

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-106
SENATE BILL 947

AN ACT TO MAKE TECHNICAL, CONFORMING, AND OTHER CHANGES TO
THE UNIFORM TRUST CODE AND OTHER RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-13-3(a)(5) reads as rewritten:

"(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent ~~man~~ person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including ~~but not limited to~~ the powers specified in the following subdivisions:

- ..
- (5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative ~~upon compliance with the provisions of G.S. 36A-63.~~ pursuant to G.S. 53-163.1.
- ..

SECTION 1.1. G.S. 32A-3 is amended by adding a new subsection to read:

"§ 32A-3. Provisions not exclusive; reference to Chapter ~~32B.32B~~; limitations on authority.

(a) The provisions of this Article are not exclusive and shall not bar the use of any other or different form of power of attorney desired by the parties concerned.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws.

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602.1(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter."

SECTION 1.2. G.S. 32A-14 is amended by adding a new subsection to read:

"§ 32A-14. Powers of attorney executed under the provisions of G.S. 47-115.1; reference to Chapter ~~32B.32B~~; limitations on authority.

(a) A power of attorney executed prior to October 1, 1988, pursuant to G.S. 47-115.1 as it existed prior to October 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32A-8.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws.

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602.1(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter."

SECTION 1.3. G.S. 36B-8 reads as rewritten:

"§ 36B-8. Conflict with other law.

To the extent that the provisions of this Chapter are inconsistent with the provisions of either Chapter 36A 36C or Chapter 55A, the provisions of this Chapter shall control. The provisions of this Chapter shall not apply to the University of North Carolina."

SECTION 2. G.S. 36C-1-103 reads as rewritten:

"§ 36C-1-103. Definitions.

~~In this~~ The following definitions apply in this Chapter:

- (1) ~~"Action", with respect~~ Action. – When applicable to an act of a trustee, includes a failure to act.
- (2) ~~"Ascertainable standard" means a~~ Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- (3) ~~"Beneficiary" means a~~ Beneficiary. – A person who:
 - a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or
 - b. In a capacity other than that of trustee, holds a power of appointment over trust property.
- (4) ~~"Charitable trust" means a~~ Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).
- (5) ~~"Environmental law" means a~~ Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (6) ~~"General guardian" means a general guardian as that term is~~ General guardian. – As defined in G.S. 35A-1202(7).
- (7) ~~"Guardian of the estate" means a guardian of the estate as that term is~~ Guardian of the estate. – As defined in G.S. 35A-1202(9).
- (8) ~~"Guardian of the person" means a guardian of the person as that term is~~ Guardian of the person. – As defined in G.S. 35A-1202(10).
- (9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.
- (10) ~~"Internal Revenue Code" means the~~ Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.
- (11) ~~"Jurisdiction", with respect~~ Jurisdiction. – When applicable to a geographic area, includes a state or country.
- (12) ~~"Person" means an~~ Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.
- (13) ~~"Power of withdrawal" means a~~ Power of withdrawal. – A presently exercisable general power of appointment other than a power:
 - a. Exercisable by a trustee and limited by an ascertainable standard; or
 - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
- (13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is one of the following:

- a. The usual place of business of the corporate trustee if there is a corporate cotrustee.
- b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.
- (14) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- (15) ~~"Qualified beneficiary" means a~~ Qualified beneficiary. – A living beneficiary ~~who, to whom,~~ on the date the beneficiary's qualification is ~~determined:~~ determined, any of the following apply:
 - a. Is a distributee or permissible distributee of trust income or ~~principal;~~ principal.
 - b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to ~~terminate;~~ or terminate.
 - c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (16) ~~"Revocable", as applied~~ Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- (17) ~~"Settlor" means a~~ Settlor. – A person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
- (18) ~~"Spendthrift provision" means a~~ Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
- (19) ~~"State" means a~~ State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
- (20) ~~"Terms of a trust" means the~~ Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.
- (21) ~~"Trust instrument" means an~~ Trust instrument. – An instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.
- (22) ~~"Trustee" includes~~ Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts."

