A BILL TO BE ENTITLED
AN ACT TO UPDATE AND CLARIFY PROVISIONS OF THE LAWS GOVERNING
ESTATES, TRUSTS, GUARDIANSHIPS, POWERS OF ATTORNEY, AND OTHER
FIDUCIARIES.

The General Assembly of North Carolina enacts:

PART I. PROTECTION OF RIGHTS TO DIGITAL ASSETS

SECTION 1. (a) G.S. 28A-13-3(a) reads as rewritten:
"(a) Except as qualified by express limitations imposed in a will of the decedent or a
court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint
personal representatives, a personal representative has the power to perform in a reasonable and
prudent manner every act which a reasonable and prudent person would perform incident to the
collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the
desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and
expeditious manner as provided by law, including the powers specified in the following
subdivisions:

…

(34) To access, take control of, handle, conduct, continue, distribute, dispose of,
or terminate any digital assets, as defined in G.S. 28A-13-11(d)(3), and
digital accounts, as defined in G.S. 28A-13-11(d)(2), owned by the decedent
at death."

SECTION 1. (b) Article 13 of Chapter 28A of the General Statutes is amended by
adding a new section to read:
(a) A custodian shall provide to a personal representative access to any digital accounts
of the decedent operated by the custodian and copies of any digital assets of the decedent stored
by the custodian, upon receipt by the custodian of either of the following:

(1) A written request for access to digital accounts and digital assets made by
the personal representative, accompanied by a copy of the death certificate
and a copy of the personal representative’s letters testamentary or letters of
administration.

(2) An order of the clerk of superior court having jurisdiction over the
decedent's estate or an order of a court having probate jurisdiction over the
decedent's estate.
(b) A custodian shall not destroy, disable, or dispose of any digital account or digital asset of the decedent for two years after the custodian receives a request or order under subsection (a) of this section, unless directed to do so by the personal representative.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

1. Any digital asset or digital account in violation of any applicable federal law.
2. Any digital asset or digital account to which the decedent would not have been permitted access in the ordinary course of business by the custodian.

(d) The following definitions apply in this section:

1. "Custodian" means any person who electronically stores the digital assets of another person or who operates the digital accounts of another person.
2. "Digital accounts" means, but is not limited to, e-mail accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, Web hosting accounts, tax preparation service accounts, online stores, affiliate programs, and other online accounts that currently exist or may exist as technology develops or such comparable items as technology develops.
3. "Digital assets" means, but is not limited to, files, including, but not limited to, e-mails, documents, images, audio, video, and similar digital files that currently exist or may exist as technology develops or such comparable items as technology develops, stored on digital devices, including, but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device that currently exists or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device upon which the digital asset is stored."

SECTION 1.(c) G.S. 32-27 reads as rewritten:

"§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

... (30a) Control Digital Assets and Accounts. – To access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in G.S. 32-29(d)(3), and digital accounts, as defined in G.S. 32-29(d)(2). ..."

SECTION 1.(d) Article 3 of Chapter 32 of the General Statutes is amended by adding a new section to read:

"§ 32-29. Access to digital assets and accounts by fiduciary.

(a) A custodian shall provide a fiduciary access to any digital accounts of the decedent or settlor operated by the custodian and copies of any digital assets of the decedent or settlor stored by the custodian, upon receipt by the custodian of either of the following:

1. A written request for access to digital accounts and digital assets made by the fiduciary, accompanied by a copy of the instrument creating the fiduciary relationship or certification thereof.
2. An order of the clerk of superior court having jurisdiction over the estate or trust involved or an order of a court having jurisdiction over the estate or trust involved.
A custodian shall not destroy, disable, or dispose of any digital account or digital asset for two years after the custodian receives a request or order under subsection (a) of this section, unless directed to do so by the fiduciary.

Nothing in this section shall be construed to require a custodian to disclose or grant access to:

1. Any digital asset or digital account in violation of any applicable federal law.
2. Any digital asset or digital account to which the decedent or the settlor would not have been permitted access in the ordinary course of business by the custodian.

