Chapter 36C.

North Carolina Uniform Trust Code.

Article 1.

General Provisions and Definitions.

§ 36C-1-101. Short title.

This Chapter may be cited as the North Carolina Uniform Trust Code. (2005-192, s. 2.)

§ 36C-1-102. Scope.

This Chapter applies to any express trust, private or charitable, with additions to the trust, wherever and however created. The term "express trust" includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk of superior court. This Chapter also applies to any trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. This Chapter does not apply to constructive trusts, resulting trusts, conservatorships, estates, Payable on Death accounts as defined in G.S. 53C-6-7, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another. (2005-192, s. 2; 2012-56, s. 8.)

§ 36C-1-103. Definitions.

The following definitions apply in this Chapter:

(1) Action. – When applicable to an act of a trustee, includes a failure to act.

(2) Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) Beneficiary. – A person who:

  a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer, but excluding a permissible appointee of a power of appointment; or

  b. In a capacity other than that of trustee, holds a power of appointment over trust property.

(4) Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).

(5) Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) General guardian. – As defined in G.S. 35A-1202(7).

(7) Guardian of the estate. – As defined in G.S. 35A-1202(9).

(8) Guardian of the person. – As defined in G.S. 35A-1202(10).

(9) Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.

(10) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.

(11) Jurisdiction. – When applicable to a geographic area, includes a state or country.

(12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(13) Power of withdrawal. – A presently exercisable general power of appointment other than a power:

a. Exercisable by a trustee and limited by an ascertainable standard; or

b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is one of the following:

a. The usual place of business of the corporate trustee if there is a corporate cotrustee.

b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.

(14) Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(15) Qualified beneficiary. – A living beneficiary to whom, on the date the beneficiary's qualification is determined, any of the following apply:

a. Is a distributee or permissible distributee of trust income or principal.

b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to terminate.

c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(16) Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(17) Settlor. – Except as otherwise provided in G.S. 36C-8B-25, a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(18) Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

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

(20) Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as established, determined, or amended by any of the following:
a. A judicial proceeding.
b. A nonjudicial settlement agreement.
c. A nonjudicial modification with the consent of the settlor and all beneficiaries under G.S. 36C-4-411(a) or other law.
d. A trustee or other person in accordance with law, including a power holder under Article 8A of this Chapter or a trustee under Article 8B of this Chapter.

(21) Trust instrument. – An instrument that contains the terms of a trust.

(22) Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts. (2001-413, s. 1; 2005-192, s. 2; 2007-106, s. 2; 2009-222, s. 1; 2017-121, s. 2.1; 2021-85, s. 2(a).)

§ 36C-1-104. Knowledge.

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:
(1) Has actual knowledge of it;
(2) Has received notice or notification of it; or
(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows a matter involving the trust would be materially affected by the information. (2005-192, s. 2.)

§ 36C-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a trustee and a power holder under Article 8A of this Chapter, relations among trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:
(1) The requirements for creating a trust.
(2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except as follows:
a. This duty is subject to G.S. 36C-8A-4 with respect to the trustee.
b. This duty does not apply to the extent the power holder is acting in a nonfiduciary capacity as provided in G.S. 36C-8A-3.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416.
(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.
(6) The effect of an exculpatory term under G.S. 36C-10-1008, except to the extent the power holder is acting in a nonfiduciary capacity as provided in G.S. 36C-8A-3.
(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary.
(8) Periods of limitation for commencing a judicial proceeding.
(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.
(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.
(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.
(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32).

(c) Repealed by Session Laws 2021-85, s. 2(b), effective July 8, 2021, and applicable to trusts created before, on, or after that date. (2005-192, s. 2; 2007-106, s. 3; 2009-48, s. 15; 2015-205, s. 7; 2021-85, s. 2(b).)

§ 36C-1-106. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another statute of this State. (2005-192, s. 2.)

§ 36C-1-107. Governing law.

(a) The meaning and effect of the terms of a trust are determined by any of the following:
(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.
(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Notwithstanding subsection (a) of this section, the rights of a person other than a trustee or beneficiary are governed by G.S. 36C-10-1010 through G.S. 36C-10-1013. (2005-192, s. 2; 2007-106, s. 4.)

§ 36C-1-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in, or a trustee is a resident of, the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another jurisdiction in accordance with this subsection:

(1) If the trustee is transferring the trust's principal place of administration to another state, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust not less than 60 days before initiating the transfer. If no qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the trustee may make the transfer. If a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the authority of the trustee to transfer the trust's principal place of administration in accordance with this section terminates.

(2) If the trustee is transferring the trust's principal place of administration to a jurisdiction outside of the United States, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust, and the transfer cannot be made until the written consent of all the qualified beneficiaries is obtained.

(c) Anytime a trustee is required to provide a qualified beneficiary with written notice of a proposed transfer of a trust's principal place of administration, the notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) If the proposed transfer is to another state, the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(d) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under G.S. 36C-7-704. (2005-192, s. 2.)

§ 36C-1-109. Methods and waiver of notice.

(a) Subject to subsection (d) of this section, notice to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(1) Permissible methods of notice or methods for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(2) Notice shall be deemed to be given upon the occurrence of any of the following:

a. When personally delivered by hand to the person.

b. When transmitted by facsimile.
c. When placed in the hands of a nationally recognized courier service for delivery.
d. When received by the person if sent by registered or certified United States mail, return receipt requested.
e. Three days after depositing the notice in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail.

(3) Notice by any means other than those described in subdivision (2) of this subsection shall be deemed to be given for all purposes upon the date of actual receipt.

(b) Notice otherwise required under this Chapter, or a document otherwise required to be sent under this Chapter, need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) The person to be notified or to be sent a document may waive notice under this Chapter.

(d) Notice of a judicial proceeding must be given as provided in Article 2 of this Chapter. (2005-192, s. 2; 2007-106, s. 5.)

§ 36C-1-110. Others treated as qualified beneficiaries.

(a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this Chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal upon the termination of the interest of other distributees or permissible distributees then receiving or eligible to receive distributions, but the termination of those interests would not cause the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in G.S. 36C-4-408 or G.S. 36C-4-409 has the rights of a qualified beneficiary under this Chapter. (2005-192, s. 2.)

§ 36C-1-111. Nonjudicial settlement agreements.

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Interested persons may enter into a binding nonjudicial settlement agreement with respect to any of the following matters involving a trust:

(1) The approval of a trustee's report or accounting;

(2) Direction to a trustee to perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power, including a power granted under G.S. 36C-8-816;

(3) The resignation or appointment of a trustee and the determination of a trustee's compensation;

(4) Transfer of a trust's principal place of administration; and

(5) Liability of a trustee for any action taken under subdivisions (1) through (4) of this subsection.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this Chapter or other applicable law.

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 of this Chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved. (2005-192, s. 2.)

§ 36C-1-112. Rules of construction.

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. (2005-192, s. 2.)

§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in trust instruments or amendments to trust instruments created by settlors who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

(1) To a trust instrument or an amendment to a trust instrument executed by a settlor before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the settlor dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(2) To the terms of a trust instrument or an amendment to a trust instrument executed by a settlor who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A trust instrument or an amendment to a trust instrument subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the trust instrument or the amendment to the trust instrument contains a formula that meets one or more of the following conditions:

(1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."

(2) The formula measures a share of a trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.

(3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The trustee of the trust or an affected beneficiary under the trust may commence a proceeding to determine whether the settlor intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the settlor. (2010-126, s. 2.)

§ 36C-1-114. Insurable interest of trustee.

(a) As used in this section, the term "settlor" means a person that executes a trust instrument. The term includes a person for whom a fiduciary or agent is acting.

(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is trust property if, as of the date the policy is issued:

(1) The insured is either of the following:

a. A settlor of the trust.

b. An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.

(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured.

(c) This section does not limit or abridge any insurable interest or right to insure now existing at common law or by statute and shall be construed liberally to sustain insurable interests, whether as a declaration of existing law or as an extension of or addition to existing law. (2013-91, s. 2(a).)

Article 2.

Judicial Proceedings.

§ 36C-2-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by a party or as provided by law.

(b) A trust is not subject to continuing judicial supervision, except as provided in G.S. 36C-2-208 and G.S. 36C-2-209, unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights. (2005-192, s. 2.)

§ 36C-2-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this State, or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust. (2005-192, s. 2.)

§ 36C-2-203. Subject matter jurisdiction.

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

(1) To appoint or remove a trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b) and the appointment of a special fiduciary pursuant to G.S. 36C-8B-9.

(2) To approve the resignation of a trustee.

(3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final accounts.

(4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in G.S. 37A-1-104.3.

(5) To transfer a trust's principal place of administration.

(6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different sureties.

(7) To make orders with respect to a trust for the care of animals as provided in G.S. 36C-4-408.

(8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in G.S. 36C-4-409.

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, to create a trust, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of

Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall be construed (i) to confer upon the clerk of superior court any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the governing instrument or of State law; or (ii) to confer upon any party any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes.

(d) The clerk of superior court shall not, over the objection of a party, entertain proceedings under this section involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk of superior court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk of superior court may grant a continuance or enter any other appropriate order.

(e) Any party to a proceeding before the clerk of superior court may appeal from the decision of the clerk to a superior court judge as provided for estate matters in G.S. 1-301.3.

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of any of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416. Actions to reform or modify a trust pursuant to G.S. 36C-4-412 through G.S. 36C-4-416 shall include the addition of trust terms to provide for the removal and replacement of the trustee by one or more beneficiaries or other persons.

(2) Actions by or against creditors or debtors of a trust.

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(4) Actions to enforce a charitable trust under G.S. 36C-4-405.1.

(5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.

(6) Actions involving the exercise of the decanting power pursuant to Article 8B of this Chapter.

(7) Actions to construe a formula contained in a trust subject to G.S. 36C-1-113.

(8) Actions to establish the validity of a revocable trust before death pursuant to Article 4C of this Chapter. (1911, c. 39, s. 4; C.S. s. 4027; 1977, c. 502, s. 2; 1999-216, s. 8; 2001-413, s. 1; 2005-192, s. 2; 2007-106, ss. 6, 7; 2009-267, s. 1; 2009-318, s. 2; 2010-126, s. 3; 2017-121, ss. 2.2, 2.3; 2019-113, s. 5; 2021-53, s. 1.4.)

§ 36C-2-204. Venue.

In any trust proceeding, whether brought before the clerk of superior court or the Superior Court Division of the General Court of Justice, the following rules apply:

(1) If the trustee is required to account to the clerk of superior court, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.

(2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is either of the following:
   a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary resides.
   b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.

(2a) In the case of a petition to establish the validity of a revocable trust before death pursuant to Article 4C of this Chapter, venue shall be in the county of this State in which the petitioner whose revocable trust is the subject of the petition resides.

(3) Repealed by Session Laws 2007-106, s. 8, effective October 1, 2007.

(4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered.

(5) An objection to improper venue in a trust proceeding shall be subject to the following:
   a. For a trust proceeding before the clerk of superior court, objection must be made as part of a timely served response to the complaint or petition or, if no response is filed, within 20 days after service of the complaint or petition, including any extensions of time pursuant to G.S. 36C-2-205(d).
   b. For a trust proceeding before the Superior Court Division of the General Court of Justice, objection shall be governed by the Rules of Civil Procedure.

(6) The validity of a trust proceeding shall not be affected by any error in venue. (2001-413, s. 1; 2003-261, s. 2; 2005-192, s. 2; 2007-106, s. 8; 2021-53, ss. 1.2, 3.1.)

