributions. Statutory accounting requires itemized receipts and payments with dates and their sources or purposes. [113]

Step 7 Complete notices and calendar the separate clocks

The clerk generally arranges publication of appointment within 15 days, with an exception for estates having gross value of $10,000 or less. Verify completion rather than assuming publication occurred. [114] Separately, the executor must notify specifically named legatees, the surviving spouse, and known heirs as

required and certify the notice. Follow the court's current method and preserve evidence of delivery. Court mailing of the original petition should not be assumed to satisfy every later duty. [115]

Trigger or time	Required action or issue	Qualification
Within 30 days after custodian learns of death	Deliver will to court or named executor	Custodian's duty [17]
Within 30 days after death or learning of nomination, whichever later	Named executor files will	Includes no-assets filing route [18]
Within 15 days after appointment	Clerk causes publication	Statutory $10,000 exception [114]
Within 60 days after appointment	Required will-beneficiary/spouse/heir notices	Certify by day 90 [115]
Within 90 days after appointment	Inventory, when required	Waiver or specific court order may change obligation [116]
Six months after original grant	General creditor-demand deadline	Exceptions, suspension, and distinct claims apply [117] [118]
Six months after probate of will	General period for specified will challenges	Different trigger; statutory exceptions exist [11]
Six months after appointment	General spouse-election deadline	Possible good-cause permission; recording if land involved [19]
Six to twelve months after appointment	Waiver closing affidavit	Extension for good cause may be granted [15]
At least six months after appointment	Earliest ordinary summary-closing motion	All other prerequisites must be satisfied [15]
One year after appointment; annually thereafter	Account in full administration	Unless excused or another route applies [111] [119]
One year after original grant	General deadline for ordinary creditor suit	Statutory exceptions and suspension apply [120]

Date of death, date of appointment, date the will was proved, and date a notice was sent can differ. Record each separately. Ask counsel to calculate deadlines in contested, late-opened, suspended, or converted proceedings. Do not replace a court-specific deadline with a date copied from this table.

Step 8 Inventory and value the property

When an inventory is required, file it within 90 days after appointment. It must identify estate property, date-of-death fair market values, and how those values were determined. [116] Request account statements as of death, mortgage balances, and reliable appraisals for assets where value is material or disputed.

An assessed property-tax value may not be a suitable market-value conclusion for a tax return, contested allocation, or beneficiary buyout. Obtain a valuation appropriate to its purpose. Photograph and document

valuable personal property. For a business, collect operating agreements, financial statements, debts, buy-sell terms, and valuation information before assigning a number.

The inventory is a snapshot. The account later explains changes: additional assets discovered, receipts, income, sales, gains or losses, expenses, and distributions. Tell counsel about later-discovered property and make required corrections. Do not quietly omit an asset because collecting it is inconvenient.

Step 9 Manage property while administration continues

Keep sufficient cash for predictable bills and avoid unnecessary investment risk for money expected to be distributed soon. Document why assets are retained or sold. Preserve specific gifts where the will and lawful claims permit. If family members want furniture or jewelry, use a written inventory and signed receipts instead of informal removal.

For a residence, confirm who may occupy it, who pays utilities and carrying costs, and whether rent is appropriate. Put any interim arrangement in writing. A family member's expectations are not a substitute for title and fiduciary authority. Review leases, tenants' rights, security deposits, repairs, and insurance before changing occupancy.

Keep compensation and reimbursement transparent. Record time, services, travel, and expenses contemporaneously. Discuss the method with counsel and disclose amounts through the required accounting or approval process. Do not pay yourself a percentage based on something a friend says executors usually receive.

Step 10 Investigate claims and test solvency before paying

Collect bills and written claims; verify the debtor, amount, insurance coverage, credits, and supporting contracts. An invoice is evidence to review, not proof of its priority or validity. Do not promise to pay a debt personally.

For ordinary claims governed by RSA 556, demand generally must be exhibited within six months after the original grant of administration; ordinary suit is generally subject to a one-year appointment-based limit, with exceptions and suspension rules. The six-month date does not erase every lien, tax, governmental claim, tort issue, or later-permitted claim. Obtain a claims review before distributing. [117] [120] [118] [121]

RSA 554:19 establishes payment priorities: administration expenses; reasonable necessary funeral, burial, and cremation costs; federally preferred debts and taxes; specified state assistance claims; other lawful debts; and finally beneficiaries. Lower classes do not receive payment before higher classes are paid, and claims within a class are not to be preferred over each other. Federal priority rules must also be considered. [8]

Notify the Office of Reimbursements when you know of liability of the kind identified in RSA 554:19-a. Investigate Medicaid and other assistance history rather than assuming that a house or trust passed free of recovery issues. [122]

If the estate cannot pay everything

Stop beneficiary distributions and seek advice before paying ordinary creditors selectively. Under RSA 554:19-b, an administrator may petition for an initial insolvency determination, providing estate values, creditors, claims, and relevant revocable-trust assets. Interested persons receive notice. A later petition proposes distribution under the legal priority rules; it cannot be made sooner than six months after the

grant. The statute provides a 30-day objection period and a further wait of at least 30 days after the distribution order before distributions and the confirming affidavit. Follow the court's order exactly. [113]

Example: the estate has $40,000 cash and $70,000 in likely valid claims and administration costs. Paying the first three credit-card demands in full can prejudice later creditors with higher priority. A promise that each child will receive $5,000 does not change the required payment order. [8]

Step 11 Coordinate the tax work early

Engage a tax professional familiar with estates. Provide prior returns, gift-tax records, income documents, date-of-death values, sale documents, beneficiary details, and your ledger. Separate the decedent's predeath income from income received by the estate or beneficiaries after death.

