GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 279
RATIFIED BILL

AN ACT TO UPDATE AND CLARIFY PROVISIONS OF THE LAWS GOVERNING ESTATES, TRUSTS, GUARDIANSHIPS, POWERS OF ATTORNEY, AND OTHER FIDUCIARIES.

The General Assembly of North Carolina enacts:

PART I. UPDATE AND CLARIFY LAWS GOVERNING WILLS AND ESTATES

CLARIFY WRONGFUL DEATH STATUTE

SECTION 1.(a) G.S. 28A-18-2(a) reads as rewritten:

"**§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled the injured person to an action for damages therefor, the person or corporation that would have been so liable, and ~~or her~~ the personal representatives or collectors of the person or corporation that would have been so liable, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or devises, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to ~~G.S. 135-45.1.~~G.S. 135-48.37. All claims filed for ~~such services shall be approved by~~ burial expenses of the decedent and reasonable hospital and medical expenses shall be subject to the approval of the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

CLARIFY NOTICE TO CREDITORS/LIMITED PERSONAL REPRESENTATIVES

SECTION 1.(b) G.S. 28A-29-1 reads as rewritten:

"**§ 28A-29-1. Notice to creditors without estate administration.**

When (i) a decedent dies testate or intestate leaving no personal property subject to ~~probate,~~ probate and no real property devised to the personal representative; (ii) a decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) a decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) a decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) a decedent has left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10, and no application or petition for appointment of a personal representative is pending or has been

granted in this State, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article."

SECTION 1.(c) G.S. 28A-29-2(a) reads as rewritten:

"(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege all of the following facts:

(1) The name and domicile of the decedent at the time of death.

(2) The date and place of death of the decedent.

(3) That, so far as is known or can with reasonable diligence be ascertained, ~~the decedent's property is not subject to probate.~~ (i) the decedent left no personal property subject to probate and no real property devised to the personal representative; (ii) the decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) the decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) the decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) the decedent left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10.

(4) That no application or petition for appointment of a personal representative is pending or has been granted in this State."

ELECTIVE SHARE CHANGE

SECTION 1.(d) G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the surviving spouse was married to the decedent ~~is not survived by any lineal descendants, one-half~~ for less than five years, fifteen percent (15%) of the Total Net Assets.

(2) If the surviving spouse was married to the decedent ~~is survived by one child, or lineal descendants of one deceased child, one-half~~ for at least five years but less than 10 years, twenty-five percent (25%) of the Total Net Assets.

(3) If the surviving spouse was married to the decedent ~~is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third~~ for at least 10 years but less than 15 years, thirty-three percent (33%) of the Total Net Assets.

(4) If the surviving spouse was married to the decedent for 15 years or more, fifty percent (50%) of the Total Net Assets.

~~(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.~~"

ATTORNEYS' FEES ON YEAR'S ALLOWANCE

SECTION 1.(e) G.S. 30-31 reads as rewritten:

"**§ 30-31. Amount of allowance.**

The clerk of superior court may assign to the petitioner a value sufficient for the support of petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding the deceased's death. Attorneys' fees and costs awarded the petitioner under G.S. 6-21 shall be paid as an administrative expense of the estate."

OUT-OF-STATE WILL PROBATE AND MILITARY WILLS

SECTION 1.(f) G.S. 31-11.6 reads as rewritten:

"**§ 31-11.6. How attested wills may be made self-proved.**

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in ~~substantially~~ the following ~~form:~~ form, or in a similar form showing the same intent:

"I, _____, the testator, sign my name to this instrument this ____ day of _____, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

THE STATE OF _____.
COUNTY OF _____.

Subscribed, sworn to and acknowledged before me by _____. the testator and subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of _____

(SEAL)

(SIGNED) _____
(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA
"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes

therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

_____
Testator

_____
Witness

_____
Witness

_____
Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and sworn before me by _____, _____ and _____ witnesses, this ____ day of _____, A.D. ____

(SEAL)

(SIGNED) _____

(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

(d) Any will executed in another state and shown by the propounder to have been made self-proved under the laws of that state shall be considered as self-proved.

(e) A military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d(d) or any successor or replacement statute shall be considered as self-proved."

