

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 566

Short Title: Amend Powers of Fiduciaries.

(Public)

Sponsors: Representatives Richardson and Neely.

Referred to: Judiciary II.

March 28, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO THE POWERS OF
FIDUCIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36A-66 reads as rewritten:
"§ 36A-66. **Trustee buying from or selling to self.**

~~No~~ Unless expressly authorized by a written instrument creating or properly amending the trust, no trustee shall directly or indirectly buy or sell any property for the trust from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee or of an affiliate, or from or to a relative, employer, partner, or other business ~~associate~~ associate of such trustee or of an affiliate."

Sec. 2. G.S. 36A-78 reads as rewritten:
"§ 36A-78. **Power of settlor.**

The settlor of any trust affected by this Article may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve liabilities which would otherwise be imposed upon him by this Article; or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by this Article; or add duties, restrictions, liabilities, privileges, or powers, to those imposed or granted by this

1 Article; but no act of the settlor shall relieve a trustee from the duties, restrictions, and
2 liabilities imposed upon him by G.S. 36A-62, ~~36A-63~~ and G.S. ~~36A-66~~ and G.S. 36A-63."

3 Sec. 3. G.S. 28A-13-3(a)(31) reads as rewritten:

4 "(31) To exercise such additional lawful powers as are expressly
5 conferred upon him by the will, including the power to buy
6 or sell any property for the estate from or to the personal
7 representative."

8 Sec. 4. Chapter 32A of the General Statutes is amended by adding a new
9 section to read:

10 "**§ 32A-4. Express authorization of self-dealing transactions.**

11 Where expressly authorized by the power of attorney, the attorney-in-fact may buy or
12 sell any property for the principal from or to the attorney-in-fact."

13 Sec. 5. G.S. 32-27(27) reads as rewritten:

14 "(27) Distribute in Cash or Kind. – To make distribution of capital assets
15 of the estate or trust in kind or in cash, or partially in kind and
16 partially in cash, in divided or undivided interests, either pro rata or
17 by a method other than pro rata among all distributees, without
18 regard to the income tax basis or other special tax attributes of such
19 assets, as the fiduciary finds to be most practicable and for the best
20 interests of the distributees; and to determine the value of capital
21 assets for the purpose of making distribution thereof if and when
22 there be more than one distributee thereof, which determination shall
23 be binding upon the distributees unless clearly capricious, erroneous
24 and inequitable; provided, however, that the fiduciary shall not
25 exercise any power under this subdivision unless the fiduciary holds
26 title to or an interest in the property to be distributed and is required
27 or authorized to make distribution thereof."

28 Sec. 6. G.S. 32-27 is amended by adding a new subdivision to read:

29 "(28.1) Pay to Custodian Under Uniform Gifts or Transfers to Minors
30 Act. – To make any distribution of income or principal, including
31 real property, for the benefit of any distributee to a custodian
32 under the North Carolina Uniform Transfers to Minors Act,
33 Chapter 33A of the General Statutes, or under the provisions of
34 any similar statute in the state where the minor or the custodian
35 resides. Unless a custodian is specifically named in the governing
36 instrument, the fiduciary shall have absolute discretion to
37 nominate any qualified individual or financial institution,
38 including the fiduciary, to serve as custodian, and to nominate one
39 or more substitute custodians."

40 Sec. 7. G.S. 32-27(25.1) reads as rewritten:

41 "(25.1) Divide One Trust into Several Trusts ~~Trusts~~ and Make
42 Distributions From Those Trusts. – To divide the funds and
43 properties constituting any trusts into two or more identical

1 separate trusts that represent two or more fractional shares of the
2 funds and properties being ~~divided.~~divided, and to make
3 distributions of income and principal by a method other than pro
4 rata from the separate trusts so created as the fiduciary determines
5 to be in the best interests of the trust beneficiaries. In any case
6 where a single trust has been divided by the fiduciary into two
7 separate trusts, one of which is fully exempt from the federal
8 generation-skipping transfer tax and one of which is fully subject
9 to that tax, the fiduciary may thereafter, to the extent possible
10 consistent with the terms of the governing instrument, determine
11 the value of any mandatory or discretionary distributions to trust
12 beneficiaries on the basis of the combined value of both trusts, but
13 may satisfy such distributions from the separate trusts in a manner
14 designed to minimize the current and potential generation-
15 skipping transfer tax."

16 Sec. 8. G.S. 36A-136 is amended by adding a new subdivision to read:

17 "(24) To divide the funds and properties constituting any trust into two or
18 more identical separate trusts that represent two or more fractional
19 shares of the funds and properties being divided, and to make
20 distributions of income and principal by a method other than pro rata
21 from the separate trusts so created as the fiduciary determines to be in
22 the best interests of the trust beneficiaries. In any case where a single
23 trust has been divided by the fiduciary into two separate trusts, one of
24 which is fully exempt from the federal generation-skipping transfer tax
25 and one of which is fully subject to that tax, the fiduciary may
26 thereafter, to the extent possible consistent with the terms of the
27 governing instrument, determine the value of any mandatory or
28 discretionary distributions to trust beneficiaries on the basis of the
29 combined value of both trusts, but may satisfy such distributions by a
30 method other than pro rata from the separate trusts in a manner designed
31 to minimize the current and potential generation-skipping transfer tax."