The final individual return normally follows the due date that would have applied if the person had lived. The estate may have its own income-tax filing obligation even if no federal estate tax is owed. A domestic estate generally files Form 1041 when gross income is $600 or more, or a beneficiary is a nonresident alien. Calendar-year and fiscal-year estates can have different due dates; beneficiaries may receive Schedules K-1. [55] [25]

Use Form 56 to give the required notice of the fiduciary relationship to the IRS. The current instructions call for separate notices for separate persons or entities represented, such as the decedent and the estate; cofiduciaries also have notice obligations. Form 56 is not a substitute for the tax professional's Form 2848 authorization or an address-change form. [123]

Discuss Form 706 and portability well before the ordinary nine-month-after-death deadline. Even a nontaxable estate may benefit from a portability election for a surviving spouse. The tax review must include relevant nonprobate assets, not just the probate inventory. Also ask about state returns where the decedent or estate has connections, estimated payments, basis documentation, and whether a trust/estate election is appropriate. [55] [14]

Keep a written tax reserve calculation. "The accountant has not sent a bill" and "the estate probably owes no estate tax" are not reliable measures of remaining obligations.

Step 12 Resolve real estate with title counsel

Confirm whether the land passes under the will, a survivorship deed, a TOD deed, or a trust. The executor should not sign a deed for property owned by a different legal recipient simply to make the transaction move faster.

For probate property, determine the sale authority from the will, statutes, and orders. RSA 559:18 provides a written-consent route, subject to the will, with protections for persons under disability or unknown persons. RSA 554:17 addresses licensing a necessary sale where personal assets are insufficient for debts and legacies. A general belief that a sale would be convenient is not the required authority. [124] [125]

Before listing, confirm ownership, liens, appraisal, occupancy, required consents, and signing authority. Have a closing attorney address the deed, recording, payoff, title insurance, and treatment of proceeds. If inherited or devised property is not sold by license or consent, RSA 554:18-a requires notice to the municipality and certification to the probate court before the final account. [126]

Step 13 Calculate and document distributions

Prepare a written schedule showing specific gifts, debts and expenses, taxes, approved compensation, reserve, and residue. Check the will's survivorship, substitute-beneficiary, tax-allocation, and trust provisions. Identify beneficiaries who are minors, deceased, missing, receiving means-tested benefits, or considering disclaimers before releasing funds.

For a pour-over gift, confirm the receiving trustee's current authority and exact trust title. For in-kind distributions, agree on the authorized valuation date and allocation method with counsel; equal dollars do not necessarily mean equal tax results. For any interim distribution, obtain advice about authority and reserve adequacy. A beneficiary's receipt does not solve an unpaid creditor or tax problem.

Example: two beneficiaries each receive half the residue. One wants securities and one wants cash. Record the values used, tax-basis information supplied, who bears market movements before transfer, and the resulting balances. Do not divide using an old account statement if today's values have materially changed.

Step 14 Use the correct closing route

Waiver of full administration

Qualifying waiver cases generally omit the inventory, bond, and formal accounting. The closing affidavit is filed no earlier than six months and no later than one year after appointment unless an extension is granted. It addresses absence of outstanding obligations and lists the decedent's real estate. Completion requires court approval. Waiver does not excuse debts or proper administration, and an interested person may seek full administration for good cause before the affidavit is filed. [15]

Summary administration

In an eligible estate outside waiver, the court can end supervision after at least six months when the required claims, tax, and assent conditions are met. The motion must truthfully address outstanding obligations and the lack of need for continued supervision. Approval dispenses with the final court account and balance receipts and releases the bond, but the fiduciary must finish administration under the will and law. [15]

The current official motion asks about real-estate notices and supporting assents/receipts. Obtain assent from the legally required people, not only the easiest family members to contact. An assent includes giving up the request for a final accounting and asking the court to grant the motion; explain that before requesting a signature. [127] [128]

Full accounting and closing

Prepare and file the final account under the court's instructions, with required notice and supporting schedules. In ongoing full administration, accounts ordinarily begin within one year after appointment and recur annually unless excused. Reconcile the final balance, obtain allowance and distribution authority, make the ordered distributions, and submit required receipts. Confirm closure and release of any bond from the court record. [111] [119]

Court forms to locate

Use the current edition from the Judicial Branch and the form generated or requested by its filing system. These identifiers are a finding aid; they do not mean every case needs every form. [13] [109] [127] [128] [129]

Form	Common purpose
NHJB-2145-Pe - Petition for Estate Administration	Open case and seek appointment
NHJB-2120-Pe - Appointment of Resident Agent	Address applicable nonresident-fiduciary requirement
NHJB-2123-Pe - Declination	Record decision not to serve
NHJB-2125-Pe - Inventory of Fiduciary	Report required probate assets and values
NHJB-2117-Pe - Executor's/Administrator's Accounting	Report administration transactions
NHJB-2144-Pe - Waiver of Full Administration Statement	Close an eligible waiver case
NHJB-2149-Pe - Motion for Summary Administration	Seek summary closing
NHJB-2122-Pe - Assent for Summary Administration	Required agreement to summary process
NHJB-2139-Pe - Receipt	Document beneficiary receipt
NHJB-2142-Pe - Notice to Towns and Cities	Address qualifying inherited real estate

Step 15 Finish the practical closeout

Pay remaining authorized costs, resolve outstanding checks, complete tax filings and reporting, and distribute any properly released reserve. Close bank and investment accounts only when no receipts or obligations remain. Send a concise closing report identifying distributions, tax information, any continuing reserve, and whom to contact about later correspondence.