The following definitions apply in this section:

1. "Custodian" means any person who electronically stores the digital assets of another person or who operates the digital accounts of another person.
2. "Digital accounts" means, but is not limited to, e-mail accounts, software licenses, social network accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, Web hosting accounts, tax preparation service accounts, online stores, affiliate programs, and other online accounts that currently exist or may exist as technology develops or such comparable items as technology develops.
3. "Digital assets" means, but is not limited to, files, including, but not limited to, e-mails, documents, images, audio, video, and similar digital files that currently exist or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device upon which the digital asset is stored."

SECTION 1. (e) G.S. 32A-1 reads as rewritten:


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 ________, appoint ________ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (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
2. Personal property transactions
3. Bond, share, stock, securities and commodity transactions
4. Banking transactions
5. Safe deposits
6. Business operating transactions
(7) Insurance transactions .................................................................
(8) Estate transactions .................................................................
(9) Personal relationships and affairs ........................................
(10) Social security and unemployment ........................................
(11) Benefits from military service ............................................... 
(12) Tax matters ...........................................................................
(13) Employment of agents ...........................................................
(14) Gifts to charities, and to individuals other than the
      attorney-in-fact ...........................................................................
(15) Gifts to the named attorney-in-fact ...........................................
(16) Renunciation of an interest in or power over property to
      benefit persons other than the attorney-in-fact ...........................
(17) Renunciation of an interest in or power over property
      to benefit persons including the attorney-in-fact ........................
(18) Digital assets and accounts .......................................................

(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 ___, ___'
(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____________, ________.

_________________________________ (Seal)

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)"

SECTION 1.(f) G.S. 32A-2 reads as rewritten:

"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in
G.S. 32A-1."
The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

1. Control of Digital Assets and Accounts. – To access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in G.S. 32A-4(d)(3), and digital accounts, as defined in G.S. 32A-4(d)(2), which the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper."

SECTION 1.(g) Article 1 of Chapter 32A of the General Statutes is amended by adding a new section to read:


(a) A custodian shall provide an attorney-in-fact access to any digital accounts operated by the custodian and copies of any digital assets stored by the custodian that the principal owns at the time of execution or may thereafter acquire. A custodian shall provide access to the digital accounts and copies of the digital assets upon receipt by the custodian of either of the following:

1. A written request for access to digital accounts and digital assets made by the attorney-in-fact, accompanied by a copy of the power of attorney.

2. An order of the clerk of superior court having jurisdiction over the power of attorney or an order of a court having jurisdiction over the power of attorney.

(b) A custodian shall not destroy, disable, or dispose of any digital account or digital asset for two years after the custodian receives a request or order under subsection (a) of this section, unless directed to do so by the attorney-in-fact.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

1. Any digital asset or digital account in violation of any applicable federal law.

2. Any digital asset or digital account to which the principal would not have been permitted access in the ordinary course of business by the custodian.

(d) The following definitions apply in this section:

1. "Custodian" means any person who electronically stores the digital assets of another person or who operates the digital accounts of another person.

2. "Digital accounts" means, but is not limited to, e-mail accounts, software licenses, social network accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, Web hosting accounts, tax preparation service accounts, online stores, affiliate programs, and other online accounts that currently exist or may exist as technology develops or such comparable items as technology develops.

3. "Digital assets" means, but is not limited to, files, including, but not limited to, e-mails, documents, images, audio, video, and similar digital files that currently exist or may exist as technology develops or such comparable items as technology develops, stored on digital devices, including, but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device that currently exists or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device upon that the digital asset is stored."

SECTION 1.(h) G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate."
In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

... (25) To access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in G.S. 35A-1254(d)(3), and digital accounts, as defined in G.S. 35A-1254(d)(2), owned by the ward."

SECTION 1.(i) G.S. 35A-1252 reads as rewritten:

"§ 35A-1252. Guardian's powers in administering minor ward's estate.

In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

... (18) To access, take control of, handle, conduct, continue, distribute, dispose of, or terminate any digital assets, as defined in G.S. 35A-1254(d)(3), and digital accounts, as defined in G.S. 35A-1254(d)(2), owned by the ward but absent a court order with respect to a minor; this power shall be no greater than the power of a natural guardian."

