

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 679
Judiciary II Committee Substitute Adopted 4/28/05
House Committee Substitute Favorable 6/27/05

Short Title: North Carolina Uniform Trust Code.

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT A REVISED VERSION OF THE UNIFORM TRUST CODE
3 FOR NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 1 of Chapter 36A of the General Statutes is recodified
6 as Article 7 of Chapter 32 of the General Statutes. G.S. 36A-63, G.S. 36A-66.1, and
7 Article 6 of Chapter 36A are recodified in Article 14 of Chapter 53 of the General
8 Statutes as G.S. 53-163.1 through G.S. 53-163.7. The remainder of Chapter 36A of the
9 General Statutes is repealed.

10 **SECTION 2.** The General Statutes are amended by adding a new Chapter to
11 read:

12 **"Chapter 36C.**

13 **"North Carolina Uniform Trust Code.**

14 **"Article 1.**

15 **"General Provisions and Definitions.**

16 **"§ 36C-1-101. Short title.**

17 This Chapter may be cited as the North Carolina Uniform Trust Code.

18 **"§ 36C-1-102. Scope.**

19 This Chapter applies to any express trust, private or charitable, with additions to the
20 trust, wherever and however created. The term "express trust" includes both
21 testamentary and inter vivos trusts, regardless of whether the trustee is required to
22 account to the clerk of superior court. This Chapter also applies to any trust created for
23 or determined by judgment or decree under which the trust is to be administered in the
24 manner of an express trust. This Chapter does not apply to constructive trusts, resulting
25 trusts, conservatorships, estates, trust accounts as defined in G.S. 53-146.2, 54-109.57,
26 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements
27 under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes,
28 business trusts providing for certificates to be issued to beneficiaries, common trust

1 funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary
2 purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or
3 employee benefits of any kind, or any arrangement under which a person is nominee or
4 escrowee for another.

5 **"§ 36C-1-103. Definitions.**

6 In this Chapter:

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

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

38 **"§ 36C-1-104. Knowledge.**

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

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

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

11 **"§ 36C-1-105. Default and mandatory rules.**

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

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

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

34 **"§ 36C-1-106. Common law of trusts; principles of equity.**

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

37 **"§ 36C-1-107. Governing law.**

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

- 39 (1) The law of the jurisdiction designated in the terms unless the
40 designation of that jurisdiction's law is contrary to a strong public
41 policy of the jurisdiction having the most significant relationship to the
42 matter at issue; or

1 (2) In the absence of a controlling designation in the terms of the trust, the
2 law of the jurisdiction having the most significant relationship to the
3 matter at issue.

4 **"§ 36C-1-108. Principal place of administration.**

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

8 (1) A trustee's principal place of business is located in, or a trustee is a
9 resident of, the designated jurisdiction; or

10 (2) All or part of the administration occurs in the designated jurisdiction.

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

14 (1) If the trustee is transferring the trust's principal place of administration
15 to another state, the trustee must provide written notice of the proposed
16 transfer to the qualified beneficiaries of the trust not less than 60 days
17 before initiating the transfer. If no qualified beneficiary notifies the
18 trustee of an objection to the proposed transfer on or before the date
19 specified in the notice, the trustee may make the transfer. If a qualified
20 beneficiary notifies the trustee of an objection to the proposed transfer
21 on or before the date specified in the notice, the authority of the trustee
22 to transfer the trust's principal place of administration in accordance
23 with this section terminates.

24 (2) If the trustee is transferring the trust's principal place of administration
25 to a jurisdiction outside of the United States, the trustee must provide
26 written notice of the proposed transfer to the qualified beneficiaries of
27 the trust, and the transfer cannot be made until the written consent of
28 all the qualified beneficiaries is obtained.

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

32 (1) The name of the jurisdiction to which the principal place of
33 administration is to be transferred;

34 (2) The address and telephone number at the new location at which the
35 trustee can be contacted;

36 (3) An explanation of the reasons for the proposed transfer;

37 (4) The date on which the proposed transfer is anticipated to occur; and

38 (5) If the proposed transfer is to another state, the date, not less than 60
39 days after the giving of the notice, by which the qualified beneficiary
40 must notify the trustee of an objection to the proposed transfer.

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

44 **"§ 36C-1-109. Methods and waiver of notice.**

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

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

10 (c) The person to be notified or to be sent a document may waive notice under
11 this Chapter.

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

14 **"§ 36C-1-110. Others treated as qualified beneficiaries.**

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

19 (1) Is a distributee or permissible distributee of trust income or principal;

20 (2) Would be a distributee or permissible distributee of trust income or
21 principal upon the termination of the interest of other distributees or
22 permissible distributees then receiving or eligible to receive
23 distributions, but the termination of those interests would not cause the
24 trust to terminate; or

25 (3) Would be a distributee or permissible distributee of trust income or
26 principal if the trust terminated on that date.

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

30 **"§ 36C-1-111. Nonjudicial settlement agreements.**

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

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

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

37 (2) Direction to a trustee to perform or refrain from performing a
38 particular administrative act or the grant to a trustee of any necessary
39 or desirable administrative power, including a power granted under
40 G.S. 36C-8-816;

41 (3) The resignation or appointment of a trustee and the determination of a
42 trustee's compensation;

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

- 1 (2) To permit a trustee to resign or renounce; however, unless the trustee
2 is required to account to the clerk of superior court, when the
3 governing instrument names or provides a procedure to name a
4 successor trustee, and the successor trustee is willing to serve, no
5 trustee is required to initiate a proceeding to resign or renounce as
6 trustee;
- 7 (3) To review trustees' fees under Article 6 of Chapter 32 of the General
8 Statutes and review and settle interim or final accounts;
- 9 (4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a
10 total return unitrust to an income trust, or (iii) change the percentage
11 used to calculate the unitrust amount or the method used to determine
12 the fair market value of the trust as provided in G.S. 37A-1-104.3;
- 13 (5) To transfer a trust's principal place of administration;
- 14 (6) To require a trustee to provide bond and determine the amount of the
15 bond, excuse a requirement of bond, reduce the amount of bond,
16 release the surety, or permit the substitution of another bond with the
17 same or different sureties;
- 18 (7) To make orders with respect to a trust for the care of animals as
19 provided in G.S. 36C-4-408;
- 20 (8) To make orders with respect to a noncharitable trust without an
21 ascertainable beneficiary as provided in G.S. 36C-4-409; and
- 22 (9) To ascertain beneficiaries, to determine any question arising in the
23 administration or distribution of any trust, including questions of
24 construction of trust instruments, and to determine the existence or
25 nonexistence of trusts created other than by will and the existence or
26 nonexistence of any immunity, power, privilege, duty, or right. Upon
27 motion of a party, the clerk of superior court may determine that a
28 proceeding to determine an issue listed in this subdivision shall be
29 originally heard by the superior court division of the General Court of
30 Justice.

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

36 (c) Nothing in this section affects the right of a person to file an action for
37 declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event
38 either the petitioner or respondent in a trust proceeding requests declaratory relief under
39 Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of
40 the proceeding to the superior court division of the General Court of Justice as provided
41 in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior
42 court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to
43 the extent consistent with this Article.

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

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

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

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

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

15 (f) Without otherwise limiting the jurisdiction of the superior court division of
16 the General Court of Justice, proceedings concerning the internal affairs of trusts shall
17 not include, and, therefore, the clerk of superior court shall not have jurisdiction under
18 subsection (a) of this section of the following:

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

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

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

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

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

26 **"§ 36C-2-204. Venue.**

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

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

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

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

41 b. In the case of a testamentary trust, in any county of this State in
42 which the trust has its principal place of administration, where
43 any beneficiary resides, or in which the testator's estate was
44 administered.

1 (3) Unless otherwise designated in the governing instrument, the principal
2 place of administration of the trust is the trustee's usual place of
3 business where the records pertaining to the trust are kept, or at the
4 trustee's residence if the trustee has no such place of business. In the
5 case of cotrustees, the principal place of administration, if not
6 otherwise designated in the governing instrument, is:

7 a. The usual place of business of the corporate trustee if there is
8 but one corporate or cotrustee; or

9 b. The usual place of business or residence of any of the
10 cotrustees.

11 (4) If a trust has no trustee, venue for a judicial proceeding for the
12 appointment of a trustee is in any county of this State in which a
13 beneficiary resides, in any county in which trust property is located, in
14 the county of this State specified in the trust instrument, if any county
15 is so specified, or if the trust is created by will, in the county in which
16 the decedent's estate was or is being administered.

17 **"§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and**
18 **joinder.**

19 (a) Contested Proceedings. – Trust proceedings before the clerk of superior court
20 brought against adverse parties shall be commenced as is prescribed for civil actions.
21 Upon the filing of the petition or complaint, the clerk of superior court shall docket the
22 cause as an estate matter. All parties not joined as petitioners shall be joined as
23 respondents. The clerk of superior court shall issue the summons for the respondents.
24 The clerk of superior court may order that additional persons be joined as respondents
25 and shall issue the summons for the additional persons. The summons shall notify the
26 respondents to appear and answer the petition within 10 days after its service upon the
27 respondents. The summons shall comply with the requirements set forth in G.S. 1-394
28 for a special proceeding summons except that the clerk of superior court shall indicate
29 on the summons by appropriate words that the summons is issued in an estate matter
30 and not in a special proceeding or in a civil action and shall be served upon the
31 respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time
32 for responding to the petition or complaint has expired, any party or the clerk of
33 superior court may give notice to all parties of a hearing.

34 (b) Uncontested Proceedings. – Trust proceedings before the clerk of superior
35 court in which all the parties join in the proceeding shall be commenced by the filing of
36 a petition, setting forth the facts entitling the petitioners to relief and the nature of the
37 relief demanded. In these proceedings, the clerk of superior court may hear and decide
38 the petition summarily.

39 (c) Pleadings. – The petition or complaint filed in a trust proceeding before the
40 clerk of superior court shall contain a short and plain statement of the claim which is
41 sufficiently particular to give the court and the parties notice of the transactions,
42 occurrences, or series of transactions, intended to be proved showing that the pleaders
43 entitled to relief, and a demand for judgment for the relief to which the pleader is
44 entitled. Each averment of a pleading should be simple, concise, and direct. No

1 technical forms of pleadings or motions are required. A party may set forth two or more
2 statements of a claim or defense alternatively or hypothetically. The signature of an
3 attorney or party constitutes a certificate by that attorney or party that (i) the attorney or
4 party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or
5 party's knowledge, information, and belief formed after reasonable inquiry, it is well
6 grounded in fact and is warranted by existing law or a good faith argument for the
7 extension, modification, or reversal of existing law; and (iii) it is not interposed for any
8 improper purpose, such as to harass or to cause unnecessary delay or needless increase
9 in the cost of litigation. All pleadings shall be so construed as to do substantial justice.