SECTION 3. G.S. 36C-1-105(b) reads as rewritten:

- "(b) The terms of a trust prevail over any provision of this Chapter except:
- (1) The requirements for creating a trust;
 - (2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
 - (3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

- (4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416;
- (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;
- (6) The effect of an exculpatory term under G.S. 36C-10-1008;
- (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary;
- (8) Periods of limitation for commencing a judicial proceeding;
- (9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice; ~~and~~
- (10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204~~. G.S. 36C-2-204; and
- (11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan."

SECTION 4. G.S. 36C-1-107 reads as rewritten:

"(a) The meaning and effect of the terms of a trust are determined by: by any of the following:

- (1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at ~~issue; or issue.~~
- (2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Notwithstanding subsection (a) of this section, the rights of a person other than a trustee or beneficiary are governed by G.S. 36C-10-1010 through G.S. 36C-10-1013."

SECTION 5. G.S. 36C-1-109(a) reads as rewritten:

"(a) Subject to subsection (d) of this section, notice ~~Notice~~ to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

- (1) Permissible methods of notice or methods for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.
- (2) Notice shall be deemed to be given upon the occurrence of any of the following:
 - a. When personally delivered by hand to the person.
 - b. When transmitted by facsimile.
 - c. When placed in the hands of a nationally recognized courier service for delivery.
 - d. When received by the person if sent by registered or certified United States mail, return receipt requested.
 - e. Three days after depositing the notice in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail.
- (3) Notice by any means other than those described in subdivision (2) of this subsection shall be deemed to be given for all purposes upon the date of actual receipt."

SECTION 6. G.S. 36C-2-203(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust 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;~~ trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b).
- (2) ~~To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as trustee;~~ To approve the resignation of a trustee.
- (3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final ~~accounts;~~ accounts.
- (4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in ~~G.S. 37A-1-104.3;~~ G.S. 37A-1-104.3.
- (5) ~~To transfer a trust's principal place of~~ administration; ~~administration.~~
- (6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different ~~sureties;~~ sureties.
- (7) To make orders with respect to a trust for the care of animals as provided in ~~G.S. 36C-4-408;~~ G.S. 36C-4-408.
- (8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in ~~G.S. 36C-4-409;~~ and G.S. 36C-4-409.
- (9) 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. ~~Upon motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article."~~

SECTION 7. G.S. 36C-2-203(c) reads as rewritten:

"(c) Nothing in this section affects the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. ~~In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26~~

of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article."

SECTION 8. G.S. 36C-2-204 reads as rewritten:

"§ 36C-2-204. Venue.

In any trust ~~proceeding or action, proceeding~~, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

- (1) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.
- (2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts ~~is: is~~ either of the following:
 - a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides; or resides~~.
 - b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.
- ~~(3) 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:~~
 - ~~a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or~~
 - ~~b. The usual place of business or residence of any of the cotrustees.~~
- (4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or if the trust is created by will, in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered."

SECTION 9. G.S. 36C-2-205 is amended by adding a new subsection to

read:

"(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred."

SECTION 9.1. G.S. 36C-2-205 is amended by adding a new subsection to

read:

"(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard."

SECTION 10. G.S. 36C-2-205(h) reads as rewritten:

"(h) ~~Orders Upon Consolidation/Joinder.~~ Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and ~~civil action or a civil action~~, joinder of claims under subsection (f) or (g) of this ~~section~~ section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make ~~such appropriate~~ such appropriate orders as ~~appropriate~~ to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the ~~consolidation or joinder~~ consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in ~~G.S. 36C-2-203(a)~~ G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court."

SECTION 11. G.S. 36C-3-303 reads as rewritten:

"§ 36C-3-303. Representation by fiduciaries, parents, and other persons.

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or ~~dispute~~ dispute involving a trust:

- (1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.
- (2) ~~A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.~~
- (3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.
- (4) A trustee may represent and bind the beneficiaries of the ~~trust~~ trust unless the question or dispute involves the internal affairs of the trust.
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.
- (6) A parent may represent and bind the parent's minor child if a general ~~guardian, guardian or guardian of the estate, or guardian of the person estate~~ for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.
- (7) A person may represent and bind that person's unborn issue."

