

What We Know

ARTICLES & INSIGHTS

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Should You Revise Your Power of Attorney?

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Powers of attorney serve an essential role in estate planning, giving North Carolinians control over who will manage their affairs during periods of lifetime incapacity. [Changes to North Carolina's Power of Attorney statute, which took effect on January 1, 2018](#), make this an excellent time to re-evaluate and possibly update existing powers of attorney for financial transactions.

Presumed Durability

Under previous law, after creating a durable power of attorney in North Carolina, you also had to record (file) it with the Register of Deeds office in the county where you live if you wanted your named agent to have the authority to act on your behalf during periods of incapacity or incompetence. Failing to record it with the Register of Deeds meant that the form would not do you any good if you later became incapacitated.

For powers of attorney created under the new law, the form can be "durable" (useful if you are incapacitated) without being recorded with the Register of Deeds. In fact, powers of attorney will now be presumed to be durable unless the document explicitly states otherwise.

Also – if your agent will be using a power of attorney to handle real estate deal for you, he or she will need to record it as part of the transaction itself. (See the article titled: [2018 Brings Changes to North Carolina's Power of Attorney Act](#) for more information.

Specific Authority and Guidance for the Principal and the Agent(s)

A power of attorney is, as the name implies, a powerful document. In an estate planning context, people create powers of attorney to help ensure continuity of their financial affairs in the event of future incapacity, naming trusted family members, friends or professional fiduciaries who can step in to manage things if needed. Unfortunately, agents can – and do – sometimes abuse their authority.

The new North Carolina power of attorney form provides some added protections for the principal (the person creating the form), giving them the opportunity to grant or withhold certain powers. For example, if you are creating a power of attorney under the

new law, you can decide whether or not to allow your named agent(s) to make gifts to themselves from your assets (writing themselves checks or otherwise transferring your assets into their name(s)).

The new law also clearly defines the agent's duties and responsibilities to act in good faith, in the principal's best interests, and within the scope of the authority granted in the document. Additionally, the statute defines the agent's scope of authority concerning various types of transactions, including digital assets and property.

The statutory form provides an optional agent certification section which can be used to document the agent's understanding of authority and limitations under the document, and acceptance of appointment.

Ask Your Estate Planning Attorney Whether You Should Create a New Power of Attorney

If you created a power of attorney before January 1, 2018, it is still in effect. However, since the new law includes several fundamental changes, and the new form provides advantages over the previous version – it's a good idea to speak to your estate planning attorney about whether your existing power of attorney still meets your needs or if you should consider creating a new form to obtain the protections under the now-current law.

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