

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 947

Short Title: Uniform Trust Code Changes.

(Public)

Sponsors: Senator Hagan.

Referred to: Judiciary II (Criminal).

March 20, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CONFORMING, AND OTHER CHANGES TO
3 THE UNIFORM TRUST CODE AND OTHER RELATED STATUTES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 28A-13-3(a)(5) reads as rewritten:

6 "(a) Except as qualified by express limitations imposed in a will of the decedent
7 or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of
8 joint personal representatives, a personal representative has the power to perform in a
9 reasonable and prudent manner every act which a reasonable and prudent ~~man~~ person
10 would perform incident to the collection, preservation, liquidation or distribution of a
11 decedent's estate so as to accomplish the desired result of settling and distributing the
12 decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law,
13 including ~~but not limited to~~ the powers specified in the following subdivisions:

14 ...

15 (5) To deposit, as a fiduciary, funds of the estate in a bank, including a
16 bank operated by the personal representative ~~upon compliance with the~~
17 ~~provisions of G.S. 36A-63.~~ pursuant to G.S. 53-163.1.

18 "

19 **SECTION 1.1.** Chapter 32A of the General Statutes is amended by adding a
20 new Article to read:

21 "Article 2C.

22 "Limitations on Authority of Attorney-in-Fact.

23 "§ 32A-14.13. Limitations on authority of attorney-in-fact.

24 (a) Notwithstanding any provision in this Chapter to the contrary, an
25 attorney-in-fact may not:

- 26 (1) Perform duties under a contract that requires the exercise of personal
27 services of the principal;
28 (2) Make any affidavit as to the personal knowledge of the principal;
29 (3) Vote in any public election on behalf of the principal;

- 1 (4) Execute or revoke any will or codicil for the principal; or
2 (5) Exercise the powers with respect to a revocable trust set forth in
3 G.S. 36C-6-602A(a) if the exercise of such powers would alter the
4 designation of beneficiaries to receive property on the settlor's death
5 under that settlor's existing estate plan.

6 (b) This section is not intended to apply to or impair in any way the power of an
7 attorney-in-fact to make gifts of the principal's property, which power is governed by
8 Article 2A and 2B of this Chapter."

9 **SECTION 1.2.** G.S. 36B-8 reads as rewritten:

10 **"§ 36B-8. Conflict with other law.**

11 To the extent that the provisions of this Chapter are inconsistent with the provisions
12 of either Chapter 36A 36C or Chapter 55A, the provisions of this Chapter shall control.
13 The provisions of this Chapter shall not apply to the University of North Carolina."

14 **SECTION 2.** G.S. 36C-1-103 reads as rewritten:

15 **"§ 36C-1-103. Definitions.**

16 ~~In this~~ The following definitions apply in this Chapter:

- 17 (1) ~~"Action", with respect~~ Action. – When applicable to an act of a trustee,
18 includes a failure to act.
- 19 (2) ~~"Ascertainable standard" means a~~ Ascertainable standard. – A standard
20 relating to an individual's health, education, support, or maintenance
21 within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the
22 Internal Revenue Code.
- 23 (3) ~~"Beneficiary" means a~~ Beneficiary. – A person who:
24 a. Has a present or future beneficial interest in a trust, vested or
25 contingent, including the owner of an interest by assignment or
26 transfer; or
27 b. In a capacity other than that of trustee, holds a power of
28 appointment over trust property.
- 29 (4) ~~"Charitable trust" means a~~ Charitable trust. – A trust, including a
30 split-interest trust as described in section 4947 of the Internal Revenue
31 Code, created for a charitable purpose described in G.S. 36C-4-405(a).
- 32 (5) ~~"Environmental law" means a~~ Environmental law. – A federal, state, or
33 local law, rule, regulation, or ordinance relating to protection of the
34 environment.
- 35 (6) ~~"General guardian" means a general guardian as that term is~~ General
36 guardian. – As defined in G.S. 35A-1202(7).
- 37 (7) ~~"Guardian of the estate" means a guardian of the estate as that term is~~ Guardian of the estate. – As defined in G.S. 35A-1202(9).
- 38 (8) ~~"Guardian of the person" means a guardian of the person as that term~~ is Guardian of the person. – As defined in G.S. 35A-1202(10).
- 39 (9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries.
40 is Guardian of the person. – As defined in G.S. 35A-1202(10).
- 41 (9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries.
42 – The beneficial interests provided in the terms of the trust.
- 43 (10) ~~"Internal Revenue Code" means the~~ Internal Revenue Code. – The
44 Internal Revenue Code of 1986, as amended from time to time. Each

- 1 reference to a provision of the Internal Revenue Code shall include any
2 successor to that provision.
- 3 (11) ~~"Jurisdiction", with respect~~ Jurisdiction. – When applicable to a
4 geographic area, includes a state or country.
- 5 (12) ~~"Person" means an~~ Person. – An individual, corporation, business
6 trust, estate, trust, partnership, limited liability company, association,
7 joint venture, government; governmental subdivision, agency, or
8 instrumentality; public corporation, or any other legal or commercial
9 entity.
- 10 (13) ~~"Power of withdrawal" means a~~ Power of withdrawal. – A presently
11 exercisable general power of appointment other than a power:
12 a. Exercisable by a trustee and limited by an ascertainable
13 standard; or
14 b. Exercisable by another person only upon consent of the trustee
15 or a person holding an adverse interest.
- 16 (13a) Principal place of administration. – The trustee's usual place of
17 business where the records pertaining to the trust are kept or the
18 trustee's residence if the trustee has no usual place of business. In the
19 case of cotrustees, the principal place of administration is:
20 a. The usual place of business of the corporate trustee if there is a
21 corporate cotrustee.
22 b. The usual place of business or residence of any of the cotrustees
23 if there is no corporate cotrustee.
- 24 (14) ~~"Property" means anything~~ Property. – Anything that may be the
25 subject of ownership, whether real or personal, legal or equitable, or
26 any interest therein.
- 27 (15) ~~"Qualified beneficiary" means a~~ Qualified beneficiary. – A living
28 beneficiary ~~who, to whom,~~ on the date the beneficiary's qualification is
29 ~~determined;~~ determined, any of the following apply:
30 a. Is a distributee or permissible distributee of trust income or
31 ~~principal;~~ principal.
32 b. Would be a distributee or permissible distributee of trust
33 income or principal if the interests of the distributees described
34 in sub-subdivision a. of this subdivision terminated on that date
35 without causing the trust to ~~terminate;~~ or terminate.
36 c. Would be a distributee or permissible distributee of trust
37 income or principal if the trust terminated on that date.
- 38 (16) ~~"Revocable", as applied~~ Revocable. – When applicable to a trust,
39 means revocable by the settlor without the consent of the trustee or a
40 person holding an adverse interest.
- 41 (17) ~~"Settlor" means a~~ Settlor. – A person, including a testator, who creates,
42 or contributes property to, a trust. If more than one person creates or
43 contributes property to a trust, each person is a settlor of the portion of
44 the trust property attributable to that person's contribution except to the

1 extent another person has the power to revoke or withdraw that
2 portion.

3 (18) ~~"Spendthrift provision" means a~~ Spendthrift provision. – A term of a
4 trust that restrains both voluntary and involuntary transfer of a
5 beneficiary's interest.

6 (19) ~~"State" means a~~ State. – A state of the United States, the District of
7 Columbia, Puerto Rico, the United States Virgin Islands, or any
8 territory or insular possession subject to the jurisdiction of the United
9 States. The term includes an Indian tribe or band recognized by federal
10 law or formally acknowledged by a state.

11 (20) ~~"Terms of a trust" means the~~ Terms of a trust. – The manifestation of
12 the settlor's intent regarding a trust's provisions as expressed in the
13 trust instrument or established in a judicial proceeding.

14 (21) ~~"Trust instrument" means an~~ Trust instrument. – An instrument
15 executed by the settlor that contains terms of the trust, including any
16 amendments to the instrument, and any modifications permitted by
17 court order.

18 (22) ~~"Trustee" includes~~ Trustee. – Includes an original, additional, and
19 successor trustee, and a cotrustee, whether or not appointed or
20 confirmed by a court. The term does not include trustees in mortgages
21 and deeds of trusts."

