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HOUSE BILL 707
Committee Substitute Favorable 6/3/11
Senate Judiciary I Committee Substitute Adopted 6/4/12

Short Title: Register of Deeds/Directed Trustees/Estates.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE OBSOLETE REGISTER OF DEEDS PROVISIONS FROM THE GENERAL STATUTES, TO AMEND LOCAL AGENCY CHARGES FOR VITAL RECORDS SEARCHES, TO CLARIFY THE LAW GOVERNING PERSONS HOLDING THE POWER TO DIRECT TRUSTEES, TRUST PROTECTORS, AND DIRECTED TRUSTEES AND OTHER FIDUCIARIES, TO MAKE TECHNICAL CHANGES IN THE LAW GOVERNING TRUSTS AND DECEDENTS' ESTATES, AND TO AUTHORIZE THE REVISOR OF STATUTES TO PRINT OFFICIAL COMMENTS TO THE UNIFORM TRUST CODE.

The General Assembly of North Carolina enacts:

PART I. OBSOLETE REGISTER OF DEEDS PROVISIONS

SECTION 1.1. G.S. 9-4 reads as rewritten:

"§ 9-4. Preparation and custody of list.

As the jury list is prepared, the name and address of each qualified person selected for the list shall be recorded and alphabetically arranged. ~~written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They~~ The list shall be filed with the office of the clerk of court, register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The ~~register of deeds~~ clerk of court may elect to store an electronic copy of the jury list for the county."

SECTION 1.2. G.S. 45-16 is repealed.

SECTION 1.3. G.S. 45-21.17A(b) reads as rewritten:

"§ 45-21.17A. Requests for copies of notice.

...

(b) Register of Deeds' Duties. – Upon the filing for record of such request, the register of deeds shall index in the general index of grantors the names of the trustors (mortgagors) recited therein, and the names of the persons requesting copies, with a reference in the index of the book and page of the recorded security instrument to which the request refers. ~~refers; or upon the filing for record of such request, the register of deeds may, instead of indexing such request on the general index of grantors, stamp upon the face of the security instrument referred to in the request the book and page of each request for notice thereunder."~~

SECTION 1.4. G.S. 47-14(e) reads as rewritten:



1 "§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and
2 register instruments and electronic documents; order by judge; instruments to
3 which register of deeds is a party.
4 ...

5 (e) Register of Deeds as Party. – Any instrument required or permitted by law to be
6 registered in which the register of deeds of the county of registration is a party may be proved
7 or acknowledged before any magistrate or any notary public. ~~The clerk of superior court of the~~
8 ~~county of registration shall examine any instrument presented for registration. If it appears that~~
9 ~~the execution and acknowledgment are in due form, the clerk shall so certify and the instrument~~
10 ~~shall then be recorded in the office of the register of deeds."~~

11 SECTION 1.5. G.S. 47C-2-101(a) reads as rewritten:

12 "§ 47C-2-101. Execution and recordation of declaration.

13 (a) A declaration creating a condominium shall be executed in the same manner as a
14 deed, shall be recorded in every county in which any portion of the condominium is
15 located.~~located, and shall be indexed in the Grantee index in the name of the condominium and~~
16 ~~in the Grantor index in the name of each person executing the declaration."~~

17 SECTION 1.6. G.S. 47C-2-109(a) reads as rewritten:

18 "§ 47C-2-109. Plats and plans.

19 (a) The declarant shall file with the register of deeds in each county where the
20 condominium is located the condominium's plat or plan prepared in accordance with this
21 section. The plat or plan shall be considered a part of the declaration but shall be recorded
22 separately, and the declaration shall refer by number to the file where such plat or plan is
23 recorded. ~~Each plat or plan shall be kept by the register of deeds in a separate file, indexed in~~
24 ~~the same manner as a conveyance entitled to be recorded, numbered serially in the order of~~
25 ~~receipt, and designated "Condominium" with the name of the building, if any, and shall contain~~
26 ~~a reference to the book and page numbers and date of the recording of the declaration. Each~~
27 ~~plat or plan must contain a certification by an architect licensed under the provisions of Chapter~~
28 ~~83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of~~
29 ~~the General Statutes that it contains all of the information required by this section."~~

30 SECTION 1.7. G.S. 47F-2-101 reads as rewritten:

31 "§ 47F-2-101. Creation of the planned community.

32 A declaration creating a planned community shall be executed in the same manner as a
33 ~~deed, deed and~~ shall be recorded in every county in which any portion of the planned
34 community is located.~~located, and shall be indexed in the Grantee index in the name of the~~
35 ~~planned community and the association and in the Grantor index in the name of each person~~
36 ~~executing the declaration."~~

37 SECTION 1.8. G.S. 47F-2-117(c) reads as rewritten:

38 "§ 47F-2-117. Amendment of declaration.

39 ...
40 (c) Every amendment to the declaration shall be recorded in every county in which any
41 portion of the planned community is located and is effective only upon recordation. ~~An~~
42 ~~amendment shall be indexed in the Grantee index in the name of the planned community and~~
43 ~~the association and in the Grantor index in the name of each person executing the amendment."~~

44 SECTION 1.9. G.S. 58-72-50 reads as rewritten:

45 "§ 58-72-50. Approval, acknowledgment and custody of bonds.

46 The approval of all official bonds taken or renewed by the board of commissioners shall be
47 recorded by the clerk to the board. Every such bond shall be acknowledged by the parties
48 thereto or proved by a subscribing witness, before the chairman of the board of commissioners,
49 or before the clerk of the superior court, ~~registered in the register's office in a separate book to~~
50 ~~be kept for the registration of official bonds, and the original bond, with the approval of the~~
51 ~~commissioners endorsed thereon and certified by their chairman, shall be deposited with the~~

1 clerk of the superior court for safekeeping. Provided that an official bond executed as surety by
2 a surety company authorized to do business in this State need not be acknowledged upon behalf
3 of the surety when such bond is executed under seal in the name of the surety by an agent or
4 attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of
5 deeds of such county, county and such bond may be recorded by the register of deeds without
6 an order of probate entered by the clerk of the superior court."

7 **SECTION 1.10.** G.S. 68-18.1 reads as rewritten:

8 "**§ 68-18.1. Notice when owner not known.**

9 If the owner of the impounded livestock is not known or cannot be found, the impounder
10 shall inform the ~~register of deeds that he has impounded the livestock and provide the register~~
11 ~~of deeds with a description of the livestock. The register of deeds shall record the information~~
12 ~~in a book kept for that purpose, and shall charge the impounder a fee of ten dollars (\$10.00).~~
13 ~~The register of deeds shall immediately publish a notice of the impoundment of the animal by~~
14 ~~posting a notice on the courthouse door. The notice on the courthouse door shall be posted for~~
15 ~~30 days, and shall contain sheriff of the county in which the livestock was found of the~~
16 impoundment, giving a full description of the livestock impounded, including all marks or
17 brands on the livestock, and shall state when and where the animal was taken up. ~~The~~
18 ~~impounder shall publish once, in some newspaper published and distributed in the county, a~~
19 ~~notice containing the same information as the notice posted by the register of deeds. The fees~~
20 ~~for publishing the notice shall be paid by the impounder."~~

21 **SECTION 1.11.** G.S. 80-16 reads as rewritten:

22 "**§ 80-16. How adopted, registered and published.**

23 Every such dealer desiring to adopt a trademark may do so pursuant to the provisions of
24 Article 1 of Chapter 80 of the General Statutes. Nothing in this section invalidates or otherwise
25 alters the legal effect of any timber mark registered according to the law in effect at the time of
26 registration, by the execution of a writing in form and effect as follows:

27 Notice is hereby given that I (or we, etc., as the case may be) have adopted the following
28 trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here
29 insert the words, letters, figures, etc., constituting the trademark, or if it be any device other
30 than words, letters or figures, insert a facsimile thereof).

