

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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Short Title: Uniform Custodial Trust Act.

(Public)

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Sponsors:

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Referred to:

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March 8, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM CUSTODIAL  
3 TRUST ACT AND TO MAKE CONFORMING AMENDMENTS TO THE POWER  
4 OF ATTORNEY STATUTES, AS RECOMMENDED BY THE GENERAL  
5 STATUTES COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. The General Statutes are amended by adding a new Chapter to read  
8 as follows:

9 **CHAPTER 33B.**

10 **"NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT.**

11 **"§ 33B-1. Definitions.**

12 As used in this act:

- 13 (1) 'Adult' means an individual who is at least 21 years of age.  
14 (2) 'Beneficiary' means an individual for whom property has been  
15 transferred to or held under a declaration of trust by a custodial trustee  
16 for the individual's use and benefit under this act.  
17 (3) 'Guardian of the estate' means a guardian appointed for the purpose of  
18 managing the property, estate, and business affairs of a ward, or a

1 person legally authorized to perform substantially the same functions.  
2 As used in this act the term 'guardian of the estate' includes a general  
3 guardian or guardian of the estate appointed under the provisions of  
4 Chapter 35A of the General Statutes.

5 (4) 'Court' means the clerk of superior court of this State.

6 (5) 'Custodial trust property' means an interest in property transferred to or  
7 held under a declaration of trust by a custodial trustee under this act and  
8 the income from and proceeds of that interest.

9 (6) 'Custodial trustee' means a person designated as trustee of a custodial  
10 trust under this act or a substitute or successor to the person designated.

11 (7) 'Guardian of the person' means a guardian appointed for the purpose of  
12 performing duties relating to the care, custody, and control of a ward,  
13 but not a person who is only a guardian ad litem. As used in this act the  
14 term 'guardian of the person' includes a general guardian or guardian of  
15 the person appointed under the provisions of Chapter 35A of the  
16 General Statutes.

17 (8) 'Incapacitated' means lacking the ability to manage property and  
18 business affairs effectively by reason of mental illness, mental  
19 deficiency, physical illness or disability, chronic use of drugs, chronic  
20 intoxication, confinement, detention by a foreign power, disappearance,  
21 being under 21 years of age, or other disabling cause.

22 (9) 'Legal representative' means a personal representative or guardian of the  
23 estate.

24 (10) 'Member of the beneficiary's family' means a beneficiary's spouse,  
25 descendant, parent, grandparent, brother, sister, uncle or aunt, whether  
26 of the whole or half blood or by adoption.

27 (11) 'Person' means an individual, corporation, business trust, estate, trust,  
28 partnership, joint venture, association, or any other legal or commercial  
29 entity.

30 (12) 'Personal representative' means an executor, administrator, or special  
31 administrator of a decedent's estate, a person legally authorized to  
32 perform substantially the same function, or a successor to any of them.

33 (13) 'State' means a state, territory, or possession of the United States, the  
34 District of Columbia, or the Commonwealth of Puerto Rico.

35 (14) 'Transferor' means a person who creates a custodial trust by transfer or  
36 declaration.

37 (15) 'Trust company' means a financial institution, corporation, or other legal  
38 entity, authorized to exercise general trust powers in North Carolina.

39 (16) 'General guardian' means a guardian of both the estate and the person.

40 **"§ 33B-2. Custodial trust; general.**

41 (a) A person may create a custodial trust of property by a written transfer of the  
42 property to a trust company or an adult other than the transferor executed in any lawful  
43 manner, naming as beneficiary an individual, who may be the transferor, in which the

1 transferee is designated, in substance, as custodial trustee under the North Carolina  
2 Uniform Custodial Trust Act. A transfer is executed in a lawful manner if the  
3 formalities, if any, of the transfer of the particular property necessary under general  
4 principles of law are satisfied.

5 (b) An adult may create a custodial trust of property by a written declaration which  
6 names as beneficiary an individual other than the declarant. The declaration shall be  
7 evidenced by registration of the property or by other instrument of declaration executed  
8 in any lawful manner, describing the property and designating the declarant, in substance,  
9 as custodial trustee under the North Carolina Uniform Custodial Trust Act. A registration  
10 or other declaration of trust for the sole benefit of the declarant is not a custodial trust  
11 under this act. A registration or declaration is executed in a lawful manner if the  
12 formalities, if any, of the transfer of the beneficial interest in the particular property under  
13 general principles of law are satisfied.

