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Summary of the North Carolina Uniform Transfers to Minors Act and the Proposed North Carolina Uniform Custodial Trust Act

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A SUMMARY OF THE NORTH CAROLINA UNIFORM TRANSFERS TO MINORS ACT AND THE PROPOSED NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT

JULIE ZYDRON GRIGGS*

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In the century since its organization in 1892, the National Conference of Commissioners on Uniform State Laws (the "Conference") has drafted and recommended laws for voluntary adoption in all states on many subjects in which uniformity is both desirable and practicable. Because of the increasing mobility of individuals, uniformity in the laws relating to the transfer of wealth is particularly important, and the Conference has embraced the laws of estates and probate for the promulgation of various uniform acts. This Article will highlight a pair of such uniform acts, one enacted in North Carolina and one proposed for enactment in North Carolina, which concern the transfer of wealth in connection with persons who are legally incapacitated, whether by age or mental condition. In addition, this Article will indicate the differences between the North Carolina legislation or proposed legislation and the official uniform act text.

I. THE NORTH CAROLINA UNIFORM TRANSFERS TO MINORS ACT

A. History

The Uniform Transfers to Minors Act (the "UTMA"), approved by the Conference in 1983, revises and restates the Uniform
Gifts to Minors Act (the "UGMA") which was approved by the Conference in 1956, amended by the Conference in 1965 and 1966 and enacted in some form in every state. Prior to the availability of the UGMA, the transfer of any type of property (other than United States Savings Bonds or deposits in certain financial institutions in certain states) for the benefit of a minor had to be accomplished by means of a trust or a guardianship in order to avoid the practical difficulties of direct ownership of property by a minor (such as the minor's ability to disaffirm the sale of such property after reaching the age of majority). Both the trust and the guardianship are separate legal and taxable entities that are subject to various accounting, bond, investment, return and other requirements that tend to be burdensome for the trustee or guardian. The UGMA was originally promulgated as an alternative to the often expensive and cumbersome trust or guardianship for the legal ownership, management and distribution of certain types of property of a minor and was designed to be an act to avoid conflicts of law in situations in which the laws of more than one state might apply.1

The UGMA proved to be a relatively simple, useful and widely adopted vehicle for the transfer of substantial amounts of property for the benefit of minors, but, even as revised, the UGMA was available as a trust or guardianship substitute only for transfers of money, securities, life insurance policies and annuity contracts.2 Moreover, the UGMA was available only for inter vivos3 gratuitous transfers.4 Consequently, many states modified the UGMA by adding types of property which could be transferred and expanding the circumstances under which such transfers could be made, and as each state increased the usefulness (within its own jurisdiction) of the UGMA, the uniformity sought by the Conference was destroyed. However, because the Conference viewed the UGMA as one of its "most successful products," it proceeded to design a new act to embody the expansive approach taken by the many states

that had enacted a modified version of the UGMA.\textsuperscript{5}

In addition to the outright \textit{inter vivos} gratuitous transfers from individuals covered by the UGMA, the UTMA, as approved in 1983, covers transfers (i) by irrevocable exercise of a power of appointment,\textsuperscript{6} (ii) from trusts and estates if such transfers are specifically authorized by the governing instrument,\textsuperscript{7} (iii) from trusts, estates and guardianships if such transfers are not specifically prohibited by the governing instrument\textsuperscript{8} and (iv) from any third party indebted to a minor such as a tort judgment debtor of a minor, a bank holding a joint or "pay on death" account of which a minor is the surviving payee or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor.\textsuperscript{9}

In addition to the transfers of money, securities, life insurance policies and annuity contracts covered by the UGMA, the UTMA covers transfers of virtually "every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property."\textsuperscript{10}

In contrast to the UGMA which did not address claims of third parties because it was the view of the Conference that the types of property which could be transferred under the UGMA did not tend to give rise to third party claims,\textsuperscript{11} the UTMA generally limits any claim of a third party to recourse against the custodial property. Under the UTMA, the minor is not personally liable for an obligation arising from ownership of custodial property unless the minor is personally at fault, and the custodian is not personally liable on a contract entered into in the custodial capacity unless the custodian fails to reveal the custodial capacity in the contract or for an obligation arising from ownership of custodial property unless the custodian is personally at fault.\textsuperscript{12}

\begin{itemize}
\item\textsuperscript{5} Unif. Transfers to Minors Act prefatory note, 8A U.L.A. 254 (Supp. 1991).
\item\textsuperscript{6} Id. § 4, 8A U.L.A. at 263.
\item\textsuperscript{7} Id. § 5, 8A U.L.A. at 263.
\item\textsuperscript{8} Id. § 6, 8A U.L.A. at 264.
\item\textsuperscript{9} Id. § 7 and comment, 8A U.L.A. at 266.
\item\textsuperscript{10} Id. § 1(6) and comment, 8A U.L.A. at 257-58.
\item\textsuperscript{11} Id. prefatory note, 8A U.L.A. at 254.
\item\textsuperscript{12} Id. § 17, 8A U.L.A. at 280. In the Prefatory Note to the UTMA, the Conference suggests that even with such limits on liability to third parties, property such as real estate or general partnership interests may be associated with liability risks which can and should be insured against and that in those cases in which custodial assets are insufficient to provide for the purchase of such insurance, there is doubt that the custodian will act to purchase such insurance or there are
\end{itemize}
Unlike the UGMA, the UTMA attempts to address the uncertainties that may arise because of the inconsistency of the law in this subject area among the various states. To this end, the UTMA provides for the choice of law by the transferor in a custodianship, with the result that the transferor may elect for the law of any state to apply to the custodianship as long as a nexus exists (i.e., the transferor, the minor or the custodian is a resident of such state or the custodial property is located in such state) at the time of the transfer.¹³

Whereas the UGMA contained a relatively limited list of the specific powers of a custodian, the UTMA provides that a custodian shall have all of the rights, powers and authority over custodial property that an unmarried adult has over his own property, except that such rights, powers and authority may be exercised only in a custodial capacity,¹⁴ and the UTMA increases the standard of care required of a custodian in dealing with custodial property from the care that would be exercised by a prudent man in dealing with his own property to that which would be exercised by a prudent man in dealing with the property of another person and pronounces an even higher standard of care applicable to particularly skilled (or professional) custodians.¹⁵

The UTMA retains the UGMA age of majority of twenty-one (21) years.¹⁶

In 1987, the North Carolina General Assembly enacted a version of the UTMA which became effective October 1 of that year.¹⁷ By such enactment, North Carolina became one of more than half of the states which have repealed their respective versions of the UGMA.¹⁸

significant uninsurable risks, the transferor should consider, as an alternative to a custodianship, a trust which can contain spendthrift provisions (such as a minor's trust created under Section 2503(c) of the Internal Revenue Code). Id. prefatory note, 8A U.L.A. at 254.

13. Id. § 2 and comment, 8A U.L.A. at 261-62.
14. Id. § 13 and comment, 8A U.L.A. at 276-77.
15. Id. § 12 and comment, 8A U.L.A. at 274-75.
16. Id. § 1(11) and comment, 8A U.L.A. at 258-59. North Carolina, like many states, however, in its version of the UGMA, had lowered the age of majority for purposes of its version of the UGMA to eighteen (18) years. N.C. GEN. STAT. § 33-71(d) (1966), repealed by Act of July 6, 1987, ch. 563, 1987 N.C. Sess. Laws 973.
18. The North Carolina version of the UGMA was found at N.C. GEN. STAT. § 33-68 to -77 (1966)(Uniform Gifts to Minors Act) and was repealed by Act of July
The North Carolina Uniform Transfers to Minors Act (the "NCUTMA") is an enactment of essentially all of the major provisions of the UTMA. The certain respects in which the NCUTMA differs from the UTMA are illuminated below within the discussion of the provisions of the NCUTMA.