31 Dated this ____ day of ____, ____ A ____ B ____

32 Such writing shall be acknowledged or proved for record in the same manner as deeds are
33 acknowledged or proved, and shall be registered in the office of the register of deeds of the
34 county in which the principal office or place of business of such timber dealer may be, in a
35 book to be kept for that purpose marked Registry of Timber Marks, also in office of Secretary
36 of State, and a copy thereof shall be published at least once in each week for four successive
37 weeks in some newspaper printed in such county, or if there be no such newspaper printed
38 therein, then in some newspaper of general circulation in such county."

39 **SECTION 1.12.** G.S. 80-33 through G.S. 80-37 are repealed.

40 **SECTION 1.13.** G.S. 80-38 reads as rewritten:

41 "**§ 80-38. When transfer of farm carries name.**

42 When any owner of a farm, the name of which has been recorded in the office of the
43 register of deeds of the county in which the farm is located according to the law in effect at the
44 time of recording, as provided in this Article, transfers by deed or otherwise the whole of such
45 farm, such transfer may include the registered name thereof; but if the owner shall transfer only
46 a portion of such farm, then, in the event, the registered name thereof shall not be transferred to
47 the purchaser unless so stated in the deed or conveyance."

48 **SECTION 1.14.** G.S. 80-39 reads as rewritten:

49 "**§ 80-39. Cancellation of registry; fee.**

50 When any owner of a ~~registered farm name that has been registered in the office of the~~
51 register of deeds of the county in which the farm is located desires to cancel the registered

1 name thereof, such owner may record a duly signed and acknowledged instrument to that effect
2 in the register of deeds real estate records.~~he shall state on the margin of the record of the~~
3 ~~register of such name the following: "This name is canceled and I hereby release all rights~~
4 ~~thereunder," which shall be signed by the person canceling such name, and attested by the~~
5 ~~register of deeds. For such latter service the register of deeds shall charge a fee of twenty five~~
6 ~~cents (25¢), which shall be paid to the county treasurer as other fees are paid to the county~~
7 ~~treasurer by him."~~

8 **SECTION 1.15.** G.S. 87-110(d) reads as rewritten:

9 **"§ 87-110. Recording requirements for utility owners.**

10 ...

11 (d) ~~Upon receipt of the documents recorded pursuant to subsections (a), (b), or (c) of~~
12 ~~this section, the Register of Deeds shall place the documents in the Grantor's Index under the~~
13 ~~heading "Underground Utilities". The registration fee imposed by Chapter 161 of the General~~
14 ~~Statutes shall apply to these documents."~~

15 **SECTION 1.16.** G.S. 104-7(c) reads as rewritten:

16 **"§ 104-7. Acquisition of lands by the United States for customhouses, courthouses, post**
17 **offices, forts, arsenals, or armories; cession of jurisdiction; exemption from**
18 **taxation.**

19 ...

20 (c) The jurisdiction ceded shall not vest until the United States has acquired title to the
21 land by purchase, condemnation, or otherwise; accepted the cession of jurisdiction in writing;
22 and filed a certified copy of the acceptance in the office of the register of deeds in the county or
23 counties in which the land is located. ~~The acceptance of jurisdiction shall be made by an~~
24 ~~authorized official of the United States and shall include a precise description of the land~~
25 ~~involved and a statement of the extent to which cession of jurisdiction is accepted. The register~~
26 ~~of deeds shall record the acceptance of jurisdiction and index it in both the grantor and the~~
27 ~~grantee index under the name of the United States and, if title to the land over which~~
28 ~~jurisdiction is ceded is vested in any entity other than the United States, then the register of~~
29 ~~deeds shall also index the acceptance of jurisdiction in both the grantor and the grantee index~~
30 ~~under the name of that entity."~~

31 **SECTION 1.17.** G.S. 130A-301 reads as rewritten:

32 **"§ 130A-301. Recordation of permits for disposal of waste on land and Notice of Open**
33 **Dump.**

34 (a) Whenever the Department approves a permit for a sanitary landfill or a facility for
35 the disposal of hazardous waste on land, the owner of the facility shall be granted both an
36 original permit and a copy certified by the Secretary. The permit shall include a legal
37 description of the site that would be sufficient as a description in an instrument of conveyance.

38 (b) The owner of a facility granted a permit for a sanitary landfill or a facility for the
39 disposal of hazardous waste on land shall file the certified copy of the permit in the office of
40 the register of deeds in the county or counties in which the land is located.

41 (c) ~~The register of deeds shall record the certified copy of the permit and index it in the~~
42 ~~grantor index under the name of the owner of the land.~~

43 (d) The permit shall not be effective unless the certified copy is filed as required under
44 subsection (b) of this section.

45 (e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is
46 sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in
47 the description section in no smaller type than that used in the body of the deed or instrument a
48 statement that the property has been used as a sanitary landfill or a disposal site for hazardous
49 waste and a reference by book and page to the recordation of the permit.

50 (f) When the Department determines that an open dump exists, the Department shall
51 notify the owner or operator of the open dump of applicable requirements to take remedial

1 action at the site of the open dump to protect public health and the environment. If the owner or
 2 operator fails to take remedial action, the Department may record a Notice of Open Dump in
 3 the office of the register of deeds in the county or counties where the open dump is located. Not
 4 less than 30 days before recording the Notice of Open Dump, the Department shall notify the
 5 owner or operator of its intention to file a Notice of Open Dump. The Department may notify
 6 the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the
 7 owner or operator of applicable requirements to take remedial action. An owner or operator
 8 may challenge a decision of the Department to file a Notice of Open Dump by filing a
 9 contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator
 10 challenges a decision of the Department to file a Notice of Open Dump, the Department shall
 11 not file the Notice of Open Dump until the contested case is resolved, but may file a notice of
 12 pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is
 13 additional and supplemental to any other power granted to the Department. This subsection
 14 does not repeal or supersede any statute or rule requiring or authorizing record notice by the
 15 owner.

- (1) The Department shall file the Notice of Open Dump in the office of the register of deeds in substantially the following form:

"NOTICE OF OPEN DUMP

The Division of Waste Management of the North Carolina Department of Environment and Natural Resources has determined that an open dump exists on the property described below. The Department provides the following information regarding this open dump as a public service. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

Description of the real property: _____

Description of the particular area where the open dump is located: _____

Any person who has questions regarding this Notice should contact the Division of Waste Management of the North Carolina Department of Environment and Natural Resources. The contact person for this Notice is: _____ who may be reached by telephone at _____ or by mail at _____. Requests for inspection and copying of public records regarding this open dump may be directed to _____ who may be reached by telephone at _____ or by mail at _____.

Secretary of Environment and Natural Resources by _____

Date: _____."

- (2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.
- (3) ~~The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person in the Notice of Open Dump.~~
- (4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the

1 original Notice of Open Dump and shall state that all the solid waste that
2 constituted the open dump has been removed to the satisfaction of the
3 Department. ~~The Cancellation shall be filed and indexed in the same manner~~
4 ~~as the original Notice of Open Dump."~~

5 **SECTION 1.18.** G.S. 130A-310.8 reads as rewritten:

6 **"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

7 (a) After determination by the Department of the existence and location of an inactive
8 hazardous substance or waste disposal site, the owner of the real property on which the site is
9 located, within 180 days after official notice to the owner to do so, shall submit to the
10 Department a survey plat of areas designated by the Department that has been prepared and
11 certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE
12 HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". Where an inactive hazardous
13 substance or waste disposal site is located on more than one parcel or tract of land, a composite
14 map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal
15 description of the site that would be sufficient as a description in an instrument of conveyance,
16 shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- 17 (1) The location and dimensions of the disposal areas and areas of potential
18 environmental concern with respect to permanently surveyed benchmarks.
19 (2) The type, location, and quantity of hazardous substances known by the
20 owner of the site to exist on the site.
21 (3) Any restrictions approved by the Department on the current or future use of
22 the site.

23 (b) After the Department approves and certifies the Notice, the owner of the site shall
24 file the certified copy of the Notice in the register of deeds' office in the county or counties in
25 which the land is located within 15 days of the date on which the owner receives approval of
26 the Notice from the Department.