22 **SECTION 3.** G.S. 36C-1-105(b) reads as rewritten:

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

- 24 (1) The requirements for creating a trust;
25 (2) The duty of a trustee to act in good faith and in accordance with the
26 terms and purposes of the trust and the interests of the beneficiaries;
27 (3) The requirement that a trust and its terms be for the benefit of its
28 beneficiaries, and that the trust have a purpose that is lawful, not
29 contrary to public policy, and possible to achieve;
30 (4) The power of the court to modify or terminate a trust under
31 G.S. 36C-4-410 through G.S. 36C-4-416;
32 (5) The effect of a spendthrift provision and the rights of certain creditors
33 and assignees to reach a trust as provided in Article 5 of this Chapter;
34 (6) The effect of an exculpatory term under G.S. 36C-10-1008;
35 (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a
36 person other than a trustee or beneficiary;
37 (8) Periods of limitation for commencing a judicial proceeding;
38 (9) The power of the court to take any action and exercise any jurisdiction
39 as may be necessary in the interests of justice; ~~and~~
40 (10) The subject-matter jurisdiction of the court and venue for commencing
41 a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204.~~
42 G.S. 36C-2-204; and
43 (11) The requirement that the exercise of the powers described in
44 G.S. 36C-6-602A(a) shall not alter the designation of beneficiaries to

1 receive property on the settlor's death under that settlor's existing estate
2 plan."

3 **SECTION 4.** G.S. 36C-1-107 reads as rewritten:

4 "(a) The meaning and effect of the terms of a trust are determined ~~by:~~ by any of
5 the following:

6 (1) The law of the jurisdiction designated in the terms unless the
7 designation of that jurisdiction's law is contrary to a strong public
8 policy of the jurisdiction having the most significant relationship to the
9 matter at ~~issue;~~ issue.

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

13 (b) Notwithstanding subsection (a) of this section, the rights of a person other
14 than a trustee or beneficiary are governed by G.S. 36C-10-1010 through
15 G.S. 36C-10-1013."

16 **SECTION 5.** G.S. 36C-1-109(a) reads as rewritten:

17 "(a) Notice to a person under this Chapter or the sending of a document to a
18 person under this Chapter must be accomplished in a manner reasonably suitable under
19 the circumstances and likely to result in receipt of the notice or document. Permissible
20 methods of notice or for sending a document include first-class mail, personal delivery,
21 delivery to the person's last known place of residence or place of business, or a properly
22 directed electronic message.

23 Notice shall be deemed to be given when any of the following occur:

24 (1) When personally delivered by hand to the person.

25 (2) When transmitted by facsimile.

26 (3) When placed in the hands of a nationally recognized courier service
27 for delivery.

28 (4) When received by the person if sent by registered or certified United
29 States mail, return receipt requested.

30 (5) Three days after depositing the same in a regularly maintained
31 receptacle for the deposit of United States mail if sent by regular
32 United States mail.

33 Delivery by any means other than those described in subdivisions (1) through (5) of
34 this subsection shall be deemed to be delivered, given, and received for all purposes as
35 of the date of the actual receipt."

36 **SECTION 6.** G.S. 36C-2-203(a) reads as rewritten:

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

- 1 (1) To appoint or remove a ~~trustee~~; trustee, including the appointment and
2 removal of a trustee pursuant to G.S. 36C-4-414(b).
- 3 (2) ~~To permit a trustee to resign or renounce; however, unless the trustee~~
4 ~~is required to account to the clerk of superior court, when the~~
5 ~~governing instrument names or provides a procedure to name a~~
6 ~~successor trustee, and the successor trustee is willing to serve, no~~
7 ~~trustee is required to initiate a proceeding to resign or renounce as~~
8 ~~trustee; To approve the resignation of a trustee.~~
- 9 (3) To review trustees' fees under Article 6 of Chapter 32 of the General
10 Statutes and review and settle interim or final ~~accounts~~; accounts.
- 11 (4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a
12 total return unitrust to an income trust, or (iii) change the percentage
13 used to calculate the unitrust amount or the method used to determine
14 the fair market value of the trust as provided in ~~G.S. 37A-1-104.3~~;
15 G.S. 37A-1-104.3.
- 16 (5) To transfer a trust's principal place of ~~administration~~; administration.
- 17 (6) To require a trustee to provide bond and determine the amount of the
18 bond, excuse a requirement of bond, reduce the amount of bond,
19 release the surety, or permit the substitution of another bond with the
20 same or different ~~sureties~~; sureties.
- 21 (7) To make orders with respect to a trust for the care of animals as
22 provided in ~~G.S. 36C-4-408~~; G.S. 36C-4-408.
- 23 (8) To make orders with respect to a noncharitable trust without an
24 ascertainable beneficiary as provided in ~~G.S. 36C-4-409~~; ~~and~~
25 G.S. 36C-4-409.
- 26 (9) To ascertain beneficiaries, to determine any question arising in the
27 administration or distribution of any trust, including questions of
28 construction of trust instruments, and to determine the existence or
29 nonexistence of trusts created other than by will and the existence or
30 nonexistence of any immunity, power, privilege, duty, or right. ~~Upon~~
31 ~~motion of a party, the clerk of superior court may determine that a~~
32 ~~proceeding to determine an issue listed in this subdivision shall be~~
33 ~~originally heard by the superior court division of the General Court of~~
34 ~~Justice. Any party may file a notice of transfer of a proceeding~~
35 ~~pursuant to this subsection to the superior court division of the General~~
36 ~~Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a~~
37 ~~transfer to Superior Court, Article 26 of Chapter 1 of the General~~
38 ~~Statutes shall apply to a trust proceeding pending before the clerk of~~
39 ~~superior court to the extent consistent with this Article."~~

40 **SECTION 7.** G.S. 36C-2-203(c) reads as rewritten:

41 "(c) Nothing in this section affects the right of a person to file an action in the
42 superior court division of the General Court of Justice for declaratory relief under
43 Article 26 of Chapter 1 of the General Statutes. ~~In the event either the petitioner or~~
44 ~~respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter~~

1 ~~1 of the General Statutes, either party may move for a transfer of the proceeding to the~~
2 ~~superior court division of the General Court of Justice as provided in Article 21 of~~
3 ~~Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26~~
4 ~~of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent~~
5 ~~consistent with this Article."~~

6 **SECTION 8.** G.S. 36C-2-204 reads as rewritten:

7 **"§ 36C-2-204. Venue.**

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

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

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

20 a. In the case of an inter vivos trust, in any county of this State in
21 which the trust has its principal place of administration or
22 where any beneficiary ~~resides;~~ resides.

23 b. In the case of a testamentary trust, in any county of this State in
24 which the trust has its principal place of administration, where
25 any beneficiary resides, or in which the testator's estate was
26 administered.

27 ~~(3) Unless otherwise designated in the governing instrument, the principal~~
28 ~~place of administration of the trust is the trustee's usual place of~~
29 ~~business where the records pertaining to the trust are kept, or at the~~
30 ~~trustee's residence if the trustee has no such place of business. In the~~
31 ~~case of cotrustees, the principal place of administration, if not~~
32 ~~otherwise designated in the governing instrument, is:~~

33 a. ~~The usual place of business of the corporate trustee if there is~~
34 ~~but one corporate or cotrustee; or~~

35 b. ~~The usual place of business or residence of any of the~~
36 ~~cotrustees.~~

37 (4) If a trust has no trustee, venue for a judicial proceeding for the
38 appointment of a trustee is in any county of this State in which a
39 beneficiary resides, in any county in which trust property is located, in
40 the county of this State specified in the trust instrument, if any county
41 is so specified, or if the trust is created by will, in the case of a
42 testamentary trust, in the county in which the decedent's estate was or
43 is being administered."

1 **SECTION 9.** G.S. 36C-2-205 is amended by adding a new subsection to
2 read:

3 "(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant
4 to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served
5 with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure
6 to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to
7 the clerk of superior court's exercise of jurisdiction over the trust proceeding then
8 pending before the clerk. When a notice of transfer is duly served and filed, the clerk
9 shall transfer the proceeding to the appropriate court. The proceeding after the transfer
10 is subject to the provisions of the General Statutes and to the rules that apply to actions
11 initially filed in the court to which the proceeding was transferred."

12 **SECTION 9.1.** G.S. 36C-2-205 is amended by adding a new subsection to
13 read:

14 "(i) Notice to Attorney General. – In every trust proceeding with respect to a
15 charitable trust, the Attorney General shall be notified and given an opportunity to be
16 heard."

17 **SECTION 10.** G.S. 36C-2-205(h) reads as rewritten:

18 "(h) Orders Upon ~~Consolidation/Joinder~~. Consolidation/Joinder/Transfer. – Upon
19 the consolidation of a trust proceeding and ~~civil action or a civil action~~, joinder of
20 claims under subsection (f) or (g) of this ~~section~~ section, or transfer to the superior court
21 division of the General Court of Justice pursuant to subsection (g1) of this section, the
22 clerk of superior court or the judge may make ~~such~~ appropriate orders as appropriate to
23 protect the interests of the parties and to avoid unnecessary costs or delay.
24 Notwithstanding the ~~consolidation or joinder~~ consolidation, joinder of claims under
25 subsection (f) or (g) of this section, or transfer to the superior court division of the
26 General Court of Justice under subsection (g1) of this section, the clerk of superior
27 court's exclusive jurisdiction as set forth in ~~G.S. 36C-2-203(a)~~ G.S. 36C-2-203(a)(1)
28 through (8) shall not be stayed unless so ordered by the court."