Preserve the original documents, appointment, court orders, inventory, accounts, statements, appraisals, tax returns, claims decisions, receipts, and communications for the retention period advised by counsel and the tax professional. Protect personal identifiers; the official accounting form warns that it is public and must not contain prohibited full account numbers or other protected information. [129]

If an asset, claim, or refund appears after closing, ask whether reopening or a supplemental filing is required. Do not revive old banking authority informally. The final check is whether the property reached the correct recipients, obligations were handled, required filings were completed, and the record explains every material decision.

13 New Hampshire transfer on death deeds

A useful option for a simple real estate transfer

A **transfer on death deed**, or TOD deed, directs a New Hampshire real-property interest to named beneficiaries at the owner's death. The Uniform Real Property Transfer on Death Act became effective July 1, 2024. The deed is revocable and non-testamentary: it operates outside the will. Capacity to make or revoke it is measured by the will-capacity standard. [6]

This can be an efficient option for an owner who wants a straightforward outright gift of a home to capable adult beneficiaries. It may be less suitable when the goal is ongoing management, a child's staged inheritance, disability-benefit protection, blended-family support arrangements, or coordinated administration of many assets. A living trust can address those management needs more comprehensively. A TOD deed changes the transfer route for the described land; it does not provide an entire estate plan.

What it does during your life

You retain your ownership rights, including the ability to sell or mortgage the property. The beneficiary does not acquire a current legal or equitable interest just from being named, and the beneficiary's creditors do not thereby gain access to the property. Your own creditors' rights are not eliminated. The statute provides that the deed does not affect the transferor's or designated beneficiary's public-assistance eligibility during the transferor's life. [130]

That does not turn the deed into Medicaid asset protection. You still own the property during life; eligibility, home treatment, liens, and estate recovery require their own analysis. Nor does a TOD deed appoint someone to manage the property during your incapacity. Pair it with appropriate lifetime financial-authority planning.

Creating and completing the deed

1. **Review the existing title.** Obtain the current recorded deed, legal description, mortgages, liens, and any prior TOD instruments. Determine each owner's actual interest and whether ownership includes survivorship. Have title counsel identify marital, homestead, contractual, and title issues.
2. **Choose the receiving arrangement.** Decide who takes, in what shares, and what happens if a beneficiary dies first. Discuss whether multiple recipients should become co-owners or whether a trustee should manage the property. Naming three children without a management plan can create three owners with different financial needs.
3. **Have a compliant deed prepared.** It must meet the ordinary deed execution requirements, bear the statutory TOD title, and state that the transfer occurs at death. The grantor signs and acknowledges the instrument before an authorized officer; the deed must contain the grantee mailing address. [131] [89]
4. **Record promptly.** The deed must be recorded in the county or counties where the property lies **before death and within 60 days after execution**. A signed deed in a desk drawer is not sufficient. Check that the registry actually accepted and indexed the instrument, and retain the recording information. [131]

5. **Coordinate the plan.** Update the asset inventory and document-location sheet. Reconcile the deed with the will, trust, intended expense allocation, and beneficiaries' circumstances. Revisit it after a sale, refinance, marriage, divorce, or beneficiary death.

Changing or revoking it

A later will and destruction of your copy do not revoke a recorded TOD deed. Use a qualifying later TOD deed, express revocation instrument, or deed that expressly revokes it, properly executed and acknowledged after the earlier instrument and recorded by the earlier of 60 days after execution or death. A lifetime conveyance can also affect the property independently. Special rules apply where several transferors or joint owners signed; a joint-owner deed is revoked only by all living joint owners under the statute. [7]

Do not assume that telling the beneficiary or attorney you changed your mind completes the revocation. Request the recorded instrument and confirm its effect on every parcel and owner's interest.

What happens at death

The beneficiary normally must survive the transferor. Default lapse rules differ from a will's anti-lapse rule. Unless the deed provides otherwise, multiple beneficiaries take equal undivided interests without survivorship, and a failed share can pass proportionately to the remaining beneficiaries. If a joint owner survives the transferor, survivorship ownership controls; the TOD deed becomes effective when the transferor is the last surviving joint owner. The beneficiary takes subject to existing encumbrances and applicable estate claims, without a warranty of title. [132]

The statute also excludes TOD property from the probate estate for the specified spouse-election and omitted-child calculations. These effects deserve deliberate review in blended-family and disinheritance planning. [132] Divorce after execution can cause a designated former spouse to be treated as predeceased unless the deed provides otherwise. [133]

A postdeath checklist for the beneficiary

The notice-of-death affidavit requirement was added effective **August 22, 2025**. A beneficiary receiving property must record a notarized affidavit within 60 days after the transferor's death. It identifies the beneficiaries and addresses, property address, TOD deed date and recording book/page, decedent, date and place of death, and future tax-bill recipient. The registry returns the original and sends a copy to the municipal assessor. Filing is required, but the statute expressly says it is not a condition of title transfer. [134]

Ask title counsel to prepare or review the affidavit and confirm that this death actually triggers the TOD transfer. Then:

- Preserve the death certificate, deed, affidavit, title search, and recording receipts.
- Confirm the new insurance and tax-billing arrangements promptly.
- Obtain a date-of-death value for tax and accounting purposes.
- Coordinate with the executor about estate claims before selling or giving away the property.
- Agree in writing on occupancy, carrying costs, repairs, sale decisions, and buyout arrangements if several beneficiaries inherit.