27 ~~(c) The register of deeds shall record the certified copy of the Notice and index it in the~~
28 ~~grantor index under the names of the owners of the lands.~~

29 (d) In the event that the owner of the site fails to submit and file the Notice required by
30 this section within the time specified, the Secretary may prepare and file such Notice. The costs
31 thereof may be recovered by the Secretary from any responsible party. In the event that an
32 owner of a site who is not a responsible party submits and files the Notice required by this
33 section, he may recover the reasonable costs thereof from any responsible party.

34 (e) When an inactive hazardous substance or waste disposal site is sold, leased,
35 conveyed, or transferred, the deed or other instrument of transfer shall contain in the
36 description section, in no smaller type than that used in the body of the deed or instrument,
37 a statement that the property has been used as a hazardous substance or waste disposal site and a
38 reference by book and page to the recordation of the Notice.

39 (f) A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to
40 this section may, at the request of the owner of the land, be cancelled by the Secretary after the
41 hazards have been eliminated. If requested in writing by the owner of the land and if the
42 Secretary concurs with the request, the Secretary shall send to the register of deeds of each
43 county where the Notice is recorded a statement that the hazards have been eliminated and
44 request that the Notice be cancelled of record. The Secretary's statement shall contain the
45 names of the owners of the land as shown in the Notice and reference the plat book and page
46 where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the~~
47 ~~deed books and index it on the grantor index in the names of the owners of the land as shown in~~
48 ~~the Notice and on the grantee index in the name "Secretary of Environment and Natural~~
49 ~~Resources". The register of deeds shall make a marginal entry on the Notice showing the date~~
50 ~~of cancellation and the book and page where the Secretary's statement is recorded, and the~~
51 ~~register of deeds shall sign the entry. If a marginal entry is impracticable because of the method~~

1 ~~used to record maps and plats, the register of deeds shall not be required to make a marginal~~
2 ~~entry.~~

3 (g) Recordation under this section is not required for any inactive hazardous substance
4 or waste disposal site that is undergoing voluntary remedial action pursuant to this Part unless
5 the Secretary determines that either:

6 (1) A concentration of a hazardous substance or hazardous waste that poses a
7 danger to public health or the environment will remain following
8 implementation of the voluntary remedial action program.

9 (2) The voluntary remedial action program is not being implemented in a
10 manner satisfactory to the Secretary and in compliance with the agreement
11 between the Secretary and the owner, operator, or other responsible party.

12 (h) The Secretary may waive recordation under this section with respect to any
13 residential real property that is contaminated solely because a hazardous substance or
14 hazardous waste migrated to the property from other property by means of groundwater flow if
15 disclosure of the contamination is required under Chapter 47E of the General Statutes. An
16 owner of residential real property whose recordation requirement is waived by the Secretary
17 under this subsection and who fails to disclose contamination as required by Chapter 47E of the
18 General Statutes is subject to both the penalties and remedies under this Chapter applicable to a
19 person who fails to comply with the recordation requirements of this section as though those
20 requirements had not been waived and to the remedies available under Chapter 47E of the
21 General Statutes."

22 **SECTION 1.19.** G.S. 130A-310.35 reads as rewritten:

23 **"§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

24 (a) In order to reduce or eliminate the danger to public health or the environment posed
25 by a brownfields property being addressed under this Part, a prospective developer who desires
26 to enter into a brownfields agreement with the Department shall submit to the Department a
27 proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled
28 "Notice of Brownfields Property", shall include a survey plat of areas designated by the
29 Department that has been prepared and certified by a professional land surveyor and that meets
30 the requirements of G.S. 47-30, shall include a legal description of the brownfields property
31 that would be sufficient as a description of the property in an instrument of conveyance, and
32 shall identify all of the following:

33 (1) The location and dimensions of the areas of potential environmental concern
34 with respect to permanently surveyed benchmarks.

35 (2) The type, location, and quantity of regulated substances and contaminants
36 known to exist on the brownfields property.

37 (3) Any restrictions on the current or future use of the brownfields property or,
38 with the owner's permission, other property that are necessary or useful to
39 maintain the level of protection appropriate for the designated current or
40 future use of the brownfields property and that are designated in the
41 brownfields agreement. These land-use restrictions may apply to activities
42 on, over, or under the land, including, but not limited to, use of groundwater,
43 building, filling, grading, excavating, and mining. Where a brownfields
44 property encompasses more than one parcel or tract of land, a composite
45 map or plat showing all parcels or tracts may be recorded.

46 (b) After the Department approves and certifies the Notice of Brownfields Property
47 under subsection (a) of this section, a prospective developer who enters into a brownfields
48 agreement with the Department shall file a certified copy of the Notice of Brownfields Property
49 in the register of deeds' office in the county or counties in which the land is located. The
50 prospective developer shall file the Notice of Brownfields Property within 15 days of the

1 prospective developer's receipt of the Department's approval of the notice or the prospective
2 developer's entry into the brownfields agreement, whichever is later.

3 ~~(e) The register of deeds shall record the certified copy of the notice and index it in the~~
4 ~~grantor index under the names of the owners of the land, and, if different, also under the name~~
5 ~~of the prospective developer conducting the redevelopment of the brownfields property.~~

6 (d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or
7 other instrument of transfer shall contain in the description section, in no smaller type than that
8 used in the body of the deed or instrument, a statement that the brownfields property has been
9 classified and, if appropriate, cleaned up as a brownfields property under this Part.

10 (e) A Notice of Brownfields Property filed pursuant to this section may, at the request
11 of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated.
12 If requested in writing by the owner of the land and if the Secretary concurs with the request,
13 the Secretary shall send to the register of deeds of each county where the notice is recorded a
14 statement that the hazards have been eliminated and request that the notice be cancelled of
15 record. The Secretary's statement shall contain the names of the owners of the land as shown in
16 the notice and reference the plat book and page where the notice is recorded. ~~The register of~~
17 ~~deeds shall record the Secretary's statement in the deed books and index it on the grantor index~~
18 ~~in the names of the owners of the land as shown in the Notice of Brownfields Property and on~~
19 ~~the grantee index in the name "Secretary of Environment and Natural Resources". The register~~
20 ~~of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date~~
21 ~~of cancellation and the book and page where the Secretary's statement is recorded, and the~~
22 ~~register of deeds shall sign the entry. If a marginal entry is impracticable because of the method~~
23 ~~used to record maps and plats, the register of deeds shall not be required to make a marginal~~
24 ~~entry.~~

25 (f) Any land-use restriction filed pursuant to this section shall be enforced by any
26 owner of the land. Any land-use restriction may also be enforced by the Department through
27 the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The
28 Department may enforce any land-use restriction without first having exhausted any available
29 administrative remedies. A land-use restriction may also be enforced by any unit of local
30 government having jurisdiction over any part of the brownfields property by means of a civil
31 action without the unit of local government having first exhausted any available administrative
32 remedy. A land-use restriction may also be enforced by any person eligible for liability
33 protection under this Part who will lose liability protection if the land-use restriction is violated.
34 A land-use restriction shall not be declared unenforceable due to lack of privity of estate or
35 contract, due to lack of benefit to particular land, or due to lack of any property interest in
36 particular land. Any person who owns or leases a property subject to a land-use restriction
37 under this section shall abide by the land-use restriction.

38 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields
39 properties remediated under this Part."

40 **SECTION 1.20.** G.S. 143-215.85A reads as rewritten:

41 **"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

42 (a) The owner of the real property on which a site is located that is subject to current or
43 future use restrictions approved as provided in G.S. 143-215.84(f) shall submit to the
44 Department a survey plat as required by this section within 180 days after the owner is notified
45 to do so. The survey plat shall identify areas designated by the Department, shall be prepared
46 and certified by a professional land surveyor, and shall be entitled "NOTICE OF OIL OR
47 HAZARDOUS SUBSTANCE DISCHARGE SITE". Where an oil or hazardous substance
48 discharge site is located on more than one parcel or tract of land, a composite map or plat
49 showing all parcels or tracts may be recorded. The Notice shall include a legal description of
50 the site that would be sufficient as a description in an instrument of conveyance, shall meet the
51 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 1 (1) The location and dimensions of the disposal areas and areas of potential
2 environmental concern with respect to permanently surveyed benchmarks.
3 (2) The type, location, and quantity of oil or hazardous substances known to the
4 owner of the site to exist on the site.
5 (3) Any restrictions approved by the Department on the current or future use of
6 the site.

