

NORTH CAROLINA ESTATE PLANNING CHECKLIST

A person creating an estate plan should carefully examine each of the following documents to see if it will help secure their estate and their family's future. None of the documents are required by law but it is critical that, if drafted, they are established in accordance with North Carolina laws. To make sure nothing is left out of an estate plan, contact a trusted attorney for legal advice.

Step 1 - Appoint a Health Care Agent

A **health care agent** is an individual tasked with communicating a person's (principal) wishes to health care professionals should that person become incapacitated; i.e., unable to make informed medical decisions for themselves. An agent should be a trusted individual, one who is close to the principal and understands their values and character (typically a spouse or other close family member).

[Health Care Power of Attorney](#) – This is a legal instrument that establishes the authority granted to a health care agent by the principal. Through this instrument, the Principal is able to outline which powers a health care agent will acquire in the event of their incapacitation. A Health Care POA also includes sections regarding organ donation, guardianship, and authoritative-limitations of the health care agent.

- **Signing Requirements** ([§ 32A-16](#)) – Must be signed in the presence of two (2) qualified witnesses and acknowledged before a notary public.

Step 2 - Appoint a Financial Agent

A **financial agent** is a position established by execution of a Durable Power of Attorney that enables the agent to manage the principal's assets and other financial matters. Appointing a financial agent is an act that is effective immediately after a POA is signed and remains in effect even if the principal becomes incapacitated. An agent should be a trusted individual who will always act with the best interests of the principal and the principal's family in mind.

[Durable \(Financial\) Power of Attorney](#) – A legal instrument containing the outline of the relationship between a principal and their financial agent. “Durable” means that even if the principal becomes incapacitated, the financial agent is still in charge of all financial matters that have been included in the Power of Attorney. Below is a list of subjects that can be included in the financial agent’s authority. The principal should also appoint a successor agent and even a second successor agent in case their first choice is unable or unwilling to act for them.

- **Signing Requirements** ([§ 32C-1-105](#)) – A POA must be signed by the principal and acknowledged by a notary public.

Financial Powers Allowed:

- Real property ([§ 32C-2-204](#));
- Tangible personal property ([§ 32C-2-205](#));
- Stocks and bonds ([§ 32C-2-206](#));
- Commodities and options ([§ 32C-2-207](#));
- Banks and other financial institutions ([§ 32C-2-208](#));
- Operation of entity ([§ 32C-2-209](#));
- Insurance and annuities ([§ 32C-2-210](#));
- Estates, trusts, and other beneficial interests ([§ 32C-2-211](#));
- Claims and litigation ([§ 32C-2-212](#));
- Personal and family maintenance ([§ 32C-2-213](#));
- Benefits from governmental programs or civil or military service ([§ 32C-2-214](#));
- Retirement plans ([§ 32C-2-215](#));
- Taxes ([§ 32C-2-216](#)); and
- Gifts ([§ 32C-2-217](#)).

Step 3 - Compile List of Assets

A [Current Assets List](#) can be downloaded for the purposes of keeping track of all assets, debts, and liabilities while creating an estate plan. This document is a helpful organizational tool that should cover all the areas of a person’s estate so they don’t forget to include anything in their estate plan.

Step 4 - Decide Who Will Become a Beneficiary

Beneficiaries are people or entities that will receive a portion of an estate after the principal's death. Deciding who gets what is a big decision and should be made with the utmost care. While family members and close friends are typically the selected beneficiaries of an estate, the principal can distribute their estate any way they see fit within the confines of the law.

Step 5 - Execute a Will and/or Living Trust

The two (2) main estate planning documents are Wills and Trusts. Each document covers slightly different areas of the principal's estate, therefore it is recommended that an attorney be consulted to see which tool would be most appropriate.

[Last Will and Testament](#) - A legal document executed by a principal (referred to as a testator) that names an executor to distribute their estate after they die. Beneficiaries are named in the Will so that the executor knows who will get what. A Will also covers provisions regarding taxes, debts, and guardianship for the testator's children. After the testator's death, the Will must be reviewed by members of probate court to ensure its validity and authenticity.

- **Signing Requirements** ([§ 31-3.3](#)) - A Will is only valid if signed by the principal and at least two (2) witnesses.

[Revocable Living Trust](#) - Once a Revocable Living Trust document is executed by a principal, it becomes a legal entity into which assets can be placed. Once the assets are placed into the Trust, the Trust takes over ownership of said assets. This provides some protection for the principal's estate, allowing them to benefit from the assets during their lifetime but also provide instructions for distribution after they die. A trustee is named to manage the Trust (usually the grantor) and a successor trustee will take over after the grantor dies (if grantor is trustee). Beneficiaries are included in the Trust document in a similar fashion as a Will; however, they do not have to wait for probate court to confirm the legitimacy of the document. A Revocable Living Trust does not go through probate nor is it filed as public record.

- **Signing Requirements** - Not statutorily mentioned; a Trust document is considered valid if the grantor, trustee, and successor trustee inscribe their signatures. However, it is recommended that the document be acknowledged by a notary public.

Step 6 - Store Documents

All estate planning documents should be kept in a safe, fireproof and waterproof place, preferably with a lock for extra security. A principal's spouse, attorney, agent, or other trusted representative should have copies of the documents or should be privy to the location of the original copies. Safety deposit boxes should be avoided due to the fact that a court order may be required to open them after the principal dies.