14 (c) Title to custodial trust property is in the custodial trustee, and the beneficial  
15 interest is in the beneficiary.

16 (d) Except as provided in subsection (e) of this section, a transferor may not  
17 terminate a custodial trust.

18 (e) The beneficiary, if not incapacitated, or the guardian of the estate of an  
19 incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial  
20 trustee a writing signed by the beneficiary or guardian of the estate declaring the  
21 termination. If not previously terminated, the custodial trust terminates on the death of  
22 the beneficiary.

23 (f) Any person may augment existing custodial trust property by the addition of  
24 other property pursuant to a written instrument satisfying the requirements of subsections  
25 (a) or (b) of this section.

26 (g) The transferor may designate, or authorize the designation of, a successor  
27 custodial trustee in the trust instrument.

28 (h) This act does not displace or restrict other means of creating trusts. A trust, the  
29 terms of which do not conform to this act, may be enforceable according to its terms  
30 under the law.

31 **"§ 33B-3. Custodial trust to begin in the future.**

32 (a) A person may create a custodial trust to begin in the future by designating the  
33 transferee in substance 'as custodial trustee for ..... (name of beneficiary) under  
34 the North Carolina Uniform Custodial Trust Act'. A designation under this section may  
35 be made in:

36 (1) A will;

37 (2) A trust;

38 (3) An insurance policy;

39 (4) A deed;

40 (5) A payable-on-death account;

41 (6) An instrument exercising a power of appointment, provided that the  
42 donor of the power has not expressly prohibited the exercise of the  
43 power in favor of a custodial trustee, and provided further that the

beneficiary of the custodial trust is a permissible object of the power, although the custodial trustee need not be a permissible object of the power; or

(7) A writing designating a beneficiary of contractual rights, including but not limited to rights under a pension or profit sharing plan, which is registered with or delivered to the fiduciary, payor, issuer, or obligor of the contractual right.

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the preceding designated custodial trustee is unable or unwilling to serve.

**"§ 33B-4. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.**

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this act upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

**'CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE**

I, ..... (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the North Carolina Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of

.....

Dated: .....

.....

(Signature of Custodial Trustee)'

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this act is subject to personal jurisdiction in this State with respect to any matter relating to the custodial trust.

**"§ 33B-5. Transfer to custodial trustee by fiduciary or obligor; facility of payment.**

(a) A person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

1 (c) This section shall not apply when the disposition of the property has been  
2 directed by an instrument designating a custodial trustee pursuant to G.S. 33B-3.

3 **"§ 33B-6. Single beneficiaries; separate custodial trusts.**

4 (a) Beneficial interests in a custodial trust may not be created for multiple  
5 beneficiaries.

6 (b) All custodial trust property held under this act by the same custodial trustee for  
7 the use and benefit of a single beneficiary may be administered as a single custodial trust.

8 **"§ 33B-7. General duties of custodial trustee.**

9 (a) If appropriate, a custodial trustee shall register or record the instrument vesting  
10 title to custodial trust property.

11 (b) If the beneficiary is not incapacitated, a custodial trustee shall follow the  
12 directions of the beneficiary in the management, control, investment, or retention of the  
13 custodial trust property.

14 If the beneficiary is incapacitated or the beneficiary has capacity but has not given  
15 direction, the custodial trustee shall observe the standard of care that would be observed  
16 by a prudent person dealing with property of another and is not limited by any other law  
17 restricting investments by fiduciaries. However, a custodial trustee, in the custodial  
18 trustee's discretion, may retain any custodial trust property received from the transferor.

19 If a custodial trustee has a special skill or expertise or is named custodial trustee on  
20 the basis of representation of a special skill or expertise, the custodial trustee shall  
21 observe the standard of care expected of one with that skill or expertise.

22 (c) Subject to subsection (b) of this section, a custodial trustee shall take control of  
23 and collect, hold, manage, invest, and reinvest custodial trust property.

24 (d) A custodial trustee at all times shall keep custodial trust property of which the  
25 custodial trustee has control, separate from all other property in a manner sufficient to  
26 identify it clearly as custodial trust property of the beneficiary. Custodial trust property,  
27 the title to which is subject to recordation, is adequately identified as such if an  
28 appropriate instrument so identifying the property is recorded in the name of the custodial  
29 trustee, designated in substance 'as custodial trustee for ..... (name of beneficiary)  
30 under the North Carolina Uniform Custodial Trust Act'. Custodial trust property subject  
31 to registration is so identified if it is registered, or held in an account in the name of the  
32 custodial trustee, designated in substance 'as custodial trustee for ..... (name  
33 of beneficiary) under the North Carolina Uniform Custodial Trust Act'.

