

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 437

Short Title: Trustee Powers Act.

(Public)

Sponsors: Representative Michaux.

Referred to: Judiciary I.

March 17, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO GRANT STATUTORY POWERS TO TRUSTEES UNDER EXPRESS
3 TRUST INSTRUMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 36A of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 13.**
8 **"POWERS OF TRUSTEES.**

9 **"§ 36A-135. Applicability.**

10 (a) This Article applies only to trustees under express trust agreements, including
11 testamentary trusts, whether the trustee is appointed under an express trust agreement or
12 appointed by the clerk of superior court. This Article does not apply to trustees of:

- 13 (1) Resulting or constructive trusts;
14 (2) Business trusts that provide for certificates to be issued to the
15 beneficiary;
16 (3) Investment trusts;
17 (4) Voting trusts;
18 (5) Security instruments;
19 (6) Trusts created by the judgment or decree of a court;
20 (7) Liquidation trusts;
21 (8) Trusts created for the primary purpose of paying dividends, interest,
22 interest coupons, salaries, wages, pensions or profits, or employee
23 benefits of any kind;
24 (9) Instruments in which a person is nominee or escrowee for another;

1 (10) Trusts created in deposits in any financial institution; or

2 (11) Any other trust the nature of which does not allow for general trust
3 administration.

4 A trustee shall have all the powers and duties under this Article to the extent that
5 such powers and duties are not inconsistent with the powers and duties imposed in the
6 express trust. The powers and duties of more than one trustee are subject to the
7 provisions of G.S. 36A-73.

8 (b) Nothing contained in this Article shall be construed as authorizing any
9 departure from the express terms or limitations set forth in any express trust agreement
10 creating or limiting the trustee's powers and duties.

11 (c) The powers contained in this Article are in addition to any other powers
12 granted or provided by law.

13 **"§ 36A-136. Powers of a trustee.**

14 A trustee has the power to perform in a reasonable and prudent manner every act
15 that a reasonable and prudent person would perform incident to the collection,
16 preservation, management, use, and distribution of the trust estate to accomplish the
17 desired result of administering the trust estate legally and in the best interest of the trust
18 beneficiaries, including the following specific powers:

19 (1) To take possession, custody, or control of assets transferred to the
20 trust.

21 (2) To retain for such time as the trustee shall deem advisable any
22 property, real or personal, which the trustee may receive, even though
23 the retention of such property by reason of its character, amount, or
24 proportion to the total estate, or for any other reason, would not be
25 appropriate for the trustee apart from this provision.

26 (3) To receive assets from other fiduciaries or other sources.

27 (4) To compromise, adjust, arbitrate, sue on or defend, abandon, or
28 otherwise deal with and settle claims in favor of or against the estate.

29 (5) To make, execute, and deliver all instruments, under seal or otherwise,
30 as may be necessary in the exercise of the powers granted in this
31 section.

32 (6) To abandon or relinquish all rights in any property when, in the
33 trustee's opinion, acting reasonably and in good faith, the property is
34 valueless, or is so encumbered or is otherwise in such condition that it
35 is of no benefit or value to the trust.

36 (7) To sell, exchange or otherwise dispose of, or grant options with respect
37 to, any personal property of the trust in the manner prescribed by G.S.
38 36A-137 and G.S. 36A-138.

39 (8) To sell, exchange, partition, or otherwise dispose of, or grant options
40 with respect to, any real property of the trust in the manner prescribed
41 by G.S. 36A-139 and G.S. 36A-140, provided that if the terms of an
42 express trust grant the trustee the power to sell, exchange, partition, or
43 otherwise dispose of, or grant options with respect to, any real

1 property, the powers contained in the express trust shall control, and
2 the provisions of G.S. 36A-139 and G.S. 36A-140 shall not apply.

