LGBTQ OPTIONS - 2022
ESTATE PLANNING FORMS[1]

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1. FORM - REFERENCE TO MEDICARE MEDICAID CONDITIONS OF PARTICIPATION FOR HEALTHCARE POWERS OF ATTORNEY

ADVANCE DIRECTIVES. Including a reference to Medicare and Medicaid Conditions for Participation in advance directives can be useful in a hostile situation to remind healthcare provider of their obligations.

> This health care power of attorney, including, without limitation, the appointment of my health care agent(s) hereunder, is an advance directive and all of my health care providers, including, without limitation, those subject to 42 C.F.R. §§ 489.100-489.102 (Conditions for Medicare and Medicaid Participation), wherever located, shall follow the directives contained herein and the directions of my health care agent(s) appointed hereunder without interference from any third parties.

2. FORM - EXCLUSION OF HOSTILE FAMILY MEMBERS FROM NOMINATION AS EXECUTOR, TRUSTEE, AND GUARDIANS

a. **Will – Executor:** In no event shall my _____, _____, and _____, or their issue serve as personal representative of my estate, and I expressly exclude them as persons suitable to serve as personal representative of my estate.
b. **Trust – Trustee:** In no event shall my _____, _____, and _____, or their issue, serve as Trustee and I expressly exclude them as persons suitable to serve as Trustee hereunder.

c. **Power of Attorney – Guardian of Estate:** If it becomes necessary for a court to appoint a guardian of my estate, I nominate my Agent acting under this document to be the guardian of my estate, to serve without bond or security. In no event, shall my _____, _____, and _____, or their issue serve as guardian of my estate and I expressly exclude them as persons suitable to serve as guardian of my estate.

[1] The following forms are intended as general guidance. An attorney using the forms should independently determine the accuracy and legal consequences of the use of forms in a particular case.

d. **Healthcare Power of Attorney – Guardian of Person:** If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in _____, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with N.C.G.S. 35A 1201(a)(5). In no event shall my _____, _____, and _____, or their issue serve as guardian of my person and I expressly exclude them as persons suitable as guardian of my person.

3. FORM - APPOINTMENT OF AGENT AND DECLARATION OF FINAL DISPOSITON OF REMAINS AT DEATH

PRACTICE NOTE: If used outside of North Carolina, substitute statutory authority for state of residence. If there is no statutory authority, consider using without a statutory reference or incorporating in a healthcare power of attorney. Please edit as appropriate.

STATE OF NORTH CAROLINA
COUNTY OF _____

APPOINTMENT OF AGENT AND
DECLARATION OF FINAL DISPOSITON
OF REMAINS AT DEATH

I , [DECLARANT], pursuant to North Carolina General Statutes, Section 130A-420, hereby appoints the following persons in the order named to arrange for the disposition of my remains at my death and further designate the type, place and method of the disposition of my bodily remains as provided herein.

1. Authorization and Appointment of Agent: Pursuant to North Carolina General Statutes, Section 130A-420(a1), I hereby appoint the following person, in the order named, with full, absolute and exclusive authority direct the type, place and method of the disposition of my bodily remains upon my death:

A. Name: _____
Home Address: _____
_____
Home Telephone Number: _____
Work Telephone Number: _____
Cellular Telephone Number: _____

B. Name: _____
Home Address: _____
_____
Home Telephone Number: _____
Work Telephone Number: _____
Cellular Telephone Number: _____

C. Name: _____

Home Address: _____
_____

Home Telephone Number: _____
Work Telephone Number: _____
Cellular Telephone Number: _____

2. Powers of Persons Authorized to Dispose of Remains: I specifically provide the foregoing persons, in the order named, with the full, absolute and exclusive authority to make any and all decisions regarding the disposition of my remains.

3. No Authority of Next of Kin and Third Parties to Interfere with Authority of Named Agents Hereunder: The authority of the forgoing persons, in the order named above, is exclusive and no third persons (including without limitation, next of kin and person listed in North Carolina General Statutes, Section 130A-420(b)) shall have any authority nor shall their consent be required or obtained in connection with the disposition of my bodily remains.

4. Special Instructions: I direct that my bodily remains be cremated and that the foregoing persons, in the order named above, make all reasonable and necessary arrangements in connection with the cremation of my bodily remains and funeral and related services regarding the same.

[OPTOINAL IF FAMILY MEMBERS ARE HOSTILE: Specifically, and without limitation of the foregoing, my _____, _____, my _____, _____and _____'s issue shall have no authority nor shall their consent be required or obtained in connection with the disposition of my bodily remains.]

I have signed this Appointment Of Agent And Declaration Of Final Disposition Of Remains At Death this _____ day of _____, 20__.

_____
[DECLARANT]

We, _____and _____, the undersigned witnesses, being first duly sworn, sign our names and declare to the undersigned authority that the said named principal, _____, signs and executes this Appointment of Agent And Declaration of Final Disposition of Remains at Death willingly, that each of us, in the presence and hearing of the principal, signs this instrument as witness to the principal's signing and that to the best of our knowledge the principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

STATE OF NORTH CAROLINA

COUNTY OF _____

Subscribed and sworn to before me by _____ and _____, witnesses, both of whom personally appeared before me this _____ day of _____, 20__.