B. Provisions of the NCUTMA

1. Section 33A-1. Definitions

Chapter 33A of the North Carolina General Statutes begins with a group of definitions which substantially tracks Section 1 of the UTMA. Of particular importance are the definition of "adult" as an individual who has reached twenty-one (21) years of age and the definition of "minor" as an individual who has not yet reached twenty-one (21) years of age.19 "Custodial property" is defined as any interest in property transferred to a custodian under Chapter 33A as well as the income from and proceeds of any such interest in property, with the result that the type of property which may be transferred into a custodianship is virtually unlimited.20 "Court" as referred to in Chapter 33A means the Clerk of Superior Court with jurisdiction over the subject transfer.21

"Member of the minor's family" includes the minor's parent, spouse, grandparent, sibling, uncle or aunt, whether of the whole or half blood or by adoption.22 This particular definition in the NCUTMA varies from that contained in the UTMA in that the definition in the UTMA also includes a stepparent of the minor as a "member of the minor's family."23

2. Section 33A-2. Scope and Jurisdiction

Jurisdiction over the custodianship, comity with other states, personal jurisdiction over the custodian and the exclusivity of the NCUTMA over the transfer of property interests to minors are addressed in Section 33A-2 of the NCUTMA. If the instrument of transfer refers to the NCUTMA and either the transferor, the minor or the custodian is a resident of North Carolina or the custo-

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20. Id. § 33A-1(5).
21. Id. § 33A-1(4).
22. Id. § 33A-1(10).
dial property is located in North Carolina, then the NCUTMA will apply to the transfer even if at some point subsequent to the creation of the custodianship none of the parties is a resident of North Carolina and the custodial property has been removed from the state. 24

Even though the custodian is not required to be a North Carolina resident, the custodian is, as custodian, subject to personal jurisdiction in North Carolina with respect to any matter relating to the custodianship. 25

Comity is established with other states that have adopted some version of the UTMA in that if a transfer is valid under the laws of another state, it is governed by the laws of such state and is enforceable in North Carolina if, at the time of the transfer, the transferor, the minor or the custodian was a resident of such state or the custodial property was located in such state. 26

Section 33A-2 of the NCUTMA contains an additional provision not found in the UTMA to the effect that the NCUTMA is not the exclusive procedure for the transfer of property interests to minors but rather that any other procedure for such transfer authorized by law, not specifically repealed by statute, continues in effect. 27

3. Section 33A-3. Nomination of Custodian

A transferor has the authority under the NCUTMA to designate a custodian and successor custodians of property contingent upon the occurrence of a future event by using the language "as custodian for [name of minor] under the North Carolina Uniform Transfers to Minors Act." 28 Such a designation may be made by will, trust, deed, written instrument exercising a power of appointment or written instrument designating a beneficiary of contractual rights which is registered with the obligor of such contractual rights. 29 Such a designation will not create custodial property until the instrument in which the designation is made becomes irrevocable. 30

25. Id. § 33A-2(b).
26. Id. § 33A-2(c).
27. Id. § 33A-2(d).
28. Id. § 33A-3(a).
29. Id.
30. Id. § 33A-3(c).
4. **Section 33A-4. Transfer by Gift or Exercise of Power of Appointment**

The first type of transfer contemplated and permitted by the NCUTMA is a direct gift to, or irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor, and there is no restriction that the direct gift be made during the transferor's lifetime.\(^{31}\)

5. **Section 33A-5. Transfer Authorized by Will or Trust**

The second type of transfer contemplated and permitted by the NCUTMA is an irrevocable transfer by a personal representative or trustee, if such a transfer is specifically authorized in the governing instrument, to a custodian for the benefit of a minor which has been nominated in the governing instrument or, if no custodian has been nominated in the governing instrument or if each custodian so nominated for any reason fails or ceases to serve as such custodian, then that custodian which the personal representative or trustee selects.\(^{32}\) This provision allows for the creation of a custodianship as an alternative to a trust or guardianship in those situations in which, because of the value of the property involved, the creation and maintenance of a trust would not be practical and a guardianship would generate disproportionate expense and other burdens (such as court supervision and a relatively more strict investment standard) for the ward's estate and the guardian.

6. **Section 33A-6. Other Transfer by Fiduciary**

In the third type of transfer contemplated and permitted by the NCUTMA, a personal representative, trustee or guardian may make an irrevocable transfer to another person, including the transferor, as custodian for the benefit of a minor in the absence of a will or under a will or trust that does not expressly authorize the transfer if the following conditions are met: (i) the personal representative, trustee or guardian considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with the provisions of the governing instrument and (iii) the transfer is authorized by the court if aggregate transfers to the custodian for the benefit of a minor under Section 33A-6 will

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31. *Id.* § 33A-4.
32. *Id.* § 33A-5.
total more than ten thousand dollars ($10,000). In addition, the NCUTMA includes a requirement, not found in the UTMA, that the court authorize any transfer under Section 33A-6 made to the transferor.

7. Section 33A-7. Transfer by Obligor

The fourth type of transfer contemplated and permitted by the NCUTMA concerns a transfer by a non-fiduciary who holds property owned by or owes a liquidated debt to a minor who has no guardian. If a custodian has been properly and effectively nominated to receive such property, such property (regardless of its aggregate value) must be transferred to such custodian, but if no custodian has been properly and effectively nominated to receive such property, or if each custodian properly and effectively nominated for any reason fails or ceases to serve, such non-fiduciary may elect to transfer such property to an adult member of the minor’s family or to a trust company unless the aggregate value of such property exceeds ten thousand dollars ($10,000), in which case a guardian will have to be appointed to receive such property.

8. Section 33A-8. Receipt for Custodial Property

A written acknowledgement by a custodian of delivery authorized by Chapter 33A constitutes sufficient receipt and discharge for custodial property transferred to the custodian.

9. Section 33A-9. Manner of Creating Custodial Property and Effecting Transfer; Designation of Initial Custodian; Control

Section 33A-9 governs the manner of creating custodial property, effecting a transfer and designating an initial custodian. The section gives specific instructions as to the creation of custodial property out of securities, money, life insurance, power of appointment property, real estate and tangible personal property, which

33. Id. § 33A-6.
34. Id. § 33A-6(c).
35. Id. § 33A-7.
36. Id. § 33A-8. The Conference, in its comment to Section 8 of the UTMA, cautions that this section does not authorize any custodian to whom an obligor makes a transfer under Section 7 to settle or release a claim of the minor against a third party and that only a guardian or other person authorized under law to act for the minor may compromise such a claim. Unif. Transfers to Minors Act § 8 comment, 8A U.L.A. 267 (Supp. 1991).
instructions generally require that the property be registered or assigned in the name of or to the credit of an account of a person "as custodian for [name of minor] under the North Carolina Uniform Transfers to Minors Act," but the Section also indicates that any other type of property may be transferred under the Section to a custodian for the benefit of a minor. A recommended form of transfer document is set forth in Section 33A-9(b). Section 33A-9(c) indicates that the transferor is to release the control of the custodial property to the custodian as soon as practicable.

There is no language in Section 33A-9 which limits the class of eligible initial custodians.

10. Section 33A-10. Single Custodianship

A transfer of property under the NCUTMA may be made for the benefit of only one (1) minor, and all custodial property held under the NCUTMA by the same custodian for the benefit of the same minor constitutes, and may be consolidated as, a single custodianship.

37. N.C. GEN. STAT. § 33A-9(a) (1987). The Conference, in its comment to Section 9 of the UTMA, cautions that the payor, issuer or obligor of payments to be made in the future under a life insurance or annuity contract, benefit plan, royalty agreement, promissory note or similar arrangement may require additional formalities such as the completion of a specific assignment form or endorsement but that the transfer or assignment of such payments to a custodian for the benefit of a minor under Section 9 is technically effective upon notification of such payor, issuer or obligor that a written transfer or assignment under Section 9 has been made. Unif. Transfers to Minors Act § 9 comment, 8A U.L.A. 269-70 (Supp. 1991).


39. Id. § 33A-9(b). The Conference, in its comment to Section 9 of the UTMA, notes that the recommended form contains an acceptance which is to be executed by the custodian to make the disposition effective and emphasizes that although such a form of written acceptance is not required under Section 9, it is a better and recommended practice to obtain, in some manner, the written acknowledgement, consent and acceptance of the custodian. Unif. Transfers to Minors Act § 9 comment, 8A U.L.A. 269-70 (Supp. 1991).