SECTION 1.(j) Article 9 of Chapter 35A is amended by adding a new section to read:

"§ 35A-1254. Access to digital assets and accounts by guardian of the estate.

(a) A custodian shall provide a general guardian or guardian of the estate access to any digital accounts and copies of any digital assets owned by the ward and operated by the custodian. A custodian shall provide access to the digital accounts and digital assets upon receipt by the custodian of either of the following:

(1) A written request for access to digital accounts and digital assets made by the general guardian or guardian of the estate, accompanied by a copy of the general guardian or guardian of the estate's letters of appointment as general guardian or guardian of the estate.

(2) An order of the clerk of superior court having jurisdiction over the ward or an order of a court having jurisdiction over the ward.

(b) A custodian shall not destroy, disable, or dispose of any digital account or digital asset for two years after the custodian receives a request or order under subsection (a) of this section, unless directed to do so by the guardian.

(c) Nothing in this section shall be construed to require a custodian to disclose or grant access to:

(1) Any digital asset or digital account in violation of any applicable federal law.

(2) Any digital asset or digital account to which the ward would not have been permitted access in the ordinary course of business by the custodian.

(d) The following definitions apply in this section:

(1) "Custodian" means any person who electronically stores the digital assets of another person or who operates the digital accounts of another person.

(2) "Digital accounts" means, but is not limited to, e-mail accounts, software licenses, social network accounts, social media accounts, file sharing accounts, financial management accounts, domain registration accounts, domain name service accounts, Web hosting accounts, tax preparation
service accounts, online stores, affiliate programs, and other online accounts
that currently exist or may exist as technology develops or such comparable
items as technology develops.
(3) "Digital assets" means, but is not limited to, files, including, but not limited
to, e-mails, documents, images, audio, video, and similar digital files that
currently exist or may exist as technology develops or such comparable
items as technology develops, stored on digital devices, including, but not
limited to, desktops, laptops, tablets, peripherals, storage devices, mobile
telephones, smartphones, and any similar digital device that currently exists
or may exist as technology develops or such comparable items as technology
develops, regardless of the ownership of the physical device upon that the
digital asset is stored."

SECTION 1.(k) G.S. 36C-8-816 reads as rewritten:
"§ 36C-8-816. Specific powers of trustee.
Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

…
(33) Access in accordance with G.S. 32-29, take control of, handle, conduct,
continue, distribute, dispose of, or terminate any digital assets and digital
accounts held as part of the trust property or received as trust property from
a settlor or any other person."

PART II. UPDATE AND CLARIFY LAWS GOVERNING WILLS AND ESTATES

CLARIFY NOTICE TO CREDITORS/LIMITED PERSONAL REPRESENTATIVES

SECTION 2.(a) G.S. 28A-29-1 reads as rewritten:
"§ 28A-29-1. Notice to creditors without estate administration.
When (i) a decedent dies testate or intestate leaving no personal property subject to probate,
probate and no real property devised to the personal representative; (ii) a decedent's estate is
being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) a
decedent's estate is being administered under the summary administration provisions of Article
28 of this Chapter; (iv) a decedent's estate consists solely of a motor vehicle that can be
transferred by the procedure authorized by G.S. 20-77(b); or (v) a decedent has left assets that
may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10, and
no application or petition for appointment of a personal representative is pending or has been
granted in this State, any person otherwise qualified to serve as personal representative of the
estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a
revocable trust created by the decedent may file a petition to be appointed as a limited personal
representative to provide notice to creditors without administration of an estate before the clerk
of superior court of the county where the decedent was domiciled at the time of death. This
procedure is not available if the decedent's will provides that it is not available. A limited
personal representative shall have the rights and obligations provided for in this Article."

SECTION 2.(b) G.S. 28A-29-2(a) reads as rewritten:
"(a) The application for appointment as limited personal representative shall be in the
form of an affidavit sworn to before an officer authorized to administer oaths, signed by the
applicant or the applicant's attorney, which may be supported by other proof under oath in
writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege
all of the following facts:
(1) The name and domicile of the decedent at the time of death.
(2) The date and place of death of the decedent.
(3) That, so far as is known or can with reasonable diligence be ascertained, the
decedent's property is not subject to probate; (i) the decedent left no personal
property subject to probate and no real property devised to the personal representative; (ii) the decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) the decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) the decedent’s estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) the decedent left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10.

