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ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Andrew is a member of the firm's Trust and Estates practice area. He primarily represents clients in matters involving estate planning, estate administration, special needs law and elder law. Originally from Grand Haven, Michigan, Andrew attended the University of Michigan, graduating with a Bachelor of Arts degree in Political Science. He earned his J.D. from Michigan State University College of Law.

Signing Requirements of Health Care Powers of Attorney and Advance Directives Under NC S704

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On May 4, 2020, the North Carolina General Assembly and Governor Roy Cooper signed into law Senate Bill 704 (NC S704). Two essential estate planning documents were part of NC S704 – health care powers of attorney and advance directives. Health care powers of attorney give your named agent(s) the ability to make medical decisions on your behalf when you are incapacitated, and an advance directive allows you to select your end of life wishes.

To properly execute either of these documents, you need to have two disinterested witnesses witness your signature when executing the documents. In light of the COVID-19 pandemic, the importance of these documents cannot be overstated. Unfortunately, with the current stay-at-home restrictions and social distancing guidelines, getting two disinterested witnesses together in a room to execute these documents has become a significant obstacle for many.

In response to this challenge, NC S704 has temporarily revised the requirements necessary to execute both of these documents. The law suspends the requirement of two witnesses and instead allows for both documents to just be notarized instead to be legally effective. The sections allowing this will sunset on August 1, 2020. In addition, NC S704 also temporarily allows all notaries public to perform emergency video notarizations until August 1, 2020. As such, if you have been contemplating having these documents drafted and executed but have been hesitant due to the potential of an in-person interaction, NC S704 will allow you to sign the documents via video conference technology, with a notary public. This can be an excellent solution during this pandemic for any individual who wishes to ensure their estate planning documents are in order, especially for those at high risk of COVID-19.

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