SESSION 1995

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SENATE BILL 724 Second Edition Engrossed 5/11/95

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

1	act through an agent. (DIRECTIONS: Initial the line opposite any one or				
2	more of the subdivisions as to which the principal desires to give the				
3	attorney-in- fact authority.)				
4	(1) Real property transactions; <u>transactions</u>				
5	 (1) Personal property transactions; <u>transactions</u> 				
6	 (3) Bond, share, <u>stock</u>, <u>securities</u> and commodity 				
7	transactions; transactions				
8	(4) Banking transactions; <u>transactions</u>				
9	 (5) Safe deposits; deposits 				
10	(6) Business operating transactions; <u>transactions</u>				
11	(7) Insurance transactions; <u>transactions</u>				
12	(8) Estate transactions; <u>transactions</u>				
13	(9) Personal relationships and affairs; <u>affairs</u>				
14	(10) Social security and unemployment; <u>unemployment</u>				
15	(11) Benefits from military service; military service				
16	(12) Tax				
17	(13) Employment of agents				
18	(14) Gifts to individuals and charities				
19	(15) Gifts to the named attorney-in-fact				
20	(If power of substitution and revocation is to be given, add: 'I also give				
21	to such person full power to appoint another to act as my attorney-in-fact				
22	and full power to revoke such appointment.')				
23	(If period of power of attorney is to be limited, add: 'This power				
24	terminates, 19')				
25	(If power of attorney is to be a durable power of attorney under the				
26	provision of Article 2 of Chapter 32A and is to continue in effect after the				
27	incapacity or mental incompetence of the principal, add: 'This power of				
28	attorney shall not be affected by my subsequent incapacity or mental				
29	incompetence.')				
30	(If power of attorney is to take effect only after the incapacity or mental				
31	incompetence of the principal, add: 'This power of attorney shall become				
32	effective after I become incapacitated or mentally incompetent.')Dated				
33	, 19(Seal)				
34	Signature STATE OF COUNTY OFOn this day of				
35	,				
36	,				
37	personally				
38	appeared				
39	before me, the				
40	said named				
41	to me				
42	known and				
43	known to me				

1 2			to be the person
3			described in
4			and who
5			executed the
6			foregoing
7			instrument and
8			he (or she)
9			acknowledged
10			that he (or she)
11			executed the
12			same and
13			being duly
14			sworn by me,
15			made oath that
16 17			the statements
17			in the
18 19			foregoing instrument are
20			true.
20		My C	mmission Expires
		nij e	
22			
22 23			(Signature of Notary Public)
			(Signature of Notary Public) Notary Public (Official Seal)'''.
23		Sec. 2. G.S	
23 24	read:	Sec. 2. G.S	Notary Public (Official Seal)".
23 24 25	read:		Notary Public (Official Seal)'". 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u>
23 24 25 26 27 28	read:		Notary Public (Official Seal)'". 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u>
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23 24 25 26 27 28 29 30 31 32 33 34	read:	"(<u>14)</u> <u>Gifts</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u> 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
23 24 25 26 27 28 29 30 31 32 33 34 35	read:	"(<u>14)</u> <u>Gifts</u> <u>a.</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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.
23 24 25 26 27 28 29 30 31 32 33 34 35 36	read:	"(<u>14)</u> <u>Gifts</u>	Notary Public (Official Seal)"'. 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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. Except as provided in G.S. 32A-2(14)c., a power described in
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23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38	read:	"(<u>14)</u> <u>Gifts</u> <u>a.</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>b Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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. 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
23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39	read:	"(<u>14)</u> <u>Gifts</u> <u>a.</u> <u>b.</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>b Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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. 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.
23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40	read:	"(<u>14)</u> <u>Gifts</u> <u>a.</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>o Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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. 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. If the power described in G.S. 32A-2(14)a. is conferred upon two
23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39	read:	"(<u>14)</u> <u>Gifts</u> <u>a.</u> <u>b.</u>	Notary Public (Official Seal)". 32A-2 is amended by adding the following new subdivisions to <u>b Individuals and Charities. –</u> <u>Except as provided in G.S. 32A-2(14)b., to make gifts of any of</u> 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. 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.

