

**§ 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 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. (1999-270, s. 3; 2011-284, s. 39; 2013-91, s. 3(c).)