§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and joinder.

(a) Contested Proceedings. – Trust proceedings before the clerk of superior court brought against adverse parties shall be commenced as is prescribed for civil actions. Upon the filing of the petition or complaint, the clerk of superior court shall docket the cause as an estate matter. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the summons for the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the summons for the additional persons. The

summons shall notify the respondents to appear and answer the petition within 20 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk of superior court shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action and shall be served upon the respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Proceedings. – Trust proceedings before the clerk of superior court in which all the parties join in the proceeding shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – The petition or complaint filed in a trust proceeding before the clerk of superior court shall contain a short and plain statement of the claim which is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions, intended to be proved showing that the pleaders entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment of a pleading should be simple, concise, and direct. No technical forms of pleadings or motions are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All pleadings shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, except to the extent that the court finds that justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 52(b), 56, 58, 59, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure, shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

(f) Consolidation. – When a trust proceeding pending before the clerk of superior court and a civil action pending before the superior court division of the General Court of Justice involve a

common question of law or fact, upon the court's motion or motion of a party to either the trust proceeding or the civil action, a superior court judge may order a consolidation of the trust proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating a trust proceeding and civil action, the jurisdiction for all matters pending in both the trust proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before a superior court division of the General Court of Justice, a party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as that party has against an opposing party notwithstanding the fact that the claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

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

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

(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard. (2005-192, s. 2; 2007-106, ss. 9, 9.1, 10; 2011-344, ss. 11, 12; 2012-18, s. 3.11; 2021-53, s. 3.3.)

§ 36C-2-206. Representation of parties.

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any trust proceeding, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the parties shall be represented as provided in Article 3 of this Chapter.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative. (2005-192, s. 2; 2006-259, s. 13(a).)

§ 36C-2-207. Waiver of notice.

A party, or the representative of the party as provided in G.S. 36C-2-206, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative, and filed in the proceeding. (2001-413, s. 1; 2005-192, s. 2.)

§ 36C-2-208. Accounting to clerk.

(a) No trustee, including a trustee appointed by the clerk of superior court, is required to account to the clerk of superior court unless the trust instrument directs that the trustee is required to account to the clerk of superior court or unless the trustee is otherwise required by law to account to the clerk of superior court.

(b) If the trustee is required to account to the clerk of superior court, the trustee shall not be permitted to resign as trustee until a final account of the trust estate is filed with the clerk of superior court and until the court is satisfied that the account is true and correct, unless the terms of the trust instrument provide otherwise.

(c) Notwithstanding subsections (a) and (b) of this section, under a proceeding brought under G.S. 36C-4-405.1, the clerk of superior court may require a trustee of a charitable trust to account to the clerk of superior court. (1911, c. 39, s. 6; C.S., s. 4029; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 4; 2005-192, s. 2.)

§ 36C-2-209. Qualification and accounting of trustee of a testamentary trust.

(a) For any testamentary trust created under a will of a decedent executed before January 1, 2004, the trustee shall first qualify under the laws applicable to executors, and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. This subsection shall not apply to the extent that the will makes a different provision.

(b) For any testamentary trust created under a will of a decedent executed on or after January 1, 2004, that directs the trustee to account to the clerk of superior court, the trustee shall first qualify under the laws applicable to executors and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as are required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. No trustee, including a trustee appointed by the clerk of superior court, is required to account to the clerk of superior court unless the will directs that the trustee is required to account to the clerk of superior court or unless otherwise required by law.

(c) The Administrative Office of the Courts may adopt rules regulating the registration or indexing of testamentary trusts. (1907, c. 804; C.S., s. 51; 1961, c. 519; 1965, c. 1176, s. 1; 1973, c. 1329, s. 4; 1977, c. 502, s. 2; 1985, c. 377, s. 1, 2; 2003-261, s. 7(j); 2005-192, s. 2.)

Article 3.

Representation.

§ 36C-3-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this Article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this Article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in G.S. 36C-4-411 and G.S. 36C-6-602, a person who under this Article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this Article with respect to the termination or modification of trust under G.S. 36C-4-411(a). (2005-192, s. 2.)

§ 36C-3-302. Representation by holder of power of revocation or general power of appointment.

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as takers in default, are subject to the power. (2005-192, s. 2; 2009-222, s. 2; 2010-96, s. 8.)

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

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

(1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.

(2) Repealed by Session Laws 2007-106, s. 11, effective October 1, 2007.

(3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the trust unless the question or dispute involves the internal affairs of the trust.

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

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

(7) A person may represent and bind that person's unborn issue. (2005-192, s. 2; 2007-106, s. 11.)

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

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

representative and the person represented with respect to the particular question or dispute. (2005-192, s. 2; 2007-106, s. 12.)

§ 36C-3-305. Appointment of representative; scope of representation.

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

(b) Any representative under this Article may act on behalf of the individual represented with respect to any matter arising under this Chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative, including a guardian ad litem, may base a decision to consent to an action upon a finding that living members of the individual's family would generally benefit from that action. (2005-192, s. 2; 2007-106, s. 13.)

Article 4.

Creation, Validity, Modification, and Termination of Trust.

§ 36C-4-401. Methods of creating trust.

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

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:
   a. The devise to the trustee of the trust as provided in G.S. 31-47.
   b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.

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

(4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code. (2005-192, s. 2; 2007-106, s. 14; 2009-267, s. 2; 2011-284, s. 45.)

§ 36C-4-401.1. Interest of trustee as beneficiary of life insurance or other death benefit sufficient to support inter vivos or testamentary trust.

(a) The interest of a trustee as the beneficiary of a life insurance policy is a sufficient property interest or res to support the creation of an inter vivos or testamentary trust notwithstanding the fact that the insured or any other person or persons reserves or has the right to exercise any one or more of the following rights or powers:

(1) To change the beneficiary;

(2) To surrender the policy and receive the cash surrender value;

(3) To borrow from the insurance company issuing the policy or elsewhere using the policy as collateral security;

(4) To assign the policy; or

(5) To exercise any other right in connection with the policy commonly known as an incident of ownership of that policy.

The term "life insurance policy" includes life, annuity, and endowment contracts, or any variation or combination of those contracts, and any agreement entered into by an insurance company in connection with life, annuity, or endowments contracts.

(b) The interest of a trustee as the beneficiary of a death benefit under an employee benefit plan or group life insurance policy is a sufficient property interest or res to support the creation of an inter vivos or testamentary trust notwithstanding the fact that the insured, employer, insurer or administrator of the plan reserves or has the right to revoke or otherwise defeat the designation or assignment or to exercise any one or more of the rights or powers incident to employee benefit plans or group life insurance policies.

The term "employee benefit plan" includes pension, retirement, death benefit, deferred compensation, employment, agency, retirement annuity, stock bonus, profit-sharing or employees' savings contracts, plans, systems or trusts; and trusts, securities or accounts established or held under the federal Self-Employed Individuals Tax Retirement Act of 1962, the federal Employee Retirement Income Security Act of 1974, or similar legislation. The term "group life insurance policy" includes group life, industrial life, accident, and health insurance policies having death benefits.

(c) A testator having the right to designate the beneficiary under a life insurance policy, employee benefit plan, or group life insurance policy described in subsection (a) or (b) of this section may designate as that beneficiary a trustee named or to be named in the testator's will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no trustee makes claim to the proceeds within six months after the death of the testator, payments shall be made to the personal representative of the estate of the testator unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee is not subject to claims against the estate of the testator to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets that may properly become part of the trust, but the proceeds shall not become part of the testator's estate for purposes of trust administration unless the will expressly so provides. (1957, c. 1444, s. 1; 1977, c. 502, s. 2; 1999-337, s. 7(j); 2005-192, s. 2.)

§ 36C-4-401.2. Creation of trust by a court.

A court may create or establish a trust by judgment or decree, including a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code, upon petition of an interested party in accordance with the provisions of this Chapter or in any other matter properly before the court. (2009-267, s. 3; 2010-97, s. 5(a).)

§ 36C-4-402. Requirements for creation.

(a) A trust is created only if:

(1) The settlor has capacity to create a trust;

(2) The settlor indicates an intention to create the trust;

(3) The trust has a definite beneficiary or is:

a. A charitable trust;

b. A trust for the care of an animal, as provided in G.S. 36C-4-408; or

c. A trust for a noncharitable purpose, as provided in G.S. 36C-4-409;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. (2005-192, s. 2.)

§ 36C-4-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode, or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located. (2005-192, s. 2.)

§ 36C-4-404. Trust purposes.

A trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries. (2005-192, s. 2.)

§ 36C-4-405. Charitable purposes.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, benevolent, literary, governmental, or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) It is the policy of the State that a gift for charitable purposes, whether in trust or otherwise, is valid, notwithstanding the fact that the gift is made in general terms, and this section shall be construed liberally to effect this policy.

(c) No gift for charitable purposes, whether in trust or otherwise, is void or invalid because:

(1) The gift is in general terms or is uncertain as to the specific charitable purposes;

(2) When the gift is made in trust, the trustee is granted discretionary powers in the selection and designation of the beneficiaries of that charitable trust or in carrying out the purpose of that trust;

(3) The trustee or other recipient of the gift is given no specific instructions, powers, or duties as to the manner or means of carrying out those charitable purposes; or

(4) The gift contravenes any statute or rule against perpetuities.

(d) When any gift is made in general terms, the trustee or other recipient of the gift may:

(1) Select from time to time one or more specific charitable beneficiaries or purposes for which any trust or property or income is held and administered; and

(2) Determine the means to accomplish those charitable purposes, unless otherwise provided, including the creation of corporations or other legal entities for those purposes.

(e) For purposes of this section, the reference to a "gift" includes both inter vivos and testamentary gifts, grants, and other transfers. (2005-192, s. 2.)

§ 36C-4-405.1. Enforcement of charitable gift or trust.

(a) The settlor of a charitable trust, the Attorney General, the district attorney, a beneficiary, or any other interested party may maintain a proceeding to enforce a charitable trust, including the following:

(1) A proceeding to require a trustee to make a selection as may be necessary to establish the charitable beneficiaries or purposes for which the trust was established, as provided in subdivisions (d)(1) and (d)(2) of G.S. 36C-4-405;

(2) A proceeding for breach of fiduciary duty if there is reason to believe that the trust property has been mismanaged through negligence or fraud; and

(3) A proceeding for an accounting of the trustee's administration of the trust.

(b) The donor of a charitable gift, the Attorney General, the district attorney, or any other interested party may maintain a proceeding to enforce the gift, including a proceeding to require the recipient of the gift to make a selection as may be necessary to establish the charitable beneficiaries or purposes for which the gift was intended, as provided in subdivisions (d)(1) and (d)(2) of G.S. 36C-4-405. (2005-192, s. 2.)

§ 36C-4-405.2. Spending rules applicable to charitable trusts.

Subject to the intent of a settlor specifically expressed in a trust instrument, including a document making a gift to a charitable trust after it is established, a trustee of a charitable trust may appropriate for expenditure or accumulate so much of the trust property as the trustee determines is prudent for the uses, benefits, purposes, and duration for which that charitable trust is established. In making a determination to appropriate or accumulate trust property, a trustee shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the trust;

(2) The purposes of the trust;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the trust; and

(7) The investment policy of the trust. (2009-8, s. 3.)

§ 36C-4-406. Creation of trust induced by fraud, duress, or undue influence.

A trust is voidable to the extent that its creation was induced by fraud, duress, or undue influence. (2005-192, s. 2.)