1	2(14)b. from exercising the power of appointment as if they were
2	the only attorney-in-fact or attorneys-in-fact.
3	d. <u>An attorney-in-fact expressly authorized by this section to make</u>
4	gifts of the principal's property may elect to request the clerk of
5	the superior court to issue an order to make a gift of the property
6	of the principal.
7	(15) Gifts to the Named Attorney-in-Fact. – To make gifts to the attorney-in-
8	fact named in the power of attorney or the estate, creditors, or creditors
9	of the estate of the attorney-in-fact."
10	Sec. 3. Chapter 32A of the General Statutes is amended by adding the
11	following new Articles to read:
12	" <u>ARTICLE 2A.</u>
13	"AUTHORITY OF ATTORNEY-IN-FACT TO MAKE GIFTS.
14	"§ 32A-14.1. Gifts under power of attorney.
15	(a) Except as provided in subsection (b) of this section, if any power of attorney
16	authorizes an attorney-in-fact to do, execute, or perform any act that the principal might
17	or could do or evidences the principal's intent to give the attorney-in-fact full power to
18	handle the principal's affairs or deal with the principal's property, the attorney-in-fact
19	shall have the power and authority to make gifts in any amount of any of the principal's
20	property to any individual or to any organization described in sections 170(c) and 2422(a)
21	of the Internal Revenue Code or corresponding future provisions of federal tax law, or
22	both, in accordance with the principal's personal history of making or joining in the
23	making of lifetime gifts. As used in this subsection, 'Internal Revenue Code' means the
24	'Code' as defined in G.S. 105-2.1.
25	(b) Except as provided in subsection (c) of this section, or unless gifts are
26	expressly authorized by the power of attorney, a power described in subsection (a) of this
27	section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the
28	estate, creditors, or the creditors of the estate of the attorney-in-fact.
29	(c) If the power of attorney described in subsection (a) of this section is conferred
30	upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or
31	attorneys-in-fact who are not disqualified by subsection (b) of this section from
32	exercising the power of appointment as if they were the only attorney-in-fact or
33	attorneys-in-fact.
34	(d) <u>Subsection (a) of this section shall not in any way impair the right, power, or</u>
35	ability of any principal, by express terms in the power of attorney, to authorize or limit
36	the authority of any attorney-in-fact to make gifts of the principal's property.
37	(e) An attorney-in-fact expressly authorized by this section to make gifts of the
38	principal's property may elect to request that the clerk of the superior court issue an order
39	approving a gift or gifts of the property of the principal.
40	(f) This section shall apply to all powers of attorney executed prior to, on, or after
41	the effective date of this section.
42	<u>"ARTICLE 2B.</u>
43	''GIFTS AUTHORIZED BY COURT ORDER.

"§ 32A-14.10. Gifts authorized by court order.

1 2 An attorney-in-fact, acting under a power of attorney that does not contain the grant 3 of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's 4 property, may initiate a special proceeding before the clerk of superior court in 5 accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for 6 authority to make gifts of the principal's property to the extent not inconsistent with the 7 express terms of the power of attorney. The principal and any guardian ad litem appointed for the principal are the defendants in a proceeding pursuant to this Article. 8 9 The clerk may issue an order setting forth the amounts, frequency, recipients, and 10 proportions of any gifts of the principal's property after considering all relevant factors, 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 14 principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the 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 17 becomes effective. 18 "§ 32A-14.11. Appeal; stay effected by appeal. Any party in interest may appeal from the decision of the clerk to the judge of the 19 20 superior court. The procedure for appeal shall be the same as the procedure for appeal in 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 23 clerk until the cause is heard and determined by the judge upon the appeal taken. 24 "§ 32A-14.12. Costs and fees. 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 29 as a codification of the existing North Carolina common law.

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