What should I do if I think my estate may be worth over $1 million? • You should see an attorney who regularly works with clients who have taxable estates. The attorney will be able to help you plan your estate to minimize or eliminate estate taxes.

POWERS OF ATTORNEY
What is a power of attorney? • A power of attorney ("POA") is a legal document in which a person, called the "principal," gives authority to an agent to act for the principal.

What is a POA used for? • There are two common POAs, the one for financial matters, (sometimes called a "General" or "Financial Power of Attorney") and the one for health care decisions (usually referred to as a "Health Care Power of Attorney"). The Financial Power of Attorney allows you to name someone to pay bills and handle business or property transactions for you. The Health Care Power of Attorney allows you to name someone to make healthcare decisions if you are unable to do so for yourself.

What powers and obligations does the agent have? • The agent has the powers listed in the POA, as well as additional powers that are implied by law. An agent also has duties, which may or may not be spelled out in the document. If an agent acts under a POA, the agent must act according to the principal’s wishes or according to what the principal would have wanted. If the agent doesn’t know what the principal wants, then the agent must act in the principal’s best interest. The agent’s responsibility is to the principal, not the principal’s family. The agent may not act to benefit herself or others, except as specifically authorized in the POA. Sometimes a Financial Power of Attorney has a power that allows the agent to make gifts of the principal’s property. It is wise to consult with a knowledgeable attorney prior to making gifts because there may be federal or state gift tax issues and/or penalties imposed on the principal for making gifts because there may be federal or state gift tax issues and/or penalties imposed on the principal for making gifts.

When is a POA effective? • A POA is effective immediately when it is signed unless stated otherwise in the POA. For example, a Health Care Power of Attorney may take effect only when a doctor determines that the principal is unable to make or communicate his medical decisions. A Financial Power of Attorney is in effect only while the principal is alive and competent unless it is “springing,” which means it does not become effective until a later date and the agent is determined to be incapable of making financial decisions, or the POA states that it is “durable” and survives the incapacity of the principal. Most POAs are “durable” so that the POA can be used when the principal is not capable of making his or her own decisions. If the principal dies or revokes the POA, the POA is terminated.

ADDITIONAL RESOURCES
To learn more about wills, trusts, powers of attorney and general estate planning, please consult the following resources:
- Estate Planning & Fiduciary Law Section of the North Carolina Bar Association (http://estateplanningandfiduciarylaw.ncbar.org/)
- Estate Planning: Understanding the Basics, a publication of the North Carolina Cooperative Extension, N.C. State University (http://www.ces.ncsu.edu/depts/pcs/pdfs/FC552%20estate%20planning%20final.pdf)
- List of attorneys certified by the N.C. State Bar Board of Legal Specialization as specialists in Estate Planning and Probate Law (www.nclawspecialists.org)
- Internal Revenue Service (www.irs.gov)

NEED A LAWYER? Contact the N.C. Lawyer Referral Service
The North Carolina Lawyer Referral Service (LRS) can refer you to a lawyer near you. LRS lawyers charge no more than $50 for up to a 30-minute initial consultation. This is not a prebono referral service. We do not make referrals to lawyers who work for free.

www.ncfindalawyer.org
1.800.662.7660 (toll free)
Monday-Friday (9 a.m. - 5 p.m.)

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PROTECTING YOUR ASSETS: Wills, Trusts & Powers of Attorney

This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1.800.662.7660) or online (www.ncfindalawyer.org).

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NORTH CAROLINA BAR ASSOCIATION SEEKING LIBERTY & JUSTICE

THIS IS THE LAW PROTECTING YOUR ASSETS: Wills, Trusts & Powers of Attorney
Protecting your assets and caring for your family are important issues during life and after death. Wills, trusts, and powers of attorney are strategic documents to accomplish this goal. To be certain that your needs and desires are met, always consult an experienced attorney for the planning and drafting of these documents.

WILLS

Having a will makes the emotional time after your passing easier for your family. You can lessen the burden on your family by planning for their care and financial well-being, by naming a guardian to care of your minor children, by creating a trust for the benefit of your spouse and/or children, and by planning to save taxes.

What is a will? • A will is a legal document that allows you to control how and to whom certain assets owned by you at your death. Your will can provide for the disposition of your home and other real estate, as well as personal property such as cars and bank accounts, to loved ones. There are formal requirements established by N.C. law that must be met for a will to be valid.

Who may have a will? • Anyone 18 years of age or older may have a will. Without a will, N.C. law determines how and to whom your money, property, and personal belongings will pass. If you already have a will, the person named in the will as your guardian for your minor children is your designated guardian. If this person is unavailable, you should be certain that it still expresses your wishes and desires. If you have a will from another state, you should have your will reviewed by a North Carolina attorney to ensure that it meets the requirements of N.C. law.

THE PROBATE PROCESS IN NORTH CAROLINA

What is probate? • Probate is the administration of a decedent’s estate that occurs in Superior Court. A person who has died is called the “decedent.” The person who settles the decedent’s estate is called the personal representative. The Clerk of Superior Court’s job is to make sure that the personal representative carries out its duties. The personal representative is the person authorized to deal with the assets of the estate and handle matters of estate administration.

What happens after probate is started? • The personal representative’s job is to “settle the decedent’s estate.” This includes notifying beneficiaries, gathering assets, paying debts, accounting for all property that comes into and goes out of the estate, and properly distributing the decedent’s property. The Clerk of Superior Court’s job is to make sure that the personal representative carries out its duties. The personal representative is the person authorized to deal with the assets of the estate and handle matters of estate administration.

