

1 purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or
2 employee benefits of any kind, or any arrangement under which a person is nominee or
3 escrowee for another.

4 **"§ 36C-1-103. Definitions.**

5 In this Chapter:

- 6 (1) "Action", with respect to an act of a trustee, includes a failure to act.
7 (2) "Ascertainable standard" means a standard relating to an individual's
8 health, education, support, or maintenance within the meaning of
9 section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
10 (3) "Beneficiary" means a person who:
11 a. Has a present or future beneficial interest in a trust, vested or
12 contingent, including the owner of an interest by assignment or
13 transfer; or
14 b. In a capacity other than that of trustee, holds a power of
15 appointment over trust property.
16 (4) "Charitable trust" means a trust, including a split-interest trust as
17 described in section 4947 of the Internal Revenue Code, created for a
18 charitable purpose described in G.S. 36C-4-405(a).
19 (5) "Environmental law" means a federal, state, or local law, rule,
20 regulation, or ordinance relating to protection of the environment.
21 (6) "General guardian" means a general guardian as that term is defined in
22 G.S. 35A-1202(7).
23 (7) "Guardian of the estate" means a guardian of the estate as that term is
24 defined in G.S. 35A-1202(9).
25 (8) "Guardian of the person" means a guardian of the person as that term
26 is defined in G.S. 35A-1202(10).
27 (9) "Interests of the beneficiaries" means the beneficial interests provided
28 in the terms of the trust.
29 (10) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
30 amended from time to time. Each reference to a provision of the
31 Internal Revenue Code shall include any successor to that provision.
32 (11) "Jurisdiction", with respect to a geographic area, includes a state or
33 country.
34 (12) "Person" means an individual, corporation, business trust, estate, trust,
35 partnership, limited liability company, association, joint venture,
36 government; governmental subdivision, agency, or instrumentality;
37 public corporation, or any other legal or commercial entity.
38 (13) "Power of withdrawal" means a presently exercisable general power of
39 appointment other than a power:
40 a. Exercisable by a trustee and limited by an ascertainable
41 standard; or

- 1 b. Exercisable by another person only upon consent of the trustee
2 or a person holding an adverse interest.
- 3 (14) "Property" means anything that may be the subject of ownership,
4 whether real or personal, legal or equitable, or any interest therein.
- 5 (15) "Qualified beneficiary" means a living beneficiary who, on the date the
6 beneficiary's qualification is determined:
- 7 a. Is a distributee or permissible distributee of trust income or
8 principal;
- 9 b. Would be a distributee or permissible distributee of trust
10 income or principal if the interests of the distributees described
11 in sub-subdivision a. of this subdivision terminated on that date
12 without causing the trust to terminate; or
- 13 c. Would be a distributee or permissible distributee of trust
14 income or principal if the trust terminated on that date.
- 15 (16) "Revocable", as applied to a trust, means revocable by the settlor
16 without the consent of the trustee or a person holding an adverse
17 interest.
- 18 (17) "Settlor" means a person, including a testator, who creates, or
19 contributes property to, a trust. If more than one person creates or
20 contributes property to a trust, each person is a settlor of the portion of
21 the trust property attributable to that person's contribution except to the
22 extent another person has the power to revoke or withdraw that
23 portion.
- 24 (18) "Spendthrift provision" means a term of a trust that restrains both
25 voluntary and involuntary transfer of a beneficiary's interest.
- 26 (19) "State" means a state of the United States, the District of Columbia,
27 Puerto Rico, the United States Virgin Islands, or any territory or
28 insular possession subject to the jurisdiction of the United States. The
29 term includes an Indian tribe or band recognized by federal law or
30 formally acknowledged by a state.
- 31 (20) "Terms of a trust" means the manifestation of the settlor's intent
32 regarding a trust's provisions as expressed in the trust instrument or
33 established in a judicial proceeding.
- 34 (21) "Trust instrument" means an instrument executed by the settlor that
35 contains terms of the trust, including any amendments to the
36 instrument, and any modifications permitted by court order.
- 37 (22) "Trustee" includes an original, additional, and successor trustee, and a
38 co-trustee, whether or not appointed or confirmed by a court. The term
39 does not include trustees in mortgages and deeds of trusts.

40 **"§ 36C-1-104. Knowledge.**

1 (a) Subject to subsection (b) of this section, a person has knowledge of a fact if
2 the person:

- 3 (1) Has actual knowledge of it;
- 4 (2) Has received notice or notification of it; or
- 5 (3) From all the facts and circumstances known to the person at the time in
6 question, has reason to know it.

7 (b) An organization that conducts activities through employees has notice or
8 knowledge of a fact involving a trust only from the time the information was received
9 by an employee having responsibility to act for the trust, or would have been brought to
10 the employee's attention if the organization had exercised reasonable diligence. An
11 organization exercises reasonable diligence if it maintains reasonable routines for
12 communicating significant information to the employee having responsibility to act for
13 the trust and there is reasonable compliance with the routines. Reasonable diligence
14 does not require an employee of the organization to communicate information unless the
15 communication is part of the employee's regular duties or the employee knows a matter
16 involving the trust would be materially affected by the information.

17 **"§ 36C-1-105. Default and mandatory rules.**

18 (a) Except as otherwise provided in the terms of the trust, this Chapter governs
19 the duties and powers of a trustee, relations among trustees, and the rights and interests
20 of a beneficiary.

21 (b) The terms of a trust prevail over any provision of this Chapter except:

- 22 (1) The requirements for creating a trust;
- 23 (2) The duty of a trustee to act in good faith and in accordance with the
24 terms and purposes of the trust and the interests of the beneficiaries;
- 25 (3) The requirement that a trust and its terms be for the benefit of its
26 beneficiaries, and that the trust have a purpose that is lawful, not
27 contrary to public policy, and possible to achieve;
- 28 (4) The power of the court to modify or terminate a trust under
29 G.S. 36C-4-410 through G.S. 36C-4-416;
- 30 (5) The effect of a spendthrift provision and the rights of certain creditors
31 and assignees to reach a trust as provided in Article 5;
- 32 (6) The effect of an exculpatory term under G.S. 36C-10-1008;
- 33 (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a
34 person other than a trustee or beneficiary;
- 35 (8) Periods of limitation for commencing a judicial proceeding;
- 36 (9) The power of the court to take such action and exercise such
37 jurisdiction as may be necessary in the interests of justice; and
- 38 (10) The subject-matter jurisdiction of the court and venue for commencing
39 a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

40 **"§ 36C-1-106. Common law of trusts; principles of equity.**

41 The common law of trusts and principles of equity supplement this Chapter, except
42 to the extent modified by this Chapter or another statute of this State.

1 **"§ 36C-1-107. Governing law.**

2 The meaning and effect of the terms of a trust are determined by:

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

10 **"§ 36C-1-108. Principal place of administration.**

11 (a) Without precluding other means for establishing a sufficient connection with
12 the designated jurisdiction, terms of a trust designating the principal place of
13 administration are valid and controlling if:

- 14 (1) A trustee's principal place of business is located in, or a trustee is a
15 resident of, the designated jurisdiction; or
16 (2) All or part of the administration occurs in the designated jurisdiction.

17 (b) Without precluding the right of the court to order, approve, or disapprove a
18 transfer, the trustee may transfer the trust's principal place of administration to another
19 jurisdiction in accordance with the provisions of this subsection:

- 20 (1) If the trustee is transferring the trust's principal place of administration
21 to another state, the trustee shall provide written notice of the proposed
22 transfer to the qualified beneficiaries of the trust not less than 60 days
23 before initiating the transfer. If no qualified beneficiary notifies the
24 trustee of an objection to the proposed transfer on or before the date
25 specified in the notice, the trustee may make the transfer. If a qualified
26 beneficiary notifies the trustee of an objection to the proposed transfer
27 on or before the date specified in the notice, the authority of the trustee
28 to transfer the trust's principal place of administration in accordance
29 with the provisions of this section terminates.
30 (2) If the trustee is transferring the trust's principal place of administration
31 to a jurisdiction outside of the United States, the trustee shall provide
32 written notice of the proposed transfer to the qualified beneficiaries of
33 the trust and the transfer cannot be made until the written consent of all
34 the qualified beneficiaries is obtained.

35 (c) Anytime a trustee is required to provide a qualified beneficiary with written
36 notice of a proposed transfer of a trust's principal place of administration, the notice of
37 proposed transfer must include:

- 38 (1) The name of the jurisdiction to which the principal place of
39 administration is to be transferred;
40 (2) The address and telephone number at the new location at which the
41 trustee can be contacted;

- 1 (3) An explanation of the reasons for the proposed transfer;
2 (4) The date on which the proposed transfer is anticipated to occur; and
3 (5) If the proposed transfer is to another state, the date, not less than 60
4 days after the giving of the notice, by which the qualified beneficiary
5 must notify the trustee of an objection to the proposed transfer.

6 (d) In connection with a transfer of the trust's principal place of administration,
7 the trustee may transfer some or all of the trust property to a successor trustee
8 designated in the terms of the trust or appointed pursuant to G.S. 36C-7-704.

9 **"§ 36C-1-109. Methods and waiver of notice.**

10 (a) Notice to a person under this Chapter or the sending of a document to a
11 person under this Chapter must be accomplished in a manner reasonably suitable under
12 the circumstances and likely to result in receipt of the notice or document. Permissible
13 methods of notice or for sending a document include first-class mail, personal delivery,
14 delivery to the person's last known place of residence or place of business, or a properly
15 directed electronic message.

16 (b) Notice otherwise required under this Chapter, or a document otherwise
17 required to be sent under this Chapter, need not be provided to a person whose identity
18 or location is unknown to and not reasonably ascertainable by the trustee.

19 (c) Notice under this Chapter, or the sending of a document under this Chapter,
20 may be waived by the person to be notified or sent the document.

21 (d) Notice of a judicial proceeding must be given as provided in Article 2 of this
22 Chapter.

23 **"§ 36C-1-110. Others treated as qualified beneficiaries.**

24 (a) A charitable organization expressly designated to receive distributions under
25 the terms of a charitable trust has the rights of a qualified beneficiary under this Chapter
26 if the charitable organization, on the date the charitable organization's qualification is
27 being determined:

- 28 (1) Is a distributee or permissible distributee of trust income or principal;
29 (2) Would be a distributee or permissible distributee of trust income or
30 principal upon the termination of the interest of other distributees or
31 permissible distributees then receiving or eligible to receive
32 distributions, but the termination of those interests would not cause the
33 trust to terminate; or
34 (3) Would be a distributee or permissible distributee of trust income or
35 principal if the trust terminated on that date.

36 (b) A person appointed to enforce a trust created for the care of an animal or
37 another noncharitable purpose as provided in G.S. 36C-4-408 or G.S. 36C-4-409 has the
38 rights of a qualified beneficiary under this Chapter.

39 **"§ 36C-1-111. Nonjudicial settlement agreements.**

40 (a) For purposes of this section, "interested persons" means persons whose
41 consent would be required in order to achieve a binding settlement were the settlement
42 to be approved by the court.

1 **(b)** Interested persons may enter into a binding nonjudicial settlement agreement
2 with respect to any of the following matters involving a trust:

3 **(1)** The approval of a trustee's report or accounting;

4 **(2)** Direction to a trustee to perform or refrain from performing a
5 particular administrative act or the grant to a trustee of any necessary
6 or desirable administrative power, including a power granted pursuant
7 to G.S. 36C-8-816;

8 **(3)** The resignation or appointment of a trustee and the determination of a
9 trustee's compensation;

10 **(4)** Transfer of a trust's principal place of administration; and

11 **(5)** Liability of a trustee for any action taken pursuant to subdivisions (1)
12 through (4) of this subsection.

13 **(c)** A nonjudicial settlement agreement is valid only to the extent it does not
14 violate a material purpose of the trust and includes terms and conditions that could be
15 properly approved by the court under this Chapter or other applicable law.

16 **(d)** Any interested person may request the court to approve a nonjudicial
17 settlement agreement, to determine whether the representation as provided in Article 3
18 of this Chapter was adequate, and to determine whether the agreement contains terms
19 and conditions the court could have properly approved.

20 **"§ 36C-1-112. Rules of construction.**

21 The rules of construction that apply in this State to the interpretation of and
22 disposition of property by will also apply as appropriate to the interpretation of the
23 terms of a trust and the disposition of the trust property.

24 "Article 2.

25 "Judicial Proceedings.

26 **"§ 36C-2-201. Role of court in administration of trust.**

27 **(a)** The court may intervene in the administration of a trust to the extent its
28 jurisdiction is invoked by a party or as provided by law.

29 **(b)** A trust is not subject to continuing judicial supervision, except as provided in
30 G.S. 36C-2-208 and G.S. 36C-2-209, unless ordered by the court.

31 **(c)** A judicial proceeding involving a trust may relate to any matter involving the
32 trust's administration, including a request for instructions and an action to declare rights.

33 **"§ 36C-2-202. Jurisdiction over trustee and beneficiary.**

34 **(a)** By accepting the trusteeship of a trust having its principal place of
35 administration in this State, or by moving the principal place of administration to this
36 State, the trustee submits personally to the jurisdiction of the courts of this State
37 regarding any matter involving the trust.

38 **(b)** With respect to their interests in the trust, the beneficiaries of a trust having
39 its principal place of administration in this State are subject to the jurisdiction of the
40 courts of this State regarding any matter involving the trust. By accepting a distribution

1 from such a trust, the recipient submits personally to the jurisdiction of the courts of this
2 State regarding any matter involving the trust.

3 (c) This section does not preclude other methods of obtaining jurisdiction over a
4 trustee, beneficiary, or other person receiving property from the trust.

5 **"§ 36C-2-203. Subject matter jurisdiction.**

6 (a) The clerks of superior court of this State have original jurisdiction over all
7 proceedings concerning the internal affairs of trusts. Except as provided in subdivision
8 (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings
9 concerning the internal affairs of the trust are those concerning the administration and
10 distribution of trusts, the declaration of rights, and the determination of other matters
11 involving trustees and trust beneficiaries, to the extent that those matters are not
12 otherwise provided for in the governing instrument. These include proceedings:

13 (1) To appoint or remove a trustee;

14 (2) To permit a trustee to resign or renounce; however, unless the trustee
15 is required to account to the clerk of superior court, when the
16 governing instrument names or provides a procedure to name a
17 successor trustee, and the successor trustee is willing to serve, no
18 trustee shall be required to initiate a proceeding to resign or renounce
19 as trustee;

20 (3) To review trustees' fees pursuant to Article 5A of Chapter 32 of the
21 General Statutes and review and settle interim or final accounts;

22 (4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a
23 total return unitrust to an income trust, or (iii) change the percentage
24 used to calculate the unitrust amount or the method used to determine
25 the fair market value of the trust as provided in G.S. 37A-1-104.3;

26 (5) To transfer a trust's principal place of administration;

27 (6) To require a trustee to provide bond and determine the amount of the
28 bond, excuse a requirement of bond, reduce the amount of bond,
29 release the surety, or permit the substitution of another bond with the
30 same or different sureties;

31 (7) To make such orders with respect to a trust for the care of animals as
32 provided in G.S. 36C-4-408;

33 (8) To make such orders with respect to a noncharitable trust without an
34 ascertainable beneficiary as provided in G.S. 36C-4-409; and

35 (9) To ascertain beneficiaries, to determine any question arising in the
36 administration or distribution of any trust, including questions of
37 construction of trust instruments, and to determine the existence or
38 nonexistence of trusts created other than by will and the existence or
39 nonexistence of any immunity, power, privilege, duty, or right. Upon
40 motion of a party, the clerk of superior court may determine that a
41 proceeding to determine an issue listed in this subdivision shall be

1 originally heard by the superior court division of the General Court of
2 Justice.

3 (b) Nothing in this section shall be construed (i) to confer upon the clerk of
4 superior court any authority to regulate or supervise the actions of a trustee except to the
5 extent that the trustee's actions are inconsistent with the provisions of the governing
6 instrument or of State law; or (ii) to confer upon any party any additional right, remedy,
7 or cause of action not otherwise conferred by law.

8 (c) Nothing in this section affects the right of a person to file an action for
9 declaratory relief under the provisions of Article 26 of Chapter 1 of the General
10 Statutes. In the event either the petitioner or respondent in a trust proceeding requests
11 declaratory relief under the provisions of Article 26 of Chapter 1 of the General
12 Statutes, either party may move for a transfer of the proceeding to the superior court
13 division of the General Court of Justice as provided in Article 21 of Chapter 7A of the
14 General Statutes. In absence of removal to superior court, the provisions of Article 26 of
15 Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent not
16 inconsistent with this Article.

17 (d) The clerk of superior court shall not, over the objection of a party, entertain
18 proceedings under this section involving a trust having its principal place of
19 administration in another state, except:

20 (1) When all appropriate parties could not be bound by litigation in the
21 courts of the state in which the trust had its principal place of
22 administration; or

23 (2) When the interests of justice otherwise would be seriously impaired.

24 The clerk of superior court may condition a stay or dismissal of a proceeding under
25 this section on the consent of any party to jurisdiction of the state in which the trust has
26 its principal place of administration, or the clerk of superior court may grant a
27 continuance or enter any other appropriate order.

28 (e) Any party to a proceeding before the clerk of superior court may appeal from
29 the decision of the clerk to a superior court judge as provided for estate matters in
30 G.S. 1-301.3.

31 (f) Without otherwise limiting the jurisdiction of the superior court division of
32 the General Court of Justice, proceedings concerning the internal affairs of trusts shall
33 not include, and, therefore, the clerk of superior court shall not have jurisdiction under
34 subsection (a) of the following:

35 (1) Actions to reform, terminate, or modify a trust as provided by
36 G.S. 36C-4-410 through G.S. 36C-4-416;

37 (2) Actions by or against creditors or debtors of a trust;

38 (3) Actions involving claims for monetary damages, including claims for
39 breach of fiduciary duty, fraud, and negligence;

40 (4) Actions to enforce a charitable trust under G.S. 36C-4-405A; and

41 (5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.