Probate avoidance does not eliminate claims

When the probate estate is insufficient to satisfy an allowed claim, the estate may enforce liability against TOD property. If several properties passed by TOD deed, the statute apportions liability by net date-of-death values. Its two-year provision applies when no estate administration was granted within two years after death; it is not a universal promise that all TOD property becomes claim-free exactly two years after death. [107]

Before a sale, mortgage, disclaimer, or distribution, obtain a coordinated title, tax, and creditor review. The executor and beneficiary should share the information needed to resolve obligations while keeping their separate ownership and authority clear.

14 Serving as trustee during incapacity and after death

Identify your authority before acting

A successor trustee administers trust property under the trust's terms. The title does not give authority over every asset the settlor owned. The personal representative, an agent under a power of attorney, a retirement-account beneficiary, and a trustee may have different responsibilities even when one person fills several roles. Identify the capacity in which you are acting on each transaction.

Obtain the complete signed trust and amendments, asset records, relevant certificates, and contact details for the attorney and tax preparer. Read the provisions governing succession, incapacity, beneficiaries, distributions, compensation, and powers. Locate any co-trustee, trust advisor, or protector whose consent or direction is relevant. Do not treat an old summary as the controlling document.

Follow the specified acceptance process. NH law can also recognize acceptance through taking delivery of property or exercising trustee powers when the document does not provide an exclusive method. A named trustee may decline, and limited protective or investigative actions can sometimes be taken without accepting if statutory conditions are met. Obtain advice before acting if property presents environmental exposure, major debt, litigation, or a conflict. [135]

Make an initial responsibility checklist. Who secures real estate, pays current expenses, retrieves records, communicates with beneficiaries, prepares tax filings, and checks deadlines? Delegating work is often sensible, but the trustee should know who is doing it and what remains unfinished.

When the settlor becomes incapacitated

Use the trust's actual incapacity procedure. It may require specified medical determinations or another method; a relative's impression does not automatically trigger succession. Obtain the required evidence and an updated certification or other proof of authority before approaching institutions. Keep medical information confidential and disclose only what is needed.

Create a care and cash-flow budget with the appropriate health-care decision maker and financial agent. Identify housing, care providers, insurance, taxes, utilities, and personal needs. Determine which bills belong to the trust and which must be handled from assets outside it. Review how recurring expenses will be paid and maintain a reserve for interruptions in income or unexpected care.

The settlor's needs and instructions remain central. Future beneficiaries should not pressure a trustee to deny authorized care merely to preserve an inheritance. Conversely, relatives should not receive gifts because they say the settlor "would have wanted it" when the document does not authorize them. Document unusual requests and the basis for decisions. [24]

Review reporting duties when the settlor loses capacity; the reporting position may differ from the period when a capable settlor controlled a revocable trust. Coordinate benefit payments with any separately required government representative arrangement rather than assuming trusteeship supplies every form of authority. [31][136]

First actions after a death

1. Obtain death certificates and inform counsel and the tax preparer. Confirm the acting trustees and preserve the complete estate-planning file.
2. Secure property and valuable records. Maintain suitable insurance, necessary utilities, and essential payments while ownership and liabilities are clarified.
3. Inventory what the trust actually owns. Compare statements, deeds, assignments, and beneficiary confirmations; do not assume the funding schedule is conclusive.
4. Separate trust assets from probate assets, jointly owned property, and benefits payable directly to individuals. Coordinate with the personal representative.
5. Obtain date-of-death values and preserve supporting records. Arrange appraisals where appropriate rather than assigning unsupported estimates to important property.
6. Determine tax identification, accounts, reporting, and filing responsibilities. A revocable trust becoming irrevocable and an estate usually require distinct identification analysis. [98]
7. Calendar beneficiary notices, contest procedures, creditor matters, tax deadlines, and document-specific distribution events with counsel.
8. Prepare a preliminary administration budget and communication plan before promising distribution dates.

Early protection of assets is different from final distribution. Collecting records and paying an insured property's essential expenses can be urgent; dividing everything among beneficiaries usually requires more analysis.

Notice and information obligations in New Hampshire

NH's reporting rules are not identical to every state's version of the Uniform Trust Code. Many are default rules that the instrument can change; mandatory duties and court authority still apply. Have counsel identify the applicable provisions, dates, recipients, representation rules, and any valid waivers. [137]

Under RSA 564-B:8-813's applicable default rules:

- Acceptance notice is due within 60 days after the later of acceptance or the last surviving settlor's death, to qualified beneficiaries age 21 or older and persons with qualified-beneficiary rights.
- The separate existence-and-rights notice generally runs within 60 days after knowledge of the required combination of irrevocability, initial funding, and the last surviving settlor's death. It explains the right to request the instrument and a report.
- Annual and termination reports generally go to current distributees or permissible distributees, requesting qualified beneficiaries and equivalent rights holders, and the specified incapacitated settlor's representative; applicable terms and waivers matter.
- Reports address assets, liabilities, receipts, disbursements, trustee compensation, and feasible market values. Compensation-rate or method changes also have a 60-day notice rule for the specified recipients. [136]

"Qualified beneficiary" is a statutory category that includes current and certain next-in-line or termination beneficiaries. It is not synonymous with everyone related to the settlor. Build the recipient list from the trust and the statute, including appropriate representation for minors or others. [22]

Maintain proof of what was sent, to whom, by which permitted method, and when. A friendly email saying that a parent died is not necessarily a statutory notice. A clear initial letter can still explain the process, identify the contact person, and set a realistic expectation for updates without promising a fixed completion date.