29 **SECTION 11.** G.S. 36C-3-303 reads as rewritten:

30 "**§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

31 To the extent that there is no conflict of interest between the representative and the
32 person represented or among those being represented with respect to a particular
33 question or ~~dispute~~: dispute involving a trust:

- 34 (1) A general guardian or a guardian of the estate may represent and bind
35 the estate that the guardian controls.
- 36 (2) ~~A guardian of the person may represent and bind the ward if a general~~
37 ~~guardian or guardian of the estate of the ward's estate has not been~~
38 ~~appointed.~~
- 39 (3) An agent under a power of attorney having authority to act with
40 respect to the particular question or dispute may represent and bind the
41 principal.
- 42 (4) A trustee may represent and bind the beneficiaries of the ~~trust~~. trust
43 unless the question or dispute involves the internal affairs of the trust.

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

3 (6) A parent may represent and bind the parent's minor child if a general
4 ~~guardian, guardian or~~ guardian of the estate, ~~or guardian of the person~~
5 estate for the child has not been appointed. If a disagreement arises
6 between parents seeking to represent the same minor child, the parent
7 who is a beneficiary of the trust that is the subject of the representation
8 is entitled to represent the minor child or, if no parent is a beneficiary
9 of the trust that is the subject of the representation, a parent who is a
10 lineal descendant of the settlor is entitled to represent the minor child,
11 or if no parent is a lineal descendant of the settlor, a guardian ad litem
12 shall be appointed to represent the minor child.

13 (7) A person may represent and bind that person's unborn issue."

14 **SECTION 12.** G.S. 36C-3-304 reads as rewritten:

15 **"§ 36C-3-304. Representation by person having substantially identical interest.**

16 Unless otherwise represented under this Article, a minor, an ~~incapacitated~~
17 incompetent or unborn individual, or a person whose identity or location is unknown
18 and not reasonably ascertainable, may be represented by and bound by another having a
19 substantially identical interest with respect to the particular question or dispute, but only
20 to the extent that there is no conflict of interest between the representative and the
21 person ~~represented.~~ represented with respect to the particular question or dispute."

22 **SECTION 13.** G.S. 36C-3-305(a) reads as rewritten:

23 "(a) If the court determines that an interest is not represented under this Article, or
24 that the otherwise available representation might be inadequate, the court may appoint a
25 guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act
26 on behalf of a minor, ~~incapacitated~~ an incompetent or unborn individual, or a person
27 whose identity or location is unknown. A guardian ad litem may be appointed to
28 represent several persons or interests."

29 **SECTION 14.** G.S. 36C-4-401 reads as rewritten:

30 **"§ 36C-4-401. Methods of creating trust.**

31 A trust may be created ~~by:~~ by any of the following methods:

32 (1) Transfer of property by a settlor to a person as trustee during the
33 settlor's lifetime or by will or other disposition taking effect upon the
34 settlor's ~~death;~~ death, including either of the following:

35 a. The devise or bequest to the trustee of the trust as provided in
36 G.S. 31-47.

37 b. The designation of the trust as beneficiary of life insurance or
38 other death benefits as provided in G.S. 36C-4-401.1.

39 (2) Declaration by the owner of property that the owner holds identifiable
40 property as trustee unless the transfer of title of that property is
41 otherwise required by ~~law;~~ or law.

42 (3) Exercise of a power of appointment in favor of a trustee."

43 **SECTION 15.** G.S. 36C-4-409 reads as rewritten:

44 **"§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

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

3 (1) A trust may be created for a noncharitable purpose without a definite
4 or definitely ascertainable beneficiary or for a noncharitable but
5 otherwise valid purpose to be selected by the trustee. The trust may not
6 be enforced for more than 21 years. If the trust is still in existence after
7 21 years, the trust shall terminate, and the unexpended trust property
8 shall be transferred in the following order:

9 a. As directed in the trust instrument.

10 b. If the trust was created in a preresiduary clause in the settlor's
11 will or in a codicil to the settlor's will, under the residuary
12 clause in the settlor's will.

13 c. If no taker is produced by the application of sub-subdivisions a.
14 or b. of this subdivision, to the settlor, if then living, otherwise
15 to the settlor's heirs as determined under Chapter 29 of the
16 General Statutes as of the date of the settlor's death.

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

20 (3) Property of a trust authorized by this section may be applied only to its
21 intended use, except to the extent that the court determines that the
22 value of the trust property exceeds the amount required for the
23 intended use. ~~Except as otherwise provided in the terms of the trust,~~
24 The property not required for the intended use must be distributed to
25 the settlor, if then living, or otherwise to the settlor's successors in
26 interest. shall be distributed under subdivision (1) of this section.

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

37 **SECTION 16.** G.S. 36C-4-410 reads as rewritten:

38 **"§ 36C-4-410. Modification or termination of trust; proceedings for approval or**
39 **disapproval.**

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

1 (b) A trustee or beneficiary may commence a proceeding to approve or
2 disapprove a proposed modification or termination under G.S. 36C-4-411 through
3 ~~G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417.~~
4 G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a
5 proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable
6 trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a
7 necessary party to any proceeding under this ~~section.~~ Article.

8 (c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006."

9 **SECTION 17.** G.S. 36C-4-411 reads as rewritten:

10 "**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by**
11 **consent.**

12 (a) ~~A noncharitable irrevocable trust may be modified or terminated upon~~
13 ~~consent of the settlor and all beneficiaries.~~ If the settlor and all beneficiaries of a
14 noncharitable irrevocable trust consent, they may compel the modification or
15 termination of the trust without the approval of the court even if the modification or
16 termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a
17 minor or incompetent or a person who is unborn or whose identity or location is
18 unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor
19 or any competent adult beneficiary or the representative of any beneficiary properly
20 represented under Article 3 of this Chapter may institute a proceeding before the court
21 to appoint a guardian ad litem. The court shall allow the modification or termination if
22 the court finds that, following the appointment of a guardian ad litem, all beneficiaries
23 or their representatives have consented. A settlor's power to consent to a trust's
24 modification or termination may be exercised ~~by~~ by:

25 (1) ~~an~~ An agent under a power of attorney only to the extent expressly
26 authorized by the power of attorney or the terms of the ~~trust;~~ by the
27 trust.

28 (2) The settlor's general guardian or the guardian of the estate with the
29 approval of the court supervising the ~~guardianship if an agent is not so~~
30 ~~authorized; or by the settlor's guardian of the person with the approval~~
31 ~~of the court supervising the guardianship if an agent is not so~~
32 ~~authorized and a general guardian or guardian of the estate has not~~
33 ~~been appointed.~~ guardianship.

34 (b) A noncharitable irrevocable trust may be terminated upon consent of all of
35 the beneficiaries if the court concludes that continuance of the trust is not necessary to
36 achieve any material purpose of the trust. A noncharitable irrevocable trust may be
37 modified upon consent of all of the beneficiaries, if the court concludes that
38 modification is consistent with a material purpose of the trust.

39 (c) Where the beneficiaries of an irrevocable trust seek to compel a termination
40 of the trust and the continuance of the trust is necessary to carry out a material purpose
41 of the trust, or where the beneficiaries seek to compel a modification of the trust in a
42 manner that is inconsistent with its material purpose, the trust may be modified or
43 terminated, in the discretion of the court, only if the court determines that the reason for

1 modifying or terminating the trust under the circumstances substantially outweighs the
2 interest in accomplishing a material purpose of the trust.

3 (d) If not all of the beneficiaries consent to a proposed modification or
4 termination of the trust under subsection (a), (b), or (c) of this section, the modification
5 or termination may be approved by the court if the court is satisfied ~~that:~~ that all of the
6 following apply:

7 (1) If all of the beneficiaries had consented, the trust could have been
8 modified or terminated under this ~~section;~~ and section.

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

11 (e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

12 (f) In determining the class of beneficiaries whose consent is necessary to
13 modify or terminate a trust under this section, the presumption of fertility is rebuttable.

14 (g) If a trust instrument provides for the disposition of property to a class of
15 persons described only as "heirs" or "next of kin" of any person or uses other words that
16 describe the class of all persons who would take under the rules of intestacy, the court
17 may limit the class of beneficiaries whose consent is needed to compel the modification
18 or termination of the trust to the beneficiaries who are reasonably likely to take under
19 the circumstances."

20 **SECTION 17.1.** G.S. 36C-4-413(c) is repealed.

