

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 604

Short Title: Clarify Atty-In-Fact Gifts.

(Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-
IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. –

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact 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.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), 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.

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- 1 c. If the power described in G.S. 32A-2(14)a. is conferred upon two
2 or more attorneys-in-fact, it may be exercised by the attorney-in-
3 fact or attorneys-in-fact who are not disqualified by G.S. 32A-
4 2(14)b. from exercising the power of appointment as if they were
5 the only attorney-in-fact or attorneys-in-fact.
6 d. An attorney-in-fact expressly authorized by this section to make
7 gifts of the principal's property may elect to request the clerk of
8 the superior court to issue an order to make a gift of the property
9 of the principal."

10 Section 2. G.S. 32A-2(15) reads as rewritten:

11 "(15) Gifts to the Named Attorney-In-Fact. – To make gifts to the attorney-in-
12 fact named in the power of attorney or the estate, creditors, or creditors
13 of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with
14 the principal's personal history of making or joining in the making of
15 lifetime gifts."

16 Section 3. Section 1 of this act becomes effective July 1, 1999, and applies to
17 all powers of attorney executed on or after October 1, 1995. Section 2 of this act
18 becomes effective October 1, 1999, and applies to all powers of attorney executed on or
19 after that date. Section 3 of this act is effective when it becomes law.