SECTION 12. G.S. 36C-3-304 reads as rewritten:

"§ 36C-3-304. Representation by person having substantially identical interest.

Unless otherwise represented under this Article, a minor, an ~~incapacitated incompetent~~ or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person ~~represented~~ represented with respect to the particular question or dispute."

SECTION 13. G.S. 36C-3-305(a) reads as rewritten:

"(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act

on behalf of a minor, ~~incapacitated~~ an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests."

SECTION 14. G.S. 36C-4-401 reads as rewritten:

"§ 36C-4-401. Methods of creating trust.

A trust may be created ~~by:~~ by any of the following methods:

- (1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's ~~death;~~ death including either of the following:
 - a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.
 - b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by ~~law;~~ or law.
- (3) Exercise of a power of appointment in favor of a trustee."

SECTION 15. G.S. 36C-4-409 reads as rewritten:

"§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in G.S. 36C-4-408 or by another statute, the following rules apply:

- (1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years. If the trust is still in existence after 21 years, the trust shall terminate. The unexpended trust property shall be transferred in the following order:
 - a. As directed in the trust instrument.
 - b. If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.
 - c. If no taker is produced by the application of sub-subdivisions a. or b. of this subdivision, to the settlor, if then living, otherwise to the settlor's heirs as determined under Chapter 29 of the General Statutes as of the date of the settlor's death.
- (2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
- (3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. ~~Except as otherwise provided in the terms of the trust, The property not required for the intended use must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.~~ shall be distributed under subdivision (1) of this section.
- (4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not repeal or supersede G.S. 36C-4-413."

SECTION 16. G.S. 36C-4-410 reads as rewritten:

"§ 36C-4-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by G.S. 36C-4-411 through G.S. 36C-4-414, a trust terminates to the extent that the trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through ~~G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417.~~ G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this ~~section.~~ Article.

(c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006."

SECTION 17. G.S. 36C-4-411 reads as rewritten:

"§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries.~~ If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised ~~by~~ by:

(1) ~~an~~ An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the ~~trust;~~ trust.

(2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so authorized and a general guardian or guardian of the estate has not been appointed. ~~guardianship.~~

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of a noncharitable irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification

or termination may be approved by the court if the court is satisfied ~~that~~ that all of the following apply:

- (1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this ~~section; and section.~~
- (2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

(f) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust under this section, the presumption of fertility is rebuttable.

(g) If a trust instrument provides for the disposition of property to a class of persons described only as "heirs" or "next of kin" of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances."

SECTION 17.1. G.S. 36C-4-413(c) is repealed.

SECTION 18. G.S. 36C-4-418 reads as rewritten:

"§ 36C-4-418. Distribution upon termination of trust.

Upon termination of a trust under ~~G.S. 36C-4-411, G.S. 36C-4-411(a),~~ the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under ~~G.S. 36C-4-412 or G.S. 36C-4-414, G.S. 36C-4-411(b) or (c),~~ the trustee shall distribute the trust property in accordance with the order entered by the court. Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:

- ~~(1) To the guardian of the estate or general guardian of the beneficiary;~~
- ~~(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or~~
- ~~(3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes."~~

SECTION 19. G.S. 36C-5-501(b) reads as rewritten:

"(b) This Subsection (a) of this section shall not apply apply, and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary's ~~interest; interest is protected or restricted by any of the following:~~

- ~~(1) Is subject to a A spendthrift provision; provision.~~
- ~~(2) Is a A discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or G.S. 36C-5-504(a)(2).~~
- ~~(3) Is a A protective trust interest as described in G.S. 36C-5-508."~~

SECTION 20. G.S. 36C-5-505 reads as rewritten:

"§ 36C-5-505. Creditor's claim against settlor.

(a) ~~Whether~~ Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

- (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
- (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

- (2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.
- (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by ~~G.S. 28A-19-3~~ applicable law.