21 **SECTION 18.** G.S. 36C-4-418 reads as rewritten:

22 **"§ 36C-4-418. Distribution upon termination of trust.**

23 Upon termination of a trust under ~~G.S. 36C-4-411~~, G.S. 36C-4-411(a), the trustee
24 shall distribute the trust property as agreed by the beneficiaries. Upon termination of a
25 trust under ~~G.S. 36C-4-412 or G.S. 36C-4-414~~, G.S. 36C-4-411(b) or (c), the trustee
26 shall distribute the trust property in accordance with the order entered by the court.
27 Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee
28 shall distribute the trust property in a manner consistent with the purposes of the trust. If
29 any trust property becomes distributable to a minor or incompetent under this Article, it
30 may be distributed:

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

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

34 (3) ~~In accordance with the North Carolina Uniform Custodial Trust Act,~~
35 ~~Chapter 33B of the General Statutes."~~

36 **SECTION 19.** G.S. 36C-5-501(b) reads as rewritten:

37 (b) ~~This Subsection (a) of this section shall not apply~~ apply, and a trustee shall
38 have no liability to any creditor of a beneficiary for any distributions made to or for the
39 benefit of the beneficiary, to the extent that a beneficiary's ~~interest:~~ interest is protected
40 or restricted by any of the following:

41 (1) ~~Is subject to a A spendthrift provision;~~ provision.

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

44 (3) ~~Is a A protective trust interest as described in G.S. 36C-5-508."~~

1 **SECTION 20.** G.S. 36C-5-505 reads as rewritten:

2 "**§ 36C-5-505. Creditor's claim against settlor.**

3 (a) ~~Whether~~ Subject to the other applicable law, whether or not the terms of a
4 trust contain a spendthrift provision or the interest in the trust is a discretionary trust
5 interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in
6 G.S. 36C-5-508, the following rules apply:

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

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

15 (2a) Notwithstanding subdivision (2) of this subsection, the trustee's
16 discretionary authority to pay directly to the taxing authorities or to
17 reimburse the settlor for any tax on trust income or trust principal that
18 is payable by the settlor under the law imposing the tax shall not be
19 considered to be an amount that can be distributed to or for the settlor's
20 benefit, and a creditor or assignee of the settlor shall not be entitled to
21 reach any amount.

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

31 (b) For purposes of this section, with respect to a power of withdrawal over
32 property of a trust exercisable by a holder of the power other than the settlor of the trust,
33 both of the following shall apply:

34 (1) The property subject to the exercise of the power shall be subject to the
35 claims of the creditors of the holder only when and to the extent that
36 the holder exercises the power.

37 (2) The lapse, release, or waiver of a power of withdrawal shall not be
38 deemed to be an exercise of the power and shall not cause the holder to
39 be treated as a settlor of the trust."

40 **SECTION 21.** G.S. 36C-6-602(e) is repealed.

41 **SECTION 22.** G.S. 36C-6-602(f) is repealed.

42 **SECTION 23.** Article 6 of Chapter 36C of the General Statutes is amended
43 by adding a new section to read:

1 **"§ 36C-6-602A. Exercise of settlor's powers with respect to revocable trust by**
2 **agent or guardian.**

3 (a) An agent acting under a power of attorney may exercise any of the following
4 powers of the settlor with respect to a revocable trust only to the extent expressly
5 authorized by the terms of the trust or the power of attorney:

6 (1) Revocation of the trust.

7 (2) Amendment of the trust.

8 (3) Additions to the trust.

9 (4) Direction to dispose of property of the trust.

10 (5) The creation of the trust, notwithstanding G.S. 36C-4-402(a)(1) and
11 (2).

12 The exercise of the powers described in this section shall not alter the designation of
13 beneficiaries to receive property on the settlor's death under that settlor's existing estate
14 plan.

15 (b) A general guardian or a guardian of the estate of the settlor may exercise the
16 powers of the settlor with respect to a revocable trust as provided in
17 G.S. 35A-1251(24)."

18 **SECTION 24.** G.S. 36C-6-603 reads as rewritten:

19 **"§ 36C-6-603. Settlor's powers; powers of withdrawal. control of revocable trust.**

20 (a) While a trust is revocable, rights of the beneficiaries are subject to the control
21 of, and the duties of the trustee are owed exclusively to, the settlor. If a trustee is a
22 settlor, the trustee's actions are presumed to be taken at the direction of the settlor.

23 (b) If a revocable trust has more than one settlor, the duties of the trustee are
24 owed to all of the settlors."

25 **SECTION 25.** Article 6 of Chapter 36C of the General Statutes is amended
26 by adding a new section to read:

27 **"§ 36C-6-605. Failure of disposition of property of a trust by lapse or otherwise.**

28 (a) If a beneficiary under a revocable trust predeceases the execution of the trust
29 or the settlor or is treated as having predeceased the settlor, and if the beneficiary is a
30 grandparent of or a descendant of a grandparent of the settlor, then the issue of the
31 predeceased beneficiary who survive the settlor shall take in place of the deceased
32 beneficiary. The deceased beneficiary's issue shall take the deceased beneficiary's share
33 in the same manner that the issue would take as heirs of the deceased beneficiary under
34 the intestacy provisions in effect at the time of the settlor's death. The provisions of this
35 section apply whether the disposition of property is to an individual, to a class, or is a
36 part of the residue of the trust. In the case of the disposition to a class, the issue shall
37 take whatever share the deceased beneficiary would have taken had the deceased
38 beneficiary survived the settlor. In the event the deceased class member leaves no issue,
39 the deceased beneficiary's share shall devolve upon the members of the class who
40 survived the settlor and the issue of any deceased members taking by substitution.

41 (b) If the provisions of subsection (a) of this section do not apply to the
42 disposition of property that fails, the property shall pass to the beneficiaries in
43 proportion to their share of the residue of the trust. If the disposition is part of the
44 residue of the trust, it shall augment the shares of the other residuary beneficiaries,

1 including the shares of any substitute takers under subsection (a) of this section. If there
2 are no residuary beneficiaries, then the property shall pass by intestacy."

3 **SECTION 26.** Article 6 of Chapter 36C of the General Statutes is amended
4 by adding a new section to read:

5 **"§ 36-6-606. Revocation of provisions in revocable trust by divorce or annulment;
6 revival.**

7 Dissolution of the settlor's marriage by absolute divorce or annulment after
8 executing a revocable trust revokes all provisions in the trust in favor of the settlor's
9 former spouse, including, but not by way of limitation, any provision conferring a
10 general or special power of appointment on the former spouse and any appointment of
11 the former spouse as trustee. Property prevented from passing to the former spouse
12 because of revocation by divorce or absolute annulment passes as if the former spouse
13 failed to survive the settlor, and other provisions conferring some power or office on the
14 former spouse are interpreted as if the former spouse failed to survive the settlor. If
15 provisions are revoked solely by this section, they are revived by the settlor's remarriage
16 to the former spouse. The reference to "former spouse" in this section includes a
17 purported former spouse."

18 **SECTION 26.1** Article 6 of Chapter 36C of the General Statutes is amended
19 by adding a new section to read:

20 **"§ 36C-6-607. Modification or termination of a revocable trust.**

21 (a) A revocable trust may be modified or terminated by the court pursuant to any
22 of the methods for modification or termination of an irrevocable trust set forth in
23 G.S. 36C-4-411(b) or (c), G.S. 36C-4-412, G.S. 36C-4-415, or G.S. 36C-4-416.

24 (b) The settlor is a necessary party to any proceeding brought to modify or
25 terminate a revocable trust."

26 **SECTION 27.** G.S. 36C-7-703(f) is repealed.

27 **SECTION 28.** G.S. 36C-7-703(g) reads as rewritten:

28 "(g) ~~Each~~ A trustee shall exercise reasonable care in connection with matters
29 for which the trustee is given authority under the terms of a trust to:

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

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

32 **SECTION 29.** G.S. 36C-7-703(h) reads as rewritten:

33 "(h) ~~Notwithstanding subsection (f) or (g) of this section, a trustee who has not~~
34 ~~joined in an action approved by a majority of the other trustees is not liable for the~~
35 ~~action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who~~
36 ~~joins in an action at the direction of the majority of the trustees but who notified in~~
37 ~~writing any cotrustee of the dissent at or before the time of the action is not liable for the~~
38 ~~action, unless that trustee had knowledge that the action taken involved intentional~~
39 ~~misconduct or was taken with an intention to directly or indirectly provide an improper~~
40 ~~personal benefit to one or more trustees approving the action. section, a cotrustee is not~~
41 liable for the action of a majority of the other trustees if either of the following apply:

42 (1) The trustee does not join in an action approved by a majority of the
43 other trustees.

1 (2) The dissenting trustee joins in an action necessary to carry out the
2 decision of the majority of the trustees and notifies in writing the
3 cotrustees of the dissent at or before joining in the action, unless the
4 trustee had knowledge that the action taken involved intentional
5 misconduct or was taken with an intention to directly or indirectly
6 provide an improper personal benefit to one or more trustees
7 approving the action."