10 (d) Extensions of Time. – The clerk of superior court, for cause shown at any
11 time in the clerk's discretion, with or without motion or notice, may enter an order
12 enlarging the period of time within which an act is required or permitted by this Article,
13 by any applicable Rules of Civil Procedure or by order of the court, if the request is
14 made before the expiration of the period originally prescribed, but not to exceed 10
15 days, nor more than once. Upon motion made after the expiration of the specified
16 period, the clerk of superior court may permit the act where the failure to act was the
17 result of excusable neglect. Notwithstanding any other provision of this subsection, the
18 parties to a proceeding may enter into binding stipulations, without approval of the clerk
19 of superior court, enlarging the time within which an act is required or permitted by this
20 Article, by any applicable Rules of Civil Procedure or by order of the court, not to
21 exceed 30 days.

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

31 (f) Consolidation. – When a trust proceeding pending before the clerk of superior
32 court and a civil action pending before the superior court division of the General Court
33 of Justice involve a common question of law or fact, upon the court's motion or motion
34 of a party to either the trust proceeding or the civil action, a superior court judge may
35 order a consolidation of the trust proceeding and civil action, and the judge may make
36 orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
37 Upon the entry of an order consolidating a trust proceeding and civil action, the
38 jurisdiction for all matters pending in both the trust proceeding and the civil action shall
39 be vested in the superior court.

40 (g) Joinder. – In any civil action pending before a superior court division of the
41 General Court of Justice, a party asserting a claim for relief as an original claim,
42 counterclaim, cross-claim, or third-party claim, may join, either as independent or as
43 alternate claims, as many claims, legal or equitable, as that party has against an

1 opposing party notwithstanding the fact that the claims may otherwise be within the
2 exclusive jurisdiction of the clerk of superior court.

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

10 **"§ 36C-2-206. Representation of parties.**

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

15 (1) Parties shall be represented as provided in Article 3 of this Chapter.

16 (2) In the case of any party represented by another as provided in
17 subdivision (1) of this section, service of process shall be made by
18 serving such representative.

19 **"§ 36C-2-207. Waiver of notice.**

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

23 **"§ 36C-2-208. Accounting to clerk.**

24 (a) No trustee, including a trustee appointed by the clerk of superior court, is
25 required to account to the clerk of superior court unless the trust instrument directs that
26 the trustee is required to account to the clerk of superior court or unless the trustee is
27 otherwise required by law to account to the clerk of superior court.

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

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

35 **"§ 36C-2-209. Qualification and accounting of trustee of a testamentary trust.**

36 (a) For any testamentary trust created under a will of a decedent executed before
37 January 1, 2004, the trustee shall first qualify under the laws applicable to executors,
38 and shall file in the office of the clerk of superior court of the county where the will is
39 probated inventories of the assets that come into the trustee's hands and annual and final
40 accounts of the trust that are the same as required of executors and administrators. The
41 power of the clerk of superior court to enforce the filing and the clerk's duties to audit
42 and approve the trustee's inventories and accounts is the same as the clerk's powers and
43 duties with respect to the inventories and accounts of executors and administrators. This
44 subsection shall not apply to the extent that the will makes a different provision.

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

21 **"§ 36C-3-304. Representation by person having substantially identical interest.**

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

28 **"§ 36C-3-305. Appointment of representative; scope of representation.**

29 (a) If the court determines that an interest is not represented under this Article, or
30 that the otherwise available representation might be inadequate, the court may appoint a
31 guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act
32 on behalf of a minor, incapacitated or unborn individual, or a person whose identity or
33 location is unknown. A guardian ad litem may be appointed to represent several persons
34 or interests.

35 (b) Any representative under this Article may act on behalf of the individual
36 represented with respect to any matter arising under this Chapter, whether or not a
37 judicial proceeding concerning the trust is pending.

38 (c) In making decisions, a representative, including a guardian ad litem, may
39 base a decision to consent to an action upon a finding that living members of the
40 individual's family would generally benefit from that action.

41 "Article 4.

42 "Creation, Validity, Modification, and Termination of Trust.

43 **"§ 36C-4-401. Methods of creating trust.**

44 A trust may be created by:

- 1 (1) Transfer of property by a settlor to a person as trustee during the
2 settlor's lifetime or by will or other disposition taking effect upon the
3 settlor's death;
- 4 (2) Declaration by the owner of property that the owner holds identifiable
5 property as trustee unless the transfer of title of that property is
6 otherwise required by law; or
- 7 (3) Exercise of a power of appointment in favor of a trustee.

8 **"§ 36C-4-401A. Interest of trustee as beneficiary of life insurance or other death**
9 **benefit sufficient to support inter vivos or testamentary trust.**

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

- 15 (1) To change the beneficiary;
- 16 (2) To surrender the policy and receive the cash surrender value;
- 17 (3) To borrow from the insurance company issuing the policy or
18 elsewhere using the policy as collateral security;
- 19 (4) To assign the policy; or
- 20 (5) To exercise any other right in connection with the policy commonly
21 known as an incident of ownership of that policy.

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

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

32 The term "employee benefit plan" includes pension, retirement, death benefit,
33 deferred compensation, employment, agency, retirement annuity, stock bonus,
34 profit-sharing or employees' savings contracts, plans, systems or trusts; and trusts,
35 securities or accounts established or held under the federal Self-Employed Individuals
36 Tax Retirement Act of 1962, the federal Employee Retirement Income Security Act of
37 1974, or similar legislation. The term "group life insurance policy" includes group life,
38 industrial life, accident, and health insurance policies having death benefits.

39 (c) A testator having the right to designate the beneficiary under a life insurance
40 policy, employee benefit plan, or group life insurance policy described in subsection (a)
41 or (b) of this section may designate as that beneficiary a trustee named or to be named
42 in the testator's will whether or not the will is in existence at the time of the designation.
43 The proceeds received by the trustee shall be held and disposed of as part of the trust
44 estate under the terms of the will as they exist at the death of the testator. If no trustee

1 makes claim to the proceeds within six months after the death of the testator, payments
2 shall be made to the personal representative of the estate of the testator unless it is
3 otherwise provided by an alternative designation or by the policy or plan. The proceeds
4 received by the trustee is not subject to claims against the estate of the testator to estate
5 or inheritance taxes to any greater extent than if the proceeds were payable directly to
6 the beneficiary or beneficiaries named in the trust. The proceeds may be commingled
7 with any other assets that may properly become part of the trust, but the proceeds shall
8 not become part of the testator's estate for purposes of trust administration unless the
9 will expressly so provides.

10 **"§ 36C-4-402. Requirements for creation.**

11 (a) A trust is created only if:

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

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

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

15 a. A charitable trust;

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

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

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

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

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

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

28 **"§ 36C-4-403. Trusts created in other jurisdictions.**

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

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

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

34 (3) Any trust property was located.

35 **"§ 36C-4-404. Trust purposes.**

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

39 **"§ 36C-4-405. Charitable purposes.**

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

1 **(b)** It is the policy of the State that a gift for charitable purposes, whether in trust
2 or otherwise, is valid, notwithstanding the fact that the gift is made in general terms, and
3 this section shall be construed liberally to effect this policy.

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

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

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

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

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

15 **(d)** When any gift is made in general terms, the trustee or other recipient of the
16 gift may:

17 **(1)** Select from time to time one or more specific charitable beneficiaries
18 or purposes for which any trust or property or income is held and
19 administered; and

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

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

25 **"§ 36C-4-405A. Enforcement of charitable gift or trust.**

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

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

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

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

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

43 **"§ 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 State statute other than this Chapter, a trust need not be
5 evidenced by a trust instrument, but the creation of an oral trust, and its terms may be
6 established only by clear and convincing evidence.

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

8 (a) Subject to this section, a trust for the care of one or more designated domestic
9 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 must name a trustee. The clerk of superior court may
42 order the transfer of the property to another trustee, if required to assure that the
43 intended use is carried out and if no successor trustee is designated in the trust
44 instrument or if no designated successor trustee agrees to serve or is able to serve. The

1 clerk of superior court may also make other orders and determinations as are advisable
2 to carry out the intent of the transferor and the purpose of this section.

3 **"§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

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

6 (1) A trust may be created for a noncharitable purpose without a definite
7 or definitely ascertainable beneficiary or for a noncharitable but
8 otherwise valid purpose to be selected by the trustee. The trust may not
9 be enforced for more than 21 years.

10 (2) A trust authorized by this section may be enforced by a person
11 appointed in the terms of the trust or, if no person is so appointed, by a
12 person appointed by the court.

13 (3) Property of a trust authorized by this section may be applied only to its
14 intended use, except to the extent that the court determines that the
15 value of the trust property exceeds the amount required for the
16 intended use. Except as otherwise provided in the terms of the trust,
17 property not required for the intended use must be distributed to the
18 settlor, if then living, or otherwise to the settlor's successors in interest.

19 (4) Notwithstanding subdivisions (1) through (3) of this section, a trust,
20 contract, or other arrangement to provide for the care of a cemetery lot,
21 grave, crypt, niche, mausoleum, columbarium, grave marker, or
22 monument is valid without regard to remoteness of vesting, duration of
23 the arrangement, or lack of definite beneficiaries to enforce the trust,
24 provided that the trust, contract, or other arrangement meets the
25 requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the
26 General Statutes, Article 9 of Chapter 65 of the General Statutes, or
27 other applicable law. This section does not repeal or supersede
28 G.S. 36C-4-413.

29 **"§ 36C-4-410. Modification or termination of trust; proceedings for approval or**
30 **disapproval.**

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

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

42 (c) Jurisdiction of a proceeding brought under this section is as provided in
43 G.S. 36C-2-203.

