

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

SESSION LAW 2001-413  
HOUSE BILL 1070

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES, TO MAKE VARIOUS CHANGES IN THE LAW OF FIDUCIARIES AND DECEDENTS' ESTATES, AND TO MAKE TECHNICAL CORRECTIONS TO HOUSE BILL 1073, SENATE BILL 815, AND SENATE BILL 842, AS ENACTED BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

**PART I: RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND APPOINTMENT OF SUCCESSOR TRUSTEES.**

**SECTION 1.** Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"Article 3.

~~"Resignation, Removal, and Renunciation of Trustees. Trust Administration.~~

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

~~"§ 36A-22.1. Definitions.~~

~~As used in this Article:~~

- ~~(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer; and (ii) any person entitled to enforce a charitable trust.~~
- ~~(2) "Fiduciary" includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.~~
- ~~(3) "Interested person" includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.~~
- ~~(4) "Person" means an individual person, a corporation, an organization, or other legal entity.~~
- ~~(5) "Trust" includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk. The term also includes a trust created for or determined by judgment or decree under which the trust is to be~~

administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

- (6) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

**"§36A-23. Clerk's power to accept resignations.**

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

**"§ 36A-23.1. Court; jurisdiction of trusts.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

- (1) To appoint or remove a trustee;
- (2) To review trustees' fees pursuant to G.S. 32-50 and review and settle interim or final accounts; and
- (3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge.

(b) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

**"§ 36A-24. Petition; contents and verification.**

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

**"§ 36A-24.1. Trust proceedings; venue.**

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides.

(c) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee; or

(2) The usual place of business or residence of any of the cotrustees.

**"§ 36A-25. Parties; hearing; successor appointed.**

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter. If it appears to the clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted or if it appears to the clerk that sufficient reasons exist for allowing the resignation and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of the clerk's discretion, allow the applicant to resign. The clerk shall appoint the successor of the petitioner in the manner provided in this Article.~~

**"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.**

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place

of administration, or the clerk may grant a continuance or enter any other appropriate order.

**"§ 36A-26. Resignation allowed; costs; judge's approval.**

In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.

**"§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All known beneficiaries, trustees, or cotrustees not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter as provided for in G.S. 1-301.3.

**"§ 36A-26.2. Waiver of notice.**

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

**"§ 36A-26.3. When parties represented by others.**

In proceedings involving trusts, the following rules apply:

- (1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.
- (2) Interested persons shall be represented by others in the following cases:
  - a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.
  - b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.
  - c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

Nothing in this section authorizes the disbursement of funds distributable to an interested person to a person authorized to represent that person under this section.

**"§ 36A-27. Appeal; stay effected by appeal. Appeal.**

~~Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure for appeal is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the resignation and an appeal is taken from the decision of the clerk, the appeal stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken. a superior court judge as provided for estate matters in G.S. 1-301.3.~~

**"§ 36A-28: Repealed by Session Laws 1999-216, s. 2.**

**"§ 36A-29. Final accounting before resignation.**

~~No If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be allowed or permitted to resign his trust as trustee until he shall first file with the court his a final account of the trust estate, estate is filed with the clerk, and until the court shall be satisfied that the said account is true and correct.~~

**§ 36A-30. Resignation effective on settlement with successor.**

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

**"§ 36A-31. Court to appoint successor; when When bond required.**

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court, A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a~~

requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision. If bond is required, it shall be in a sum double the value of the personal property to come into his the trustee's hands when bond is executed by a personal surety surety, and in an amount not less than one and one-fourth times the value of all personal property of the decedent trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of his the trustee's duties as such trustee and for the payment to the persons entitled to receive the same of all moneys, assets, or other things of value which may come into his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond. the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

**"§ 36A-32. Rights and duties devolve on successor.**

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the A~~ successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the creating governing instrument.