(b) For purposes of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor of the trust, both of the following shall apply:

- (1) The property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power.
- (2) The lapse, release, or waiver of a power of withdrawal shall not be deemed to be an exercise of the power and shall not cause the holder to be treated as a settlor of the trust."

SECTION 21. G.S. 36C-6-602(e) is repealed.

SECTION 22. G.S. 36C-6-602(f) is repealed.

SECTION 23. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-6-602.1. Exercise of settlor's powers with respect to revocable trust by agent or guardian.

(a) An agent acting under a power of attorney may exercise any of the following powers of the settlor with respect to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

- (1) Revocation of the trust.
- (2) Amendment of the trust.
- (3) Additions to the trust.
- (4) Direction to dispose of property of the trust.
- (5) The creation of the trust, notwithstanding G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subsection shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) A general guardian or a guardian of the estate of the settlor may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24)."

SECTION 24. G.S. 36C-6-603 reads as rewritten:

"§ 36C-6-603. Settlor's powers; powers of withdrawal; control of revocable trust.

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If a trustee is a settlor, the trustee's actions are presumed to be taken at the direction of the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors."

SECTION 25. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-6-605. Failure of disposition of property of a trust by lapse or otherwise.

(a) If a beneficiary under a revocable trust predeceases the execution of the trust or the settlor or is treated as having predeceased the settlor, and if the beneficiary is a grandparent of or a descendant of a grandparent of the settlor, then the issue of the predeceased beneficiary who survive the settlor shall take in place of the deceased beneficiary. The deceased beneficiary's issue shall take the deceased beneficiary's share in the same manner that the issue would take as heirs of the deceased beneficiary under the intestacy provisions in effect at the time of the settlor's death. The provisions of this section apply whether the disposition of property is to an individual, to a class, or is a part of the residue of the trust. In the case of the disposition to a class, the issue shall take whatever share the deceased beneficiary would have taken had the deceased beneficiary survived the settlor. In the event the deceased class member leaves no issue, the deceased beneficiary's share shall devolve upon the members of the class who survived the settlor and the issue of any deceased members taking by substitution.

(b) If the provisions of subsection (a) of this section do not apply to the disposition of property that fails, the property shall pass to the beneficiaries in proportion to their share of the residue of the trust. If the disposition is part of the residue of the trust, it shall augment the shares of the other residuary beneficiaries, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary beneficiaries, then the property shall pass by intestacy."

SECTION 26. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-6-606. Revocation of provisions in revocable trust by divorce or annulment; revival.

Dissolution of the settlor's marriage by absolute divorce or annulment after executing a revocable trust revokes all provisions in the trust in favor of the settlor's former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee. Property prevented from passing to the former spouse because of revocation by divorce or absolute annulment passes as if the former spouse failed to survive the settlor, and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse failed to survive the settlor. If provisions are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. The reference to "former spouse" in this section includes a purported former spouse."

SECTION 26.1 Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-6-607. Modification or termination of a revocable trust.

(a) A revocable trust may be modified or terminated by the court pursuant to any of the methods for modification or termination of an irrevocable trust set forth in G.S. 36C-4-411(b) or (c), 36C-4-412, 36C-4-415, or 36C-4-416.

(b) The settlor is a necessary party to any proceeding brought to modify or terminate a revocable trust."

SECTION 27. G.S. 36C-7-703(f) is repealed.

SECTION 28. G.S. 36C-7-703(g) reads as rewritten:

"(g) Each ~~A~~ trustee shall exercise reasonable ~~care~~ care in connection with matters for which the trustee is given authority under the terms of a trust to:

- (1) Avoid enabling a cotrustee to commit a serious breach of trust; and
- (2) Compel a cotrustee to redress a serious breach of trust."

SECTION 29. G.S. 36C-7-703(h) reads as rewritten:

"(h) Notwithstanding subsection ~~(f)~~ or (g) of this section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the

~~action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action. section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:~~

- (1) The trustee does not join in an action approved by a majority of the other trustees.
- (2) The dissenting trustee joins in an action necessary to carry out the decision of the majority of the trustees and notifies in writing the cotrustees of the dissent at or before joining in the action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action."