§ 36C-4-407. Evidence of oral trust.

Except as required by a State statute other than this Chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust, and its terms may be established only by clear and convincing evidence. (2005-192, s. 2.)

§ 36C-4-408. Trust for care of animal.

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the trust instrument.

(2) If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.

(3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor. Extrinsic evidence is admissible in determining the settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the settlor and the purpose of this section. (1995, c. 225, s. 1; 2005-192, s. 2; 2006-259, s. 13(b).)

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

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

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

a. As directed in the trust instrument.

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

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

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

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. The property not required for the intended use shall be distributed under subdivision (1) of this section.

(4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not repeal or supersede G.S. 36C-4-413. (1995, c. 225, s. 1; 2005-192, s. 2; 2007-106, s. 15.)

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

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

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this Article.

(c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006. (2005-192, s. 2; 2006-259, s. 13(c); 2007-106, s. 16.)

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

(a) If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a

guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised by the following:

(1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust.

(2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the guardianship.

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

(c) If the beneficiaries of a noncharitable irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

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

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

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

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

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

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

(h) Except for the modification of a trust pursuant to subsection (a) of this section, nothing in this section permits the modification of a trust to provide for the removal and replacement of a trustee of the trust, including the addition of trust terms providing for the removal and replacement of the trustee by one or more beneficiaries or other persons. (2005-192, s. 2; 2006-259, s. 13(d); 2007-106, s. 17; 2019-113, s. 6; 2023-46, s. 7.)

§ 36C-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Repealed by Session Laws 2006-259, s. 13(e), effective October 1, 2006. (2005-192, s. 2; 2006-259, s. 13(e).)

§ 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.)

§ 36C-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value of less than fifty thousand dollars ($50,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The trustee may enter into an agreement or make other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust. This subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125.6, provides that it shall not apply. The trustee shall not be liable for that termination and distribution notwithstanding the

existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.

(c) This section does not apply to an easement for conservation or preservation.

(d) Repealed by Session Laws 2006-259, s. 13(f), effective October 1, 2006. (2005-192, s. 2; 2006-259, s. 13(f).)

§ 36C-4-415. Reformation to correct mistakes.

The court may reform the terms of a trust, if the terms of the trust are ambiguous, to conform the terms to the settlor's intent if it is proved by clear and convincing evidence what the settlor's intent was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. (2005-192, s. 2; 2017-152, s. 4.)

§ 36C-4-416. Modification to achieve settlor's tax objectives.

To achieve a settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. (2005-192, s. 2; 2006-259, s. 13(g).)

§ 36C-4-417. Combination and division of trusts.

(a) Unless otherwise provided in the trust instrument, a trustee may do any of the following:

(1) Consolidate the assets of more than one trust and administer the assets as one trust under the terms of one of the trusts if the terms of the trusts are substantially similar and the beneficiaries of the trusts are identical.

(2) Divide one trust into two or more separate trusts if the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

(b) In dividing a trust into two or more separate trusts, a trustee shall accomplish the division by severing the trusts on a fractional basis and funding the separate trusts either (i) with a pro rata portion of each asset held by the undivided trust; or (ii) on a non-pro rata basis based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

(c) In any case where two separate identical trusts are created under this section, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the trustee may thereafter, to the extent possible consistent with the terms of the trust, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy those distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax. (2005-192, s. 2; 2006-259, s. 13(h).)

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

Upon termination of a trust under G.S. 36C-4-411(a), the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under G.S. 36C-4-411(b) or (c), the trustee shall distribute the trust property in accordance with the order entered by the court. Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. (1999-266, s. 2; 2005-192, s. 2; 2007-106, s. 18.)

§ 36C-4-419. Effect of inalienable interest on modification or termination.

The court, in exercising its discretion to modify or terminate an irrevocable trust under G.S. 36C-4-411, 36C-4-412, or 36C-4-414 shall consider provisions making the interest of a beneficiary inalienable, including those described in Article 5, but the court is not precluded from the exercise of that discretion solely because of such provisions. (2005-192, s. 2; 2006-259, s. 13(i).)

Article 4A.

Tax Status of Charitable Trusts.

§ 36C-4A-1. Prohibited transactions.

(a) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (b) of this section, the trust instrument of each trust that is a private foundation described in section 509 of the Internal Revenue Code (including each nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code that is treated as a private foundation) and the trust instrument of each nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code (but only to the extent that section 508(e) of the Internal Revenue Code is applicable to the nonexempt split-interest trust under section 4947(a)(2) of the Internal Revenue Code) is considered to contain the following provisions: "The trust shall make distributions at any time and in any manner as not to subject it to tax under section 4942 of the Internal Revenue Code; the trust shall not engage in any act of self-dealing which would subject it to tax under section 4941 of the Internal Revenue Code; the trust shall not retain any excess business holdings that would subject it to tax under section 4943 of the Internal Revenue Code; the trust shall not make any investments that would subject it to tax under section 4944 of the Internal Revenue Code; and the trust shall not make any taxable expenditures that would subject it to tax under section 4945 of the Internal Revenue Code." With respect to any trust created before January 1, 1970, this section shall apply only for its taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary, unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (a) of this section, the governing instrument of each trust that is a nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code is considered to contain the following provisions:

(1) The trust shall be operated exclusively for charitable, educational, religious, and scientific purposes within the meaning of section 501(c)(3) and section 170(c)(2) of the Internal Revenue Code.

(2) Upon any dissolution, winding up, or liquidation of the trust, its assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or a state or local government for a public purpose.

(c) The trustee of any trust described in this section may do one of the following:

(1) Without judicial proceedings, amend the trust to expressly exclude the application of this section by executing a written amendment to the trust instrument and filing a duplicate original of the amendment with the Attorney General. Upon filing of the amendment, this section shall not apply to that trust.
(2) Institute a proceeding under Article 2 of this Chapter seeking reformation of the trust instrument. (1971, c. 1136, s. 4; 1977, c. 502, s. 2; 1981 (Reg. Sess., 1982), c. 1210, ss. 1-3; 2005-192, s. 2.)

§ 36C-4A-2. Reformation of charitable remainder trust.

If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property that passes from the decedent under a will or trust to a person, or for a use, described in section 2055(a) of the Internal Revenue Code, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the Internal Revenue Code, then in order that the deduction shall nevertheless be allowable under section 2055(e)(3) of the Internal Revenue Code, the court may, on application of any trustee or interested party with either (i) the written consent of the qualified beneficiaries, or (ii) a finding that the interest of those beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust that is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in section 664 of the Internal Revenue Code), or a pooled income fund (as that term is described in section 642(c)(5) of the Internal Revenue Code), or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly), in accordance with section 2055(e)(2)(B) of the Internal Revenue Code. In every proceeding under this section, the Attorney General shall be notified, and given an opportunity to be heard. (1971, c. 1136, s. 4; 1977, c. 502, s. 2; 1981 (Reg. Sess., 1982), c. 1210, ss. 1-3; 2005-192, s. 2.)

Article 4B.

Charitable Remainder Trust Administration Act.

§ 36C-4B-1. Short title.

This Article shall be known as the Charitable Remainder Administration Trust Act. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 2005-192, s. 2.)

§ 36C-4B-2. General rule.

Notwithstanding any provisions in the laws of this State or in the governing instruments to the contrary, any charitable remainder annuity trust and any charitable remainder unitrust that cannot qualify for a deduction for federal tax purposes under section 2055 or section 2522 of the Internal Revenue Code in the absence of this Article shall be administered in accordance with this Article. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 2005-192, s. 2.)

§ 36C-4B-3. Definitions.

The following definitions apply to this Article unless the context clearly requires otherwise:

(1) "Charitable remainder trust" means a trust that provides for a specified distribution at least annually for either life or a term of years to one or more beneficiaries, at least one of which is not a charity (hereinafter referred to as "beneficiaries"), with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity. For purposes of this Article, only a charitable

remainder annuity trust or a charitable remainder unitrust is considered a charitable remainder trust.

(2) "Charitable remainder annuity trust" means a charitable remainder trust:

a. From which a sum certain (that is not less than five percent (5%) of the initial net fair market value of all property placed in trust) is to be paid at least annually to one or more persons (at least one of which is not an organization described in section 170(c) of the Internal Revenue Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of that individual or those individuals; however, in the case of an individual, the amount to be paid to that individual may be subject to a qualified contingency according to the terms of the governing instrument;

b. From which no amount other than the payments described in sub-subdivision a. of this subdivision may be paid to or for or both to and for the use of anyone other than an organization that is or was described in section 170(c) of the Internal Revenue Code; and

c. Following the termination of the payments described in sub-subdivision a. of this subdivision, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in section 170(c) of the Internal Revenue Code or is to be retained by the trust for that use.

(3) "Charitable remainder unitrust" means a charitable remainder trust:

a. From which a fixed percentage (that is not less than five percent (5%)) of the net fair market value of its assets, valued annually, is to be paid at least annually to one or more persons (at least one of which is not an organization described in section 170(c) of the Internal Revenue Code and, in the case of individuals, only to an individual who was living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of that individual or those individuals; however, in the case of an individual, the amount to be paid to that individual may be made subject to a qualified contingency according to the terms of the governing instrument;

b. From which no amount other than the payments described in sub-subdivision a. of this subdivision may be paid to or for the use of anyone other than an organization that is or was an organization described in section 170(c) of the Internal Revenue Code; and

c. Following the termination of the payments described in sub-subdivision a. of this subdivision, the remainder interest in the trust is to be transferred to, or for the use of, an organization that is or was described in section 170(c) of the Internal Revenue Code, or is to be retained by the trust for such a use.

Notwithstanding sub-subdivisions a. and b. of this subdivision, the trust instrument may provide that the trustee shall pay to the income beneficiary for any year (i) the amount of the trust income if that amount is less than the amount required to be distributed under sub-subdivision a. of this subdivision, and (ii)

any amount of the trust income that exceeds the amount required to be distributed under sub-subdivision a. of this subdivision to the extent that (by reason of sub-subdivision a.) the aggregate of the amounts paid in prior years is less than the aggregate of the required amounts.

(4) "Qualified contingency" means any provision of the governing instrument that provides that, upon the happening of a contingency, the payments made to an individual noncharitable beneficiary of a charitable remainder trust will terminate not later than those payments would otherwise terminate under the governing instrument. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, ss. 1-3; 2005-192, s. 2.)

§ 36C-4B-4. Administrative provisions applicable to both charitable remainder annuity trusts and charitable remainder unitrusts.

(a) Creation of Remainder Interests in Charity. – Upon the termination of the noncharitable interests, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiary or beneficiaries, to the designated charity or charities, or shall hold the property in trust for the designated charity or charities in accordance with the terms of the trust document.

(b) Selection of Alternate Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(c) of the Internal Revenue Code at Time of Distribution. – If the designated charity is not an organization described in section 170(c) of the Internal Revenue Code at the time when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in section 170(c) of the Internal Revenue Code selected in accordance with the terms of the trust instrument. If the trust instrument does not provide for a method of selecting alternate charitable beneficiaries that are then qualified under section 170(c) of the Internal Revenue Code, the trustee must, in the trustee's sole discretion, select alternate trust beneficiaries that are qualified under section 170(c) of the Internal Revenue Code.

