

ESTATE PLANNING FOR NEW NORTH CAROLINA RESIDENTS

FREQUENTLY ASKED QUESTIONS MOVING TO NORTH CAROLINA

Q. ARE ESTATE PLANNING DOCUMENTS PREPARED IN ANOTHER STATE VALID IN NC?

A: If an estate planning document (e.g. trust, last will and testament, or powers of attorney) was prepared and signed while you were domiciled in another state, and the document and its signing requirements satisfied the laws of the state where you were previously domiciled, the document is valid in North Carolina.

OUR SERVICES INCLUDE:

- Review of existing out-of-state documents and recommendation regarding replacement of documents
- Preparation of amendments to out-of-state documents
- Ancillary estate administration

Q. EVEN IF A DOCUMENT IS VALID, ARE THERE OTHER CONSIDERATIONS FOR ESTATE PLANNING DOCUMENTS?

A. Yes! Even if an out-of-state document is technically valid in North Carolina, there are still practical considerations to keep in mind. For example, a last will and testament completed in another state will be accepted after you move to North Carolina if the document was valid in the original state. However, North Carolina's probate court may require that your executor present additional documents, such as affidavits from the witnesses or a certification from an out-of-state attorney as to the document's compliance with state law at the time it was signed.

While these hurdles do not necessarily make the document invalid, many individuals want the probate process to be seamless and simple for loved ones. Keeping this goal in mind, in some instances it is ultimately easier to sign new documents in North Carolina rather than face those obstacles down the road.

Q. HOW DO I FIND OUT IF DOCUMENTS ARE VALID IN NC?

A. You should meet with an attorney licensed in North Carolina to determine whether an out-of-state meets North Carolina's signing requirements and, if not, what obstacles will need to be met for the document to be accepted in North Carolina. In some instances, this may include coordinating the review of those documents with your previous estate planning attorney (if any), particularly if you travel between two states or may ultimately return to the other state.

Q. WHAT ABOUT MY HEALTH CARE DOCUMENTS?

A. Generally, health care powers of attorney or living wills (also known as advance directives for a natural death) will be accepted between states. However, there are numerous other health care related documents that will not be accepted in another state. This will include a DNR or a MOST (Medical Orders for Scope of Treatment) form. Re-evaluating your health care documents is of particular importance if you frequently travel.

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Q. IF I AM MARRIED, DOES IT MATTER WHICH STATE I MOVED FROM?

A. Yes. There are two different sets of rules for marital property – common law and community property. North Carolina is a common law state. When moving to or from a community property state, there may be certain requirements about how much of that property you must leave to your spouse after your passing, and how much you can leave to other non-spouse beneficiaries such as children.

Q. WHAT ARE THE COMMUNITY PROPERTY STATES?

A. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Q. DOES IT MATTER IF I OWN PROPERTY IN ANOTHER STATE?

A. Yes—if you own property in more than one state, you may benefit from a revocable living trust. Such trusts are typically beneficial to avoid an ancillary estate administration in the non-domicile states where you own property.

Q. WILL I HAVE TO PAY ESTATE TAXES?

A. For most individuals, estate tax will not be owed. While some states still have an estate tax, North Carolina repealed its estate tax for those who passed on January 1, 2013, or later. At the federal level, for tax year 2024, the estate tax exemption for individuals is \$13.61 million, which may be doubled for married couples (\$27.22 million). Because of these high exemptions, most estates are not taxable. However, it is important to differentiate estate tax from estate income tax. An estate may not owe any estate tax, but if the estate generates more than \$600 in annual gross income (e.g. from dividends and interest), an estate *income* tax return will be due.

Q. WHAT IS THE PROBATE PROCESS IN NORTH CAROLINA?

A. Probate is one of the most common concerns of new residents to North Carolina. This is due, in part, to the wide variation from state to state of the probate process and the associated costs. In North Carolina, the probate process is supervised by the Clerk of Superior Court. The Clerk's office will determine if a last will and testament will be accepted to probate. The Clerk's office will also ensure that creditors are paid and that the property and assets subject to probate pass to the appropriate beneficiaries under the terms of the will or, if none, then under North Carolina law.

Probate assets include assets that do not have a joint owner with right of survivorship or a named beneficiary, transfer on death, or pay on death designation. Additionally, real estate is not typically a part of the probate estate unless needed to pay creditors or unless the real estate is specifically left to the executor under a will to be sold. Probate fees are modest in North Carolina, being \$4 for every \$1,000 of probate property (multiply probate assets by 0.004). Fees are capped at \$6,000.

Q. SHOULD I JUST GIVE MY ASSETS TO MY CHILDREN WHILE I AM STILL LIVING?

A. There are some instances in which planned giving of assets makes sense, but for most individuals making such gifts may actually end up causing more harm than good. Some consequences to consider are: loss of control, assets being subject to the creditors of the recipient of the gift (including a spouse in a divorce situation), transfer penalty for long-term care Medicaid, capital gains if/when the recipient ultimately sells the asset, etc.

Q. I DID AN IRREVOCABLE TRUST IN ANOTHER STATE AS PART OF PLANNING FOR BENEFITS SUCH AS LONG-TERM CARE MEDICAID OR VA PENSION. IS THE TRUST VALID IN NORTH CAROLINA?

A. When planning for long-term care, many individuals may create and fund irrevocable trusts geared toward preserving eligibility for certain benefits, such as VA Aid and Attendance or Long-Term Care Medicaid. Although the rules for most of these programs are set at the federal level, there are variation from state-to-state. In addition, North Carolina may have some state-level programs with a separate set of eligibility rules. You should have a local elder and special needs law attorney review any such trusts to ensure that the trust terms will not negatively impact your potential eligibility for benefits in North Carolina.