1 **"§ 36C-2-204. Venue.**

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

6 (1) If the trustee is required to account to the clerk of superior court, then
7 unless the terms of the governing instrument provide otherwise, venue
8 for proceedings under G.S. 36C-2-203 involving trusts is the place
9 where the accountings are filed.

10 (2) If the trustee is not required to account to the clerk of superior court,
11 then unless the terms of the governing instrument provide otherwise,
12 venue for proceedings under G.S. 36C-2-203 involving trusts is:

13 a. In the case of an inter vivos trust, in any county of this State in
14 which the trust has its principal place of administration or
15 where any beneficiary resides; or

16 b. In the case of a testamentary trust, in any county of this State in
17 which the trust has its principal place of administration, where
18 any beneficiary resides, or in which the testator's estate was
19 administered.

20 (3) Unless otherwise designated in the governing instrument, the principal
21 place of administration of the trust is the trustee's usual place of
22 business where the records pertaining to the trust are kept, or at the
23 trustee's residence if the trustee has no such place of business. In the
24 case of co-trustees, the principal place of administration, if not
25 otherwise designated in the governing instrument, is:

26 a. The usual place of business of the corporate trustee if there is
27 but one corporate or co-trustee; or

28 b. The usual place of business or residence of any of the
29 co-trustees.

30 (4) If a trust has no trustee, venue for a judicial proceeding for the
31 appointment of a trustee is in any county of this State in which a
32 beneficiary resides, in any county in which trust property is located, in
33 the county of this State specified in the trust instrument, if any county
34 is so specified, or if the trust is created by will, in the county in which
35 the decedent's estate was or is being administered.

36 **"§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and**
37 **joinder.**

38 (a) Contested Proceedings. – Trust proceedings before the clerk of superior court
39 brought against adverse parties shall be commenced as is prescribed for civil actions.
40 Upon the filing of the petition or complaint, the clerk of superior court shall docket the
41 cause as an estate matter. All parties not joined as petitioners shall be joined as
42 respondents. The clerk of superior court shall issue the summons for the respondents.

1 The clerk of superior court may order that additional persons be joined as respondents
2 and shall issue the summons for the additional persons. The summons shall notify the
3 respondents to appear and answer the petition within 10 days after its service upon the
4 respondents. The summons shall comply with the requirements set forth in G.S. 1-394
5 for a special proceeding summons except that the clerk of superior court shall indicate
6 on the summons by appropriate words that the summons is issued in an estate matter
7 and not in a special proceeding or in a civil action and shall be served upon the
8 respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time
9 for responding to the petition or complaint has expired, any party or the clerk of
10 superior court may give notice to all parties of a hearing.

11 (b) Uncontested Proceedings. – Trust proceedings before the clerk of superior
12 court in which all the parties join in the proceeding shall be commenced by the filing of
13 a petition, setting forth the facts entitling the petitioners to relief and the nature of the
14 relief demanded. In such proceedings, the clerk of superior court may hear and decide
15 the petition summarily.

16 (c) Pleadings. – The petition or complaint filed in a trust proceeding before the
17 clerk of superior court shall contain a short and plain statement of the claim which is
18 sufficiently particular to give the court and the parties notice of the transactions,
19 occurrences, or series of transactions, intended to be proved showing that the pleaders
20 entitled to relief, and a demand for judgment for the relief to which the pleader is
21 entitled. Each averment of a pleading should be simple, concise, and direct. No
22 technical forms of pleadings or motions are required. A party may set forth two or more
23 statements of a claim or defense alternatively or hypothetically. The signature of an
24 attorney or party constitutes a certificate by that attorney or party that (i) the attorney or
25 party has read the pleading, motion, or other paper; (ii) that to the best of the attorney's
26 or party's knowledge, information, and belief formed after reasonable inquiry it is well
27 grounded in fact and is warranted by existing law or a good faith argument for the
28 extension, modification, or reversal of existing law; and (iii) that it is not interposed for
29 any improper purpose, such as to harass or to cause unnecessary delay or needless
30 increase in the cost of litigation. All pleadings shall be so construed as to do substantial
31 justice.

32 (d) Extensions of Time. – The clerk of superior court, for cause shown at any
33 time in the clerk's discretion, with or without motion or notice, may enter an order
34 enlarging the period of time within which an act is required or permitted by this Article,
35 by any applicable Rules of Civil Procedure or by order of the court, if the request is
36 made before the expiration of the period originally prescribed, but not to exceed 10
37 days, nor more than once. Upon motion made after the expiration of the specified
38 period, the clerk of superior court may permit the act where the failure to act was the
39 result of excusable neglect. Notwithstanding any other provision of this subsection, the
40 parties to a proceeding may enter into binding stipulations, without approval of the clerk
41 of superior court, enlarging the time within which an act is required or permitted by this

1 Article, by any applicable Rules of Civil Procedure or by order of the court, not to
2 exceed 30 days.

3 (e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise
4 directs, Rules 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, and 45 of the Rules of Civil
5 Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of
6 superior court, the clerk may further direct that the following Rules of Civil Procedure
7 shall apply: 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37; however,
8 nothing in Rule 17 shall require the appointment of a guardian ad litem for a party
9 represented except as provided under G.S. 36C-3-305. In applying these Rules to a trust
10 proceeding pending before the clerk of superior court, the term "judge" shall be
11 construed as "clerk of superior court."

12 (f) Consolidation. – When a trust proceeding pending before the clerk of superior
13 court and a civil action pending before the superior court division of the General Court
14 of Justice involve a common question of law or fact, upon the court's motion or motion
15 of a party to either the trust proceeding or the civil action, a superior court judge may
16 order a consolidation of the trust proceeding and civil action, and the judge may make
17 such orders concerning proceedings therein as may tend to avoid unnecessary costs or
18 delay. Upon the entry of an order consolidating a trust proceeding and civil action, the
19 jurisdiction for all matters pending in both the trust proceeding and the civil action shall
20 be vested in the superior court.

21 (g) Joinder. – In any civil action pending before a superior court division of the
22 General Court of Justice, a party asserting a claim for relief as an original claim,
23 counterclaim, cross claim, or third-party claim, may join, either as independent or as
24 alternate claims, as many claims, legal or equitable, as he has against an opposing party
25 notwithstanding the fact that such claims may otherwise be within the exclusive
26 jurisdiction of the clerk of superior court.

27 (h) Orders Upon Consolidation/Joinder. – Upon the consolidation of a trust
28 proceeding and civil action or joinder of claims pursuant to subsection (f) or (g) of this
29 section, the clerk of superior court or the judge may make such orders as appropriate to
30 protect the interests of the parties and to avoid unnecessary costs or delay.
31 Notwithstanding the consolidation or joinder of claims pursuant to subsection (f) or (g)
32 of this section, the clerk of court's exclusive jurisdiction as set forth in
33 G.S. 36C-2-203(a) shall not be stayed unless so ordered by the court.

34 **"§ 36C-2-206. Representation of parties.**

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

- 39 (1) Parties shall be represented as provided in Article 3 of this Chapter.
40 (2) In the case of any party represented by another as provided in
41 subdivision (1) of this section, service of process shall be made by
42 serving such representative.

1 **"§ 36C-2-207. Waiver of notice.**

2 A party, or the representative of the party as provided in G.S. 36C-2-206, may waive
3 notice by a writing signed by the party, the representative, or the attorney of the party or
4 the representative, and filed in the proceeding.

5 **"§ 36C-2-208. Accounting to clerk.**

6 (a) No trustee, including a trustee appointed by the clerk of superior court, shall
7 be required to account to the clerk of superior court unless the trust instrument directs
8 that the trustee shall be required to account to the clerk of superior court or unless the
9 trustee is otherwise required by law to account to the clerk of superior court.

10 (b) If the trustee is required to account to the clerk of superior court, the trustee
11 shall not be permitted to resign as trustee until a final account of the trust estate is filed
12 with the clerk of superior court and until the court shall be satisfied that the account is
13 true and correct, unless the terms of the trust instrument provide otherwise.

14 (c) Notwithstanding the provisions of subsections (a) and (b) of this section,
15 pursuant to a proceeding brought under G.S. 36C-4-405A, the clerk of superior court
16 may require a trustee of a charitable trust to account to the clerk of superior court.

17 **"§ 36C-2-209. Qualification and accounting of trustee of a testamentary trust.**

18 (a) For any testamentary trust created under a will of a decedent executed before
19 January 1, 2004, the trustee shall first qualify under the laws applicable to executors,
20 and shall file in the office of the clerk of superior court of the county where the will is
21 probated inventories of the assets that come into the trustee's hands and annual and final
22 accounts of the trust that are the same as required of executors and administrators. The
23 power of the clerk of superior court to enforce the filing and the clerk's duties to audit
24 and approve the trustee's inventories and accounts shall be the same as the clerk's
25 powers and duties with respect to the inventories and accounts of executors and
26 administrators. This subsection shall not apply to the extent that the will makes a
27 different provision.

28 (b) For any testamentary trust created under a will of a decedent executed on or
29 after January 1, 2004, the provisions of which direct the trustee to account to the clerk
30 of superior court, the trustee shall first qualify under the laws applicable to executors
31 and shall file in the office of the clerk of superior court of the county where the will is
32 probated inventories of the assets that come into the trustee's hands and annual and final
33 accounts of the trust that are the same as are required of executors and administrators.
34 The power of the clerk of superior court to enforce the filing and the clerk's duties to
35 audit and approve the trustee's inventories and accounts shall be the same as the clerk's
36 powers and duties with respect to the inventories and accounts of executors and
37 administrators. No trustee, including a trustee appointed by the clerk of superior court,
38 shall be required to account to the clerk of superior court unless the will directs that the
39 trustee shall be required to account to the clerk of superior court or unless otherwise
40 required by law.

1 (c) The Administrative Office of the Courts may adopt rules regulating the
2 registration or indexing of testamentary trusts.

3 "Article 3.

4 "Representation.

5 **"§ 36C-3-301. Representation: basic effect.**

6 (a) Notice to a person who may represent and bind another person under this
7 Article has the same effect as if notice were given directly to the other person.

8 (b) The consent of a person who may represent and bind another person under
9 this Article is binding on the person represented unless the person represented objects to
10 the representation before the consent would otherwise have become effective.

11 (c) Except as otherwise provided in G.S. 36C-4-411 and G.S. 36C-6-602, a
12 person who under this Article may represent a settlor who lacks capacity may receive
13 notice and give a binding consent on the settlor's behalf.

14 (d) A settlor may not represent and bind a beneficiary under this Article with
15 respect to the termination or modification of trust under G.S. 36C-4-411(a).

16 **"§ 36C-3-302. Representation by holder of general testamentary power of**
17 **appointment.**

18 The sole holder or all coholders of a power of revocation or a presently exercisable
19 general power of appointment, including one in the form of a power of amendment,
20 shall represent other persons to the extent that their interests, as permissible appointees,
21 takers in default, or otherwise, are subject to the power. To the extent there is no
22 conflict of interest between the holder of a general testamentary power of appointment
23 and the persons represented with respect to the particular question or dispute, the holder
24 may represent and bind persons whose interests, as permissible appointees, takers in
25 default, or otherwise, are subject to the power.

26 **"§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

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

30 (1) A general guardian or a guardian of the estate may represent and bind
31 the estate that the guardian controls.

32 (2) A guardian of the person may represent and bind the ward if a general
33 guardian or guardian of the estate of the ward's estate has not been
34 appointed.

35 (3) An agent under a power of attorney having authority to act with
36 respect to the particular question or dispute may represent and bind the
37 principal.

38 (4) A trustee may represent and bind the beneficiaries of the trust.

39 (5) A personal representative of a decedent's estate may represent and bind
40 persons interested in the estate.

41 (6) A parent may represent and bind the parent's minor child if a general
42 guardian, guardian of the estate, or guardian of the person for the child

1 "§ 36C-4-401A. Interest of trustee as beneficiary of life insurance or other death
2 benefit sufficient to support inter vivos or testamentary trust.

3 (a) The interest of a trustee as the beneficiary of a life insurance policy is a
4 sufficient property interest or res to support the creation of an inter vivos or
5 testamentary trust notwithstanding the fact that the insured or any other person or
6 persons reserves or has the right to exercise any one or more of the following rights or
7 powers:

8 (1) To change the beneficiary;

9 (2) To surrender the policy and receive the cash surrender value;

10 (3) To borrow from the insurance company issuing the policy or
11 elsewhere using the policy as collateral security;

12 (4) To assign the policy; or

13 (5) To exercise any other right in connection with the policy commonly
14 known as an incident of ownership of that policy.

15 The term "life insurance policy" includes life, annuity, and endowment contracts, or
16 any variation or combination of those contracts, and any agreement entered into by an
17 insurance company in connection with life, annuity, or endowments contracts.

18 (b) The interest of a trustee as the beneficiary of a death benefit under an
19 employee benefit plan or group life insurance policy is a sufficient property interest or
20 res to support the creation of an inter vivos or testamentary trust notwithstanding the
21 fact that the insured, employer, insurer or administrator of the plan reserves or has the
22 right to revoke or otherwise defeat the designation or assignment or to exercise any one
23 or more of the rights or powers incident to employee benefit plans or group life
24 insurance policies.

25 The term "employee benefit plan" includes pension, retirement, death benefit,
26 deferred compensation, employment, agency, retirement annuity, stock bonus,
27 profit-sharing or employees' savings contracts, plans, systems or trusts; and trusts,
28 securities or accounts established or held pursuant to the federal Self-Employed
29 Individuals Tax Retirement Act of 1962, the federal Employee Retirement Income
30 Security Act of 1974, or similar legislation. The term "group life insurance policy"
31 includes group life, industrial life, accident, and health insurance policies having death
32 benefits.

33 (c) A testator having the right to designate the beneficiary under a life insurance
34 policy, employee benefit plan, or group life insurance policy described in subsection (a)
35 or (b) of this section may designate as that beneficiary a trustee named or to be named
36 in the testator's will whether or not the will is in existence at the time of the designation.
37 The proceeds received by the trustee shall be held and disposed of as part of the trust
38 estate under the terms of the will as they exist at the death of the testator. If no trustee
39 makes claim to the proceeds within six months after the death of the testator, payments
40 shall be made to the personal representative of the estate of the testator unless it is
41 otherwise provided by an alternative designation or by the policy or plan. The proceeds
42 received by the trustee shall not be subject to claims against the estate of the testator to

1 estate or inheritance taxes to any greater extent than if the proceeds were payable
2 directly to the beneficiary or beneficiaries named in the trust. The proceeds may be
3 commingled with any other assets that may properly become part of such trust, but the
4 proceeds shall not become part of the testator's estate for purposes of trust
5 administration unless the will expressly so provides.

6 **"§ 36C-4-402. Requirements for creation.**

7 (a) A trust is created only if:

8 (1) The settlor has capacity to create a trust;

9 (2) The settlor indicates an intention to create the trust;

10 (3) The trust has a definite beneficiary or is:

11 a. A charitable trust;

12 b. A trust for the care of an animal, as provided in
13 G.S. 36C-4-408;

14 c. A trust for a noncharitable purpose, as provided in
15 G.S. 36C-4-409;

16 (4) The trustee has duties to perform; and

17 (5) The same person is not the sole trustee and sole beneficiary.

18 (b) A beneficiary is definite if the beneficiary can be ascertained now or in the
19 future, subject to any applicable rule against perpetuities.

20 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If
21 the power is not exercised within a reasonable time, the power fails and the property
22 subject to the power passes to the persons who would have taken the property had the
23 power not been conferred.

24 **"§ 36C-4-403. Trusts created in other jurisdictions.**

25 A trust not created by will is validly created if its creation complies with the law of
26 the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction
27 in which, at the time of creation:

28 (1) The settlor was domiciled, had a place of abode, or was a national;

29 (2) A trustee was domiciled or had a place of business; or

30 (3) Any trust property was located.

31 **"§ 36C-4-404. Trust purposes.**

32 A trust may be created only to the extent that its purposes are lawful, not contrary to
33 public policy, and possible to achieve. A trust and its terms must be for the benefit of its
34 beneficiaries.

35 **"§ 36C-4-405. Charitable purposes.**

36 (a) A charitable trust may be created for the relief of poverty, the advancement of
37 education or religion, the promotion of health, scientific, benevolent, literary,
38 governmental, or municipal purposes, or other purposes the achievement of which is
39 beneficial to the community.

40 (b) It is the policy of the State of North Carolina that gifts for charitable
41 purposes, whether in trust or otherwise, are valid, notwithstanding the fact that the gift

1 is made in general terms, and this section shall be construed liberally to effect this
2 policy.

3 (c) No gift for charitable purposes, whether in trust or otherwise, is void or
4 invalid because:

5 (1) The gift is in general terms or is uncertain as to the specific charitable
6 purposes;

7 (2) When the gift is made in trust, the trustee is granted discretionary
8 powers in the selection and designation of the beneficiaries of that
9 charitable trust or in carrying out the purpose of that trust;

10 (3) The trustee or other recipient of the gift is given no specific
11 instructions, powers, or duties as to the manner or means of carrying
12 out those charitable purposes; or

13 (4) The gift contravenes any statute or rule against perpetuities.

14 (d) When any gift is made in general terms, the trustee or other recipient of the
15 gift shall have the right and power:

16 (1) To select from time to time one or more specific charitable
17 beneficiaries or purposes for which any trust or property or income
18 shall be held and administered; and

19 (2) To determine the means to accomplish those charitable purposes,
20 unless otherwise provided, including the creation of corporations or
21 other legal entities for those purposes.

22 (e) For purposes of this section, the reference to a "gift" or "gifts" includes both
23 inter vivos and testamentary gifts, grants, and other transfers.

