

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 765\*  
Committee Substitute Favorable 4/4/07

Short Title: Test. Additions to Trusts/Will References.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAW REGARDING TESTAMENTARY ADDITIONS TO TRUSTS, AND TO CODIFY THE DOCTRINES OF INCORPORATION BY REFERENCE AND ACTS OF INDEPENDENT SIGNIFICANCE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 8 of Chapter 31 of the General Statutes reads as rewritten:

"Article 8.

~~"Devise or Bequest to Trustee of an Existing Trust. Testamentary Additions to Trusts.~~

**"§ 31-47. Devise or bequest to trustee of an existing trust. Testamentary additions to trusts.**

~~A devise or bequest in a will duly executed pursuant to the provisions of this Chapter may be made in form or substance to the trustee of any trust, including an existing testamentary trust, if established in writing prior to the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable or both by the settlor or any other person or persons; nor because the trust instrument or any amendment thereto was not executed in the manner required for wills, nor because the trust was amended after execution of the will. Unless the will provides otherwise, such devise or bequest shall operate to dispose of property under the terms of the trust as they appear in writing at the testator's death and the property shall not be deemed held under a testamentary trust. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.~~

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

(2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written

1 instrument executed before or concurrently with the execution of the  
2 testator's will, regardless of the existence, size, or character of the  
3 corpus of the trust during the testator's lifetime.

4 The devise is not invalid because the trust is amendable or revocable, or because the  
5 trust instrument or any amendment thereto was not executed in the manner required for  
6 wills, or because the trust was amended after the execution of the testator's will or after  
7 the testator's death. A revocable trust to which property is first transferred under  
8 subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and,  
9 as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter  
10 36C of the General Statutes.

11 (b) Unless the testator's will provides otherwise, property devised to the trustee of  
12 a trust described in subsection (a) of this section is not held under a testamentary trust of  
13 the testator, but it becomes a part of the trust to which it is devised, and shall be  
14 administered and disposed of in accordance with the provisions of the governing  
15 instrument setting forth the terms of the trust, including any amendments thereto made  
16 before or after the testator's death.

17 (c) Unless the testator's will provides otherwise, a revocation or termination of  
18 the trust before the testator's death causes the devise to lapse.

19 (d) A devise to a trust shall be construed as a devise to the trustee of that trust.

20 (e) For purposes of this section, "devise," when used as a noun, means a  
21 testamentary disposition of real or personal property and, when used as a verb, means to  
22 dispose of real or personal property by will.

23 (f) Nothing in this section alters, amends, or in any manner affects the  
24 application of the doctrine of acts of independent significance."

25 **SECTION 2.** Chapter 31 of the General Statutes is amended by adding a  
26 new Article to read:

27 "Article 9.

28 "Incorporation by Reference; Acts of Independent Significance.

29 **"§ 31-51. Incorporation by reference.**

30 A writing in existence when a will is executed may be incorporated by reference if  
31 the language of the will manifests this intent and describes the writing sufficiently to  
32 permit its identification.

33 **"§ 31-52. Acts and events of independent significance.**

34 A will may dispose of property by reference to acts and events that have significance  
35 apart from their effect upon the disposition made by the will, whether they occur before  
36 or after the execution of the will or before or after the testator's death. These acts and  
37 events may include the execution or revocation of another individual's will and the  
38 safekeeping of items in a secured depository."

39 **SECTION 3.** The Revisor of Statutes shall cause to be printed along with  
40 this act all relevant portions of the official comments to Sections 2-510 (Incorporation  
41 by Reference), and 2-511 (Testamentary Additions to Trusts) of the Uniform Probate  
42 Code and all explanatory comments of the drafters of this act as the Revisor deems  
43 appropriate.

1                   **SECTION 4.** This act is effective when it becomes law and applies to estates  
2 of decedents dying on or after that date regardless of when the will or instrument was  
3 executed.