**"§ 36A-33. Appointment of successors to deceased or incapacitated trustees. successor trustee on clerk's own motion.**

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by a beneficiary or other interested person by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered. The petition shall make all necessary parties defendants. Proceedings under this section are special proceedings subject to Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person named in the petition or some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee. The clerk shall require the person so appointed to give bond as required in G.S. 36A 31. If the instrument under which the deceased or incapacitated trustee claimed, however, does not require the trustee to give bond and expresses an intent that a successor trustee serve without bond, or if the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A 31. Any party in interest may appeal from the order or judgment of the clerk as provided in Article 27A of Chapter 1 of the General Statutes.~~

~~Nothing Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this section Article shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon the clerk's own motion.~~

**"§ 36A-34. Testamentary trustee may renounce.**

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~**"§ 36A-35. Removal of trustee.**~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the~~

requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.

**"§ 36A-36. Appointment of special trustee.**

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

**"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.**

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

**"§ 36A-39. Powers of cotrustees.**

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

**"§ 36A-40. Vesting of title.**

A special or successor trustee is vested with the title of the ~~original predecessor~~ trustee. A ~~predecessor~~ trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or ~~the clerk~~ may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

**"§§ 36A-42 through 36A-46: Reserved for future codification purposes."**

**SECTION 1.2.** G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of ten dollars (\$10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (2) For support of the General Court of Justice, the sum of twenty-six dollars (\$26.00), plus an additional forty cents (40¢) per one hundred



dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars (\$3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars (\$10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

- (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate, not to exceed three thousand dollars (\$3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars (\$15.00) shall be assessed on the filing of each annual and final account.
- (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.
- (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36A-23.1 if there is no requirement in the trust that accountings be filed with the clerk.
- (3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars (\$17.00)."

## **PART II. AUTHORIZE COMBINATION OF HEARINGS FOR CONTROL OF REAL PROPERTY BY PERSONAL REPRESENTATIVE**

### **SECTION 2. G.S. 28A-13-3(c) reads as rewritten:**

"(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

- (1) A description of the real property which is the subject of the petition;
- (2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;
- (3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for sale, lease or

mortgage of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

**SECTION 2.1.** G.S. 28A-15-1(c) reads as rewritten:

"(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be required for a sale made pursuant to authority given by will. A general provision granting authority to the personal representative to sell the testator's real property, or incorporation by reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for possession, custody or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

### **PART III. PROVIDE FOR DISTRIBUTION OF ASSETS OF INOPERATIVE TRUSTS**

**SECTION 3.** Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

**"§ 28A-22-10. Distribution of assets of inoperative trust.**

When the facts at the time of distribution of property to a trust are such that the trust would be inoperative under the terms of the instrument creating the trust for any reason, including the death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal representative or the trustee authorized or required to make the distribution of that property to the trust may distribute the property directly to the person or persons entitled to it under the terms of the instrument creating the trust without the interposition of the establishment of the trust. If only a portion of the trust would be inoperative, the property distributable to that portion of the trust may be distributed directly to the person or persons entitled to the property under the terms of the instrument creating the trust."

**SECTION 3.1.** Article 13 of Chapter 36A of the General Statutes is amended by adding a new section to read:

**"§ 36A-141. Distribution of assets of inoperative trust.**

A trustee may distribute the assets of an inoperative trust consistent with the authority granted under the provisions of G.S. 28A-22-10."

### **PART IV. PROVIDE THAT A FIDUCIARY EXPRESSLY EXCLUDED FROM INVESTMENT DECISIONS IS NOT LIABLE FOR DECISIONS MADE BY THOSE AUTHORIZED TO MAKE INVESTMENT DECISIONS**

**SECTION 4.** G.S. 36A-3 is amended by adding a new subsection to read:

"(d) Whenever an instrument reserves to the settlor or vests in any person, including an advisory or investment committee or one or more co-fiduciaries, the authority to direct the making or retention of any investment to the exclusion of the fiduciary or to the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no discretion in selecting the person authorized to make or retain investments is not liable to the beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized to direct the making or retention of investments. As used in this subsection, the term 'person' includes an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State."

