

**§ 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) of this section.

(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) of this section, 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. (1995, c. 486, s. 1.)