7 (b) After the Department approves and certifies the Notice, the owner of the site shall
8 file the certified copy of the Notice in the register of deeds office in the county or counties in
9 which the land is located within 15 days of the date on which the owner receives approval of
10 the Notice from the Department.

11 ~~(c) The register of deeds shall record the certified copy of the Notice and index it in the~~
12 ~~grantor index under the names of the owners of the lands.~~

13 (d) In the event that the owner of the site fails to submit and file the Notice required by
14 this section within the time specified, the Secretary may prepare and file the Notice. The costs
15 thereof may be recovered by the Secretary from any responsible party. In the event that an
16 owner of a site who is not a responsible party submits and files the Notice required by this
17 section, he may recover the reasonable costs thereof from any responsible party.

18 (e) When an oil or hazardous substance discharge site that is subject to current or future
19 land-use restrictions under this section is sold, leased, conveyed, or transferred, the deed or
20 other instrument of transfer shall contain in the description section, in no smaller type than that
21 used in the body of the deed or instrument, a statement that the property has been used as an oil
22 or hazardous substance discharge site and a reference by book and page to the recordation of
23 the Notice.

24 (f) A Notice of Oil or Hazardous Substance Discharge Site filed pursuant to this section
25 may, at the request of the owner of the land, be cancelled by the Secretary after the hazards
26 have been eliminated. If requested in writing by the owner of the land and if the Secretary
27 concurs with the request, the Secretary shall send to the register of deeds of each county where
28 the Notice is recorded a statement that the hazards have been eliminated and request that the
29 Notice be cancelled of record. The Secretary's statement shall contain the names of the owners
30 of the land as shown in the Notice and reference the plat book and page where the Notice is
31 recorded. ~~The register of deeds shall record the Secretary's statement in the deed books and~~
32 ~~index it on the grantor index in the names of the owners of the land as shown in the Notice and~~
33 ~~on the grantee index in the name "Secretary of Environment and Natural Resources". The~~
34 ~~register of deeds shall make a marginal entry on the Notice showing the date of cancellation~~
35 ~~and the book and page where the Secretary's statement is recorded, and the register of deeds~~
36 ~~shall sign the entry. If a marginal entry is impracticable because of the method used to record~~
37 ~~maps and plats, the register of deeds shall not be required to make a marginal entry."~~

38 **SECTION 1.21.** G.S. 143-215.104M reads as rewritten:

39 **"§ 143-215.104M. (Expires January 1, 2022 – see notes) Notice of Dry-Cleaning Solvent**
40 **Remediation; land-use restrictions in deeds.**

41 (a) Land-Use Restriction. – In order to reduce or eliminate the danger to public health
42 or the environment posed by a dry-cleaning solvent contamination site, the owner of property
43 upon which dry-cleaning solvent contamination has been discovered may file a Notice of
44 Dry-Cleaning Solvent Remediation approved by the Commission identifying the site on which
45 the contamination has been discovered and providing for current or future restrictions on the
46 use of the property. If a petitioner requests that a contamination site be remediated to standards
47 that require land-use restrictions, the owner of the property must file a Notice of Dry-Cleaning
48 Solvent Remediation for the remediation agreement to become effective.

49 (b) Notice of Restriction. – A Notice of Dry-Cleaning Solvent Remediation shall
50 include:

- 1 (1) A survey plat of the contamination site that has been prepared and certified
2 by a professional land surveyor and that meets the requirements of
3 G.S. 47-30.
- 4 (2) A legal description of the property that would be sufficient as a description
5 in an instrument of conveyance.
- 6 (3) A description of the location and dimensions of the areas of potential
7 environmental concern with respect to permanently surveyed benchmarks.
- 8 (4) The type, location, and quantity of dry-cleaning solvent contamination
9 known to exist on the property.
- 10 (5) Any restrictions on the current or future use of the property or other property
11 that are necessary to assure adequate protection of public health and the
12 environment as provided in rules adopted pursuant to
13 G.S. 143-215.104D(b)(3). These land-use restrictions may apply to activities
14 on, over, or under the land, including, but not limited to, use of groundwater,
15 building, filling, grading, excavating, and mining. Where a contamination
16 site encompasses more than one parcel or tract of land, a composite map or
17 plat showing all parcels or tracts may be recorded.

18 (c) Recordation of Notice. – After the Commission approves and certifies the Notice of
19 Dry-Cleaning Solvent Remediation under subsection (a) of this section, a certified copy of a
20 Notice of Dry-Cleaning Solvent Remediation shall be filed in the office of the register of deeds
21 of the county or counties in which the property described is located. The owner of the property
22 shall file the Notice of Dry-Cleaning Solvent Remediation within 15 days of the property
23 owner's receipt of the Commission's approval of the notice or the effective date of the
24 dry-cleaning solvent remediation agreement, whichever is later. ~~The register of deeds shall~~
25 ~~record the certified copy of the Notice of Dry-Cleaning Solvent Remediation and index it in the~~
26 ~~grantor index under the names of the owners of the land.~~

27 (d) Notice of Transfer. – When property for which a Notice of Dry-Cleaning Solvent
28 Remediation has been filed is sold, leased, conveyed, or transferred, the deed or other
29 instrument of transfer shall contain in the description section, in no smaller type than that used
30 in the body of the deed or instrument, a statement that the property has been contaminated with
31 dry-cleaning solvent and, if appropriate, cleaned up under this Part.

32 (e) Cancellation of Notice. – A Notice of Dry-Cleaning Solvent Remediation filed
33 pursuant to this Part may, at the request of the owner of the property subject to the Notice of
34 Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the risk to public health
35 and the environment associated with the dry-cleaning solvent contamination and any other
36 contaminants included in the dry-cleaning solvent remediation agreement has been eliminated
37 as a result of remediation of the property. The Secretary shall forward notice of cancellation to
38 the register of deeds of the county or counties where the Notice of Dry-Cleaning Solvent
39 Remediation is recorded and request that the Notice of Dry-Cleaning Solvent Remediation be
40 canceled. The notice of cancellation shall contain the names of the landowners as shown in the
41 Notice of Dry-Cleaning Solvent Remediation. ~~The register of deeds shall record the notice of~~
42 ~~cancellation in the deed books and index it on the grantor index in the name of the landowner~~
43 ~~as shown in the Notice of Dry-Cleaning Solvent Remediation and on the grantee index in the~~
44 ~~name "Secretary of Environment and Natural Resources". The register of deeds shall make a~~
45 ~~marginal entry on the Notice of Dry-Cleaning Solvent Remediation showing the date of~~
46 ~~cancellation and the book and page where the notice of cancellation is recorded, and the~~
47 ~~register of deeds shall sign the entry. If a marginal entry is impracticable because of the method~~
48 ~~used to record maps and plats, the register of deeds shall not be required to make a marginal~~
49 ~~entry.~~

50 (f) Enforcement. – Any restriction on the current or future use of property subject to a
51 Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by

1 any owner of the property or by any other potentially responsible party. Any land-use
2 restriction may also be enforced by the Commission through the remedies provided in this Part
3 or by means of a civil action in the superior court. The Commission may enforce any land-use
4 restriction without first having exhausted any available administrative remedies. Restrictions
5 also may be enforced by any unit of local government having jurisdiction over any part of the
6 property by means of a civil action without the unit of local government having first exhausted
7 any available administrative remedy. A land-use restriction may also be enforced by any person
8 eligible for liability protection under this Part who will lose liability protection if the land-use
9 restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of
10 estate or contract, due to lack of benefit to particular land, or due to lack of privity of any
11 property interest in particular land. Any person who owns or leases a property subject to a
12 land-use restriction under this section shall abide by the land-use restriction. Failure to submit
13 an annual certification that land-use restrictions are properly recorded and followed shall result
14 in a notice from the Commission to the property owner. The notice shall inform the person of
15 the actions that need to be taken in order for the person to come into compliance and specify a
16 date by which the person must comply, which shall not be less than 30 calendar days from the
17 date the notice is mailed. Any person who fails to comply within the time specified shall then
18 be subject to enforcement procedures as provided in this Part.