Do all of a decedent’s assets go through probate? • No. Assets held with rights of survivorship pass automatically to the survivor and are not subject to probate. Assets with designated beneficiaries such as life insurance policies, 401(k)s, and some retirement plans pass to named beneficiaries and are usually not subject to probate. The assets held in trust are governed by the terms of the trust and usually pass outside the probate process as well.

How does the probate process end? • The probate process ends when the decedent’s debts, taxes and administrative expenses have been paid, all of the remaining assets of the estate have been distributed, and the Clerk of Superior Court releases the personal representative from further responsibility for the administration of the estate.

MINOR CHILDREN

As a parent you want your child to be loved and nurtured, even after your death. Under the terms of your will, you may nominate a guardian for your child and set aside funds for his or her care and well-being.

What are the considerations in choosing a guardian? • Often it is best to choose a family member or a close friend you and your child know well, who shares your values and beliefs. It is also important to consider the personalities of the guardians.

What is a Revocable Living Trust? • A revocable living trust (RLT) is an agreement between its maker (sometimes called the grantor or settlor) and a trustee. Under that agreement, the maker transfers assets to the trustee and gives instructions to the trustee concerning the management of the assets while held in trust. The instructions specify how the assets are to be held and used during the maker’s lifetime, as well as how the assets are to be distributed following the maker’s death. A person can be both the maker and the trustee of a RLT. The term “revocable” refers to the fact that the maker has the power to amend or do away with the trust. The maker also has the power to add or remove assets from the trust and control and direct distributions from the trust. If the maker is the trustee, he or she can make all decisions concerning the assets in the trust. The assets titled in a RLT will avoid probate at the maker’s death. Unlike wills, RLTs do not have to be probated in order to manage your assets during periods of disability.

Will a revocable living trust help me avoid taxes? RLTs are tax neutral. Both wills and trusts can help avoid estate taxes, but must include specific provisions to do so. If you require tax planning, you should make sure that an experienced estate planning attorney handles your planning, whether you choose to do so by will or RLT.

Why do I hear so much about revocable living trusts? • Groups or individuals who are not attorneys, and are not bound by professional licensing boards or ethical rules, sometimes market living trusts.

How can I leave property to my minor children? You make financial arrangements for your minor children’s care in your will. If you do not arrange for the management of property inherited by your minor children, N.C. law provides a statutory method for the management of the property for the child’s benefit. The trust can ensure that the funds are used for the child’s education, health, and general well-being. You can determine when the child will receive those funds. For example, instead of allowing the minor inheriting a large sum of money, you can require that the child be older before he or she can own the inheritance outside of the trust. Regardless of the age you determine to be a reasonable age for your child to inherit your estate, you can be assured that the child’s needs will be paid for by the person, or financial institution, you appoint to manage those funds for your child. This person is called a “Trustee.” The guardian and trustee may be the same person, but they don’t have to be.

Trusts

What is a trust? • A trust is a contractual agreement between its maker (the “grantor”) and a trustee. Under that agreement, the grantor transfers assets to the trustee and specifies how the assets are to be held and used during the grantor’s lifetime, as well as how the assets are to be distributed following the maker’s death. A person can be both the maker and the trustee of a trust. The term “trust” refers to the fact that the maker has the power to amend or do away with the trust. The maker may also have the power to add or remove assets from the trust and control and direct distributions from the trust. If the maker is the trustee, he or she can make all decisions concerning the assets in the trust. The assets titled in a trust will avoid probate at the maker’s death. Unlike wills, RLTs do not have to be probated in order to manage your assets during periods of disability.

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Sometimes, exaggerated statements of costs and delays in the administration of estates are used as part of high-pressure sales tactics to convince the public to “buy” these trusts, even though the trust documents may not be suitable for a particular person. Always consult an attorney before agreeing to “buy” documents. A licensed attorney is the only professional who is authorized to draft documents pursuant to N.C. law, and he or she is bound by ethical requirements to help a client determine if a trust is a suitable estate planning tool for the client’s particular situation.

ABUSIVE TRUST ARRANGEMENTS

What is an “abusive trust arrangement”? • “Pay no income tax!” “Pass your property to your children free of federal estate tax!” “We can help you shelter your income and your property from state and federal taxes forever!” These are examples of claims made by promoters of abusive trust arrangements, who usually promise tax benefits with no meaningful change in the taxpayer’s control or use of his or her income or assets. Abusive trust arrangements are trust arrangements that claim to reduce or eliminate federal taxes in ways that are not permitted by federal tax laws.

How will I know if a trust is an abusive trust? Abusive trust arrangements may be marketed under the following names: Pure Trust, Constitutional Trust, Unincorporated Business Trust, Complex Trust, Freedom Trust, Unincorporated Business Trust, Complex Trust, and by any other names referring to constitutional issues, fairness, equity, or patriotic themes. The promoters of abusive trusts often market their trusts under names like “The wealthy have been doing this for years” or “Your attorney wouldn’t understand it.”

What can I do to protect myself? • Remember, if it sounds too good to be true, it probably is. Ask an attorney to review the materials provided by the promoter.

ESTATE TAXES

What is the estate tax? • The estate tax is a tax on the right to pass property to others at your death. While the Internal Revenue Service and the state departments of revenue assess an estate tax when a person dies, North Carolina repealed its estate tax in 2010 for decedents dying on or after January 1, 2013.

Who is affected by the estate tax? • Fortunately, most people are not affected by the estate tax. A person who dies in 2013 or later can pass $5 million, indexed for inflation each year, to his or her heirs or other beneficiaries. The indexed amount for 2013 is $5.25 million. It is important to note that the law may change at any point in time, resulting in a larger or smaller state tax exemption.