24 **"§ 36C-4-405A. Enforcement of charitable gift or trust.**

25 (a) The settlor of a charitable trust, the Attorney General, the district attorney, a
26 beneficiary, or any other interested party may maintain a proceeding to enforce a
27 charitable trust, including the following:

28 (1) A proceeding to require a trustee to make a selection as may be
29 necessary to establish the charitable beneficiaries or purposes for
30 which the trust was established, as provided in subsections (d)(1) and
31 (d)(2) of G.S. 36C-4-405;

32 (2) A proceeding for breach of fiduciary duty if there is reason to believe
33 that the trust property has been mismanaged through negligence or
34 fraud; and

35 (3) A proceeding for an accounting of the trustee's administration of the
36 trust.

37 (b) The donor of a charitable gift, the Attorney General, the district attorney, or
38 any other interested party may maintain a proceeding to enforce the gift, including a
39 proceeding to require the recipient of the gift to make a selection as may be necessary to
40 establish the charitable beneficiaries or purposes for which the gift was intended, as
41 provided in subsections (d)(1) and (d)(2) of G.S. 36C-4-405.

42 **"§ 36C-4-406. Creation of trust induced by fraud, duress, or undue influence.**

1 A trust is voidable to the extent that its creation was induced by fraud, duress, or
2 undue influence.

3 **"§ 36C-4-407. Evidence of oral trust.**

4 Except as required by a statute other than this Chapter, a trust need not be evidenced
5 by a trust instrument, but the creation of an oral trust and its terms may be established
6 only by clear and convincing evidence.

7 **"§ 36C-4-408. Trust for care of animal.**

8 (a) Subject to the provisions of this section, a trust for the care of one or more
9 designated domestic or pet animals alive at the time of creation of the trust is valid.

10 (b) Except as expressly provided otherwise in the trust instrument, no portion of
11 the principal or income may be converted to the use of the trustee or to any use other
12 than for the benefit of the designated animal or animals.

13 (c) The trust terminates at the death of the animal or last surviving animal. Upon
14 termination, the trustee shall transfer the unexpended trust property in the following
15 order:

16 (1) As directed in the trust instrument;

17 (2) If the trust was created in a preresiduary clause in the transferor's will
18 or in a codicil to the transferor's will, under the residuary clause in the
19 transferor's will;

20 (3) If no taker is produced by the application of subdivision (1) or (2) of
21 this subsection, to the transferor or the transferor's heirs determined as
22 of the date of the transferor's death under Chapter 29 of the General
23 Statutes.

24 (d) The intended use of the principal or income can be enforced by a person
25 designated for that purpose in the trust instrument or, if none, by a person appointed by
26 the clerk of superior court having jurisdiction over the decedent's estate upon
27 application to the clerk of superior court by a person.

28 (e) Except as ordered by the clerk of superior court or required by the trust
29 instrument, no filing, report, registration, periodic accounting, separate maintenance of
30 funds, appointment, bond, or fee is required by reason of the existence of the fiduciary
31 relationship of the trustee.

32 (f) A governing instrument shall be liberally construed to bring the transfer
33 within this section, to presume against the merely precatory or honorary nature of the
34 disposition, and to carry out the general intent of the transferor. Extrinsic evidence is
35 admissible in determining the transferor's intent.

36 (g) The clerk of superior court may reduce the amount of the property
37 transferred, if the clerk of superior court determines that the amount substantially
38 exceeds the amount required for the intended use. The amount of the reduction, if any,
39 passes as unexpended trust property under subsection (c) of this section.

40 (h) If no trustee is designated or if no designated trustee agrees to serve or is able
41 to serve, the clerk of superior court shall name a trustee. The clerk of superior court may

1 order the transfer of the property to another trustee, if required to assure that the
2 intended use is carried out and if no successor trustee is designated in the trust
3 instrument or if no designated successor trustee agrees to serve or is able to serve. The
4 clerk of superior court may also make such other orders and determinations as are
5 advisable to carry out the intent of the transferor and the purpose of this section.

6 **"§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

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

- 9 (1) A trust may be created for a noncharitable purpose without a definite
10 or definitely ascertainable beneficiary or for a noncharitable but
11 otherwise valid purpose to be selected by the trustee. The trust may not
12 be enforced for more than 21 years.
- 13 (2) A trust authorized by this section may be enforced by a person
14 appointed in the terms of the trust or, if no person is so appointed, by a
15 person appointed by the court.
- 16 (3) Property of a trust authorized by this section may be applied only to its
17 intended use, except to the extent that the court determines that the
18 value of the trust property exceeds the amount required for the
19 intended use. Except as otherwise provided in the terms of the trust,
20 property not required for the intended use must be distributed to the
21 settlor, if then living, or otherwise to the settlor's successors in interest.
- 22 (4) Notwithstanding subdivisions (1) through (3) of this section, a trust,
23 contract, or other arrangement to provide for the care of a cemetery lot,
24 grave, crypt, niche, mausoleum, columbarium, grave marker, or
25 monument is valid without regard to remoteness of vesting, duration of
26 the arrangement, or lack of definite beneficiaries to enforce the trust,
27 provided that the trust, contract, or other arrangement meets the
28 requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the
29 General Statutes, Article 9 of Chapter 65 of the General Statutes, or
30 other applicable law. This section does not repeal or supersede
31 G.S. 36C-4-413.

32 **"§ 36C-4-410. Modification or termination of trust; proceedings for approval or**
33 **disapproval.**

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

39 (b) A proceeding to approve or disapprove a proposed modification or
40 termination under G.S. 36C-4-411 through G.S. 36C-4-416, or trust combination or
41 division under G.S. 36C-4-417, may be commenced by a trustee or beneficiary, and a
42 proceeding to approve or disapprove a proposed modification or termination under

1 G.S. 36C-4-411 may be commenced by the settlor. The settlor of a charitable trust may
2 maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee shall be a
3 necessary party to any proceeding under this section.

4 (c) Jurisdiction of a proceeding brought under this section shall be as provided in
5 G.S. 36C-2-203.

6 **"§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by**
7 **consent.**

8 (a) A noncharitable irrevocable trust may be modified or terminated upon
9 consent of the settlor and all beneficiaries, even if the modification or termination is
10 inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's
11 modification or termination may be exercised by an agent under a power of attorney
12 only to the extent expressly authorized by the power of attorney or the terms of the trust;
13 by the settlor's general guardian or the guardian of the estate with the approval of the
14 court supervising the guardianship if an agent is not so authorized; or by the settlor's
15 guardian of the person with the approval of the court supervising the guardianship if an
16 agent is not so authorized and a general guardian or guardian of the estate has not been
17 appointed.

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

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

30 (d) If not all of the beneficiaries consent to a proposed modification or
31 termination of the trust under subsection (a), (b) or (c) of this section, the modification
32 or termination may be approved by the court if the court is satisfied that:

33 (1) If all of the beneficiaries had consented, the trust could have been
34 modified or terminated under this section; and

35 (2) The interests of a beneficiary who does not consent will be adequately
36 protected.

37 (e) Jurisdiction of a proceeding brought under this section shall be as provided in
38 G.S. 36C-2-203.

39 **"§ 36C-4-412. Modification or termination because of unanticipated circumstances**
40 **or inability to administer trust effectively.**

1 (a) The court may modify the administrative or dispositive terms of a trust or
2 terminate the trust if, because of circumstances not anticipated by the settlor,
3 modification or termination will further the purposes of the trust. To the extent
4 practicable, the modification must be made in accordance with the settlor's probable
5 intention.

6 (b) The court may modify the administrative terms of a trust if continuation of
7 the trust on its existing terms would be impracticable or wasteful or impair the trust's
8 administration.

9 (c) Jurisdiction of a proceeding brought under this section shall be as provided in
10 G.S. 36C-2-203.

11 **"§ 36C-4-413. Cy pres.**

12 (a) Except as otherwise provided in subsection (d) of this section, if a charitable
13 trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

14 (1) The trust does not fail, in whole or in part;

15 (2) The trust property does not revert to the settlor or the settlor's
16 successors in interest; and

17 (3) The court may apply cy pres to modify or terminate the trust by
18 directing that the trust property be applied or distributed, in whole or in
19 part, in a manner consistent with the settlor's charitable purposes.

20 (b) The settlor or a trustee of a charitable trust, the Attorney General, a
21 beneficiary or any other interested party may maintain a cy pres proceeding under
22 Article 2 of this Chapter.

23 (c) In every cy pres proceeding, the Attorney General shall be notified and given
24 an opportunity to be heard.

25 (d) This section shall not be applicable if the settlor has provided, either directly
26 or indirectly, for an alternative plan in the event that the charitable trust is or becomes
27 unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative
28 plan is also a charitable trust and that trust fails, the intention shown in the original plan
29 shall prevail in the application of this section.

30 **"§ 36C-4-414. Modification or termination of uneconomic trust.**

31 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of
32 trust property having a total value of less than fifty thousand dollars (\$50,000) may
33 terminate the trust if the trustee concludes that the value of the trust property is
34 insufficient to justify the cost of administration. The trustee may enter into an agreement
35 or make other provisions that the trustee deems necessary or appropriate to protect the
36 interests of the beneficiaries and to carry out the intent and purpose of the trust. The
37 provisions of this subsection shall not apply where the instrument creating the trust, by
38 specific reference to this section, or to former G.S. 36A-125.6, provides that it shall not
39 apply. The trustee shall not be liable for that termination and distribution
40 notwithstanding the existence or potential existence of other beneficiaries who are not
41 sui juris. Any beneficiary receiving a distribution from a trust terminated under this

1 section shall incur no liability and shall not be required to account to anyone for such
2 distribution.

3 (b) The court may modify or terminate a trust or remove the trustee and appoint a
4 different trustee if it determines that the value of the trust property is insufficient to
5 justify the cost of administration.

6 (c) This section does not apply to an easement for conservation or preservation.

7 (d) Jurisdiction of a proceeding brought under this section shall be as provided in
8 G.S. 36C-2-203.

9 **"§ 36C-4-415. Reformation to correct mistakes.**

10 The court may reform the terms of a trust, even if unambiguous, to conform the
11 terms to the settlor's intention if it is proved by clear and convincing evidence that both
12 the settlor's intent and the terms of the trust were affected by a mistake of fact or law,
13 whether in expression or inducement. Jurisdiction of a proceeding brought under this
14 section shall be as provided in G.S. 36C-2-203.

15 **"§ 36C-4-416. Modification to achieve settlor's tax objectives.**

16 To achieve a settlor's tax objectives, the court may modify the terms of a trust in a
17 manner that is not contrary to the settlor's probable intention. The court may provide
18 that the modification has retroactive effect. Jurisdiction of a proceeding brought under
19 this section shall be as provided in G.S. 36C-2-203.

20 **"§ 36C-4-417. Combination and division of trusts.**

21 (a) Unless otherwise provided in the trust instrument, after notice to the qualified
22 beneficiaries, a trustee may:

23 (1) Consolidate the assets of more than one trust and administer the assets
24 as one trust under the terms of one of the trusts if the terms of the
25 trusts are substantially similar and the beneficiaries of the trusts are
26 identical; or

27 (2) Divide one trust into two or more separate trusts if the new trusts
28 provide in the aggregate for the same succession of interests and
29 beneficiaries as are provided in the original trust.

30 (b) In dividing a trust into two or more separate trusts, a trustee shall accomplish
31 the division by severing the trusts on a fractional basis and funding the separate trusts
32 either (i) with a pro rata portion of each asset held by the undivided trust; or (ii) on a
33 non-pro rata basis based on either the fair market value of the assets on the date of
34 funding or in a manner that fairly reflects the net appreciation or depreciation in the
35 value of the assets measured from the valuation date to the date of funding.

36 (c) In any case where two separate identical trusts are created pursuant to this
37 section, one of which is fully exempt from the federal generation-skipping transfer tax
38 and one of which is fully subject to that tax, the trustee may thereafter, to the extent
39 possible consistent with the terms of the trust, determine the value of any mandatory or
40 discretionary distributions to trust beneficiaries on the basis of the combined value of
41 both trusts, but may satisfy those distributions by a method other than pro rata from the

1 separate trusts in a manner designed to minimize the current and potential
2 generation-skipping transfer tax.

3 **"§ 36C-4-418. Distribution upon termination of trust.**

4 Upon termination of a trust under G.S. 36C-4-411, the trustee shall distribute the
5 trust property as agreed by the beneficiaries. Upon termination of a trust under
6 G.S. 36C-4-412 or G.S. 36C-4-414, the trustee shall distribute the trust property in a
7 manner consistent with the purposes of the trust. If any trust property becomes
8 distributable to a minor or incompetent under this Article it may be distributed:

9 (1) To the guardian of the estate or general guardian of the beneficiary;

10 (2) In accordance with the North Carolina Uniform Transfer to Minors
11 Act, Chapter 33A of the General Statutes; or

12 (3) In accordance with the North Carolina Custodial Trust Act, Chapter
13 33B of the General Statutes.

14 **"§ 36C-4-419. Effect of inalienable interest on modification or termination.**

15 The court, in exercising its discretion to modify or terminate an irrevocable trust
16 pursuant to the provisions of G.S. 36C-4-411, 36C-4-412 or 36C-4-413 shall consider
17 provisions making the interest of a beneficiary inalienable, including those described in
18 Article 5, but the court is not precluded from the exercise of that discretion solely
19 because of such provisions.

20 "Article 4A.

21 "Tax Status of Charitable Trusts.

22 **"§ 36C-4A-1. Prohibited transactions.**

23 (a) Notwithstanding any provisions in the laws of this State or in the governing
24 instrument to the contrary unless otherwise decreed by a court of competent jurisdiction
25 except as provided in subsection (b), the trust instrument of each trust which is a private
26 foundation described in section 509 of the Internal Revenue Code (including each
27 nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code
28 which is treated as a private foundation) and the trust instrument of each nonexempt
29 split-interest trust described in section 4947(a)(2) of the Internal Revenue Code (but
30 only to the extent that section 508(e) of the Internal Revenue Code is applicable to such
31 nonexempt split-interest trust under section 4947(a)(2) of the Internal Revenue Code)
32 shall be deemed to contain the following provisions: "The trust shall make distributions
33 at such time and in such manner as not to subject it to tax under section 4942 of the
34 Internal Revenue Code; the trust shall not engage in any act of self-dealing which
35 would subject it to tax under section 4941 of the Internal Revenue Code; the trust shall
36 not retain any excess business holdings which would subject it to tax under section
37 4943 of the Internal Revenue Code; the trust shall not make any investments which
38 would subject it to tax under section 4944 of the Internal Revenue Code; and the trust
39 shall not make any taxable expenditures which would subject it to tax under section
40 4945 of the Internal Revenue Code." With respect to any such trust created prior to
41 January 1, 1970, this section shall apply only for its taxable years beginning on or after
42 January 1, 1972.

1 "Charitable Remainder Trust Administration Act.

2 **"§ 36C-4B-1. Short title.**

3 This Article shall be known as the Charitable Remainder Administration Trust Act.

4 **"§ 36C-4B-2. General rule.**

5 Notwithstanding any provisions in the laws of this State or in the governing
6 instruments to the contrary, any charitable remainder annuity trust and any charitable
7 remainder unitrust that cannot qualify for a deduction for federal tax purposes under
8 section 2055 or section 2522 of the Internal Revenue Code in the absence of this Article
9 shall be administered in accordance with this Article.

10 **"§ 36C-4B-3. Definitions.**

11 The following definitions apply to this Article unless the context clearly requires
12 otherwise:

13 (1) "Charitable remainder trust" means a trust that provides for a specified
14 distribution at least annually for either life or a term of years to one or
15 more beneficiaries, at least one of which is not a charity (hereinafter
16 referred to as "beneficiaries"), with an irrevocable remainder interest
17 to be held for the benefit of, or paid over to, charity. For purposes of
18 this Article, only a charitable remainder annuity trust or a charitable
19 remainder unitrust is considered a charitable remainder trust.

20 (2) "Charitable remainder annuity trust" means a charitable remainder
21 trust:

22 a. From which a sum certain (that is not less than five percent
23 (5%) of the initial net fair market value of all property placed in
24 trust) is to be paid at least annually to one or more persons (at
25 least one of which is not an organization described in section
26 170(c) of the Internal Revenue Code and, in the case of
27 individuals, only to an individual who was living at the time of
28 the creation of the trust) for a term of years (not in excess of 20
29 years) or for the life or lives of that individual or those
30 individuals; however, in the case of an individual, the amount
31 to be paid to that individual may be subject to a qualified
32 contingency according to the terms of the governing instrument;

33 b. From which no amount other than the payments described in
34 sub-subdivision a. of this subdivision may be paid to and/or for
35 the use of anyone other than an organization that is or was
36 described in section 170(c) of the Internal Revenue Code; and

37 c. Following the termination of the payments described in
38 sub-subdivision a. of this subdivision, the remainder interest in
39 the trust is to be transferred to, or for the use of, an organization
40 that is or was described in section 170(c) of the Internal
41 Revenue Code or is to be retained by the trust for such a use.

42 (3) "Charitable remainder unitrust" means a charitable remainder trust:

- 1 a. From which a fixed percentage (that is not less than five percent
2 (5%)) of the net fair market value of its assets, valued annually,
3 is to be paid at least annually to one or more persons (at least
4 one of which is not an organization described in section 170(c)
5 of the Internal Revenue Code and, in the case of individuals,
6 only to an individual who was living at the time of the creation
7 of the trust) for a term of years (not in excess of 20 years) or for
8 the life or lives of that individual or those individuals; however,
9 in the case of an individual, the amount to be paid to that
10 individual may be made subject to a qualified contingency
11 according to the terms of the governing instrument;
- 12 b. From which no amount other than the payments described in
13 sub-subdivision a. of this subdivision may be paid to or for the
14 use of anyone other than an organization that is or was an
15 organization described in section 170(c) of the Internal Revenue
16 Code; and
- 17 c. Following the termination of the payments described in
18 sub-subdivision a. of this subdivision, the remainder interest in
19 the trust is to be transferred to, or for the use of, an organization
20 that is or was described in section 170(c) of the Internal
21 Revenue Code, or is to be retained by the trust for such a use.