(c) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of Distribution. – Notwithstanding subsection (b) of this section, if the designated charity is, at the time of the creation of the trust, an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the designated charity is not an organization described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code when any principal or income of the trust is to be distributed to it, the trustee must distribute the principal or income to one or more organizations then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code selected in accordance with the terms of the governing instrument; however, in the event that the governing instrument does not provide a method of selecting alternative charitable beneficiaries that are then described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, the trustee shall, in his sole discretion, select one or more alternative charitable beneficiaries that are described in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and must distribute the principal or income to the organization or organizations so selected in shares as the trustee, in the trustee's sole discretion, shall determine.

(d) Prohibitions Governing Trustees. – Except for payment of the annuity amount or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, retaining any excess business holdings as defined in section 4943(c) of the Internal Revenue Code

that would subject the trust to tax under section 4943 of the Code, making any investments that would subject the trust to tax under section 4944 of the Internal Revenue Code, and making any taxable expenditures as defined in section 4945(d) of the Code. The trustee shall make distributions at a time and in a manner as not to subject the trust to tax under section 4942 of the Internal Revenue Code.

(e) Distribution to Charity During Term of Noncharitable Interests and Distributions in Kind. – If the governing instrument of the trust provides for distribution to charity during the term of the noncharitable interests, the trustee may pay to the designated charity the amounts specified in the governing instrument that exceed the annuity amount or the unitrust amount payable to any of the beneficiaries for the taxable year of the trust in which the income is earned. If the governing instrument of the trust provides for distribution to charity in kind, the adjusted basis for federal income tax purposes of any trust property the trustee distributes in kind to charity during the term of the noncharitable interests must be fairly representative of the adjusted basis for those purposes of all trust property available for distribution on the date of distribution.

(f) Investment Restrictions on Trustee. – Nothing in the trust instrument shall be construed to restrict the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

(g) Distribution From Trust Used to Administer an Estate to Charitable Remainder Trust. – If the governing instrument of a revocable inter vivos trust provides that the revocable inter vivos trust will be used partially to administer the estate of the settlor or for some other purpose, and further provides the assets will then be distributed to another trust that is a charitable remainder trust, upon the death of the settlor, or upon the occurrence of any event that causes the trust to become irrevocable, then the trust shall become irrevocable, and the trustee of this trust shall perform any remaining duties or obligations provided for in the trust instrument and then transfer the property specified in the governing instrument to the trustee of the charitable remainder trust to be held, administered, and distributed in the manner and according to the terms and conditions provided by the charitable remainder trust.

(h) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter vivos charitable remainder trust that is liable to pay, from trust property, any federal estate, state inheritance, or other similar death taxes by reason of the death of the settlor of the trust, the interest of any noncharitable beneficiary of the trust shall terminate upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust sufficient funds for payment of all those taxes attributable to the interest of the noncharitable beneficiary in the trust property, and the termination shall be deemed as the occurrence of a qualified contingency. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, ss. 4, 5; 2005-192, s. 2.)

§ 36C-4B-5. Administrative provisions applicable to charitable remainder trusts only.

(a) Creation of Annuity Amount for Period of Years or Life. – In each taxable year of the trust, the trustee shall pay the annuity amount designated in the trust instrument to the beneficiaries named in the trust instrument during their lives or, if the governing instrument so provides, for a period of 20 years or less. The annuity amount shall be paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The annuity amount shall be paid from income and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal.

The total amount payable at least annually to a person or persons named in the trust document, at least one of which is not an organization described in section 170(c) of the Internal Revenue

Code, may not be less than five percent (5%) of the initial net fair market value of the property placed in trust as finally determined for federal tax purposes, except as provided in subsection (g) of this section.

(b) Computation of Annuity Amount in Short and Final Taxable Years. – For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the annuity amount on a daily basis.

(c) Prohibition of Additional Contributions. – No additional contributions shall be made to the trust after the initial contribution.

(d) Deferral of Annuity Amount During Period of Administration or Settlement. – When property passes to the trust at the death of the settlor, the obligation to pay the annuity amount commences with the date of death of the settlor, but payment of the annuity amount may be deferred from the date of the settlor's death to the end of the taxable year in which complete funding of the trust occurs. Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

(1) Any annuity amounts actually paid, plus interest on those amounts computed at ten percent (10%) a year, compounded annually; and

(2) The annuity amounts payable, determined under the method described in Section 1.664-1(a)(5) of the federal income tax regulations, plus interest on those amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the annuity amounts, if the governing instrument was executed or last amended before August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the annuity amounts must be computed using an interest rate at six percent (6%) a year, compounded annually.

(e) Dollar Amount Annuity May Be Stated as Fraction or Percentage. – If the governing instrument of the trust states the amount of the annuity as a fraction or a percentage, the trustee must pay to the beneficiaries in each taxable year of the trust during their lives an annuity amount equal to a percentage (that percentage being stipulated in the governing instrument of the trust and, in any event, being five percent (5%) or greater) of the initial net fair market value of the assets constituting the trust. In determining this amount, assets shall be valued at their values as finally determined for federal tax purposes. If the fiduciary incorrectly determines the initial net fair market value of the assets constituting the trust, then, within a reasonable period after a final determination, the trustee shall pay to the beneficiaries, in the case of an undervaluation or shall receive from the beneficiaries, in the case of an overvaluation, an amount equal to the difference between the annuity amount properly payable and the annuity amount actually paid.

(f) Annuity Amount May Be Allocated Among Class of Noncharitable Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust provides that the annuity trust amount may be allocated among a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee must pay the annuity amount, which is defined in the governing instrument of the trust, in each taxable year of the trust, to the member or members of the class of noncharitable beneficiaries in an amount and proportions as the trustee in the trustee's absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the entire annuity amount to one member of this class or may apportion it among the various members in a manner as the trustee from time to time considers advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the

trust under the rules of section 671 through section 678 of the Internal Revenue Code. If the class provided for in the governing instrument is open, then the distribution must be for a period of years not to exceed 20 years, notwithstanding a provision to the contrary in the trust instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire annuity amount for each taxable year annually and may not delay payment of the annuity amount.

(g) Reduction of Annuity Amount If Part of Corpus Is Paid to Charity at Expiration of Term of Years or on Death of Recipient. – If the governing instrument of the trust provides for the reduction of the annuity amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries, the trustee shall, in each taxable year of the trust, pay a total annuity amount of at least five percent (5%) of the initial net fair market value of the assets placed in trust. Upon the expiration of the term of years or the death of a beneficiary, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay, annually or in more frequent installments, to the survivors for their lives, an annuity amount that in each taxable year of the trust, bears the same ratio to five percent (5%) of the initial net fair market value of the trust assets as the net fair market value of the trust assets valued as of the date of distribution, less the amount or percentage of trust assets distributed to the charity, bears to the net fair market value of the trust assets as of the date of distribution.

(h) Termination of Annuity Amount on Payment Date Preceding Termination of Noncharitable Interest. – If the governing instrument of the trust provides that payment of the annuity amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee must pay to the noncharitable beneficiary during the term of the noncharitable interest the annuity amount, defined in the trust document, in each taxable year of the trust. The obligation of the trustee to pay the annuity amount shall terminate with the payment preceding the death of the noncharitable beneficiary or other event that terminates the noncharitable interest.

(i) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the governing instrument of the trust provides that the settlor of the trust retains the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in section 170(c) of the Internal Revenue Code, then the trustee shall pay to the settlor during the settlor's life the annuity amount, as defined in the governing instrument of the trust and, upon the death of the settlor, if the noncharitable beneficiary survives the settlor, the trustee must pay to the noncharitable beneficiary during that beneficiary's life the annuity amount equal to the amount paid to the settlor. The settlor shall have the power, exercisable only by will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the settlor and noncharitable beneficiary; or (ii) the death of the settlor if the settlor effectively exercised the settlor's testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee must distribute all of the then principal and income of the trust, other than any amount due the settlor or noncharitable beneficiary, to the charity named in the trust document or, if the governing instrument so provides, the trustee must continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust is effective. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, s. 6; 2005-192, s. 2.)

§ 36C-4B-6. Administrative provisions applicable to charitable remainder unitrusts only.

(a) Creation of Unitrust Amount for a Period of Years or Life. – The trustee shall pay to the beneficiaries named in the trust investment in each taxable year of the trust during their lives or, if the governing instrument so provides, for a period not exceeding 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing instrument of the trust, of the net fair market value of the trust assets valued annually on the date or by the method designated in the governing instrument of the trust or, if no date or method is specified, on the date or by the method selected by the trustee in the trustee's discretion, so long as the same valuation date or dates or valuation methods are used each year. The unitrust amount is paid annually or in more frequent equal or unequal installments if the governing instrument so provides. The unitrust amount is paid from income and, to the extent that income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust amount is added to principal. The fixed percentage to be paid at least annually to all beneficiaries cannot be less than five percent (5%).

(b) Unitrust Amount Expressed as the Lesser of Income or a Fixed Percentage. – If the governing instrument of the trust provides that the trustee shall pay, instead of a regular unitrust amount (the fixed percentage of the net fair market value of the trust assets, determined annually), the amount of trust income for the taxable year to the extent that this amount is not greater than the amount required to be distributed as a regular unitrust amount for that taxable year or the amount of the trust income for the taxable year that exceeds the regular unitrust amount for that taxable year to the extent that the aggregate of the amounts paid in prior years is less than the aggregate of the regular unitrust amount for those prior years, then the trustee must pay to the beneficiaries in each taxable year of the trust during their lives, or for a period not exceeding 20 years if the trust agreement so provides, an amount equal to the lesser of (i) the trust income for the taxable year, as defined in section 643(b) of the Internal Revenue Code and the regulations under that section, and (ii) the percentage, as stated in the governing instrument, of the net fair market value of the trust assets valued as of the taxable year decreased as elsewhere provided if the taxable year is a short taxable year or is the taxable year in which the noncharitable interest terminates by death or otherwise, and increased as elsewhere provided if additional contributions are made in the taxable year.

If the governing instrument of the trust so provides and if the trust income for any taxable year exceeds the amount determined under (ii) above, the payment to beneficiaries also must include the excess income to the extent that the aggregate of the amounts paid to beneficiaries in prior years is less than the percentage of the aggregate net fair market value of the trust assets, which percentage is defined in the governing instrument of the trust, for these years. Payments to beneficiaries must be made annually or in more frequent equal or unequal installments if the governing instrument so provides. Any income of the trust in excess of these payments must be added to principal.

(c) Adjustment for Incorrect Valuation. – If the fiduciary incorrectly determines the net fair market value of the trust assets for any taxable year, the trustee must, within a reasonable period after the final determination of the correct value, pay to the beneficiaries, in the case of an undervaluation, or receive from the beneficiaries, in the case of an overvaluation, an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

(d) Computation of Unitrust Amount in Short and Final Taxable Years. – For a short taxable year and for the taxable year in which the noncharitable beneficiary's interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on a daily basis. If a trust provides

for a valuation date other than the first day of the taxable year, and the valuation date does not occur in a taxable year of the trust because the taxable year is either a short taxable year or is the taxable year in which the noncharitable interests terminate, the trust assets must be valued as of the last day of the short taxable year or the day on which the noncharitable interests terminate, as appropriate.

(e) Additional Contributions. – If the governing instrument does not prohibit additional contributions and additional contributions are made to the trust after the initial contribution in the trust, the unitrust amount for the taxable year in which the additional contributions are made must be a fixed percentage, as stated in the governing instrument of the trust, of the sum of (i) the net fair market value of trust assets, excluding the additional contributions and any income from or appreciation of these contributions and (ii) that proportion of the value of the additional contributions excluded under (i) which the number of days in the period beginning with the date of contribution and ending with the earlier of the last day of the taxable year or the day the noncharitable beneficiary's interest terminated bears to the number of days in the period beginning on the first day of the taxable year and ending with the earlier of the last day in the taxable year or the day the noncharitable beneficiary's interest terminated. If no valuation date occurs after the contributions are made, the assets so added are valued as of the time of contribution.