40. N.C. GEN. STAT. § 33A-9(c) (1987). In its comment to Section 9 of the UTMA, the Conference suggests that the intent behind Section 9(c) is that for inter vivos transfers, "as soon as practicable" is to be interpreted as "immediately" or "promptly." Unif. Transfers to Minors Act § 9 comment, 8A U.L.A. 269-70 (Supp. 1983).

41. N.C. GEN. STAT. § 33A-10 (1987). The Conference, in its comment to Section 10 of the UTMA, notes that consolidation will not be possible between custodial property held under the UTMA and custodial property held under the
11. Section 33A-11. Validity and Effect of Transfer

The validity of a transfer under the NCUTMA is not affected by the transferor's failure to place the custodian in control of the custodial property, by the designation of an ineligible custodian (except the designation of the transferor as custodian when the transferor is ineligible to serve) or by the death, incapacity or disclaimer of the named custodian. Once made, a transfer under the NCUTMA is irrevocable, and the custodial property is indefeasibly vested in the minor. The NCUTMA contains an additional provision, not found in the UTMA, to the effect that the use of an abbreviation in referring to the NCUTMA or an equivalent act of another state will not affect the validity of a transfer under the NCUTMA.

12. Section 33A-12. Care of Custodial Property

The custodian is required to take control of and hold, manage and invest the custodial property and to register or record title to such property if appropriate. The custodian may retain any custodial property received by him or her without any obligation to diversify the investment, and in dealing with custodial property, the custodian must observe the standard of care that would be observed by a prudent person when dealing with the property of another person, but the custodian is not limited by any other rule of law restricting investments by fiduciaries, with the exception that if a custodian has special skill or expertise and is named as custodian on the basis of such special skill or expertise, the custodian

UGMA because of differences in the applicable age of distribution and custodian powers and that, even under the UTMA, because certain custodianships will terminate sooner than others, custodianships that do not terminate at the same time cannot be consolidated. Unif. Transfers to Minors Act § 10 comment, 8A U.L.A. 272 (Supp. 1991).

43. Id. § 33A-11(b). The Conference, in its comment to Section 11 of the UTMA, points out that the minor's indefeasibly vested rights are subject, however, to the rights, powers, duties and authority of the custodian and that, for example, spousal rights in the case of a married minor do not attach to custodial property so as to conflict with the custodian's ability and authority to manage, sell or transfer such property until the custodianship terminates as provided under the UTMA. Unif. Transfers to Minors Act § 11 comment, 8A U.L.A. 273 (Supp. 1991).
45. Id. § 33A-12(a).
must observe a higher standard of care and use such special skill or expertise when dealing with custodial property. The custodian specifically may invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate or the custodian, in his custodial capacity, is the beneficiary. A custodian must keep custodial property separate and distinct from all other property in a manner sufficient to identify such property clearly as the custodial property of the minor, and custodial property may be held with other owners if the custodial property is held as a tenant in common. The custodian must keep records of all transactions involving custodial property and must make such records available for inspection by the parents or legal representative of the minor or by the minor if he or she has reached fourteen (14) years of age.


A custodian has very broad and general powers, to wit, all of the rights, powers and authority over custodial property that an unmarried adult has over his or her own property, except that the custodian may exercise such rights, powers and authority in a custodial capacity only (for the benefit of the minor and not for the direct or indirect benefit of the custodian) and except that the exercise of such rights, powers and authority is subject to the pru-

46. Id. § 33A-12(b).
47. Id. § 33A-12(c).
48. Id. § 33A-12(d). The Conference, in its comment to Section 12 of the UTMA, suggests that custodial property consisting of an undivided interest held as a tenant in common is permitted so as to allow the custodian to invest in common trust funds, mutual funds, proportionate interests in “jumbo” certificates of deposit and similar property and also indicates that although investment by the custodian in property held in joint tenancy with right of survivorship is not permitted, a transfer of such property to a custodian is not prohibited and the custodian is authorized under paragraph (b) of Section 12 to retain any interest received in a transfer. Unif. Transfers to Minors Act § 12 comment, 8A U.L.A. 274-75 (Supp. 1991).
49. N.C. GEN. STAT. § 33A-12(e) (1987). The Conference, in its comment to Section 12 of the UTMA, advises that because the custodianship is not a separate legal entity, the minor’s taxpayer identification number should be used to identify all custodial accounts. Unif. Transfers to Minors Act § 12 comment, 8A U.L.A. 275 (Supp. 1991).
dent person rule stated in Section 33A-12.  

14. **Section 33A-14. Use of Custodial Property**

In the exercise of very broad discretion, a custodian may expend so much of the custodial property as the custodian deems advisable for the use and benefit of the minor without court order, without regard to the duty of the custodian or anyone else to support the minor, without regard to any other income or property of the minor and without affecting any obligation of any person to support the minor. If an interested person or the minor (if the minor has reached fourteen (14) years of age) petitions the court, however, the court may order the custodian to deliver or pay to the minor or apply for the minor’s benefit so much of the custodial property as the court deems advisable. 

15. **Section 33A-15. Custodian’s Expenses, Compensation and Bond**

A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in connection with the administration of the custodial property, and the NCUTMA, unlike the UTMA, contains specific language which provides that the custodian may pay reasonable expenses directly from custodianship property and is not required to make out-of-pocket expenditures and then seek reimbursement. In addition, unless the custodian is the transferor, the custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during the year. Section 33A-15(b) does not contain, however, a method for the determination of “reasonable” compensation. In most cases, the custodian is not required to give bond. 

51. Id. § 33A-14(a), (c).
52. Id. § 33A-14. The Conference, in its comment to Section 14 of the UTMA, illustrates that an “interested person” entitled to seek court ordered distribution would include not only the parents or guardian of the minor but also a third party to whom the minor owes a legally enforceable debt. Unif. Transfers to Minors Act § 14 comment, 8A U.L.A. 277-78 (Supp. 1991).
54. Id. § 33A-15(b).
55. Id. § 33A-15(c).
16. Section 33A-16. Exemption of Third Person From Liability

A third person who deals in good faith with a custodian and who has no knowledge as to any irregularity of a transaction is not responsible for determining the validity of the designation of the purported custodian, the propriety of, or authority for, under the NCUTMA, any act of the purported custodian, the validity, under the NCUTMA, of any instrument or instructions executed by the purported transferor or the purported custodian or the propriety, under the NCUTMA, of the application of any property of the minor delivered to the purported custodian. 56

17. Section 33A-17. Liability to Third Persons

Claims based on a contract entered into by a custodian acting in a custodial capacity, obligations arising from the ownership and control of custodial property and torts committed during the custodianship may be asserted against the custodial property, without regard to whether or not the custodian or the minor is personally liable therefor. 57 A custodian may be held personally liable on a custodial contact if the custodian fails to reveal the custodial capacity or fails to reveal the custodianship in the contract. 58 If personally at fault, a custodian, as well as a minor, may be held personally liable for an obligation arising from control of custodial property or for a tort. 59

18. Section 33A-18. Renunciation, Resignation, Death or Removal of Custodian; Designation of Successor Custodian

A nominated or designated custodian may decline to serve by delivering a written disclaimer to the nominor or to the transferor or the transferor’s legal representative. 60 It is noteworthy that Section 33A-18(a) of the NCUTMA contains the phrase “written disclaimer” instead of the phrase “valid disclaimer [under the Uniform Disclaimer of Property Interests Act of the Enacting State]” used in Section 18(a) of the UTMA. 61 In a written instrument exe-

56. Id. § 33A-16.
57. Id. § 33A-17(a).
58. Id. § 33A-17(b)(1).
59. Id. § 33A-17(b)(2), (c).
60. Id. § 33A-18(a).
cuted before a subscribing witness other than the successor custodian, a custodian may designate a successor custodian (a trust company or any adult other than the transferor), but such designation will not take effect until the custodian resigns, dies, becomes incapacitated or is removed. A custodian may resign at any time by delivering written notice to the successor custodian, as well as to the minor if the minor has reached fourteen (14) years of age, and by delivering the custodial property to the successor custodian. If a custodian is ineligible, dies or becomes incapacitated without designating a successor and the minor has reached age fourteen (14), the minor may designate as a successor custodian (i) any adult member of the minor’s family, (ii) the minor’s guardian or (iii) a trust company, and if the minor fails to act within sixty (60) days or has not reached age fourteen (14) within sixty (60) days after the custodian fails or ceases to act, then the minor’s guardian becomes successor guardian. If the minor has no guardian or if the minor’s guardian refuses to serve, any interested person may petition the court to designate a successor custodian. Any interested person (including the minor if the minor has reached fourteen (14) years of age) may petition the court to remove a custodian for cause, to designate a successor custodian or to require the custodian to give appropriate bond.