8 **SECTION 30.** G.S. 36C-7-704(d) reads as rewritten:

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

- 11 (1) By a person designated in the terms of the trust or appointed under the
12 terms of the trust to act as successor trustee;
13 (2) By a person selected by majority agreement of the qualified
14 beneficiaries, if the trust is a split-interest charitable trust;
15 (2a) By a person selected by majority agreement of the charitable
16 organizations expressly designated to receive distributions under the
17 terms of the trust; or
18 (3) By a person appointed by the court."

19 **SECTION 31.** G.S. 36C-8-802(d) reads as rewritten:

20 "(d) A transaction between a trustee and a beneficiary that does not concern trust
21 property, but that occurs during the existence of the trust or while the trustee retains
22 significant influence over the beneficiary, and from which the trustee obtains an
23 advantage, advantage and which is outside the ordinary course of the trustee's business
24 or on terms and conditions substantially less favorable than those the trustee generally
25 offers similarly situated customers, is voidable by the beneficiary unless the trustee
26 establishes that the transaction was fair to the beneficiary."

27 **SECTION 32.** G.S. 36C-8-802(f) reads as rewritten:

28 "(f) Notwithstanding subsection (c) of this section:

- 29 (1) An investment by a trustee in securities of an investment company,
30 investment trust, or pooled investment vehicle in which the trustee or
31 its affiliate has an investment, or to which the trustee, or its affiliate,
32 provides services for compensation, is not presumed to be affected by
33 a conflict between personal and fiduciary interests if the investment
34 otherwise complies with the prudent investor rule of Article 9 of this
35 Chapter. The investment company, investment trust, or pooled
36 investment vehicle may compensate the trustee for providing those
37 services out of fees charged to the trust if the trustee at least annually
38 notifies the persons entitled under G.S. 36C-8-813 to receive a copy of
39 the trustee's annual report of the rate and method by which the
40 compensation was determined; and
41 (2) Payment made by a trustee to an attorney, broker, accountant, or agent
42 for services performed on behalf of the trust in the ordinary course of
43 business is not considered to be affected by a conflict between the
44 trustee's personal and fiduciary interests if the payment is consistent

1 with payments generally made ~~in the community~~ for the same or
2 similar services."

3 **SECTION 33.** G.S. 36C-8-802(h) reads as rewritten:

4 "(h) This section does not preclude any of the following ~~transactions, if fair to the~~
5 ~~beneficiaries:~~ transactions:

- 6 (1) An agreement between a trustee and a beneficiary relating to the
7 appointment or compensation of the ~~trustee;~~ trustee.
8 (2) Payment of ~~reasonable~~ compensation to which the ~~trustee;~~ trustee is
9 entitled under G.S. 36C-7-708.
10 (3) A transaction that is fair to the beneficiaries between a trust and
11 another trust, decedent's estate, or guardianship, or similar relationship
12 of which the trustee is a fiduciary or in which a beneficiary has an
13 ~~interest;~~ interest.
14 (4) A deposit of trust money in a regulated financial-service institution
15 operated by the trustee or an affiliate of the ~~trustee;~~ or trustee.
16 (5) An advance by the trustee of money for the protection of the trust."

17 **SECTION 34.** G.S. 36C-8-808(a) reads as rewritten:

18 "(a) While a trust is revocable, the trustee may follow a direction of the settlor that
19 is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the
20 trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the
21 trustee would otherwise violate a duty the trustee owes under the trust."

22 **SECTION 34.1.** G.S. 36C-8-810(d) reads as rewritten:

23 "(d) If the trustee maintains records clearly indicating the respective interests, a
24 trustee may invest and administer as a whole the property of two or more separate
25 trusts."

26 **SECTION 35.** G.S. 36C-8-813 reads as rewritten:

27 "**§ 36C-8-813. Duty to inform and report.**

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

- 33 (1) Provide reasonably complete and accurate information as to the nature
34 and amount of the trust property, at reasonable intervals, to any
35 qualified beneficiary who is a distributee or permissible distributee of
36 trust income or principal.
37 (2) In response to a reasonable request of any qualified beneficiary:
38 a. Provide a copy of the trust instrument.
39 b. Provide reasonably complete and accurate information as to the
40 nature and amount of the trust property.
41 c. Allow reasonable inspections of the subject matter of the trust
42 and the accounts and other documents relating to the trust.

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

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

4 (2) A trustee is considered to have discharged the trustee's duty under
5 subdivision (1) of subsection (a) of this section as to a qualified
6 beneficiary for matters disclosed by a report sent at least annually and
7 at termination of the trust to the beneficiary that describes the trust
8 property, liabilities, receipts, and disbursements, including the source
9 and amount of the trustee's compensation, and lists the trust assets and
10 their respective market values, including estimated values of assets
11 with uncertain values. No presumption shall arise that a trustee who
12 does not comply with this subdivision failed to discharge the trustee's
13 duty under subdivision (1) of subsection (a) of this section.

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

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

19 **SECTION 36.** G.S. 36C-8-814(b) reads as rewritten:

20 "(b) Subject to subsection (d) of this section, and unless the terms of the trust
21 expressly indicate by an express reference to this subsection that a rule in this
22 subsection does not apply:

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

30 (2) Notwithstanding subdivision (1) of this subsection, if the trust confers
31 on the trustee the power to make discretionary distributions to or for
32 the trustee's personal ~~benefit~~, benefit that would, except for this
33 subsection, constitute in whole or in part a general power of
34 appointment, the trustee may exercise the power in accordance with an
35 ascertainable standard.

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

39 (4) Any power conferred upon the trustee in the trustee's capacity as a
40 trustee to allocate receipts and expenses as between income and
41 principal in the trustee's own favor must be exercised in accordance
42 with the provisions of Chapter 37A of the General Statutes, the
43 Uniform Principal and Income Act of 2003.

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

6 **SECTION 37.** G.S. 36C-8-816 reads as rewritten:

7 **"§ 36C-8-816. Specific powers of trustee.**

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

9 ...

10 (19) Pledge trust property to guarantee loans made by others to a any
11 beneficiary;

12 (19a) Guarantee loans made by others to a any beneficiary;

13 (19b) Pledge trust property to guarantee loans made by others to a any
14 proprietorship, partnership, limited liability company, business trust,
15 corporation, venture, agricultural operation, or other form of business
16 or enterprise in which the trust or any beneficiary has an ownership
17 interest.

18 (19c) Guarantee loans made by others to a proprietorship, partnership,
19 limited liability company, business trust, corporation, venture,
20 agricultural operation, or other form of business or enterprise in which
21 the trust or any beneficiary has an ownership interest.

22 ...

23 (21) Pay an amount distributable to a beneficiary ~~who is under a legal~~
24 ~~disability~~ regardless of whether the beneficiary is a minor or
25 incompetent or ~~who~~ whether the trustee reasonably believes is
26 incapacitated, the beneficiary to be incompetent, by paying it directly
27 to the beneficiary or applying it for the beneficiary's benefit, or if the
28 beneficiary is a minor or incompetent or a person the trustee
29 reasonably believes to be incompetent, by:

30 a. Paying it to the beneficiary's general guardian or the guardian of
31 the beneficiary's ~~estate or, if the beneficiary does not have a~~
32 ~~general guardian or guardian of the beneficiary's estate, the~~
33 ~~guardian of the beneficiary's person; estate;~~

34 b. Paying it to a custodian under a uniform transfer to minors act
35 or custodial trustee under a uniform custodial trust act and, for
36 that purpose, creating a custodianship or custodial trust for the
37 benefit of the beneficiary;

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

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

42 A trustee making payments under this subdivision does not have any
43 duty to see to the application of the payments so made, if the trustee
44 exercised due care in the selection of the person, including ~~the~~ a minor

1 or incompetent, to whom the payments were made, and the receipt of
2 that person shall be full acquittance to the trustee; trustee.
3 Notwithstanding the foregoing, if a mandatory distribution is to be
4 paid to a beneficiary who is not a minor or incompetent or a person the
5 trustee reasonably believes to be incompetent, such amount may be
6 applied for the beneficiary's benefit only with the beneficiary's
7 consent;

8"

9 **SECTION 37.1.** Article 9 of Chapter 36C of the General Statutes is
10 amended by adding a new section to read:

11 **"§ 36C-9-903A. Duties as to life insurance.**

12 (a) Notwithstanding the provisions of this Article, the duties of a trustee with
13 respect to acquiring or retaining a contract of insurance upon the life of the settlor, or
14 the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine
15 whether any such contract is or remains a proper investment; (ii) to exercise policy
16 options, including investment options, available under any such contract; or (iii) to
17 diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to
18 any party for any loss arising from the absence of those duties upon the trustee.