1 **"§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by**
2 **consent.**

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

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

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

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

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

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

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

34 **"§ 36C-4-412. Modification or termination because of unanticipated circumstances**
35 **or inability to administer trust effectively.**

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

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

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

3 **"§ 36C-4-413. Cy pres.**

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

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

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

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

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

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

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

22 **"§ 36C-4-414. Modification or termination of uneconomic trust.**

23 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of
24 trust property having a total value of less than fifty thousand dollars (\$50,000) may
25 terminate the trust if the trustee concludes that the value of the trust property is
26 insufficient to justify the cost of administration. The trustee may enter into an agreement
27 or make other provisions that the trustee deems necessary or appropriate to protect the
28 interests of the beneficiaries and to carry out the intent and purpose of the trust. This
29 subsection shall not apply where the instrument creating the trust, by specific reference
30 to this section, or to former G.S. 36A-125.6, provides that it shall not apply. The trustee
31 shall not be liable for that termination and distribution notwithstanding the existence or
32 potential existence of other beneficiaries who are not sui juris. Any beneficiary
33 receiving a distribution from a trust terminated under this section shall incur no liability
34 and shall not be required to account to anyone for such distribution.

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

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

39 (d) Jurisdiction of a proceeding brought under this section is as provided in
40 G.S. 36C-2-203.

41 **"§ 36C-4-415. Reformation to correct mistakes.**

42 The court may reform the terms of a trust, even if unambiguous, to conform the
43 terms to the settlor's intention if it is proved by clear and convincing evidence that both
44 the settlor's intent and the terms of the trust were affected by a mistake of fact or law,

1 whether in expression or inducement. Jurisdiction of a proceeding brought under this
2 section shall be as provided in G.S. 36C-2-203.

3 **"§ 36C-4-416. Modification to achieve settlor's tax objectives.**

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

8 **"§ 36C-4-417. Combination and division of trusts.**

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

11 (1) Consolidate the assets of more than one trust and administer the assets
12 as one trust under the terms of one of the trusts if the terms of the
13 trusts are substantially similar and the beneficiaries of the trusts are
14 identical; or

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

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

24 (c) In any case where two separate identical trusts are created under this section,
25 one of which is fully exempt from the federal generation-skipping transfer tax and one
26 of which is fully subject to that tax, the trustee may thereafter, to the extent possible
27 consistent with the terms of the trust, determine the value of any mandatory or
28 discretionary distributions to trust beneficiaries on the basis of the combined value of
29 both trusts, but may satisfy those distributions by a method other than pro rata from the
30 separate trusts in a manner designed to minimize the current and potential
31 generation-skipping transfer tax.

32 **"§ 36C-4-418. Distribution upon termination of trust.**

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

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

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

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

43 **"§ 36C-4-419. Effect of inalienable interest on modification or termination.**

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

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

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

- 25 a. From which a fixed percentage (that is not less than five percent
26 (5%)) of the net fair market value of its assets, valued annually,
27 is to be paid at least annually to one or more persons (at least
28 one of which is not an organization described in section 170(c)
29 of the Internal Revenue Code and, in the case of individuals,
30 only to an individual who was living at the time of the creation
31 of the trust) for a term of years (not in excess of 20 years) or for
32 the life or lives of that individual or those individuals; however,
33 in the case of an individual, the amount to be paid to that
34 individual may be made subject to a qualified contingency
35 according to the terms of the governing instrument;
36 b. From which no amount other than the payments described in
37 sub-subdivision a. of this subdivision may be paid to or for the
38 use of anyone other than an organization that is or was an
39 organization described in section 170(c) of the Internal Revenue
40 Code; and
41 c. Following the termination of the payments described in
42 sub-subdivision a. of this subdivision, the remainder interest in
43 the trust is to be transferred to, or for the use of, an organization

1 that is or was described in section 170(c) of the Internal
2 Revenue Code, or is to be retained by the trust for such a use.

3 Notwithstanding sub-subdivisions a. and b. of this subdivision, the
4 trust instrument may provide that the trustee shall pay to the income
5 beneficiary for any year (i) the amount of the trust income if that
6 amount is less than the amount required to be distributed under
7 sub-subdivision a. of this subdivision, and (ii) any amount of the trust
8 income that exceeds the amount required to be distributed under
9 sub-subdivision a. of this subdivision to the extent that (by reason of
10 sub-subdivision a.) the aggregate of the amounts paid in prior years
11 is less than the aggregate of the required amounts.

12 (4) "Qualified contingency" means any provision of the governing
13 instrument that provides that, upon the happening of a contingency, the
14 payments made to an individual noncharitable beneficiary of a
15 charitable remainder trust will terminate not later than those payments
16 would otherwise terminate under the governing instrument.

17 **§ 36C-4B-4. Administrative provisions applicable to both charitable remainder**
18 **annuity trusts and charitable remainder unitrusts.**

19 (a) Creation of Remainder Interests in Charity. – Upon the termination of the
20 noncharitable interests, the trustee shall distribute all of the then principal and income
21 of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to
22 the designated charity or charities, or shall hold the property in trust for the designated
23 charity or charities in accordance with the terms of the trust document.

24 (b) Selection of Alternate Charitable Beneficiary if Remaindermen Do Not
25 Qualify Under Section 170(c) of the Internal Revenue Code at Time of Distribution. –
26 If the designated charity is not an organization described in section 170(c) of the
27 Internal Revenue Code at the time when any principal or income of the trust is to be
28 distributed to it, the trustee must distribute the principal or income to one or more
29 organizations then described in section 170(c) of the Internal Revenue Code selected in
30 accordance with the terms of the trust instrument. If the trust instrument does not provide
31 for a method of selecting alternate charitable beneficiaries that are then qualified under
32 section 170(c) of the Internal Revenue Code, the trustee must, in the trustee's sole
33 discretion, select alternate trust beneficiaries that are qualified under section 170(c) of
34 the Internal Revenue Code.

35 (b) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not
36 Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of
37 Distribution. – Notwithstanding subsection (b) of this section, if the designated charity
38 is, at the time of the creation of the trust, an organization described in both section
39 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the designated
40 charity is not an organization described in both section 170(b)(1)(A) and section 170(c) of
41 the Internal Revenue Code when any principal or income of the trust is to be distributed
42 to it, the trustee must distribute the principal or income to one or more organizations
43 then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue
44 Code selected in accordance with the terms of the governing instrument; however, in the

1 event that the governing instrument does not provide a method of selecting alternative
2 charitable beneficiaries that are then described in both section 170(b)(1)(A) and section
3 170(c) of the Internal Revenue Code, the trustee shall, in his sole discretion, select one
4 or more alternative charitable beneficiaries that are described in both section
5 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and must distribute the
6 principal or income to the organization or organizations so selected in shares as the
7 trustee, in the trustee's sole discretion, shall determine.

8 (c) Prohibitions Governing Trustees. – Except for payment of the annuity amount
9 or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is
10 prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the
11 Internal Revenue Code, retaining any excess business holdings as defined in section
12 4943(c) of the Internal Revenue Code that would subject the trust to tax under section
13 4943 of the Code, making any investments that would subject the trust to tax under
14 section 4944 of the Internal Revenue Code, and making any taxable expenditures as
15 defined in section 4945(d) of the Code. The trustee shall make distributions at a time
16 and in a manner as not to subject the trust to tax under section 4942 of the Internal
17 Revenue Code.

18 (d) Distribution to Charity During Term of Noncharitable Interests and
19 Distributions in Kind. – If the governing instrument of the trust provides for distribution
20 to charity during the term of the noncharitable interests, the trustee may pay to the
21 designated charity the amounts specified in the governing instrument that exceed the
22 annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable
23 year of the trust in which the income is earned. If the governing instrument of the trust
24 provides for distribution to charity in kind, the adjusted basis for federal income tax
25 purposes of any trust property the trustee distributes in kind to charity during the term
26 of the noncharitable interests must be fairly representative of the adjusted basis for those
27 purposes of all trust property available for distribution on the date of distribution.

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

32 (f) Distribution From Trust Used to Administer an Estate to Charitable
33 Remainder Trust. – If the governing instrument of a revocable inter vivos trust provides
34 that the revocable inter vivos trust will be used partially to administer the estate of the
35 settlor or for some other purpose, and further provides the assets will then be
36 distributed to another trust that is a charitable remainder trust, upon the death of the
37 settlor, or upon the occurrence of any event that causes the trust to become
38 irrevocable, then the trust shall become irrevocable, and the trustee of this trust shall
39 perform any remaining duties or obligations provided for in the trust instrument and
40 then transfer the property specified in the governing instrument to the trustee of the
41 charitable remainder trust to be held, administered, and distributed in the manner and
42 according to the terms and conditions provided by the charitable remainder trust.

43 (g) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter
44 vivos charitable remainder trust that is liable to pay, from trust property, any federal

1 estate, state inheritance, or other similar death taxes by reason of the death of the settlor
2 of the trust, the interest of any noncharitable beneficiary of the trust shall terminate
3 upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust
4 sufficient funds for payment of all those taxes attributable to the interest of the
5 noncharitable beneficiary in the trust property, and the termination shall be deemed as
6 the occurrence of a qualified contingency.

7 **"§ 36C-4B-5. Administrative provisions applicable to charitable remainder trusts**
8 **only.**

9 (a) Creation of Annuity Amount for Period of Years or Life. – In each taxable
10 year of the trust, the trustee shall pay the annuity amount designated in the trust
11 instrument to the beneficiaries named in the trust instrument during their lives or, if the
12 governing instrument so provides, for a period of 20 years or less. The annuity amount
13 shall be paid annually or in more frequent equal or unequal installments if the governing
14 instrument so provides. The annuity amount shall be paid from income and, to the
15 extent that income is not sufficient, from principal. Any income of the trust for a taxable
16 year in excess of the annuity amount shall be added to principal.

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

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

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

28 (d) Deferral of Annuity Amount During Period of Administration or Settlement.
29 – When property passes to the trust at the death of the settlor, the obligation to pay
30 the annuity amount commences with the date of death of the settlor, but payment of the
31 annuity amount may be deferred from the date of the settlor's death to the end of the
32 taxable year in which complete funding of the trust occurs. Within a reasonable time
33 after the end of the taxable year in which the complete funding of the trust occurs, the
34 trustee must pay to the beneficiary, in the case of an underpayment, or must receive
35 from the beneficiary, in the case of an overpayment, the difference between:

- 36 (1) Any annuity amounts actually paid, plus interest on those amounts
37 computed at ten percent (10%) a year, compounded annually; and
38 (2) The annuity amounts payable, determined under the method described
39 in Section 1.664-1(a)(5) of the federal income tax regulations, plus
40 interest on those amounts computed at ten percent (10%) a year,
41 compounded annually.

