

§ 36C-4-413. Cy pres.

(a) Except as otherwise provided in subsections (c1) and (d) of this section, if a charitable trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

- (1) The trust does not fail, in whole or in part;
- (2) The trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

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

(c) Repealed by Session Laws 2007-106, s. 17.1, effective October 1, 2007.

(c1) If a trustee of a charitable trust determines that a restriction contained in the trust instrument, including a document making a gift to a charitable trust after it is established, relating to the management, investment, or purpose of the trust or gift is unlawful, impracticable, impossible to achieve, or wasteful, the trustee may release or modify the restriction, in whole or part, if:

- (1) The trust property to which the restriction applies has a total value of less than one hundred thousand dollars (\$100,000);
- (2) More than 10 years have elapsed since the trust property to which the restriction applies was given to the charitable trust; and
- (3) The trustee uses the trust property in a manner consistent with the charitable purposes expressed in the applicable trust instrument.

The trustee must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the court to contest the trustee's determination that the restriction should be released or modified within 60 days of receipt of the trustee's written notice.

(d) This section is not applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event that the charitable trust is or becomes unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative plan is also a charitable trust and that trust fails, the intention shown in the original plan shall prevail in the application of this section. (2005-192, s. 2; 2007-106, s. 17.1; 2009-8, s. 4.)