19. Section 33A-19. Accounting by and Determination of Liability of Custodian

A minor who has reached fourteen (14) years of age, the minor’s guardian or legal representative, an adult member of the minor’s family, a transferor or a transferor’s legal representative may petition the court for an accounting by the custodian or the custodian’s legal representative and, unless the issue has already been adjudicated in an action under Section 33A-17 to which the minor or the minor’s legal representative was a party, may petition for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property.

63. Id. § 33A-18(c).
64. Id. § 33A-18(d).
65. Id.
66. Id. § 33A-18(f).
67. Id. § 33A-19(a). The Conference, in its comment to Section 19 of the
20. Section 33A-20. Termination of Custodianship

A custodian shall transfer custodial property to the minor or the minor's estate upon the earliest to occur of (i) the date the minor reaches age twenty-one (21) if the custodial property was transferred by gift, exercise of a power of appointment, will or trust, and the NCUTMA, unlike the UTMA, provides that a transferor may provide in the instrument of transfer that the custodial property be transferred to the minor at any time after the minor reaches age eighteen (18) and before the minor reaches age twenty-one (21), (ii) the date the minor reaches age eighteen (18) if the custodial property was transferred by a personal representative, trustee of guardian without express authority from the donor of the property or by an obligor or (iii) the date of the minor's death.68


The NCUTMA applies to transfers made after October 1, 1987, and, under Section 33A-21, transfers made after October 1, 1987 which mistakenly refer to (i) the Uniform Gifts to Minors Act of North Carolina, (ii) a version of the UGMA enacted by another state, even though such version contained no specific authority for a transfer from the source in question of the type of property in question, or (iii) a version of the UTMA enacted by another state which had no jurisdiction in the transaction are all validated under the NCUTMA if application of the NCUTMA is necessary to validate the transfer.69

22. Section 33A-22. Effect on Existing Custodianships

Prior transfers of any kind which are now covered by the NCUTMA are validated and governed by the NCUTMA except to the extent the application of the NCUTMA would extend the duration of custodianships in existence on October 1, 1987 and except custodianships which terminated on or before October 1, 1987 be-

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UTMA, notes that there is no special statute of limitations precluding petitions for accounting at some point after the termination of a custodianship but that general statutes of limitations and the doctrine of laches should adequately protect former custodians from unreasonably delayed petitions for accounting. Unif. Transfers to Minors Act § 19 comment, 8A U.L.A. 285 (Supp. 1991).

69. Id. § 33A-21.
cause the minor had reached age eighteen (18). 70

23. Section 33A-23. Uniformity of Application and Construction

Because the NCUTMA is patterned on a uniform act, it is to be applied and construed so as to result in uniformity of the law which is the subject of the NCUTMA among states which enact some version of it. 71

24. Section 33A-24. Short Title

The NCUTMA may be cited as the "North Carolina Uniform Transfers to Minors Act." 72

II. THE PROPOSED NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT

A. History

The Conference approved the Uniform Custodial Trust Act (the "UCTA") in 1987, and as yet it has not been widely adopted by the states. 73 Generally, the UCTA concerns the creation of trusts by and for adults with provisions for the management of property patterned on the UTMA provisions for the management of property of minors. 74 Under the UCTA, a donor or the beneficiary may create a trust-like arrangement for property by simply registering the title to the property in the name of a custodial trustee for the beneficiary. In addition, a custodial trust under the UTMA may be used to transfer property at the death of the beneficiary outside of the beneficiary's probate estate. The UCTA is also an alternative to management by a court-appointed guardian, which can be a costly and cumbersome process in which the owner

70. Id. § 33A-22.
71. Id. § 33A-23.
72. Id. § 33A-24.
of the property loses all control over the property, or by an agent under a durable power of attorney, whose authority will disappear upon the death of the grantor of the power of attorney.

The trustee of a custodial trust cannot be the beneficiary of the custodial trust, but the beneficiary of a custodial trust retains complete control over the custodial trust property until the legal incapacity or death of the beneficiary; that is, the beneficiary may direct the management of the custodial trust property, request income and principal from such property and cancel the custodial trust at any time, all in striking contrast to the rights of beneficiaries of trusts created under common law, the trustees of which are not subject to direction by the trust beneficiaries. Consequently, the results of a transfer under the UCTA are similar to those obtained by the settlor of a self-trusteed, inter vivos revocable trust created for his or her own benefit, but without the necessity of having a trust instrument drafted by legal counsel.

The Conference, in its prefatory comment to the UCTA, states that the UCTA is designed to provide a statutory standby inter vivos trust for those individuals who are typically not particularly affluent or sophisticated in estate planning matters and who are possibly represented by attorneys who do not specialize in estate planning and that, although the most frequent user of the UCTA is expected to be the elderly person planning for incapacity, the UCTA may also be used (i) by a parent to establish a custodial trust for an adult child who is legally incapacitated, (ii) by a military person, or other adult who is leaving the country temporarily, in order to arrange for management of his or her property by another person without relinquishing the beneficial ownership of the property or (iii) by a young adult who has received property under some version of the UTMA and wishes to keep the property in a simple trust arrangement in order to obtain the benefit and convenience of management services performed by a custodial trustee. 75

In 1989, the General Statutes Commission of the State of North Carolina Attorney General’s Office (the “GSC”) began its consideration of a North Carolina version of the UCTA which had been created by the Trusts Drafting Committee of the GSC (the “TDC”). 76 The GSC noted that initially the TDC had questioned the value of adding the provisions of the UCTA to the body of North Carolina law when it contained characteristics already found

75. Id.
76. Minutes from meeting of the GSC (September 8, 1989).
in the NCUTMA and the durable power of attorney legislation but that the TDC had ultimately concluded that the UCTA provisions for an adult who is already incompetent, as well as the provisions which essentially formalize a procedure of self-help for an adult who is contemplating the incompetency of himself or herself or another adult, would be valuable additions to existing law.\(^7\) In the months following the GCS's initial consideration of the TDC's first North Carolina version of the UCTA, there have been several exchanges between the GSC and the TDC resulting in review, comment, action and revision by the GSC and the TDC of such first version. As of March 1991, the GSC and the TDC are considering a sixth version of the UCTA for enactment in North Carolina, and this sixth version is reproduced in its entirety as the Appendix to this Article (such sixth version being hereinafter referred to as the "NCUCTA").\(^7\) The provisions of the NCUCTA are summarized below, and the differences between the provisions of the NCUCTA and the UCTA are highlighted.

B. Provisions

The NCUTMA, if enacted, would add a new chapter to the North Carolina General Statutes, Chapter 33B, immediately following Chapter 33A which contains the NCUTMA. The proposed effective date for the NCUCTA is October 1, 1991.

1. Section 33B-1. Definitions

Chapter 33B of the NCUCTA begins with a group of definitions which substantially tracks Section 1 of the UCTA. Of particular importance is the definition of "Adult" as an individual who has reached eighteen (18) years of age.\(^7\) "Custodial property" is defined as any interest in property held by a custodial trustee under Chapter 33B as well as the income from and proceeds of any such interest in property, with the result that the type of property which may be transferred into a custodial trust is virtually unlimited.\(^8\) "Court" as referred to in Chapter 33B means the Clerk of Superior Court with jurisdiction over the subject custodial trust.\(^9\)

"Incapacitated" is defined as lacking the ability to manage

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\(^7\) Id.