42 Notwithstanding the foregoing sentence, in computing any underpayment or
43 overpayment of the annuity amounts, if the governing instrument was executed or last
44 amended before August 9, 1984, and if the governing instrument does not specify that

1 a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of
2 the annuity amounts must be computed using an interest rate at six percent (6%) a year,
3 compounded annually.

4 (e) Dollar Amount Annuity May Be Stated as Fraction or Percentage. – If the
5 governing instrument of the trust states the amount of the annuity as a fraction or a
6 percentage, the trustee must pay to the beneficiaries in each taxable year of the trust
7 during their lives an annuity amount equal to a percentage (that percentage being
8 stipulated in the governing instrument of the trust and, in any event, being five percent
9 (5%) or greater) of the initial net fair market value of the assets constituting the trust. In
10 determining this amount, assets shall be valued at their values as finally determined for
11 federal tax purposes. If the fiduciary incorrectly determines the initial net fair market
12 value of the assets constituting the trust, then, within a reasonable period after a final
13 determination, the trustee shall pay to the beneficiaries, in the case of an undervaluation
14 or shall receive from the beneficiaries, in the case of an overvaluation, an amount
15 equal to the difference between the annuity amount properly payable and the annuity
16 amount actually paid.

17 (f) Annuity Amount May Be Allocated Among Class of Noncharitable
18 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
19 provides that the annuity trust amount may be allocated among a class of
20 noncharitable beneficiaries in the discretion of the trustee, then the trustee must pay the
21 annuity amount, which is defined in the governing instrument of the trust, in each
22 taxable year of the trust, to the member or members of the class of noncharitable
23 beneficiaries in an amount and proportions as the trustee in the trustee's absolute
24 discretion shall from time to time determine until the last of the noncharitable
25 beneficiaries dies. The trustee may pay the entire annuity amount to one member of this
26 class or may apportion it among the various members in a manner as the trustee from
27 time to time considers advisable as long as the power to allocate does not cause any
28 person to be treated as the owner of any part of the trust under the rules of section 671
29 through section 678 of the Internal Revenue Code. If the class provided for in the
30 governing instrument is open, then the distribution must be for a period of years not to
31 exceed 20 years, notwithstanding a provision to the contrary in the trust instrument. If
32 the class provided for in the governing instrument is closed at the creation of the trust,
33 and all members of the class are ascertainable, the distribution may be for the lives of
34 the members of the class or for a period not exceeding 20 years. The trustee shall pay
35 the entire annuity amount for each taxable year annually and may not delay payment of
36 the annuity amount.

37 (g) Reduction of Annuity Amount If Part of Corpus Is Paid to Charity at
38 Expiration of Term of Years or on Death of Recipient. – If the governing instrument of
39 the trust provides for the reduction of the annuity amount if part of the corpus is paid
40 to charity at the expiration of a term of years or upon the death of a recipient, then
41 during the term of years or during the joint lives of the noncharitable beneficiaries,
42 the trustee shall, in each taxable year of the trust, pay a total annuity amount of at least
43 five percent (5%) of the initial net fair market value of the assets placed in trust. Upon
44 the expiration of the term of years or the death of a beneficiary, the trustee shall

1 distribute an amount or percentage of the trust assets, as provided in the governing
2 instrument of the trust, to the charity named in the governing instrument, and thereafter
3 the trustee shall pay, annually or in more frequent installments, to the survivors for their
4 lives, an annuity amount that in each taxable year of the trust, bears the same ratio to
5 five percent (5%) of the initial net fair market value of the trust assets as the net fair
6 market value of the trust assets valued as of the date of distribution, less the amount
7 or percentage of trust assets distributed to the charity, bears to the net fair market value
8 of the trust assets as of the date of distribution.

9 (h) Termination of Annuity Amount on Payment Date Preceding Termination of
10 Noncharitable Interest. – If the governing instrument of the trust provides that
11 payment of the annuity amount may terminate with the regular payment preceding the
12 termination of all noncharitable interests, then the trustee must pay to the noncharitable
13 beneficiary during the term of the noncharitable interest the annuity amount, defined in
14 the trust document, in each taxable year of the trust. The obligation of the trustee to pay
15 the annuity amount shall terminate with the payment preceding the death of the
16 noncharitable beneficiary or other event that terminates the noncharitable interest.

17 (i) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
18 governing instrument of the trust provides that the settlor of the trust retains the
19 power, exercisable only by will, to revoke or terminate the interest of any recipient
20 other than an organization described in section 170(c) of the Internal Revenue Code,
21 then the trustee shall pay to the settlor during the settlor's life the annuity amount, as
22 defined in the governing instrument of the trust and, upon the death of the settlor, if
23 the noncharitable beneficiary survives the settlor, the trustee must pay to the
24 noncharitable beneficiary during that beneficiary's life the annuity amount equal to the
25 amount paid to the settlor. The settlor shall have the power, exercisable only by will, to
26 revoke and terminate the interest of the noncharitable beneficiary under the trust.
27 Upon the first to occur of (i) the death of the survivor of the settlor and
28 noncharitable beneficiary; or (ii) the death of the settlor if the settlor effectively
29 exercised the settlor's testamentary power to revoke and terminate the interest of the
30 noncharitable beneficiary, the trustee must distribute all of the then principal and
31 income of the trust, other than any amount due the settlor or noncharitable beneficiary,
32 to the charity named in the trust document or, if the governing instrument so provides,
33 the trustee must continue to hold the principal and income in trust for the charity or for
34 the charitable purposes specified in the trust. No other retained power to terminate an
35 interest in the trust is effective.

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

38 (a) Creation of Unitrust Amount for a Period of Years or Life. – The trustee shall
39 pay to the beneficiaries named in the trust investment in each taxable year of the trust
40 during their lives or, if the governing instrument so provides, for a period not exceeding
41 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing
42 instrument of the trust, of the net fair market value of the trust assets valued annually
43 on the date or by the method designated in the governing instrument of the trust or, if
44 no date or method is specified, on the date or by the method selected by the trustee in

1 the trustee's discretion, so long as the same valuation date or dates or valuation methods
2 are used each year. The unitrust amount is paid annually or in more frequent equal or
3 unequal installments if the governing instrument so provides. The unitrust amount is
4 paid from income and, to the extent that income is not sufficient, from principal. Any
5 income of the trust for a taxable year in excess of the unitrust amount is added to
6 principal. The fixed percentage to be paid at least annually to all beneficiaries cannot be
7 less than five percent (5%).

8 (b) Unitrust Amount Expressed as the Lesser of Income or a Fixed Percentage. –
9 If the governing instrument of the trust provides that the trustee shall pay, instead of a
10 regular unitrust amount (the fixed percentage of the net fair market value of the trust
11 assets, determined annually), the amount of trust income for the taxable year to the
12 extent that this amount is not greater than the amount required to be distributed as a
13 regular unitrust amount for that taxable year or the amount of the trust income for the
14 taxable year that exceeds the regular unitrust amount for that taxable year to the extent
15 that the aggregate of the amounts paid in prior years is less than the aggregate of the
16 regular unitrust amount for those prior years, then the trustee must pay to the
17 beneficiaries in each taxable year of the trust during their lives, or for a period not
18 exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of
19 (i) the trust income for the taxable year, as defined in section 643(b) of the Internal
20 Revenue Code and the regulations under that section, and (ii) the percentage, as stated
21 in the governing instrument, of the net fair market value of the trust assets valued as of
22 the taxable year decreased as elsewhere provided if the taxable year is a short taxable
23 year or is the taxable year in which the noncharitable interest terminates by death or
24 otherwise, and increased as elsewhere provided if additional contributions are made in
25 the taxable year.

26 If the governing instrument of the trust so provides and if the trust income for any
27 taxable year exceeds the amount determined under (ii) above, the payment to
28 beneficiaries also must include the excess income to the extent that the aggregate of the
29 amounts paid to beneficiaries in prior years is less than the percentage of the aggregate
30 net fair market value of the trust assets, which percentage is defined in the governing
31 instrument of the trust, for these years. Payments to beneficiaries must be made
32 annually or in more frequent equal or unequal installments if the governing instrument
33 so provides. Any income of the trust in excess of these payments must be added to
34 principal.

35 (c) Adjustment for Incorrect Valuation. – If the fiduciary incorrectly determines
36 the net fair market value of the trust assets for any taxable year, the trustee must, within
37 a reasonable period after the final determination of the correct value, pay to the
38 beneficiaries, in the case of an undervaluation, or receive from the beneficiaries, in the
39 case of an overvaluation, an amount equal to the difference between the unitrust amount
40 properly payable and the unitrust amount actually paid.

41 (d) Computation of Unitrust Amount in Short and Final Taxable Years. – For a
42 short taxable year and for the taxable year in which the noncharitable beneficiary's
43 interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on
44 a daily basis. If a trust provides for a valuation date other than the first day of the

1 taxable year, and the valuation date does not occur in a taxable year of the trust
2 because the taxable year is either a short taxable year or is the taxable year in which the
3 noncharitable interests terminate, the trust assets must be valued as of the last day of the
4 short taxable year or the day on which the noncharitable interests terminate, as
5 appropriate.

6 (e) Additional Contributions. – If the governing instrument does not prohibit
7 additional contributions and additional contributions are made to the trust after the
8 initial contribution in the trust, the unitrust amount for the taxable year in which the
9 additional contributions are made must be a fixed percentage, as stated in the
10 governing instrument of the trust, of the sum of (i) the net fair market value of trust
11 assets, excluding the additional contributions and any income from or appreciation of
12 these contributions and (ii) that proportion of the value of the additional contributions
13 excluded under (i) which the number of days in the period beginning with the date of
14 contribution and ending with the earlier of the last day of the taxable year or the day the
15 noncharitable beneficiary's interest terminated bears to the number of days in the period
16 beginning on the first day of the taxable year and ending with the earlier of the last
17 day in the taxable year or the day the noncharitable beneficiary's interest terminated. If
18 no valuation date occurs after the contributions are made, the assets so added are
19 valued as of the time of contribution.

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

- 29 (1) Any unitrust amounts actually paid, plus interest on those amounts
30 computed at ten percent (10%) a year, compounded annually; and
31 (2) The unitrust amounts payable, determined under the method described
32 in section 1.664-1(a)(5) of the federal income tax regulations, plus
33 interest on those amounts computed at ten percent (10%) a year,
34 compounded annually.