22 Notwithstanding the provisions of sub-subdivisions a. and b. of this
23 subdivision, the trust instrument may provide that the trustee shall pay
24 to the income beneficiary for any year (i) the amount of the trust
25 income if that amount is less than the amount required to be distributed
26 under sub-subdivision a. of this subdivision, and (ii) any amount of the
27 trust income that exceeds the amount required to be distributed under
28 sub-subdivisions a of this subdivision to the extent that (by reason of
29 sub-subdivision a.) the aggregate of the amounts paid in prior years
30 is less than the aggregate of the required amounts.

- 31 (4) "Qualified contingency" means any provision of the governing
32 instrument that provides that, upon the happening of a contingency, the
33 payments made to an individual noncharitable beneficiary of a
34 charitable remainder trust will terminate not later than those payments
35 would otherwise terminate under the governing instrument.

36 **"§ 36C-4B-4. Administrative provisions applicable to both charitable remainder**
37 **annuity trusts and charitable remainder unit trusts.**

38 (a) Creation of Remainder Interests in Charity. – Upon the termination of the
39 noncharitable interests, the trustee shall distribute all of the then principal and income
40 of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to

1 the designated charity or charities, or shall hold the property in trust for the designated
2 charity or charities in accordance with the terms of the trust document.

3 (b) Selection of Alternate Charitable Beneficiary if Remaindermen Do Not
4 Qualify Under Section 170(c) of the Internal Revenue Code at Time of Distribution. –
5 If the designated charity is not an organization described in section 170(c) of the
6 Internal Revenue Code at the time when any principal or income of the trust is to be
7 distributed to it, the trustee shall distribute the principal or income to one or more
8 organizations then described in section 170(c) of the Internal Revenue Code selected in
9 accordance with the terms of the trust instrument. If the trust instrument does not provide
10 for a method of selecting alternate charitable beneficiaries that are then qualified under
11 section 170(c) of the Internal Revenue Code, the trustee shall, in the trustee's sole
12 discretion, select alternate trust beneficiaries that are qualified under section 170(c) of
13 the Internal Revenue Code.

14 (bl) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not
15 Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of
16 Distribution. – Notwithstanding the provisions of subsection (b) of this section, if the
17 designated charity is, at the time of the creation of the trust, an organization described in
18 both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the
19 designated charity is not an organization described in both section 170(b)(1)(A) and
20 section 170(c) of the Internal Revenue Code when any principal or income of the trust is
21 to be distributed to it, the trustee shall distribute the principal or income to one or more
22 organizations then described in both section 170(b)(1)(A) and section 170(c) of the
23 Internal Revenue Code selected in accordance with the terms of the governing instrument;
24 however, in the event that the governing instrument does not provide a method of
25 selecting alternative charitable beneficiaries that are then described in both section
26 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, the trustee shall, in his
27 sole discretion, select one or more alternative charitable beneficiaries that are described
28 in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and shall
29 distribute the principal or income to the organization or organizations so selected in
30 such shares as the trustee, in the trustee's sole discretion, shall determine.

31 (c) Prohibitions Governing Trustees. – Except for payment of the annuity amount
32 or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is
33 prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the
34 Internal Revenue Code, retaining any excess business holdings as defined in section
35 4943(c) of the Internal Revenue Code that would subject the trust to tax under section
36 4943 of the Code, making any investments that would subject the trust to tax under
37 section 4944 of the Internal Revenue Code, and making any taxable expenditures as
38 defined in section 4945(d) of the Code. The trustee shall make distributions at a time
39 and in a manner as not to subject the trust to tax under section 4942 of the Internal
40 Revenue Code.

41 (d) Distribution to Charity During Term of Noncharitable Interests and
42 Distributions in Kind. – If the governing instrument of the trust provides for distribution

1 to charity during the term of the noncharitable interests, the trustee may pay to the
2 designated charity the amounts specified in the governing instrument that exceed the
3 annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable
4 year of the trust in which the income is earned. If the governing instrument of the trust
5 provides for distribution to charity in kind, the adjusted basis for federal income tax
6 purposes of any trust property the trustee distributes in kind to charity during the term
7 of the noncharitable interests must be fairly representative of the adjusted basis for those
8 purposes of all trust property available for distribution on the date of distribution.

9 (e) Investment Restrictions on Trustee. – Nothing in the trust instrument shall be
10 construed to restrict the trustee from investing the trust assets in a manner that could
11 result in the annual realization of a reasonable amount of income or gain from the sale
12 or disposition of trust assets.

13 (f) Distribution From Trust Used to Administer an Estate to Charitable
14 Remainder Trust. – If the governing instrument of a revocable inter vivos trust provides
15 that the revocable inter vivos trust will be used partially to administer the estate of the
16 settlor or for some other purpose, and further provides the assets will then be
17 distributed to another trust that is a charitable remainder trust, upon the death of the
18 settlor, or upon the occurrence of any event that causes the trust to become
19 irrevocable, then the trust shall become irrevocable, and the trustee of this trust shall
20 perform any remaining duties or obligations provided for in the trust instrument and
21 then transfer the property specified in the governing instrument to the trustee of the
22 charitable remainder trust to be held, administered, and distributed in the manner and
23 according to the terms and conditions provided by the charitable remainder trust.

24 (g) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter
25 vivos charitable remainder trust that is liable to pay, from trust property, any federal
26 estate, state inheritance, or other similar death taxes by reason of the death of the settlor
27 of the trust, the interest of any noncharitable beneficiary of the trust shall terminate
28 upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust
29 sufficient funds for payment of all those taxes attributable to the interest of the
30 noncharitable beneficiary in the trust property, and the termination shall be deemed as
31 the occurrence of a qualified contingency.

32 **"§ 36C-4B-5. Administrative provisions applicable to charitable remainder trusts**
33 **only.**

34 (a) Creation of Annuity Amount for Period of Years or Life. – The trustee shall
35 pay the annuity amount designated in the trust instrument to the beneficiaries named in
36 the trust instrument during their lives (or if the governing instrument so provides, for a
37 period of 20 years or less) in each taxable year of the trust. The annuity amount shall be
38 paid annually or in more frequent equal or unequal installments if the governing
39 instrument so provides. The annuity amount shall be paid from income and, to the
40 extent that income is not sufficient, from principal. Any income of the trust for a taxable
41 year in excess of the annuity amount shall be added to principal.

1 The total amount payable at least annually to a person or persons named in the trust
2 document, at least one of which is not an organization described in section 170(c) of the
3 Internal Revenue Code, may not be less than five percent (5%) of the initial net fair
4 market value of the property placed in trust as finally determined for federal tax
5 purposes, except as provided in subsection (g) of this section.

6 (b) Computation of Annuity Amount in Short and Final Taxable Years. – For a
7 short taxable year and for the taxable year in which the noncharitable beneficiary's
8 interest terminates by death or otherwise, the trustee shall prorate the annuity amount on
9 a daily basis.

10 (c) Prohibition of Additional Contributions. – No additional contributions shall
11 be made to the trust after the initial contribution.

12 (d) Deferral of Annuity Amount During Period of Administration or Settlement.
13 – When property passes to the trust at the death of the settlor, the obligation to pay
14 the annuity amount commences with the date of death of the settlor, but payment of the
15 annuity amount may be deferred from the date of the settlor's death to the end of the
16 taxable year in which complete funding of the trust occurs. Within a reasonable time
17 after the end of the taxable year in which the complete funding of the trust occurs, the
18 trustee must pay to the beneficiary, in the case of an underpayment, or must receive
19 from the beneficiary, in the case of an overpayment, the difference between:

20 (1) Any annuity amounts actually paid, plus interest on those amounts
21 computed at ten percent (10%) a year, compounded annually; and

22 (2) The annuity amounts payable, determined under the method described
23 in Section 1.664-1(a)(5) of the federal income tax regulations, plus
24 interest on those amounts computed at ten percent (10%) a year,
25 compounded annually.

26 Notwithstanding the foregoing sentence, in computing any underpayment or
27 overpayment of the annuity amounts, if the governing instrument was executed or last
28 amended prior to August 9, 1984, and if the governing instrument does not specify that
29 a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of
30 the annuity amounts shall be computed using an interest rate at six percent (6%) a year,
31 compounded annually.

32 (e) Dollar Amount Annuity May Be Stated as Fraction or Percentage. – If the
33 governing instrument of the trust states the amount of the annuity as a fraction or a
34 percentage, the trustee shall pay to the beneficiaries in each taxable year of the trust
35 during their lives an annuity amount equal to a percentage (that percentage being
36 stipulated in the governing instrument of the trust and, in any event, being five percent
37 (5%) or greater) of the initial net fair market value of the assets constituting the trust. In
38 determining this amount, assets shall be valued at their values as finally determined for
39 federal tax purposes. If the fiduciary incorrectly determines the initial net fair market
40 value of the assets constituting the trust, then, within a reasonable period after a final
41 determination, the trustee shall pay to the beneficiaries, in the case of an undervaluation
42 or shall receive from the beneficiaries, in the case of an overvaluation, an amount

1 equal to the difference between the annuity amount properly payable and the annuity
2 amount actually paid.

3 (f) Annuity Amount May Be Allocated Among Class of Noncharitable
4 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
5 provides that the annuity trust amount may be allocated among a class of
6 noncharitable beneficiaries in the discretion of the trustee, then the trustee shall pay the
7 annuity amount, which is defined in the governing instrument of the trust, in each
8 taxable year of the trust, to the member or members of the class of noncharitable
9 beneficiaries in an amount and proportions as the trustee in the trustee's absolute
10 discretion shall from time to time determine until the last of the noncharitable
11 beneficiaries dies. The trustee may pay the entire annuity amount to one member of this
12 class or may apportion it among the various members in a manner as the trustee from
13 time to time deems advisable as long as the power to allocate does not cause any
14 person to be treated as the owner of any part of the trust under the rules of section 671
15 through section 678 of the Internal Revenue Code. If the class provided for in the
16 governing instrument is open, then the distribution shall be for a period of years not to
17 exceed 20 years, notwithstanding a provision to the contrary in the trust instrument. If
18 the class provided for in the governing instrument is closed at the creation of the trust,
19 and all members of the class are ascertainable, the distribution may be for the lives of
20 the members of the class or for a period not exceeding 20 years. The trustee shall pay
21 the entire annuity amount for each taxable year annually and may not delay payment of
22 the annuity amount.

23 (g) Reduction of Annuity Amount If Part of Corpus Is Paid to Charity at
24 Expiration of Term of Years or on Death of Recipient. – If the governing instrument of
25 the trust provides for the reduction of the annuity amount if part of the corpus is paid
26 to charity at the expiration of a term of years or upon the death of a recipient, then
27 during the term of years or during the joint lives of the noncharitable beneficiaries,
28 the trustee shall, in each taxable year of the trust, pay a total annuity amount of at least
29 five percent (5%) of the initial net fair market value of the assets placed in trust. Upon
30 the expiration of the term of years or the death of a beneficiary, the trustee shall
31 distribute an amount or percentage of the trust assets, as provided in the governing
32 instrument of the trust, to the charity named in the governing instrument, and thereafter
33 the trustee shall pay, annually or in more frequent installments, to the survivors for their
34 lives, an annuity amount that in each taxable year of the trust, bears the same ratio to
35 five percent (5%) of the initial net fair market value of the trust assets as the net fair
36 market value of the trust assets valued as of the date of distribution, less the amount
37 or percentage of trust assets distributed to the charity, bears to the net fair market value
38 of the trust assets as of the date of distribution.

39 (h) Termination of Annuity Amount on Payment Date Preceding Termination of
40 Noncharitable Interest. – If the governing instrument of the trust provides that
41 payment of the annuity amount may terminate with the regular payment preceding the

1 termination of all noncharitable interests, then the trustee shall pay to the noncharitable
2 beneficiary during the term of the noncharitable interest the annuity amount, defined in
3 the trust document, in each taxable year of the trust. The obligation of the trustee to pay
4 the annuity amount shall terminate with the payment preceding the death of the
5 noncharitable beneficiary or other event that terminates the noncharitable interest.

6 (i) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
7 governing instrument of the trust provides that the settlor of the trust retains the
8 power, exercisable only by will, to revoke or terminate the interest of any recipient
9 other than an organization described in section 170(c) of the Internal Revenue Code,
10 then the trustee shall pay to the settlor during his life the annuity amount, as defined in
11 the governing instrument of the trust and, upon the death of the settlor, if the
12 noncharitable beneficiary survives the settlor, the trustee shall pay to the noncharitable
13 beneficiary during his life the annuity amount equal to the amount paid to the settlor.
14 The settlor shall have the power, exercisable only by will, to revoke and terminate the
15 interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i)
16 the death of the survivor of the settlor and noncharitable beneficiary; or (ii) the death
17 of the settlor if he effectively exercised his testamentary power to revoke and terminate
18 the interest of the noncharitable beneficiary; the trustee shall distribute all of the then
19 principal and income of the trust, other than any amount due the settlor or
20 noncharitable beneficiary, to the charity named in the trust document or, if the
21 governing instrument so provides, the trustee shall continue to hold the principal and
22 income in trust for the charity or for the charitable purposes specified in the trust. No
23 other retained power to terminate an interest in the trust shall be effective.

24 **"§ 36C-4B-6. Administrative provisions applicable to charitable remainder**
25 **unitrusts only.**

26 (a) Creation of Unitrust Amount for a Period of Years or Life. – The trustee shall
27 pay to the beneficiaries named in the trust investment in each taxable year of the trust
28 during their lives or, if the governing instrument so provides, for a period not exceeding
29 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing
30 instrument of the trust, of the net fair market value of the trust assets valued annually
31 on the date or by the method designated in the governing instrument of the trust or, if
32 no date or method is specified, on the date or by the method selected by the trustee in
33 his discretion, so long as the same valuation date or dates or valuation methods are used
34 each year. The unitrust amount shall be paid annually or in more frequent equal or
35 unequal installments if the governing instrument so provides. The unitrust amount shall
36 be paid from income and, to the extent that income is not sufficient, from principal. Any
37 income of the trust for a taxable year in excess of the unitrust amount shall be added
38 to principal. The fixed percentage to be paid at least annually to all beneficiaries cannot
39 be less than five percent (5%).

40 (b) Unitrust Amount Expressed as the Lesser of Income or a Fixed Percentage. –
41 If the governing instrument of the trust provides that the trustee shall pay, instead of a
42 regular unitrust amount (the fixed percentage of the net fair market value of the trust

1 assets, determined annually), the amount of trust income for the taxable year to the
2 extent that this amount is not greater than the amount required to be distributed as a
3 regular unitrust amount for that taxable year or the amount of the trust income for the
4 taxable year that exceeds the regular unitrust amount for that taxable year to the extent
5 that the aggregate of the amounts paid in prior years is less than the aggregate of the
6 regular unitrust amount for those prior years, then the trustee shall pay to the
7 beneficiaries in each taxable year of the trust during their lives, or for a period not
8 exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of
9 (i) the trust income for the taxable year, as defined in section 643(b) of the Internal
10 Revenue Code and the regulations thereunder, and (ii) the percentage, as stated in the
11 governing instrument, of the net fair market value of the trust assets valued as of the
12 taxable year decreased as elsewhere provided if the taxable year is a short taxable year
13 or is the taxable year in which the noncharitable interest terminates by death or
14 otherwise, and increased as elsewhere provided if additional contributions are made in
15 the taxable year.

16 If the governing instrument of the trust so provides and if the trust income for any
17 taxable year exceeds the amount determined under (ii) above, the payment to
18 beneficiaries shall also include the excess income to the extent that the aggregate of the
19 amounts paid to beneficiaries in prior years is less than the percentage of the aggregate
20 net fair market value of the trust assets, which percentage is defined in the governing
21 instrument of the trust, for these years. Payments to beneficiaries shall be made annually
22 or in more frequent equal or unequal installments if the governing instrument so
23 provides. Any income of the trust in excess of these payments shall be added to
24 principal.

25 (c) Adjustment for Incorrect Valuation. – If the fiduciary incorrectly determines
26 the net fair market value of the trust assets for any taxable year, the trustee shall, within
27 a reasonable period after the final determination of the correct value, pay to the
28 beneficiaries, in the case of an undervaluation, or receive from the beneficiaries, in the
29 case of an overvaluation, an amount equal to the difference between the unitrust amount
30 properly payable and the unitrust amount actually paid.

31 (d) Computation of Unitrust Amount in Short and Final Taxable Years. – For a
32 short taxable year and for the taxable year in which the noncharitable beneficiary's
33 interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on
34 a daily basis. If a trust provides for a valuation date other than the first day of the
35 taxable year, and the valuation date does not occur in a taxable year of the trust
36 because the taxable year is either a short taxable year or is the taxable year in which the
37 noncharitable interests terminate, the trust assets shall be valued as of the last day of the
38 short taxable year or the day on which the noncharitable interests terminate, as
39 appropriate.

40 (e) Additional Contributions. – If the governing instrument does not prohibit
41 additional contributions and additional contributions are made to the trust after the

1 initial contribution in the trust, the unitrust amount for the taxable year in which the
2 additional contributions are made shall be a fixed percentage, as stated in the governing
3 instrument of the trust, of the sum of (i) the net fair market value of trust assets,
4 excluding the additional contributions and any income from or appreciation of these
5 contributions and (ii) that proportion of the value of the additional contributions
6 excluded under (i) which the number of days in the period beginning with the date of
7 contribution and ending with the earlier of the last day of the taxable year or the day the
8 noncharitable beneficiary's interest terminated bears to the number of days in the period
9 beginning on the first day of the taxable year and ending with the earlier of the last
10 day in the taxable year or the day the noncharitable beneficiary's interest terminated. If
11 no valuation date occurs after the contributions are made, the assets so added shall be
12 valued as of the time of contribution.