19 (g) Relation to Brownfields Notice. – Unless the Commission decertifies a previously
20 certified facility or a previously certified abandoned site, this section shall apply in lieu of the
21 provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article
22 21A of Chapter 143 of the General Statutes for properties remediated under this Part."

23 **SECTION 1.22.** G.S. 143B-279.10 reads as rewritten:

24 **"§ 143B-279.10. Recordation of contaminated sites.**

25 (a) The owner of the real property on which a site is located that is subject to current or
26 future use restrictions approved as provided in G.S. 143B-279.9(a) shall submit to the
27 Department a survey plat as required by this section within 180 days after the owner is notified
28 to do so. The survey plat shall identify areas designated by the Department, shall be prepared
29 and certified by a professional land surveyor, and shall be entitled "NOTICE OF
30 CONTAMINATED SITE". Where a contaminated site is located on more than one parcel or
31 tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice
32 shall include a legal description of the site that would be sufficient as a description in an
33 instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and
34 shall identify:

- 35 (1) The location and dimensions of any disposal areas and areas of potential
36 environmental concern with respect to permanently surveyed benchmarks.
- 37 (2) The type, location, and quantity of contamination known to the owner of the
38 site to exist on the site.
- 39 (3) Any restriction approved by the Department on the current or future use of
40 the site.

41 (b) The Department shall review the proposed Notice to determine whether the Notice
42 meets the requirements of this section and rules adopted to implement this section, and shall
43 provide the owner of the site with a notarized copy of the approved Notice. After the
44 Department approves the Notice, the owner of the site shall file a notarized copy of the
45 approved Notice in the register of deeds office in the county or counties in which the land is
46 located within 15 days of the date on which the owner receives approval of the Notice from the
47 Department.

48 ~~(c) The register of deeds shall record the notarized copy of the approved Notice and~~
49 ~~index it in the grantor index under the names of the owners of the land.~~

50 (d) In the event that the owner of the site fails to submit and file the Notice required by
51 this section within the time specified, the Secretary may prepare and file the Notice. The costs

1 thereof may be recovered by the Secretary from any responsible party. In the event that an
2 owner of a site who is not a responsible party submits and files the Notice required by this
3 section, the owner may recover the reasonable costs thereof from any responsible party.

4 (e) When a contaminated site that is subject to current or future land-use restrictions is
5 sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in
6 the description section, in no smaller type than that used in the body of the deed or instrument,
7 a statement that the property is a contaminated site and a reference by book and page to the
8 recordation of the Notice.

9 (f) A Notice of Contaminated Site filed pursuant to this section shall, at the request of
10 the owner of the land, be cancelled by the Secretary after the contamination has been
11 eliminated or remediated to unrestricted use standards. If requested in writing by the owner of
12 the land and if the Secretary concurs with the request, the Secretary shall send to the register of
13 deeds of each county where the Notice is recorded a statement that the contamination has been
14 eliminated, or that the contamination has been remediated to unrestricted use standards, and
15 request that the Notice be cancelled of record. The Secretary's statement shall contain the
16 names of the owners of the land as shown in the Notice and reference the plat book and page
17 where the Notice is recorded. ~~The register of deeds shall record the Secretary's statement in the~~
18 ~~deed books and index it on the grantor index in the names of the owners of the land as shown in~~
19 ~~the Notice and on the grantee index in the name "Secretary of Environment and Natural~~
20 ~~Resources". The register of deeds shall make a marginal entry on the Notice showing the date~~
21 ~~of cancellation and the book and page where the Secretary's statement is recorded, and the~~
22 ~~register of deeds shall sign the entry. If a marginal entry is impracticable because of the method~~
23 ~~used to record maps and plats, the register of deeds shall not be required to make a marginal~~
24 ~~entry.~~

25 (g) This section does not apply to the cleanup pursuant to a remedial action plan that
26 addresses environmental damage resulting from a discharge or release of petroleum from an
27 underground storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General
28 Statutes.

29 (h) The definitions set out in G.S. 143B-279.9 apply to this section."

30 **SECTION 1.23.** G.S. 143B-279.11 reads as rewritten:

31 **"§ 143B-279.11. Recordation of residual petroleum from an underground storage tank.**

32 (a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this
33 section. This section applies only to a cleanup pursuant to a remedial action plan that addresses
34 environmental damage resulting from a discharge or release of petroleum from an underground
35 storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General Statutes.

36 (b) The owner, operator, or other person responsible for a discharge or release of
37 petroleum from an underground storage tank shall prepare and submit to the Department a
38 proposed Notice that meets the requirements of this section. The proposed Notice shall be
39 submitted to the Department (i) before the property is conveyed, or (ii) when the owner,
40 operator, or other person responsible for the discharge or release requests that the Department
41 issue a determination that no further action is required under the remedial action plan,
42 whichever first occurs. The Notice shall be entitled "NOTICE OF RESIDUAL PETROLEUM".
43 The Notice shall include a description that would be sufficient as a description in an instrument
44 of conveyance of the (i) real property on which the source of contamination is located and (ii)
45 any real property on which contamination is located at the time the remedial action plan is
46 approved and that was owned or controlled by any owner or operator of the underground
47 storage tank or other responsible party at the time the discharge or release of petroleum is
48 discovered or reported or at any time thereafter. The Notice shall identify the location of any
49 residual petroleum known to exist on the real property at the time the Notice is prepared. The
50 Notice shall also identify the location of any residual petroleum known, at the time the Notice
51 is prepared, to exist on other real property that is a result of the discharge or release. The Notice

1 shall set out any restrictions on the current or future use of the real property that are imposed by
2 the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users
3 of the property.

4 (c) If the contamination is located on more than one parcel or tract of land, the
5 Department may require that the owner, operator, or other person responsible for the discharge
6 or release prepare a composite map or plat that shows all parcels or tracts. If the contamination
7 is located on one parcel or tract of land, the owner, operator, or other person responsible for the
8 discharge or release may prepare a map or plat that shows the parcel but is not required to do
9 so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the
10 requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the
11 Department has approved a map or plat, it shall be recorded in the office of the register of
12 deeds and shall be incorporated into the Notice by reference.

13 (d) The Department shall review the proposed Notice to determine whether the Notice
14 meets the requirements of this section and rules adopted to implement this section and shall
15 provide the owner, operator, or other person responsible for the discharge or release of
16 petroleum from an underground storage tank with a notarized copy of the approved Notice.
17 After the Department approves the Notice, the owner, operator, or other person responsible for
18 the discharge or release of petroleum from an underground storage tank shall file a notarized
19 copy of the approved Notice in the register of deeds office in the county or counties in which
20 the real property is located (i) before the property is conveyed or (ii) within 30 days after the
21 owner, operator, or other person responsible for the discharge or release receives notice from
22 the Department that no further action is required under the remedial action plan, whichever first
23 occurs. If the owner, operator, or other person responsible for the discharge or release fails to
24 file the Notice as required by this section, any determination by the Department that no further
25 action is required is void. The owner, operator, or other person responsible for the discharge or
26 release, may record the Notice required by this section without the agreement of the owner of
27 the real property. The owner, operator, or other person responsible for the discharge or release
28 shall submit a certified copy of the Notice as filed in the register of deeds office to the
29 Department.

30 ~~(e) The register of deeds shall record the notarized copy of the approved Notice and~~
31 ~~index it in the grantor index under the names of the owners of the real property.~~

32 (f) In the event that the owner, operator, or other person responsible for the discharge
33 or release fails to submit and file the Notice required by this section within the time specified,
34 the Secretary may prepare and file the Notice. The costs thereof may be recovered by the
35 Secretary from any responsible party. In the event that an owner of the real property who is not
36 a responsible party submits and files the Notice required by this section, the owner may recover
37 the reasonable costs thereof from any responsible party.