SECTION 30. G.S. 36C-7-704(d) reads as rewritten:

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
- (2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;
- (2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or
- (3) By a person appointed by the court."

SECTION 31. G.S. 36C-8-802(d) reads as rewritten:

"(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an ~~advantage,~~ advantage and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary."

SECTION 32. G.S. 36C-8-802(f) reads as rewritten:

"(f) Notwithstanding subsection (c) of this section:

- (1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; and
- (2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made ~~in the community~~ for the same or similar services."

SECTION 33. G.S. 36C-8-802(h) reads as rewritten:

"(h) This section does not preclude any of the following transactions, ~~if fair to the beneficiaries: transactions:~~

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the ~~trustee; trustee.~~
- (2) Payment of ~~reasonable~~ compensation to which the trustee; trustee is entitled under G.S. 36C-7-708.
- (3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an ~~interest; interest.~~
- (4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the ~~trustee; or trustee.~~
- (5) An advance by the trustee of money for the protection of the trust."

SECTION 34. G.S. 36C-8-808(a) reads as rewritten:

"(a) While a trust is revocable, the trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust."

SECTION 34.1. G.S. 36C-8-810(d) reads as rewritten:

"(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts."

SECTION 35. G.S. 36C-8-813 reads as rewritten:

"§ **36C-8-813. Duty to inform and report.**

(a) The trustee is under a ~~duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect the subject matter of the trust and the accounts and other documents relating to the trust.~~ duty to do all of the following:

- (1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.
- (2) In response to a reasonable request of any qualified beneficiary:
 - a. Provide a copy of the trust instrument.
 - b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.
 - c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

(b) Notwithstanding subsection (a) of this section:

- (1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.
- (2) A trustee is considered to have discharged the trustee's duty under subdivision (1) of subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subdivision (1) of subsection (a) of this section.

(c) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. With respect to future reports and other information, a beneficiary may withdraw a waiver previously given.

~~(d) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter."~~

SECTION 36. G.S. 36C-8-814(b) reads as rewritten:

"(b) Subject to subsection (d) of this section, and unless the terms of the trust ~~expressly indicate by an express reference to this subsection~~ that a rule in this subsection does not apply:

- (1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.
- (2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal ~~benefit, benefit that would, except for this subsection, constitute in whole or in part a general power of appointment,~~ the trustee may exercise the power in accordance with an ascertainable standard.
- (3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
- (4) Any power conferred upon the trustee in the trustee's capacity as a trustee to allocate receipts and expenses as between income and principal in the trustee's own favor must be exercised in accordance with the provisions of Chapter 37A of the General Statutes, the Uniform Principal and Income Act of 2003.

For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee 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 section 2514(c) of the Internal Revenue Code."

SECTION 37. G.S. 36C-8-816 reads as rewritten:

"§ 36C-8-816. Specific powers of trustee.

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

- ~~(19)~~ Pledge trust property to guarantee loans made by others to a any beneficiary;
- (19a) Guarantee loans made by others to a any beneficiary;
- (19b) Pledge trust property to guarantee loans made by others to a ~~any~~ proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.
- (19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.
- ~~(21)~~ Pay an amount distributable to a beneficiary ~~who is under a legal disability regardless of whether the beneficiary is a minor or incompetent or who whether the trustee reasonably believes is incapacitated, the beneficiary to be incompetent,~~ by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the

beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:

- a. ~~Paying it to the beneficiary's general guardian or the guardian of the beneficiary's estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person; estate;~~
- b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;
- c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
- d. Managing it as a separate fund on the beneficiary's behalf.

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including ~~the a~~ a minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the ~~trustee; trustee.~~ Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, the distribution may be applied for the beneficiary's benefit only with the beneficiary's consent;

....."
SECTION 37.1. Article 9 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-9-903.1. Duties as to life insurance.

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply."

SECTION 38. G.S. 32-53 reads as rewritten:

"§ 32-53. Definitions.