(f) Deferral of Unitrust Amount During Period of Administration or Settlement. – When property passes to the trust at the death of the settlor, the obligation to pay the unitrust amount commences with the date of the settlor's death, but payment of the unitrust amount may be deferred from the date of the settlor's death to the end of the taxable year of the trust in which complete funding of the trust occurs. Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

(1) Any unitrust amounts actually paid, plus interest on those amounts computed at ten percent (10%) a year, compounded annually; and

(2) The unitrust amounts payable, determined under the method described in section 1.664-1(a)(5) of the federal income tax regulations, plus interest on those amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the unitrust amounts, if the governing instrument was executed or last amended before August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the unitrust amounts shall be computed using an interest rate of six percent (6%) a year, compounded annually.

(g) Unitrust Amount May Be Allocated Among Class of Noncharitable Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust provides that the unitrust amount may be allocated to a class of noncharitable beneficiaries in the discretion of the trustee, then the trustee must pay, in each taxable year of the trust, the unitrust amount to the member or members of the class of noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's absolute discretion shall from time to time determine until the last of the noncharitable beneficiaries dies. The trustee may pay the unitrust amount to any one member of the class or may apportion it among the various members in a manner that the trustee shall from time to time consider advisable as long as the power to allocate does not cause any person to be treated as the owner of any part of the trust under the rules of section 671 through section 678 of the Internal Revenue Code. If the class provided for in the governing instrument is open, the distribution must be for a period not exceeding 20 years, notwithstanding a provision to the contrary in the trust

instrument. If the class provided for in the governing instrument is closed at the creation of the trust, and all members of the class are ascertainable, the distribution may be for the lives of the members of the class or for a period not exceeding 20 years. The trustee shall pay the entire unitrust amount for each taxable year annually and may not delay payment of the unitrust amount.

(h) Reduction of Unitrust Amount if Part of Corpus Is Paid to Charity at Expiration of Term of Years or on Death of a Recipient. – If the governing instrument of the trust provides for the reduction of the unitrust amount if part of the corpus is paid to charity at the expiration of a term of years or upon the death of a recipient, then during the term of years or during the joint lives of the noncharitable beneficiaries the trustee shall, in each taxable year of the trust, pay the total unitrust amount equal to a percentage of the net fair market value of the trust assets valued annually, which shall not be less than five percent (5%). Upon expiration of the term of years or the death of a recipient, the trustee shall distribute an amount or percentage of the trust assets, as provided in the governing instrument of the trust, to the charity named in the governing instrument, and thereafter the trustee shall pay to the survivors for their lives a unitrust amount in each taxable year of the trust equal to at least five percent (5%)(the actual percentage being defined in the trust instrument) of the net fair market value of the remaining trust assets valued annually.

(i) Termination of Unitrust Amount on Payment Date Preceding Termination of Noncharitable Interests. – If the governing instrument of the trust provides that payment of the unitrust amount may terminate with the regular payment preceding the termination of all noncharitable interests, then the trustee must pay the unitrust amount to the noncharitable beneficiary in each taxable year of the trust during the term of the noncharitable interest. The obligation of the trustee to pay the unitrust amount terminates with the payment preceding the termination of the noncharitable interest by death or otherwise. The five percent (5%) requirement provided in subsection (a) of this section shall be met until the termination of all payments of the unitrust amount.

(j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the governing instrument of the trust provides that the settlor of the trust shall retain the power, exercisable only by will, to revoke or terminate the interest of any recipient other than an organization described in section 170(c) of the Internal Revenue Code, then the trustee must pay the unitrust amount to the settlor during the settlor's life and, upon the death of the settlor, shall pay the unitrust amount to the noncharitable beneficiary during the charitable beneficiary's life, provided the noncharitable beneficiary survives the settlor. The settlor shall have the power, exercisable only by will, to revoke and terminate the interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the survivor of the settlor and the noncharitable beneficiary; or (ii) the death of the settlor if the settlor effectively exercised the testamentary power to revoke and terminate the interest of the noncharitable beneficiary, the trustee shall distribute all of the then principal and income of the trust, other than any amount due the noncharitable beneficiaries, to the charity named in the trust document or, if the governing instrument so provides, the trustee shall continue to hold the principal and income in trust for the charity or for the charitable purposes specified in the trust. No other retained power to terminate an interest in the trust is effective. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 1985, c. 406, s. 7; 2005-192, s. 2.)

§ 36C-4B-7. Interpretation.

This Article shall be interpreted and construed to effectuate its general purpose to cause all charitable remainder annuity trusts and all charitable remainder unitrusts to be administered in

accordance with section 2055 and section 2522 of the Internal Revenue Code and the regulations under those sections. (1981 (Reg. Sess., 1982), c. 1252, s. 1; 2005-192, s. 2.)

Article 4C.

Judicial Establishment of Validity of a Revocable Trust.

§ 36C-4C-1. Proceedings for validity of a revocable trust.

A settlor may commence a judicial proceeding to establish the validity of a revocable trust pursuant to this Article. (2021-53, s. 1.1.)

§ 36C-4C-2. Establishing validity of a revocable trust before death.

(a) During the settlor's lifetime, any settlor of a revocable trust who is a resident of North Carolina may commence a judicial proceeding seeking a judicial declaration that the trust is valid.

(b) The petition shall be filed with the Superior Court Division of the General Court of Justice. At the hearing, the petitioner shall produce the evidence necessary to establish that the revocable trust, including any existing amendments thereto, is valid and enforceable under its terms, subject only to a subsequent amendment or revocation of the revocable trust. Civil summonses shall be issued to those interested persons identified in the settlor's petition, and such parties shall be served with a copy of the summons and petition as provided in Rule 4 of the Rules of Civil Procedure.

(c) The petition filed to determine the validity of a revocable trust may also join as an additional claim a request for a judicial declaration that the petitioner's will or codicil is valid as provided in Article 2B of Chapter 28A of the General Statutes and, notwithstanding G.S. 28A-2B-1(b), the joined action shall be heard in the Superior Court Division of the General Court of Justice as provided in this Article.

(d) Failure to use the procedure authorized by this Article shall not have any evidentiary or procedural effect on any future proceedings, including trust proceedings, civil actions, and estate proceedings.

(e) For purposes of this Article only, a "petitioner" is a person who requests a judicial declaration that confirms the validity of that person's revocable trust. (2021-53, s. 1.1.)

§ 36C-4C-3. Venue.

The venue for a petition under this Article shall be as provided in G.S. 36C-2-204. (2021-53, s. 1.1.)

§ 36C-4C-4. Contents of petition for revocable trust validity.

(a) Petition. – A petition requesting an order declaring that a petitioner's revocable trust is valid shall be verified and shall contain the following information:

(1) A statement that the petitioner is a resident of North Carolina and specifying the county of the petitioner's residence.

(2) Allegations that the revocable trust was prepared and executed in accordance with North Carolina law and a statement that the revocable trust was created with intent to create the revocable trust.

(3) A statement that the petitioner had capacity to create a revocable trust at the time the trust was created.

(4) A statement that the petitioner was free from undue influence and duress and executed the revocable trust in the exercise of the petitioner's free will.

(5) A statement identifying the petitioner, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall attach a copy of the revocable trust and any amendments then in effect to the petition. If an order is entered declaring the revocable trust to be valid, the petitioner shall tender the original revocable trust and any amendments then in effect at the hearing, and the court shall affix a certificate of validity to such revocable trust and amendments, if any. (2021-53, s. 1.1.)

§ 36C-4C-5. Declaration by court; bar to contesting validity of trust.

(a) If the court enters a judgment declaring a revocable trust to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding, pursuant to the provisions of Article 3 of Chapter 36C of the General Statutes, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a challenge to the validity of the revocable trust once that trust becomes irrevocable.

(b) If the court declares a revocable trust to be valid, upon the motion of the petitioner or the court, the court may order that the trust cannot be revoked and that no subsequent revocable trust or amendment to the validated trust will be valid unless the revocation or the subsequent amendment to the validated trust is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the trust not declared valid in a proceeding under this Article shall be void, and any subsequent trust or amendment to the validated trust not declared valid in a proceeding under this Article shall be void.

(c) If a revocable trust judicially declared valid is revoked or modified by a subsequent revocable trust or amendment, nothing in this section shall bar an interested person from contesting the validity of that subsequent trust or amendment, unless that subsequent trust or amendment is also declared valid in a proceeding under this Article in which the interested person was a party. If a trust or amendment to a trust judicially declared valid is revoked by a method other than the execution of a subsequent trust, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

(d) Nothing in this Article shall preclude a party from seeking relief from a judgment pursuant to Rule 60 of the North Carolina Rules of Civil Procedure, including, without limitation, for fraud upon the court. (2021-53, s. 1.1.)

§ 36C-4C-6. Confidentiality.

(a) Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the court shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the court to any person other than the following:

(1) The petitioner named in the petition.

(2) The attorney for the petitioner.

(3) A court of competent jurisdiction hearing or reviewing the matter.

(b) For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section. Following the petitioner's death, a sealed file shall be unsealed upon the request of any interested person for the purpose of other estate proceedings. (2021-53, s. 1.1.)

Article 5.

Creditors' Claims; Spendthrift and Discretionary Trusts.

§ 36C-5-501. Rights of beneficiary's creditor or assignee.

(a) Except as provided in subsection (b) of this section, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to that relief as is appropriate under the circumstances.

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

(1) A spendthrift provision.

(2) A discretionary trust interest as defined in G.S. 36C-5-504(a)(2).

(3) A protective trust interest as described in G.S. 36C-5-508. (2005-192, s. 2; 2007-106, s. 19.)

§ 36C-5-502. Spendthrift provision.

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this Article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. (2005-192, s. 2.)

§ 36C-5-503. Exceptions to spendthrift provision.

(a) As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to relief that is appropriate under the circumstances. (2005-192, s. 2.)

§ 36C-5-504. Discretionary trusts; effect of standard.

(a) In this section:

(1) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(2) "Discretionary trust interest" means an interest in a trust that is subject to the trustee's discretion, whether or not the discretion is expressed in the form of a standard of distribution. A discretionary trust interest shall include an interest in any one or any combination of the following:

a. A trust in which the amount to be received by the beneficiary, including whether or not the beneficiary, or a class of beneficiaries, is to receive anything at all, is within the discretion of the trustee.

b. A trust in which the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or apply on behalf of the beneficiary, those sums that the trustee, in the trustee's discretion, determines are appropriate for the support, education, or maintenance of the beneficiary.

(b) The beneficiary may not transfer a discretionary trust interest. Except as otherwise provided in this Article, a creditor or assignee of a beneficiary may not reach a discretionary trust interest or a distribution by the trustee before its receipt by the beneficiary.

(c) Except as provided in subsection (d) of this section, a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest even if the trustee has abused the trustee's discretion.

(d) To the extent that a trustee has not complied with a standard of distribution or has abused a discretion:

(1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and

(2) The court shall direct the trustee to pay to the child an amount that is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(e) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(f) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard. (2005-192, s. 2.)

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

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

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

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

(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be

distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by applicable law.