(4) That no application or petition for appointment of a personal representative is pending or has been granted in this State."

**ELECTIVE SHARE CHANGE**

**SECTION 2.(c) G.S. 30-3.1 reads as rewritten:**

"§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

1. If the surviving spouse was married to the decedent is not survived by any lineal descendants, one half for less than five years, fifteen percent (15%) of the Total Net Assets.
2. If the surviving spouse was married to the decedent is survived by one child, or lineal descendants of one deceased child, one half, for at least five years but less than 10 years, twenty-five percent (25%) of the Total Net Assets.
3. If the surviving spouse was married to the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one third for at least 10 years but less than 15 years, thirty-three percent (33%) of the Total Net Assets.
4. If the surviving spouse was married to the decedent for 15 years or more, fifty percent (50%) of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving who are not lineal descendants of the decedent’s marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one half."

**ATTORNEY’S FEES ON YEAR’S ALLOWANCE**

**SECTION 2.(d) G.S. 30-31 reads as rewritten:**


The clerk of superior court may assign to the petitioner a value sufficient for the support of petitioner according to the estate and condition of the decedent and without regard to the limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding the deceased's death. Attorneys' fees and costs awarded the petitioner under G.S. 6-21 shall be paid as an administrative expense of the estate."

**OUT-OF-STATE WILL PROBATE AND MILITARY WILLS**
SECTION 2(e) G.S. 31-11.6 reads as rewritten:

"§ 31-11.6. How attested wills may be made self-proved.

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, ________, the testator, sign my name to this instrument this ___ day of ______, ____ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

___________________________________
Testator

We ________, ________, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

___________________________________
Witness

___________________________________
Witness

THE STATE OF ______.
COUNTY OF ______.

Subscribed, sworn to and acknowledged before me by ________, the testator and subscribed and sworn to before me by ________ and ________, witnesses, this ___ day of ______,

(SEAL)

(SIGNED) __________________________
(_OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA

"COUNTY/CITY OF ______

"Before me, the undersigned authority, on this day personally appeared ________, and ________, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.
The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

_________________________  
Testator  

__________________________  
Witness  

__________________________  
Witness  

___________________________  
Witness

Subscribed, sworn and acknowledged before me by ________, the testator, subscribed and sworn before me by ________, ________ and ________ witnesses, this ___ day of _____, A.D. ____

(SEAL)

(SIGNED) _________________________________________  

(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

(d) Any will executed in another state and made self-proved under the laws of that state shall be considered as self-proved. A document that appears on its face to be a will that was executed, attested, and notarized under the laws of another state is rebuttably presumed to be self-proved under the laws of that state.

(e) A military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute shall be considered as self-proved.

SECTION 2.(f) G.S. 31-46 reads as rewritten:

"§ 31-46. Validity of will; which laws govern.

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator, or if (i) its execution complies with the law of the place where it is executed at the time of execution; (ii) its execution complies with the law of the place where the testator is domiciled at the time of execution or at the time of death; or (iii) it is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute."

SECTION 2.(g) G.S. 28A-2A-17 reads as rewritten:

"§ 28A-2A-17. Certified copy of will of nonresident recorded.

(a) Subject to the provisions of subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said
will according to the laws of this State either at the time of its execution or at the time of the
death of the testator, or as otherwise recognized as valid under the provisions of G.S. 31-46,
must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in
which such will is offered for probate, from the testimony of a witness or witnesses to such
will, or from findings of fact or recitals in the order of probate, or otherwise in such certified
copy of the will and probate proceedings.
(c) If the execution of the will in accordance with the laws of this State either at the
time of its execution or at the time of the death of the testator, or as otherwise recognized as
valid under the provisions of G.S. 31-46, does not appear as required by subsection (b) of this
section, the clerk before whom the copy is exhibited shall have power to take proof as
prescribed in G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the
will shall be recorded as herein provided.
(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this
State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real
estate in this State."