Distinguish three different notice procedures

Beneficiary information notices, trust-contest notices, and creditor notices do different jobs. Do not use one form for all three.

NH permits an optional trust-validity notice accompanied by the trust instrument that can trigger a 180-day contest limitation when statutory requirements are satisfied. Other statutory three-year periods can apply. The trustee does not have a general duty to send that optional notice. Known or threatened litigation changes distribution decisions; obtain advice immediately if a challenge is raised. [95]

For claims against a deceased settlor, RSA 564-B:5-508 supplies an optional procedure involving notice to known claimants and publication for unknown claims. The statutory enforcement period is one year from the applicable notice or publication. The provision excludes certain contingent and postdeath claims and does not bar claims enforceable by DHHS or the director of charitable trusts. These rules are separate from probate creditor procedures and do not mean every debt disappears one year after death. [138]

Coordinate debts taxes and the probate estate

Request a coordinated list of claims, final expenses, tax responsibilities, and assets from the personal representative. Determine which document directs payment and whether reimbursement between estate and trust is appropriate. Avoid duplicate payment and preserve invoices and proof of payment.

A formerly revocable trust may be responsible for specified liabilities when the probate estate is inadequate; probate avoidance does not mean that the trustee may ignore the estate's legitimate needs. Confirm exceptions and allocation before paying or refusing a claim. [30]

The tax preparer should identify required individual, estate, trust, gift, estate-tax, and state returns. Ask about income received before versus after death, required retirement distributions, estimated taxes, basis records, and any election that requires an earlier decision. Keep tax reserves until the remaining exposure is reasonably understood. Tax filing and beneficiary accounting are different tasks; completion of one does not prove completion of the other.

Manage property prudently

Write down the trust's time horizon, expected expenses, distribution schedule, tax situation, and liquidity needs. Investment decisions should fit the whole portfolio and the trust's purposes. NH's prudent-investor rule requires reasonable care, skill, caution, and attention to relevant facts; it does not guarantee gains or justify judging every decision solely by hindsight. [139]

Review concentrated holdings, idle cash, insurance coverage, property condition, and debt promptly. Diversification is the default investment duty unless special circumstances reasonably support a different approach. If a family business or home should be retained, document why, how expenses will be met, and when the decision will be reconsidered. [140]

You may hire appropriate attorneys, accountants, investment advisers, appraisers, and property managers. NH permits prudent delegation but requires care in selection, defining the task, and monitoring performance. Sending everything to an adviser and never reviewing the work is not a sound administration process. [141]

Avoid conflicts and keep complete records

Never mix trust receipts with your personal checking account. Keep invoices, statements, cancelled checks or equivalent payment records, valuations, correspondence, and a transaction ledger. Identify transfers between separate trust shares so each beneficiary's interest remains traceable. [104]

Buying the trust's house yourself, lending money to your business, employing a relative, or favoring your own beneficiary share creates conflict issues. NH's loyalty rules can make conflicted transactions voidable unless an applicable exception or appropriate authorization applies. Obtain advice before the transaction, not after money has changed hands. Independent valuation alone does not resolve every conflict. [142]

Keep a time log if compensation is expected. Follow the trust's provision or the applicable reasonable-compensation standard and disclose charges properly. Separate reimbursement of documented expenses from payment for your services. Family status does not supply an unlimited fee entitlement. [143]

A useful working ledger records the date, payee or recipient, purpose, amount, asset or account, beneficiary share, supporting document, and tax category if known. Reconcile it to statements monthly. Save explanations while events are fresh; reconstructing a year of unexplained transfers is difficult and expensive.

Make distributions under the actual standard

Read the distribution clause before deciding a request. Does it require a payment, permit discretion, impose a health-or-education standard, or depend on a specified age or event? Consider the beneficiary's relevant circumstances and other resources only as the instrument and applicable duties require.

Ask for enough documentation to decide responsibly without creating needless obstacles. For a substantial discretionary request, record the amount requested, purpose, relevant clause, information considered, decision, and payment method. Compare similar requests consistently while respecting differences in the beneficiaries' interests. Impartiality does not require equal spending where the trust directs otherwise. [37]

Before an in-kind distribution, review valuation, tax basis, liens, transfer costs, and whether the allocation is permitted. Two assets with the same market value can carry very different tax burdens or liquidity. A house may be difficult for a beneficiary to maintain; an investment account may contain substantial unrealized gains. Explain proposed allocations clearly.

When a beneficiary receives means-tested benefits or has creditor, divorce, addiction, or incapacity concerns, consult the appropriate specialist before paying cash outright. Use the trust's protective

provisions as written. Do not improvise a replacement special needs trust or give another relative the funds to "hold for" the beneficiary.

Joint trusts and continuing shares

At the first death, determine exactly which provisions remain revocable and which become fixed. Identify required marital, family, bypass, survivor, or children's shares. Obtain necessary values and document allocations. Do not leave all property indefinitely in the original joint account simply because the bank continues to permit transactions.