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

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

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

(c) Subject to the Uniform Voidable Transactions Act, Article 3A of Chapter 39 of the General Statutes, for purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) If the settlor is a beneficiary after the death of the settlor's spouse:

a. 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.

b. An irrevocable inter vivos marital trust that is treated as a qualified terminable interest trust under section 2523(f) of the Internal Revenue Code.

c. An irrevocable inter vivos trust of which the settlor's spouse is a beneficiary during the spouse's lifetime but which does not qualify for the federal gift tax marital deduction, and during the lifetime of the settlor's spouse (i) the settlor's spouse is the only beneficiary or (ii) the settlor's spouse and any issue of the settlor or the settlor's spouse, or both, are the only beneficiaries.

d. Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in sub-subdivisions a., b., and c. of this subdivision.

For purposes of this subdivision, notwithstanding the provisions of G.S. 36C-1-103(3), 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.

(2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse, regardless of whether or when that person was a settlor of an irrevocable inter vivos trust for the benefit of the person's spouse.

For purposes of this subsection, the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable inter vivos trust was created, notwithstanding a subsequent

dissolution of the marriage. (2005-192, s. 2; 2007-106, s. 20; 2011-339, s. 2; 2013-91, s. 2(b); 2015-205, s. 9; 2017-212, s. 8.5(a).)

§ 36C-5-506. Overdue distribution.

(a) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term excludes a distribution subject to the exercise of the trustee's discretion, regardless of whether the terms of the trust (i) include a support or other standard to guide the trustee in making distribution decisions; or (ii) provide that the trustee "may" or "shall" make discretionary distributions, including distributions under a support or other standard.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date. (2005-192, s. 2.)

§ 36C-5-507. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. (2005-192, s. 2.)

§ 36C-5-508. Protective trusts.

Except with respect to an interest retained by the settlor, a "protective trust interest" means an interest in a trust in which the terms of the trust provide that the interest terminates or becomes discretionary if:

(1) The beneficiary alienates or attempts to alienate that interest; or

(2) Any creditor attempts to reach the beneficiary's interest by attachment, levy, or otherwise; or

(3) The beneficiary becomes insolvent or bankrupt. (2005-192, s. 2.)

Article 6.

Revocable Trusts.

§ 36C-6-601. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. (2005-192, s. 2.)

§ 36C-6-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust without regard to the actual capacity of the settlor. This subsection does not apply to a trust created under an instrument executed before the effective date of this Chapter.

(b) If a revocable trust is created or funded by more than one settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

a. A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

b. By oral statement to the trustee if the trust was created orally; or

c. Any other written method delivered to the trustee manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) Repealed by Session Laws 2007-106, s. 21, effective October 1, 2007.

(f) Repealed by Session Laws 2007-106, s. 22, effective October 1, 2007.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked. (2005-192, s. 2; 2007-106, ss. 21, 22.)

§ 36C-6-602.1. Exercise of settlor's powers with respect to revocable trust by agent or guardian.

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

(1) Revocation of the trust.

(2) Amendment of the trust.

(3) Additions to the trust.

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

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

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

(b) A general guardian or a guardian of the estate of the settlor may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24). (2007-106, s. 23.)

§ 36C-6-603. Settlor's control of revocable trust.

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

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors. (2005-192, s. 2; 2007-106, s. 24.)

§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Three years after the settlor's death.

(2) 120 days after the trustee sent the person a copy of the trust instrument and written notice pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to administer the trust and distribute the trust property in accordance with the terms of the trust and shall not be subject to liability for doing so, except that the trustee shall not distribute trust property to any beneficiary in contravention of the rights of any person who may be affected by the outcome of a pending or possible judicial proceeding if, at the time the distribution is made, any of the following apply:

(1) The trustee knows of a pending judicial proceeding contesting the validity of all or part of the terms of the trust or contesting the identity of the beneficiaries eligible to receive distributions therefrom.

(2) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the validity of all or part of the terms of the trust or to contest the identity of the beneficiaries eligible to receive distribution therefrom, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(b1) Any distribution in contravention of the provisions of subsection (b) of this section shall constitute a breach of trust by the trustee. Upon motion of a party and after notice to interested parties, a court, on good cause shown, may make an exception to the provisions of subsection (b) of this section and authorize the trustee to distribute trust assets to a beneficiary, subject to any conditions the court, in the court's discretion, may impose, including the posting of a bond by the beneficiary.

(c) A beneficiary of a trust that is determined to have been invalid, or whose interest in a trust has been determined to be invalid, is liable to return any distribution received. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution, including attorneys' fees. (2005-192, s. 2; 2011-344, s. 13; 2012-18, s. 3.11; 2025-33, s. 11.1.)

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

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

(b) If the provisions of subsection (a) of this section do not apply to the disposition of property that fails, the property shall pass to the beneficiaries in proportion to their share of the residue of the trust. If the disposition is part of the residue of the trust, it shall augment the shares of the other residuary beneficiaries, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary beneficiaries, then the property shall pass by intestacy. (2007-106, s. 25.)

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

(a) Unless a contrary intent is expressly indicated in the revocable trust, if the settlor's marriage is dissolved by absolute divorce or annulment after the execution of a revocable trust, then the settlor's former spouse shall be deemed to have predeceased the settlor for all purposes related to the construction, interpretation, or administration of that revocable trust. This section shall apply to all provisions of the settlor's revocable trust, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as executor, trustee, conservator, guardian, or any other fiduciary or nonfiduciary position.

(b) This section shall not apply to a revocable trust if any of the following occur:

(1) The settlor executes a subsequent valid amendment to the revocable trust, such as by date of the revocable trust, and which modifies the revocable trust.

(2) The settlor remarries the former spouse prior to the settlor's death, unless the remarriage is subsequently dissolved by absolute divorce or annulment.

(c) As used in this section, the term "former spouse" includes a purported former spouse. (2007-106, s. 26; 2023-120, s. 2.2.)

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

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

(b) The settlor is a necessary party to any proceeding brought to modify or terminate a revocable trust. (2007-106, s. 26.1.)

Article 7.

Office of Trustee.

§ 36C-7-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

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

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within 120 days after written notice to accept the trusteeship is provided is considered to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. (2005-192, s. 2; 2006-259, s. 13(j).)

§ 36C-7-702. Trustee's bond.

(a) A trustee shall provide bond to secure the performance of the trustee's duties if:

(1) The trust instrument was executed before January 1, 2006, unless the terms of the trust instrument provide otherwise;

(2) The trust instrument was executed on or after January 1, 2006, but only if the terms of the trust instrument require the trustee to provide bond;

(3) A beneficiary requests the trustee to provide bond, and the court finds the request to be reasonable; or

(4) The court finds that it is necessary for the trustee to provide bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee if the governing instrument directs otherwise.

(b) If bond is required, it shall be in a sum of double the value of the personal property to come into the trustee's hands if bond is executed by a personal surety, and in an amount not less than one and one-fourth times the value of all personal property of the trust estate if the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) of that value, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive property that may come into the trustee's hands. All bonds executed under this Article shall be filed with the clerk of superior court.

(c) On petition of the trustee or a qualified beneficiary, the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties.

(d) As provided in G.S. 53-159 and G.S. 53-366(a)(10), banks and trust companies licensed to do trust business in this State need not give bond, even if required by the terms of the trust. (1911, c. 39, s. 7; C.S., s. 4031; 1951, c. 264; 1965, c. 1177, s. 1; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 5; 2005-192, s. 2.)

§ 36C-7-703. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision if more than two are serving. Unanimity is required when only two cotrustees are serving.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust and exercise all trustee powers, except those powers that the remaining trustees are prohibited from exercising under the trust instrument or by law.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under

other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee with the consent of the cotrustee the performance of any function other than those the settlor reasonably expected the trustees to perform jointly. The following functions are not considered to be those that the settlor reasonably expected the trustees to perform jointly:

(1) Establish and maintain bank accounts for the trust and issue checks for the trust.
(2) Maintain inventories, accountings, and income and expense records of the trust.
(3) Enter any safety deposit box rented by the trust.
(4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.
(5) List trust property for taxes and prepare and file tax returns for the trust.
(6) Collect and give receipts for claims and debts of the trust.
(7) Pay debts, claims, costs of administration, and taxes of the trust.
(8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the trust.
(9) Have custody of the trust property.
(10) Perform any function relating to investment of trust assets.

The list of functions contained in this subsection is not intended to be exclusive of others that may be delegated to a cotrustee in accordance with this subsection.

(e1) Repealed by Session Laws 2015-205, s. 10, effective October 1, 2015.

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and
(2) Compel a cotrustee to redress a serious breach of trust.

(g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:

(1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.
(2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.
(3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:
    a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.
    b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

(h) If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:

(1) The dissenting cotrustee does not join in the action.

(2) The dissenting cotrustee joins in the action necessary to carry out the decision of the other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the action.

(i) Notwithstanding any other provision of this section to the contrary, if two or more trustees own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, the act binds all;

(2) If more than one vote, in person or by proxy, the act binds all; and

(3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately. (2005-192, s. 2; 2007-106, ss. 27, 28, 29; 2012-18, s. 3.2; 2015-205, s. 10.)

§ 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. (1911, c. 39, s. 8; C.S., s. 4032; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 6; 2005-192, s. 2; 2007-106, s. 30; 2011-339, s. 3.)

§ 36C-7-705. Resignation of trustee.

(a) A trustee may resign:

(1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) With the approval of the court.

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

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation. (2005-192, s. 2.)

§ 36C-7-706. Removal of trustee.

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

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries. (2005-192, s. 2.)

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

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. A former trustee shall execute those documents acknowledging the transfer of title to

trust property as may be reasonably requested by the cotrustee, successor trustee, or other person entitled to it to facilitate administration of the trust, and in the event that the former trustee fails to do so, the clerk of superior court may order the former trustee to execute those documents. (2005-192, s. 2; 2012-18, s. 3.5.)

§ 36C-7-708. Compensation of trustee.

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation determined in accordance with Article 6 of Chapter 32 of the General Statutes.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified. (2005-192, s. 2.)

§ 36C-7-709. Reimbursement of expenses.

A trustee is entitled to be reimbursed out of the trust property for expenses properly incurred in the administration of the trust as provided in G.S. 32-58. (2005-192, s. 2.)

Article 8.

Duties and Powers of Trustee.

§ 36C-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, a trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this Chapter. (2005-192, s. 2.)

§ 36C-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in G.S. 36C-10-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account, or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests, is voidable by a beneficiary affected by the transaction, without regard to whether the transaction is fair to the beneficiary, unless:

(1) The terms of the trust authorized the transaction;

(2) The court approved the transaction;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by G.S. 36C-10-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with G.S. 36C-10-1009; or

(5) The transaction involves a contract entered into, or claim acquired by, the trustee before the person became or contemplated becoming trustee.

(c) In determining whether a sale, encumbrance, or other transaction involving the investment or management of trust property is affected by a conflict of interest between the trustee's fiduciary and personal interests, the transaction is rebuttably presumed to be affected by a conflict of interest if the trustee enters into the transaction with:

(1) The trustee's spouse or a parent of the trustee's spouse;

(2) The trustee's descendants, siblings, ancestors, or their spouses;

(3) An agent, attorney, employee, officer, director, member, manager, or partner of the trustee, or an entity that controls, is controlled by, or is under common control with the trustee; or

(4) Any other person or entity in which the trustee, or a person that owns a significant interest in the trust, has an interest or relationship that might affect the trustee's best judgment.