\(^8\) Id.

\(^9\) N.C. GEN. STAT. § 33B-1(1) (proposed legislation).

\(^10\) Id. § 33B-1(5).

\(^11\) Id. § 33B-1(4).
property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or any other disabling cause.82

"Member of the beneficiary's family" includes the beneficiary's spouse, descendant, parent, grandparent, sibling, uncle or aunt, whether of the whole or half blood or by adoption.83 This particular definition in the NCUCTA varies from that contained in the UCTA in that the definition in the UCTA also includes a stepchild or stepparent of the beneficiary as a "member of the beneficiary's family."84

While the UCTA defines "trust company" as a financial institution, corporation or other legal entity authorized to exercise general trust powers,85 the NCUCTA restricts the definition of "trust company" to a financial institution, corporation or other legal entity authorized to exercise general trust powers in North Carolina.86

2. Section 33B-2. Custodial Trust; General

An adult may create a custodial trust for himself or herself as beneficiary by written transfer of property to another adult "as custodial trustee under the North Carolina Uniform Custodial Trust Act,"87 and an adult may create a custodial trust for another person as beneficiary by written declaration describing property which he or she holds "as custodial trustee under the North Carolina Uniform Custodial Trust Act,"88 but a person may not, under the NCUCTA, declare a custodial trust for his or her benefit of which he or she is to serve as custodial trustee. The Conference, in its comment to Section 2 of the UCTA, states that a custodial trust could be created by the exercise of a valid power of attorney or power of appointment given by the owner of property.89

An adult beneficiary who is not legally incapacitated has the power to terminate the custodial trust at any time during his or

82. Id. § 33B-1(8).
83. Id. § 33B-1(10).
85. Id. § 1(15).
86. N.C. GEN. STAT. § 33B-1(15) (proposed legislation).
87. Id. § 33B-2(a).
88. Id. § 33B-2(b).
her lifetime, but unless he or she is a beneficiary who is not legally incapacitated, the transferor may not terminate the custodial trust. A transferor may designate or authorize the designation of a successor custodial trustee in the written instrument of transfer.

All other statutory and non-statutory means of creating trusts under existing law remain available in addition to the means provided under the NCUCTA.

3. Section 33B-3. Custodial Trust to Begin in the Future

A custodial trustee may be named to receive property to be held in a custodial trust effective upon the occurrence of a future event or transfer. To contemplate changes in circumstances over time, one or more successor custodial trustees may be named. Any designation under Section 33B-3 may be made by will, trust, insurance policy, deed, payable-on-death account, instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights, and any such designation must registered with or delivered to the fiduciary, payor, issuer or obligor.

4. Section 33B-4. Form and Effect of Receipt and Acceptance by Custodial Trustee; Jurisdiction

A custodial trust is created by a transfer or declaration that satisfies the provisions of Section 33B-2, but the responsibilities and obligations of the custodial trustee do not arise until the custodial trustee has accepted the transfer. While such acceptance can be express or implied, the Conference recommends, in its comment to Section 4 of the UCTA, that the written form of acceptance found in Section 4(b) be used in practice.

Upon acceptance, either express or implied, of the custodial trust property by a custodial trustee under the NCUCTA, the custodial trustee is subject to the exercise of personal jurisdiction by the

90. N.C. GEN. STAT. § 33B-2(e) (proposed legislation).
91. Id. § 33B-2(d).
92. N.C. GEN. STAT. § 33B-2(g) (proposed legislation).
93. Id. § 33B-2(h).
94. Id. § 33B-3(a).
95. Id. § 33B-3(b).
96. Id. § 33B-3(a).
97. Id. § 33B-4(a).
Clerk of Superior Court in the North Carolina county which has jurisdiction over the subject custodial trust.99

5. Section 33B-5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment

Persons owing money to a legally incapacitated individual who does not have a guardian of the estate may discharge a fixed obligation by payment to an adult member of such legally incapacitated individual's family as custodial trustee under the NCUCTA, and court authorization need not be obtained unless such payment exceeds twenty thousand dollars ($20,000).100 The effect of Section 33B-5 is to permit a custodial trust to be established as a substitute for a court supervised guardianship when a liquidated debt is owed to a legally incapacitated individual. In its comment to Section 5 of the UCTA, however, the Conference cautions that Section 5 does not authorize a custodial trustee to settle a claim for a disputed amount.101 In addition, Section 33B-5 is not available if the disposition of the proceeds of the obligation to a legally incapacitated individual have been directed by a custodial trust instrument executed pursuant to Section 33B-3.102

6. Section 33B-6. Single Beneficiaries; Separate Custodial Trusts

The NCUCTA, unlike the UCTA, does not permit the creation of a custodial trust for more than one beneficiary.103 All custodial trust property held under the NCUCTA by the same custodial trustee for the benefit of the same beneficiary may be administered as a single custodial trust.104

99. N.C. Gen. Stat. § 33B-4(c) (proposed legislation). The Conference, in its comment to Section 4 of the UCTA, suggests that such personal jurisdiction over the custodial trustee would continue to be available in the state in which the original custodial trust transfer or declaration was made even after any or all of the parties or the custodial trust property were relocated to another state. Unif. Custodial Trust Act § 4 comment, 7A U.L.A. 12 (Supp. 1991).
100. N.C. Gen. Stat. § 33B-5(a) (proposed legislation).
102. N.C. Gen. Stat. § 33B-5(c) (proposed legislation).
104. N.C. Gen. Stat. § 33B-6(b) (proposed legislation).
7. **Section 33B-7. General Duties of Custodial Trustee**

Generally, the custodial trustee must follow all directions of the custodial trust beneficiary, if such beneficiary has capacity, with regard to the management, control, investment or retention of the custodial trust property.\(^{105}\) If the custodial trust beneficiary is incapacitated or has capacity but has not given direction to the custodial trustee, the custodial trustee must observe the standard of care in dealing with the custodial trust property that would be observed by a prudent person in dealing with the property of another, except that a custodial trustee named because of special skill or expertise must observe the standard of care expected of one with such skill or expertise.\(^{106}\) A custodial trustee may retain any custodial trust property received from the transferor of such property without regard to any diversification requirements otherwise imposed by law, and a custodial trustee is not limited by any other law restricting investments by fiduciaries other than the applicable "prudent person" standard of care described above.\(^{107}\)

The exercise of a durable power of attorney for a legally incapacitated individual is not effective to terminate or control a custodial trust for the benefit of such individual unless such durable power of attorney specifically so provides.\(^{108}\)

8. **Section 33B-8. General Powers of Custodial Trustee**

Generally, a custodial trustee has very broad powers over custodial trust property, subject only to the control of the beneficiary who has legal capacity and the applicable "prudent person" standard of care.\(^{109}\)

9. **Section 33B-9. Use of Custodial Trust Property**

If a custodial trust beneficiary is legally incapacitated, the custodial trustee shall pay over or expend custodial trust property for the use and benefit of such beneficiary and such beneficiary's de-

\(^{105}\) Id. § 33B-7(b).

\(^{106}\) Id.

\(^{107}\) Id.

\(^{108}\) Id. § 33B-7(f). In contrast, Section 7(f) of the UCTA states that if a beneficiary has become legally incapacitated, the custodial trust may not be terminated by the exercise of a durable power of attorney. Unif. Custodial Trust Act § 7(f), 7A U.L.A. 14 (Supp. 1991).

\(^{109}\) N.C. GEN. STAT. § 33B-8 (proposed legislation).
pendents. A custodial trustee may maintain a checking or savings account of a reasonable amount from which both the beneficiary and the custodial trustee may make withdrawals.

10. Section 33B-10. Determination of Incapacity; Effect

The legal incapacity of a custodial trust beneficiary does not terminate the custodial trust, any designation of a successor custodial trustee, any rights or powers of the custodial trustee or any immunities of third persons acting on instructions of the custodial trustee, but the legal incapacity of the custodial trust beneficiary changes the trust from one subject to the control of the beneficiary to one subject to the exercise of the custodial trustee’s discretion for the benefit of the custodial trust beneficiary.