A formula allocation may require more than dividing by two. Ownership contributions, the trust's definitions, prior gifts, tax elections, and asset characteristics may affect the result. Have counsel and the tax preparer reconcile the proposed allocation before opening subaccounts or distributing assets.

Each continuing share needs clear records, appropriate tax reporting, a distribution policy consistent with its terms, and a successor arrangement. Schedule annual reviews of beneficiaries, investment needs, fees, and significant changes in circumstances. A trust intended to last decades needs a process that survives the first trustee.

Reporting and resolving problems

An understandable accounting should let recipients follow the movement from beginning assets through income, expenses, gains or losses, distributions, and ending assets. Provide supporting explanation for major transactions and identify compensation. Invite questions through a manageable process and answer them accurately rather than treating reasonable questions as hostility.

Most living trusts are not under continuing court supervision unless ordered, but courts can resolve questions and disputes. Testamentary trusts may have separate judicial-accounting requirements under RSA 564:19. Confirm whether an applicable waiver or exception changes court filings; do not confuse that issue with beneficiary reporting. [28][35]

Seek instructions when the document is ambiguous, beneficiaries dispute a major transaction, a trustee has a conflict, or a proposed change affects substantive rights. Delay and silence often make disagreements harder to solve. Preserve relevant records and avoid retaliatory withholding of information or distributions.

Close a trust or completed share carefully

Prepare a final distribution plan after identifying remaining expenses and tax exposure. NH allows a reasonable reserve for debts, expenses, and taxes while requiring expeditious distribution after a terminating event. A statutory proposal can create a 30-day objection window only if the notice explains the right and deadline. A beneficiary release must satisfy legal requirements; a signature does not excuse withheld material facts or improper conduct. [144]

Before closing, confirm the following:

- Required payments, filings, notices, and reports are completed or have a funded plan for completion.
- Beneficiary identities and payment instructions are independently verified.
- Receipts and appropriate transfer documents are obtained for cash and property.
- Tax basis and other records needed by recipients accompany the distribution where appropriate.

- Continuing trusts receive their allocated assets and records rather than unexplained lump sums.
- Final tax returns and beneficiary tax statements are addressed with the preparer.
- A records custodian and retention plan are identified.
- A small administrative account remains open only as long as needed for the documented reserve and final transactions.

After residual expenses and refunds are resolved, distribute the remaining reserve according to the trust, document that distribution, and close obsolete accounts. Keep the final file accessible for later tax or title questions. Trust administration ends through completed responsibilities and documented transfers, not simply because an account balance reaches zero.

PART FOUR Working tools and sources

15 Planning and administration worksheets

Use these pages as working tools with your attorney and other advisers. They are not wills, trusts, deeds, beneficiary designations, court forms, or legal releases. A checked box should refer to supporting evidence in the file. Copy the pages when additional space is needed and use secure storage for completed worksheets.

Worksheet 1 Your planning priorities

Name or family reference _____ Date _____

Describe your three most important objectives in your own words.

1. _____

2. _____

3. _____

What concerns you most about incapacity, inheritance, long-term care, or family conflict?

_____

_____

Which restrictions on your own access to property would you be unwilling to accept?

_____

What should happen if the people you name cannot serve or a beneficiary dies first?

_____

Questions to resolve before drafting _____

_____

Worksheet 2 Fiduciary and contact list

Record full legal names and secure contact details. Discuss the role with each proposed person before finalizing the documents.

Role	First choice	Backup	Discussion completed
Financial agent	_____	_____	_____
Health care agent	_____	_____	_____
Executor	_____	_____	_____
Trustee	_____	_____	_____
Guardian nominee	_____	_____	_____

Role	First choice	Backup	Discussion completed
Attorney	_____	_____	_____
Tax preparer	_____	_____	_____

Potential conflicts or practical obstacles _____

_____

Location of the signed documents _____

How the appropriate person can obtain access _____

Worksheet 3 Asset ownership and beneficiary inventory

Use one entry per asset. Do not put full account numbers or passwords on this general worksheet.

Asset and account ending	Current legal owner	Current beneficiary	Intended action
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

For each asset, attach or securely reference the current statement, deed, accepted beneficiary designation, loan information, and approximate value. Mark whether the value is estimated or appraised. Record cost-basis information separately when relevant.

Unresolved title or beneficiary questions _____

_____

Assets needing out-of-state, business, benefits, or special tax review _____

_____

Worksheet 4 Signing and funding completion

Document signing

☐ Final names, family relationships, percentages, and backups reviewed.

☐ Questions about powers, restrictions, taxes, and distributions resolved.

☐ Will executed with the required witnesses and any self-proving affidavit completed correctly.

☐ Trust, certifications, assignments, and trustee acceptances completed as required.

☐ Financial power of attorney and required attachments completed.

☐ Health care directive completed and copies delivered to appropriate people.

☐ Deeds and other instruments signed using their separate requirements.

☐ Originals stored and access instructions recorded.

Funding evidence

Asset or document	Responsible person	Submitted date	Confirmed completion and evidence
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ Recorded deeds obtained and checked.

☐ Bank and taxable investment registration confirmed.

☐ Retirement and insurance beneficiaries confirmed by the provider.

☐ Business consents, assignments, and ownership records completed.

☐ Insurance, loan, tax, and automatic-payment consequences reviewed.

☐ Rejected or incomplete items assigned a follow-up date.

Next funding review _____ Responsible person _____

Worksheet 5 First actions after a death

Decedent _____ Date of death _____

Lead contact _____ Attorney _____

☐ Arrange immediate care for dependents, pets, and vulnerable household members.

