

## Article 7.

### Investment and Deposit of Trust Funds.

#### **§ 32-70. Definition.**

(a) For the purpose of this Article, the word "fiduciary" shall be construed to include a guardian, personal representative, collector, trustee, or any other person charged with the duty of acting for the benefit of another party as to matters coming within the scope of the relationship between them.

(b) As used in subsection (a) above, the word "person" shall be construed to include an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State of North Carolina. (1977, c. 502, s. 2; 2005-192, s. 1.)

#### **§ 32-71. Investment; prudent person rule.**

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by Article 9 of Chapter 36C of the General Statutes.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(c),(d) Repealed by Session Laws 2007-106, s. 43, effective October 1, 2007. (1870-1, c. 197; Code, s. 1594; 1885, c. 389; 1889, c. 470; Rev., ss. 1792, 1793; 1917, c. 6, s. 9; c. 67, s. 1; c. 152, s. 7; c. 191, s. 1; c. 269, s. 5; C.S., ss. 4018, 4018(a), 4019; Ex. Sess. 1921, c. 63; 1931, c. 257; 1933, c. 549, s. 1; 1935, c. 449; 1937, c. 14; 1943, c. 96; c. 473, ss. 1-3; 1945, c. 713; 1953, c. 620; 1959, c. 364, s. 2; c. 1015, s. 2; 1969, c. 861; 1971, c. 528, s. 34; c. 864, s. 17; 1973, c. 239, s. 1; 1975, cc. 40, 319; 1977, c. 502, s. 2; 1995, c. 153, s. 1; 1999-215, s. 2; 2005-192, s. 1; 2006-259, s. 13(o); 2007-106, s. 43.)

#### **§ 32-72. Terms of creating instrument.**

(a) Nothing contained in this Article shall be construed as authorizing any departure from the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's powers and duties.

(b) A fiduciary holding funds for investment who is specifically directed or authorized by an instrument creating the fiduciary relationship to retain the stock of a bank or trust company that is a member of a bank holding company currently fully registered under an act of Congress entitled Bank Holding Company Act of 1956, as the same may be amended from time to time, shall be considered as being directed or authorized to retain the stock of such bank holding company.

(c) Whenever a fiduciary holding funds for investment is directed, required, authorized, or permitted by an instrument creating the fiduciary relationship to invest in United States

government obligations, the fiduciary may, in the absence of an express prohibition in the instrument, invest in and hold such obligations either directly or in the form of interests in a money market mutual fund registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., as from time to time amended, the portfolio of which is limited to United States government obligations and repurchase agreements fully collateralized thereby.

(d) The following provisions apply to an instrument creating a fiduciary relationship other than a trust instrument to which Chapter 36C of the General Statutes applies and to a fiduciary other than a trustee:

- (1) The terms of the instrument may confer upon a person certain powers with respect to the actions of a fiduciary, including, but not limited to, the following:
  - a. Investments, including retention, purchase, sale, exchange, or other transaction affecting the ownership of investments with respect to all or any one or more assets.
  - b. Any other matter.
- (2) When the terms of the instrument confer upon a person any power with respect to the actions of a fiduciary, the duty and liability of the fiduciary are as follows:
  - a. If the terms of the instrument confer upon the person the power to direct certain actions of the fiduciary, the fiduciary must act in accordance with the direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes intentional misconduct on the part of the fiduciary.
  - b. If the terms of the instrument confer upon a person the power to consent to certain actions of the fiduciary, and the power holder does not provide consent within a reasonable time after the fiduciary has made a timely request for the power holder's consent, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the fiduciary's failure to take any action that required the power holder's consent.
  - b1. If the terms of the instrument confer upon a person a power other than the power to direct or consent to actions of the fiduciary, the fiduciary is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.
  - c. The fiduciary has no duty to monitor the conduct of the power holder, provide advice to the power holder, or consult with the power holder. The fiduciary is not required to give notice to any beneficiary of any action taken or not taken by the power holder whether or not the fiduciary agrees with the result. Administrative actions taken by the fiduciary for the purpose of implementing directions of the power holder, including confirming that the directions of the power holder have been carried out, do not constitute monitoring of the power holder or other participation in decisions within the scope of the power holder's authority.
- (3) A person who holds a power with respect to the actions of a fiduciary is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the estate, or other relationship between the fiduciary and

beneficiaries, and the interests of the beneficiaries, except that if a beneficiary is a person with such a power with respect to the actions of a fiduciary, the beneficiary is not a fiduciary with respect to the following:

- a. A power that constitutes a power of appointment held by a beneficiary under the instrument.
- b. A power the exercise or nonexercise of which affects only the interests of the beneficiary holding the power and no other beneficiary.
- c. A power to remove and appoint a fiduciary.

The holder of the power with respect to the actions of a fiduciary is liable for any loss that results from breach of a fiduciary duty occurring as a result of the exercise or nonexercise of the power. (1973, c. 1277; 1977, c. 502, s. 2; 1985, c. 538, s. 1; 2001-413, s. 4; 2005-192, s. 1; 2012-18, s. 3.3; 2013-91, s. 3(b).)

**§ 32-73. Power of court not restricted.**

Nothing contained in this Article shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. (1977, c. 502, s. 2; 2005-192, s. 1.)

**§ 32-74. Applicability of provisions.**

This Article shall govern fiduciaries acting under wills, agreements, court orders, and other instruments now existing or hereafter made. (1977, c. 502, s. 2; 2005-192, s. 1.)

**§ 32-75. Employee trusts.**

Pension, profit sharing, stock bonus, annuity, or other employee trusts established for the purpose of distributing the income and principal thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities, restraints on the power of alienation of title to property, or the accumulation of income; but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purpose for which they were established. (1954, c. 8; 1977, c. 502, s. 2; 2005-192, s. 1.)

**§ 32-76. Applicability.**

The provisions of this Article shall apply to fiduciary relationships in existence on January 1, 1978, or thereafter established. (1977, c. 502, s. 2; 2005-192, s. 1.)