13 (f) Deferral of Unitrust Amount During Period of Administration or Settlement.
14 – When property passes to the trust at the death of the settlor, the obligation to pay the
15 unitrust amount commences with the date of the settlor's death, but payment of the
16 unitrust amount may be deferred from the date of the settlor's death to the end of the
17 taxable year of the trust in which complete funding of the trust occurs. Within a
18 reasonable time after the end of the taxable year in which the complete funding of the
19 trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or
20 must receive from the beneficiary, in the case of an overpayment, the difference
21 between:

- 22 (1) Any unitrust amounts actually paid, plus interest on those amounts
23 computed at ten percent (10%) a year, compounded annually; and
24 (2) The unitrust amounts payable, determined under the method described
25 in section 1.664-1(a)(5) of the federal income tax regulations, plus
26 interest on those amounts computed at ten percent (10%) a year,
27 compounded annually.

28 Notwithstanding the foregoing sentence, in computing any underpayment or
29 overpayment of the unitrust amounts, if the governing instrument was executed or last
30 amended prior to August 9, 1984, and if the governing instrument does not specify that
31 a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of
32 the unitrust amounts shall be computed using an interest rate of six percent (6%) a year,
33 compounded annually.

34 (g) Unitrust Amount May Be Allocated Among Class of Noncharitable
35 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
36 provides that the unitrust amount may be allocated to a class of noncharitable
37 beneficiaries in the discretion of the trustee, then the trustee shall pay, in each taxable
38 year of the trust, the unitrust amount to the member or members of the class of
39 noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's
40 absolute discretion shall from time to time determine until the last of the noncharitable
41 beneficiaries dies. The trustee may pay the unitrust amount to any one member of the
42 class or may apportion it among the various members in a manner that the trustee shall

1 from time to time deem advisable as long as the power to allocate does not cause any
2 person to be treated as the owner of any part of the trust under the rules of section
3 671 through section 678 of the Internal Revenue Code. If the class provided for in the
4 governing instrument is open, the distribution shall be for a period not exceeding 20
5 years, notwithstanding a provision to the contrary in the trust instrument. If the class
6 provided for in the governing instrument is closed at the creation of the trust, and all
7 members of the class are ascertainable, the distribution may be for the lives of the
8 members of the class or for a period not exceeding 20 years. The trustee shall pay the
9 entire unitrust amount for each taxable year annually and may not delay payment of the
10 unitrust amount.

11 (h) Reduction of Unitrust Amount if Part of Corpus Is Paid to Charity at
12 Expiration of Term of Years or on Death of a Recipient. – If the governing instrument
13 of the trust provides for the reduction of the unitrust amount if part of the corpus is
14 paid to charity at the expiration of a term of years or upon the death of a recipient,
15 then during the term of years or during the joint lives of the noncharitable
16 beneficiaries the trustee shall, in each taxable year of the trust, pay the total unitrust
17 amount equal to a percentage of the net fair market value of the trust assets valued
18 annually, which shall not be less than five percent (5%). Upon expiration of the term
19 of years or the death of a recipient, the trustee shall distribute an amount or
20 percentage of the trust assets, as provided in the governing instrument of the trust, to
21 the charity named in the governing instrument, and thereafter the trustee shall pay to
22 the survivors for their lives a unitrust amount in each taxable year of the trust equal to
23 at least five percent (5%) (the actual percentage being defined in the trust instrument) of
24 the net fair market value of the remaining trust assets valued annually.

25 (i) Termination of Unitrust Amount on Payment Date Preceding Termination of
26 Noncharitable Interests. – If the governing instrument of the trust provides that
27 payment of the unitrust amount may terminate with the regular payment preceding the
28 termination of all noncharitable interests, then the trustee shall pay the unitrust amount
29 to the noncharitable beneficiary in each taxable year of the trust during the term of the
30 noncharitable interest. The obligation of the trustee to pay the unitrust amount
31 terminates with the payment preceding the termination of the noncharitable interest by
32 death or otherwise. The five percent (5%) requirement provided in subsection (a) of this
33 section shall be met until the termination of all payments of the unitrust amount.

34 (j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
35 governing instrument of the trust provides that the settlor of the trust shall retain the
36 power, exercisable only by will, to revoke or terminate the interest of any recipient
37 other than an organization described in section 170(c) of the Internal Revenue Code,
38 then the trustee shall pay the unitrust amount to the settlor during his life and, upon the
39 death of the settlor, shall pay the unitrust amount to the noncharitable beneficiary during
40 his life, provided the noncharitable beneficiary survives the settlor. The settlor shall
41 have the power, exercisable only by will, to revoke and terminate the interest of the

1 noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the
2 survivor of the settlor and the noncharitable beneficiary; or (ii) the death of the settlor if
3 the settlor effectively exercised the testamentary power to revoke and terminate the
4 interest of the noncharitable beneficiary; the trustee shall distribute all of the then
5 principal and income of the trust, other than any amount due the noncharitable
6 beneficiaries, to the charity named in the trust document or, if the governing instrument
7 so provides, the trustee shall continue to hold the principal and income in trust for the
8 charity or for the charitable purposes specified in the trust. No other retained power to
9 terminate an interest in the trust shall be effective.

10 **"§ 36C-4B-7. Interpretation.**

11 This Article shall be interpreted and construed to effectuate its general purpose to
12 cause all charitable remainder annuity trusts and all charitable remainder unitrusts to be
13 administered in accordance with the provisions of section 2055 and section 2522 of
14 the Internal Revenue Code and the regulations under those sections.

15 "Article 5.

16 "Creditors' Claims; Spendthrift and Discretionary Trusts.

17 **"§ 36C-5-501. Rights of beneficiary's creditor or assignee.**

18 (a) Except as provided in subsection (b) of this section, the court may authorize a
19 creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment
20 of present or future distributions to or for the benefit of the beneficiary or other means.
21 The court may limit the award to that relief as is appropriate under the circumstances.

22 (b) This section shall not apply and a trustee shall have no liability to any creditor
23 of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the
24 extent that a beneficiary's interest:

25 (1) Is subject to a spendthrift provision;

26 (2) Is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or

27 (3) Is a protective trust interest as described in G.S. 36C-5-508.

28 **"§ 36C-5-502. Spendthrift provision.**

29 (a) A spendthrift provision is valid only if it restrains both voluntary and
30 involuntary transfer of a beneficiary's interest.

31 (b) A term of a trust providing that the interest of a beneficiary is held subject to
32 a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary
33 and involuntary transfer of the beneficiary's interest.

34 (c) A beneficiary may not transfer an interest in a trust in violation of a valid
35 spendthrift provision and, except as otherwise provided in this Article, a creditor or
36 assignee of the beneficiary may not reach the interest or a distribution by the trustee
37 before its receipt by the beneficiary.

38 **"§ 36C-5-503. Exceptions to spendthrift provision.**

39 (a) As used in this section, the term "child" includes any person for whom an
40 order or judgment for child support has been entered in this or another state.

41 (b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest
42 is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust

1 interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court
2 order against the beneficiary for support or maintenance may obtain from a court an
3 order attaching present or future distributions to or for the benefit of the beneficiary.
4 The court may limit the award to such relief as is appropriate under the circumstances.

5 **"§ 36C-5-504. Discretionary trusts; effect of standard.**

6 (a) In this section:

7 (1) "Child" includes any person for whom an order or judgment for child
8 support has been entered in this or another state.

9 (2) "Discretionary trust interest" means an interest in a trust that is subject
10 to the trustee's discretion, whether or not the discretion is expressed in
11 the form of a standard of distribution. A discretionary trust interest
12 shall include an interest in any one or any combination of the
13 following:

14 a. A trust in which the amount to be received by the beneficiary,
15 including whether or not the beneficiary, or a class of
16 beneficiaries, is to receive anything at all, is within the
17 discretion of the trustee.

18 b. A trust in which the trustee has no duty to pay or distribute any
19 particular amount to the beneficiary, but has only a duty to pay
20 or distribute to the beneficiary, or apply on behalf of the
21 beneficiary, those sums that the trustee, in the trustee's
22 discretion, determines are appropriate for the support,
23 education, or maintenance of the beneficiary.

24 (b) A discretionary trust interest may not be transferred by the beneficiary and,
25 except as otherwise provided in this Article, a creditor or assignee of a beneficiary may
26 not reach such an interest or a distribution by the trustee before its receipt by the
27 beneficiary.

28 (c) Except as provided in subsection (d) of this section, a creditor of a beneficiary
29 may not compel a distribution from a trust in which the beneficiary has a discretionary
30 trust interest even if the trustee has abused the trustee's discretion.

31 (d) To the extent that a trustee has not complied with a standard of distribution or
32 has abused a discretion:

33 (1) A distribution may be ordered by the court to satisfy a judgment or
34 court order against the beneficiary for support or maintenance of the
35 beneficiary's child; and

36 (2) The court shall direct the trustee to pay to the child such amount as is
37 equitable under the circumstances but not more than the amount the
38 trustee would have been required to distribute to or for the benefit of
39 the beneficiary had the trustee complied with the standard or not
40 abused the discretion.

1 (e) This section does not limit the right of a beneficiary to maintain a judicial
2 proceeding against a trustee for an abuse of discretion or failure to comply with a
3 standard for distribution.

4 (f) A creditor may not reach the interest of a beneficiary who is also a trustee or
5 co-trustee, or otherwise compel a distribution, if the trustee's discretion to make
6 distributions for the trustee's own benefit is limited by an ascertainable standard.

7 **"§ 36C-5-505. Creditor's claim against settlor.**

8 (a) Whether or not the terms of a trust contain a spendthrift provision or the
9 interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a
10 protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

11 (1) During the lifetime of the settlor, the property of a revocable trust is
12 subject to claims of the settlor's creditors.

13 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor
14 may reach the maximum amount that can be distributed to or for the
15 settlor's benefit. If a trust has more than one settlor, the amount the
16 creditor or assignee of a particular settlor may reach may not exceed
17 the settlor's interest in the portion of the trust attributable to that
18 settlor's contribution.

19 (3) After the death of a settlor, and subject to the settlor's right to direct
20 the source from which liabilities will be paid, the property of a trust
21 that was revocable at the settlor's death is subject to claims of the
22 settlor's creditors, costs of administration of the settlor's estate, the
23 expenses of the settlor's funeral and disposal of remains, and statutory
24 allowances to a surviving spouse and children to the extent that the
25 settlor's probate estate is inadequate to satisfy those claims, costs,
26 expenses, and allowances, unless barred by G.S. 28A-19-3.

27 (b) The lapse, release, or waiver of a power of withdrawal shall not cause the
28 holder to be treated as a settlor of the trust.

29 **"§ 36C-5-506. Overdue distribution.**

30 (a) In this section, "mandatory distribution" means a distribution of income or
31 principal that the trustee is required to make to a beneficiary under the terms of the trust,
32 including a distribution upon termination of the trust. The term excludes a distribution
33 subject to the exercise of the trustee's discretion, regardless of whether the terms of the
34 trust (i) include a support or other standard to guide the trustee in making distribution
35 decisions; or (ii) provide that the trustee "may" or "shall" make discretionary
36 distributions, including distributions pursuant to a support or other standard.

37 (b) Whether or not a trust contains a spendthrift provision, a creditor or assignee
38 of a beneficiary may reach a mandatory distribution of income or principal, including a
39 distribution upon termination of the trust, if the trustee has not made the distribution to
40 the beneficiary within a reasonable time after the designated distribution date.

41 **"§ 36C-5-507. Personal obligations of trustee.**

1 Trust property is not subject to personal obligations of the trustee, even if the trustee
2 becomes insolvent or bankrupt.

3 **"§ 36C-5-508. Protective trusts.**

4 Except with respect to an interest retained by the settlor, a "protective trust interest"
5 means an interest in a trust in which the terms of the trust provide that the interest shall
6 terminate or become discretionary if:

- 7 (1) The beneficiary alienates or attempts to alienate that interest; or
8 (2) Any creditor attempts to reach the beneficiary's interest by attachment,
9 levy, or otherwise; or
10 (3) The beneficiary becomes insolvent or bankrupt.

11 "Article 6.

12 "Revocable Trusts.

13 **"§ 36C-6-601. Capacity of settlor of revocable trust.**

14 The capacity required to create, amend, revoke, or add property to a revocable trust,
15 or to direct the actions of the trustee of a revocable trust, is the same as that required to
16 make a will.

17 **"§ 36C-6-602. Revocation or amendment of revocable trust.**

18 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the
19 settlor may revoke or amend the trust without regard to the actual capacity of the settlor.
20 This subsection does not apply to a trust created under an instrument executed before
21 the effective date of this Chapter.

22 (b) If a revocable trust is created or funded by more than one settlor:

- 23 (1) To the extent the trust consists of community property, the trust may
24 be revoked by either spouse acting alone but may be amended only by
25 joint action of both spouses; and
26 (2) To the extent the trust consists of property other than community
27 property, each settlor may revoke or amend the trust with regard the
28 portion of the trust property attributable to that settlor's contribution.

29 (c) The settlor may revoke or amend a revocable trust:

- 30 (1) By substantial compliance with a method provided in the terms of the
31 trust; or
32 (2) If the terms of the trust do not provide a method or the method
33 provided in the terms is not expressly made exclusive, by:
34 a. A later will or codicil that expressly refers to the trust or
35 specifically devises property that would otherwise have passed
36 according to the terms of the trust; or
37 b. By oral statement to the trustee if the trust was created orally; or
38 c. Any other written method delivered to the trustee manifesting
39 clear and convincing evidence of the settlor's intent.

40 (d) Upon revocation of a revocable trust, the trustee shall deliver the trust
41 property as the settlor directs.

1 (a) Except as otherwise provided in subsection (c) of this section, a person
2 designated as trustee accepts the trusteeship:

3 (1) By substantially complying with a method of acceptance provided in
4 the terms of the trust; or

5 (2) If the terms of the trust do not provide a method or the method
6 provided in the terms is not expressly made exclusive, by accepting
7 delivery of the trust property, exercising powers or performing duties
8 as trustee, or otherwise indicating acceptance of the trusteeship.

9 (b) A person designated as trustee who has not yet accepted the trusteeship may
10 reject the trusteeship. A designated trustee who does not accept the trusteeship within a
11 reasonable time, not to exceed 120 days, after receiving written notice of the trusteeship
12 shall be deemed to have rejected the trusteeship.

13 (c) A person designated as trustee, without accepting the trusteeship, may:

14 (1) Act to preserve the trust property if, within a reasonable time after
15 acting, the person sends a rejection of the trusteeship to the settlor or,
16 if the settlor is dead or lacks capacity, to a qualified beneficiary; and

17 (2) Inspect or investigate trust property to determine potential liability
18 under environmental or other law or for any other purpose.

19 **"§ 36C-7-702. Trustee's bond.**

20 (a) A trustee shall provide bond to secure the performance of the trustee's duties
21 if:

22 (1) The trust instrument was executed before January 1, 2006, unless the
23 terms of the trust instrument provide otherwise;

24 (2) The trust instrument was executed on or after January 1, 2006, but
25 only if the terms of the trust instrument require the trustee to provide
26 bond;

27 (3) A beneficiary requests the trustee to provide bond, and the court finds
28 the request to be reasonable; or

29 (4) The court finds that it is necessary for the trustee to provide bond in
30 order to protect the interests of beneficiaries who are not able to
31 protect themselves and whose interests otherwise are not adequately
32 represented.

33 However, in no event shall bond be required of a trustee if the governing instrument
34 directs otherwise.

35 (b) If bond is required, it shall be in a sum of double the value of the personal
36 property to come into the trustee's hands if bond is executed by a personal surety, and in
37 an amount not less than one and one-fourth times the value of all personal property of
38 the trust estate if the bond is secured by a suretyship bond executed by a corporate
39 surety company authorized by the Commissioner of Insurance to do business in this
40 State, provided that the court, when the value of the personal property exceeds one
41 hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value

1 of the personal property plus ten percent (10%) of that value, conditioned upon the
2 faithful performance of the trustee's duties and for the payment to the persons entitled to
3 receive property that may come into the trustee's hands. All bonds executed under the
4 provisions of this Article shall be filed with the clerk of superior court.

5 (c) On petition of the trustee or a qualified beneficiary, the court may excuse a
6 requirement of bond, reduce the amount of the bond, release the surety, or permit the
7 substitution of another bond with the same or different sureties.

8 (d) As provided in G.S. 53-159 and G.S. 53-366(a)(10), banks and trust
9 companies licensed to do trust business in this State need not give bond, even if required
10 by the terms of the trust.

11 **"§ 36C-7-703. Co-trustees.**

12 (a) Co-trustees who are unable to reach a unanimous decision may act by
13 majority decision if more than two are serving. Unanimity is required when only two
14 co-trustees are serving.

15 (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for
16 the trust and exercise all trustee powers, except those powers that the remaining trustees
17 are prohibited from exercising under the trust instrument or by law.

18 (c) A co-trustee must participate in the performance of a trustee's function unless
19 the cotrustee is unavailable to perform the function because of absence, illness,
20 disqualification under other law, or other temporary incapacity, or the co-trustee has
21 properly delegated the performance of the function to another trustee.

22 (d) If a co-trustee is unavailable to perform duties because of absence, illness,
23 disqualification under other law, or other temporary incapacity, and prompt action is
24 necessary to achieve the purposes of the trust or to avoid injury to the trust property, the
25 remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

26 (e) A trustee may delegate to a co-trustee with the consent of the co-trustee the
27 performance of any function other than those the settlor reasonably expected the trustees
28 to perform jointly. The following functions shall not be deemed to be those that the
29 settlor reasonably expected the trustees to perform jointly:

- 30 (1) Establish and maintain bank accounts for the trust and issue checks for
31 the trust.
- 32 (2) Maintain inventories, accountings, and income and expense records of
33 the trust.
- 34 (3) Enter any safety deposit box rented by the trust.
- 35 (4) Employ persons as advisors or assistants in the performance of
36 administrative duties, including agents, attorneys, accountants,
37 brokers, appraisers, and custodians.
- 38 (5) List trust property for taxes and prepare and file tax returns for the
39 trust.
- 40 (6) Collect and give receipts for claims and debts of the trust.
- 41 (7) Pay debts, claims, costs of administration, and taxes of the trust.