35 Notwithstanding the foregoing sentence, in computing any underpayment or
36 overpayment of the unitrust amounts, if the governing instrument was executed or last
37 amended before August 9, 1984, and if the governing instrument does not specify that a
38 ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the
39 unitrust amounts shall be computed using an interest rate of six percent (6%) a year,
40 compounded annually.

41 (g) Unitrust Amount May Be Allocated Among Class of Noncharitable
42 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
43 provides that the unitrust amount may be allocated to a class of noncharitable
44 beneficiaries in the discretion of the trustee, then the trustee must pay, in each taxable

1 year of the trust, the unitrust amount to the member or members of the class of
2 noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's
3 absolute discretion shall from time to time determine until the last of the noncharitable
4 beneficiaries dies. The trustee may pay the unitrust amount to any one member of the
5 class or may apportion it among the various members in a manner that the trustee shall
6 from time to time consider advisable as long as the power to allocate does not cause
7 any person to be treated as the owner of any part of the trust under the rules of section
8 671 through section 678 of the Internal Revenue Code. If the class provided for in the
9 governing instrument is open, the distribution must be for a period not exceeding 20
10 years, notwithstanding a provision to the contrary in the trust instrument. If the class
11 provided for in the governing instrument is closed at the creation of the trust, and all
12 members of the class are ascertainable, the distribution may be for the lives of the
13 members of the class or for a period not exceeding 20 years. The trustee shall pay the
14 entire unitrust amount for each taxable year annually and may not delay payment of the
15 unitrust amount.

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

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

39 (j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
40 governing instrument of the trust provides that the settlor of the trust shall retain the
41 power, exercisable only by will, to revoke or terminate the interest of any recipient
42 other than an organization described in section 170(c) of the Internal Revenue Code,
43 then the trustee must pay the unitrust amount to the settlor during the settlor's life and,
44 upon the death of the settlor, shall pay the unitrust amount to the noncharitable

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

13 **"§ 36C-4B-7. Interpretation.**

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

18 "Article 5.

19 "Creditors' Claims; Spendthrift and Discretionary Trusts.

20 **"§ 36C-5-501. Rights of beneficiary's creditor or assignee.**

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

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

28 (1) Is subject to a spendthrift provision;

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

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

31 **"§ 36C-5-502. Spendthrift provision.**

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

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

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

41 **"§ 36C-5-503. Exceptions to spendthrift provision.**

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

1 (b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest
2 is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust
3 interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court
4 order against the beneficiary for support or maintenance may obtain from a court an
5 order attaching present or future distributions to or for the benefit of the beneficiary.
6 The court may limit the award to relief that is appropriate under the circumstances.

7 **"§ 36C-5-504. Discretionary trusts; effect of standard.**

8 (a) In this section:

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

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

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

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

26 (b) The beneficiary may not transfer a discretionary trust interest. Except as
27 otherwise provided in this Article, a creditor or assignee of a beneficiary may not reach
28 a discretionary trust interest or a distribution by the trustee before its receipt by the
29 beneficiary.

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

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

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

38 (2) The court shall direct the trustee to pay to the child an amount that is
39 equitable under the circumstances but not more than the amount the
40 trustee would have been required to distribute to or for the benefit of
41 the beneficiary had the trustee complied with the standard or not
42 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 cotrustee, 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 under 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.**

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

44 **"§ 36C-5-508. Protective trusts.**

1 **(b)** A person designated as trustee who has not yet accepted the trusteeship may
2 reject the trusteeship. A designated trustee who does not accept the trusteeship within a
3 reasonable time, not to exceed 120 days, after receiving written notice of the trusteeship
4 is considered to have rejected the trusteeship.

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

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

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

11 **"§ 36C-7-702. Trustee's bond.**

12 **(a)** A trustee shall provide bond to secure the performance of the trustee's duties
13 if:

14 **(1)** The trust instrument was executed before January 1, 2006, unless the
15 terms of the trust instrument provide otherwise;

16 **(2)** The trust instrument was executed on or after January 1, 2006, but
17 only if the terms of the trust instrument require the trustee to provide
18 bond;

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

21 **(4)** The court finds that it is necessary for the trustee to provide bond in
22 order to protect the interests of beneficiaries who are not able to
23 protect themselves and whose interests otherwise are not adequately
24 represented.

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

27 **(b)** If bond is required, it shall be in a sum of double the value of the personal
28 property to come into the trustee's hands if bond is executed by a personal surety, and in
29 an amount not less than one and one-fourth times the value of all personal property of
30 the trust estate if the bond is secured by a suretyship bond executed by a corporate
31 surety company authorized by the Commissioner of Insurance to do business in this
32 State, provided that the court, when the value of the personal property exceeds one
33 hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value
34 of the personal property plus ten percent (10%) of that value, conditioned upon the
35 faithful performance of the trustee's duties and for the payment to the persons entitled to
36 receive property that may come into the trustee's hands. All bonds executed under this
37 Article shall be filed with the clerk of superior court.

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

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

44 **"§ 36C-7-703. Cotrustees.**

1 (a) Cotrustees who are unable to reach a unanimous decision may act by majority
2 decision if more than two are serving. Unanimity is required when only two cotrustees
3 are serving.

4 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for
5 the trust and exercise all trustee powers, except those powers that the remaining trustees
6 are prohibited from exercising under the trust instrument or by law.

7 (c) A cotrustee must participate in the performance of a trustee's function unless
8 the cotrustee is unavailable to perform the function because of absence, illness,
9 disqualification under other law, or other temporary incapacity, or the cotrustee has
10 properly delegated the performance of the function to another trustee.

11 (d) If a cotrustee is unavailable to perform duties because of absence, illness,
12 disqualification under other law, or other temporary incapacity, and prompt action is
13 necessary to achieve the purposes of the trust or to avoid injury to the trust property, the
14 remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

15 (e) A trustee may delegate to a cotrustee with the consent of the cotrustee the
16 performance of any function other than those the settlor reasonably expected the trustees
17 to perform jointly. The following functions are not considered to be those that the settlor
18 reasonably expected the trustees to perform jointly:

19 (1) Establish and maintain bank accounts for the trust and issue checks for
20 the trust.

21 (2) Maintain inventories, accountings, and income and expense records of
22 the trust.

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

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

27 (5) List trust property for taxes and prepare and file tax returns for the
28 trust.

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

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

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

33 (9) Have custody of the trust property.

34 (10) Perform any function relating to investment of trust assets.

35 The list of functions contained in this subsection is not intended to be exclusive of
36 others that may be delegated to a cotrustee in accordance with this subsection.

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

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

40 (1) Avoid enabling a cotrustee to commit a serious breach of trust; and

41 (2) Compel a cotrustee to redress a serious breach of trust.

42 (h) Notwithstanding subsection (f) or (g) of this section, a trustee who has not
43 joined in an action approved by a majority of the other trustees is not liable for the
44 action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who

1 joins in an action at the direction of the majority of the trustees but who notified in
2 writing any cotrustee of the dissent at or before the time of the action is not liable for the
3 action, unless that trustee had knowledge that the action taken involved intentional
4 misconduct or was taken with an intention to directly or indirectly provide an improper
5 personal benefit to one or more trustees approving the action.

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

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

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

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

14 **"§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

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

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

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

18 (3) A trustee resigns;

19 (4) A trustee is disqualified or removed;

20 (5) A trustee dies; or

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

23 (b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not
24 be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

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

27 (1) By a person designated in the terms of the trust or appointed under the
28 terms of the trust to act as successor trustee;

29 (2) By a person appointed by unanimous agreement of the qualified
30 beneficiaries; or

31 (3) By a person appointed by the court.

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

34 (1) By a person designated in the terms of the trust or appointed under the
35 terms of the trust to act as successor trustee;

36 (2) By a person selected by majority agreement of the charitable
37 organizations expressly designated to receive distributions under the
38 terms of the trust; or

39 (3) By a person appointed by the court.

40 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the
41 court may appoint an additional trustee or special fiduciary whenever the court
42 considers the appointment necessary for the administration of the trust.

43 (f) A successor trustee shall succeed to all the rights, powers, and privileges, and
44 is subject to all the duties, liabilities, and responsibilities that were imposed upon the

1 original trustee, unless a contrary intent appears from the governing instrument or
2 unless the order appointing the successor trustee provides otherwise.

3 **"§ 36C-7-705. Resignation of trustee.**

4 (a) A trustee may resign:

5 (1) Upon at least 30 days' notice in writing to the qualified beneficiaries,
6 the settlor, if living, and all cotrustees; or

7 (2) With the approval of the court.

8 (b) In approving a resignation, the court may issue orders and impose conditions
9 reasonably necessary for the protection of the trust property.

10 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for
11 acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

12 **"§ 36C-7-706. Removal of trustee.**

13 (a) For the reasons set forth in subsection (b) of this section, the settlor of an
14 irrevocable trust, a cotrustee of an irrevocable trust, or a beneficiary of an irrevocable
15 trust may request the court to remove a trustee, or a trustee may be removed by the court
16 on its own initiative.

17 (b) The court may remove a trustee if:

18 (1) The trustee has committed a serious breach of trust;

19 (2) Lack of cooperation among cotrustees substantially impairs the
20 administration of the trust;

21 (3) Because of unfitness, unwillingness, or persistent failure of the trustee
22 to administer the trust effectively, the court determines that removal of
23 the trustee best serves the interests of the beneficiaries; or

24 (4) There has been a substantial change of circumstances, the court finds
25 that removal of the trustee best serves the interests of all of the
26 beneficiaries and is consistent with a material purpose of the trust, and
27 a suitable cotrustee or successor trustee is available.

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

32 **"§ 36C-7-707. Delivery of property by former trustee.**

33 (a) Unless a cotrustee remains in office or the court otherwise orders, and until
34 the trust property is delivered to a successor trustee or other person entitled to it, a
35 trustee who has resigned or been removed has the duties of a trustee and the powers
36 necessary to protect the trust property.

37 (b) A trustee who has resigned or been removed shall proceed expeditiously to
38 deliver the trust property within the trustee's possession to the cotrustee, successor
39 trustee, or other person entitled to it. A former trustee shall execute those documents
40 transferring title to trust property as may be appropriate to facilitate administration of
41 the trust, and in the event that the former trustee fails to do so, the clerk of superior
42 court may order the former trustee to execute those documents, or the clerk of superior
43 court may transfer title.

44 **"§ 36C-7-708. Compensation of trustee.**

1 (4) Any other person or entity in which the trustee, or a person that owns a
2 significant interest in the trust, has an interest or relationship that
3 might affect the trustee's best judgment.