_____
Notary Public

_____
Notary's Printed or Typed Name

My Commission Expires:

4. FORM - § 32A-34. STATUTORY FORM AUTHORIZATION TO CONSENT TO HEALTH CARE FOR MINOR

The use of the following form in the creation of any authorization to consent to health care for minor is lawful and, when used, it shall meet the requirements and be construed in accordance with the provisions of this Article.

Authorization to Consent to
Health Care for Minor

I, _____, of _____ County,_____,
am the custodial parent having legal custody of, _____
__,
a minor child, age_____, born on_____, ____. I authorize, an
adult in whose care the minor child has been entrusted, and who resides at
_____, _____to do any acts which may be necessar
y or proper to provide for the health care of the minor child, including, but
not limited to, the power (i) to provide for such health care at any hospital
or other institution,
or the employing of any physician, dentist, nurse, or other person whose se

rvices may be needed for such health care, and (ii) to consent to and autho rize any healthcare, including administration of anesthesia, X-ray examination, performance of operations, and other procedures by physicians, dentists, and other medical personnel except the withholding or withdrawal of life sustaining procedures.

[Optional: This consent shall be effective from the date of execution to and including _____ , _____.].

By signing here, I indicate that I have the understanding and capacity to commnicate health care decisions and that I am fully informed as to the co ntents of this document and understand the full import of this grant of pow ers to the agent named herein.

_____ (SEAL)

Custodial Parent

Date:_____

STATE OF NORTH CAROLINA

COUNTY OF

On this day of _____ , _____ , personally appeared before me the named _____ , to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledges that he (or she) execut ed the same and being duly sworn by me, made oath that the statements in the foregoing instrum ent are true.

_____
Notary Public

My Commission Expires: _____

(OFFICIAL SEAL).

6. FORM – GENERAL POWER OF ATTORNEY – PROVISION ALLOWING FOR SUPPORT OF UNMARRIED PARTNER

PRACTICE NOTE: The following form assumes client desires to provide a broad obligation of support during any period of incapacity. The form should be edited as appropriate to meet the client's intent.

SPECIFIC POWERS RELATING TO PERSONAL AFFAIRS

My Agent may exercise the following powers relating to personal affairs:

A. Support. The power to do any acts, including the disbursing of any moneys belonging to me, which, in the opinion of my Agent, may be necessary or proper for any purpose in connection with my support and maintenance of **[PARTNER]** and me in accordance with my customary standard of living, including, but not limited to, provisions for housing, clothing, food, transportation, recreation, education and the employing of any person whose services may be needed for such purposes;

B. Health Care. The power to disburse any moneys belonging to me, which, in the opinion of my Agent, may be necessary or proper for any purpose in connection with my health care and the health care of **[PARTNER],** that is, any care, treatment, service or procedure to maintain, diagnose, treat, or provide for my physical or mental health or personal care and comfort and that of , **[PARTNER]**, including, but not limited to, the power to pay for the charges of health care providers, such as any physician, dentist, or podiatrist and any hospital, nursing or convalescent home, or other institution; and

C. Other Personal Affairs. The power to do any acts, including the disbursing of any moneys belonging to me, which, in the opinion of my Agent, may be necessary or proper in connection with the conduct of my other personal affairs, including, but not limited to, (i) continuation, use or termination of any charge or credit accounts, (ii) payments or contributions to any charitable, religious or educational organizations, (iii) dealing with my mail and representing me in any matter concerning the U.S. Postal Service, (iv) continuation or discontinuation of my membership in any club or other organization, and (v) acceptance of or resignation from, on my behalf, any offices or positions which I may hold including any fiduciary positions and appointment of, on my behalf, any fiduciaries which I may have the right to appoint.

D. Residence. My Agent shall also have the following power to take any of the following actions with regard to any residence I may occupy:

1. Retention and Use of Residence. My Agent may retain the interest in the residence and, if retained, shall permit **[PARTNER]** to use and occupy the residence rent free.

2. Payment of Expenses of Residence. My Agent may pay all expenses incurred in connection with the carrying, upkeep, maintenance and repair of the residence including, without limitation, all mortgage payments, taxes, assessments, insurance and repairs.

3. Purchase of Replacement Residence. If **[PARTNER]** so desires, my Agent, in my Agent's discretion, may purchase an interest in a replacement residence using such portion of the net proceeds from any sale or other disposition of my interest in the residence, as my Agent, in my Agent's discretion, may determine. To the extent not so used, the net proceeds of any sale or other disposition of my interest in the residence shall be added to my property.

PRACTICE NOTE: If a client is unmarried, the client's partner will not be able to use the client's property or assets unless the power of attorney specifically provides such right. At the same time, care must be taken to assure that the client's financial resources are not put at risk during any period of incapacity. If there are significant assets, a trust may be useful and provide greater flexibility to achieve protect both the client and the client's partner. Counselling with the client and consideration of the risk to the principal if the relationship ends or the attorney in fact abuses the power of attorney are essential.

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