38 (g) A Notice filed pursuant to this section shall, at the request of the owner of the real
39 property, be cancelled by the Secretary after the residual petroleum has been eliminated or
40 remediated to unrestricted use standards. If requested in writing by the owner of the land, the
41 Secretary shall send to the register of deeds of each county where the Notice is recorded a
42 statement that the residual petroleum has been eliminated, or that the residual petroleum has
43 been remediated to unrestricted use standards, and request that the Notice be cancelled of
44 record. The Secretary's statement shall contain the names of the owners of the land as shown in
45 the Notice and reference the plat book and page where the Notice is recorded. ~~The register of~~
46 ~~deeds shall record the Secretary's statement in the deed books and index it on the grantor index~~
47 ~~in the names of the owners of the real property as shown in the Notice and on the grantee index~~
48 ~~in the name "Secretary of Environment and Natural Resources". The register of deeds shall~~
49 ~~make a marginal entry on the Notice showing the date of cancellation and the book and page~~
50 ~~where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a~~

1 marginal entry is impracticable because of the method used to record, the register of deeds shall
 2 not be required to make a marginal entry."

3 **SECTION 1.24.** G.S. 160A-400.6 reads as rewritten:

4 **"§ 160A-400.6. Required landmark designation procedures.**

5 As a guide for the identification and evaluation of landmarks, the commission shall
 6 undertake, at the earliest possible time and consistent with the resources available to it, an
 7 inventory of properties of historical, architectural, prehistorical, and cultural significance within
 8 its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as
 9 expeditiously as possible to the Office of Archives and History. No ordinance designating a
 10 historic building, structure, site, area or object as a landmark nor any amendment thereto may
 11 be adopted, nor may any property be accepted or acquired by a preservation commission or the
 12 governing board of a municipality, until all of the following procedural steps have been taken:

- 13 ...
- 14 (6) Upon adoption of the ordinance, the owners and occupants of each
 15 designated landmark shall be given written notification of such designation
 16 insofar as reasonable diligence permits. One copy of the ordinance and all
 17 amendments thereto shall be filed by the preservation commission in the
 18 office of the register of deeds of the county in which the landmark or
 19 landmarks are located. ~~Each designated landmark shall be indexed according~~
 20 ~~to the name of the owner of the property in the grantee and grantor indexes~~
 21 ~~in the register of deeds office, and the preservation commission shall pay a~~
 22 ~~reasonable fee for filing and indexing.~~ In the case of any landmark property
 23 lying within the zoning jurisdiction of a city, a second copy of the ordinance
 24 and all amendments thereto shall be kept on file in the office of the city or
 25 town clerk and be made available for public inspection at any reasonable
 26 time. A third copy of the ordinance and all amendments thereto shall be
 27 given to the city or county building inspector. The fact that a building,
 28 structure, site, area or object has been designated a landmark shall be clearly
 29 indicated on all tax maps maintained by the county or city for such period as
 30 the designation remains in effect.

31"

32
 33 **PART II. LOCAL AGENCY CHARGES FOR VITAL RECORDS SEARCHES**

34 **SECTION 2.1.** G.S. 130A-93.1(a)(1) reads as rewritten:

35 **"§ 130A-93.1. Fees for vital records copies or search; automation fund.**

- 36 (a) The State Registrar shall collect, process, and utilize fees for services as follows:
- 37 (1) A fee not to exceed twenty-four dollars (\$24.00) shall be charged for issuing
 38 a first copy of a vital record or for conducting a routine search of the files for
 39 the record when no copy is made. A fee of fifteen dollars (\$15.00) shall be
 40 charged for each additional certificate copy requested from the same search.
 41 When certificates are issued or searches conducted for statewide issuance by
 42 local agencies using databases maintained by the State Registrar, the local
 43 agency shall charge ~~these fees and shall retain ten dollars (\$10.00) of these~~
 44 ~~fees to cover local administrative costs and forward the remaining fees to the~~
 45 State Registrar for the purposes established in subsection (b) of this
 46 section, section fourteen dollars (\$14.00) and shall charge and retain ten
 47 dollars (\$10.00) if a copy of the record is made. Provided, however, that a
 48 local agency may waive the ten dollar (\$10.00) charge for its retention when
 49 the copy is issued to a person over the age of 62 years."

50 **SECTION 2.2.** G.S. 161-10(8a) is repealed.

1 **PART III. CHANGES TO THE LAWS GOVERNING TRUSTS AND DECEDENTS'**
2 **ESTATES**

3
4 **SUBPART A. Uniform TRUST CODE AMENDMENTS RELATING TO PERSONS HOLDING THE**
5 **POWER TO Direct Trustees, TRUST PROTECTORS, DIRECTED TRUSTEES AND OTHER**
6 **FIDUCIARIES**

7 **SECTION 3.1.** G.S. 36C-8-808 reads as rewritten:

8 **"§ 36C-8-808. Powers ~~to direct~~ of a settlor to take certain actions with respect to the trust.**

9 (a) While a trust is revocable, the settlor of a revocable trust has, at all times, the power
10 to direct or consent to the actions of the trustee whether or not the power is conferred upon the
11 settlor by the terms of the trust. The duty and liability of the trustee subject to the direction and
12 consent of the settlor is as follows:

13 (1) The trustee may follow a direction of the settlor that is not authorized by or
14 is contrary to the terms of the trust, even if by doing so (i) the trustee
15 exceeds the authority granted to the trustee under the terms of the trust, or
16 (ii) the trustee would otherwise violate a duty the trustee owes under the
17 trust.

18 (2) The trustee is not liable, individually or as a fiduciary, for any loss resulting
19 directly or indirectly from compliance with the direction. If the settlor
20 requires the settlor's consent to certain actions of the trustee, and the settlor
21 does not provide consent within a reasonable time after the trustee has made
22 a timely request for the settlor's consent, the trustee is not liable, individually
23 or as a fiduciary, for any loss resulting directly or indirectly from the
24 trustee's failure to take any action that required the settlor's consent.

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

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

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

36 **SECTION 3.2.** G.S. 36C-7-703 is amended by adding the following new subsection
37 to read:

38 **"§ 36C-7-703. Cotrustees.**

39 ...

40 (e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee,
41 the power to take certain actions with respect to the trust, including the power to direct or
42 prevent certain actions of the trustees, the following apply:

43 (1) The duty and liability of the excluded trustee is as follows:

44 a. If the terms of a trust confer upon the cotrustee the power to direct
45 certain actions of the excluded trustee, the excluded trustee must act
46 in accordance with the direction and is not liable, individually or as a
47 fiduciary, for any loss resulting directly or indirectly from
48 compliance with the direction unless compliance with the direction
49 constitutes intentional misconduct on the part of the directed
50 cotrustee.

1 **b.** If the terms of the trust confer upon the cotrustee any other power,
2 the excluded trustee is not liable, individually or as a fiduciary, for
3 any loss resulting directly or indirectly from the action taken by the
4 cotrustee.

5 **c.** The excluded trustee has no duty to monitor the conduct of the
6 cotrustee, provide advice to the cotrustee, or consult with or request
7 directions from the cotrustee. The excluded trustee is not required to
8 give notice to any beneficiary of any action taken or not taken by the
9 cotrustee whether or not the excluded trustee agrees with the result.
10 Administrative actions taken by the excluded trustee for the purpose
11 of implementing directions of the cotrustee, including confirming
12 that the directions of the cotrustee have been carried out, do not
13 constitute monitoring of the cotrustee nor do they constitute
14 participation in decisions within the scope of the cotrustee's
15 authority.

16 **(2)** Except as otherwise provided in sub-subdivision a. of subdivision (1) of this
17 subsection, the cotrustee holding the power to take certain actions with
18 respect to the trust shall be liable to the beneficiaries with respect to the
19 exercise of the power as if the excluded trustee were not in office and has the
20 exclusive obligation to account to the beneficiaries and defend any action
21 brought by the beneficiaries with respect to the exercise of the power."

22 **SECTION 3.3.** G.S. 32-72(d) reads as rewritten:

23 **"§ 32-72. Terms of creating instrument.**

24 ...