34 (e) A custodial trustee shall keep records of all transactions with respect to  
35 custodial trust property, including information necessary for the preparation of tax  
36 returns, and shall make the records and information available at reasonable times to the  
37 beneficiary or legal representative of the beneficiary.

38 (f) Unless the durable power of attorney specifically provides otherwise, the  
39 exercise of the durable power of attorney for an incapacitated beneficiary is not effective  
40 to terminate or direct the administration or distribution of a custodial trust.

41 **"§ 33B-8. General powers of custodial trustee.**

42 (a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers  
43 over custodial trust property which an unmarried adult owner has over individually

1 owned property, but a custodial trustee may exercise those rights and powers in a  
2 fiduciary capacity only.

3 (b) This section does not relieve a custodial trustee from liability for a violation of  
4 G.S. 33B-7.

5 **"§ 33B-9. Use of custodial trust property.**

6 (a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's  
7 use and benefit so much or all of the custodial trust property as the beneficiary while not  
8 incapacitated may direct from time to time.

9 (b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or  
10 all of the custodial trust property as the custodial trustee considers advisable for the use  
11 and benefit of the beneficiary and the spouse and children, and other dependents of the  
12 beneficiary. Expenditures may be made in the manner, when, and to the extent that the  
13 custodial trustee determines suitable and proper, without court order and without regard  
14 to other support, income, or property of the beneficiary.

15 (c) A custodial trustee may establish checking, savings, or other similar accounts  
16 of reasonable amounts from which either the custodial trustee or the beneficiary may  
17 withdraw funds or against which either may draw checks. Funds withdrawn from, or  
18 checks written against, the account of the beneficiary are distributions of custodial trust  
19 property by the custodial trustee to the beneficiary.

20 **"§ 33B-10. Determination of incapacity; effect.**

21 (a) The custodial trustee shall administer the custodial trust as for an incapacitated  
22 beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the transferor has  
23 so directed in the instrument creating the custodial trust, (iii) a determination that a  
24 beneficiary is an incompetent adult has been made under the provisions of Chapter 35A,  
25 including a determination of limited incompetence under the provisions of G.S. 35A-  
26 1112(d), unless the court provided otherwise, or (iv) the custodial trustee has determined  
27 that the beneficiary is incapacitated under subsection (b) of this section.

28 (b) A custodial trustee may determine that the beneficiary is incapacitated in  
29 reliance upon (i) previous direction or authority given by the beneficiary while not  
30 incapacitated, including direction or authority pursuant to a durable power of attorney,  
31 (ii) the certificate of the beneficiary's physician, (iii) authority given to the custodial  
32 trustee in the instrument creating the trust to determine the incapacity of the beneficiary  
33 after the creation of the custodial trust, or (iv) other reasonable evidence.

34 (c) If a custodial trustee for an incapacitated beneficiary determines that the  
35 beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's  
36 ability to manage property and business affairs have changed since the creation of a  
37 custodial trust directing administration as for an incapacitated beneficiary, the custodial  
38 trustee may administer the trust as for a beneficiary who is not incapacitated.

39 (d) Regardless of whether any determination of incapacity under subsection (b) of  
40 this section has or has not been made, the beneficiary, the custodial trustee, or other  
41 person interested in the custodial trust property or the welfare of the beneficiary, may  
42 petition under the procedures of Chapter 35A for a determination by the court whether  
43 the beneficiary is or continues to be incapacitated as defined in G.S. 33B-1(8). A

1 determination of incapacity does not require appointment of a guardian of the estate  
2 unless in the discretion of the court such appointment is otherwise warranted.

3 (e) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any  
4 designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee,  
5 or (iv) any immunities of third persons acting on instructions of the custodial trustee.

6 (f) A custodial trustee shall not be liable for any determinations authorized by this  
7 section regarding the capacity or incapacity of the beneficiary made in good faith.

