

**§ 33B-17. Distribution on termination.**

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) To the beneficiary, if not incapacitated or deceased;
- (2) To the guardian of the estate or other recipient designated by the court for an incapacitated beneficiary; or
- (3) Upon the beneficiary's death, in the following order:
  - a. As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
  - b. As designated in the instrument creating the custodial trust; or
  - c. To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

(d) The writing described in G.S. 33B-17(a)(3)a. or the instrument described in G.S. 33B-17(a)(3)b. must also be signed by at least two witnesses, neither of whom is the custodial trustee or the distributee of the custodial trust property, and be acknowledged by the beneficiary or transferor before an individual authorized to administer oaths or take acknowledgements. Failure to comply with the witness or acknowledgement requirement shall not affect the validity of the custodial trust during the life of the beneficiary, but shall invalidate only the direction or designation of the distributee on termination of the custodial trust under G.S. 33B-17(a)(3)a. or G.S. 33B-17(a)(3)b., and upon termination of the custodial trust the custodial trustee shall transfer the unexpended custodial trust property according to the remaining provisions of this section. (1995, c. 486, s. 1.)