25 **(d)** ~~Whenever an instrument reserves to the settlor or vests in any person, including an~~
26 ~~advisory or investment committee or one or more co-fiduciaries, the authority to direct the~~
27 ~~making or retention of any investment to the exclusion of the fiduciary or to the exclusion of~~
28 ~~one or more of several co-fiduciaries, the excluded fiduciary or co-fiduciary who has no~~
29 ~~discretion in selecting the person authorized to make or retain investments is not liable to the~~
30 ~~beneficiaries or to the trust for the decisions or actions of the settlor or other person authorized~~
31 ~~to direct the making or retention of investments. As used in this subsection, the term "person"~~
32 ~~includes an individual, a corporation, or any legal or commercial entity authorized to hold~~
33 ~~property or do business in the State. The following provisions apply to an instrument creating a~~
34 ~~fiduciary relationship other than a trust instrument to which Chapter 36C of the General~~
35 ~~Statutes applies and to a fiduciary other than a trustee:~~

36 **(1)** The terms of the instrument may confer upon a person the power to direct or
37 consent to certain actions of the fiduciary with respect to the following:

38 **a.** Investments, including retention, purchase, sale, exchange, or other
39 transaction affecting the ownership of investments with respect to all
40 or any one or more assets.

41 **b.** Any other administrative matter.

42 **(2)** When the terms of the instrument confer upon a person the power to direct
43 or consent to certain actions of the fiduciary, the duty and liability of the
44 fiduciary are as follows:

45 **a.** If the terms of the instrument confer upon the person the power to
46 direct certain actions of the fiduciary, the fiduciary must act in
47 accordance with the direction and is not liable, individually or as a
48 fiduciary, for any loss resulting directly or indirectly from
49 compliance with the direction unless compliance with the direction
50 constitutes intentional misconduct on the part of the fiduciary.

1 **(b)** The terms of a trust may also confer upon the power holder any other power,
2 including, but not limited to, the power to do the following:

3 **(1)** Modify or amend the trust to do any of the following:

4 **a.** Achieve favorable tax status under applicable law.

5 **b.** Take advantage of laws governing restraints on alienation or other
6 State laws restricting the terms of the trust, distribution of trust
7 property, or the administration of the trust.

8 **(2)** Remove and appoint trustees and power holders.

9 **(3)** Increase or decrease the interests of any beneficiary.

10 **(4)** Grant a power of appointment to one or more beneficiaries of the trust or
11 modify the terms of or terminate a power of appointment granted to a
12 beneficiary by the governing instrument, except that a grant or modification
13 of a power of appointment may not grant a beneficial interest to any of the
14 following:

15 **a.** Any individual or class of individuals not specifically provided for in
16 the trust instrument.

17 **b.** The person having the power to grant, modify, or terminate the
18 power of appointment.

19 **c.** The estate and creditors of the person having the power to grant,
20 modify, or terminate the power of appointment.

21 **(5)** Change the governing law of the trust.

22 **"§ 36C-8A-803. Duty and liability of power holder.**

23 **(a)** A power holder is a fiduciary with respect to the powers conferred upon the power
24 holder who, as such, is required to act in good faith and in accordance with the purposes and
25 terms of a trust and the interests of the beneficiaries, except a power holder is not a fiduciary
26 with respect to the following:

27 **(1)** A power to remove and appoint a trustee or power holder.

28 **(2)** A power that constitutes a power of appointment held by a beneficiary of a
29 trust.

30 **(3)** A power the exercise or nonexercise of which may affect only the interests
31 of the power holder and no other beneficiary.

32 **(b)** A power holder is liable for any loss that results from breach of fiduciary duty
33 occurring as a result of the exercise or nonexercise of the power.

34 **(c)** The following provisions applicable to a trustee shall also be applicable to a power
35 holder with respect to powers conferred upon the power holder as a fiduciary:

36 **(1)** The provisions of G.S. 36C-8-814 regarding discretionary powers and tax
37 savings.

38 **(2)** The provisions of G.S. 36C-10-1001 through G.S. 36C-10-1012 regarding
39 liability of trustees and rights of third persons dealing with trustees.

40 **(3)** The provisions of Article 9 of this Chapter regarding the uniform prudent
41 investor rule.

42 **"§ 36C-8A-804. Duty and liability of trustee.**

43 **(a)** If the terms of a trust confer upon a power holder the power to direct certain actions
44 of the trustee, the trustee must act in accordance with the direction and is not liable,
45 individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with
46 the direction unless compliance with the direction constitutes intentional misconduct on the part
47 of the trustee.

48 **(b)** If the terms of a trust confer upon the power holder the power to consent to certain
49 actions of the trustee, and the power holder does not provide consent within a reasonable time
50 after the trustee has made a timely request for the power holder's consent, the trustee is not

1 liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the
2 trustee's failure to take any action that required the power holder's consent.

3 (c) If the terms of a trust confer upon the person a power other than the power to direct
4 or consent to actions of the trustee, the trustee is not liable, individually or as a fiduciary, for
5 any loss resulting directly or indirectly from the exercise or nonexercise of the power.

6 (d) The trustee has no duty to monitor the conduct of the power holder, provide advice
7 to the power holder, or consult with the power holder. The trustee is not required to give notice
8 to any beneficiary of any action taken or not taken by the power holder whether or not the
9 trustee agrees with the result. Administrative actions taken by the trustee for the purpose of
10 implementing directions of the power holder, including confirming that the directions of the
11 power holder have been carried out, do not constitute monitoring of the power holder nor do
12 they constitute participation in decisions within the scope of the power holder's authority.

13 **"§ 36C-8A-805. Compensation and reimbursement of expenses of power holder.**

14 A power holder as a fiduciary is entitled to compensation and reimbursement of expenses as
15 provided in G.S. 32-59.

16 **"§ 36C-8A-806. Jurisdiction over power holder.**

17 (a) By accepting appointment to serve as a power holder with respect to a trust having
18 its principal place of business in this State, or by moving the principal place of administration
19 to this State, the power holder submits personally to the jurisdiction of the courts of this State
20 regarding any matter involving action or inaction of the power holder.

21 (b) This section does not preclude other methods of obtaining jurisdiction over a power
22 holder.

23 **"§ 36C-8A-807. Accepting or declining the appointment as power holder.**

24 (a) A person designated as a power holder accepts the appointment to serve as a power
25 holder:

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

28 (2) If the terms of a trust do not provide a method or the method provided in the
29 terms of a trust is not expressly made exclusive, by exercising powers or
30 performing duties as a power holder or otherwise indicating acceptance of
31 the appointment to serve as a power holder.

32 (b) A person designated as a power holder may reject the appointment to serve as a
33 power holder. A trustee may give written notice to a power holder requesting acceptance of the
34 appointment as power holder. A power holder who does not accept such appointment within
35 120 days after receipt of such notice is considered to have rejected the appointment to serve as
36 a power holder.

37 **"§ 36C-8A-808. Powers of trustee in the absence of a power holder.**

38 The trustee shall be vested with any fiduciary power or duty conferred upon a power holder
39 by the terms of a trust that are described in G.S. 36C-8A-802(a) during the time when no power
40 holder is available to exercise such power or perform such duty because of absence, illness, or
41 other cause.

42 **"§ 36C-8A-809. More than one power holder.**

43 When there is more than one power holder authorized to act, and they are unable to reach a
44 unanimous decision, they may act by majority decision. Unanimity is required when only two
45 are authorized to act.

46 **"§ 36C-8A-810. Resignation of power holder.**

47 (a) A power holder may resign upon either of the following conditions:

48 (1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the
49 settlor, if living, and all trustees.

50 (2) With the approval of the court.

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

3 **"§ 36C-8A-811. Removal of power holder.**

4 (a) For the reasons set forth in subsection (b) of this section, the settlor of an
 5 irrevocable trust, a trustee of an irrevocable trust, or a beneficiary of an irrevocable trust may
 6 request the court to remove a power holder, or a power holder may be removed by the court on
 7 its own initiative.

8 (b) The court may remove a power holder under any of the following circumstances:

9 (1) The power holder has committed a serious breach of trust.

10 (2) Lack of cooperation with the trustee substantially impairs the administration
 11 of the trust.

12 (3) Because of unfitness, unwillingness, or a persistent failure of the power
 13 holder to exercise effectively the duties and powers conferred upon the
 14 power holder the court determines that removal of the power holder best
 15 serves the interests of the beneficiaries.

