

Article 17.

Gifts from Income for Certain Purposes.

**§ 35A-1335. Gifts authorized with approval of judge of superior court.**

With the approval of the resident judge of the superior court of the district in which the guardian was appointed, upon a duly verified petition the guardian of a person judicially declared to be incompetent may, from the income of the incompetent, make gifts to the State of North Carolina, its agencies, counties or municipalities, or to the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational purposes, or to individuals including the guardian. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate. (1963, c. 111, s. 1; 1987, c. 550, s. 4; 1999-270, s. 1.)

**§ 35A-1336. Prerequisites to approval by judge of gifts for governmental or charitable purposes.**

The judge shall not approve gifts from income for governmental or charitable purposes unless it appears to the judge's satisfaction that all of the following apply:

- (1) After making the gifts and the payment of 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) 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 aggregate of the gifts does not exceed the percentage of income fixed by federal law as the maximum deduction allowable for the gifts in computing federal income tax liability. (1963, c. 111, s. 2; 1987, c. 550, s. 4; 1999-270, s. 2.)

**§ 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 gift qualifies either for the federal annual gift tax exclusion under section 2503(b) of the Internal Revenue Code or is a qualified transfer for tuition or medical expenses under section 2503(e) of the Internal Revenue Code.

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. (1999-270, s. 3; 2011-284, s. 39; 2013-91, s. 3(c).)

**§ 35A-1337. Fact that incompetent had not previously made similar gifts.**

The judge shall not withhold his approval merely because the incompetent, prior to becoming incompetent, had not made gifts to the same donees or other gifts similar in amount or type. (1963, c. 111, s. 3; 1987, c. 550, s. 4.)

**§ 35A-1338. Validity of gift.**

A gift made with the approval of the judge under the provisions of this Article shall be deemed a gift by the incompetent and shall be as valid in all respects as if made by a competent person. (1963, c. 111, s. 4; 1987, c. 550, s. 4.)

**§ 35A-1339: Reserved for future codification purposes.**