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

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

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

(1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually provides notice of the rate and method by which the compensation was determined to each beneficiary of the trust to whom the trustee owes a duty under G.S. 36C-8-813(a)(1) to provide the information described in that subdivision; and

(2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made for the same or similar services.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect to appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude any of the following transactions:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee.

(2) Payment of compensation to which the trustee is entitled under G.S. 36C-7-708.

(3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an interest.

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the trustee.

(5) An advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee. (1999-215, s. 1; 2005-192, s. 2; 2007-106, ss. 31, 32, 33; 2015-205, s. 10.5; 2015-264, s. 31(a).)

§ 36C-8-803. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. (2005-192, s. 2.)

§ 36C-8-805. Cost of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-806. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State. (2005-192, s. 2.)

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

While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the

terms of the trust. The duty and liability of the trustee subject to the direction and consent of the settlor is as follows:

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

(2) The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent. (2005-192, s. 2; 2007-106, s. 34; 2012-18, s. 3.1.)

§ 36C-8-809. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property. (2005-192, s. 2.)

§ 36C-8-810. Record keeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts. (2005-192, s. 2; 2007-106, s. 34.1.)

§ 36C-8-811. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. (2005-192, s. 2.)

§ 36C-8-812. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee. (2005-192, s. 2.)

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

(a) The trustee is under a duty to do all of the following:

(1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.

(2) In response to a reasonable request of any qualified beneficiary:

a. Provide a copy of the trust instrument.

b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.

c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

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

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

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

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

(d) Repealed by Session Laws 2007-106, s. 35, effective October 1, 2007. (2005-192, s. 2; 2007-106, s. 35.)

§ 36C-8-814. Discretionary powers; tax savings.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive, even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

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

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

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

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

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

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

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or section 2523(e) of the Internal Revenue Code, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust, if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

(e) If a trust created under a will or trust instrument for the benefit of the spouse of the settlor of the trust, other than a trust that provides that upon the termination of the income interest that the entire remaining trust estate be paid to the estate of the spouse, requires that all the income of the trust be paid not less frequently than annually to the spouse and a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the trust instrument specifically provides otherwise by reference to this section, any investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require either that the asset be made productive of income, or that it be converted to assets productive of income, within a reasonable period of time. (1991, c. 736, s. 2; 2003-232, s. 5a; 2005-192, s. 2; 2007-106, s. 36.)

§ 36C-8-815. General powers of trustee.

(a) A trustee, without authorization by the court, may exercise any of the following:

(1) Powers conferred by the terms of the trust.

(2) Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and

c. Any other powers conferred by this Chapter.

(b) No provision of this section shall relieve a trustee of the fiduciary duties under this Article. (2005-192, s. 2; 2006-259, s. 13(k).)

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

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

(1) Collect and control trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Invest and reinvest trust property as the trustee considers advisable in accordance with the trust, and to acquire or sell property, for cash or on credit, at public or private sale;
(3) Exchange, partition, or otherwise change the character of trust property;
(4) Deposit trust money in an account in a regulated financial services institution, including an institution operated by the trustee or an affiliate of the trustee upon compliance with any applicable requirements for the deposit;
(5) Borrow money, with or without security, including from a corporate trustee's lending department, renew or modify loans, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise, form and transfer, assign, and convey to that form of business or enterprise all or any part of the trust property in exchange for the stock, securities, or obligations of that form of business or enterprise, continue any business or other enterprise, and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization, or contributing additional capital;
(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
    a. Vote, or give general or limited proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement, or execute waivers, consents, or objections with respect to those securities;
    b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
    c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights;
    d. Deposit the securities with a depositary or other regulated financial service institution; and
    e. Consent, directly or through a committee or other agent, to the merger, consolidation, reorganization, readjustment of capital or financial structure, lease, sale, dissolution, or liquidation of a business enterprise, and elect whether to participate as a member of a class in any litigation involving the securities;
(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing party walls or buildings or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries, make contracts, licenses, leases, conveyances, or grants of every nature and kind with respect to crops, gravel, sand, oil, gas, timber and forest products, other usufructs or natural resources, and other benefits or incidents of the real property;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust at the expense of the trust;

(12) Abandon, relinquish any or all rights to, or decline to administer property of no value or of insufficient benefit or value to the trust to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law:

a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

c. Repealed by Session Laws 2009-48, s. 17, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, compromise, adjust or otherwise settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay from the trust property taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust and the protection of the trust property;

(16) Exercise elections with respect to federal, state, and local taxes including, but not limited to, considering discretionary distributions to a beneficiary as being made from capital gains realized during the year;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under that plan, annuity, or life insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the

circumstances, and acquire a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made to any beneficiary;

(19a) Guarantee loans made to any beneficiary;

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

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

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, limit those powers the appointed trustee may exercise and the duties for which the appointed trustee is responsible, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary regardless of whether the beneficiary is a minor or incompetent or whether the trustee reasonably believes the beneficiary to be incompetent, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:

a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's estate;

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

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

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

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including a minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the trustee. Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, the distribution may be applied for the beneficiary's benefit only with the beneficiary's consent;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares without regard to the income tax basis or other special tax attributes of the assets, as the trustee finds to be most practicable and for the best interests of the distributees, value the trust property

for those purposes, and adjust for resulting differences in valuation; and to distribute trust property in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Make, execute, and deliver contracts and other instruments, including instruments under seal, that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise 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;

(27) Employ as advisors or assistants in the performance of administrative duties, or delegate administrative duties in the manner provided in G.S. 36C-8-807, to persons, firms, and corporations, including agents, auditors, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment advisors, appraisers, custodians, rental agents, realtors, and tax specialists;

(28) Bid on property at a foreclosure sale, or acquire property from a mortgagor or obligor without foreclosure, and retain the property so bid on or taken over without foreclosure;

(29) Divide one trust into several trusts and make distributions from those trusts in the manner provided in G.S. 36C-4-417;

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such property;

(31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-10;

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law; and

(33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets. (2005-192, s. 2; 2007-106, s. 37; 2009-48, ss. 16, 17; 2009-222, s. 3; 2011-339, s. 4; 2013-91, s. 2(c); 2016-53, s. 9; 2017-25, s. 3.)

§ 36C-8-816.1: Repealed by Session 2017-121, s. 2.4, effective July 18, 2017.

§ 36C-8-817. Distribution upon termination.

Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right

of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. (2005-192, s. 2.)

§ 36C-8-818. Notice of deceased Medicaid beneficiaries.

If a trust was established by a person who at the time of that person's death was receiving medical assistance, as defined in G.S. 108A-70.5(b), and the trust was revocable at the time of that person's death, then any trustee of that trust that knows of the medical assistance within 90 days of the person's death shall provide notice of that person's death to the Division of Health Benefits of the Department of Health and Human Services, within 90 days of the person's death. This section does not apply to trustees of preneed funeral trusts established or created pursuant to Article 13D of Chapter 90 of the General Statutes. (2013-378, s. 5; 2019-81, s. 15(a); 2021-88, s. 9(g).)

Article 8A.

Powers, Duties, and Liability of a Power Holder Other Than a Trustee; Duty and Liability of a Trustee With Respect to Power Holder's Actions.

§ 36C-8A-1. "Power holder" defined.

(a) For purposes of this Article:

(1) The term "power holder" means a person described in subdivision (2) of this subsection that under the terms of a trust has the power to take certain actions with respect to a trust and that is not any of the following:

a. A trustee.

b. A settlor with a power to direct or consent pursuant to G.S. 36C-8-808.

c. A person in which a donor creates a power of appointment.

d. A person that has authority to consent to the exercise of a power of appointment.

e. A beneficiary with a power over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by a beneficiary under G.S. 36C-3-301 through G.S. 36C-3-305 with respect to the exercise or nonexercise of the power.

(2) A power holder may be any of the following:

a. One or more individuals.

b. One or more other persons each of which is qualified to exercise trust powers in this State.

c. Any combination of the persons described in sub-subdivisions a. and b. of this subdivision.

(b) A person is a power holder whether or not the terms of a trust refer to the person as a power holder and, except as otherwise provided in sub-subdivisions (a)(1)b. and e. of this section, whether or not the person is a beneficiary or settlor of the trust. (2012-18, s. 3.4; 2021-85, s. 2(c).)

§ 36C-8A-2. Powers of a power holder.

(a) The terms of a trust may confer upon a power holder a power to direct or consent to a duty that would normally be required of a trustee, including, but not limited to, a power to direct or consent to the following:

(1) Investments, including any action relating to investment of all or any one or more of the trust assets that a trustee may take under this Chapter.

(2) Discretionary distributions of trust assets, including distributions to one or more beneficiaries, distribution of one of more trust assets, and termination of the trust by distribution of all of the trust assets.

(3) Any other matter regarding trust administration, including the transfer of the principal place of administration of the trust.

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

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

a. Achieve favorable tax status under applicable law.

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

(2) Remove and appoint trustees and power holders.

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

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

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

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

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

(5) Change the governing law of the trust.

(c) A power holder may exercise any further power appropriate to the exercise or nonexercise of a power granted to the power holder under subsections (a) and (b) of this section.

(d) The powers granted to a power holder under this section are subject to the same provisions of G.S. 36C-8-814 regarding discretionary powers and tax savings that are applicable to a trustee in a like position and under similar circumstances. (2012-18, s. 3.4; 2021-85, s. 2(c).)

§ 36C-8A-3. Duty and liability of power holder.

(a) Except as otherwise provided in subsection (f) of this section, a power holder is a fiduciary with respect to the exercise or nonexercise of a power and has the same duty and liability as the following:

(1) If the power is not held jointly with the trustee or another power holder, as a sole trustee in a like position and under similar circumstances.

(2) If the power is held jointly with the trustee or another power holder, as a cotrustee in a like position and under similar circumstances.

(b) Repealed by Session Laws 2021-85, s. 2(c), effective July 8, 2021, and applicable to trusts created before, on, or after that date.

(c) The provisions regarding the same duty and liability of a power holder as a trustee in a like position and under similar circumstances include all of the following:

(1) The provisions of Article 8 of this Chapter regarding the duties of a trustee.

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

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

(4) The provisions of G.S. 36C-7-703 regarding cotrustees.

(d) Subject to subsection (e) of this section, a power holder shall provide information to a trustee or another power holder to the extent the information is reasonably related both to the powers and duties of a power holder and the powers and duties of the trustee or the other power holder. A trustee or other power holder that acts in reliance on information provided by the power holder is not liable for breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee or the other power holder engages in intentional misconduct.

(e) A power holder does not have a duty to monitor a trustee or another power holder or inform or give advice to a settlor, beneficiary, trustee, or another power holder concerning an instance in which the power holder might have acted differently than a trustee or another power holder. By taking the action described in this subsection, the power holder does not assume the duty excluded under this subsection.

(f) The terms of a trust may provide that a power holder is a nonfiduciary with respect to the exercise or nonexercise of a power, including the power to achieve the settlor's tax objectives under the Internal Revenue Code. Unless the terms of a trust provide otherwise, the power to remove and appoint a trustee or power holder shall be deemed to be held in a nonfiduciary capacity. (2012-18, s. 3.4; 2021-85, s. 2(c).)

§ 36C-8A-4. Duty and liability of trustee.

(a) If the terms of a trust confer upon a power holder the power to direct certain actions of the trustee, the trustee shall 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 trustee.

(b) If the terms of a trust confer upon the power holder the power to consent to certain actions of the trustee, and the power holder does not provide consent within a reasonable time after the trustee has made a timely request for the power holder's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the power holder's consent.