16 (4) There has been a substantial change of circumstances, the court finds that
 17 removal of the power holder best serves the interests of all of the
 18 beneficiaries and is consistent with a material purpose of the trust, and a
 19 suitable successor power holder is available.

20 (c) Pending a final decision on a request to remove a power holder, or in lieu of or in
 21 addition to removing a power holder, the court may order appropriate relief under
 22 G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of the
 23 beneficiaries."

24
 25 **SUBPART B. TECHNICAL CORRECTIONS TO LAWS GOVERNING TRUSTS AND DECEDENTS'**
 26 **ESTATES**

27 **SECTION 3.5.** G.S. 36C-7-707(b) reads as rewritten:

28 **"§ 36C-7-707. Delivery of property by former trustee.**

29 ...

30 (b) A trustee who has resigned or been removed shall proceed expeditiously to deliver
 31 the trust property within the trustee's possession to the cotrustee, successor trustee, or other
 32 person entitled to it. A former trustee shall execute those documents ~~transferring~~
 33 acknowledging the transfer of title to trust property as may be appropriate reasonably requested
 34 by the cotrustee, successor trustee, or other person entitled to it to facilitate administration of
 35 the trust, and in the event that the former trustee fails to do so, the clerk of superior court may
 36 order the former trustee to execute those documents, or the clerk of superior court may transfer
 37 title documents."

38 **SECTION 3.6.** G.S. 108A-70.5(c) reads as rewritten:

39 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

40 ...

41 (c) The amount the Department recovers from the estate of any recipient shall not
 42 exceed the amount of medical assistance made on behalf of the recipient and shall be
 43 recoverable only for medical care services prescribed in subsection (b) of this section. The
 44 Department is a ~~fifth-class~~sixth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of
 45 determining the order of claims against an estate; provided, however, that judgments in favor of
 46 other ~~fifth-class~~sixth-class creditors docketed and in force before the Department seeks
 47 recovery for medical assistance shall be paid prior to recovery by the Department."

48 **SECTION 3.7.** G.S. 28A-13-3 reads as rewritten:

49 **"§ 28A-13-3. Powers of a personal representative or fiduciary.**

50 ...

1 ~~(b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2)~~
2 ~~of this section shall be determined in accordance with the provisions of Article 18 of this~~
3 ~~Chapter.~~

4 ...

5 (d) The personal representative ~~shall have~~has the power to institute ~~an estate~~a
6 proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this ~~subsection~~
7 ~~[section]-section.~~ The clerk of superior court may enter orders necessary to enforce the rights
8 set forth in this ~~subsection [section]-section.~~ If the person occupying the real property is a
9 tenant or lessee of the property, the personal representative may seek ejectment of the tenant or
10 lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes."

11 **SECTION 3.8.** G.S. 28A-21-6 reads as rewritten:

12 "**§ 28A-21-6. Permissive notice of final accounts.**

13 The personal representative or collector may, but is not required to, give written notice of a
14 proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of
15 testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of
16 such account. In giving written notice, the personal representative shall attach a copy of the
17 proposed final accounting with exhibits made a part thereof, but is not required to include
18 copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If
19 the personal representative or collector elects to provide this notice, the personal representative
20 or collector shall file with the clerk of superior court a certificate indicating that this notice has
21 been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment
22 under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such
23 account or any annual account for the estate ~~filed by the personal representative or~~
24 ~~collector~~attached to the written notice must be objected to by a devisee or heir within 30 days
25 after the receipt of the written notice or will be deemed to be accepted by the devisee or heir."

26 **SECTION 3.9.** G.S. 28A-25-1.1(a) reads as rewritten:

27 "**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

28 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
29 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days
30 from the date of death, any person indebted to the decedent or having possession of tangible
31 personal property or an instrument evidencing a debt, obligation, stock or chose in action
32 belonging to the decedent shall make payment of the indebtedness or deliver the tangible
33 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
34 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person
35 named or designated as executor in the will, devisee, heir or creditor, of the decedent, not
36 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in
37 accordance with subsection (b) and made by or on behalf of the heir, the person named or
38 designated as executor in the will of the decedent, the creditor, the public administrator, or the
39 devisee, stating:

- 40 (1) The name and address of the affiant and the fact that the affiant is the public
41 administrator, a person named or designated as executor in the will, devisee,
42 heir or creditor, of the decedent;
- 43 (2) The name of the decedent and the decedent's residence at time of death;
- 44 (3) The date and place of death of the decedent;
- 45 (4) That 30 days have elapsed since the death of the decedent;
- 46 (5) That the decedent died testate leaving personal property, less liens and
47 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
48 value;
- 49 (6) That the decedent's will has been admitted to probate in the court of the
50 proper county and a duly certified copy of the will has been recorded in each

1 county in which is located any real property owned by the decedent at the
2 time of the decedent's death;

3 (7) That a certified copy of the decedent's will is attached to the affidavit;

4 (8) That no application or petition for appointment of a personal representative
5 is pending or has been granted in any jurisdiction;

6 (9) The names and addresses of those persons who are entitled, under the
7 provisions of the will, or if applicable, of the Intestate Succession Act, to the
8 property of the decedent; and their relationship, if any, to the decedent; and

9 (10) A description sufficient to identify each tract of real property owned by the
10 decedent at the time of the decedent's death.

11 In those cases in which the affiant is the surviving spouse, is entitled to all of the property
12 of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
13 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
14 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in ~~value~~-value, after
15 reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In
16 such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the
17 affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if
18 applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the
19 decedent died testate leaving personal property, less liens and encumbrances thereon, not
20 exceeding thirty thousand dollars (\$30,000); and (iii) the information required under
21 subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection."

22 **SECTION 3.10.** G.S. 30-31 reads as rewritten:

23 "**§ 30-31. Amount of allowance.**

24 The clerk of superior court may assign to the petitioner a value sufficient for the support of
25 petitioner according to the estate and condition of the decedent and without regard to the
26 limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration
27 for other persons entitled to allowances for year's support from the decedent's estate; and the
28 total value of all allowances shall not in any case exceed the one half of the average annual net
29 income of the deceased for three years next preceding the deceased's death. ~~This report shall be
30 returned by the magistrate to the court."~~

31 **SECTION 3.11.** Section 14 of S. L. 2011-344 reads as rewritten:

32 "**SECTION 14.** ~~This~~ Except as provided below, this act becomes effective January 1,
33 2012, and applies to estates of decedents dying on or after that date-date:

34 (1) Subject to subdivision (3) of this section, Section 10 of this act becomes
35 effective January 1, 2012, and applies to health care powers of attorney
36 executed before, on, or after that date.

37 (2) Subject to subdivision (3) of this section, Sections 11, 12, and 13 of this act
38 become effective January 1, 2012, and apply to trust proceedings
39 commenced before, on, or after that date.

40 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this section:

41 a. In any proceeding pending before the effective date of this act, the
42 provisions in Sections 10, 11, 12, and 13 of this act shall not apply
43 retroactively and shall not apply prospectively if the court finds that
44 application of a newly effective provision would substantially
45 interfere with the effective conduct of a judicial proceeding or
46 prejudice the rights of the parties.

47 b. An act done before the date of enactment of this act is not affected by
48 this act, and a right that was acquired, extinguished, barred, or
49 commenced to run prior to the date of this act is not affected by this
50 act."

1 **PART IV. AUTHORITY OF THE REVISOR OF STATUTES TO PUBLISH**
2 **EXPLANATORY COMMENTS**

3 **SECTION 4.** The Revisor of Statutes shall cause to be printed, as annotations to
4 the published General Statutes, all relevant portions of the Official Comments to the North
5 Carolina Uniform Trust Code and all explanatory comments of the drafters of this act as the
6 Revisor may deem appropriate.

7
8 **PART V. EFFECTIVE DATE**

9 **SECTION 5.** Sections 1.1 through 1.24 and Sections 2.1 and 2.2 of this act become
10 effective July 1, 2012. The remaining sections of this act are effective when this act becomes
11 law.