The following definitions apply in this Article:

- (1) ~~"Beneficiary" means (i) all living persons who are currently receiving or who are eligible to receive distributions of income or principal of the trust and (ii) all living persons who would be entitled to income and/or principal of the trust if the trust were to terminate at the time of the giving of the notice referred to in G.S. 32-55 (without regard to the exercise of any power of appointment).~~
- (2) ~~"Representative" means, with respect to a beneficiary who is under a legal disability, the beneficiary's agent under a durable power of attorney, general guardian, guardian of the estate, or guardian of the person of a beneficiary, and the parent of a minor beneficiary.~~
- (3) ~~"Trust" is as defined in G.S. 36A-22.1(5).~~

- (1) Legal disability. – A person under a legal disability is a person who is a minor, incompetent, or unborn individual, or whose identity or location is unknown.
- (2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With respect to a charitable trust defined in G.S. 36C-1-103(4), the term includes (i) a charitable organization described in G.S. 36C-1-110 as having the rights of a qualified beneficiary; or (ii) if there is no such charitable organization, the Attorney General.
- (3) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.
- (4) Trust. – A trust to which Chapter 36C of the General Statutes applies as provided in G.S. 36C-1-102."

SECTION 39. G.S. 32-55 reads as rewritten:

"§ 32-55. Notice.

(a) ~~The trustee shall~~ If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) ~~If a qualified beneficiary is under a legal disability, notice shall be deemed to be given to the beneficiary only if notice is given to the representative of the beneficiary. If the trustee is the representative of the beneficiary, no notice shall be deemed to have been given to the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.~~

(d) ~~The written notice required under this section shall be deemed to be given as follows: (i) when personally delivered by hand to the person, (ii) when transmitted by facsimile or e-mail with confirmation of transmission, (iii) when placed in the hands of a nationally recognized courier service for delivery, (iv) when received by the person if sent by registered or certified United States mail, return receipt requested, (v) three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail. Notices delivered by any other means shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt. The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."~~

SECTION 40. G.S. 32-56 reads as rewritten:

"§ 32-56. Payment of compensation without court order.

The trustee is authorized to pay the compensation provided for in G.S. 32-54 without prior approval of the clerk of superior court only if:

- (1) The annual amount of compensation does not exceed four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year; or
- (2) ~~No beneficiary~~ Notice has been given pursuant to G.S. 32-55 and no qualified beneficiary or representative of a qualified beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 20 days after notice has been given by the trustee in accordance with G.S. 32-55."

SECTION 41. G.S. 32-57(a) reads as rewritten:

"(a) ~~The trustee or any beneficiary~~ If the terms of the trust do not specify the trustee's compensation, the trustee or any qualified beneficiary, or representative of a qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 42. G.S. 32-58 reads as rewritten:

"§ 32-58. Reimbursement for expenses incurred.

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred or advanced in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court. The court may allow reimbursement of other expenses incurred or advanced to which the trustee is entitled in equity and good conscience. The trustee shall have a lien on trust property to secure reimbursement, with reasonable interest, of expenses owed under this section."

SECTION 43. G.S. 32-71(c) and (d) are repealed.

SECTION 44. G.S. 37A-1-104(c)(8) reads as rewritten:

"(c) A trustee shall not make an adjustment:

- ...
 - (8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or ~~indirectly; or indirectly,~~ except that a trustee may make an adjustment that also benefits a beneficiary even if the terms of the trust provide for trustee compensation as a percentage of the trust's income; or

...
SECTION 45. G.S. 37A-1-104.1 reads as rewritten:

"§ 37A-1-104.1. Definitions.