1 (8) Compromise, adjust, or otherwise settle any claim by or against the
2 trust and release, in whole or in part, a claim belonging to the trust.

3 (9) Have custody of the trust property.

4 The list of functions contained in this subsection is not intended to be exclusive of
5 others that may be delegated to a co-trustee in accordance with this subsection.

6 (f) Except as otherwise provided in subsection (g) of this section, a trustee who
7 does not join in an action of another trustee is not liable for the action.

8 (g) Each trustee shall exercise reasonable care to:

9 (1) Avoid enabling a co-trustee to commit a serious breach of trust; and

10 (2) Compel a co-trustee to redress a serious breach of trust.

11 (h) Notwithstanding subsection (f) or (g) of this section, a trustee who has not
12 joined in an action approved by a majority of the other trustees shall not be liable for the
13 action, nor shall a dissenting trustee who joins in an action at the direction of the
14 majority of the trustees but who notified in writing any co-trustee of the dissent at or
15 before the time of the action be liable for the action, unless that trustee had knowledge
16 that the action taken involved intentional misconduct or was taken with an intention to
17 directly or indirectly provide an improper personal benefit to one or more trustees
18 approving the action.

19 (i) Notwithstanding any other provision of this section to the contrary, if two or
20 more trustees own shares of corporate stock or other securities, their acts with respect to
21 voting shall have the following effect:

22 (1) If only one votes, in person or by proxy, the act binds all;

23 (2) If more than one vote, in person or by proxy, the act binds all; and

24 (3) If more than one vote, in person or by proxy, but the vote is evenly
25 split on any particular matter, each faction is entitled to vote the stock
26 or other securities in question proportionately.

27 "**§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

28 (a) A vacancy in a trusteeship occurs if:

29 (1) A person designated as trustee rejects the trusteeship;

30 (2) A person designated as trustee cannot be identified or does not exist;

31 (3) A trustee resigns;

32 (4) A trustee is disqualified or removed;

33 (5) A trustee dies; or

34 (6) A general guardian, guardian of the estate, or guardian of the person is
35 appointed for an individual serving as trustee.

36 (b) If one or more co-trustees remain in office, a vacancy in a trusteeship need
37 not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining
38 trustee.

39 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled
40 must be filled in the following order of priority:

- 1 (1) By a person designated in the terms of the trust or appointed pursuant
2 to the terms of the trust to act as successor trustee;
3 (2) By a person appointed by unanimous agreement of the qualified
4 beneficiaries; or
5 (3) By a person appointed by the court.
6 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled
7 must be filled in the following order of priority:
8 (1) By a person designated in the terms of the trust or appointed pursuant
9 to the terms of the trust to act as successor trustee;
10 (2) By a person selected by majority agreement of the charitable
11 organizations expressly designated to receive distributions under the
12 terms of the trust; or
13 (3) By a person appointed by the court.
14 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the
15 court may appoint an additional trustee or special fiduciary whenever the court
16 considers the appointment necessary for the administration of the trust.
17 (f) A successor trustee shall succeed to all the rights, powers, and privileges, and
18 shall be subject to all the duties, liabilities, and responsibilities that were imposed upon
19 the original trustee, unless a contrary intent appears from the governing instrument or
20 unless the order appointing the successor trustee provides otherwise.

21 **"§ 36C-7-705. Resignation of trustee.**

- 22 (a) A trustee may resign:
23 (1) Upon at least 30 days' notice in writing to the qualified beneficiaries,
24 the settlor, if living, and all co-trustees; or
25 (2) With the approval of the court.
26 (b) In approving a resignation, the court may issue orders and impose conditions
27 reasonably necessary for the protection of the trust property.
28 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for
29 acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

30 **"§ 36C-7-706. Removal of trustee.**

- 31 (a) For the reasons set forth in subsection (b) of this section, the settlor, a
32 co-trustee, or a beneficiary of an irrevocable trust may request the court to remove a
33 trustee, or a trustee may be removed by the court on its own initiative.
34 (b) The court may remove a trustee if:
35 (1) The trustee has committed a serious breach of trust;
36 (2) Lack of cooperation among co-trustees substantially impairs the
37 administration of the trust;
38 (3) Because of unfitness, unwillingness, or persistent failure of the trustee
39 to administer the trust effectively, the court determines that removal of
40 the trustee best serves the interests of the beneficiaries; or
41 (4) There has been a substantial change of circumstances, the court finds
42 that removal of the trustee best serves the interests of all of the

1 beneficiaries and is not inconsistent with a material purpose of the
2 trust, and a suitable co-trustee or successor trustee is available.

3 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in
4 addition to removing a trustee, the court may order appropriate relief under
5 G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of
6 the beneficiaries.

7 **"§ 36C-7-707. Delivery of property by former trustee.**

8 (a) Unless a co-trustee remains in office or the court otherwise orders, and until
9 the trust property is delivered to a successor trustee or other person entitled to it, a
10 trustee who has resigned or been removed has the duties of a trustee and the powers
11 necessary to protect the trust property.

12 (b) A trustee who has resigned or been removed shall proceed expeditiously to
13 deliver the trust property within the trustee's possession to the co-trustee, successor
14 trustee, or other person entitled to it. A former trustee shall execute those documents
15 transferring title to trust property as may be appropriate to facilitate administration of
16 the trust, and in the event that the former trustee fails to do so, the clerk of superior
17 court may order the former trustee to execute those documents, or the clerk of superior
18 court may transfer title.

19 **"§ 36C-7-708. Compensation of trustee.**

20 (a) If the terms of a trust do not specify the trustee's compensation, a trustee is
21 entitled to compensation determined in accordance with the provisions of Article 5A of
22 Chapter 32 of the General Statutes.

23 (b) If the terms of a trust specify the trustee's compensation, the trustee is entitled
24 to be compensated as specified.

25 **"§ 36C-7-709. Reimbursement of expenses.**

26 A trustee is entitled to be reimbursed out of the trust property for expenses properly
27 incurred in the administration of the trust as provided in G.S. 32-58.

28 "Article 8.

29 "Duties and Powers of Trustee.

30 **"§ 36C-8-801. Duty to administer trust.**

31 Upon acceptance of a trusteeship, a trustee shall administer the trust in good faith, in
32 accordance with its terms and purposes and the interests of the beneficiaries, and in
33 accordance with this Chapter.

34 **"§ 36C-8-802. Duty of loyalty.**

35 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

36 (b) Subject to the rights of persons dealing with or assisting the trustee as
37 provided in G.S. 36C-10-1012, a sale, encumbrance, or other transaction involving the
38 investment or management of trust property entered into by the trustee for the trustee's
39 own personal account, or that is otherwise affected by a conflict between the trustee's
40 fiduciary and personal interests, is voidable by a beneficiary affected by the transaction,
41 without regard to whether the transaction is fair to the beneficiary, unless:

- 1 (1) The transaction was authorized by the terms of the trust;
- 2 (2) The transaction was approved by the court;
- 3 (3) The beneficiary did not commence a judicial proceeding within the
4 time allowed by G.S. 36C-10-1005;
- 5 (4) The beneficiary consented to the trustee's conduct, ratified the
6 transaction, or released the trustee in compliance with
7 G.S. 36C-10-1009; or
- 8 (5) The transaction involves a contract entered into, or claim acquired by,
9 the trustee before the person became or contemplated becoming
10 trustee.

11 (c) In determining whether a sale, encumbrance, or other transaction involving
12 the investment or management of trust property is affected by a conflict of interest
13 between the trustee's fiduciary and personal interests, the transaction is rebuttably
14 presumed to be affected by such a conflict if the trustee enters into the transaction with:

- 15 (1) The trustee's spouse or a parent of the trustee's spouse;
- 16 (2) The trustee's descendants, siblings, ancestors, or their spouses;
- 17 (3) An agent, attorney, employee, officer, director, member, manager, or
18 partner of the trustee, or an entity that controls, is controlled by, or is
19 under common control with the trustee; or
- 20 (4) Any other person or entity in which the trustee, or a person that owns a
21 significant interest in the trust, has an interest or relationship that
22 might affect the trustee's best judgment;

23 (d) A transaction between a trustee and a beneficiary that does not concern trust
24 property, but that occurs during the existence of the trust or while the trustee retains
25 significant influence over the beneficiary, and from which the trustee obtains an
26 advantage, is voidable by the beneficiary unless the trustee establishes that the
27 transaction was fair to the beneficiary.

28 (e) A transaction not concerning trust property in which the trustee engages in
29 the trustee's individual capacity involves a conflict between personal and fiduciary
30 interests if the transaction concerns an opportunity properly belonging to the trust.

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

- 32 (1) An investment by a trustee in securities of an investment company,
33 investment trust, or pooled investment vehicle in which the trustee has
34 an investment, or to which the trustee, or its affiliate, provides services
35 is not presumed to be affected by a conflict between personal and
36 fiduciary interests if the investment otherwise complies with the
37 prudent investor rule of Article 9 of this Chapter. The trustee may be
38 compensated by the investment company, investment trust, or pooled
39 investment vehicle for providing those services out of fees charged to
40 the trust if the trustee at least annually notifies the persons entitled
41 under G.S. 36C-8-813 to receive a copy of the trustee's annual report

1 of the rate and method by which the compensation was determined;
2 and

- 3 (2) Payment made by a trustee to an attorney, broker, accountant, or agent
4 for services performed on behalf of the trust in the ordinary course of
5 business shall not be deemed to be affected by a conflict between the
6 trustee's personal and fiduciary interests if the payment is consistent
7 with payments generally made in the community for the same or
8 similar services.

9 (g) In voting shares of stock or in exercising powers of control over similar
10 interests in other forms of enterprise, the trustee shall act in the best interests of the
11 beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise,
12 the trustee shall elect to appoint directors or other managers who will manage the
13 corporation or enterprise in the best interests of the beneficiaries.

14 (h) This section does not preclude the following transactions, if fair to the
15 beneficiaries:

- 16 (1) An agreement between a trustee and a beneficiary relating to the
17 appointment or compensation of the trustee;
18 (2) Payment of reasonable compensation to the trustee;
19 (3) A transaction between a trust and another trust, decedent's estate, or
20 guardianship, or similar relationship of which the trustee is a fiduciary
21 or in which a beneficiary has an interest;
22 (4) A deposit of trust money in a regulated financial-service institution
23 operated by the trustee or an affiliate of the trustee; or
24 (5) An advance by the trustee of money for the protection of the trust.

25 (i) The court may appoint a special fiduciary to make a decision with respect to
26 any proposed transaction that might violate this section if entered into by the trustee.

27 **"§ 36C-8-803. Impartiality.**

28 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,
29 managing, and distributing the trust property, giving due regard to the beneficiaries'
30 respective interests.

31 **"§ 36C-8-804. Prudent administration.**

32 A trustee shall administer the trust as a prudent person would, by considering the
33 purposes, terms, distributional requirements, and other circumstances of the trust. In
34 satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

35 **"§ 36C-8-805. Cost of administration.**

36 In administering a trust, the trustee may incur only costs that are reasonable in
37 relation to the trust property, the purposes of the trust, and the skills of the trustee.

38 **"§ 36C-8-806. Trustee's skills.**

39 A trustee who has special skills or expertise, or is named trustee in reliance upon the
40 trustee's representation that the trustee has special skills or expertise, shall use those
41 special skills or expertise.

1 **"§ 36C-8-807. Delegation by trustee.**

2 (a) A trustee may delegate duties and powers that a prudent trustee of
3 comparable skills could properly delegate under the circumstances. The trustee shall
4 exercise reasonable care, skill, and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation, consistent with the
7 purposes and terms of the trust; and

8 (3) Periodically reviewing the agent's actions in order to monitor the
9 agent's performance and compliance with the terms of the delegation.

10 (b) In performing a delegated function, an agent owes a duty to the trust to
11 exercise reasonable care to comply with the terms of the delegation.

12 (c) A trustee who complies with subsection (a) of this section is not liable to the
13 beneficiaries or to the trust for an action of the agent to whom the function was
14 delegated.

15 (d) By accepting a delegation of powers or duties from the trustee of a trust that
16 is subject to the law of this State, an agent submits to the jurisdiction of the courts of
17 this State.

18 **"§ 36C-8-808. Powers to direct.**

19 (a) While a trust is revocable, the trustee may follow a direction of the settlor that
20 is contrary to the terms of the trust.

21 (b) If the terms of a trust confer upon a person other than the settlor of a
22 revocable trust power to direct certain actions of the trustee, the trustee shall act in
23 accordance with an exercise of the power unless the attempted exercise is manifestly
24 contrary to the terms of the trust, or the trustee knows the attempted exercise would
25 constitute a serious breach of a fiduciary duty that the person holding the power owes to
26 the beneficiaries of the trust.

27 (c) The terms of a trust may confer upon a trustee or other person a power to
28 direct the modification or termination of the trust.

29 (d) A person, other than a beneficiary, who holds a power to direct is
30 presumptively a fiduciary who, as such, is required to act in good faith with regard to
31 the purposes of the trust and the interests of the beneficiaries. The holder of a power to
32 direct is liable for any loss that results from breach of a fiduciary duty.

33 **"§ 36C-8-809. Control and protection of trust property.**

34 A trustee shall take reasonable steps to take control of and protect the trust property.

35 **"§ 36C-8-810. Record keeping and identification of trust property.**

36 (a) A trustee shall keep adequate records of the administration of the trust.

37 (b) A trustee shall keep trust property separate from the trustee's own property.

38 (c) Except as otherwise provided in subsection (d) of this section, a trustee shall
39 cause the trust property to be designated so that the interest of the trust, to the extent
40 feasible, appears in records maintained by a party other than a trustee or beneficiary.

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

1 **"§ 36C-8-811. Enforcement and defense of claims.**

2 A trustee shall take reasonable steps to enforce claims of the trust and to defend
3 claims against the trust.

4 **"§ 36C-8-812. Collecting trust property.**

5 A trustee shall take reasonable steps to compel a former trustee or other person to
6 deliver trust property to the trustee, and to redress a breach of trust known to the trustee
7 to have been committed by a former trustee.

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

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

14 (b) Notwithstanding the provisions of subsection (a) of this section:

15 (1) The duty of the trustee under subsection (a) of this section shall not
16 include informing any beneficiary in advance of transactions relating
17 to the trust property.

18 (2) A trustee shall be deemed to have discharged the trustee's duty under
19 subsection (a) of this section as to a qualified beneficiary for matters
20 disclosed by a report sent at least annually and at termination of the
21 trust to the beneficiary that describes the trust property, liabilities,
22 receipts, and disbursements, including the source and amount of the
23 trustee's compensation, and lists the trust assets and their respective
24 market values (including estimated values of assets with uncertain
25 values). No presumption shall arise that a trustee who does not comply
26 with the provisions of this subdivision failed to discharge the trustee's
27 duty under subsection (a) of this section.

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

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

33 **"§ 36C-8-814. Discretionary powers; tax savings.**

34 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of
35 the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a
36 trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary
37 power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive,
38 even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in
39 accordance with the terms and purposes of the trust and the interests of the
40 beneficiaries.

1 (b) Subject to subsection (d) of this section, and unless the terms of the trust
2 expressly indicate that a rule in this subsection does not apply:

3 (1) A person other than a settlor who is a beneficiary and trustee of a trust
4 that confers on the trustee a power that would, except for this
5 subsection, constitute in whole or in part a general power of
6 appointment may not exercise that power in favor of the
7 trustee/beneficiary, the trustee/beneficiary's estate, the
8 trustee/beneficiary's creditors, or the creditors of the
9 trustee/beneficiary's estate.

10 (2) Notwithstanding the provisions of subdivision (1) of this subsection, if
11 the trust confers on the trustee the power to make discretionary
12 distributions to or for the trustee's personal benefit, the trustee may
13 exercise the power in accordance with an ascertainable standard.

14 (3) The trustee may not exercise a power to make discretionary
15 distributions to satisfy a legal obligation of support that the trustee
16 personally owes another person.

17 For purposes of this subsection, a "general power of appointment" means any power
18 that would cause the income to be taxed to the trustee in his individual capacity under
19 section 678 of the Internal Revenue Code and any power that would be a general power
20 of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the
21 Internal Revenue Code.

22 (c) A power whose exercise is limited or prohibited by subsection (b) of this
23 section may be exercised by a majority of the remaining trustees whose exercise of the
24 power is not so limited or prohibited. If the power of all trustees is so limited or
25 prohibited, the court may appoint a special fiduciary with authority to exercise the
26 power.

27 (d) Subsection (b) of this section does not apply to:

28 (1) A power held by the settlor's spouse who is the trustee of a trust for
29 which a marital deduction, as defined in section 2056(b)(5) or section
30 2523(e) of the Internal Revenue Code, was previously allowed;

31 (2) Any trust during any period that the trust may be revoked or amended
32 by its settlor; or

33 (3) A trust, if contributions to the trust qualify for the annual exclusion
34 under section 2503(c) of the Internal Revenue Code.

35 (e) If a trust created under a will or trust instrument for the benefit of the spouse
36 of the settlor of the trust, other than a trust that provides that upon the termination of the
37 income interest that the entire remaining trust estate be paid to the estate of the spouse,
38 requires that all the income of the trust be paid not less frequently than annually to the
39 spouse and a federal estate or gift tax marital deduction is claimed with respect to the
40 trust, then, unless the trust instrument specifically provides otherwise by reference to
41 this section, any investment in or retention of unproductive property as an asset of the
42 trust is subject to the power of the spouse to require either that the asset be made

1 productive of income, or that it be converted to assets productive of income, within a
2 reasonable period of time.

3 **"§ 36C-8-815. General powers of trustee.**

4 (a) A trustee, without authorization by the court, may exercise:

5 (1) Powers conferred by the terms of the trust; or

6 (2) Except as limited by the terms of the trust:

7 a. All powers over the trust property that an unmarried competent
8 owner has over individually owned property;

9 b. Any other powers appropriate to achieve the proper investment,
10 management, administration or distribution of the trust
11 property; and

12 c. Any other powers conferred by this Chapter.