19 (b) The trustee of a trust described under subsection (a) of this section established
20 prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor
21 provides written notice to the contrary to the trustee within 60 days of the trustee's
22 notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection
23 (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor
24 notifies the trustee that subsection (a) of this section shall not apply."

25 **SECTION 38.** G.S. 32-53 reads as rewritten:

26 **"§ 32-53. Definitions.**

27 The following definitions apply in this Article:

28 (1) ~~"Beneficiary" means (i) all living persons who are currently receiving~~
29 ~~or who are eligible to receive distributions of income or principal of~~
30 ~~the trust and (ii) all living persons who would be entitled to income~~
31 ~~and/or principal of the trust if the trust were to terminate at the time of~~
32 ~~the giving of the notice referred to in G.S. 32-55 (without regard to the~~
33 ~~exercise of any power of appointment).~~

34 (2) ~~"Representative" means, with respect to a beneficiary who is under a~~
35 ~~legal disability, the beneficiary's agent under a durable power of~~
36 ~~attorney, general guardian, guardian of the estate, or guardian of the~~
37 ~~person of a beneficiary, and the parent of a minor beneficiary.~~

38 (3) ~~"Trust" is as defined in G.S. 36A-22.1(5).~~

39 (1) Legal disability. – A person under a legal disability is a person who is
40 a minor, incompetent, or unborn individual, or whose identity or
41 location is unknown.

42 (2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With
43 respect to a charitable trust defined in G.S. 36C-1-103(4), the term
44 includes (i) a charitable organization described in G.S. 36C-1-110 as

1 having the rights of a qualified beneficiary; or (ii) if there is no such
2 charitable organization, the Attorney General.

3 (3) Representative. – A person who may represent and bind another as
4 provided in Article 3 of Chapter 36C of the General Statutes, the
5 provisions of which shall apply for purposes of this Article.

6 (4) Trust. – A trust to which Chapter 36C of the General Statutes applies
7 as provided in G.S. 36C-1-102."

8 **SECTION 39.** G.S. 32-55 reads as rewritten:

9 **"§ 32-55. Notice.**

10 (a) ~~The trustee shall~~ If the terms of the trust do not specify the trustee's
11 compensation, the trustee may, in the trustee's discretion, give written notice to all
12 qualified beneficiaries of each proposed payment of compensation if the annual amount
13 of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value
14 of the assets of the trust on the last day of the trust accounting year. The notice shall
15 contain a statement that the qualified beneficiaries have 20 days from when notice is
16 given to file a proceeding for review of the reasonableness of the compensation with the
17 clerk of superior court in accordance with Article 2 of Chapter 36C of the General
18 Statutes.

19 (b) In lieu of giving written notice of each proposed payment of compensation
20 under subsection (a) of this section, the trustee may give written notice to all qualified
21 beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis
22 or of the method of computation of the compensation. The trustee shall not be required
23 to give additional notice to the qualified beneficiaries unless the amount to be paid to
24 the trustee on a periodic basis or the method of computation of the compensation
25 changes.

26 (c) If a qualified beneficiary is under a legal disability, notice shall be deemed to
27 be given to the beneficiary only if notice is given to the representative of the
28 beneficiary. If the trustee is the representative of the beneficiary, no notice shall be
29 deemed to have been given to the beneficiary. If a representative of a qualified
30 beneficiary is not available without court order, notice shall be deemed given under this
31 section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15)
32 a. or b. who is not under a legal disability or a representative of a qualified beneficiary
33 so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who
34 is not under a legal disability or a representative of a qualified beneficiary so described.

35 (d) ~~The written notice required under this section shall be deemed to be given as~~
36 follows: (i) when personally delivered by hand to the person, (ii) when transmitted by
37 facsimile or e-mail with confirmation of transmission, (iii) when placed in the hands of
38 a nationally recognized courier service for delivery, (iv) when received by the person if
39 sent by registered or certified United States mail, return receipt requested, (v) three days
40 after depositing the same in a regularly maintained receptacle for the deposit of United
41 States mail if sent by regular United States mail. Notices delivered by any other means
42 shall be deemed to be delivered, given, and received for all purposes as of the date of
43 the actual receipt. The provisions of G.S. 36C-1-109 regarding notices to persons under

1 Chapter 36C of the General Statutes shall apply for purposes of notices under this
2 Article."

3 **SECTION 40.** G.S. 32-56 reads as rewritten:

4 "**§ 32-56. Payment of compensation without court order.**

5 The trustee is authorized to pay the compensation provided for in G.S. 32-54 without
6 prior approval of the clerk of superior court only if:

7 (1) The annual amount of compensation does not exceed four-tenths of
8 one percent (4/10 of 1%) of the principal value of the assets of the trust
9 on the last day of the trust accounting year; or

10 (2) ~~No beneficiary~~ Notice has been given pursuant to G.S. 32-55 and no
11 qualified beneficiary or representative of a qualified beneficiary has
12 initiated a proceeding under G.S. 32-57 for review of the
13 reasonableness of the compensation within 20 days after notice has
14 been given by the trustee in accordance with G.S. 32-55."

15 **SECTION 41.** G.S. 32-57(a) reads as rewritten:

16 "(a) ~~The trustee or any beneficiary~~ If the terms of the trust do not specify the
17 trustee's compensation, the trustee or any qualified beneficiary, or representative of a
18 qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the
19 General Statutes for review of the reasonableness of any compensation or expense
20 reimbursement and for the approval or denial of the payment of compensation or
21 expense reimbursement. A beneficiary may initiate a proceeding even though the
22 20-day period referred to in G.S. 32-56(2) has expired."

23 **SECTION 42.** G.S. 32-58 reads as rewritten:

24 "**§ 32-58. Reimbursement for expenses incurred.**

25 In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled
26 to reimbursement out of the assets of the trust for expenses properly incurred or
27 advanced in the administration of the trust and shall be empowered to pay the expenses
28 from the assets of the trust without prior approval of the clerk of superior court. The
29 court may allow reimbursement of other expenses incurred or advanced to which the
30 trustee is entitled in equity and good conscience. The trustee shall have a lien on trust
31 property to secure reimbursement, with reasonable interest, of expenses owed under this
32 section."

33 **SECTION 43.** G.S. 32-71(c) and (d) are repealed.

34 **SECTION 44.** G.S. 37A-1-104(c)(8) reads as rewritten:

35 "(c) A trustee shall not make an adjustment:

36 ...

37 (8) If the trustee is not a beneficiary but the adjustment would benefit the
38 trustee directly or ~~indirectly; or~~ indirectly, except that a trustee may
39 make an adjustment that also benefits a beneficiary even if the terms of
40 the trust provide for trustee compensation as a percentage of the trust's
41 income; or

42"

43 **SECTION 45.** G.S. 37A-1-104.1 reads as rewritten:

44 "**§ 37A-1-104.1. Definitions.**

1 For purposes of this ~~The following definitions apply to this Part:~~

- 2 (1) ~~"Code" means the Code. – The~~ Internal Revenue Code of 1986, as
3 amended from time to time, and any statutory enactment successor to
4 the Code; reference to a specific section of the Code in this Part shall
5 be considered a reference also to any successor provision dealing with
6 the subject matter of that section of the Code.
- 7 (2) ~~"Competent beneficiary" includes:~~
- 8 a. ~~A beneficiary who has attained the age of 18 and is not~~
9 ~~otherwise under a legal disability;~~
- 10 b. ~~A court appointed guardian of an incompetent beneficiary;~~
- 11 c. ~~An attorney in fact or agent under a durable power of attorney~~
12 ~~for an incompetent beneficiary;~~
- 13 d. ~~A court appointed guardian of a minor beneficiary's estate; and~~
- 14 e. ~~In the case of a minor beneficiary for whom no guardian has~~
15 ~~been appointed, a parent of the minor beneficiary, but only if~~
16 ~~the parent does not have an interest in the estate or trust that~~
17 ~~conflicts with the interest of the minor beneficiary.~~
- 18 (3) ~~"Disinterested person" means a Disinterested person. – A person who~~
19 ~~is not a related or subordinate party with respect to the person then~~
20 ~~acting as trustee of the trust and excludes the grantor settlor of the trust~~
21 ~~and any interested trustee.~~
- 22 (4) ~~"Grantor" means an individual who created an inter vivos trust.~~
- 23 (5) ~~"Income trust" means a Income trust. – A~~ trust, created by either an
24 inter vivos or a testamentary instrument, which directs or permits the
25 trustee to distribute the net income of the trust to one or more persons,
26 either in fixed proportions or in amounts or proportions determined by
27 the trustee, and regardless of whether the trust directs or permits the
28 trustee to distribute principal of the trust to one or more of those
29 persons.
- 30 (6) ~~"Interested distributee" means a Interested distributee. – A living~~
31 ~~beneficiary who is a distributee or permissible distributee person to~~
32 ~~whom distributions of trust income or principal can currently be made~~
33 ~~who has the power to remove the existing trustee and designate as~~
34 ~~successor a person who may be a related or subordinate party with~~
35 ~~respect to that distributee.~~
- 36 (7) ~~"Interested trustee" means Interested trustee. – Any of the following:~~
- 37 (i)a. ~~an An individual trustee to whom the net income or principal of~~
38 ~~the trust can currently be distributed or would be distributed if~~
39 ~~the trust were then to terminate and be distributed, who is a~~
40 ~~qualified beneficiary.~~
- 41 (ii)b. ~~any Any trustee who may be removed and replaced by an~~
42 ~~interested distributee, or distributee.~~

1 ~~(iii)c.~~ An individual trustee whose legal obligation to support a
2 beneficiary may be satisfied by distributions of income and
3 principal of the trust.