8 **"§ 33B-11. Third-party transactions.**

9 A third person in good faith and without a court order may act on instructions of, or  
10 otherwise deal with, a person purporting to make a transfer as, or to act in the capacity of,  
11 a custodial trustee. In the absence of actual knowledge to the contrary, the third person is  
12 not responsible for determining:

13 (1) The validity of the purported custodial trustee's designation;

14 (2) The propriety of, or the authority under this act for, any action of the  
15 purported custodial trustee;

16 (3) The validity or propriety of an instrument executed or instruction given  
17 pursuant to this act either by the person purporting to make a transfer or  
18 declaration or by the purported custodial trustee; or

19 (4) The propriety of the application of property vested in the purported  
20 custodial trustee.

21 **"§ 33B-12. Liability to the third person.**

22 (a) A claim based on (i) a contract entered into by a custodial trustee acting in a  
23 fiduciary capacity, (ii) an obligation arising from the ownership or control of custodial  
24 trust property, (iii) a tort committed in the course of administering the custodial trust,  
25 may be asserted by a third person against the custodial trust property by proceeding  
26 against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or  
27 the beneficiary is personally liable.

28 (b) A custodial trustee may be held personally liable to a third person:

29 (1) On a contract entered into in a fiduciary capacity if the custodial trustee  
30 fails to reveal that capacity or to identify the custodial trust in the  
31 contract; or

32 (2) For an obligation arising from control of custodial trust property or for a  
33 tort committed in the course of the administration of the custodial trust  
34 if the custodial trustee is personally at fault.

35 (c) A beneficiary is not personally liable to a third person for an obligation arising  
36 from beneficial ownership of custodial trust property or for a tort committed in the course  
37 of administration of the custodial trust unless the beneficiary is personally in possession  
38 of the custodial trust property giving rise to the liability or is personally at fault.

39 (d) Subsections (b) and (c) of this section do not preclude actions or proceedings  
40 to establish liability of the custodial trustee or beneficiary as owner or possessor of the  
41 custodial trust property to the extent that person is protected as the insured by liability  
42 insurance.

1 **"§ 33B-13. Declination, resignation, incapacity, death, or removal of custodial**  
2 **trustee; designation of successor custodial trustee.**

3 (a) Before accepting the custodial trust property, a person designated as custodial  
4 trustee may decline to serve by notifying the person who made the designation, the  
5 transferor, or the transferor's legal representative. In such case, the transferor or the  
6 transferor's legal representative may designate a substitute custodial trustee. If the  
7 custodial trust is being created under G.S. 33B-3, the substitute custodial trustee  
8 designated under G.S. 33B-3 becomes the custodial trustee, or, if a substitute custodial  
9 trustee has not been designated, the person who made the designation may designate a  
10 substitute custodial trustee pursuant to G.S. 33B-3.

11 (b) A custodial trustee who has accepted the custodial trust property may resign by  
12 (i) delivering written notice to a successor custodial trustee, if any, the beneficiary, and, if  
13 the beneficiary is incapacitated, to the beneficiary's guardian of the estate, if any, and (ii)  
14 transferring and, where appropriate, registering or recording an instrument relating to the  
15 custodial trust property in the name of the successor custodial trustee identified under  
16 subsection (c) of this section.

17 (c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or  
18 becomes incapacitated, the successor designated under G.S. 33B-2 or G.S. 33B-3  
19 becomes custodial trustee. If there is no effective provision for a successor, the  
20 beneficiary, if not incapacitated, may designate a successor custodial trustee; if the  
21 beneficiary fails to act within 90 days, the resigning custodial trustee may designate a  
22 successor custodial trustee. If there is no effective provision for a successor custodial  
23 trustee and if the beneficiary is incapacitated, the beneficiary's guardian of the estate  
24 becomes successor custodial trustee. If the beneficiary does not have a guardian of the  
25 estate or the guardian of the estate fails to act as custodial trustee, the resigning custodial  
26 trustee may designate a successor custodial trustee.

27 (d) If a successor custodial trustee is not designated pursuant to subsection (c) of  
28 this section, the following persons may in the order listed petition the court to designate a  
29 successor custodial trustee: the transferor, the legal representative of the transferor, the  
30 legal representative of the custodial trustee, the general guardian of the beneficiary, the  
31 guardian of the estate of the beneficiary, an adult member of the beneficiary's family, a  
32 person interested in the custodial trust property, or a person interested in the welfare of  
33 the beneficiary.

