



## CHICAGO TITLE INSURANCE COMPANY

<b>TOPIC:</b> <u>Minors</u>
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### TITLE SEARCH & CLOSING RULES:

1. Minors can receive and hold title to real property.
2. Minors cannot sell, mortgage or convey property until they reach 18 years old, nor can their duly appointed guardians, *unless*:
  - a. A special proceeding to sell, mortgage or convey is filed and a Superior Court Judge authorizes the action contemplated, or
  - b. The minor is simply waiving contingent statutory marital rights in property actually owned by their adult spouse, or joining with their adult spouse in a mortgage or sale of property held as tenants by the entireties or other joint tenancy.
3. Once a minor reaches the age of 18, they have 3 years to disaffirm any conveyance or contract made by them prior to reaching the age of majority.
4. Property conveyed to a Custodian (as defined in the particular statute below) can be conveyed out by the Custodian (again, subject to the particular statute's limits) pursuant to either the Uniform Custodial Trust Act (if under \$100,000) or the Uniform Gifts to Minors Act (if under \$10,000). The custodianship will last until the minor is aged 21, unless the gift specifies otherwise.

### TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:

Any planned conveyance by a minor, a guardian or a custodian should be pre-approved by the title insurer prior to closing.

### FORMS:

None.

### LEGAL DISCUSSION:

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#### A. MINORS, CONTRACTS AND CONVEYANCES:

A minor is a person who has not reached the age of 18 years. N.C.G.S. 48A-2. However, a juvenile of at least 16 years can petition the court to be emancipated (N.C.G.S. 7A, Article 56); and a married juvenile *is* emancipated. N.C.G.S. 7A-726.

Contracts of infants are voidable at the option of the infant. They become void *ab initio* if the infant disaffirms them during infancy or upon attaining the age of twenty-one (*i.e.*, 3 years after reaching the age of majority without any intervening disability) or within a

reasonable time thereafter. *See* Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19, 41 A.L.R.3d 1062 (1970). *See also* 35 A.L.R.2d 1302, 13 A.L.R.3d 1251, and 16 A.L.R.2d 1420, regarding disaffirmances of various contracts. *See* Baggett v. Jackson, 160 N.C. 26, 76 S.E. 86 (1912); Toyota, Inc. v. Smith, 48 N.C.App. 580, 269 S.E.2d 320 (1980) (regarding return of an automobile)

For persons under 18 years of age on July 5, 1971, any time periods for disaffirmance of application of the statute of limitations shall run from the person's reaching age 18. N.C.G.S. 48A-3. And evidence of disaffirmance is *very broad*, including simply conveying the property to a third party without taking exception to the "contract" entered as a minor. Richmond Cedar Works v. Kramer Bros. & Co., 267 F. 723 (1920).

The "Disabilities" statute of limitation, N.C.G.S. 1-17, requires that actions must be brought within the general limitation period for the type of action after removal of the disability, "except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, . . . , when he must commence his action, or make his entry, within three years next after removal of the disability, and at no time thereafter." For example, a cause of action to set aside a deed executed by a person who is *non compos mentis* must be brought within *seven years* from the date of execution (under 7-year color of title in good faith. N.C.G.S. 1-38), or within *three years* after removal of the disability, whichever expires later. Emanuel v. Emanuel, 78 N.C.App. 799, 338 S.E.2d 620 (1986); Ellington v. Ellington, 103 N.C. 54, 9 S.E. 208 (1889). And the appointment of the guardian may qualify as a "removal of disability." First-Citizens Bank & Trust Company v. Willis, 257 N.C. 59, 125 S.E.2d 359 (1962); Teele v. Kerr, 261 N.C. 148, 134 S.E.2d 126 (1964). The exemptions in the statute can apply only to one having, by virtue of this title, a right of entry or of action. Berry v. Lumber Co., 141 N.C. 386, 54 S.E. 278 (1906). A "voidable" deed is sufficient color of title. Butler v. Bell, 181 N.C. 85, 106 S.E. 217 (1921).

In the case of simultaneous or "cumulative" disabilities, the limitation period does not begin to run until the last to be removed is removed. N.C.G.S. 1-19.

Once the statute begins to run (*i.e.* one disability has been removed), it does not again toll if another disability comes into play. For example, when one owner's disability ceases and statute begins, their dying and leaving minor heirs does not again begin the limitation period. Battle v. Battle, 235 N.C. 499, 70 S.E.2d 492 (1952).

If the infant fails to disaffirm (or accepts benefits), this may imply ratification. *See* 5 A.L.R.2d 7.

Misrepresentation of age by the minor does *not* affect his/her right to disaffirm. Gillis v. Whitley's Discount Auto Sales, Inc., 70 N.C.App. 270, 319 S.E.2d 661 (1984). *But see* 29 A.L.R.3d 1270.

## **B. EXCEPTIONS TO ABILITY TO DISAFFIRM:**

Acceptance after majority of benefits of a contract executed during minority is a ratification of the contract, precluding subsequent disaffirmance. Watson v. Watson, 204 N.C. 5, 167 S.E. 389 (1933).