13 (b) The exercise of a power is subject to the fiduciary duties prescribed by this
14 Article.

15 **"§ 36C-8-816. Specific powers of trustee.**

16 Without limiting the authority conferred by G.S. 36C-8-816, a trustee may:

17 (1) Collect and control trust property and accept or reject additions to the
18 trust property from a settlor or any other person;

19 (2) Invest and reinvest trust property as the trustee deems advisable in
20 accordance with the provisions of the trust, and to acquire or sell
21 property, for cash or on credit, at public or private sale;

22 (3) Exchange, partition, or otherwise change the character of trust
23 property;

24 (4) Deposit trust money in an account in a regulated financial services
25 institution, including an institution operated by the trustee or an
26 affiliate of the trustee upon compliance with any applicable
27 requirements for the deposit;

28 (5) Borrow money, with or without security, including from a corporate
29 trustee's lending department, renew or modify loans, and mortgage or
30 pledge trust property for a period within or extending beyond the
31 duration of the trust;

32 (6) With respect to an interest in a proprietorship, partnership, limited
33 liability company, business trust, corporation, venture, agricultural
34 operation, or other form of business or enterprise, form and transfer,
35 assign, and convey to that form of business or enterprise all or any part
36 of the trust property in exchange for the stock, securities, or
37 obligations of that form of business or enterprise, continue any
38 business or other enterprise and take any action that may be taken by
39 shareholders, members, or property owners, including merging,
40 dissolving, or otherwise changing the form of business organization, or
41 contributing additional capital;

- 1 (7) With respect to stocks or other securities, exercise the rights of an
2 absolute owner, including the right to:
3 a. Vote, or give general or limited proxies to vote, with or without
4 power of substitution, or enter into or continue a voting trust
5 agreement, or execute waivers, consents, or objections with
6 respect to those securities;
7 b. Hold a security in the name of a nominee or in other form
8 without disclosure of the trust so that title may pass by delivery;
9 c. Pay calls, assessments, and other sums chargeable or accruing
10 against the securities, and sell or exercise stock subscription or
11 conversion rights;
12 d. Deposit the securities with a depository or other regulated
13 financial-service institution; and
14 e. Consent, directly or through a committee or other agent, to the
15 merger, consolidation, reorganization, readjustment of capital or
16 financial structure, lease, sale, dissolution, or liquidation of a
17 business enterprise, and elect whether to participate as a
18 member of a class in any litigation involving the securities;
19 (8) With respect to an interest in real property, construct, or make ordinary
20 or extraordinary repairs to, alterations to, or improvements in,
21 buildings or other structures, demolish improvements, raze existing
22 party walls or buildings or erect new party walls or buildings,
23 subdivide or develop land, dedicate land to public use or grant public
24 or private easements, and make or vacate plats and adjust boundaries,
25 make contracts, licenses, leases, conveyances, or grants of every nature
26 and kind with respect to crops, gravel, sand, oil, gas, timber and forest
27 products, other usufructs or natural resources, and other benefits or
28 incidents of the real property;
29 (9) Enter into a lease for any purpose as lessor or lessee, including a lease
30 or other arrangement for exploration and removal of natural resources,
31 with or without the option to purchase or renew, for a period within or
32 extending beyond the duration of the trust;
33 (10) Grant an option involving a sale, lease, or other disposition of trust
34 property or acquire an option for the acquisition of property, including
35 an option exercisable beyond the duration of the trust, and exercise an
36 option so acquired;
37 (11) Insure the property of the trust against damage or loss and insure the
38 trustee, the trustee's agents, and beneficiaries against liability arising
39 from the administration of the trust at the expense of the trust;
40 (12) Abandon, relinquish any or all rights to, or decline to administer
41 property of no value or of insufficient benefit or value to the trust to
42 justify its collection or continued administration;

- 1 (13) With respect to possible liability for violation of environmental law:
2 a. Inspect or investigate property the trustee holds or has been
3 asked to hold, or property owned or operated by an organization
4 in which the trustee holds or has been asked to hold an interest,
5 for the purpose of determining the application of environmental
6 law with respect to the property;
7 b. Take action to prevent, abate, or otherwise remedy any actual or
8 potential violation of any environmental law affecting property
9 held directly or indirectly by the trustee, whether taken before
10 or after the assertion of a claim or the initiation of governmental
11 enforcement;
12 c. Decline to accept property into trust or disclaim any power with
13 respect to property that is or may be burdened with liability for
14 violation of environmental law;
15 d. Compromise claims against the trust which may be asserted for
16 an alleged violation of environmental law; and
17 e. Pay the expense of any inspection, review, abatement, or
18 remedial action to comply with environmental law;
19 (14) Pay or contest any claim, compromise, adjust or otherwise settle a
20 claim by or against the trust, and release, in whole or in part, a claim
21 belonging to the trust;
22 (15) Pay from the trust property taxes, assessments, compensation of the
23 trustee and of employees and agents of the trust, and other expenses
24 incurred in the administration of the trust and the protection of the trust
25 property;
26 (16) Exercise elections with respect to federal, state, and local taxes;
27 (17) Select a mode of payment under any employee benefit or retirement
28 plan, annuity, or life insurance payable to the trustee, exercise rights
29 under such a plan, including exercise of the right to indemnification
30 for expenses and against liabilities, and take appropriate action to
31 collect the proceeds;
32 (18) Make loans out of trust property, including loans to a beneficiary on
33 terms and conditions the trustee considers to be fair and reasonable
34 under the circumstances, and acquire a lien on future distributions for
35 repayment of those loans;
36 (19) Pledge trust property to guarantee loans made by others to a
37 beneficiary;
38 (20) Appoint a trustee to act in another jurisdiction with respect to trust
39 property located in the other jurisdiction, confer upon the appointed
40 trustee all of the powers and duties of the appointing trustee, limit
41 those powers the appointed trustee may exercise and the duties for

1 which the appointed trustee is responsible, require that the appointed
2 trustee furnish security, and remove any trustee so appointed;

3 (21) Pay an amount distributable to a beneficiary who is under a legal
4 disability or who the trustee reasonably believes is incapacitated, by
5 paying it directly to the beneficiary or applying it for the beneficiary's
6 benefit, or by:

7 a. Paying it to the beneficiary's general guardian or the guardian of
8 the beneficiary's estate or, if the beneficiary does not have a
9 general guardian or guardian of the beneficiary's estate, the
10 guardian of the beneficiary's person;

11 b. Paying it to a custodian under a uniform transfer to minors act
12 or custodial trustee under a uniform custodial trust act and, for
13 that purpose, creating a custodianship or custodial trust for the
14 benefit of the beneficiary;

15 c. Paying it to an adult relative or other person having legal or
16 physical care or custody of the beneficiary, to be expended on
17 the beneficiary's behalf; or

18 d. Managing it as a separate fund on the beneficiary's behalf.

19 A trustee making payments under this subdivision does not have any
20 duty to see to the application of the payments so made, if the trustee
21 exercised due care in the selection of the person, including the minor
22 or incompetent, to whom the payments were made, and the receipt of
23 that person shall be full acquittance to the trustee;

24 (22) On distribution of trust property or the division or termination of a
25 trust, make distributions in divided or undivided interests, allocate
26 particular assets in proportionate or disproportionate shares without
27 regard to the income tax basis or other special tax attributes of such
28 assets, as the trustee finds to be most practicable and for the best
29 interests of the distributees, value the trust property for those purposes,
30 and adjust for resulting differences in valuation; and to distribute trust
31 property in kind or in cash, or partially in kind and partially in cash, in
32 divided or undivided interests;

33 (23) Resolve a dispute concerning the interpretation of the trust or its
34 administration by mediation, arbitration, or other procedure for
35 alternative dispute resolution;

36 (24) Prosecute or defend an action, claim, or judicial proceeding in any
37 jurisdiction to protect trust property and the trustee in the performance
38 of the trustee's duties;

39 (25) Make, execute, and deliver contracts and other instruments, including
40 instruments under seal, that are useful to achieve or facilitate the
41 exercise of the trustee's powers;

1 permissible by law for investment of trust funds", "legal investments", "authorized
2 investments", "using the judgment and care under the circumstances then prevailing that
3 persons of prudence, discretion, and intelligence exercise in the management of their
4 own affairs, not in regard to speculation but in regard to the permanent disposition of
5 their funds, considering the probable income as well as the probable safety of their
6 capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent
7 investor rule". This Article also applies where a trust contains no investment standard.

8 (d) This Article does not apply to:

9 (1) Unless the provisions of the trust provide otherwise by specific
10 reference to this Article:

11 a. Trusts under any federal employee retirement income security
12 statute or other retirement or pension trusts;

13 b. Trusts that are created by legislative act;

14 c. Trusts that are created by or pursuant to premarital or
15 postmarital agreements, divorce settlements, settlements of
16 other proceedings or disputes;

17 d. Transfers under the Uniform Transfers to Minors Act;

18 e. Transfers under the Uniform Custodial Trust Act; or

19 f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

20 (2) Trusts imposed or required under another chapter of the General
21 Statutes or by rule in which the investment of the trust funds is
22 regulated by the other chapter or by rule, unless a provision of the
23 other chapter or the rule provides otherwise by a specific reference to
24 this Article.

25 **"§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.**

26 (a) A trustee shall invest and manage trust assets as a prudent investor would, by
27 considering the purposes, terms, distribution requirements, and other circumstances of
28 the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and
29 caution.

30 (b) A trustee's investment and management decisions respecting individual assets
31 must be evaluated not in isolation but in the context of the trust portfolio as a whole and
32 as a part of an overall investment strategy having risk and return objectives reasonably
33 suited to the trust.

34 (c) Among circumstances that a trustee shall consider in investing and managing
35 trust assets are any of the following that are relevant to the trust or its beneficiaries:

36 (1) General economic conditions;

37 (2) The possible effect of inflation or deflation;

38 (3) The expected tax consequences of investment decisions or strategies;

39 (4) The role that each investment or course of action plays within the
40 overall trust portfolio, which may include financial assets, interests in
41 closely held enterprises, tangible and intangible personal property, and
42 real property;

- 1 (6) Suspend the trustee;
- 2 (7) Remove the trustee as provided in G.S. 36C-7-706;
- 3 (8) Reduce or deny compensation to the trustee;
- 4 (9) Subject to G.S. 36C-10-1012, void an act of the trustee, impose a lien
5 or a constructive trust on trust property, or trace trust property
6 wrongfully disposed of and recover the property or its proceeds; or
- 7 (10) Order any other appropriate relief.

8 (c) The court may, for cause shown, relieve a trustee from liability for any breach
9 of trust, or wholly or partly excuse a trustee who has acted honestly and reasonably
10 from liability for a breach of trust.

11 **"§ 36C-10-1002. Damages for breach of trust.**

12 (a) A trustee who commits a breach of trust is liable for the greater of:

- 13 (1) The amount required to restore the value of the trust property and trust
14 distributions to what they would have been had the breach not
15 occurred; or
- 16 (2) The profit the trustee made by reason of the breach.

17 (b) Except as otherwise provided in this subsection, if more than one trustee is
18 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from
19 the other trustee or trustees. A trustee is not entitled to contribution if the trustee was
20 substantially more at fault than another trustee or if the trustee committed the breach of
21 trust in bad faith or with reckless indifference to the purposes of the trust or the interests
22 of the beneficiaries. A trustee who received a benefit from the breach of trust is not
23 entitled to contribution from another trustee to the extent of the benefit received.

24 **"§ 36C-10-1003. Liability in absence of breach.**

25 (a) A trustee is accountable for any profit made by the trustee arising from the
26 administration of the trust, even absent a breach of trust. Nothing in this section limits a
27 trustee's right to compensation under G.S. 36C-7-708 or payments allowed under
28 G.S. 36C-8-802(f).

29 (b) Absent a breach of trust, a trustee is not liable for a loss or depreciation in the
30 value of trust property or for not having made a profit.

31 **"§ 36C-10-1004. Attorney's fees and costs.**

32 In a judicial proceeding involving the administration of a trust, the court may award
33 costs and expenses, including reasonable attorney fees, as provided in the General
34 Statutes.

35 **"§ 36C-10-1005. Limitation of action against trustee.**

36 Limitation of actions on judicial proceedings involving trusts shall be governed by
37 applicable provisions of Chapter 1 of the General Statutes, except that no proceeding
38 against a trustee for breach of trust may be commenced more than five years after the
39 first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination
40 of the beneficiary's interest in the trust; or (iii) the termination of the trust.

41 **"§ 36C-10-1006. Reliance on trust instrument.**

1 A trustee who acts in reasonable reliance on the terms of the trust as expressed in a
2 trust instrument is not liable for a breach of trust to the extent that the breach resulted
3 from the reliance.

4 **"§ 36C-10-1007. Event affecting administration or distribution.**

5 If the happening of an event, including marriage, divorce, performance of
6 educational requirements, or death, affects the administration or distribution of a trust, a
7 trustee who has exercised reasonable care to ascertain the happening of the event is not
8 liable for a loss resulting from the trustee's lack of knowledge.

9 **"§ 36C-10-1008. Exculpation of trustee.**

10 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
11 the extent that it relieves the trustee of liability for breach of trust committed in bad faith
12 or with reckless indifference to the purposes of the trust or the interests of the
13 beneficiaries.

14 **"§ 36C-10-1009. Beneficiary's consent, release, or ratification.**

15 (a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary
16 consented to the conduct constituting the breach, released the trustee from liability for
17 the breach, or ratified the transaction constituting the breach, unless:

18 (1) The consent, release, or ratification of the beneficiary was induced by
19 improper conduct of the trustee; or

20 (2) At the time of the consent, release, or ratification, the beneficiary did
21 not have knowledge of the beneficiary's rights or of the material facts
22 relating to the breach.

23 (b) No consideration is required for the consent, release, or ratification to be
24 valid.

25 **"§ 36C-10-1010. Limitation on personal liability of trustee.**

26 (a) Except as otherwise provided in the contract, a trustee is not personally liable
27 on a contract properly entered into in the trustee's fiduciary capacity in the course of
28 administering the trust if the trustee in making the contract disclosed the fiduciary
29 capacity. The addition of the phrases "trustee," or "as trustee," or similar designations to
30 the signature of a trustee on a written contract shall be deemed prima facie evidence of a
31 disclosure of fiduciary capacity.

32 (b) A trustee is personally liable for torts committed in the course of
33 administering a trust, or for obligations arising from ownership or control of trust
34 property, including liability for violation of environmental law, only if the trustee is
35 personally at fault.

36 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
37 capacity, on an obligation arising from ownership or control of trust property, or on a
38 tort committed in the course of administering a trust, may be asserted in a judicial
39 proceeding against the trustee in the trustee's fiduciary capacity, whether or not the
40 trustee is personally liable for the claim. Any judgment rendered in favor of a claimant
41 in such a judicial proceeding against a trust may be recovered from the trust property,

1 without proof that the trustee could have obtained reimbursement from the trust if the
2 trustee had paid the claim.

3 (d) A trustee shall be entitled to indemnity from the trust for any claim, other
4 than a breach of trust, for which the trustee is liable:

5 (1) If the claim arose from a common incident of activity in which the
6 trustee was properly engaged for the trust;

7 (2) If the trustee was not personally at fault; or

8 (3) To the extent that the trustee's actions increased the value of trust
9 property.

10 (e) A decision by a trustee not to inspect property, or to decline to accept
11 property, shall not create any inference as to liability, under any environmental law,
12 with respect to that property. A trustee shall have no liability for a decrease in value of
13 property in a trust by reason of the trustee's compliance with any environmental law,
14 including reporting requirements.

15 **"§ 36C-10-1011. Interest as general partner.**

16 (a) Except as otherwise provided in subsection (c) of this section or unless
17 personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity,
18 an interest as a general partner in a general or limited partnership is not personally liable
19 on a contract entered into by the partnership if the fiduciary capacity was disclosed. The
20 addition of the phrases "trustee", or "as trustee", or similar designations to the signature
21 of a trustee on a written partnership document shall be deemed prima facie evidence of
22 a disclosure of fiduciary capacity.

23 (b) A trustee who holds, in a fiduciary capacity, an interest as a general partner is
24 not personally liable for torts committed by the partnership or for obligations arising
25 from ownership or control of the interest unless the trustee is personally at fault. This
26 subsection does not apply to additional ownership interests of the trustee held in a
27 nonfiduciary capacity.

28 (c) If the settlor transfers an existing general partnership interest to a revocable
29 trust, the settlor remains personally liable for partnership obligations as if the settlor
30 were a general partner.

31 **"§ 36C-10-1012. Protection of person dealing with trustee.**

32 (a) A person other than a beneficiary who in good faith assists a trustee, or who
33 in good faith and for value deals with a trustee, without knowledge that the trustee is
34 exceeding or improperly exercising the trustee's powers, is protected from liability as if
35 the trustee properly exercised the power.

36 (b) A person other than a beneficiary who in good faith deals with a trustee is not
37 required to inquire into the extent of the trustee's powers or the propriety of their
38 exercise.

39 (c) A person who in good faith delivers assets to a trustee need not ensure their
40 proper application.

41 (d) A person other than a beneficiary who in good faith assists a former trustee,
42 or who in good faith and for value deals with a former trustee, without knowledge that

1 the trusteeship has terminated is protected from liability as if the former trustee were
2 still a trustee.

3 (e) Comparable protective provisions of other laws relating to commercial
4 transactions or transfer of securities by fiduciaries prevail over the protection provided
5 by this section.

6 (f) A person is not required to obtain a certification under G.S. 36C-10-1013 in
7 order to be entitled to the protections of this section.

