

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 656

Short Title: Amend Trust Administration Act.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 25, 2003

A BILL TO BE ENTITLED
AN ACT TO AMEND THE TRUST ADMINISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36A-23.1(a) reads as rewritten:

"(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~~. governed by Article 11A of this Chapter. 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;

(1a) To permit a trustee to resign or renounce; however, no trustee shall be required to initiate a proceeding to resign or renounce as trustee where a successor trustee named in the governing instrument or in accordance with a procedure provided in the governing instrument is willing to serve, unless the trustee is required to account to the clerk;

(2) To review trustees' fees pursuant to ~~G.S. 32-50~~ Article 5 of Chapter 32 of the General Statutes 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

1 determine an issue listed in this subdivision shall be originally heard
2 by a superior court judge."

3 **SECTION 2.** G.S. 36A-24.1(b) reads as rewritten:

4 "(b) If the trustee is not required to account to the clerk, then unless the terms of
5 the governing instrument provide otherwise, venue for proceedings under G.S.
6 36A-23.1 involving trusts ~~is in~~ is:

7 (1) In the case of an inter vivos trust, in any county of this State in which
8 the trust has its principal place of administration or where any
9 beneficiary resides. resides; or

10 (2) In the case of a testamentary trust, in any county of this State in which
11 the trust has its principal place of administration, where any
12 beneficiary resides, or in which the testator's estate was administered."

13 **SECTION 3.** G.S. 36A-26.1 reads as rewritten:

14 "**§ 36A-26.1. Trust proceedings; necessary parties.**

15 Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the
16 office of the clerk of superior court. Upon the filing of the petition, the clerk shall
17 docket the cause as an estate matter. All ~~known beneficiaries, trustees, or cotrustees~~
18 trustees and interested persons not joined as petitioners shall be joined as respondents.
19 The clerk shall issue the summons for the respondents. The clerk may order ~~notification~~
20 of that additional persons be joined as respondents and shall issue the summons for such
21 additional persons. An order is valid as to all persons who are given notice of the
22 proceeding even if all interested persons are not notified. The beneficiaries, creditors, or
23 any other persons interested in the trust estate have the right to The summons shall
24 notify the respondents to appear and answer the petition and to offer evidence against
25 granting the petition. The clerk shall then proceed to hear within 10 days after its service
26 upon the respondents. The summons shall comply with the requirements set forth in
27 G.S. 1-394 for a special proceeding summons except that the clerk shall indicate on the
28 summons by appropriate words that the summons is issued in an estate matter and not in
29 a special proceeding or in a civil action. The clerk shall set the matter for hearing after
30 the period for respondents to answer the petition has expired and shall provide notice of
31 such hearing to respondents. At the hearing, petitioners and respondents shall have the
32 right to offer evidence for and against granting the petition, and the clerk shall decide
33 and determine the matter as provided for in G.S. 1-301.3, in G.S. 1-301.3. An order
34 entered by the clerk is valid as to all persons to whom a summons is issued."

35 **SECTION 4.** G.S. 36A-29 reads as rewritten:

36 "**§ 36A-29. Final accounting before resignation. Accounting to the clerk.**

37 (a) No trustee, including a trustee appointed by the clerk, shall be required to
38 account to the clerk of superior court unless the governing instrument directs that the
39 trustee shall be required to account to the clerk or unless the trustee is otherwise
40 required by law to account to the clerk.

41 (b) If the trustee is required to account to the clerk of superior court, then unless
42 the terms of the governing instrument provide otherwise, no trustee shall be permitted to
43 resign as trustee until a final account of the trust estate is filed with the clerk, and until
44 the court shall be satisfied that the account is true and correct."

1 **SECTION 5.** G.S. 36A-31 reads as rewritten:

2 "**§ 36A-31. When bond required.**

3 A trustee ~~need not~~ shall provide bond to secure performance of the trustee's duties
4 ~~unless required by the if:~~

5 (1) ~~The terms of the governing instrument, reasonably requested by a~~
6 ~~beneficiary, or found by the clerk to be necessary instrument require~~
7 ~~the trustee to provide bond;~~

8 (2) ~~A beneficiary requests the trustee to provide bond and the clerk finds~~
9 ~~the request to be reasonable; or~~

10 (3) ~~The clerk finds that it is necessary for the trustee to provide bond in~~
11 ~~order to protect the interests of beneficiaries who are not able to~~
12 ~~protect themselves and whose interests otherwise are not adequately~~
13 ~~represented.~~

14 However, in no event shall bond be required of a trustee, including a trustee appointed
15 by the clerk, if the governing instrument directs otherwise. On petition of the trustee or
16 other interested person, the clerk may excuse a requirement of bond, reduce the amount
17 of the bond, release the surety, or permit the substitution of another bond with the same
18 or different sureties. ~~If the governing instrument is silent as to the requirement of a bond~~
19 ~~and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond~~
20 ~~requirement, the clerk's decision must be approved by a superior court judge unless all~~
21 ~~beneficiaries have been notified of the decision.~~ If bond is required, it shall be in a sum
22 double the value of the personal property to come into the trustee's hands when bond is
23 executed by a personal surety, and in an amount not less than one and one-fourth times
24 the value of all personal property of the trust estate when the bond is secured by a
25 suretyship bond executed by a corporate surety company authorized by the
26 Commissioner of Insurance to do business in this State, provided that the clerk of
27 superior court, when the value of the personal property exceeds one hundred thousand
28 dollars (\$100,000), may accept bond in an amount equal to the value of the personal
29 property plus ten percent (10%) thereof, conditioned upon the faithful performance of
30 the trustee's duties and for the payment to the persons entitled to receive all moneys,
31 assets, or other things of value which may come into the trustee's hands. All bonds
32 executed under the provisions of this Article shall be filed with the clerk."

33 **SECTION 6.** G.S. 36A-32 reads as rewritten:

34 "**§ 36A-32. Rights and duties devolve on successor.**

35 A successor ~~trustee~~ trustee, including a successor trustee appointed by the clerk,
36 shall succeed to all the rights, powers, and privileges, and shall be subject to all the
37 duties, liabilities, and responsibilities that were imposed upon the original trustee unless
38 a contrary intent appears from the governing ~~instrument~~ instrument or unless the order
39 appointing the successor trustee provides otherwise."

40 **SECTION 7.** This act becomes effective January 1, 2004, and applies to all
41 trusts created before or after that date.