Married minors' conveyances are valid under G.S. 39-13.2(a)(1)(2) as follows:

*§ 39-13.2. Married persons under 18 made competent as to certain transactions; certain transactions validated.*

*Statute text*

*(a) Any married person under 18 years of age is authorized and empowered and shall have the same privileges as are conferred upon married persons 18 years of age or older to:*

*(1) Waive, release or renounce by deed or other written instrument any right or interest which he or she may have in the real or personal property (tangible or intangible) of the other spouse; or*

*(2) Jointly execute with his or her spouse, if such spouse is 18 years of age or older, any note, contract of insurance, deed, deed of trust, mortgage, lien of whatever nature or other instrument with respect to real or personal property (tangible or intangible) held with such other spouse either as tenants by the entirety, joint tenants, tenants in common, or in any other manner.*

*(b) Any transaction between a husband and wife pursuant to this section shall be subject to the provisions of G.S. 52-10 or 52-10.1 whenever applicable.*

*(c) No renunciation of dower or curtesy or of rights under G.S. 29-30(a) by a married person under the age of 21 years after June 30, 1960, and until April 7, 1961, shall be invalid because such person was under such age. No written assent by a husband under the age of 21 years to a conveyance of the real property of his wife after June 30, 1960, and until April 7, 1961, shall be invalid because such husband was under such age.*

General reference: 42 Am.Jur.2d, Infants, Sections 8-13 and 58-139.

## **C. CONVEYANCES BY GUARDIANS OF MINORS**

Any conveyance by a minor's guardian must be made pursuant to order of a Superior Court judge, complying with the provisions of G.S. 35A-1301. Merely having letters of guardianship (property or both property and personal) is not enough.

## **D. NORTH CAROLINA UNIFORM TRANSFER TO MINORS ACT**

In 1987, the North Carolina Uniform Transfer to Minors Act was adopted which allows a person to make a gift or devise for the benefit of a minor (under 21 years of age), to a named custodian, designating them "*as custodian for \_\_\_\_\_ (name of minor) under the North Carolina Uniform Transfers to Minors Act.*" The custodianship will last

until the minor reaches age 21, unless specifically authorizing disbursement on or after age 18.

In the absence of such a specific gift, devise, will or trust provision identifying a specific custodian or custodial gift, G.S. § 33A-6 authorizes other transfers by fiduciaries -- trustees, personal representatives or guardians -- to a custodian as follows:

*(c) A transfer under subsection (a) [by personal representative or trustee] or (b) [by guardian] may be made only if (i) the personal representative, trustee, or guardian considers the transfer to be in the best interest of the minor, and (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument. If the value of the property transferred under subsections (a) or (b) will total more than ten thousand dollars (\$10,000), whether in one or more transfers, that transfer must be authorized by the court. If a transfer under subsections (a) or (b) is to the transferor then the transfer must be authorized by the court.*

Similarly, a person who holds property for or owes money to a minor, can convey same to a custodian so named, or can name a custodian under 33A-7(a), so long as within the \$10,000 limit.

A transfer must be for only one minor, and only one custodian under 33A-10.

Though the property is “indefeasibly vested in the minor” under G.S. 33A-11,

*. . . the custodian has all the rights, powers, duties, and authority provided in this Chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this Chapter. . . . (c) By making a transfer, the transferor incorporates in the disposition all the provisions of this Chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this Chapter.”*

The statute itemizes no specific right to sell or mortgage real estate. However, the custodian has the responsibility to “invest or reinvest”. No case law has yet tested the broadest interpretation authorizing conveyance by the guardian. Pursuant to G.S. § 33A-13. *Powers of custodian:*

*(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in the capacity of a custodian only.*

In addition, under G.S. 33A-12(b):

*In dealing with custodial property, a custodian 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 statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.*

Third parties can rely upon conveyances by custodians under G.S. § 33A-16:

*A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:*

- (1) The validity of the purported custodian's designation;*
- (2) The propriety of, or the authority under this Chapter for, any act of the purported custodian;*
- (3) The validity or propriety under this Chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or*
- (4) The propriety of the application of any property of the minor delivered to the purported custodian.*

Conveyance is presumably by deed from the custodian to the former minor beneficiary under G.S. § 33A-20. Termination of custodianship, as follows:

*The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:*

- (1) The minor's attainment of 21 years of age with respect to custodial property transferred under G.S. 33A-4 [gift] or G.S. 33A-5 [will or trust], except that any transferor may have custodial property transferred to the minor at any time after the age of 18 and before the age of 21 by a designation in the following words or their equivalent: "The custodian shall transfer this property to \_\_\_\_\_ (name of minor) when he reaches the age of \_\_\_\_ (age after 18 and before 21).";*
- (2) The minor's attainment of age 18 with respect to custodial property transferred under G.S. 33A-6 or G.S. 33A-7; or*
- (3) The minor's death.*

#### **D. NORTH CAROLINA UNIFORM CUSTODIAL TRUST ACT**

A simplified statutory trust structure was enacted in 1995, as Chapter 33B of the North Carolina General Statutes. Though very similar to G.S. 33A for minors, this simplified trust has broader application, with the following value limitation under G.S. 33B-22:

*Transfers or declarations of property to the corpus of a custodial trust under this act shall not exceed in the aggregate one hundred thousand dollars (\$100,000) in value, exclusive of the value of the transferor's or declarant's personal residence. This limitation shall not apply to any appreciation in the value of the corpus held in the custodial trust. A good faith violation of this section shall not invalidate a custodial trust.*