

You May Not Need that Guardian of the Estate After All: Other Methods of Distributing Property to Minors

A guardian of the estate for any unemancipated minor may be appointed under G.S. Chapter 35A to receive and administer property on the minor's behalf. [G.S. 35A-1221](#); [G.S. 35A-1251](#); [G.S. 35A-1202\(12\)](#) (requiring also that the minor must not be married). This is because such minors are legally incompetent to transact business or give consent for most purposes. [G.S. 35A-1201\(a\)\(6\)](#); see [G.S. 7B-3507](#) (rights of emancipated minors). Unemancipated minors therefore need responsible, accountable adults to handle property or benefits to which they are entitled. *Id.*

As part of careful estate planning, a minor's parents or other interested persons may establish a trust for his or her benefit. This may include a special needs trust for a disabled minor. However, there are many instances where a minor may be entitled to property and there is no prior planning in place as to how the minor may receive and use the property. For instance, if a parent of an unemancipated minor dies suddenly and does not leave a will or leaves a will that devises property to the minor, the minor may be entitled to receive a distribution of property from the parent's estate. Many times the immediate answer given in these instances is that the minor needs a guardian of the estate appointed by the clerk under G.S. Chapter 35A to receive and administer the minor's property. However, it is not always the case that a guardian of the estate is needed. There are a number of other methods of distributing property payable to a minor that are generally less expensive and requires less court oversight than a 35A minor guardianship, which requires that the guardian must be bonded, entitles the guardian to the payment of a commission from the minor's estate, and requires the guardian to file an inventory and annual accountings. Many of these alternative methods arise the context of an estate administration where some of the decedent's property is to be distributed to a minor.

- 1. Year's Allowance Due to a Child.** The personal representative (PR) of an estate may pay the year's allowance due to an eligible child of the decedent (\$5,000) directly to a surviving parent in some instances. [G.S. 30-17](#).
- 2. Payment by the Personal Representative to the Clerk.** The PR may pay property in any amount due to a minor from an estate directly to the clerk when the minor does not have a guardian. [G.S. 28A-23-2](#). There is no limit on the amount payable to the clerk under this statute.
- 3. Payment Directed by Will.** A will or trust can also expressly authorize distributions by a PR or trustee, respectively, directly to a minor, to payment of certain bills of the minor, or to any person who is a legal or natural guardian or who has care and custody of the minor. [G.S. 32-27\(28\)](#).
- 4. Uniform Transfers to Minors Act.** The Uniform Transfers to Minors Act under [G.S. Chapter 33A](#) allows for any type of property up to any amount to be transferred to a custodian for the benefit of a minor. The types of allowable transfers and transferors are set out in G.S. 33A-4 through G.S.

33A-7, including transfers authorized by a will or trust and by a PR of an estate to a UTMA custodial account.

Each of these options serve as an alternative to minor guardianship of the estate. There are two more to add to that list that were the subject of changes by the NC General Assembly this past legislative session. They are:

5. Distribution to a Parent or Guardian of less than \$5,000. A PR of a decedent's estate may make a distribution of personal property owed to a person under the age of 18 directly to a parent or guardian under [G.S. 28A-22-7](#). A guardian under this statute would seem to include a guardian appointed under G.S. Chapter 35A and a guardian appointed under G.S. Chapter 7B in an abuse, neglect, or dependency proceeding. Under [Session Law 2018-40](#), the General Assembly increased the amount of the allowable distribution from less than \$1,500 to less than \$5,000, meaning the PR could distribute a total of \$4,999 directly to a parent or guardian. *The increase went into effect on January 1, 2019.*

There are a couple of restrictions on the PR's ability to make such a distribution. The distribution must be (a) the result of a devise under a will, (b) to a person under 18, and (c) the person under 18 must reside in the same household as the parent or guardian. The distribution may come in the form of a single distribution of \$4,999 or a series of distributions that total \$4,999. The personal property distributed must be used solely for the education, maintenance, and support of the person under 18. Importantly and distinctly from a guardianship of a minor under G.S. Chapter 35B, no accountings are required to be provided to the clerk or the PR by the parent or guardian. However, the clerk must give approval before the PR makes the distribution. There is more on this process in Chapter 81 of the [NC Clerk of Superior Court Procedures Manual](#) (CSC Manual).

6. Clerk Administration of \$50,000 or Less. Another alternative method of distributing property to a minor exists under [G.S. 7A-111\(a\)](#) and applies to areas beyond estate administration. Under this statute, *any person* in possession of \$50,000 or less for a minor under the age of 18 for whom there is no guardian may pay the money to the clerk in the county of the minor's domicile. Also if the minor is the named insured on an insurance policy and the insured dies before the minor reaches the age of 18, the proceeds, in an amount not exceeding \$50,000, may be paid to the clerk.

The General Assembly increased the allowable amount payable of both insurance proceeds and general proceeds this past legislative session from \$25,000 to \$50,000. [S.L. 2018-40](#). *This change went into effect on June 22, 2018.*

The receipt of the funds by the clerk constitutes a valid release of the payor's obligation. The clerk then may administer and disburse the monies at such times in the clerk determines, in his or her judgment, is in the best interest of the child. However, these funds may not be used to replace a parent's or other responsible adult's obligations to provide support and maintenance to the child.

The clerk may not authorize disbursement of the funds unless the clerk first determines that the parents or other responsible persons are unable to provide the necessities for the child and the child is in need of maintenance and support. The clerk must require receipts showing that the monies disbursed were used for the exclusive use and benefit of the child.

This may be a good option where a payment is due to an older minor, someone who is 16 or 17. The payment may be due as a result of a wrongful death case, a personal injury suit, or from the sale of a minor's interest in property. Instead of causing the minor's estate to incur the expenses related to a guardian of the estate, the money may be paid into the clerk and administered in accordance with G.S. 7A-111(a). There is more on this process in Chapter 88 of the CSC Manual.

Each of these options listed may prevent the need for the appointment of a guardian of the minor's estate. This does not include an exhaustive list. Know of any other options you'd add to the discussion? Shoot me an [email](#) and I'll consider adding them to the list.