

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 386*

Short Title: Clarify Atty-In-Fact Gifts.

(Public)

Sponsors: Senator Ballantine.

Referred to: Judiciary.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2 reads as rewritten:

"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

- (1) Real Property Transactions. – To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and in any way or manner deal with all or any part of any interest in real property whatsoever, that the principal owns at the time of execution or may thereafter acquire, for under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

- 1 (2) Personal Property Transactions. – To lease, purchase, exchange, and
2 acquire, and to agree, bargain, and contract for the lease, purchase,
3 exchange, and acquisition of, and to accept, take, receive, and possess
4 any personal property whatsoever, tangible or intangible, or interest
5 thereto, on such terms and conditions, and under such covenants, as said
6 attorney-in-fact shall deem proper; and to maintain, repair, improve,
7 manage, insure, rent, lease, sell, convey, subject to liens and mortgages,
8 and hypothecate, and in any way or manner deal with all or any part of
9 any personal property whatsoever, tangible or intangible, or any interest
10 therein, that the principal owns at the time of execution or may
11 thereafter acquire, under such terms and conditions, and under such
12 covenants, as said attorney-in-fact shall deem proper.
- 13 (3) Bond, Share, Stock, Securities and Commodity Transactions. – To
14 request, ask, demand, sue for, recover, collect, receive, and hold and
15 possess any bond, share, instrument of similar character, commodity
16 interest or any instrument with respect thereto together with the interest,
17 dividends, proceeds, or other distributions connected therewith, as now
18 are, or shall hereafter become, owned by, or due, owing payable, or
19 belonging to, the principal at the time of execution or in which the
20 principal may thereafter acquire interest, to have, use, and take all
21 lawful means and equitable and legal remedies, procedures, and writs in
22 the name of the principal for the collection and recovery thereof, and to
23 adjust, sell, compromise, and agree for the same, and to make, execute,
24 and deliver for the principal, all endorsements, acquittances, releases,
25 receipts, or other sufficient discharges for the same.
- 26 (4) Banking Transaction. – To make, receive, sign, endorse, execute,
27 acknowledge, deliver, and possess checks, drafts, bills of exchange,
28 letters of credit, notes, stock certificates, withdrawal receipts and
29 deposit instruments relating to accounts or deposits in, or certificates of
30 deposit of, banks, savings and loan or other institutions or associations
31 for the principal.
- 32 (5) Safe Deposits. – To have free access at any time or times to any safe
33 deposit box or vault to which the principal might have access as lessee
34 or owner.
- 35 (6) Business Operating Transactions. – To conduct, engage in, and transact
36 any and all lawful business of whatever nature or kind for the principal.
- 37 (7) Insurance Transactions. – To exercise or perform any act, power, duty,
38 right or obligation whatsoever in regard to any contract of life, accident,
39 health, disability or liability insurance or any combination of such
40 insurance procured by or on behalf of the principal prior to execution;
41 and to procure new, different or additional contracts of insurance for the
42 principal and to designate the beneficiary of any such contract of
43 insurance, provided, however, that the agent himself cannot be such

1 beneficiary unless the agent is spouse, child, grandchild, parent, brother
2 or sister of the principal.

3 (8) Estate Transactions. – To request, ask, demand, sue for, recover, collect,
4 receive, and hold and possess all legacies, bequests, devises, as are,
5 owned by, or due, owing, payable, or belonging to, the principal at the
6 time of execution or in which the principal may thereafter acquire
7 interest, to have, use, and take all lawful means and equitable and legal
8 remedies, procedures, and writs in the name of the principal for the
9 collection and recovery thereof, and to adjust, sell, compromise, and
10 agree for the same, and to make, execute, and deliver for the principal,
11 all endorsements, acquittances, releases, receipts, or other sufficient
12 discharges for the same.

13 (9) Personal Relationships and Affairs. – To do all acts necessary for
14 maintaining the customary standard of living of the principal, the spouse
15 and children, and other dependents of the principal; to provide medical,
16 dental and surgical care, hospitalization and custodial care for the
17 principal, the spouse, and children, and other dependents of the
18 principal; to continue whatever provision has been made by the
19 principal, for the principal, the spouse, and children, and other
20 dependents of the principal, with respect to automobiles, or other means
21 of transportation; to continue whatever charge accounts have been
22 operated by the principal, for the convenience of the principal, the
23 spouse, and children, and other dependents of the principal, to open
24 such new accounts as the attorney-in-fact shall think to be desirable for
25 the accomplishment of any of the purposes enumerated in this section,
26 and to pay the items charged on such accounts by any person authorized
27 or permitted by the principal or the attorney-in-fact to make such
28 charges; to continue the discharge of any services or duties assumed by
29 the principal, to any parent, relative or friend of the principal; to
30 continue payments incidental to the membership or affiliation of the
31 principal in any church, club, society, order or other organization, or to
32 continue contributions thereto.