~~For purposes of this~~ The following definitions apply to this Part:

- (1) ~~"Code" means the Code.~~ – The Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.
- (2) ~~"Competent beneficiary" includes:~~
 - a. ~~A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;~~
 - b. ~~A court appointed guardian of an incompetent beneficiary;~~
 - c. ~~An attorney in fact or agent under a durable power of attorney for an incompetent beneficiary;~~
 - d. ~~A court appointed guardian of a minor beneficiary's estate; and~~
 - e. ~~In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.~~

- (3) ~~"Disinterested person" means a Disinterested person. – A person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the grantor settlor of the trust and any interested trustee.~~
- (4) ~~"Grantor" means an individual who created an inter vivos trust.~~
- (5) ~~"Income trust" means a Income trust. – A trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.~~
- (6) ~~"Interested distributee" means a Interested distributee. – A living beneficiary who is a distributee or permissible distributee person to whom distributions of trust income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.~~
- (7) ~~"Interested trustee" means Interested trustee. – Any of the following:~~
- (i)a. ~~an An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, who is a qualified beneficiary.~~
- (ii)b. ~~any Any trustee who may be removed and replaced by an interested distributee, or distributee.~~
- (iii)c. ~~an An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.~~
- (7a) Legal disability. – A person under a legal disability is a person who is a minor, an incompetent, or an unborn individual, or whose identity or location is unknown.
- (7b) Qualified beneficiary. – A qualified beneficiary as defined in G.S. 36C-1-103(15).
- (8) ~~"Related or subordinate party" means a Related or subordinate party. – A related or subordinate party as defined in section 672(c) of the Code.~~
- (8a) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.
- (8b) Settlor. – An individual, including a testator, who creates a trust.
- (9) ~~"Total return unitrust" means an Total return unitrust. – An income trust that has been converted under and meets the provisions of this Part.~~
- (9a) ~~"Treasury regulations" means the Treasury regulations. – The regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.~~
- (10) ~~"Trustee" means any Trustee. – Any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.~~
- (11) ~~"Unitrust amount" means an Unitrust amount. – An amount computed as a percentage of the fair market value of the trust."~~

SECTION 46. G.S. 37A-1-104.2 reads as rewritten:

"§ 37A-1-104.2. Conversion in trustee's discretion without court approval.

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if~~: if all of the following apply:

- (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~policy.
- (2) The trustee ~~sends~~gives written notice of its intention to take the action, ~~along with~~including copies of the written policy and this Part, to (i) the ~~grantor~~settlor of the trust, if living, ~~and (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~(ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.
- (3) There is at least (i) ~~one competent~~qualified beneficiary described in subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection ~~G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described and (ii) one competent~~qualified beneficiary described in subdivision (2)(iv) of this subsection; ~~G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.~~
- (4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days ~~of receipt of the notice~~after notice has been given. The objection shall be by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if~~: if all of the following apply:

- (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future

distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~ policy.

- (2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the ~~unitrust amount;~~ amount.
- (3) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with including~~ copies of the written policy and this Part, and the determinations of the disinterested person to (i) the ~~grantor~~ settlor of the trust, if living, and (ii) all persons who are the competent-qualified beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) ~~without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate,~~ (iv) ~~without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.
- (4) There is at least one (i) ~~competent-qualified~~ beneficiary described in subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection G.S. 36C-1-103(15)a. or b. or a representative of a beneficiary so described and (ii) one competent-qualified beneficiary described in subdivision (3)(iv) of this subsection; G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so described. ~~and~~
- (5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days ~~of receipt of~~ after the notice has been given. The objection must be by written instrument delivered to the trustee.

(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided ~~that:~~ that all of the following apply:

- (1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions ~~(2)-(3)~~ (2)-(3) and ~~(3)-(4)~~ (3)-(4) of subsection (b) of this section, as the case may be, the trustee shall send written notice to ~~the named charity or charities~~ each charitable organization expressly designated then entitled to receive the income of the trust under the governing

instrument and, if no named charity or charities are charitable organization is expressly designated entitled to receive all of the income of the trust under the governing instrument, to the Attorney General of this State; State.

- (2) Subdivision (4) of subsection (a) of this section or subdivision ~~(4)~~ (5) of subsection (b) of this section, as the case may be, shall not apply to this ~~action; and action.~~
- (3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.

(d) The provisions of G.S. 36C-1-109 regarding notices and the sending of documents to persons under Chapter 36C of the General Statutes shall apply for purposes of notices and the sending of documents under this section."

