

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 765*

Short Title: Test. Additions to Trusts/Will References.

(Public)

Sponsors: Representatives Ross; Alexander and Hurley.

Referred to: Judiciary I.

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAW REGARDING TESTAMENTARY ADDITIONS TO TRUSTS, TO CODIFY THE DOCTRINES OF INCORPORATION BY REFERENCE AND ACTS OF INDEPENDENT SIGNIFICANCE, AND TO ALLOW, IF AUTHORIZED BY WILL, THE DISPOSITION OF TANGIBLE PERSONAL PROPERTY OTHER THAN MONEY BY A SEPARATE WRITING, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 31 of the General Statutes reads as rewritten:

"Article 8.

~~"Devise or Bequest to Trustee of an Existing Trust. Testamentary Additions to Trusts.~~
"§ 31-47. Devise or bequest to trustee of an existing trust. Testamentary additions to trusts.

~~A devise or bequest in a will duly executed pursuant to the provisions of this Chapter may be made in form or substance to the trustee of any trust, including an existing testamentary trust, if established in writing prior to the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable or both by the settlor or any other person or persons; nor because the trust instrument or any amendment thereto was not executed in the manner required for wills, nor because the trust was amended after execution of the will. Unless the will provides otherwise, such devise or bequest shall operate to dispose of property under the terms of the trust as they appear in writing at the testator's death and the property shall not be deemed held under a testamentary trust. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.~~

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

1 (2) The trustee of a trust to be established at the testator's death, if the trust
2 is identified in the testator's will and its terms are set forth in a written
3 instrument executed before or concurrently with the execution of the
4 testator's will, regardless of the existence, size, or character of the
5 corpus of the trust during the testator's lifetime.

6 The devise is not invalid because the trust is amendable or revocable, or because the
7 trust instrument or any amendment thereto was not executed in the manner required for
8 wills, or because the trust was amended after the execution of the testator's will or after
9 the testator's death. A revocable trust to which property is first transferred under
10 subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and,
11 as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter
12 36C of the General Statutes.

13 (b) Unless the testator's will provides otherwise, property devised to the trustee of
14 a trust described in subsection (a) of this section is not held under a testamentary trust of
15 the testator, but it becomes a part of the trust to which it is devised, and shall be
16 administered and disposed of in accordance with the provisions of the governing
17 instrument setting forth the terms of the trust, including any amendments thereto made
18 before or after the testator's death.

19 (c) Unless the testator's will provides otherwise, a revocation or termination of
20 the trust before the testator's death causes the devise to lapse.

21 (d) A devise to a trust shall be construed as a devise to the trustee of that trust.

22 (e) For purposes of this section, "devise," when used as a noun, means a
23 testamentary disposition of real or personal property and, when used as a verb, means to
24 dispose of real or personal property by will.

25 (f) Nothing in this section alters, amends, or in any manner affects the
26 application of the doctrine of acts of independent significance."

27 **SECTION 2.** Chapter 31 of the General Statutes is amended by adding a
28 new Article to read:

29 "Article 9.

30 "Incorporation by Reference; Acts of Independent Significance; Separate Writing
31 Identifying Tangible Personal Property.

32 **"§ 31-51. Incorporation by reference.**

33 A writing in existence when a will is executed may be incorporated by reference if
34 the language of the will manifests this intent and describes the writing sufficiently to
35 permit its identification.

36 **"§ 31-52. Acts and events of independent significance.**

37 A will may dispose of property by reference to acts and events that have significance
38 apart from their effect upon the disposition made by the will, whether they occur before
39 or after the execution of the will or before or after the testator's death. These acts and
40 events may include the execution or revocation of another individual's will and the
41 safekeeping of items in a secured depository.

42 **"§ 31-53. Separate writing identifying devise of certain types of tangible personal**
43 **property.**

1 Whether or not the provisions relating to holographic wills apply, a will may refer to
2 a written statement or list to dispose of items of tangible personal property not otherwise
3 specifically disposed of by the will, other than money. To be admissible under this
4 section as evidence of the intended disposition, the writing must be signed by the
5 testator and must describe the items and the devisees with reasonable certainty. The
6 writing may be referred to as one to be in existence at the time of the testator's death; it
7 may be prepared before or after the execution of the will; it may be altered by the
8 testator after its preparation; and it may be a writing that has no significance apart from
9 its effect on the dispositions made by will.

10 For purposes of this section, "devisee" means any person entitled to take real or
11 personal property under the provisions of a valid, probated will."

12 **SECTION 3.** The Revisor of Statutes shall cause to be printed along with
13 this act all relevant portions of the official comments to Sections 2-510 (Incorporation
14 by Reference), 2-511 (Testamentary Additions to Trusts), and 2-513 (Separate Writing
15 Identifying Devise of Certain Types of Tangible Personal Property) of the Uniform
16 Probate Code and all explanatory comments of the drafters of this act as the Revisor
17 deems appropriate.

18 **SECTION 4.** This act is effective when it becomes law and applies to estates
19 of decedents dying on or after that date regardless of when the will or instrument was
20 executed.