34 (e) A custodial trustee who declines to serve or resigns, or the legal representative  
35 of a deceased or incapacitated custodial trustee shall put the custodial trust property and  
36 records in the possession and control of the successor custodial trustee as soon as  
37 practical. The successor custodial trustee shall enforce the obligation to deliver custodial  
38 trust property and records.

39 (f) A beneficiary, the beneficiary's guardian of the estate, an adult member of the  
40 beneficiary's family, a guardian of the person of the beneficiary, a person interested in the  
41 custodial trust property, or a person interested in the welfare of the beneficiary, may  
42 petition the court (i) to remove the custodial trustee for cause and to designate a successor



1 custodial trustee, (ii) to require the custodial trustee to furnish a bond or other security for  
2 the faithful performance of fiduciary duties, or (iii) for other appropriate relief.

3 **"§ 33B-14. Expenses, compensation, and bond of custodial trustee.**

4 Except as otherwise provided in the instrument creating the custodial trust, in an  
5 agreement with the beneficiary, or by court order, a custodial trustee:

- 6 (1) Is entitled to reimbursement from custodial trust property for reasonable  
7 expenses incurred in the performance of fiduciary services;  
8 (2) May charge, no later than six months after the end of each calendar  
9 year, a reasonable compensation for fiduciary services performed during  
10 that year; and  
11 (3) Need not furnish a bond or other security for the faithful performance of  
12 fiduciary duties.

13 **"§ 33B-15. Reporting and accounting by custodial trustee; determination of liability**  
14 **of custodial trustee.**

15 (a) Upon the acceptance of custodial trust property, the custodial trustee shall  
16 provide a written statement that the custodial trust property is held pursuant to this act  
17 and describing the custodial trust property. The custodial trustee shall thereafter provide  
18 a written statement of the administration of the custodial trust property (i) once each year,  
19 (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal  
20 representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon  
21 termination of the custodial trust. The statements must be provided to the beneficiary or  
22 to the beneficiary's legal representative. Upon termination of the beneficiary's interest,  
23 the custodial trustee shall furnish a statement to the person to whom the custodial trust  
24 property is to be delivered.

25 (b) A beneficiary, the beneficiary's legal representative, an adult member of the  
26 beneficiary's family, a person interested in the custodial trust property, or a person  
27 interested in the welfare of the beneficiary may petition the court for an accounting by the  
28 custodial trustee or the custodial trustee's legal representative.

29 (c) A successor custodial trustee may petition the court for an accounting by a  
30 predecessor custodial trustee or the legal representative of a predecessor custodial trustee.

31 (d) In an action or proceeding under this act or in any other proceeding, the court  
32 may require or permit the custodial trustee or the custodial trustee's legal representative to  
33 account. The custodial trustee or the custodial trustee's legal representative may petition  
34 the court for approval of annual or final accounts.

35 (e) If a custodial trustee is removed, the court shall require an accounting and  
36 order delivery of the custodial trust property and records to the successor custodial trustee  
37 and the execution of all instruments required for transfer of the custodial trust property.

38 (f) On petition of the custodial trustee or any person who could petition for an  
39 accounting, the court, after notice to interested persons, may issue instructions to the  
40 custodial trustee or review the propriety of the acts of a custodial trustee or the  
41 reasonableness of compensation determined by the custodial trustee or others.

42 **"§ 33B-16. Limitations of action against custodial trustee.**

1       (a) Except as provided in subsections (b) and (c) of this section, a claim for relief  
2 against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a  
3 person to whom custodial trust property is to be paid or delivered, or the legal  
4 representative of an incapacitated or deceased beneficiary or payee:

5           (1) Who has received a final account or statement fully disclosing the  
6 matter unless an action or proceeding to assert the claim is commenced  
7 within two years after receipt of the final account or statement; or

8           (2) Who has not received a final account or statement fully disclosing the  
9 matter unless an action or proceeding to assert the claim is commenced  
10 within three years after the termination of the custodial trust.

11       (b) Except as provided in subsection (c) of this section, a claim for relief to  
12 recover from a custodial trustee for fraud, misrepresentation, or concealment is barred  
13 unless an action or proceeding to assert the claim is commenced within five years after  
14 the termination of the custodial trust.

15       (c) A claim for relief is not barred by this section if the claimant:

16           (1) Is a minor, until the earlier of two years after the claimant becomes an  
17 adult or dies;

18           (2) Is an incapacitated adult, until the earliest of two years after (i) the  
19 appointment of a guardian of the estate, (ii) the removal of the  
20 incapacity, or (iii) the death of the claimant; or

21           (3) Was an adult, now deceased, who was not incapacitated, until two years  
22 after the claimant's death if the claim was not barred by adjudication,  
23 consent, or limitation prior to the claimant's death.