☐ Secure the residence, vehicles, valuables, devices, and important mail.

☐ Maintain appropriate property insurance and notify the insurer of occupancy changes.

☐ Obtain death certificates and locate the signed original will and all trust documents.

☐ Preserve records and avoid informal division of property.

☐ Determine the will-delivery and filing obligations promptly.

☐ Separate assets by probate, trust, survivorship, and beneficiary-transfer route.

☐ Identify the person who must obtain court appointment and the person who succeeds as trustee.

☐ Contact the tax adviser before retirement elections, major sales, or distributions.

☐ Create a calendar using actual legal triggers and court orders.

Immediate unresolved issues _____

_____

Worksheet 6 Administration calendar

Enter actual dates with counsel. Some clocks run from death, some from appointment, some from notice, and some from another event. A date in this table is not verified until the governing authority and event have been checked.

Task	Trigger and source	Actual due date	Responsible person and proof
Original will delivery or filing	_____	_____	_____
Probate appointment materials	_____	_____	_____
Beneficiary or heir notices	_____	_____	_____
Inventory	_____	_____	_____
Creditor procedure	_____	_____	_____
Trust notices and reports	_____	_____	_____
TOD affidavit if applicable	_____	_____	_____
Tax return or election	_____	_____	_____
Accounting and closing	_____	_____	_____

Worksheet 7 Receipts payments and claims

Maintain a full ledger in the format required by the court or appropriate to the trust. This sample is a planning aid, not a substitute for an official fiduciary account. Keep receipts, statements, and approval records for each transaction.

Date and reference	Description and authority	Money in	Money out
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Date and reference	Description and authority	Money in	Money out
_____	_____	_____	_____
_____	_____	_____	_____

Bank reconciliation date _____ Reconciled balance _____

For each claim, record the claimant, amount, when and how it was received, applicable deadline, priority, whether disputed, and the decision or court order. Never infer that a bill is payable merely because it was received first.

Unresolved claims and reserved amounts _____

_____

Worksheet 8 Distribution review

Complete this review before a proposed interim or final distribution. Obtain professional review when claims, tax, title, benefits, or beneficiary rights are uncertain.

☐ Correct governing document and amendments identified.

☐ Fiduciary has authority for the proposed transaction.

☐ Beneficiary identity, survival, capacity, and receipt arrangements confirmed.

☐ Minor or disabled beneficiary issues addressed before payment.

☐ Expenses, debts, taxes, claims, and required reserves evaluated.

☐ Distribution percentages and valuations checked against the instrument.

☐ Prior advances and distributions accounted for.

☐ In-kind assets reviewed for basis, gain, transfer restrictions, and equitable valuation.

☐ Required notice, assent, accounting, or court approval obtained.

☐ Delivery method, receipts, and tax reporting arranged.

Recipient and capacity	Asset or amount	Document authority	Receipt and reporting status
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Reserve remaining after distribution _____ Reason _____

Worksheet 9 Closing and records

☐ Required court or trust closing route identified.

☐ Final account or report prepared and reconciled.

☐ Required notices, assents, receipts, orders, and releases addressed.

☐ Tax returns, elections, payments, and beneficiary information completed or reserved for.

☐ Property transfers and recordings confirmed.

☐ Outstanding checks, deposits, refunds, and recurring charges resolved.

☐ Accounts closed only when appropriate; reserve disposition documented.

☐ Records delivered or retained under a written plan.

☐ Continuing trusts identified and transferred to the proper trustee and accounts.

Closing order or trust completion date _____

Record custodian and secure location _____

Retention instructions from counsel and tax adviser _____

An example of a distribution calculation

Assume a governing document calls for equal residuary shares to two adults. After authorized expenses and liabilities, the fiduciary has $120,000 available but determines that a $20,000 reserve is still needed. The proposed interim distributable amount is $100,000, or $50,000 to each beneficiary. The reserve is still estate or trust property; it should not be described as anyone's final entitlement until the remaining obligations are resolved.

If one beneficiary instead receives an investment worth $50,000, the accounting must identify the valuation date, tax basis, authority for an in-kind distribution, and any tax consequence of using that asset to satisfy the share. Equal market value does not necessarily mean equal after-tax value. This example demonstrates arithmetic only; it does not establish that an interim distribution is permitted in a particular matter.

A useful message to the professional team

When requesting guidance, provide the decision, facts, and documents needed to answer it. For example: "I am the appointed executor. Before making an interim distribution, please review the attached asset schedule, claims list, proposed reserve, and allocation under the will. Please identify outstanding legal or tax steps and whether any court approval or beneficiary notice is needed." Send sensitive attachments through the agreed secure method.

Keep the response with the transaction record. A later fiduciary, beneficiary, accountant, or court should be able to understand what was decided, why, and what evidence supported it.

16 Plain language glossary

These definitions introduce terms used in the guide. The governing document or statute may use a more specific definition in a particular situation.

Abatement Reduction of gifts when available estate property is insufficient to satisfy expenses, liabilities, and intended gifts in full.

Accounting A report showing assets, receipts, payments, changes in value, distributions, and property remaining. Court accounts and trustee reports have different requirements.

Administrator A court-appointed personal representative, commonly serving when there is no effective executor appointment under a will.

Advance directive A document naming a health care decision-maker, stating treatment wishes, or both.

Agent A person authorized to act for a principal under a power of attorney.