The custodial trustee must administer the custodial trust as if for a legally incapacitated beneficiary if (i) it was created under Section 33B-5, (ii) the transferor so directed in the instrument of transfer, (iii) a determination of incompetency has been made under the provisions of Chapter 35A or (iv) the custodial trustee has determined that the beneficiary is legally incapacitated. The custodial trustee may determine that the custodial trust beneficiary is legally incapacitated by reliance upon (i) previous direction or authority given by the beneficiary while he or she was not legally incapacitated, including direction or authority given under a durable power of attorney, (ii) the certificate of the beneficiary’s physician, (iii) authority given to the custodial trustee in the instrument creating the custodial trust or (iv) other reasonable evidence. Whether or not the custodial trustee makes a determination of incapacity, the custodial trust beneficiary, the custodial trustee or any other person interested in the custodial trust prop-

110. Id. § 33B-9(b). The Conference, in its comment to Section 9 of the UCTA, indicates that the “use and benefit” standard for expenditures of custodial trust property was selected to avoid any implication that custodial trust property may be used only for the required support of the legally incapacitated beneficiary. Unif. Custodial Trust Act § 9 comment, 7A U.L.A. 16 (Supp. 1991).

111. N.C. GEN. STAT. § 33B-9(c) (proposed legislation). The Conference, in its comment to Section 9 of the UCTA, illustrates that this provision may be especially attractive in those cases in which the custodial trust beneficiary is not competent to manage business affairs but is capable of paying personal expenses. Unif. Custodial Trust Act § 9 comment, 7A U.L.A. 16 (Supp. 1991).

112. N.C. GEN. STAT. § 33B-10(f) (proposed legislation).

113. Id. § 33B-10(a).

114. Id. § 33B-10(b).
erty or the welfare of the beneficiary may petition the court under the procedures set forth in Chapter 35A for a determination by the court of incapacity as defined in Section 33B-1(8), but any such judicial determination of incapacity does not require the appointment of a guardian of the estate unless the court finds such appointment otherwise necessary.115

Under Section 10 of the UCTA, the custodial trustee has the authority to administer a custodial trust as if for a legally incapacitated individual even in the absence of a determination of legal incapacity by the custodial trustee or the appropriate court as long as the custodial trustee has “reason to believe” that the beneficiary is incapacitated.116 The NCUCTA does not include this provision, and, at least where the custodial trust was not created pursuant to Section 33B-5 or directed by the transferor to be administered as if for a legally incapacitated individual, apparently requires the custodial trustee to make or seek some determination of incapacity prior to administering the custodial trust as if for a legally incapacitated individual. The NCUCTA includes a provision, however, not found in the UCTA, that the custodial trustee shall not be liable for any determination regarding the incapacity of the custodial trust beneficiary which he or she makes in good faith under Section 33B-10.117

11. Section 33B-11. Third Party Transactions

Third persons may deal with confidence in any manner with the custodial trustee as long as they do so in good faith, that is, without actual knowledge that (i) the purported custodial trustee designation is not valid, (ii) the subject action of the purported custodial trustee is not proper or authorized, (iii) any instrument executed by the purported transferor, declarant or custodial trustee is not valid or proper or (iv) the application of property vested in the purported custodial trustee is not proper.118 The NCUCTA requires only lack of “actual knowledge” of the above described items for protection of third persons whereas the UCTA requires lack of “knowledge” which presumably includes constructive knowledge.119

115. Id. § 33B-10(d).
118. Id. § 33B-11.
12. Section 33B-12. Liability to the Third Person

Generally, the claims of a third party are limited to recourse against custodial trust property.\textsuperscript{120} A custodial trustee is protected from personal liability on claims of a third party as long as the custodial trustee discloses his or her fiduciary capacity in dealing with the third party and as long as the custodial trustee is free from personal fault.\textsuperscript{121} A custodial trust beneficiary is protected from personal liability on claims of a third party as long as the custodial trust beneficiary is free from personal fault.\textsuperscript{122} Personal liability claims against a custodial trustee or custodial trust beneficiary arising out of ownership or possession of custodial trust property are permitted to the extent of liability insurance.\textsuperscript{123}

13. Section 33B-13. Declination, Resignation, Incapacity, Death or Removal of Custodial Trustee; Designation of Successor Custodial Trustee

A designated custodial trustee may decline to serve by notifying the person who made the designation, the transferor or the transferor’s legal representative, and in such case, the transferor or the transferor’s legal representative may designate a successor custodial trustee unless a substitute custodial trustee has been designated under Section 33B-3, in which case such successor shall serve.\textsuperscript{124} A custodial trustee may resign at any time by delivering written notice to the successor custodial trustee and to the custodial trust beneficiary, as well as to the custodial trust beneficiary’s guardian of the estate, if any, if the beneficiary is legally incapacitated, and by delivering the custodial trust property to the successor custodial trustee.\textsuperscript{125} If a custodial trustee is ineligible, dies or becomes incapacitated, the successor custodial trustee shall be that successor designated under Section 33B-2 or Section 33B-3, if any, and, if none, then the custodial trust beneficiary who has legal capacity may designate a successor custodial trustee, and if the custodial trust beneficiary fails to act within ninety (90) days, then the resigning custodial trustee may designate a successor custodial trustee.

\textsuperscript{120} N.C. GEN. STAT. § 33B-12(a) (proposed legislation).
\textsuperscript{121} Id. § 33B-12(b).
\textsuperscript{122} Id. § 33B-12(c).
\textsuperscript{123} Id. § 33B-12(d).
\textsuperscript{124} Id. § 33B-13(a).
\textsuperscript{125} Id. § 33B-13(b).
trustee. If there is no effective provision for a successor custodial trustee and the custodial trust beneficiary is incapacitated, the beneficiary’s guardian of the estate shall serve as successor custodial trustee, and if the custodial trust beneficiary has no guardian of the estate or if such guardian refuses to serve, then the resigning custodial trustee may designate a successor custodian. Any interested person (including the custodial trust beneficiary, the beneficiary’s guardian of the person or of the estate, an adult member of the beneficiary’s family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary) may petition the court to remove a custodial trustee for cause, to designate a successor custodial trustee or to require the custodial trustee to give appropriate bond.

To summarize, unlike the power held by a custodian under the NCUTMA, generally, a custodial trustee does not have a broad power to designate a successor custodial trustee but has only a limited power to do so in those situations in which the procedure for the designation of a successor custodial trustee by other persons has been exhausted.

14. Section 33B-14. Expenses, Compensation and Bond of Custodial Trustee

Unless otherwise provided in the custodial trust instrument, in any other agreement with the beneficiary or by court order, a custodial trustee is entitled to reimbursement from custodial property for reasonable expenses incurred in connection with the administration of the custodial trust property, may charge within six (6) months of the end of each calendar year reasonable compensation for services performed during the year and in most cases is not required to give bond.

126. Id. § 33B-13(c).
127. Id.
128. Id. § 33B-13(f).
129. Id. § 33B-14. The Conference, in its comment to Section 14 of the UCTA, states that the ability to control these matters by the trust instrument or agreement of the beneficiary or court order was implied in the UTMA but is expressly stated in Section 14 of the UCTA because of the possibility of informal arrangements with persons as custodial trustees. Unif. Custodial Trust Act § 14 comment, 7A U.L.A. 20 (Supp. 1991).
15. **Section 33B-15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee**

The custodial trustee must inform the custodial trust beneficiary or such beneficiary's legal representative of the initiation of the custodial trust and provide reasonably current reports of the administration of the custodial trust property to such beneficiary or such beneficiary's legal representative, and the court has the power to instruct a custodial trustee and to review such custodial trustee's actions.  

