

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-339
SENATE BILL 407

AN ACT TO AMEND THE LAWS GOVERNING TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32-55 reads as rewritten:

"§ 32-55. Notice.

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

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

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 2. G.S. 36C-5-505 is amended by adding a new subsection to read:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor:

(1) An irrevocable inter vivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.



- (2) An irrevocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code.
- (3) An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
- (4) Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1), (2), or (3) of this subsection.

For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of appointment."

SECTION 3. G.S. 36C-7-704 reads as rewritten:

"§ 36C-7-704. Vacancy in trusteeship; appointment of successor.

- (a) A vacancy in a trusteeship occurs if:
 - (1) A person designated as trustee rejects the trusteeship;
 - (2) A person designated as trustee cannot be identified or does not exist;
 - (3) A trustee resigns;
 - (4) A trustee is disqualified or removed;
 - (5) A trustee dies; or
 - (6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.
- (b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
- (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:
 - (1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
 - (2) By a person appointed by unanimous agreement of the qualified beneficiaries; or
 - (3) By a person appointed by the court.
- (d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:
 - (1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
 - (2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;
 - (2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or
 - (3) By a person appointed by the court.
- (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.
- (f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order appointing the successor trustee provides otherwise. A successor trustee shall be vested with the title to property of the former trustee."

SECTION 4. G.S. 36C-8-816 reads as rewritten:

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

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

...

- (26) On termination of the trust, exercise ~~the~~ all of the powers otherwise exercisable by the trustee during the administration of the trust, including, without limitation, the trustee's investment powers, the power to sell assets, and the powers set forth in subdivision (22) of this section, and exercise the additional powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

...."

SECTION 5. G.S. 28A-8-1(b) reads as rewritten:

"(b) No bond shall be required of:

...

- (5) A personal representative that is a ~~national banking association having its principal place of business in this State or a State bank acting pursuant to trust institution licensed under~~ G.S. 53-159;

...."

SECTION 6. G.S. 53-43 reads as rewritten:

"§ 53-43. General powers.

In addition to the powers conferred by law upon private corporations, banks shall have the power:

...

- (6) ~~Maintain~~ To maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as ~~may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty five per centum (125%) of such deposits.~~ are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

...."

SECTION 7. Article 14 of Chapter 53 of the General Statutes reads as rewritten:

"Article 14.

"Banks Trust Institutions Acting in a Fiduciary Capacity.

"Part 1. General Provisions.

"§ 53-158.10. Definitions.

For purposes of this Article, the following definitions apply:

- (1) "Depository institution" has the same meaning as set forth in the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.
- (2) "Hazardous condition" has the same meaning as set forth in G.S. 53-301(a)(23).
- (3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52).

"§ 53-159. ~~Bank~~ Trust institution may act as fiduciary.

Any ~~bank~~ trust institution licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such ~~bank~~ trust institution to any such office.

"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any ~~bank or trust company~~ trust institution holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities ~~in a clearing corporation~~ with a securities intermediary as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such ~~clearing corporation~~ securities intermediary with any other such securities deposited in such ~~clearing corporation~~ securities intermediary by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such ~~bank or trust company~~ trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such ~~clearing corporation~~ securities intermediary without physical delivery of certificates representing such securities. A ~~bank or trust company~~ trust institution so depositing securities pursuant to this section shall be subject to such rules as, in the case of State-chartered institutions, the State Banking Commission and, in the case of ~~national banking associations, the Comptroller of the Currency~~ other institutions, their regulators may from time to time issue. A ~~bank or trust company~~ trust institution acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such ~~bank or trust company~~ trust institution in such ~~clearing corporation~~ securities intermediary for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such ~~clearing corporation~~ securities intermediary for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any ~~bank or trust company~~ trust institution holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such ~~clearing corporation~~ securities intermediary. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited.

"§ 53-160. License to do business.

Before any such ~~bank or trust company~~ trust institution is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such

license the licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's ~~agents in supervising and examining the licensee, agents,~~ shall pay to the Commissioner of Banks an annual license fee ~~not to exceed of~~ five hundred dollars (\$500.00). ~~(\$500.00) as required by rule of the State Banking Commission.~~ A national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161.

"§ 53-161. Examination in connection with license as to solvency.

The Commissioner of Banks shall ~~examine into the solvency of such bank, and shall, if he deem it necessary, may,~~ at the expense of the bank, trust institution, make or cause to be made an examination at its home office of its assets and liabilities. ~~Examinations of trust institutions other than banks shall be as provided in Article 24 of this Chapter.~~ of any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it finds to be in a hazardous condition.

~~"§ 53-162. Certificate of solvency.~~

~~After any bank has been licensed by the Commissioner of Banks, a certificate issued by the Commissioner of Banks, showing the bank to be solvent to an amount not less than one hundred thousand dollars (\$100,000), shall authorize such bank to act in a fiduciary capacity without bond. There shall be no charge for the seal of this certificate.~~

"§ 53-163. Clerk of superior court notified of license and revocation.

The Commissioner of Banks, upon granting license to any ~~such bank or trust company,~~ trust institution, shall immediately notify the clerk of the superior court of each county in the State that the ~~bank or trust company~~ trust institution has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any ~~bank or trust company~~trust institution licensed by the Commissioner ~~has become insolvent, or is in imminent danger of insolvency,~~ is in a hazardous condition, the Commissioner shall revoke the license granted to that ~~bank~~ trust institution and notify the clerk of the superior court of each county in the State of the revocation. ~~After such notification, the right of any such bank or trust company to act in a fiduciary capacity shall cease.~~

"§ 53-163.1. Funds held by a ~~corporation exercising fiduciary powers~~ trust institution awaiting investment or distribution.

