

§ 35A-1341. Prerequisites to approval by judge of gifts for governmental or charitable purposes.

The judge shall not approve any gifts from principal for governmental or charitable purposes unless it appears to the judge's satisfaction all of the following requirements are met:

- (1) The making of the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income 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 these dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.
- (2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax liability.
- (3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax laws.
- (4) The making of the gifts will not jeopardize the rights of any creditor of the incompetent.
- (5) It is improbable that the incompetent will recover competency during his or her lifetime.
- (5a) Sufficient credible evidence is presented to the court that the proposed gift is of a nature which the incompetent would have approved prior to being declared incompetent.
- (6) Either a. or b. applies:
 - a. All of the following apply:
 1. 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.
 2. Specific devises, or nondiscretionary distributions of specific amounts of money, income or property included in the paper-writing or revocable trust or both, will not be jeopardized by making the gifts.
 3. All residuary devisees and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both, if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will and the spouse, if any, of the incompetent have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.
 - b. Both of the following apply:
 1. 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

2. All persons who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian was appointed, within the 10-day period.
- (7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2. (1963, c. 112, s. 2; 1987, c. 550, s. 5; 1999-270, s. 5; 2011-284, s. 40.)