

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 724
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Short Title: Gifts by Attorney-In-Fact.

(Public)

Sponsors:

Referred to:

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
I,, appoint to be my attorney-in-fact, and give such person full power to act

1 in my ~~name, place and stead name~~ name in any way which I ~~myself could do if I were~~
 2 ~~personally present could act for myself,~~ with respect to the following matters as each of
 3 them is defined in Chapter 32A of the North Carolina General ~~Statutes to the extent that I~~
 4 ~~am permitted by law to act through an agent.~~ Statutes. (DIRECTIONS: Initial the line
 5 opposite any one or more of the subdivisions as to which the principal desires to give the
 6 attorney-in-fact authority.)

7 (1) Real
 8 propert
 9 y
 10 ~~transacti~~
 11 ~~ons;~~
 12 transact
 13 ions

14 (2) Personal property ~~transaactions;~~ transactions

15 (3) Bond, ~~share share,~~ stock, securities and commodity
 16 ~~transaactions;~~ transactions

17 (4) Banking
 18 ~~transaactions;~~
 19 transactions

20 (5) Safe ~~deposits;~~ deposits

21 (6) Business operating ~~transaactions;~~ transactions

22 (7) Insurance
 23 ~~transaactions;~~
 24 transactions

25 (8) Estate
 26 ~~transaactions;~~
 27 transactions

28 (9) Personal relationships and ~~affairs;~~ affairs

29 (10) Social security and ~~unemployment;~~ unemployment

30 (11) Benefits from ~~military service;~~ military service

31 (12) Tax matters

32 (13) Employment of agents

33 (14) Gifts to charities, and to individuals other than the attorney-in-fact

34 (15) Gifts to the named attorney-in-fact

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

38 (If period of power of attorney is to be limited, add: 'This power terminates
 39', 19.....')

40 (If power of attorney is to be a durable power of attorney under the provision
 41 of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental
 42 incompetence of the principal, add: 'This power of attorney shall not be affected by my
 43 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.')

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. 2. G.S. 32A-2(3) reads as rewritten:

"(3) Bond, ~~Share~~ Share, Stock, Securities and Commodity Transactions. – To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all indorsements, acquittances, releases, receipts, or other sufficient discharges for the same."

Sec. 3. G.S. 32A-2(12) reads as rewritten:

"(12) ~~Tax~~ Tax matters. – To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute

1 or could do or evidences the principal's intent to give the attorney-in-fact full power to
2 handle the principal's affairs or deal with the principal's property, the attorney-in-fact
3 shall have the power and authority to make gifts in any amount of any of the principal's
4 property to any individual or to any organization described in sections 170(c) and 2422(a)
5 of the Internal Revenue Code or corresponding future provisions of federal tax law, or
6 both, in accordance with the principal's personal history of making or joining in the
7 making of lifetime gifts. As used in this subsection, 'Internal Revenue Code' means the
8 'Code' as defined in G.S. 105-2.1.

9 (b) Except as provided in subsection (c) of this section, or unless gifts are
10 expressly authorized by the power of attorney, a power described in subsection (a) of this
11 section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the
12 estate, creditors, or the creditors of the estate of the attorney-in-fact.

13 (c) If the power of attorney described in subsection (a) of this section is conferred
14 upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or
15 attorneys-in-fact who are not disqualified by subsection (b) of this section from
16 exercising the power of appointment as if they were the only attorney-in-fact or
17 attorneys-in-fact. If the power of attorney described in subsection (a) of this section is
18 conferred upon one attorney-in-fact, the power of attorney may be exercised by the
19 attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of
20 the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance
21 with the procedures and provisions of Article 2B of this Chapter.

22 (d) Subsection (a) of this section shall not in any way impair the right, power, or
23 ability of any principal, by express terms in the power of attorney, to authorize or limit
24 the authority of any attorney-in-fact to make gifts of the principal's property.

25 (e) An attorney-in-fact expressly authorized by this section to make gifts of the
26 principal's property may elect to request that the clerk of the superior court issue an order
27 approving a gift or gifts of the property of the principal.

28 (f) This section shall apply to all powers of attorney executed prior to, on, or after
29 the effective date of this section.

30 **"ARTICLE 2B.**

31 **"GIFTS AUTHORIZED BY COURT ORDER.**

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

33 An attorney-in-fact, acting under a power of attorney that does not contain the grant
34 of power set out in G.S. 32A-14.1 and does not expressly authorize gifts of the principal's
35 property, may initiate a special proceeding before the clerk of superior court in
36 accordance with the procedures of Article 33 of Chapter 1 of the General Statutes for
37 authority to make gifts of the principal's property to the extent not inconsistent with the
38 express terms of the power of attorney. The principal and any guardian ad litem
39 appointed for the principal are the defendants in a proceeding pursuant to this Article.
40 The clerk may issue an order setting forth the amounts, frequency, recipients, and
41 proportions of any gifts of the principal's property after considering all relevant factors,
42 including, but not limited to: (i) the size of the principal's estate; (ii) the principal's
43 foreseeable obligations; (iii) the principal's foreseeable maintenance needs; (iv) the

1 principal's personal history of making or joining in the making of lifetime gifts; (v) the
2 principal's estate plan; and (vi) the tax effects of the gifts. If there is no appeal from the
3 decision and order of the clerk within the time prescribed by law, the clerk's order shall
4 be submitted to the judge of the superior court and approved by the court before the order
5 becomes effective.

6 **"§ 32A-14.11. Appeal; stay effected by appeal.**

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

12 **"§ 32A-14.12. Costs and fees.**

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

16 Sec. 6. Nothing in this act is intended to alter or otherwise affect the law of this
17 State with regard to presumptions of fraud or fiduciary responsibilities.

18 Sec. 7. Article 2A of Chapter 32A as set out in Section 3 of this act is intended
19 as a codification of the existing North Carolina common law.

20 Sec. 8. This act becomes effective October 1, 1995.