**PART V. TECHNICAL CORRECTIONS TO REFERENCES TO THE INTERNAL REVENUE CODE**

**SECTION 5.** G.S. 32-34(a) reads as rewritten:

"(a) For purposes of this section:

- (1) "General power of appointment" means any power that would cause income to be taxed to the fiduciary in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or 2514(c) of the Internal Revenue Code.
- (2) "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1~~G.S. 105-228.90.
- (3) The term "fiduciary" has the meaning set forth in G.S. 32-25."

**SECTION 5.1.** G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact.

- a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1~~G.S. 105-228.90.
- b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.
- c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.
- d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

**SECTION 5.2.** G.S. 32A-14.1(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2.1~~G.S. 105-228.90.

**PART VI. TECHNICAL CORRECTIONS TO HOUSE BILL 1073, SENATE BILL 815, AND SENATE BILL 842, AS ENACTED BY THE GENERAL ASSEMBLY**

**SECTION 6.** Section 175(a) of S.L. 2001-387 (Senate Bill 842, 2001 General Assembly), reads as rewritten:

"**SECTION 175.(a)** Section 173 of this act is effective when it becomes law. Section 59A of this act becomes effective September 1, 2001. The remainder of this act becomes effective January 1, 2002."

**SECTION 7.** G.S. 55-14-22(a1), as enacted by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

"(a1) If, at the time the corporation applies for reinstatement, the name of the corporation is not distinguishable from the name of another entity authorized to be used under ~~G.S. 55-4-01~~, G.S. 55D-21, then the corporation must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement."

**SECTION 7.1.** G.S. 55-14-22(b), as amended by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

"(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section, that the information is correct, and that the name of the corporation complies with ~~G.S. 55-4-01~~G.S. 55D-21 and any other applicable section, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the Secretary of State's determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation."

**SECTION 7.2.** G.S. 55A-14-22(a1), as amended by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

"(a1) If, at the time the corporation applies for reinstatement, the name of the corporation is not distinguishable from the name of another entity authorized to be used under ~~G.S. 55A-4-01~~, G.S. 55D-21, then the corporation must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement."

**SECTION 7.3.** G.S. 55A-14-22(b), as amended by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

"(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section, that the information is correct, and that the name of the corporation complies with ~~G.S. 55A-4-01~~G.S. 55D-21 and any other applicable section, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the Secretary of State's determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation."

**SECTION 7.4.** G.S. 57C-6-03(c), as amended by S.L. 2001-390 (House Bill 1073, 2001 General Assembly), reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to corporations under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the time the limited liability company applies for reinstatement, the name of the limited liability company is not distinguishable from the name of another entity authorized to be used under ~~G.S. 57C-2-30~~, G.S. 55D-21, then the limited liability company must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The effect of reinstatement of a limited liability company shall be the same as for a corporation under G.S. 55-14-22."

**SECTION 8.** G.S. 59-210(g), as enacted by S.L. 2001-387 (Senate Bill 842, 2001 General Assembly) reads as rewritten:

"(g) A limited liability limited partnership shall be subject to the provisions of ~~G.S. 59-84.4(f)~~ ~~G.S. 59-84.4~~ regarding annual reports and revocation of registration as if it were a registered limited liability partnership."

**SECTION 8.2.(a)** If House Bill 1147, 2001 Session, becomes law, Section 3 of that act is amended by deleting "G.S. 96-27(b)", and substituting "G.S. 97-26(b)".

**SECTION 8.2.(b)** This section becomes effective September 15, 2001.

**SECTION 9.** Section 2 of S.L. 2001-340 (Senate Bill 815, 2001 General Assembly), reads as rewritten:

"**SECTION 2.** This act becomes effective ~~October 1, 2001~~, July 1, 2002, and applies to loans applied for on or after that date."

## **PART VII. EFFECTIVE DATES**

**SECTION 10.** Part I of this act becomes effective January 1, 2002, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before, on or after that date. Parts II through IV of this act are effective when they become law and apply to actions by personal representatives on or after that date. Sections 7 through 8 become effective January 1, 2002. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13<sup>th</sup> day of September, 2001.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 9:18 p.m. this 14<sup>th</sup> day of September, 2001