

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 724

Short Title: Gifts by Attorney-In-Fact.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II/Election Laws

April 13, 1995

A BILL TO BE ENTITLED

AN ACT TO DESCRIBE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-1 reads as rewritten:" § 32A-1. Statutory Short Form of General Power of Attorney.The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.'NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.State of

County of

I, the undersigned, hereby appoint my attorney-in-fact for me and give such person full power to act in my name, place and stead in any way which I myself could do if I were personally present with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes to the extent that I am permitted by law to act through an agent. (DIRECTIONS: Initial the line opposite any one or

more of the subdivisions as to which the principal desires to give the attorney-in- fact authority.)

- (1) Real property ~~transactions;~~ transactions
- (2) Personal property ~~transactions;~~ transactions
- (3) Bond, share and commodity ~~transactions;~~ transactions
- (4) Banking ~~transactions;~~ transactions
- (5) Safe ~~deposits;~~ deposits
- (6) Business operating ~~transactions;~~ transactions
- (7) Insurance ~~transactions;~~ transactions
- (8) Estate ~~transactions;~~ transactions
- (9) Personal relationships and ~~affairs;~~ affairs
- (10) Social security and ~~unemployment;~~ unemployment
- (11) Benefits from ~~military service;~~ military service
- (12) Tax
- (13) Employment of agents
- (14) Gifts to individuals and charities
- (15) Gifts to the named attorney-in-fact

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates, 19.....')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

....., 19.....(Seal)
Signature STATE OF COUNTY OFOn this day of

.....,
.....,
personally
appeared
before me, the
said named
..... to me
known and
known to me
to be the
person

described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires

.....
(Signature of Notary Public)
Notary Public (Official Seal)''.

Sec. 2. G.S. 32A-2 is amended by adding the following new subdivisions to

read:

“(14) Gifts to Individuals and Charities. –

- a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.
- b. Except as provided in G.S. 32A-2(14)c., a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.
- c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

1 An attorney-in-fact, acting under a power of attorney that does not contain the grant
2 of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's
3 property, may initiate a special proceeding before the clerk of superior court in
4 accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for
5 authority to make gifts of the principal's property to the extent not inconsistent with the
6 express terms of the power of attorney. The principal and any guardian ad litem
7 appointed for the principal are the defendants in a proceeding pursuant to this Article.
8 The clerk may issue an order setting forth the amounts, frequency, recipients, and
9 proportions of any gifts of the principal's property after considering all relevant factors,
10 including, but not limited to: (i) the size of the principal's estate; (ii) the principal's
11 foreseeable obligations; (iii) the principal's foreseeable maintenance needs; (iv) the
12 principal's personal history of making or joining in the making of lifetime gifts; (v) the
13 principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the
14 decision and order of the clerk within the time prescribed by law, the clerk's order shall
15 be submitted to the judge of the superior court and approved by the court before the order
16 becomes effective.

17 **"§ 32A-14.11. Appeal; stay effected by appeal.**

18 Any party in interest may appeal from the decision of the clerk to the judge of the
19 superior court. The procedure for appeal shall be the same as the procedure for appeal in
20 other special proceedings governed by Article 33 of Chapter 1 of the General Statutes.
21 An appeal taken from the decision of the clerk shall stay the decision and order of the
22 clerk until the cause is heard and determined by the judge upon the appeal taken.

23 **"§ 32A-14.12. Costs and fees.**

24 All costs and fees arising in connection with a proceeding under this Article shall be
25 assessed the same as costs and fees are assessed in special proceedings governed by
26 Article 33 of Chapter 1 of the General Statutes."

27 Sec. 4. Article 2A of Chapter 32A as set out in Section 3 of this act is intended
28 as a codification of the existing North Carolina common law.

29 Sec. 5. This act is effective upon ratification.