33 In the event the attorney-in-fact named pursuant to G.S. 32A-1
34 makes a decision regarding the health care of the principal that is
35 contradictory to a decision made by a health care agent appointed
36 pursuant to Article 3 of this Chapter, the decision of the health care
37 agent shall overrule the decision of the attorney-in-fact.

38 (10) Social Security and Unemployment. – To prepare, execute and file all
39 social security, unemployment insurance and information returns
40 required by the laws of the United States, or of any state or subdivision
41 thereof, or of any foreign government.

42 (11) Benefits from Military Service. – To execute vouchers in the name of
43 the principal for any and all allowances and reimbursements payable by

1 the United States, or subdivision thereof, to the principal, arising from
2 or based upon military service and to receive, to endorse and to collect
3 the proceeds of any check payable to the order of the principal drawn on
4 the treasurer or other fiscal officer or depository of the United States or
5 subdivision thereof; to take possession and to order the removal and
6 shipment, of any property of the principal from any post, warehouse,
7 depot, dock or other place of storage or safekeeping, either
8 governmental or private, to execute and to deliver any release, voucher,
9 receipt, bill of lading, shipping ticket, certificate or other instrument
10 which the agent shall think to be desirable or necessary for such
11 purpose; to prepare, to file and to prosecute the claim of the principal to
12 any benefit or assistance, financial or otherwise, to which the principal
13 is, or claims to be, entitled, under the provisions of any statute or
14 regulation existing at the creation of the agency or thereafter enacted by
15 the United States or by any state or by any subdivision thereof, or by
16 any foreign government, which benefit or assistance arises from or is
17 based upon military service performed prior to or after execution.

18 (12) Tax matters. – To prepare, execute, verify and file in the name of the
19 principal and on behalf of the principal any and all types of tax returns,
20 amended returns, declaration of estimated tax, report, protest,
21 application for correction of assessed valuation of real or other property,
22 appeal, brief, claim for refund, or petition, including petition to the Tax
23 Court of the United States, in connection with any tax imposed or
24 proposed to be imposed by any government, or claimed, levied or
25 assessed by any government, and to pay any such tax and to obtain any
26 extension of time for any of the foregoing; to execute waivers or
27 consents agreeing to a later determination and assessment of taxes than
28 is provided by any statute of limitations; to execute waivers of
29 restriction on the assessment and collection of deficiency in any tax; to
30 execute closing agreements and all other documents, instruments and
31 papers relating to any tax liability of any sort; to institute and carry on
32 through counsel any proceeding in connection with determining or
33 contesting any such tax or to recover any tax paid or to resist any claim
34 for additional tax on any proposed assessment or levy thereof; and to
35 enter into any agreements or stipulations for compromise or other
36 adjustments or disposition of any tax.

37 (13) Employment of Agents. – To employ agents such as legal counsel,
38 accountants or other professional representation as may be appropriate
39 and to grant such agents such powers of attorney or other appropriate
40 authorization as may be required in connection with such representation
41 or by the Internal Revenue Service or other governmental authority.

42 (14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. –

- 1 a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of
2 the principal's property to any individual other than the attorney-
3 in-fact or to any organization described in sections 170(c) and
4 2522(a) of the Internal Revenue Code or corresponding future
5 provisions of federal tax law, or both, in accordance with the
6 principal's personal history of making or joining in the making of
7 lifetime gifts. As used in this subdivision 'Internal Revenue Code'
8 means the 'Code' as defined in G.S. 105-2.1.
- 9 b. Except as provided in G.S. 32A-2(14)c., or unless gifts are
10 expressly authorized by the power of attorney, a power described
11 in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact
12 in favor of the attorney-in-fact or the estate, creditors, or
13 creditors of the estate of the attorney-in-fact.
- 14 c. If the power described in G.S. 32A-2(14)a. is conferred upon two
15 or more attorneys-in-fact, it may be exercised by the attorney-in-
16 fact or attorneys-in-fact who are not disqualified by G.S. 32A-
17 2(14)b. from exercising the power of appointment as if they were
18 the only attorney-in-fact or attorneys-in-fact.
- 19 d. An attorney-in-fact expressly authorized by this section to make
20 gifts of the principal's property may elect to request the clerk of
21 the superior court to issue an order to make a gift of the property
22 of the principal.

23 (15) Gifts to the Named Attorney-In-Fact. – To make gifts to the attorney-in-
24 fact named in the power of attorney or the estate, creditors, or creditors
25 of the estate of the ~~attorney-in-fact~~ attorney-in-fact, in accordance with
26 the principal's personal history of making or joining in the making of
27 lifetime gifts."

28 Section 2. This act becomes effective July 1, 1997, and applies to all powers
29 of attorney executed on or after October 1, 1995.