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

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

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

13 (1) An investment by a trustee in securities of an investment company,
14 investment trust, or pooled investment vehicle in which the trustee has
15 an investment, or to which the trustee, or its affiliate, provides services
16 is not presumed to be affected by a conflict between personal and
17 fiduciary interests if the investment otherwise complies with the
18 prudent investor rule of Article 9 of this Chapter. The investment
19 company, investment trust, or pooled investment vehicle may
20 compensate the trustee for providing those services out of fees charged
21 to the trust if the trustee at least annually notifies the persons entitled
22 under G.S. 36C-8-813 to receive a copy of the trustee's annual report
23 of the rate and method by which the compensation was determined;
24 and

25 (2) Payment made by a trustee to an attorney, broker, accountant, or agent
26 for services performed on behalf of the trust in the ordinary course of
27 business is not considered to be affected by a conflict between the
28 trustee's personal and fiduciary interests if the payment is consistent
29 with payments generally made in the community for the same or
30 similar services.

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

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

38 (1) An agreement between a trustee and a beneficiary relating to the
39 appointment or compensation of the trustee;

40 (2) Payment of reasonable compensation to the trustee;

41 (3) A transaction between a trust and another trust, decedent's estate, or
42 guardianship, or similar relationship of which the trustee is a fiduciary
43 or in which a beneficiary has an interest;

1 (4) A deposit of trust money in a regulated financial-service institution
2 operated by the trustee or an affiliate of the trustee; or

3 (5) An advance by the trustee of money for the protection of the trust.

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

6 **"§ 36C-8-803. Impartiality.**

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

10 **"§ 36C-8-804. Prudent administration.**

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

14 **"§ 36C-8-805. Cost of administration.**

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

17 **"§ 36C-8-806. Trustee's skills.**

18 A trustee who has special skills or expertise, or is named trustee in reliance upon the
19 trustee's representation that the trustee has special skills or expertise, shall use those
20 special skills or expertise.

21 **"§ 36C-8-807. Delegation by trustee.**

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

25 (1) Selecting an agent;

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

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

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

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

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

38 **"§ 36C-8-808. Powers to direct.**

39 (a) While a trust is revocable, the trustee may follow a direction of the settlor that
40 is contrary to the terms of the trust, even if doing so (i) the trustee exceeds the authority
41 granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise
42 violate a duty the trustee owes under the trust.

43 (b) If the terms of a trust confer upon a person other than the settlor of a
44 revocable trust power to direct certain actions of the trustee, the trustee must act in

1 accordance with an exercise of the power unless the attempted exercise is manifestly
2 contrary to the terms of the trust, or the trustee knows the attempted exercise would
3 constitute a serious breach of a fiduciary duty that the person holding the power owes to
4 the beneficiaries of the trust.

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

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

11 **"§ 36C-8-809. Control and protection of trust property.**

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

13 **"§ 36C-8-810. Record keeping and identification of trust property.**

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

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

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

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

21 **"§ 36C-8-811. Enforcement and defense of claims.**

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

24 **"§ 36C-8-812. Collecting trust property.**

25 A trustee shall take reasonable steps to compel a former trustee or other person to
26 deliver trust property to the trustee and to redress a breach of trust known to the trustee
27 to have been committed by a former trustee.

28 **"§ 36C-8-813. Duty to inform and report.**

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

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

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

38 (2) A trustee is considered to have discharged the trustee's duty under
39 subsection (a) of this section as to a qualified beneficiary for matters
40 disclosed by a report sent at least annually and at termination of the
41 trust to the beneficiary that describes the trust property, liabilities,
42 receipts, and disbursements, including the source and amount of the
43 trustee's compensation, and lists the trust assets and their respective
44 market values, including estimated values of assets with uncertain

1 values. No presumption shall arise that a trustee who does not comply
2 with this subdivision failed to discharge the trustee's duty under
3 subsection (a) of this section.

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

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

9 **§ 36C-8-814. Discretionary powers; tax savings.**

10 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of
11 the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a
12 trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary
13 power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive,
14 even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in
15 accordance with the terms and purposes of the trust and the interests of the
16 beneficiaries.

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

19 (1) A person other than a settlor who is a beneficiary and trustee of a trust
20 that confers on the trustee a power that would, except for this
21 subsection, constitute in whole or in part a general power of
22 appointment may not exercise that power in favor of the
23 trustee/beneficiary, the trustee/beneficiary's estate, the
24 trustee/beneficiary's creditors, or the creditors of the
25 trustee/beneficiary's estate.

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

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

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

38 (c) A power whose exercise is limited or prohibited by subsection (b) of this
39 section may be exercised by a majority of the remaining trustees whose exercise of the
40 power is not so limited or prohibited. If the power of all trustees is so limited or
41 prohibited, the court may appoint a special fiduciary with authority to exercise the
42 power.

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

- 1 (1) A power held by the settlor's spouse who is the trustee of a trust for
2 which a marital deduction, as defined in section 2056(b)(5) or section
3 2523(e) of the Internal Revenue Code, was previously allowed;
4 (2) Any trust during any period that the trust may be revoked or amended
5 by its settlor; or
6 (3) A trust, if contributions to the trust qualify for the annual exclusion
7 under section 2503(c) of the Internal Revenue Code.

8 (e) If a trust created under a will or trust instrument for the benefit of the spouse
9 of the settlor of the trust, other than a trust that provides that upon the termination of the
10 income interest that the entire remaining trust estate be paid to the estate of the spouse,
11 requires that all the income of the trust be paid not less frequently than annually to the
12 spouse and a federal estate or gift tax marital deduction is claimed with respect to the
13 trust, then, unless the trust instrument specifically provides otherwise by reference to
14 this section, any investment in or retention of unproductive property as an asset of the
15 trust is subject to the power of the spouse to require either that the asset be made
16 productive of income, or that it be converted to assets productive of income, within a
17 reasonable period of time.

18 **"§ 36C-8-815. General powers of trustee.**

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

- 20 (1) Powers conferred by the terms of the trust; or
21 (2) Except as limited by the terms of the trust:
22 a. All powers over the trust property that an unmarried competent
23 owner has over individually owned property;
24 b. Any other powers appropriate to achieve the proper investment,
25 management, administration, or distribution of the trust
26 property; and
27 c. Any other powers conferred by this Chapter.

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

30 **"§ 36C-8-816. Specific powers of trustee.**

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

- 32 (1) Collect and control trust property and accept or reject additions to the
33 trust property from a settlor or any other person;
34 (2) Invest and reinvest trust property as the trustee considers advisable in
35 accordance with the trust, and to acquire or sell property, for cash or
36 on credit, at public or private sale;
37 (3) Exchange, partition, or otherwise change the character of trust
38 property;
39 (4) Deposit trust money in an account in a regulated financial services
40 institution, including an institution operated by the trustee or an
41 affiliate of the trustee upon compliance with any applicable
42 requirements for the deposit;
43 (5) Borrow money, with or without security, including from a corporate
44 trustee's lending department, renew or modify loans, and mortgage or

- 1 pledge trust property for a period within or extending beyond the
2 duration of the trust;
- 3 (6) With respect to an interest in a proprietorship, partnership, limited
4 liability company, business trust, corporation, venture, agricultural
5 operation, or other form of business or enterprise, form and transfer,
6 assign, and convey to that form of business or enterprise all or any part
7 of the trust property in exchange for the stock, securities, or
8 obligations of that form of business or enterprise, continue any
9 business or other enterprise, and take any action that may be taken by
10 shareholders, members, or property owners, including merging,
11 dissolving, or otherwise changing the form of business organization, or
12 contributing additional capital;
- 13 (7) With respect to stocks or other securities, exercise the rights of an
14 absolute owner, including the right to:
- 15 a. Vote, or give general or limited proxies to vote, with or without
16 power of substitution, or enter into or continue a voting trust
17 agreement, or execute waivers, consents, or objections with
18 respect to those securities;
- 19 b. Hold a security in the name of a nominee or in other form
20 without disclosure of the trust so that title may pass by delivery;
- 21 c. Pay calls, assessments, and other sums chargeable or accruing
22 against the securities, and sell or exercise stock subscription or
23 conversion rights;
- 24 d. Deposit the securities with a depository or other regulated
25 financial service institution; and
- 26 e. Consent, directly or through a committee or other agent, to the
27 merger, consolidation, reorganization, readjustment of capital or
28 financial structure, lease, sale, dissolution, or liquidation of a
29 business enterprise, and elect whether to participate as a
30 member of a class in any litigation involving the securities;
- 31 (8) With respect to an interest in real property, construct, or make ordinary
32 or extraordinary repairs to, alterations to, or improvements in,
33 buildings or other structures, demolish improvements, raze existing
34 party walls or buildings or erect new party walls or buildings,
35 subdivide or develop land, dedicate land to public use or grant public
36 or private easements, and make or vacate plats and adjust boundaries,
37 make contracts, licenses, leases, conveyances, or grants of every nature
38 and kind with respect to crops, gravel, sand, oil, gas, timber and forest
39 products, other usufructs or natural resources, and other benefits or
40 incidents of the real property;
- 41 (9) Enter into a lease for any purpose as lessor or lessee, including a lease
42 or other arrangement for exploration and removal of natural resources,
43 with or without the option to purchase or renew, for a period within or
44 extending beyond the duration of the trust;