32 Sec. 9. G.S. 28A-22-5 reads as rewritten:

33 **"§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers**
34 **in trust for surviving spouse. ~~trust.~~**

35 (a) Subject to the provisions of subsection (b) of this section, whenever ~~Whenever~~
36 under any will or trust indenture the executor, trustee or other fiduciary is required to, or
37 has an option to, satisfy a bequest or transfer in trust to or for the benefit of the surviving
38 spouse of a decedent by a transfer of assets of the estate or trust in kind at the values as
39 finally determined for federal estate tax purposes, the executor, trustee or other fiduciary
40 shall, in the absence of contrary provisions in such will or trust indenture, be required to
41 satisfy such bequest or transfer by the distribution of assets fairly representative of the
42 appreciation or depreciation in the value of all property available for distribution in
43 satisfaction of such bequest or transfer.

1 (b) The provisions of subsection (a) of this section shall not apply unless either:

2 (1) The decedent's surviving spouse is the beneficiary of the bequest or trust
3 transfer described in subsection (a) of this section or of the residue of
4 the estate or trust; or

5 (2) Any 'skip person', as that term is defined in Chapter 13 of the Internal
6 Revenue Code of 1986, as amended, is or may be a current or future
7 beneficiary of the bequest or trust transfer described in subsection (a) of
8 this section or of the residue of the estate or trust, and the value of the
9 decedent's gross estate for federal tax purposes exceeds the value of the
10 decedent's unused generation-skipping tax exemption available under
11 Chapter 13 of the Internal Revenue Code of 1986, as amended."

12 Sec. 10. G.S. 35A-1251 is amended by adding a new subdivision to read:

13 "(5a) To renounce any interest in property as provided in Chapter 31B
14 of the General Statutes, or as otherwise allowed by law."

15 Sec. 11. G.S. 35A-1252 is amended by adding a new subdivision to read:

16 "(4a) To renounce any interest in property as provided in Chapter 31B
17 of the General Statutes, or as otherwise allowed by law."

18 Sec. 12. G.S. 35A-1251 is amended by adding two new subdivisions to read:

19 "(21) To transfer to the spouse of the ward those amounts authorized for
20 transfer to the spouse pursuant to 42 United States Code § 1396r-
21 5.

22 (22) To create a trust for the benefit of the ward pursuant to 42 United
23 States Code § 1396p(4), provided that all amounts remaining in
24 the trust upon the death of the ward, other than those amounts
25 which must be paid to a state government, are to be paid to the
26 estate of the ward."

27 Sec. 13. G.S. 35A-1116 is amended by adding a new subsection to read:

28 "(d) The provisions of this section shall also apply to all parties to any proceedings
29 under this Chapter, including a guardian who has been removed from office and the
30 sureties on the guardian's bond."

31 Sec. 14. G.S. 37-22(c) reads as rewritten:

32 "(c) Except as otherwise provided in this section, distributions made from ordinary
33 income ~~or from realized capital gains~~ by a regulated investment company or by a trust
34 qualifying and electing to be taxed under federal law as a real estate investment trust are
35 income. All other distributions made by the company or trust, including short-term and
36 long-term capital gains distributions, whether in the form of cash or an option to take new
37 stock or cash or an option to purchase additional shares, are principal."

38 Sec. 15. Section 8 of Chapter 284 of the 1993 Session Laws reads as rewritten:

39 "Sec. 8. This act becomes effective January 1, 1994, and applies to trusts in existence
40 on that date or established on or after that date and to tax years of decedents' estates
41 beginning on or after that date, ~~except that Sections 4 through 7 of this act apply only to trusts~~
42 ~~established on or after January 1, 1994. except that for trusts established before January 1,~~

1 1994, Sections 4 through 7 of this act apply only to any expenses described in those
2 sections which are paid after July 1, 1994."

3 ♦ Sec. 16. Sections 1, 2, 3, 4, and 8 of this act are effective upon ratification,
4 and apply to all wills, trusts, and powers of attorney in existence on that date or executed
5 on or after that date. Section 9 is effective upon ratification, and applies to all
6 distributions made on or after that date. Sections 10 through 13 of this act become
7 effective July 1, 1995. Section 14 of this act becomes effective July 1, 1995, and applies
8 to any receipt received after July 1, 1995, by any trust or decedent's estate in existence on
9 that date. The remainder of this act is effective upon ratification.