PART III. UPDATE TO AND CLARIFICATIONS OF LAWS GOVERNING TRUSTS

INSURABLE INTEREST OF TRUSTEE

SECTION 3.(a) Article 1 of Chapter 36C of the General Statutes is amended by
adding a new section to read:
"§ 36C-1-114. Insurable Interest of Trustee.
(a) As used in this section, the term "settlor" means a person that executes a trust
instrument. The term includes a person for whom a fiduciary or agent is acting.
(b) A trustee of a trust has an insurable interest in the life of an individual insured under
a life insurance policy that is trust property if, as of the date the policy is issued:
(1) The insured is either of the following:
a. A settlor of the trust,
b. An individual in whom a settlor of the trust has, or would have had if
living at the time the policy was issued, an insurable interest.
(2) The life insurance proceeds are primarily for the benefit of one or more trust
beneficiaries that have an insurable interest in the life of the insured.
(c) This section does not limit or abridge any insurable interest or right to insure now
existing at common law or by statute and shall be construed liberally to sustain insurable
interests, whether as a declaration of existing law or as an extension of or addition to existing
law."

UNIFORM TRUST CODE CLARIFICATION AS TO SETTLOR'S SPOUSE

SECTION 3.(b) G.S. 36C-5-505(c) reads as rewritten:
"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this
section, if the settlor is a beneficiary of the following trusts after the death of the settlor's
spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have
been contributed by the settlor's spouse and not by the settlor:
(1) An irrevocable intervivos marital trust that is treated as a general power of
appointment trust described in section 2523(e) of the Internal Revenue Code,
(2) An irrevocable intervivos marital trust that is treated as qualified terminable
interest property under section 2523(f) of the Internal Revenue Code.
(3) An irrevocable intervivos trust of which the settlor's spouse is the sole
beneficiary during the lifetime of the settlor's spouse but which does not
qualify for the federal gift tax marital deduction."
Another trust, to the extent that the property of the other trust is attributable
to property passing from a trust described in subdivision (1), (2), or (3) of
this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under
the initial trust instrument or through the exercise of a limited or general power of
appointment, and the "settlor's spouse" refers to the person to whom the settlor
was married at the time the irrevocable intervivos trust was created, notwithstanding a
subsequent dissolution of the marriage."

DECANTING STATUTE IMPROVEMENTS

SECTION 3.(c) G.S. 36C-8-816.1(c) and (e) read as rewritten:

"§ 36C-8-816.1. Trustee's special power to appoint to a second trust.

…

(c) The terms of the second trust shall be subject to all of the following:

…

(3) The terms of the second trust may not reduce any fixed income, annuity, or
unitrust interest of a beneficiary in the assets of the original trust if that
interest has come into effect with respect to the beneficiary.

…

(8) The second trust may confer a power of appointment upon a beneficiary of
the original trust to whom or for the benefit of whom the trustee has the
power to distribute principal or income of the original trust. The permissible
appointees of the power of appointment conferred upon a beneficiary may
include persons who are not beneficiaries of the original or second trust. The
power of appointment conferred upon a beneficiary shall be subject to the
provisions of G.S. 41-23 covering the time at which the permissible period
of the rule against perpetuities and suspension of power of alienation begins
and the law that determines the permissible period of the rule against
perpetuities and suspension of power of alienation of the original trust.
Specifying the permissible period allowed for the suspension of the power of
alienation of the original trust and the time from which that permissible
period is computed.

…

(e) The exercise of the power to appoint principal or income under subsection (b) of
this section:

(1) Shall be considered the exercise of a power of appointment, other than a
power to appoint to the trustee, the trustee's creditors, the trustee's estate, or
the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 covering the time at which
the permissible period of the rule against perpetuities and suspension of
power of alienation begins and the law that determines the permissible
period of the rule against perpetuities and suspension of power of alienation
of the original trust; specifying the permissible period allowed for the
suspension of the power of alienation of the original trust and the time from
which that permissible period is computed; and

(3) Is not prohibited by a spendthrift provision or by a provision in the original
trust instrument that prohibits amendment or revocation of the trust.

