

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Lauren is a partner at the Firm and her practice is focused on transactional real estate law. She serves clients who are buying, selling, lending, leasing, developing, and investing in real estate.

2018 Brings Changes to North Carolina's Power of Attorney Act

February 7, 2018 | by

At the end of last year, North Carolina Session Law 2017-153 (Senate Bill 569) was signed into law. The law adopted the NC Uniform Power of Attorney Act, which makes substantial changes to North Carolina's power of attorney ("POA") laws.

The NC Uniform Power of Attorney Act substantially follows the Uniform Power of Attorney Act, a set of model POA laws created by a commission of experts with representatives from all states, and adopted by many states. The changes to the law have been well-received by industry professionals as necessary updates to the North Carolina's historically frustrating power of attorney laws.

Effective Date & Application

The NC Uniform Power of Attorney Act went into effect on January 1, 2018. Most of its provisions apply to powers of attorney drafted before the Act went into effect. The most notable exception is Statutory Short Form POAs drafted and signed before January 1, 2018, which are still governed by North Carolina Statutes, Chapter 32A.

New NCGS Chapter 32C

The Act creates a new chapter in North Carolina's General Statutes: Chapter 32C. Chapter 32C replaces most of Chapter 32A, which previously governed North Carolina Powers of Attorney. Only the sections of Chapter 32A governing Health Care Powers of Attorney and Consents to Health Care for Minors have survived the amendment.

Terminology Changes

The Act changes some terms and definitions. For example, in the new Chapter 32C, the person authorized to act on behalf of the principal who was previously called the "attorney-in-fact" is now called an "agent." These changes are consistent with the terminology used in most other states. Another notable example is that the definition of "incapacity" in Chapter 32C has been modified to provide more clarity regarding what does and does not constitute incapacity for purposes of POAs.

Recording

One of the most welcomed changes in the NC Uniform Power of Attorney Act is that it does not require durable POAs to be recorded with the Register of Deeds. In fact, the only POAs that have a recording requirement under the new law are POAs for real estate loan transactions. POAs for real estate transactions must be filed with the Register of Deeds in the appropriate county in short-form. The full POA does not need to be recorded.

Impact on Previously Drafted POAs

The substantial changes the NC Uniform Power of Attorney Act is bringing in 2018 have many asking whether they will need to redraft their POA. Fortunately, the Act does not invalidate powers of attorney drafted before it went into effect so most POAs will not need to be redrafted and will remain valid, though for the most part subject to the new law.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

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

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541