16. **Section 33B-16. Limitations of Action Against Custodial Trustee**

As to claims for relief against a custodial trustee for accounting or breach of duty, (i) if a custodial trustee accounts as required upon removal or resignation, then a two-year statute of limitations applies,  

(ii) if a custodial trustee fails to account as required upon removal or resignation, then a three-year statute of limitations applies,  

(iii) if the claim relates to fraud or concealment on the part of the custodial trustee, a five-year statute of limitations applies and (iv) if a custodial trust beneficiary is or becomes legally incapacitated or dies within the applicable limitation period, the applicable limitation period is tolled and does not expire until two (2) years after the legal disability has been removed or until two (2) years after death with the time beginning to run in all cases on the date the custodial trust terminates.

17. **Section 33B-17. Distribution on Termination**

Upon the termination of a custodial trust, distribution of the remaining custodial trust property may take place without judicial intervention. Remaining custodial trust property is distributed first to the custodial trust beneficiary if not legally incapacitated or deceased, second to the guardian of the estate of a legally incapacitated beneficiary and third, if the beneficiary is deceased, (i) as last directed in a writing signed by the deceased beneficiary while not legally incapacitated and received by the custodial trustee during

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130. N.C. GEN. STAT. § 33B-15 (proposed legislation).
131. Id. § 33B-16(a)(1).
132. Id. § 33B-16(a)(2).
133. Id. § 33B-16(b).
134. Id. § 33B-16(c).
the lifetime of the deceased beneficiary, (ii) as designated in the custodial trust instrument or (iii) to the estate of the deceased beneficiary as a last resort.\textsuperscript{135}

18. \textit{Section 33B-18. Methods and Forms of Creating Custodial Trusts}

Section 33B-18 governs the manner of creating a custodial trust and effecting a transfer to it. The Section gives specific instructions as to the creation of custodial property out of securities, money, life insurance, power of appointment property, rights under contract, real estate and tangible personal property, which instructions generally require that the property be registered or assigned in the name of or to the credit of an account of a person “as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act,”\textsuperscript{136} but the Section also indicates that any other type of property may be transferred under the Section into a custodial trust. Recommended forms of transfer document are set forth in Section 33B-18(a).\textsuperscript{137}

19. \textit{Section 33B-19. Applicable Law}

The NCUCTA applies to any transfer or declaration which creates a custodial trust and refers to the NCUCTA if, at the time of the transfer or declaration, the transferor or declarant, the beneficiary or the custodial trustee is a resident of or has its principal place of business in North Carolina or the custodial property is located in North Carolina, and the custodial trust remains subject to the provisions of the NCUCTA even after the subsequent disappearance of any such nexus.\textsuperscript{138}

20. \textit{Section 33B-20. Uniformity of Application and Construction}

Because the NCUCTA is patterned on a uniform act, it is to be applied and construed so as to result in uniformity of the law which is the subject of the NCUCTA among states which enact some version of it.\textsuperscript{139}

\textsuperscript{135} Id. § 33B-17(a).
\textsuperscript{136} Id. § 33B-18(b).
\textsuperscript{137} Id. § 33B-18(a).
\textsuperscript{138} Id. § 33B-19.
\textsuperscript{139} Id. § 33B-20.
21. Section 33B-21. Short Title

The NCUCTA may be cited as the “North Carolina Uniform Custodial Trust Act.”\textsuperscript{140}

\textsuperscript{140} Id. § 33B-21.
AN ACT TO BE KNOWN AS THE
NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT
AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are hereby
amended by adding a new Chapter thereto to read as follows:

Chapter 33B.
Uniform Custodial Trust Act.

§ 33B-1. Definitions.
As used in this Act:

(1) “Adult” means an individual who is at least 18 years of
age.

(2) “Beneficiary” means an individual for whom property
has been transferred to or held under a declaration of
trust by a custodial trustee for the individual’s use and
benefit under this act.

(3) “Guardian of the estate” means a guardian appointed
for the purpose of managing the property, estate and
business affairs of a ward or a person legally authorized
to perform substantially the same functions. As used in
this act, the term “guardian of the estate” includes a
general guardian appointed under the provisions of
Chapter 35A of the General Statutes.

(4) “Court” means the Clerk of Superior Court of this
State.

(5) “Custodial trust property” means an interest in
property transferred to or held under a declaration of
trust by a custodial trustee under this act and the
income from and proceeds of that interest.
(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this act or a substitute or successor to the person designated.

(7) "Guardian of the person" means a guardian appointed for the purpose of performing duties relating to the care, custody and control of a ward, including a limited guardian, but not a person who is only a guardian ad litem. As used in this act, the term "guardian of the person" includes a general guardian appointed under the provisions of Chapter 35A of the General Statutes.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause.

(9) "Legal representative" means a personal representative or guardian of the estate.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, parent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator or special administrator of a decedent's estate, a person legally authorized to perform substantially the same function or a successor to any of them.

(13) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers in North Carolina.

(16) "General guardian" means a guardian of both the estate and the person.

§ 33B-2. Custodial trust; general.
(a) A person may create a custodial trust of property by a
written transfer of the property to a trust company or an adult other than the transferor executed in any lawful manner, naming as beneficiary an individual, who may be the transferor, in which the transferee is designated; in substance, as custodial trustee under the North Carolina Uniform Custodial Trust Act.

(b) An adult may create a custodial trust of property by a written declaration which names as beneficiary an individual other than the declarant. The declaration shall be evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and designating the declarant, in substance, as custodial trustee under the North Carolina Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this act.

(c) Title to custodial trust property is in the custodial trustee, and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e), a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the guardian of the estate of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or guardian of the estate declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to a written instrument satisfying the requirements of subsections (a) or (b).

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This act does not displace or restrict other means of creating trusts. A trust the terms of which do not conform to this act may be enforceable according to its terms under the law.

§ 33B-3. Custodial trust to begin in the future.

(a) A person may create a custodial trust to begin in the future by designating the transferee in substance “as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act.” A designation under this section may be made in:

(1) A will;
(2) A trust;
(3) An insurance policy;
(4) A deed;
(5) A payable-on-death account;
(6) An instrument exercising a power of appointment, provided that the donor of the power has not expressly prohibited the exercise of the power in favor of a custodial trustee, and provided further that the beneficiary of the custodial trust is a permissible object of the power, although the custodial trustee need not be a permissible object of the power; or
(7) A writing designating a beneficiary of contractual rights, including but not limited to rights under a pension or profit sharing plan, which is registered with or delivered to the fiduciary, payor, issuer or obligor of the contractual right.

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the preceding designated custodial trustee is unable or unwilling to serve.

§ 33B-4. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this act upon the custodial trustee’s acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee’s acceptance may be evidenced by a writing stating in substance:

"CUSTODIAL TRUSTEE’S RECEIPT AND ACCEPTANCE
I, ____________________________[name of custodial trustee], acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for ____________________________[name of beneficiary] under the North Carolina Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the North Carolina Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is or becomes incapacitated. The custodial trust property consists of ____________________________."

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(c) Upon accepting custodial trust property, a person designated as custodial trustee under this act is subject to personal jurisdiction in this State with respect to any matter relating to the custodial trust.

§ 33B-5. Transfer to custodial trustee by fiduciary or obligor; facility of payment.
(a) A person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a guardian of the estate may make a transfer to an adult member of the beneficiary’s family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars ($20,000), the transfer is not effective unless authorized by the court.
(b) A written acknowledgement of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.
(c) This section shall not apply when the disposition of the property has been directed by an instrument designating a custodial trustee pursuant to G.S. 33B-3.

§ 33B-6. Single beneficiaries; separate custodial trusts.
(a) Beneficial interests in a custodial trust may not be created for multiple beneficiaries.
(b) All custodial trust property held under this act by the same custodial trustee for the use and benefit of a single beneficiary may be administered as a single custodial trust.

