

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

## Plan, and Plan Now: The Basics of Estate Planning

March 1, 2006 | by

Thinking about the future is one of the most challenging aspects of life. Planning for the unknown may seem overwhelming when considering the myriad of issues arising from death or disability. But, there is comforting news. If you take the time now to plan properly, you can address finances, family, business, taxes, and health care in one coordinated strategy. That strategy is an estate plan. Whether basic or complex, an estate plan can provide you with security.

The grief experienced by family members when a loved one is sick or has died is difficult to endure. The additional worries of health care or financial decisions, and the related confusion and potential for conflict among family members, can add an unbearable level of strain – strain which can be minimized through a properly arranged estate plan. It is a wise and caring person who takes the proper steps now, rather than leaving important decisions to unprepared family members and/or the default treatment mandated by state law.

### Functions of an Estate Plan

What can an estate plan accomplish? Even the most basic estate plan can:

- Identify your health care wishes and ensure they are carried out
- Plan for incapacity
- Decide who is to receive your assets
- Direct property quickly to the desired beneficiaries
- Minimize or eliminate estate and probate expenses
- Select guardians for your minor children
- Create a legacy for your children and grandchildren
- Reduce or eliminate taxes on your estate
- Ensure the continuity of your family-owned business
- Allow for peace of mind knowing your desires will be followed

In the absence of a proper estate plan, possible consequences include:

- Should you become disabled or incapacitated, your health and financial decisions are made under the default rules of North Carolina law and any decisions made by the courts based upon those laws
- North Carolina law dictates how and to whom your property and assets will be distributed
- If you have minor children, their future care and custody are decided solely by North Carolina courts
- If you are an unmarried couple living together in North Carolina, your surviving partner will receive none of your assets

### **Elements of an Estate Plan**

There are several components necessary to accomplish the range of objectives outlined above. An estate plan is generally comprised of four basic instruments:

- Last Will & Testament
- Financial Power of Attorney
- Health Care Power of Attorney
- Living Will

### **Last Will & Testament**

A Last Will & Testament allows you to determine what happens to your property when you die. Contrary to common belief, all of your property does not automatically go to your spouse under North Carolina law – a Will is necessary even if your desire is that simple. A Will allows you to specify who receives your property, and what they will receive. A Will may not control every type of property you own. For example, property that is subject to “rights of survivorship or control,” which do not terminate at death, is not directly controlled by your requests in the Will. Some contract-based investment assets, such as life insurance, 401(k), and annuities, will not be controlled by your Will unless they are specifically addressed.

A Will is also the best place to name a guardian for any minor child for which you have legal responsibility. A basic Will can also provide for a trusted individual or corporate advisor to properly manage assets left for the benefit of a minor child.

### **Financial Power of Attorney**

In a Financial Power of Attorney, an individual is given the legal authority to conduct your financial affairs should you become incapable of doing so. The person is your “attorney-in-fact” or “agent.” The actions of your attorney-in-fact are deemed to be your actions. Your attorney-in-fact can manage your finances and help avoid credit problems or the loss of valuable assets.

### **Health Care Power of Attorney**

A Health Care Power of Attorney gives an individual the legal authority to make health

care decisions for you. A proper Health Care Power of Attorney will also give your agent the right to receive and review medical information about you. Health Care Powers of Attorney have become increasingly popular, and necessary, since the Health Insurance Portability and Accountability Act (“HIPAA”) was enacted in 2003. HIPAA restricts medical providers from releasing patient information to unauthorized persons. Without a properly drafted Health Care Power of Attorney, your loved ones may not be able to control your medical care, or even find out the status of your health.

### **Living Will**

A Living Will is a declaration of your personal choices regarding life-prolonging medical treatments or procedures. A Living Will is commonly referred to as an “advance directive,” a “health care directive,” or a “physician’s directive.” This important document informs your health care providers and family of your desires when you are unable to speak for yourself. Living Wills are often used to make clear you desire to die a natural death and not be kept “alive” through extraordinary means.

### **Setting up an Estate Plan**

To be valid, your estate plan must be formalized according to the laws of North Carolina. Minor deviations from technical requirements could make a homemade Will unenforceable. The North Carolina Secretary of State provides a registry for both Health Care Powers of Attorney and Living Wills. Registering these documents ensures that your health care directives can be located by your family and medical providers. Consultation with a qualified attorney is generally advisable to ensure that your estate plan is set-up in an optimal manner.

The word “plan” in estate planning cannot be overemphasized. Through a valid, effective estate plan, you and your family can be best prepared for the future – but only if you plan... and plan now!

---

#### CONTACT US

919.250.2000  
mail@smithdebnamlaw.com

#### RALEIGH OFFICE

The Landmark Center  
4601 Six Forks Road, Suite 400  
Raleigh, North Carolina 27609

Phone: 919.250.2000  
Fax: 919.250.2100

#### COLUMBIA OFFICE

1720 Main St.,  
Suite 104  
Columbia, SC 29201

Phone: 864.751.5523  
Fax: 888.784.2250