24 **"§ 33B-17. Distribution on termination.**

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

27           (1) To the beneficiary, if not incapacitated or deceased;

28           (2) To the guardian of the estate or other recipient designated by the court  
29 for an incapacitated beneficiary; or

30           (3) Upon the beneficiary's death, in the following order:

31           a. As last directed in a writing signed by the deceased beneficiary  
32 while not incapacitated and received by the custodial trustee  
33 during the life of the deceased beneficiary;

34           b. As designated in the instrument creating the custodial trust; or

35           c. To the estate of the deceased beneficiary.

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

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

42       (d) The writing described in G.S. 33B-17(a)(3)a. or the instrument described in  
43 G.S. 33B-17(a)(3)b. must also be signed by at least two witnesses, neither of whom is the

1 custodial trustee or the distributee of the custodial trust property, and be acknowledged  
2 by the beneficiary or transferor before an individual authorized to administer oaths or  
3 take acknowledgements. Failure to comply with the witness or acknowledgement  
4 requirement shall not affect the validity of the custodial trust during the life of the  
5 beneficiary, but shall invalidate only the direction or designation of the distributee on  
6 termination of the custodial trust under G.S. 33B-17(a)(3)a. or G.S. 33B-17(a)(3)b., and  
7 upon termination of the custodial trust the custodial trustee shall transfer the unexpended  
8 custodial trust property according to the remaining provisions of this section.

9 **"§ 33B-18. Methods and forms of creating custodial trusts.**

10 (a) If a transaction (including a declaration with respect to or a transfer of specific  
11 property) otherwise satisfies applicable law, the criteria of G.S. 33B-2 are satisfied by:

12 (1) The execution and either delivery to the custodial trustee or recording of  
13 an instrument in substantially the following form:

14 **'TRANSFER UNDER THE NORTH CAROLINA**  
15 **UNIFORM CUSTODIAL TRUST ACT**

16 I, ..... (name of transferor or name and representative capacity if a  
17 fiduciary), transfer to ..... (name of trustee other than transferor), as custodial  
18 trustee for ..... (name of beneficiary) as beneficiary and ..... as  
19 distributee on termination of the trust in absence of direction by the beneficiary under the  
20 North Carolina Uniform Custodial Trust Act, the following:

21 (insert a description of the custodial trust property legally sufficient to identify and  
22 transfer each item of property).

23 Dated: .....(Seal) .....(Witness)

24 Signature

.....(Witness)

27 STATE OF ..... COUNTY OF .....

28 On this ..... day of ....., ....., personally appeared before me, the  
29 said named ..... to me known and known to me to be the person described  
30 in and who executed the foregoing instrument and he (or she)  
31 acknowledged that he (or she) executed the same and being duly sworn by  
32 me, made oath that the statements in the foregoing instrument are true.

33 My Commission Expires .....

35  
36 .....  
(Signature of Notary Public)  
37 Notary Public (Official Seal)';

38 or(2) The execution and the recording or giving notice of its execution to the beneficiary  
39 of an instrument in substantially the following form:

40 **'DECLARATION OF TRUST UNDER THE NORTH CAROLINA**  
41 **UNIFORM CUSTODIAL TRUST ACT**

42 I, ..... (name of owner of property,) declare that henceforth I hold as  
43 custodial trustee for ..... (name of beneficiary other than transferor) as

beneficiary and ..... as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: .....(Seal) .....(Witness)

Signature

.....(Witness)

STATE OF ..... COUNTY OF .....

On 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)'(b) Any customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including, but not limited to, any of the following:

- (1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);
(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for