(a) Funds held in a fiduciary capacity by a ~~bank, trust company, savings and loan association, or other corporation authorized to exercise the powers of a fiduciary,~~ trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars (\$1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

(b) Funds held in a fiduciary capacity by a ~~bank,~~ depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the ~~bank,~~ depository institution, provided that it shall first set aside under control of the trust department as collateral security, ~~such securities as may be found~~ the classes of securities listed in G.S. 142-34 G.S. 159-30(c) as being eligible for the investment of the sinking funds of the State of North Carolina of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6).

If such funds are deposited in a ~~bank~~ depository institution insured under the provisions of the Federal Deposit Insurance ~~Corporation, Act,~~ the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that ~~corporation.act.~~

(c) Funds held in a fiduciary capacity by a ~~corporate fiduciary~~ trust institution awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be invested in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise.

(d) In addition to any other compensation to which it may be entitled under ~~G.S. 28A 23 3, 34 12, 35A 1269,~~ statutes governing the compensation of personal representatives, guardians, or other fiduciaries, or under any other authority, a ~~corporation acting in a fiduciary capacity~~ trust institution shall be allowed to charge a fee for the temporary investment of funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the ~~corporation's~~ trust institution's periodic account statements set forth the method of computing such fees.

"§ 53-163.2. Investments in securities by ~~banks or trust companies,~~ trust institutions.

Unless the governing instrument, court order, or a statute specifically directs otherwise, a ~~bank or trust company~~ trust institution serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate thereof participates or has participated as a member of a syndicate underwriting such security, if:

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

"Part 2. Uniform Common Trust Fund Act.

"§ 53-163.5. Establishment of common trust funds.

(a) Any ~~bank or trust company~~ trust institution duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such ~~bank or trust company~~ trust institution hereafter referred to as the "maintaining ~~bank~~ institution." The maintaining ~~bank~~ institution may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other ~~bank or trust company~~ trust institution duly authorized to act as a ~~fiduciary,~~ fiduciary with which it is affiliated, wherever located, which other ~~bank or trust company~~ trust institution is hereinafter referred to as the "participating ~~bank~~ institution."

~~Provided, however, that the relationship between the maintaining bank and the participating bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank.~~

(b) For the purposes of this section, a ~~bank or trust company~~ maintaining institution shall be considered to be ~~owned, controlled or affiliated if twenty-five percent (25%) or more~~

~~of any class of its voting stock is owned by a bank or bank holding company or if twenty five percent (25%) or more of any class of its voting stock is owned by one person or no more than 10 persons who are the same person or persons who own twenty five percent (25%) or more of any class of the voting stock of the maintaining bank.~~ with a participating institution if it controls, is controlled by, or is under common control with the participating institution, as control is determined under the federal Bank Holding Company Act of 1956 or by rule, order, or declaratory ruling of the Commissioner of Banks.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the ~~bank or trust company~~ trust institution assumes investment discretion and assumes fiduciary responsibility.

(d) Such ~~bank or trust company~~ trust institution may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof, and (ii) the ~~bank~~ trust institution has no interest in the assets of the common trust fund other than as a fiduciary.

"§ 53-163.6. Court accountings.

Unless ordered by a court of competent jurisdiction the ~~bank or trust company~~ trust institution operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

"§ 53-163.7. Supervision by State Banking Commission.

All common trust funds established under the provisions of this Part shall be subject to the rules and regulations of the State Banking Commission.

"§ 53-163.8. Uniformity of interpretation.

This Part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 53-163.9. Short title.

This Part may be cited as the Uniform Common Trust Fund Act."

SECTION 8. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

...
(6a) "Board of directors" means the governing body of a company.

...
(15a) "Director" means a member of the board of directors.

...
(45) "State trust company" means a ~~corporation~~ company organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."

SECTION 9. G.S. 53-331(a) reads as rewritten:

"(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be ~~incorporated~~ established in the manner described in this Part and in no other way."

SECTION 10. G.S. 53-332 reads as rewritten:

"§ 53-332. Articles of incorporation of State trust company.

(a) The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

- (1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and
- (2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

(b) The Commissioner may allow a State trust company to be organized as a company other than a corporation, and, in such case, references in this Article to provisions of Chapter 55 of the General Statutes shall refer to analogous provisions of law governing the formation and operation of that State trust company."

SECTION 11. G.S. 53-335(b) reads as rewritten:

"(b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the ~~incorporation~~ establishment of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter."

SECTION 12. G.S. 53-352(a) reads as rewritten:

"(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, a board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. ~~The shareholders of a State trust company, at any shareholders' meeting, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the State trust company during the interval between shareholders' meetings.~~ Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes."

SECTION 13. G.S. 53-363(b) reads as rewritten:

"(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from a provision of this Article by the Commissioner pursuant to this section or prior to the enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity securities of a private trust company may by unanimous agreement limit the authority of its board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or allocate to an individual or group other than the board of directors some or all of the duties of a board of directors. A private trust company shall notify the Commissioner of the adoption of any agreement affecting the authority of the board of directors within 48 hours and shall provide such information as the Commissioner requests about the agreement. To the extent that an individual or group other than the board of directors is vested with the authority of the board of directors under this section, that individual or group shall be deemed to be acting as the board of directors in the exercise of that authority for all purposes of this Chapter."

SECTION 14. G.S. 53-363(c) reads as rewritten:

"(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-339, 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions."

SECTION 15. This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:45 a.m. this 27th day of June, 2011