

Unpacking Your Estate Plan When Moving to North Carolina

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July 8, 2020



If you have recently moved to North Carolina, you are not alone.

According to the U.S. Census Bureau, more than 300,000 people who called North Carolina home in 2018 lived in another state the previous year. Whether your move to North Carolina was to start a new job, move closer to family, or enjoy retirement, you made a great decision by

choosing to make North Carolina your home. However, with any move comes new responsibilities: unpacking your belongings, settling into your new home, choosing the right schools for your children, and much more. One responsibility that often does not come to mind for those who move to a new state, although it should, is recognizing the need to update their estate plan. This article will address important considerations to make regarding your estate plan if you are one of the many individuals who recently moved to North Carolina.

Consideration #1: Do you have an estate plan?

Let's start here. Any good estate plan will include at least a Will, Durable Power of Attorney, and Health Care Power of Attorney. Your Will directs the distribution of your individually owned property at your death. If you die without a Will, your estate may pass through intestacy—which is the law of the state where you were domiciled at your death. So, if you move to North Carolina, make it your home, and then die without a Will, North Carolina law will dictate how your estate is distributed. In the vast majority of cases, the outcome under intestacy is not what the deceased person would have wanted. If you want to decide how your assets will be distributed, rather than having North Carolina law decide, you need a Will. It is equally as important to create Powers of Attorney, which authorize a specific person or persons to act as your agent in the event you become incapacitated. If you are incapacitated and do not have a Power of Attorney, a court may have to appoint a guardian to act on your behalf, which can be costly and stressful. Having an incomplete or nonexistent estate plan can be disastrous if you move to a new state and then become ill or die.

Consideration #2: Does your estate plan conform to North Carolina law?

Maybe you already have a complete estate plan when you move to North Carolina, but you are wondering whether your move should trigger any updates to it. Under North Carolina law, if your Will from another state was valid at the time it was executed under that state's law, it is valid in North Carolina. This is good news. However, although out-of-state Wills are recognized under North Carolina law, they may require additional steps during the probate proceeding that may add time and expense to your estate administration. There

have been instances where the court must locate the witnesses to an out-of-state Will in order to determine its validity.

Additionally, you may want to update your estate plan for other important reasons. For example, your previous state may have an estate tax that was a focus of your estate plan. The state of North Carolina currently does not impose an estate tax. Therefore, provisions in your estate plan pertaining to the prior state's tax law can cause confusion and possibly unintended consequences. Even if your previous state does not impose an estate tax, it may be a "community property" state, which defines marital property differently than North Carolina law. Knowing how you own your assets with your spouse is important in developing an effective estate plan.

You may also need to re-visit your choice of executor. If your move to North Carolina brought you closer to some family members but further from others, you may want to consider who should serve as your executor now that you live somewhere new. These same considerations extend to the agents you appointed under your Powers of Attorney. In fact, updating your Powers of Attorney to conform to North Carolina law is generally a good idea if you anticipate using those documents here. Powers of Attorney created under North Carolina law are generally processed and approved more quickly than out-of-state Powers of Attorney due to their familiarity. Put another way, updating your estate plan to conform to the law of your new state would likely make implementing your estate plan, when that day inevitably comes, much easier for everyone involved.

Consideration #3: Where is your property?

Perhaps you have moved to North Carolina to enjoy retirement. You have a valid Will from your previous state, and you are comfortable with your executor and Powers of Attorney selections. You would prefer not to incur the time and expense to make any updates to your estate plan, so you put your estate plan documents in a safe place and go to the beach. This may be fine, but be aware that your property located outside of North Carolina may not be governed by probate proceedings in North Carolina. Your North Carolina residence and personal effects would pass pursuant to your North Carolina probate proceeding, but passing ownership to any real property in your previous state may require a separate legal proceeding. If you have property located in multiple states and want to avoid the time and expense of probate, you may want to consider adding a Revocable Trust to your estate plan. Under a Revocable Trust-based estate plan, you would title all or some of your assets under the Trust. When you pass away, your Trust property would be distributed pursuant to the terms of the Trust by the then-acting Trustee, and the Trust assets would not have to go through the probate process.

Consideration #4: Have you updated your beneficiary designations recently?

When you die, not all of your property passes pursuant to your Will. Individual Retirement Accounts ("IRAs") and insurance policies, for instance, pass to the beneficiary designated under the plan or policy. For example, many people are surprised to learn that if your Will directs that your IRA passes to your spouse, but your parents are listed as the beneficiaries under the plan, the IRA may pass to your parents, instead of your spouse, at your death. It is always important to periodically review your beneficiary designations, and moving to a new state or starting a new job is a good time to do so.

How to Create an Estate Plan

You may be asking, how do I create an estate plan? The best and recommended way is to contact one of our well-qualified estate planning attorneys. They will help you identify issues and options, resolve questions, and

put a comprehensive plan and set of estate planning documents in place. They are trained to and experienced with assisting clients with all sorts of needs and situations. Ward and Smith's Trusts and Estates attorneys are ready and willing to help new North Carolinians—or long-time residents in need of an estate plan — address these important issues in a complete, efficient, and comprehensive way.

It may be tempting to try a do-it-yourself product to save some time and money. We strongly recommend against that approach, because the potential for mistakes or wrong results is so high and potentially costly. In response to clients who need a "quick fix," we recently introduced an online estate planning process that we call the "Essentials Package." With the Essentials Package, you complete an electronic questionnaire and have an online meeting with one of our attorneys to discuss your situation. Based on the information gathered, we prepare a suite of estate planning documents to address your basic estate planning needs. We have found this approach can be appropriate for people who need estate planning documents immediately as a short term estate planning solution. Others who have used this package include (1) individuals with very straightforward circumstances, (2) young adults with no estate planning documents, and (3) a number of other people for whom a short term fix was extremely beneficial.

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