- 1                   ..... (name of beneficiary) under the North Carolina Uniform  
2                   Custodial Trust Act;
- 3           (5)   Delivery of a written assignment to an adult other than the transferor or  
4                   to a trust company designated in the assignment in substance by the  
5                   words 'as custodial trustee for ..... (name of beneficiary) under the  
6                   North Carolina Uniform Custodial Trust Act;
- 7           (6)   Irrevocable exercise of a power of appointment, pursuant to its terms, in  
8                   favor of a trust company, an adult other than the donee of the power, or  
9                   the donee who holds the power if the beneficiary is other than the  
10                  donee, designated in the appointment in substance 'as custodial trustee  
11                  for ..... (name of beneficiary) under the North Carolina Uniform  
12                  Custodial Trust Act;
- 13           (7)   Delivery of a written notification or assignment of a right to future  
14                  payment under a contract to an obligor which transfers the right under  
15                  the contract to a trust company, an adult other than the transferor, or the  
16                  transferor if the beneficiary is other than the transferor, designated in the  
17                  notification or assignment in substance 'as custodial trustee for  
18                  ..... (name of beneficiary) under the North Carolina Uniform  
19                  Custodial Trust Act;
- 20           (8)   Execution and delivery of a conveyance of an interest in real property in  
21                  the name of a trust company, an adult other than the transferor, or the  
22                  transferor if the beneficiary is other than the transferor, designated in  
23                  substance 'as custodial trustee for ..... (name of beneficiary)  
24                  under the North Carolina Uniform Custodial Trust Act;
- 25           (9)   Issuance of a certificate of title by an agency of a state or of the United  
26                  States which evidences title to tangible personal property:
- 27                  a.   Issued in the name of a trust company, an adult other than the  
28                        transferor, or the transferor if the beneficiary is other than the  
29                        transferor, designated in substance 'as custodial trustee for  
30                        ..... (name of beneficiary) under the North Carolina  
31                        Uniform Custodial Trust Act; or
- 32                  b.   Delivered to a trust company or an adult other than the transferor  
33                        or endorsed by the transferor to that person, designated in  
34                        substance 'as custodial trustee for ..... (name of beneficiary)  
35                        under the North Carolina Uniform Custodial Trust Act; or
- 36           (10)  Execution and delivery of an instrument of gift to a trust company or an  
37                  adult other than the transferor, designated in substance 'as custodial  
38                  trustee for ..... (name of beneficiary) under the North  
39                  Carolina Uniform Custodial Trust Act'.

40   "**§ 33B-19. Applicable law.**

- 41           (a)   This act applies to a transfer or declaration creating a custodial trust that refers  
42                  to this act if, at the time of the transfer or declaration, the transferor, beneficiary, or  
43                  custodial trustee is a resident of or has its principal place of business in this State or the

1 custodial trust property is located in this State. The custodial trust remains subject to this  
2 act despite a later change in residence or principal place of business of the transferor,  
3 beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

4 (b) A transfer made pursuant to an act of another state substantially similar to this  
5 act is governed by the law of that state and may be enforced in this State.

6 **"§ 33B-20. Uniformity of application and construction.**

7 This act shall be applied and construed to effectuate its general purpose to make  
8 uniform the law with respect to the subject of this act among states enacting it.

9 **"§ 33B-21. Short title.**

10 This act may be cited as the 'North Carolina Uniform Custodial Trust Act'."

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

12 **"§ 32A-1. Statutory Short Form of General Power of Attorney.**

13 The use of the following form in the creation of a power of attorney is lawful, and,  
14 when used, it shall be construed in accordance with the provisions of this Chapter.

15 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE  
16 BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A  
17 OF THE NORTH CAROLINA GENERAL STATUTES WHICH  
18 EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT  
19 FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES  
20 CONCERNED.

21 State of .....

22 County of .....

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

- 31 (1) Real property transactions; ..... \_\_\_\_\_
- 32 (2) Personal property transactions; ..... \_\_\_\_\_
- 33 (3) Bond, share, stock, securities and commodity transactions; .....
- 34 \_\_\_\_\_
- 35 (4) Banking transactions; ..... \_\_\_\_\_
- 36 (5) Safe deposits; ..... \_\_\_\_\_
- 37 (6) Business operating transactions; ..... \_\_\_\_\_
- 38 (7) Insurance transactions; ..... \_\_\_\_\_
- 39 (8) Estate transactions; ..... \_\_\_\_\_
- 40 (9) Personal relationships and affairs; ..... \_\_\_\_\_
- 41 (10) Social security and unemployment; ..... \_\_\_\_\_
- 42 (11) Benefits from military service; ..... \_\_\_\_\_
- 43 (12) Tax ..... \_\_\_\_\_

(13) Employment of agents .....

(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.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')Dated ....., 19.....

.....(Seal)

Signature

STATE OF ..... COUNTY OF .....On 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. 3.

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 Uniform Custodial Trust Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Sec. 4. This act becomes effective October 1, 1995.