3 (9) To comply with environmental law:

4 a. To inspect property held by the trustee, including interests in
5 sole proprietorships, partnerships, or corporations, and any
6 assets owned by any such business enterprise, for the purpose of
7 determining compliance with environmental law affecting such
8 property and to respond to any actual or threatened violation of
9 any environmental law affecting the property held by the
10 trustee;

11 b. To take any action necessary, on behalf of the estate or trust, to
12 prevent, abate, or otherwise remedy any actual or threatened
13 violation of any environmental law affecting property held by
14 the trustee, either before or after the initiation of an enforcement
15 action by any governmental body;

16 c. To refuse to accept property in trust if the trustee determines
17 that the property to be donated to the trust either is
18 contaminated by a hazardous substance or is being used for an
19 activity directly or indirectly involving a hazardous substance
20 that could result in liability to the trust or otherwise impair the
21 value of the assets held by the trust;

22 d. To settle or compromise at any time any and all claims against
23 the trust that may be asserted by a governmental body or private
24 party involving the alleged violation of any environmental law
25 affecting the property held in trust;

26 e. To disclaim any power granted by a document, statute, or rule
27 of law that, in the sole discretion of the trustee, may cause the
28 trustee to incur personal liability under any environmental law;
29 or

30 f. To decline to serve as a trustee if the trustee reasonably believes
31 that there is or may be a conflict of interest between the trustee
32 in his fiduciary capacity and the trustee in his individual
33 capacity because of potential claims or liabilities that may be
34 asserted against the trustee on behalf of the trust because of the
35 type or condition of assets held by the trust.

36 For purposes of this subdivision, the term 'environmental law' means
37 any federal, state, or local law, rule, regulation, or ordinance relating to
38 protection of the environment or human health. For purposes of this
39 subdivision, the term 'hazardous substance' means any substance
40 defined as hazardous or toxic or otherwise regulated by environmental
41 law. The trustee shall be entitled to charge the cost of any inspection,
42 review, abatement, response, cleanup, or remedial action authorized by
43 this subdivision against the income or principal of the trust. A trustee
44 shall not be personally liable to any beneficiary or other party for a

1 decrease in value of assets in trust by reason of the trustee's
2 compliance with any environmental law, specifically including
3 reporting requirements under such law. Neither the acceptance by the
4 trustee of property or a failure by the trustee to inspect property creates
5 any inference as to whether or not there is or may be liability under
6 any environmental law with respect to such property.

7 (10) To sell or exercise stock subscription or conversion rights, or to
8 consent, directly or through a committee or other agent, to the
9 reorganization, consolidation, merger, dissolution, or liquidation of a
10 corporate or other business enterprise.

11 (11) To insure the trust's assets against damage or loss, at the expense of the
12 trust.

13 (12) To pay taxes, assessments, and other expenses incident to the
14 collection, care, administration, and protection of the trust property.

15 (13) To pay necessary expenses of administering the trust from the trust
16 property.

17 (14) To employ persons, firms, and corporations, including agents, auditors,
18 accountants, brokers, attorneys-at-law, attorneys-in-fact, investment
19 advisors, appraisers, custodians, rental agents, realtors, and tax
20 specialists to advise or assist the trustee in the performance of the
21 trustee's administrative duties, and to charge the expense of such
22 employment to the trust.

23 (15) To continue any business, venture, or farming operation in which the
24 trust has an interest, when such continuation is reasonably necessary or
25 desirable to preserve the value, including goodwill, of the trust's
26 interest in such business.

27 (16) To incorporate, or participate in the incorporation of, any business or
28 venture in which the trust may have an interest.

29 (17) To invest and reinvest trust property as the trustee deems advisable in
30 accordance with the provisions of the trust or as provided by law.

31 (18) To lease any property of the trust for a term of not more than three
32 years.

33 (19) To foreclose, as an incident to the collection of any bond, note, or
34 other obligation, any mortgage, deed of trust, or other lien securing
35 such bond, note, or other obligation, and to bid on the property at the
36 foreclosure sale, or to acquire the property from the mortgagor or
37 obligor without foreclosure, and to retain the property so bid on or
38 taken over without foreclosure.