4 (7a) Legal disability. – A person under a legal disability is a person who is
5 a minor, an incompetent, or an unborn individual, or whose identity or
6 location is unknown.

7 (7b) Qualified beneficiary. – A qualified beneficiary as defined in
8 G.S. 36C-1-103(15).

9 (8) ~~"Related or subordinate party" means a~~ Related or subordinate party. –
10 A related or subordinate party as defined in section 672(c) of the Code.

11 (8a) Representative. – A person who may represent and bind another as
12 provided in Article 3 of Chapter 36C of the General Statutes, the
13 provisions of which shall apply for purposes of this Article.

14 (8b) Settlor. – An individual, including a testator, who creates a trust.

15 (9) ~~"Total return unitrust" means an~~ Total return unitrust. – An income
16 trust that has been converted under and meets the provisions of this
17 Part.

18 (9a) ~~"Treasury regulations" means the~~ Treasury regulations. – The
19 regulations, rulings, procedures, notices, or other administrative
20 pronouncements issued by the Internal Revenue Service, as amended
21 from time to time.

22 (10) ~~"Trustee" means any~~ Trustee. – Any person acting as trustee of the
23 trust, except as otherwise expressly provided in this Part, whether
24 acting in that person's discretion or on the direction of one or more
25 persons acting in a fiduciary capacity.

26 (11) ~~"Unitrust amount" means an~~ Unitrust amount. – An amount computed
27 as a percentage of the fair market value of the trust."

28 **SECTION 46.** G.S. 37A-1-104.2 reads as rewritten:

29 **"§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

30 (a) Any trustee, other than an interested trustee, or, where two or more persons
31 are acting as trustees, a majority of the trustees who are not interested trustees (in either
32 case hereafter "trustee"), may, in the trustee's sole discretion and without court approval,
33 (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust
34 to an income trust, or (iii) change the percentage used to calculate the unitrust amount or
35 the method used to determine the fair market value of the trust ~~if~~ if all of the following
36 apply:

37 (1) The trustee adopts a written policy for the trust providing (i) in the
38 case of a trust being administered as an income trust, that future
39 distributions from the trust will be unitrust amounts rather than net
40 income, (ii) in the case of a trust being administered as a total return
41 unitrust, that future distributions from the trust will be net income
42 rather than unitrust amounts, or (iii) that the percentage used to
43 calculate the unitrust amount or the method used to determine the fair
44 market value of the trust will be changed as stated in the ~~policy;~~policy.

1 (2) The trustee ~~sends~~ gives written notice of its intention to take the action,
2 ~~along with including~~ copies of the written policy and this Part, to (i)
3 ~~the grantor settlor~~ of the trust, if living, and (ii) ~~all the competent~~
4 ~~beneficiaries who are currently receiving or eligible to receive~~
5 ~~distributions of income of the trust, (iii) without regard to the exercise~~
6 ~~of a general power of appointment, all competent beneficiaries who~~
7 ~~would receive or be eligible to receive the distributions of income of~~
8 ~~the trust if the interests of the beneficiaries currently receiving or~~
9 ~~eligible to receive the income terminated at the time of the giving of~~
10 ~~the notice but the termination of those interests would not cause the~~
11 ~~trust to terminate, (iv) without regard to the exercise of any power of~~
12 ~~appointment, all the competent beneficiaries who would receive~~
13 ~~principal of the trust if the trust were to terminate at the time of the~~
14 ~~giving of the notice, and (v) all persons acting as advisor or protector~~
15 ~~of the trust; (ii) all persons who are the qualified beneficiaries of the~~
16 ~~trust at the time the notice is given. If a qualified beneficiary is under a~~
17 ~~legal disability, notice shall be given to the representative of the~~
18 ~~qualified beneficiary if a representative is available without court~~
19 ~~order.~~

20 (3) There is at least (i) one competent qualified beneficiary described in
21 ~~subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this~~
22 ~~subsection~~ G.S. 36C-1-103(15)a. or b. who is not under a legal
23 disability or a representative of a qualified beneficiary so described
24 and (ii) one competent qualified beneficiary described in ~~subdivision~~
25 ~~(2)(iv) of this subsection; G.S. 36C-1-103(15)c. who is not under a~~
26 legal disability or a representative of a qualified beneficiary so
27 described.

28 (4) No person receiving notice of the trustee's intention to take the
29 proposed action objects to the action within 60 days ~~of receipt of the~~
30 ~~notice~~ after notice has been given. The objection shall be by written
31 instrument delivered to the trustee.

32 (b) If there is no trustee of the trust other than an interested trustee, the interested
33 trustee or, where two or more persons are acting as trustee and are interested trustees, a
34 majority of the interested trustees may, in its sole discretion and without court approval,
35 (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust
36 to an income trust, or (iii) change the percentage used to calculate the unitrust amount or
37 the method used to determine the fair market value of the trust ~~if~~ if all of the following
38 apply:

39 (1) The trustee adopts a written policy for the trust providing (i) in the
40 case of a trust being administered as an income trust, that future
41 distributions from the trust will be unitrust amounts rather than net
42 income as determined under this Chapter, (ii) in the case of a trust
43 being administered as a total return unitrust, that future distributions
44 from the trust will be net income as determined under this Chapter

1 rather than unitrust amounts, or (iii) that the percentage used to
2 calculate the unitrust amount or the method used to determine the fair
3 market value of the trust will be changed as stated in the ~~policy;~~
4 policy.

5 (2) The trustee appoints a disinterested person who, in its sole discretion
6 but acting in a fiduciary capacity, determines for the trustee (i) the
7 percentage to be used to calculate the unitrust amount, (ii) the method
8 to be used in determining the fair market value of the trust, and (iii)
9 which assets, if any, are to be excluded in determining the unitrust
10 ~~amount;~~ amount.

11 (3) The trustee ~~sends~~ gives written notice of its intention to take the action,
12 ~~along with~~ including copies of the written policy and this Part, and the
13 determinations of the disinterested person to (i) the ~~grantor~~ settlor of
14 the trust, if living, and (ii) all persons who are the ~~competent~~ qualified
15 beneficiaries ~~who are currently receiving or eligible to receive~~
16 ~~distributions of income of the trust, (iii) without regard to the exercise~~
17 ~~of a general power of appointment, all competent beneficiaries who~~
18 ~~would receive or be eligible to receive the distributions of income of~~
19 ~~the trust if the interests of the beneficiaries currently receiving or~~
20 ~~eligible to receive the income terminated at the time of the giving of~~
21 ~~the notice but the termination of those interests would not cause the~~
22 ~~trust to terminate, (iv) without regard to the exercise of any power of~~
23 ~~appointment, all the competent beneficiaries who would receive~~
24 ~~principal of the trust if the trust were to terminate at the time of the~~
25 ~~giving of the notice, and (v) all persons acting as advisor or protector~~
26 ~~of the trust; of the trust at the time of the giving of the notice. If a~~
27 qualified beneficiary is under a legal disability, notice shall be given to
28 the representative of the qualified beneficiary if a representative is
29 available without court order.

30 (4) There is at least one (i) ~~competent~~ qualified beneficiary described in
31 ~~subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this~~
32 ~~subsection~~ G.S. 36C-1-103(15)a. or b. or a representative of a
33 beneficiary so described and (ii) one competent qualified beneficiary
34 ~~described in subdivision (3)(iv) of this subsection;~~
35 G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so
36 described. and

37 (5) No person receiving notice of the trustee's intention to take the
38 proposed action of the trustee objects to the action or to the
39 determination of the disinterested person within 60 days ~~of receipt of~~
40 after the notice has been given. The objection must be by written
41 instrument delivered to the trustee.