PART IV. MISCELLANEOUS UPDATES AND CLARIFICATIONS
CLARIFY INHERITED IRA CREDITOR EXEMPTION

SECTION 4.(a) G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

…

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. Any money or other assets or any interest in any such plan remains exempt after an individual’s death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) of the Internal Revenue Code.

CLARIFICATION AS TO DIRECTED FIDUCIARIES

SECTION 4.(b) G.S. 32-72(d) reads as rewritten:

"(d) The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

(1) The terms of the instrument may confer upon a person the power to direct or consent to certain actions of the fiduciary with respect to certain powers with respect to the actions of a fiduciary, including, but not limited to, the following:

a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.

b. Any other administrative matter.

(2) When the terms of the instrument confer upon a person the power to direct or consent to certain actions of the fiduciary, any power with respect to the actions of a fiduciary, the duty and liability of the fiduciary are as follows:

a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the fiduciary.

b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder’s consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary’s failure to take any action that required the power holder’s consent.

b1. If the terms of the instrument confer upon a person a power other than the power to direct or consent to actions of the fiduciary, the
fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

c. The fiduciary has no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder or other participation in decisions within the scope of the power holder's authority.

(3) A person who holds a power to direct or consent with respect to the actions of a fiduciary is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with such a power to direct or consent, with respect to the actions of a fiduciary, the beneficiary is not a fiduciary with respect to the following:

a. A power that constitutes a power of appointment held by a beneficiary under the instrument.

b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.

c. A power to remove and appoint a fiduciary.

The holder of the power to direct or consent with respect to the actions of a fiduciary is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power."

GUARDIANSHIP GIFTING

SECTION 4.(c) G.S. 35A-1336.1 reads as rewritten:

"§ 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 amount of the gift does not exceed the federal annual gift tax exclusion; the gift qualifies either for the federal annual gift tax exclusion under Internal Revenue Code, section 2503(b), or is a qualified transfer for tuition or medical expenses under Internal Revenue Code, section 2503(e).

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.

SECTION 4.(d) G.S. 35A-1341.1 reads as rewritten:

"§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making 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 in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(4) The judge determines that either a., b., c., or d. 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. Each donee is entitled to one or more specific devises, or distributions of specific amounts of money, income, or property under either the paper-writing or revocable trust or both or is a residuary devisee or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific devise, or distribution of specific amounts of money, income, or property.

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 intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent, and the amount of the gift does not exceed the federal annual gift tax exclusion, the gift qualifies either for the federal annual gift tax exclusion under Internal Revenue Code, section 2503(b), or is a qualified transfer for tuition or medical expenses under Internal Revenue Code, section 2503(e).

(5) If 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; then all residuary devises 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, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) 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.

(6) If 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, all persons who would share in the incompetent's 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 the 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-1341.1(5) and (6) above.

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."

SECTION 4.(e) G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the
ward's estate to accomplish the desired result of administering the ward's estate legally and in
the ward's best interest, including but not limited to the following specific powers:

(24) To petition the court for approval of the exercise of any of the following
powers with respect to a revocable trust that the ward, if competent, could
exercise as settlor of the revocable trust:

a. Revocation of the trust.
b. Amendment of the trust.
c. Additions to the trust.
d. Direction to dispose of property of the trust.
e. The creation of the trust, notwithstanding the provisions of
   G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter
the designation of beneficiaries to receive property on the ward's death under
that ward's existing estate plan, but may incorporate tax planning or
public benefits planning into the ward's existing estate plan, which may
include leaving beneficial interests in trust rather than outright, and (ii) shall
be subject to the provisions of Articles 17, 18, and 19 of this Chapter
concerning gifts."

PART V. DIRECTIVES TO REVISOR OF STATUTES

SECTION 5. 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 North
Carolina Uniform Trust Code and all explanatory comments of the drafters of this act, as the
Revisor may deem appropriate.

PART VI. EFFECTIVE DATE

SECTION 6. Sections 1 and 2(c) of this act become effective October 1, 2013, and
apply to estates of decedents dying on or after that date. The remainder of this act is effective
when it becomes law Section 4(a) of this act clarifies existing law and the changes apply to all
inherited individual retirement accounts without regard to the date an account was created.