SECTION 1.(g) G.S. 31-46 reads as rewritten:

"**§ 31-46. Validity of will; which laws govern.**

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the ~~testator.~~testator, or if (i) its execution complies with the law of the place where it is executed at the time of execution; (ii) its execution complies with the law of the place where the testator is domiciled at the time of execution or at the time of death; or (iii) it is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute."

SECTION 1.(h) G.S. 28A-2A-17 reads as rewritten:

"**§ 28A-2A-17. Certified copy of will of nonresident recorded.**

(a) Subject to the provisions of subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46, must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State either at the time of its execution or at the time of the death of the testator, or as otherwise recognized as

valid under the provisions of G.S. 31-46, does not appear as required by subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State."

PART II. UPDATE TO AND CLARIFICATIONS OF LAWS GOVERNING TRUSTS

INSURABLE INTEREST OF TRUSTEE

SECTION 2.(a) Article 1 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-1-114. Insurable interest of trustee.**

(a) As used in this section, the term "settlor" means a person that executes a trust instrument. The term includes a person for whom a fiduciary or agent is acting.

(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is trust property if, as of the date the policy is issued:

(1) The insured is either of the following:

a. A settlor of the trust.

b. An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured.

(c) This section does not limit or abridge any insurable interest or right to insure now existing at common law or by statute and shall be construed liberally to sustain insurable interests, whether as a declaration of existing law or as an extension of or addition to existing law."

UNIFORM TRUST CODE CLARIFICATION AS TO SETTLOR'S SPOUSE

SECTION 2.(b) G.S. 36C-5-505(c) reads as rewritten:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:

(1) An irrevocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.

(2) An irrevocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code.

(3) An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.

(4) Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1), (2), or (3) of this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of ~~appointment.~~appointment, and the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable intervivos trust was created, notwithstanding a subsequent dissolution of the marriage."

TRUSTEE POWERS CLARIFICATION

SECTION 2.(c) G.S. 36C-8-816(16) reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

…

(16) Exercise elections with respect to federal, state, and local ~~taxes;~~taxes including, but not limited to, considering discretionary distributions to a beneficiary as being made from capital gains realized during the year;

…."

DECANTING STATUTE IMPROVEMENTS

SECTION 2.(d) G.S. 36C-8-816.1(c) and (e) read as rewritten:

"**§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

…

(c) The terms of the second trust shall be subject to all of the following:

…

(3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original ~~trust.~~trust if that interest has come into effect with respect to the beneficiary.

…

(8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 ~~covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust.~~specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed.

…

(e) The exercise of the power to appoint principal or income under subsection (b) of this section:

(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 ~~covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust;~~specifying the permissible period allowed for the suspension of the power of alienation of the original trust and the time from which that permissible period is computed; and

(3) Is not prohibited by a spendthrift provision or by a provision in the original trust instrument that prohibits amendment or revocation of the trust."

PART III. MISCELLANEOUS UPDATES AND CLARIFICATIONS

CLARIFY INHERITED IRA CREDITOR EXEMPTION

SECTION 3.(a) G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

…

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. Any money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code, including, but not limited to, a

direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) of the Internal Revenue Code.

…."

CLARIFICATION AS TO DIRECTED FIDUCIARIES

SECTION 3.(b) G.S. 32-72(d) reads as rewritten:

"(d) The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

(1) The terms of the instrument may confer upon a person~~the power to direct or consent to certain actions of the fiduciary with respect to~~ certain powers with respect to the actions of a fiduciary, including, but not limited to, the following:

a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.

b. Any other ~~administrative~~ matter.

(2) When the terms of the instrument confer upon a person ~~the power to direct or consent to certain actions of the fiduciary,~~ any power with respect to the actions of a fiduciary, the duty and liability of the fiduciary are as follows:

a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the fiduciary.

b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder's consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary's failure to take any action that required the power holder's consent.

b1. If the terms of the instrument confer upon a person a power other than the power to direct or consent to actions of the fiduciary, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

c. The fiduciary has no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder or other participation in decisions within the scope of the power holder's authority.

(3) A person who holds a power ~~to direct or consent~~ with respect to the actions of a fiduciary is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with such a power~~to direct or consent,~~ with respect to the actions of a fiduciary, the beneficiary is not a fiduciary with respect to the following:

a. A power that constitutes a power of ~~appointment.~~appointment held by a beneficiary under the instrument.

b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

c. A power to remove and appoint a fiduciary.