- 1 (10) Grant an option involving a sale, lease, or other disposition of trust
2 property or acquire an option for the acquisition of property, including
3 an option exercisable beyond the duration of the trust, and exercise an
4 option so acquired;
- 5 (11) Insure the property of the trust against damage or loss and insure the
6 trustee, the trustee's agents, and beneficiaries against liability arising
7 from the administration of the trust at the expense of the trust;
- 8 (12) Abandon, relinquish any or all rights to, or decline to administer
9 property of no value or of insufficient benefit or value to the trust to
10 justify its collection or continued administration;
- 11 (13) With respect to possible liability for violation of environmental law:
- 12 a. Inspect or investigate property the trustee holds or has been
13 asked to hold, or property owned or operated by an organization
14 in which the trustee holds or has been asked to hold an interest,
15 for the purpose of determining the application of environmental
16 law with respect to the property;
- 17 b. Take action to prevent, abate, or otherwise remedy any actual or
18 potential violation of any environmental law affecting property
19 held directly or indirectly by the trustee, whether taken before
20 or after the assertion of a claim or the initiation of governmental
21 enforcement;
- 22 c. Decline to accept property into trust or disclaim any power with
23 respect to property that is or may be burdened with liability for
24 violation of environmental law;
- 25 d. Compromise claims against the trust that may be asserted for an
26 alleged violation of environmental law; and
- 27 e. Pay the expense of any inspection, review, abatement, or
28 remedial action to comply with environmental law;
- 29 (14) Pay or contest any claim, compromise, adjust or otherwise settle a
30 claim by or against the trust, and release, in whole or in part, a claim
31 belonging to the trust;
- 32 (15) Pay from the trust property taxes, assessments, compensation of the
33 trustee and of employees and agents of the trust, and other expenses
34 incurred in the administration of the trust and the protection of the trust
35 property;
- 36 (16) Exercise elections with respect to federal, state, and local taxes;
- 37 (17) Select a mode of payment under any employee benefit or retirement
38 plan, annuity, or life insurance payable to the trustee, exercise rights
39 under that plan, annuity, or life insurance, including exercise of the
40 right to indemnification for expenses and against liabilities, and take
41 appropriate action to collect the proceeds;
- 42 (18) Make loans out of trust property, including loans to a beneficiary on
43 terms and conditions the trustee considers to be fair and reasonable

- 1 under the circumstances, and acquire a lien on future distributions for
2 repayment of those loans;
- 3 (19) Pledge trust property to guarantee loans made by others to a
4 beneficiary;
- 5 (19a) Guarantee loans made by others to a beneficiary;
- 6 (19b) Pledge trust property to guarantee loans made by others to a
7 proprietorship, partnership, limited liability company, business trust,
8 corporation, venture, agricultural operation, or other form of business
9 or enterprise in which the trust has an ownership interest.
- 10 (19c) Guarantee loans made by others to a proprietorship, partnership,
11 limited liability company, business trust, corporation, venture,
12 agricultural operation, or other form of business or enterprise in which
13 the trust has an ownership interest.
- 14 (20) Appoint a trustee to act in another jurisdiction with respect to trust
15 property located in the other jurisdiction, confer upon the appointed
16 trustee all of the powers and duties of the appointing trustee, limit
17 those powers the appointed trustee may exercise and the duties for
18 which the appointed trustee is responsible, require that the appointed
19 trustee furnish security, and remove any trustee so appointed;
- 20 (21) Pay an amount distributable to a beneficiary who is under a legal
21 disability or who the trustee reasonably believes is incapacitated, by
22 paying it directly to the beneficiary or applying it for the beneficiary's
23 benefit, or by:
- 24 a. Paying it to the beneficiary's general guardian or the guardian of
25 the beneficiary's estate or, if the beneficiary does not have a
26 general guardian or guardian of the beneficiary's estate, the
27 guardian of the beneficiary's person;
- 28 b. Paying it to a custodian under a uniform transfer to minors act
29 or custodial trustee under a uniform custodial trust act and, for
30 that purpose, creating a custodianship or custodial trust for the
31 benefit of the beneficiary;
- 32 c. Paying it to an adult relative or other person having legal or
33 physical care or custody of the beneficiary, to be expended on
34 the beneficiary's behalf; or
- 35 d. Managing it as a separate fund on the beneficiary's behalf.
- 36 A trustee making payments under this subdivision does not have any
37 duty to see to the application of the payments so made, if the trustee
38 exercised due care in the selection of the person, including the minor
39 or incompetent, to whom the payments were made, and the receipt of
40 that person shall be full acquittance to the trustee;
- 41 (22) On distribution of trust property or the division or termination of a
42 trust, make distributions in divided or undivided interests, allocate
43 particular assets in proportionate or disproportionate shares without
44 regard to the income tax basis or other special tax attributes of the

1 (a) Except as otherwise provided in subsection (b) of this section, a trustee who
2 invests and manages trust assets owes a duty to the beneficiaries of the trust to comply
3 with the prudent investor rule set forth in this Article.

4 (b) The prudent investor rule is a default rule and may be expanded, restricted,
5 eliminated, or otherwise altered by the provisions of a trust that govern or direct
6 investments in a manner inconsistent with this Article. A trustee is not liable to a
7 beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the
8 trust.

9 (c) The following terms or comparable language in a trust, unless otherwise
10 limited or modified, authorize any investment or strategy permitted under this Article:
11 "Chapter 36A", "investments in accordance with Article 15 of Chapter 36A",
12 "investments in accordance with Article 9 of Chapter 36C", "investments permissible by
13 law for investment of trust funds", "legal investments", "authorized investments", "using
14 the judgment and care under the circumstances then prevailing that persons of prudence,
15 discretion, and intelligence exercise in the management of their own affairs, not in
16 regard to speculation but in regard to the permanent disposition of their funds,
17 considering the probable income as well as the probable safety of their capital",
18 "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor
19 rule". This Article also applies where a trust contains no investment standard.

20 (d) This Article does not apply to:

21 (1) Unless the trust provides otherwise by specific reference to this
22 Article:

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

25 b. Trusts that are created by legislative act;

26 c. Trusts that are created by or under premarital or postmarital
27 agreements, divorce settlements, settlements of other
28 proceedings or disputes;

29 d. Transfers under a Uniform Transfers to Minors Act;

30 e. Transfers under a Uniform Custodial Trust Act; or

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

32 (2) Trusts imposed or required under another Chapter of the General
33 Statutes or by rule in which the investment of the trust funds is
34 regulated by the other Chapter or by rule, unless a provision of the
35 other chapter or the rule provides otherwise by a specific reference to
36 this Article.

37 **"§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.**

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

42 (b) A trustee's investment and management decisions respecting individual assets
43 must be evaluated not in isolation but in the context of the trust portfolio as a whole and

1 as a part of an overall investment strategy having risk and return objectives reasonably
2 suited to the trust.

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

5 (1) General economic conditions;

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

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

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

12 (5) The expected total return from income and the appreciation of capital;

13 (6) Other resources of the beneficiaries known to the trustee;

14 (7) Needs for liquidity, regularity of income, and preservation or
15 appreciation of capital; and

16 (8) An asset's special relationship or special value, if any, to the purposes
17 of the trust or to one or more of the beneficiaries.

18 (d) A trustee shall make a reasonable effort to verify facts relevant to the
19 investment and management of trust assets.

20 (e) A trustee may invest in any kind of property or type of investment consistent
21 with the standards of this Article.

22 **"§ 36C-9-903. Diversification.**

23 A trustee shall diversify the investments of the trust unless the trustee reasonably
24 determines that, because of special circumstances, the purposes of the trust are better
25 served without diversifying.

26 **"§ 36C-9-904. Duties at inception of trusteeship.**

27 Within a reasonable time after accepting a trusteeship or receiving trust assets, a
28 trustee shall review the trust assets and make and implement decisions concerning the
29 retention and disposition of assets in order to bring the trust portfolio into compliance
30 with the purposes, terms, distribution requirements, and other circumstances of the trust,
31 and with the requirements of this Chapter.

32 **"§ 36C-9-905. Reviewing compliance.**

33 Compliance with the prudent investor rule is determined in light of the facts and
34 circumstances existing at the time of a trustee's decision or action and not by hindsight.

35 **"§ 36C-9-906. Effect on charitable remainder trusts.**

36 Nothing in this Article shall prevent the application of Article 4B of this Chapter to a
37 "charitable remainder trust" as defined in G.S. 36C-4B-3(1).

38 **"§ 36C-9-907. Short title.**

39 This Article may be cited as the "North Carolina Uniform Prudent Investor Act."

40 "Article 10.

41 "Liability of Trustees and Rights of Persons Dealing With Trustees.

42 **"§ 36C-10-1001. Remedies for breach of trust.**

43 (a) A violation by a trustee of a duty the trustee owes under a trust is a breach of
44 trust.

1 (b) To remedy a breach of trust that has occurred or may occur, the court may:

2 (1) Compel the trustee to perform the trustee's duties;

3 (2) Enjoin the trustee from committing a breach of trust;

4 (3) Compel the trustee to redress a breach of trust by paying money,
5 restoring property, or other means;

6 (4) Order a trustee to account;

7 (5) Appoint a special fiduciary to take possession of the trust property and
8 administer the trust;

9 (6) Suspend the trustee;

10 (7) Remove the trustee as provided in G.S. 36C-7-706;

11 (8) Reduce or deny compensation to the trustee;

12 (9) Subject to G.S. 36C-10-1012, void an act of the trustee, impose a lien
13 or a constructive trust on trust property, or trace trust property
14 wrongfully disposed of and recover the property or its proceeds; or

15 (10) Order any other appropriate relief.

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

19 **"§ 36C-10-1002. Damages for breach of trust.**

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

21 (1) The amount required to restore the value of the trust property and trust
22 distributions to what they would have been had the breach not
23 occurred; or

24 (2) The profit the trustee made by reason of the breach.

25 (b) Except as otherwise provided in this subsection, if more than one trustee is
26 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from
27 the other trustee or trustees. A trustee is not entitled to contribution if the trustee was
28 substantially more at fault than another trustee or if the trustee committed the breach of
29 trust in bad faith or with reckless indifference to the purposes of the trust or the interests
30 of the beneficiaries. A trustee who received a benefit from the breach of trust is not
31 entitled to contribution from another trustee to the extent of the benefit received.

32 **"§ 36C-10-1003. Liability in absence of breach.**

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

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

39 **"§ 36C-10-1004. Attorneys' fees and costs.**

40 In a judicial proceeding involving the administration of a trust, the court may award
41 costs and expenses, including reasonable attorneys' fees, as provided in the General
42 Statutes.

43 **"§ 36C-10-1005. Limitation of action against trustee.**

1 (a) No proceeding against a trustee for breach of trust may be commenced more
2 than five years after the first to occur of: (i) the removal, resignation, or death of the
3 trustee; (ii) the termination of the beneficiary's interest in the trust; or (iii) the
4 termination of the trust.

5 (b) Except as provided in subsection (a) of this section, Chapter 1 of the General
6 Statutes governs the limitations of actions on judicial proceedings involving trusts.

7 **"§ 36C-10-1006. Reliance on trust instrument.**

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

11 **"§ 36C-10-1007. Event affecting administration or distribution.**

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

16 **"§ 36C-10-1008. Exculpation of trustee.**

17 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
18 the extent that it relieves the trustee of liability for breach of trust committed in bad faith
19 or with reckless indifference to the purposes of the trust or the interests of the
20 beneficiaries.