Annual exclusion A federal gift-tax rule for qualifying gifts within a yearly amount. It is different from the lifetime exclusion and from Medicaid transfer rules.

Beneficiary A person or organization entitled to property or benefits under a will, trust, contract, account designation, or other arrangement.

Basis A tax measure used in determining gain or loss. It is not necessarily current market value.

Certification of trust A document establishing specified facts about a trust and trustee authority without necessarily reproducing all distribution terms.

Codicil A formal amendment to a will. Its execution requirements must be satisfied.

Contingent beneficiary A backup recipient whose rights depend on an event, such as the primary beneficiary failing to survive.

Corpus or principal Property held in an estate or trust, distinguished in some contexts from accounting income. Tax definitions may differ.

Creditor A person or entity asserting a legally enforceable payment obligation.

Decedent A person who has died.

Discretionary trust A trust giving the trustee discretion over distributions within the document and applicable law.

Distributable net income or DNI A tax calculation relevant to a fiduciary's distribution deduction and beneficiaries' taxable income.

EIN Employer Identification Number, used as a tax identifier for an estate, trust, or other entity even if it has no employees.

Estate Depending on context, a person's property, the probate estate, or a tax-defined estate. Always determine which meaning is intended.

Executor The personal representative nominated under a will and appointed by the court.

Fiduciary Someone who must exercise entrusted authority for others according to duties imposed by law and the governing arrangement.

Funding Completing transfers or other arrangements that place property under a trust's ownership or direct it to the trust at the appropriate time.

Grantor or settlor A person creating or contributing to a trust. Grantor also has a specific meaning in federal income-tax rules.

Grantor trust A trust whose income or assets are attributed to a deemed owner under tax rules. The label does not by itself establish revocability or estate-tax inclusion.

Guardian A court-appointed person with specified authority concerning another person's care, property, or both.

Heir A person entitled under intestacy law. The person need not be a beneficiary named in the will.

ILIT Irrevocable life insurance trust, designed to own or receive insurance under particular management and tax objectives.

In kind distribution Delivery of property itself, such as securities or real estate, instead of selling it and distributing cash.

Intestacy The statutory distribution system for property not effectively disposed of by a will.

Irrevocable trust A trust whose creator does not retain an unrestricted right to revoke it. Modification may still be possible under particular powers or legal procedures.

Joint tenancy with survivorship A form of co-ownership under which a deceased owner's interest ordinarily passes to the surviving joint owner under applicable rules.

Look back period The period during which certain prior transfers are examined for Medicaid eligibility. It is different from the duration or starting date of a transfer penalty.

Nongrantor trust A trust or portion of a trust not treated as owned by another person under the grantor-trust income-tax rules.

Personal representative The executor or administrator authorized to administer a probate estate.

Per stirpes and per capita at each generation Different methods of dividing a gift among descendants after someone dies before the donor. The will or trust's actual definition determines the result; the wills chapter illustrates the difference.

POD and TOD Payable on death and transfer on death, terms for particular beneficiary-transfer arrangements. Account registrations and real estate deeds have different rules.

Portability The federal election allowing an eligible surviving spouse to use a deceased spouse's unused estate and gift tax exclusion under applicable rules.

Pot trust A common fund for several beneficiaries before later division or termination, often used to support children according to need.

Pour over will A will directing its probate residue to an identified trust. The property passing under the will still follows the applicable probate process.

Probate Court administration of a deceased person's probate estate, including establishing authority, resolving obligations, and distributing remaining property.

Qualified beneficiary A statutory trust-law category relevant to certain rights and notices. It is not simply everyone mentioned anywhere in a trust.

QTIP Qualified terminable interest property, a marital-deduction arrangement with specific requirements and an election where applicable.

Remainder beneficiary A person or organization entitled to property after an earlier interest ends or a specified event occurs.

Residue The property remaining after applicable gifts, expenses, debts, taxes, and other required allocations.

Revocable living trust A trust established during life that can be revoked under its terms and applicable law, often used for management and coordinated distribution.

Self proved will A will accompanied by the required sworn proof of execution. Self-proof does not eliminate probate or every possible challenge.

Special needs trust A trust intended to manage resources for a person with a disability while coordinating with relevant benefit rules. Funding source and drafting determine the appropriate type.

Spendthrift provision A restriction on transfer or creditor access to a beneficiary's interest, subject to governing law and exceptions.

Successor trustee A person or institution serving after a prior trustee ceases to act under the trust's succession provisions.

Testamentary trust A trust created under a will, ordinarily funded after the relevant estate administration.

Trustee The fiduciary responsible for trust property and administration under the instrument and law.

Waiver or summary administration Particular NH procedures that may simplify qualifying estate administration. They are not interchangeable and do not excuse valid debts or required records.

17 Source notes and official resources

References identify the principal authorities supporting the text. Statutes and administrative rules should be read with applicable amendments, exceptions, court orders, and the facts of the matter. Agency guidance and forms may be revised after the review date. Select a source title to open the official resource online.

Sources reviewed October 16, 2026. Tax publications sometimes retain an earlier tax year in their title; the text uses separately verified 2026 amounts where stated. Use the form and instructions appropriate to the actual filing year.

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[29] **RSA 564-B:6-603 Settlor Powers** NH General Court.

[30] **RSA 564-B:5-505 Creditor Claims Against Settlor of Revocable Trust** NH General Court.

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[47] **Instructions for Form 706-GS D-1 Notification of Distribution from a Generation-Skipping Trust** IRS.

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