The holder of the power ~~to direct or consent~~with respect to the actions of a fiduciary is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power."

GUARDIANSHIP GIFTING

SECTION 3.(c) G.S. 35A-1336.1 reads as rewritten:

"**§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that both the following requirements are met:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(2) The judge determines that either:

a. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent, and each donee is entitled to one or more specific devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary devisee or beneficiary designated in the paper-writing or revocable trust or both; or

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, and each donee is a person who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts; or

c. The donee is the spouse, parent, descendent of the incompetent, or descendant of the incompetent's parent, and ~~the amount of the gift does not exceed the federal annual gift tax exclusion.~~the gift qualifies either for the federal annual gift tax exclusion under section 2503(b) of the Internal Revenue Code or is a qualified transfer for tuition or medical expenses under section 2503(e) of the Internal Revenue Code.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

SECTION 3.(d) G.S. 35A-1341.1 reads as rewritten:

"**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(4) The judge determines that either a., b., c., or d. applies.

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.

2. Each donee is entitled to one or more specific devises, or distributions of specific amounts of money, income, or property under either the paper-writing or revocable trust or both or is a residuary devisee or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific devise, or distribution of specific amounts of money, income, or property.

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent, and ~~the amount of the gift does not exceed the federal annual gift tax exclusion.~~the gift qualifies either for the federal annual gift tax exclusion under section 2503(b) of the Internal Revenue Code or is a qualified transfer for tuition or medical expenses under section 2503(e) of the Internal Revenue Code.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent; then all residuary devisees and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

(6) If so far as is known, the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, all persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been

given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

SECTION 3.(e) G.S. 35A-1251 reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

…

(24) To petition the court for approval of the exercise of any of the following powers with respect to a revocable trust that the ward, if competent, could exercise as settlor of the revocable trust:

a. Revocation of the trust.
b. Amendment of the trust.
c. Additions to the trust.
d. Direction to dispose of property of the trust.
e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate ~~plan;~~ plan but may incorporate tax planning or public benefits planning into the ward's existing estate plan, which may include leaving beneficial interests in trust rather than outright, and (ii) shall be subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

UPDATE NORTH CAROLINA INVESTMENT ADVISERS ACT

SECTION 3.(f) G.S. 78C-2(1)k. reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

…

k. Any person excepted from the definition of investment adviser under the Investment Advisers Act of 1940 or any rule or regulation promulgated under that act.~~Repealed by Session Laws 2003-413, s. 16, effective August 14, 2003.~~"

SECTION 3.(g) G.S. 78C-8(d) reads as rewritten:

"**§ 78C-8. Advisory activities.**

…

(c) Except as may be permitted by rule or order of the Administrator, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client (unless otherwise provided by subsection (d) or (f) below);

…

(d) Subdivision (c)(1) does not apply to any person who is exempt from registration under ~~the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this subsection (d) to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988.~~ G.S. 78C-16(a)(4) or to the performance, renewal, or extension of any advisory contract entered into by an investment advisor at a time when such investment advisor was exempt from registration under G.S. 78C-16(a)(4). Subdivision (c)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (c)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

SECTION 3.(h) G.S. 78C-16(a)(4) reads as rewritten:

"**§ 78C-16. Registration and notice filing requirement.**

(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

…

(4) The person, during the course of the preceding 12 months, has had fewer than 15 clients, and neither holds himself or herself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940.~~The person is exempt from registration under the Investment Advisers Act of 1940 by operation of section 203(b)(3) of that act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to section 203(b)(3) provided that any reference in this subsection to any statute, rule, or regulation shall be deemed to incorporate the statute, rule, or regulation (and any statute, rule, or regulation referenced therein) as in effect June 1, 1988.~~"

PART IV. DIRECTIVES TO REVISOR OF STATUTES

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the North Carolina Uniform Trust Code and all explanatory comments of the drafters of this act, as the Revisor may deem appropriate.

PART V. EFFECTIVE DATE

SECTION 5. Section 1(d) of this act becomes effective October 1, 2013, and applies to estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law. Section 3(a) of this act applies to all inherited individual retirement accounts without regard to the date an account was created.

In the General Assembly read three times and ratified this the 5th day of June, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

_____
Pat McCrory
Governor

Approved _____.m. this _____ day of _____, 2013