21 **"§ 36C-10-1009. Beneficiary's consent, release, or ratification.**

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

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

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

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

32 **"§ 36C-10-1010. Limitation on personal liability of trustee.**

33 (a) Except as otherwise provided in the contract, a trustee is not personally liable
34 on a contract properly entered into in the trustee's fiduciary capacity in the course of
35 administering the trust if the trustee in making the contract disclosed the fiduciary
36 capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to
37 the signature of a trustee on a written contract is considered prima facie evidence of a
38 disclosure of fiduciary capacity.

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

43 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
44 capacity, on an obligation arising from ownership or control of trust property, or on a

1 tort committed in the course of administering a trust, may be asserted in a judicial
2 proceeding against the trustee in the trustee's fiduciary capacity, whether or not the
3 trustee is personally liable for the claim. Any judgment rendered in favor of a claimant
4 in such a judicial proceeding against a trust may be recovered from the trust property
5 without proof that the trustee could have obtained reimbursement from the trust if the
6 trustee had paid the claim.

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

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

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

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

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

19 **"§ 36C-10-1011. Interest as general partner.**

20 (a) Except as otherwise provided in subsection (c) of this section or unless
21 personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity,
22 an interest as a general partner in a general or limited partnership is not personally liable
23 on a contract entered into by the partnership if the fiduciary capacity was disclosed. The
24 addition of the phrase "trustee" or "as trustee" or a similar designation to the signature
25 of a trustee on a written partnership document is considered prima facie evidence of a
26 disclosure of fiduciary capacity.

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

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

35 **"§ 36C-10-1012. Protection of person dealing with trustee.**

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

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

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

1 (d) A person other than a beneficiary who in good faith assists a former trustee,
2 or who in good faith and for value deals with a former trustee, without knowledge that
3 the trusteeship has terminated is protected from liability as if the former trustee were
4 still a trustee.

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

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

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

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

14 (1) The existence of the trust and the date the trust instrument was
15 executed;

16 (2) The identity of the settlor, unless withheld under a provision in the
17 trust instrument;

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

19 (4) The powers of the trustee;

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

22 (6) The authority of cotrustees to sign or otherwise authenticate and
23 whether all or less than all are required in order to exercise powers of
24 the trustee;

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

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

27 (b) Any trustee may sign or otherwise authenticate a certification of trust.

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

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

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

41 (g) A person who in good faith enters into a transaction in reliance upon a
42 certification of trust may enforce the transaction against the trust property as if the
43 representations contained in the certification were correct.

1 aware of the need for a vehicle by which they can assure ongoing individualized
2 personal concern for a severely disabled family member who may survive that disabled
3 person's parents or other family members, and provide for the efficient management of
4 small legacies or trust funds to be used for the benefit of that disabled person. In a
5 number of other states, voluntary associations have established foundations or trusts
6 intended to be responsive to these concerns. Therefore, the General Assembly finds that
7 North Carolina will benefit by the enactment of enabling legislation expressly
8 authorizing the formation of community trusts in accordance with criteria set forth by
9 statute and administered by the Secretary of State, under Chapter 55A of the General
10 Statutes. These community trusts permit the pooling of resources contributed by
11 families or persons with philanthropic intent, along with the reservation of portions
12 of these funds for the use and benefit of designated beneficiaries.

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

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

"§ 36D-2. Definitions.

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

- (1) "Beneficiary" means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.
- (2) "Community trust" means a nonprofit organization that offers the following services:

 - a. Administration of special trust funds for persons with severe chronic disabilities;
 - b. Follow along services;
 - c. Guardianship for persons with severe chronic disabilities who are incompetent, when no other family member or immediate friend is available for this purpose; and
 - d. Advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.
- (3) "Follow along services" means (i) those services offered by community trusts that are designed to ensure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, (ii) participation in the development of individualized plans being made by service providers for the beneficiary, and (iii) other similar services consistent with the purposes of this Article.
- (4) "Severe chronic disability" means a physical or mental impairment that is expected to give rise to a long-term need for specialized health, social, and other services, and that makes the person with the disability dependent upon others for assistance to secure these services.
- (5) "Trustee" means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.
- (6) "Surplus trust funds" means funds accumulated in the trust from contributions made on behalf of an individual beneficiary that, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs.

"§ 36D-3. Scope.

This Article applies to every community trust established in this State. In addition to meeting the other requirements of this Article, every board that administers a community trust shall incorporate as a nonprofit corporation under Chapter 55A of the

1 General Statutes. Except as otherwise provided in this Chapter, Chapter 55A of the
2 General Statutes applies to community trusts.

3 **"§ 36D-4. Administration; powers and duties.**

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

12 The certificate of incorporation filed with the Secretary of State under Chapter 55A
13 of the General Statutes shall, in addition to the requirements set forth in that Chapter,
14 demonstrate that the requirements of this section have been met.

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

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

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

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

36 (e) The community trust is not required to provide services to a beneficiary who
37 is a competent adult and who has refused to accept the services. Further, the community
38 trust shall not provide services of a nature or in a manner that would be contrary to the
39 public policy of this State at the time the services are to be provided. In either case, the
40 community trust may offer alternate services that are consistent with the purposes of
41 this Article and in keeping with the best interests of the beneficiary.

42 (f) The community trust may accept appointment as guardian of the person,
43 guardian of the estate, or guardian of both on behalf of any beneficiary. If the
44 community trust accepts appointment as guardian of the person of an individual, it

1 shall assign a staff member to carry out its responsibilities as the guardian. The
2 community trust may, upon request, offer consultative and professional assistance to an
3 individual, private or public guardian of any of its beneficiaries.

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

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

14 **"§ 36D-5. Accountability.**

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

24 **"§ 36D-6. Gifts, surplus trust funds.**

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

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

37 The community trust may agree to fulfill any special requests made on behalf of a
38 beneficiary as long as the requests are consistent with this Article and provided that an
39 adequate contribution has been made for this purpose on behalf of a beneficiary. The
40 community trust may agree to serve as trustee for any individual trust created on behalf
41 of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or
42 more remaindermen or contingent beneficiaries, or any other condition, so long as the
43 individual trust is consistent with the purposes of this Article.

44 **"§ 36D-8. Irrevocability; impossibility of fulfillment.**

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

7 **"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility**
8 **determination.**

9 Notwithstanding any provisions of Chapter 108A of the General Statutes, the
10 beneficiary's interest in any community trust is not considered to be an asset for the
11 purpose of determining income eligibility for any publicly operated program, nor shall
12 that interest be reached in satisfaction of a claim for support and maintenance of the
13 beneficiary. No agency shall reduce the benefits of services available to any individual
14 because that person is the beneficiary of a community trust.

15 **"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.**

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

19 **"§ 36D-11. Settlement; trustee limitations.**

20 The community trust shall settle a community trust by filing a final accounting in
21 the superior court. In addition, at any time before the settlement of the final account, the
22 community trust, the Secretary of State, or the Attorney General may bring an action for
23 the dissolution of a nonprofit corporation in the superior court for the purpose of
24 terminating the trust or merging it with another charitable trust.

25 No trustee or any private individual is entitled to share in the distribution of any of
26 the trust assets upon dissolution, merger, or settlement of the community trust. Upon
27 dissolution, merger, or settlement, the superior court shall distribute all of the remaining
28 net assets of the community trust in a manner that is consistent with the purposes of this
29 Article."

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

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

32 **"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more**
33 **than one.**

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

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

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

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

- ~~(2) Subject to the provisions of G.S. 105-24, enter any safe deposit box of the deceased or any safe deposit box rented by the personal representative or representatives;~~
- ~~(3) Employ attorneys and accountants;~~
- ~~(4) List property for taxes and prepare and file State, municipal and county tax returns;~~
- ~~(5) Collect claims and debts due the estate and give receipts therefor;~~
- ~~(6) Pay claims against and debts of the estate;~~
- ~~(7) Compromise claims in favor of or against the estate;~~
- ~~(8) Have custody of property of the estate.~~

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

- (1) Establish and maintain bank accounts for the trust and issue checks for the estate.
- (2) Maintain inventories, accountings, and income and expense records of the estate.
- (3) Enter any safety deposit box rented by the estate.
- (4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.
- (5) List estate property for taxes and prepare and file tax returns for the trust.
- (6) Collect and give receipts for claims and debts of the estate.
- (7) Pay debts, claims, costs of administration, and taxes of the estate.
- (8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the estate.
- (9) Have custody of the estate property.
- (10) Perform any function relating to investment of estate assets.

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

- (1) If only one votes, in person or by proxy, ~~his~~ that personal representative's act binds all;
- (2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;
- (3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to ~~the provisions of~~ subsections (b), ~~(c)~~ (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal

1 representative who has not joined in exercising a power shall be liable for the
2 consequences of such exercise, nor shall a dissenting personal representative be liable
3 for the consequences of an act in which ~~he~~the personal representative joins at the
4 direction of the majority of the personal representatives, if ~~he~~that personal
5 representative expressed his or her dissent in writing to any other personal
6 representative at or before the time of such joinder.

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

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

13 **SECTION 7.(a)** Section 2 of this act becomes effective January 1, 2006, and
14 except as otherwise provided in Chapter 36C of the General Statutes, as enacted by
15 Section 2 of this act, applies to (i) all trusts created before, on, or after that date; (ii) all
16 judicial proceedings concerning trusts commenced on or after that date; and (iii) judicial
17 proceedings concerning trusts commenced before that date unless the court finds that
18 application of a particular provision of Chapter 36C of the General Statutes would
19 substantially interfere with the effective conduct of the judicial proceedings or prejudice
20 the rights of the parties, in which case the particular provision of Chapter 36C of the
21 General Statutes does not apply and the superseded law applies.

22 Except as otherwise provided in Chapter 36C of the General Statutes, as
23 enacted by Section 2 of this act, any rule of construction or presumption provided in
24 Chapter 36C of the General Statutes applies to trust instruments executed before the
25 effective date of Section 2 of this act unless there is a clear indication of a contrary
26 intent in the terms of the trust or unless application of that rule of construction or
27 presumption would impair substantial rights of a beneficiary. Except as otherwise
28 provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, an
29 act done before the effective date of Section 2 of this act is not affected by Chapter 36C
30 of the General Statutes. If a right is acquired, extinguished, or barred upon the
31 expiration of a prescribed period that has commenced to run under any other statute
32 before the effective date of Section 2 of this act, that statute continues to apply to the
33 right even if it has been repealed or superseded.

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