42 (c) A trustee may act under subsection (a) or (b) of this section with respect to a
43 trust for which both income and principal have been set aside permanently for charitable

1 purposes under the governing instrument and for which a federal estate or gift tax
2 deduction has been taken, provided ~~that:~~ that all of the following apply:

3 (1) Instead of sending written notice to the persons described in
4 subdivisions (2) and (3) of subsection (a) of this section or
5 subdivisions ~~(2) (3)~~ and ~~(3) (4)~~ of subsection (b) of this section, as the
6 case may be, the trustee shall send written notice to ~~the named charity~~
7 ~~or charities~~ each charitable organization expressly designated then
8 entitled to receive the income of the trust under the governing
9 instrument and, if no named charity or charities are charitable
10 organization is expressly designated entitled to receive all of the
11 income of the trust under the governing instrument, to the Attorney
12 General of this State; State.

13 (2) Subdivision (4) of subsection (a) of this section or subdivision ~~(4) (5)~~
14 of subsection (b) of this section, as the case may be, shall not apply to
15 this ~~action;~~ and action.

16 (3) In each taxable year, the trustee shall distribute the greater of the
17 unitrust amount or the amount required by section 4942 of the Code.

18 (d) The provisions of G.S. 36C-1-109 regarding notices and the sending of
19 documents to persons under Chapter 36C of the General Statutes shall apply for
20 purposes of notices and the sending of documents under this section."

21 **SECTION 47.** G.S. 37A-1-104.3 reads as rewritten:

22 "**§ 37A-1-104.3. Conversion with court approval.**

23 (a) If any trustee desires to (i) convert an income trust to a total return unitrust,
24 (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage
25 used to calculate the unitrust amount or the method used to determine the fair market
26 value of the trust but does not have the ability to or elects not to do it under
27 ~~G.S. 36A-1-104.2, G.S. 37A-1-104.2,~~ the trustee may petition the court for an order as
28 the trustee considers appropriate. In the event, however, there is only one trustee of the
29 trust and the trustee is an interested trustee or in the event there are two or more trustees
30 of the trust and a majority of them are interested trustees, the court, in its own discretion
31 or on the petition of the trustee or trustees or any person interested in the trust, may
32 appoint a disinterested person who, acting in a fiduciary capacity, shall present
33 information to the court as shall be necessary to enable the court to make its
34 determinations under this Part.

35 (b) A ~~competent~~ qualified beneficiary or a representative of a qualified
36 beneficiary may request the trustee to (i) convert an income trust to a total return
37 unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the
38 percentage used to calculate the unitrust amount or the method used to determine the
39 fair market value of the trust. If the trustee does not take the action requested, the
40 ~~competent~~ qualified beneficiary or a representative of the qualified beneficiary may
41 petition the court to order the trustee to take the action.

42 (c) All proceedings under this section shall be conducted as provided in ~~Article 3~~
43 ~~of Chapter 36A of the General Statutes.~~ Article 2 of Chapter 36C of the General
44 Statutes."

1 **SECTION 48.** G.S. 37A-1-104.4 (a) reads as rewritten:

2 "(a) The fair market value of the trust shall be determined at least annually, using
3 a valuation date selected by the trustee in its discretion. The trustee, in its discretion,
4 may use an average of the fair market value on the same valuation date for the current
5 fiscal year and not more than three preceding fiscal years, if the use of this average
6 appears desirable to reduce the impact of fluctuations in market value on the unitrust
7 amount. Assets for which a fair market value cannot be readily ascertained shall be
8 valued using valuation methods as are considered reasonable and appropriate by the
9 trustee. Assets, such as a residence or tangible personal property, used by the trust
10 beneficiary ~~also~~ may be excluded from the fair market value for computing the unitrust
11 amount."

12 **SECTION 49.** G.S. 37A-1-104.4 (b) reads as rewritten:

13 "(b) The percentage to be used in determining the unitrust amount shall be a
14 reasonable current return from the trust, in any event not less than three percent (3%)
15 nor more than five percent (5%), taking into account the intentions of the ~~grantor~~ settlor
16 of the trust as expressed in the governing instrument, the needs of the beneficiaries,
17 general economic conditions, projected current earnings and appreciation for the trust,
18 and projected inflation and its impact on the trust."

19 **SECTION 49.1.** G.S. 37A-1-104.7 is repealed.

20 **SECTION 50.** G.S. 37A-1-104.9 reads as rewritten:

21 "**§ 37A-1-104.9. Applicability.**

22 This Part shall apply to all trusts in existence on, or created after January 1, 2004,
23 unless (i) the governing instrument contains a provision clearly expressing the ~~grantor's~~
24 settlor's intention that the current beneficiary or beneficiaries are to receive an amount
25 other than a reasonable current return from the trust, (ii) the trust is a trust described in
26 section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code,
27 (iii) the trust is a trust under which any amount is, or has been in the past, set aside
28 permanently for charitable purposes unless the income from the trust also is devoted
29 permanently to charitable purposes, or (iv) the governing instrument expressly prohibits
30 use of this Part by specific reference to this Part, or expressly states the ~~grantor's~~
31 settlor's intent that net income not be calculated as a unitrust amount. A provision in the
32 governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A of the
33 General Statutes or any corresponding provision of future law, shall not be used in the
34 administration of this trust." or "the trustee shall not determine the distributions to the
35 income beneficiary as a unitrust amount." or similar words reflecting that intent is
36 sufficient to preclude the use of this Part."

37 **SECTION 51.** G.S. 53-163.2 reads as rewritten:

38 "**§ 53-163.2. Investments in securities by banks or trust companies.**

39 Unless the governing instrument, court order, or a statute specifically directs
40 otherwise, a bank or trust company serving as trustee, guardian, agent, or in any other
41 fiduciary capacity may invest in any security authorized by this Chapter even if such
42 fiduciary or an affiliate ~~thereof, as defined in G.S. 36A-60(1), thereof~~ participates or has
43 participated as a member of a syndicate underwriting such security, if:

- 1 (1) The fiduciary does not purchase the security from itself or its affiliate;
2 and
3 (2) The fiduciary does not purchase the security from another syndicate
4 member or an affiliate, pursuant to an implied or express agreement
5 between the fiduciary or its affiliate and a selling member or its
6 affiliate, to purchase all or part of each other's underwriting
7 commitments."

8 **SECTION 52.** G.S. 35A-1251(24) reads as rewritten:

9 **"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

10 In the case of an incompetent ward, a general guardian or guardian of the estate has
11 the power to perform in a reasonable and prudent manner every act that a reasonable
12 and prudent person would perform incident to the collection, preservation, management,
13 and use of the ward's estate to accomplish the desired result of administering the ward's
14 estate legally and in the ward's best interest, including but not limited to the following
15 specific powers:

16 ...

- 17 (24) To petition the court for ~~prior approval of transfers of assets of the~~
18 ~~ward of the exercise of any of the following powers with respect to a~~
19 ~~revocable trust executed by the ward that the ward, if competent, prior~~
20 ~~to the ward being declared incompetent, provided that the ward~~
21 ~~executed a paper writing with all the formalities required by the laws~~
22 ~~of North Carolina for the execution of a valid will prior to the ward~~
23 ~~being declared incompetent and that will directs that the assets that are~~
24 ~~being transferred to the trust are to be distributed to the trust at the~~
25 ~~ward's death or the revocable trust has the same dispositive provisions~~
26 ~~as the ward's will or provides that the assets in the trust are to be~~
27 ~~distributed to the ward's estate upon the death of the ward. The~~
28 ~~guardian may at any time withdraw any assets (or the proceeds of the~~
29 ~~sale of any assets) transferred by the guardian to the trust upon 30~~
30 ~~days' written notice to the trustee of the trust; provided, however, no~~
31 ~~assets which have been distributed or otherwise disposed of by the~~
32 ~~trustee (before the notice is received by the trustee) in accordance with~~
33 ~~the terms of the trust can be so withdrawn.~~ could exercise as settlor of
34 the revocable trust:
35 a. Revocation of the trust.
36 b. Amendment of the trust.
37 c. Additions to the trust.
38 d. Direction to dispose of property of the trust.
39 e. The creation of the trust, notwithstanding the provisions of
40 G.S. 36C-4-402(a)(1) and (2).

41 The exercise of the powers described in this subdivision (i) shall
42 not alter the designation of beneficiaries to receive property on the
43 ward's death under that ward's existing estate plan; and (ii) shall be

1 subject to the provisions of Articles 17, 18, and 19 of this Chapter
2 concerning gifts."

3 **SECTION 53.** This act becomes effective October 1, 2007, and applies to (i)
4 all trusts created before, on, or after that date; (ii) all judicial proceedings concerning
5 trusts commenced on or after that date; and (iii) all judicial proceedings concerning
6 trusts commenced before that date unless the court finds that application of a particular
7 provision of this act would substantially interfere with the effective conduct of the
8 judicial proceedings or prejudice the rights of the parties, in which case the law as it
9 existed on September 30, 2007, shall apply.