8 **"§ 36C-10-1013. Certification of trust.**

9 (a) Instead of furnishing a copy of the trust instrument to a person other than a
10 beneficiary, the trustee may furnish to the person a certification of trust containing the
11 following information:

12 (1) The existence of the trust and the date the trust instrument was
13 executed;

14 (2) The identity of the settlor, unless withheld pursuant to a provision in
15 the trust instrument;

16 (3) The identity and address of the currently acting trustee;

17 (4) The powers of the trustee;

18 (5) The revocability or irrevocability of the trust and the identity of any
19 person holding a power to revoke the trust;

20 (6) The authority of co-trustees to sign or otherwise authenticate and
21 whether all or less than all are required in order to exercise powers of
22 the trustee;

23 (7) The trust's taxpayer identification number; and

24 (8) The manner of taking title to trust property.

25 (b) A certification of trust may be signed or otherwise authenticated by any
26 trustee.

27 (c) A certification of trust must state that the trust has not been revoked,
28 modified, or amended in any manner that would cause the representations contained in
29 the certification of trust to be incorrect.

30 (d) A certification of trust need not contain the dispositive terms of a trust.

31 (e) A recipient of a certification of trust may require the trustee to furnish copies
32 of those excerpts from the original trust instrument and later amendments which
33 designate the trustee and confer upon the trustee the power to act in the pending
34 transaction.

35 (f) A person who acts in reliance upon a certification of trust without knowledge
36 that the representations contained in the certification are incorrect is not liable to any
37 person for so acting and may assume without inquiry the existence of the facts
38 contained in the certification. Knowledge of the terms of the trust may not be inferred
39 solely from the fact that the person relying upon the certification holds a copy of all or
40 part of the trust instrument.

1 trust funds to be used for the benefit of such a disabled person. In a number of other
2 states voluntary associations have established foundations or trusts intended to be
3 responsive to these concerns. Therefore, the General Assembly finds that North
4 Carolina will benefit by the enactment of enabling legislation expressly authorizing the
5 formation of community trusts in accordance with criteria set forth by statute and
6 administered by the Secretary of State, pursuant to Chapter 55A of the General Statutes.
7 These community trusts permit the pooling of resources contributed by families or
8 persons with philanthropic intent, along with the reservation of portions of these
9 funds for the use and benefit of designated beneficiaries.

10 (c) This Article shall be liberally construed and applied to promote its underlying
11 purposes and policies, which are, among others, to:

- 12 (1) Encourage the orderly establishment of community trusts for the
13 benefit of persons with severe chronic disabilities;
- 14 (2) Ensure that community trusts are administered properly and that the
15 managing boards of the trusts are free from conflicts of interest;
- 16 (3) Facilitate sound administration of trust funds for persons with severe
17 chronic disabilities by allowing family members and others to pool
18 resources in order to make professional management investment more
19 efficient;
- 20 (4) Provide parents of persons with severe chronic disabilities peace of
21 mind in knowing that a means exists to ensure that the interests of their
22 children who have severe chronic disabilities are properly looked after
23 and managed after the parents die or become incapacitated;
- 24 (5) Help make guardians available for persons with severe chronic
25 disabilities who are incompetent, when no other family member is
26 available for this purpose;
- 27 (6) Encourage the availability of private resources to purchase for
28 persons with severe chronic disabilities goods and services that are
29 not available through any governmental or charitable program and to
30 conserve these resources by limiting purchases to those that are not
31 available from other sources;
- 32 (7) Encourage the inclusion, as beneficiaries of community trusts, of
33 persons who lack resources and whose families are indigent, in a way
34 that does not diminish the resources available to other beneficiaries
35 whose families have contributed to the trust; and
- 36 (8) Remove the disincentives that discourage parents and others from
37 setting aside funds for the future protection of persons with severe
38 chronic disabilities by ensuring that the interest of beneficiaries in
39 community trusts are not considered assets or income that would
40 disqualify them from any governmental or charitable entitlement
41 program with an economic means test.

1 **"§ 36D-2. Definitions.**

2 As used in this Article, unless the context clearly requires otherwise:

- 3 (1) "Beneficiary" means any person with a severe chronic disability who
4 has qualified as a member of the community trust program and who
5 has the right to receive those services and benefits vested with the
6 management of the business and affairs of a corporation, formed for
7 the purpose of managing a community trust, irrespective of the name
8 by which the group is designated.
- 9 (2) "Community trust" means a nonprofit organization that offers the
10 following services:
- 11 a. Administration of special trust funds for persons with severe
12 chronic disabilities;
- 13 b. Follow along services;
- 14 c. Guardianship for persons with severe chronic disabilities who
15 are incompetent, when no other family member or immediate
16 friend is available for this purpose; and
- 17 d. Advice and counsel to persons who have been appointed as
18 individual guardians of the persons or estates of persons with
19 severe chronic disabilities.
- 20 (3) "Follow along services" means those services offered by community
21 trusts that are designed to ensure that the needs of each beneficiary are
22 being met for as long as may be required and may include periodic
23 visits to the beneficiary and to the places where the beneficiary
24 receives services, participation in the development of individualized
25 plans being made by service providers for the beneficiary, and other
26 similar services consistent with the purposes of this Article.
- 27 (4) "Severe chronic disability" means a physical or mental impairment that
28 is expected to give rise to a long-term need for specialized health,
29 social, and other services, and which makes the person with the
30 disability dependent upon others for assistance to secure these
31 services.
- 32 (5) "Trustee" means any member of the board of a corporation, formed for
33 the purpose of managing a community trust, whether that member is
34 designated as a trustee, director, manager, governor, or by any other
35 title.
- 36 (6) "Surplus trust funds" means funds accumulated in the trust from
37 contributions made on behalf of an individual beneficiary that, after
38 the death of the beneficiary, are determined by the board to be in
39 excess of the actual cost of providing services during the beneficiary's
40 lifetime, including the beneficiary's share of administrative costs.

41 **"§ 36D-3. Scope.**

1 This Article applies to every community trust established in this State. In addition to
2 meeting the other requirements of this Article, every board that administers a
3 community trust shall incorporate as a nonprofit corporation pursuant to Chapter 55A of
4 the General Statutes. Except as otherwise provided in this Chapter, the provisions of
5 Chapter 55A of the General Statutes apply to the community trusts.

6 **"§ 36D-4. Administration; powers and duties.**

7 (a) Every community trust shall be administered by a board. The board shall be
8 comprised of no less than nine and no more than 21 members, at least one-third of
9 whom shall be parents or relatives of persons with severe chronic disabilities. No
10 board member shall be a provider of habilitative, health, social, or educational
11 services to persons with severe chronic disabilities or an employee of such a service
12 provider. The board may, however, allow service providers to serve on the board in an
13 advisory capacity. Board members shall be selected, to the maximum extent possible,
14 from geographic areas throughout the area served by the trust.

15 The certificate of incorporation filed with the Secretary of State pursuant to Chapter
16 55A of the General Statutes shall, in addition to the requirements set forth in that
17 Chapter, demonstrate that the requirements of this section have been met.

18 (b) Notwithstanding any other provision of law, no trustee may be compensated
19 for services provided as a member of the board of a community trust. No fees or
20 commissions shall be paid to these trustees; however, a trustee may be paid for
21 necessary expenses incurred by the trustee and may receive indemnification as
22 permitted under Chapter 55A of the General Statutes.

23 (bl) For every community trust incorporated under this Article, the corporation
24 itself shall be considered the trustee of any funds administered by it. No individual
25 board member shall be considered to be trustee of any fund deposited on behalf of any
26 individual beneficiary with severe chronic disabilities.

27 (c) The board shall adopt bylaws that shall include a declaration delineating the
28 primary geographic area serviced by the trust and the principal services to be provided
29 and shall file the bylaws with the Secretary of State.

30 (d) The board may retain paid staff as it considers necessary to provide follow
31 along services to the extent required by each beneficiary. The community trust may
32 authorize the expenditure of funds for any goods or services that, in its sole discretion, it
33 determines will promote the well-being of any beneficiary, including recreational
34 services. The community trust may pay for the burial of any beneficiary. The
35 community trust, however, may not expend funds for any goods or services of
36 comparable quality to those available to any particular beneficiary through any
37 governmental or charitable program, insurance, or other sources. The community trust
38 may expend funds to meet the reasonable costs of administering the community trust.

39 (e) The community trust is not required to provide services to a beneficiary who
40 is a competent adult and who has refused to accept the services. Further, the community
41 trust shall not provide services of a nature or in a manner that would be contrary to the

1 public policy of this State at the time the services are to be provided. In either case, the
2 community trust may offer alternate services that are consistent with the purposes of
3 this Article and in keeping with the best interests of the beneficiary.

4 (f) The community trust may accept appointment as guardian of the person,
5 guardian of the estate, or guardian of both on behalf of any beneficiary. If the
6 community trust accepts appointment as guardian of the person of an individual, it
7 shall assign a staff member to carry out its responsibilities as the guardian. The
8 community trust may, upon request, offer consultative and professional assistance to an
9 individual, private or public guardian of any of its beneficiaries.

10 (g) The community trust may accept contributions, bequests, and designations
11 under life insurance policies to the community trust on behalf of individuals with severe
12 chronic disabilities for the purpose of qualifying them as beneficiaries.

13 (h) At the time a contribution, bequest, or assignment of insurance proceeds is
14 made, the trustor shall receive a written statement of the services to be provided to the
15 beneficiary. The statement shall include a starting date for the delivery of services or the
16 condition precedent, such as the death of the trustor, which shall determine the starting
17 date. The statement shall describe the frequency with which services shall be provided
18 and their duration, and the criteria or procedures for modifying the program of services
19 from time to time in the best interests of the beneficiary.

20 **"§ 36D-5. Accountability.**

21 Along with the annual report filed with the Secretary of State pursuant to Chapter
22 55A of the General Statutes, the community trust shall file an itemized statement that
23 shows the funds collected for the year, income earned, salaries, other expenses incurred,
24 and the opening and final trust balances. A copy of this statement shall be made
25 available, upon request, to any beneficiary, trustor, or designee of the trustor. In
26 addition, once annually, each trustor or the trustor's designee shall receive a detailed
27 individual statement of the services provided to the trustor's beneficiary during the
28 previous 12 months and the services to be provided during the following 12 months.
29 The community trust shall make a copy of the individual statement available to any
30 beneficiary, upon request.

31 **"§ 36D-6. Gifts, surplus trust funds.**

32 The community trust may accept gifts and use surplus trust funds for the purpose of
33 qualifying as beneficiary any indigent person whose family members lack the resources
34 to make a full contribution on that person's behalf. The extent and character of the
35 services and selection of beneficiaries are at the discretion of the community trust. The
36 community trust may not use surplus trust funds to make any charitable contribution on
37 behalf of any beneficiary or any group or class of beneficiaries. The community trust
38 may accept gifts to meet start-up costs, reduce the charges to the trust for the cost of
39 administration, and for any other purpose that is consistent with this Article. Gifts made
40 to the trust for an unspecified purpose shall be used by the community trust either to
41 qualify indigent persons whose families lack the means to qualify them as beneficiaries
42 of the trust or to meet any start-up costs that the trust incurs.

1 **"§ 36D-7. Special requests on behalf of beneficiary.**

2 The community trust may agree to fulfill any special requests made on behalf of a
3 beneficiary as long as the requests are consistent with this Article and provided that an
4 adequate contribution has been made for this purpose on behalf of a beneficiary. The
5 community trust may agree to serve as trustee for any individual trust created on behalf
6 of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or
7 more remaindermen or contingent beneficiaries, or any other condition, so long as the
8 individual trust is consistent with the purposes of this Article.

9 **"§ 36D-8. Irrevocability; impossibility of fulfillment.**

10 A community trust for persons with severe chronic disabilities is irrevocable, but the
11 trustees in their sole discretion may provide compensation for any contribution to the
12 trust to any trustor who, upon good cause, withdraws a beneficiary designated by the
13 trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust
14 with regard to an individual beneficiary for reasons other than the death of the
15 beneficiary.

16 **"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility**
17 **determination.**

18 Notwithstanding any provisions of Chapter 108A of the General Statutes, the
19 beneficiary's interest in any community trust shall not be deemed to be an asset for the
20 purpose of determining income eligibility for any publicly operated program, nor shall
21 that interest be reached in satisfaction of a claim for support and maintenance of the
22 beneficiary. No agency shall reduce the benefits of services available to any individual
23 because that person is the beneficiary of a community trust.

24 **"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.**

25 A community trust shall not be subject to or held to be in violation of any principle
26 of law against perpetuities or restraints on alienation or perpetual accumulations of
27 trusts.

28 **"§ 36D-11. Settlement; trustee limitations.**

29 The community trust shall settle a community trust by filing a final accounting in
30 the superior court. In addition, at anytime prior to the settlement of the final account, the
31 community trust, the Secretary of State, or the Attorney General may bring an action for
32 the dissolution of a nonprofit corporation in the superior court for the purpose of
33 terminating the trust or merging it with another charitable trust.

34 No trustee or any private individual shall be entitled to share in the distribution of
35 any of the trust assets upon dissolution, merger, or settlement of the community trust.
36 Upon dissolution, merger, or settlement, the superior court shall distribute all of the
37 remaining net assets of the community trust in a manner that is consistent with the
38 purposes of this Article."

39 **SECTION 4.** G.S. 32-28 and G.S. 32-34 are repealed.

40 **SECTION 5.** G.S. 28A-13-6 reads as rewritten:

1 **"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more**
2 **than one.**

3 ~~(a) As used in this section, the term "personal representatives" includes~~
4 ~~testamentary trustees.~~

5 (b) If a will expressly makes provision for the execution of any of the powers of
6 personal representatives by all of them or by any one or more of them, the provisions of
7 the will govern.

8 ~~(c) If there is no governing provision in the will, personal representatives may,~~
9 ~~by written agreement signed by all of them and filed with and approved by the clerk of~~
10 ~~superior court of the county in which such personal representatives qualified, provide~~
11 ~~that any one or more of the following powers of personal representatives may be~~
12 ~~exercised by any designated one or more of them:~~

13 ~~(1) Open bank accounts and draw checks thereon;~~

14 ~~(2) Subject to the provisions of G.S. 105-24, enter any safe deposit box of~~
15 ~~the deceased or any safe deposit box rented by the personal~~
16 ~~representative or representatives;~~

17 ~~(3) Employ attorneys and accountants;~~

18 ~~(4) List property for taxes and prepare and file State, municipal and~~
19 ~~county tax returns;~~

20 ~~(5) Collect claims and debts due the estate and give receipts therefor;~~

21 ~~(6) Pay claims against and debts of the estate;~~

22 ~~(7) Compromise claims in favor of or against the estate;~~

23 ~~(8) Have custody of property of the estate.~~

24 (c1) If there is no governing provision in the will, personal representatives may,
25 by written agreement signed by all of them and filed with and approved by the clerk of
26 superior court of the county in which such personal representatives qualified, provide
27 that any one or more of the following powers of personal representatives may be
28 exercised by any designated one or more of them:

29 (1) Establish and maintain bank accounts for the trust and issue checks for
30 the trust.

31 (2) Maintain inventories, accountings, and income and expense records of
32 the trust.

33 (3) Enter any safety deposit box rented by the trust.

34 (4) Employ persons as advisors or assistants in the performance of
35 administrative duties, including agents, attorneys, accountants,
36 brokers, appraisers and custodians.

37 (5) List trust property for taxes and prepare and file tax returns for the
38 trust.

39 (6) Collect and give receipts for claims and debts of the trust.

40 (7) Pay debts, claims, costs of administration, and taxes of the trust.

41 (8) Compromise, adjust or otherwise settle any claim by or against the
42 trust and release, in whole or in part, a claim belonging to the trust.

1 (9) Have custody of the trust property.

2 (d) Subject to subsection (b) of this section, if two or more personal
3 representatives own shares of corporate stock or other securities, their acts with respect
4 to voting shall have the following effect:

5 (1) If only one votes, in person or by proxy, his act binds all;

6 (2) If more than one vote, in person or by proxy, the act of the majority so
7 voting binds all;

8 (3) If more than one vote, in person or by proxy, but the vote is evenly
9 split on any particular matter, each faction is entitled to vote the stock
10 or other securities in question proportionately.

11 (e) Subject to the provisions of subsections (b), ~~(e)~~ (c1), and (d) of this section,
12 all other acts and duties must be performed by both of the personal representatives if
13 there are two, and by a majority of them if there are more than two. No personal
14 representative who has not joined in exercising a power shall be liable for the
15 consequences of such exercise, nor shall a dissenting personal representative be liable
16 for the consequences of an act in which he joins at the direction of the majority of the
17 personal representatives, if he expressed his dissent in writing to any other personal
18 representative at or before the time of such joinder.

19 (f) No personal representative shall be relieved of liability on his bond or
20 otherwise by entering into any agreement under this section."

21 **SECTION 6.** The Revisor of Statutes shall cause to be printed along with
22 this act all relevant portions of the Official Commentary to the Uniform Trust Code and
23 all explanatory comments of the drafters of this act as the Revisor may deem
24 appropriate.

25 **SECTION 7.(a)** Section 2 of this act becomes effective January 1, 2006, and
26 except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act,
27 applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings
28 concerning trusts commenced on or after that date; and (iii) judicial proceedings
29 concerning trusts commenced before that date unless the court finds that application of a
30 particular provision of Chapter 36C would substantially interfere with the effective
31 conduct of the judicial proceedings or prejudice the rights of the parties, in which case
32 the particular provision of Chapter 36C does not apply and the superseded law applies.

33 Except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act,
34 any rule of construction or presumption provided in Chapter 36C applies to trust
35 instruments executed before the effective date of Section 2 of this act unless there is a
36 clear indication of a contrary intent in the terms of the trust or unless application of that
37 rule of construction or presumption would impair substantial rights of a beneficiary.
38 Except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act, an act
39 done before the effective date of Section 2 of this act is not affected by Chapter 36C. If
40 a right is acquired, extinguished, or barred upon the expiration of a prescribed period
41 that has commenced to run under any other statute before the effective date of Section 2

1 of this act, that statute continues to apply to the right even if it has been repealed or
2 superseded.

3 **SECTION 7.(b)** Sections 1 through 5 of this act become effective January 1,
4 2006. The remainder of this act is effective when it becomes law.