SECTION 47. G.S. 37A-1-104.3 reads as rewritten:

"§ 37A-1-104.3. Conversion with court approval.

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under ~~G.S. 36A-1-104.2, G.S. 37A-1-104.2,~~ the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A ~~competent~~ qualified beneficiary or a representative of a qualified beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the ~~competent~~ qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

(c) All proceedings under this section shall be conducted as provided in ~~Article 3 of Chapter 36A of the General Statutes.~~ Article 2 of Chapter 36C of the General Statutes."

SECTION 48. G.S. 37A-1-104.4(a) reads as rewritten:

"(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary ~~also~~ may be excluded from the fair market value for computing the unitrust amount."

SECTION 49. G.S. 37A-1-104.4(b) reads as rewritten:

"(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the ~~grantor settlor~~ of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust."

SECTION 49.1. G.S. 37A-1-104.7 is repealed.

SECTION 50. G.S. 37A-1-104.9 reads as rewritten:

"§ 37A-1-104.9. Applicability.

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the grantor's settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust." or "the trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting that intent is sufficient to preclude the use of this Part."

SECTION 51. G.S. 53-163.2 reads as rewritten:

"§ 53-163.2. Investments in securities by banks or trust companies.

Unless the governing instrument, court order, or a statute specifically directs otherwise, a bank or trust company serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof, ~~as defined in G.S. 36A-60(1), thereof~~ participates or has participated as a member of a syndicate underwriting such security, if:

- (1) The fiduciary does not purchase the security from itself or its affiliate; and
- (2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments."

SECTION 52. G.S. 35A-1251(24) reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

- (24) To petition the court for ~~prior approval of transfers of assets of the ward of the exercise of any of the following powers with respect to a revocable trust executed by the ward that the ward, if competent, prior to the ward being declared incompetent, provided that the ward executed a paper writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the~~

trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn. could exercise as settlor of the revocable trust:

- a. Revocation of the trust.
- b. Amendment of the trust.
- c. Additions to the trust.
- d. Direction to dispose of property of the trust.
- e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate plan; and (ii) shall be subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

SECTION 53. Article 1 of Chapter 39 of the General Statutes is amended by adding the following new section to read:

"§ 39-6.7. Construction of conveyances to or by trusts.

(a) A deed, will, beneficiary designation, or other instrument that purports to convey, devise, or otherwise transfer any ownership or security interest in real or personal property to a trust shall be deemed to be a transfer to the trustee or trustees of that trust.

(b) A deed or other instrument which purports to convey or otherwise transfer any ownership or security interest in real or personal property by a trust shall be deemed to be a transfer by the trustee or trustees of that trust. This rule of construction shall apply:

- (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
- (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.

(c) A deed or other instrument by which the trustee or trustees of a trust convey or otherwise transfer any ownership or security interest in real or personal property shall be deemed sufficient:

- (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
- (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.

(d) The trustee or trustees of a trust may convey or otherwise transfer any ownership or security interest in real or personal property as trustee or trustees even though the deed or instrument by which the trustee or trustees acquired title purported to convey or transfer that title to the trust.

(e) Nothing in this section shall be construed to limit the manner in which title to real or personal property may be conveyed or transferred to or by trustees."

SECTION 54. Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-11-1104. Trustee signatures.

The signature of a trustee of a trust who signs a document for or on behalf of the trust shall be deemed to be the signature of the trustee as such. A document which identifies a trust shall be deemed to include the trustee or the trustees as such."

SECTION 55. The Revisor of Statutes shall cause to be printed all explanatory comments of the drafters of this act, or revisions to existing explanatory comments of the drafters of this act, as the Revisor may deem appropriate.

SECTION 56. This act becomes effective October 1, 2007, and applies to (i) all trusts created, and to all conveyances, devises, beneficiary designations, or other transfers occurring before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007, shall apply.

In the General Assembly read three times and ratified this the 14th day of June, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:41 a.m. this 25th day of June, 2007