§ 33B-7. General duties of custodial trustee.
(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.
(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment or retention of the custodial trust property.
If the beneficiary is incapacitated or the beneficiary has capacity but has not given direction, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial
trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall observe the standard of care expected of one with that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control separate from all other property in manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation is adequately identified as such if an appropriate instrument so identifying the property is recorded in the name of the custodial trustee, designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act." Custodial trust property subject to registration is so identified if it is registered or held in an account in the name of the custodial trustee designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) Unless the durable power of attorney specifically provides otherwise, the exercise of the durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

§ 33B-8. General powers of custodial trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of G.S. 33B-7.
§ 33B-9. Use of custodial trust property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary’s use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and the spouse and children and other dependents of the beneficiary. Expenditures may be made in the manner, when and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income or property of the beneficiary.

(c) A custodial trustee may establish checking, savings or other similar accounts of reasonable amounts from which either the custodial trustee or the beneficiary may withdraw funds or against which either may draw checks. Funds withdrawn from, or checks written against, the account of the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

§ 33B-10. Determination of incapacity; effect.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the transferor has so directed in the instrument creating the custodial trust, (iii) a determination that a beneficiary is an incompetent adult has been made under the provisions of Chapter 35A, including a determination of limited incompetence under the provisions of G.S. 35A-1112(d), unless the court provided otherwise, or (iv) the custodial trustee has determined that the beneficiary is incapacitated under subsection (b).

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary’s physician, (iii) authority given to the custodial trustee in the instrument creating the trust to determine the incapacity of the beneficiary after the creation of the custodial trust or (iv) other reasonable evidence.

(c) If a custodial trustee for an incapacitated beneficiary determines that the beneficiary’s incapacity has ceased, or that circumstances concerning the beneficiary’s ability to manage property and business affairs have changed since the creation of a custodial
trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) Regardless of whether any determination of incapacity under subsection (b) has or has not been made, the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, may petition under the procedures of Chapter 35A for a determination by the court whether the beneficiary is incapacitated as defined in G.S. 33B-1(8). A determination of incapacity does not require appointment of a guardian of the estate unless in the discretion of the court such appointment is otherwise warranted.

(e) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee or (iv) any immunities of third persons acting on instructions of the custodial trustee.

(f) A custodial trustee shall not be liable for any determinations authorized by this section regarding the capacity or incapacity of the beneficiary made in good faith.

§ 33B-11. Third party transactions.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or to act in the capacity of, a custodial trustee. In the absence of actual knowledge to the contrary, the third person is not responsible for determining:

1. The validity of the purported custodial trustee’s designation;
2. The propriety of, or the authority under this act for, any action of the purported custodial trustee;
3. The validity or propriety of an instrument executed or instruction given pursuant to this act either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
4. The propriety of the application of property vested in the purported custodial trustee.

§ 33B-12. Liability to the third person.

(a) A claim based on (i) a contract entered into by a custodial trustee acting in a fiduciary capacity, (ii) an obligation arising from the ownership or control of custodial trust property or (iii) a tort committed in the course of administering the custodial trust may be asserted by a third person against the custodial trust property
by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee may be held personally liable to a third person:

(1) On a contract entered into in a fiduciary capacity if the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust if the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary as owner or possessor of the custodial trust property to the extent that person is protected as the insured by liability insurance.

§ 33B-13. Declination, resignation, incapacity, death or removal of custodial trustee; designation of successor custodial trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor or the transferor's legal representative. In such case, the transferor or the transferor's legal representative may designate a substitute custodial trustee. If the custodial trust is being created under G.S. 33B-3, the substitute custodial trustee designated under G.S. 33B-3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to G.S. 33B-3.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's guardian of the estate, if any, and (ii) transferring and where appropriate, registering or recording an instrument relating to the custodial trust property in the name of the successor custodial trustee identified under subsection
(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies or becomes incapacitated, the successor designated under G.S. 33B-2 or G.S. 33B-3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee; if the beneficiary fails to act within 90 days, the resigning custodial trustee may designate a successor custodial trustee. If there is no effective provision for a successor custodial trustee and if the beneficiary is incapacitated, the beneficiary’s guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a guardian of the estate or the guardian of the estate fails to act as custodial trustee, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c), the following persons may in the order listed petition the court to designate a successor custodial trustee: the transferor, the legal representative of the transferor, the legal representative of the custodial trustee, the general guardian of the beneficiary, the guardian of the estate of the beneficiary, an adult member of the beneficiary’s family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, shall put the custodial trust property and records in the possession and control of the successor custodial trustee as soon as practical. The successor custodial trustee shall enforce the obligation to deliver custodial trust property and records.

(f) A beneficiary, the beneficiary’s guardian of the estate, an adult member of the beneficiary’s family, a guardian of the person of the beneficiary, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary, may petition the court (i) to remove the custodial trustee for cause and to designate a successor custodial trustee, (ii) to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties or (iii) for other appropriate relief.


Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:
(1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) May charge, no later than 6 months after the end of each calendar year, a reasonable compensation for fiduciary services performed during that year; and

(3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

§ 33B-15. Reporting and accounting by custodial trustee; determination of liability of custodial trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee or the legal representative of a predecessor custodial trustee.

(d) In an action or proceeding under this act or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee’s legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the rea-
sonableness of compensation determined by the custodial trustee or others.

§ 33B-16. Limitations of action against custodial trustee.

(a) Except as provided in subsections (b) and (c), a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered or the legal representative of an incapacitated or deceased beneficiary or payee:

1. Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 2 years after receipt of the final account or statement, or
2. Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 3 years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation or concealment is barred unless action or proceeding to assert the claim is commenced within 5 years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

1. Is a minor, until the earlier of 2 years after the claimant becomes an adult or dies;
2. Is an incapacitated adult, until the earliest of 2 years after (i) the appointing of a guardian of the estate, (ii) the removal of the incapacity or (iii) the death of the claimant; or
3. Was an adult, now deceased, who was not incapacitated, until two years after the claimant’s death if the claim was not barred by adjudication, consent or limitation prior to the claimant’s death.

§ 33B-17. Distribution on termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

1. To the beneficiary, if not incapacitated or deceased;
2. To the guardian of the estate or other recipient designated by the court for an incapacitated beneficiary; or
3. Upon the beneficiary’s death, in the following order:
(i) As last directed in writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(ii) As designated in the instrument creating the custodial trust; or

(iii) To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

§ 33B-18. Methods and forms of creating custodial trusts.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of G.S. 33B-2 are satisfied by:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

"TRANSFER UNDER THE NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT

I, _______________________[name of transferor or name and representative capacity if a fiduciary], transfer to _______________________[name of trustee other than transferor], as custodial trustee for _______________________[name of beneficiary] as beneficiary and _______________________[name of distributee] as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following: [insert a description of the custodial trust property legally sufficient to identify and transfer each item of property].

Dated: _______________________

[Signature]";
(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

"DECLARATION OF TRUST UNDER THE NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT"

I, ___________________________ [name of owner of property], declare that henceforth I hold as custodial trustee for ___________________________ [name of beneficiary other than transferor] as beneficiary and ___________________________ as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following: [insert a description of the custodial trust property legally sufficient to identify and transfer each item of property].
Dated: ___________________________

[Signature]"

or

(b) Any customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including but not limited to any of the following:

(1) Registration of a security in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ___________________________ [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);
(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(5) Delivery of a written assignment to an adult other than the transferor or to a trust company designated in the assignment in substance by the words, "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power or the donee who holds the power if the beneficiary is other than the donee, designated in the appointment in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in the notification or assignment in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";
(8) Execution and delivery of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

(9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:
   (i) Issued in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act"; or
   (ii) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act";

or

(10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor designated in substance "as custodial trustee for [name of beneficiary] under the North Carolina Uniform Custodial Trust Act."

§ 33B-19. Applicable law.

(a) This act applies to a transfer or declaration creating a custodial trust that refers to this act if, at the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this State or the custodial trust property is located in this State. The custodial trust remains subject to this act despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee or removal of the custodial trust property from this State.

(b) A transfer made pursuant to an act of another state sub-
stantially similar to this act is governed by the law of that state and may be enforced in this State.

§ 33B-20. Uniformity of application and construction.
This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

This act may be cited as the "North Carolina Uniform Custodial Trust Act".

Section 2. This act shall become effective October 1, 1991.