39 (20) To borrow money for such periods of time and upon such terms and
40 conditions as to rates, maturities, renewals, and security as the trustee
41 deems advisable, including the power of a corporate trustee to borrow
42 from the trustee's own banking department, for the sole purpose of
43 paying debts, taxes, and other claims against the trust property as may

1 be required to secure such loan or loans, and to renew existing loans
 2 either as to make or endorser.

3 (21) To allocate items of income or expense to either trust income or
 4 principal, as permitted or provided by law.

5 (22) To make payments of money, or of property in lieu of money, to or for
 6 a minor or incompetent in any one or more of the following ways:

7 a. To such minor or incompetent directly;

8 b. To any person or institution providing support, maintenance,
 9 education, or medical, surgical, hospital, or other institutional
 10 care of such minor or incompetent in direct payment for those
 11 services;

12 c. To the legal or natural guardian of such minor or incompetent;

13 d. To any person, whether or not appointed guardian of the person
 14 by any court, who shall in fact have the care and custody of the
 15 person of such minor or incompetent;

16 e. To a custodian for such beneficiary under a uniform gifts or
 17 transfers to minors act.

18 The fiduciary shall not be under any duty to see the application of the
 19 payments so made, if the fiduciary exercised due care in the selection
 20 of the person, including the minor or incompetent, to whom the
 21 payments were made. The receipt by such person shall be full
 22 acquittance to the fiduciary.

23 (23) To deposit, as a trustee, funds of the trust in a bank, including a bank
 24 operated by the trustee upon compliance with the provisions of G.S.
 25 36A-63.

26 **"§ 36A-137. Disposition of personal property without court order.**

27 Pursuant to the authority contained in G.S. 36A-136(7), the trustee has the power to
 28 sell at either a public or private sale, or to exchange or otherwise dispose of, or grant
 29 options with respect to, personal property of the trust without court order.

30 **"§ 36A-138. Disposition of personal property by court order.**

31 (a) A trustee may request the clerk of superior court to issue to him an order
 32 to sell, exchange, or otherwise dispose of, or grant options with respect to, personal
 33 property of the trust.

34 (b) Sales of personal property shall be conducted as provided in Article 29A of
 35 Chapter 1 of the General Statutes, entitled 'Judicial Sales.'

36 **"§ 36A-139. Disposition of real property without court order.**

37 Pursuant to the authority contained in G.S. 36A-136(8), the trustee has the power to
 38 sell, exchange, partition, or otherwise dispose of, or grant options with respect to, real
 39 property of the trust upon such terms as he may deem just and for the advantage of the
 40 trust. The procedure shall be as provided in Article 29A of Chapter 1 of the General
 41 Statutes, entitled 'Judicial Sales.' If the clerk of superior court is petitioned and provided
 42 with satisfactory proof that the best interest of the estate will be served by private sale,
 43 the clerk may authorize a private sale in accordance with the provisions of G.S.1-339.33
 44 through G.S.1-339.40.

1 **"§ 36A-140. Disposition of real property by court order.**

2 (a) A trustee may request the clerk of superior court to issue to him an order to
3 sell, exchange, partition, or otherwise dispose of, or grant options with respect to, real
4 property of the trust.

5 (b) Sales of real property shall be conducted as provided in Article 29A of
6 Chapter 1 of the General Statutes, entitled 'Judicial Sales.'"

7 Sec. 2. G.S. 1-339.4 is amended by adding a new subdivision to read:

8 "(8) In a proceeding to sell property of a trust, the trustee."

9 Sec. 3. G.S. 1-339.10(c) reads as rewritten:

10 "(c) Whenever an executor or trustee of a testamentary trust is ordered to sell real
11 property, the judge or clerk having jurisdiction shall require such ~~executor, executor or~~
12 trustee of a testamentary trust, before receiving the proceeds of the sale, to furnish bond
13 to cover such proceeds, unless the will provides otherwise, in which case the judge or
14 clerk may require such bond."

15 Sec. 4. This act is effective upon ratification, and applies to all trusts in
16 existence on the date of ratification or created on or after the date of ratification.