(c) If the terms of a trust confer upon a power holder a power other than the power to direct or to consent to the actions of the trustee described in G.S. 36C-8A-2(a), the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the exercise or nonexercise of the power.

(d) A trustee does not have a duty to monitor a power holder or inform or give advice to a settlor, beneficiary, trustee, or power holder concerning an instance in which the trustee might have acted differently from a power holder. By taking an action described in this subsection, a trustee does not assume a duty excluded by this subsection.

(e) Subject to subsection (d) of this section, a trustee shall provide information to a power holder to the extent the information is reasonably related both to the powers and duties of the trustee and the powers and duties of the power holder. A power holder that acts in reliance on information provided by a trustee is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the power holder engages in intentional misconduct. (2012-18, s. 3.4; 2021-85, s. 2(c).)

§ 36C-8A-4.1. Limitations of actions against power holder for breach of trust.

In an action against a power holder for breach of trust, the same limitations of actions apply to the power holder that apply under G.S. 36C-10-1005 to an action for breach of trust against a trustee in a like position and under similar circumstances. (2021-85, s. 2(c).)

§ 36C-8A-4.2. Defenses in action against power holder.

In an action against a power holder for breach of trust, the power holder may assert the same defenses that a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee, including the following:

(1) Reasonable reliance on the terms of a trust pursuant to G.S. 36C-9-901(b) and G.S. 36C-10-1006.

(2) Reasonable care in ascertaining the happening of an event affecting the administration or distribution of a trust pursuant to G.S. 36C-10-1007.

(3) Beneficiary's consent, release, or ratification pursuant to G.S. 36C-10-1009. (2021-85, s. 2(c).)

§ 36C-8A-5. Compensation and reimbursement of expenses of power holder.

A power holder as a fiduciary is entitled to compensation and reimbursement of expenses as provided in G.S. 32-59. (2012-18, s. 3.4.)

§ 36C-8A-6. Jurisdiction over power holder.

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

(b) This section does not preclude other methods of obtaining jurisdiction over a power holder. (2012-18, s. 3.4.)

§ 36C-8A-7. Accepting or declining the appointment as power holder.

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

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

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

(b) A person designated as a power holder may reject the appointment to serve as a power holder. A trustee may give written notice to a power holder requesting acceptance of the appointment as power holder. A power holder who does not accept such appointment within 120 days after receipt of such notice is considered to have rejected the appointment to serve as a power holder. (2012-18, s. 3.4.)

§ 36C-8A-8. Vacancy in the office of the power holder.

(a) If a vacancy occurs in the office of the power holder because the power holder fails or ceases to act for any reason, all of the following apply:

(1) If one or more power holders remain in office, a vacancy in the office of the power holder need not be filled.
(2) If the terms of the trust provide for a successor to the power holder, the person designated by the terms of the trust or appointed under the terms of the trust shall act as the successor power holder.
(3) During the time when a vacancy occurs, the trustee shall be vested with any fiduciary power or duty conferred upon the power holder by the terms of the trust that are described in G.S. 36C-8A-2(a).
(4) The court may appoint a power holder whenever the court considers the appointment necessary for the administration of the trust.

(b) A successor power holder shall succeed to all the powers and is subject to the duties and liabilities that were imposed upon the original power holder, unless a contrary intent appears from the governing instrument. (2012-18, s. 3.4; 2021-85, s. 2(c).)

§ 36C-8A-9. More than one power holder.

When there is more than one power holder authorized to act, and they are unable to reach a unanimous decision, they may act by majority decision. Unanimity is required when only two are authorized to act. (2012-18, s. 3.4.)

§ 36C-8A-10. Resignation of power holder.

(a) A power holder may resign upon either of the following conditions:
(1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the settlor, if living, and all trustees.
(2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property. (2012-18, s. 3.4.)

§ 36C-8A-11. Removal of power holder.

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

(b) The court may remove a power holder under any of the following circumstances:
(1) The power holder has committed a serious breach of trust.
(2) Lack of cooperation with the trustee substantially impairs the administration of the trust.
(3) Because of unfitness, unwillingness, or a persistent failure of the power holder to exercise effectively the duties and powers conferred upon the power holder the court determines that removal of the power holder best serves the interests of the beneficiaries.
(4) There has been a substantial change of circumstances, the court finds that removal of the power holder best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable successor power holder is available.

(c) Pending a final decision on a request to remove a power holder, or in lieu of or in addition to removing a power holder, the court may order appropriate relief under G.S.

36C-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries. (2012-18, s. 3.4.)

§ 36C-8A-12. Power holder's bond.

(a) A bond shall be required for the performance of the power holder's duty only if the terms of a trust require the power holder to provide a bond.

(b) If no bond is required, the provisions of G.S. 36C-7-702(a)(3) and (4) applicable to a trustee apply to the power holder, but in no event shall a bond be required of a power holder if the terms of a trust require otherwise.

(c) If a bond is required, the provisions of G.S. 36C-7-702(b) and (c) applicable to a trustee apply to the power holder. (2021-85, s. 2(c).)

Article 8B.

North Carolina Uniform Trust Decanting Act.

§ 36C-8B-1. Short title.

This Article shall be known and may be cited as the North Carolina Uniform Trust Decanting Act. (2017-121, s. 1.)

§ 36C-8B-2. Definitions.

The following definitions apply to this Article, unless the context clearly requires otherwise:

(1) Authorized fiduciary. – A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries. The term also includes a special fiduciary appointed under G.S. 36C-8B-9 or a special-needs fiduciary under G.S. 36C-8B-13.

(2) Current beneficiary. – A beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(3) Decanting power. – The power of an authorized fiduciary under this Article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(4) First trust. – A trust over which an authorized fiduciary may exercise the decanting power.

(5) Second trust. – A first trust after modification pursuant to this Article or a trust to which a distribution of property from a first trust is or may be made pursuant to this Article. (2017-121, s. 1.)

§ 36C-8B-3. Scope.

(a) Except as otherwise provided in this section, this Article applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) This Article shall not apply to a trust held solely for charitable purposes as described in G.S. 36C-4-405(a).

(c) Subject to G.S. 36C-8B-15, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This Article shall not limit the power of a trustee, power holder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this State other than this Article, common law, a court order, or a nonjudicial settlement agreement.

(e) This Article shall not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument. (2017-121, s. 1.)

§ 36C-8B-4. Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This Article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this Article.

(c) Except as otherwise provided in the terms of the first trust, for purposes of this Article, G.S. 36C-8-801, and G.S. 36C-8-802(a), the terms of the first trust shall be deemed to include the decanting power. (2017-121, s. 1.)

§ 36C-8B-5. Application; governing law.

This Article shall apply to a trust that meets any of the following criteria:

(1) The trust has its principal place of administration in this State, including a trust that has had its principal place of administration changed to this State.

(2) The trust provides by its trust instrument that it is governed by the law of this State or is governed by the law of this State for any of the following purposes:

a. Administration, including administration of a trust that has had its governing law for purposes of administration changed to this State.

b. Construction of terms of the trust.

c. Determination of the meaning or effect of terms of the trust. (2017-121, s. 1.)

§ 36C-8B-6. Reasonable reliance.

A trustee or other person that reasonably relies on the validity of the exercise of a decanting power under this Article, law of this State other than this Article, or the exercise of a similar power under the law of this State or another jurisdiction shall not be liable to any person for any action or failure to act as a result of the reliance. (2017-121, s. 1.)

§ 36C-8B-7. Notice; exercise of decanting power.

(a) Except as otherwise provided in this Article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(b) Except as otherwise provided in this section, an authorized fiduciary shall give written notice of the intended exercise of the decanting power at least 60 days prior to the effective date of the exercise of the decanting power to all of the following:

(1) Any settlor as to whom the second trust would be a grantor trust.

(2) Each qualified beneficiary of the first trust.

(3) Each person that currently has the right to remove or replace the authorized fiduciary.

(4) Each other fiduciary of the first trust.

(c) The notice required pursuant to subsection (b) of this section shall meet all of the following requirements:

(1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power.

(2) Specify the proposed effective date for exercise of the power.

(3) Include a copy of the first trust.

(4) Include a copy of all second trusts.

(d) The decanting power may be exercised before expiration of the notice period under subsection (b) of this section if all persons entitled to receive notice waive the period in a signed written instrument.

(e) The receipt of notice, waiver of the notice period, or expiration of the notice period shall not affect the right of a person to file an application pursuant to G.S. 36C-8B-9 asserting any of the following:

(1) An attempted exercise of the decanting power is ineffective because it did not comply with this Article or was an abuse of discretion or breach of fiduciary duty.

(2) The provisions of G.S. 36C-8B-22 apply to the exercise of the decanting power.

(f) An exercise of the decanting power shall not be ineffective because of the failure to give notice to one or more persons pursuant to subsection (b) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (b) of this section. (2017-121, s. 1.)

§ 36C-8B-8. Reserved.

§ 36C-8B-9. Court involvement.

(a) An authorized fiduciary, a beneficiary, or a person entitled to notice under G.S. 36C-8B-7(b) may commence a proceeding for any of the following purposes:

(1) To approve or disapprove a proposed exercise of the authorized fiduciary's decanting power.

(2) To appoint a special fiduciary to exercise the decanting power.

(b) Nothing in this section shall affect the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes, including, but not limited to, an action to determine the extent to which G.S. 36C-8B-22 applies to a prior exercise of the decanting power. (2017-121, s. 1.)

§ 36C-8B-10. Formalities.

An exercise of the decanting power shall be made in a written instrument signed by an authorized fiduciary. The signed written instrument shall identify, directly or by reference to the notice required by G.S. 36C-8B-7, the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust. (2017-121, s. 1.)

§ 36C-8B-11. Decanting power.

(a) The following definitions apply to this section:

(1) Noncontingent right. – A right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute

property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) Vested interest. – An interest where any of the following exist:

a. A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power.

b. A current and noncontingent right, annually or more frequently, to a mandatory distribution of (i) income, (ii) a specified dollar amount, or (iii) a percentage of value of some or all of the trust property.

c. A current and noncontingent right, annually or more frequently, to withdraw (i) income, (ii) a specified dollar amount, or (iii) a percentage of value of some or all of the trust property.

d. A power of withdrawal.

e. A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) With the exception of a special-needs trust, as provided in G.S. 36C-8B-13, an authorized fiduciary that has distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal or income of the first trust, subject to the following limitations:

(1) A second trust may not include as a current beneficiary a person that is not a current beneficiary of the first trust, except as provided in subsection (c) of this section.

(2) The beneficiaries of a second trust may include only beneficiaries of the first trust, except as provided in subsection (c) of this section.

(3) A second trust may not reduce or eliminate a vested interest.

(4) If an authorized fiduciary has distributive discretion over principal that is subject to an ascertainable standard, then the powers to distribute income or principal to current beneficiaries in a second trust or trusts shall be subject to the same ascertainable standard as in the first trust and, in the aggregate, shall be exercisable in favor of the same current beneficiaries to whom such distributions could be made in the first trust.

(c) Subject to the limitation provided in subdivision (3) of subsection (b) of this section, a second trust may do all of the following:

(1) Retain a power of appointment granted in the first trust.

(2) Omit a power of appointment granted in the first trust, other than a power of withdrawal.

(3) Create or modify a power of appointment if the power holder is a current beneficiary of the first trust who is not the authorized fiduciary and the authorized fiduciary has distributive discretion to distribute principal to the beneficiary.

(4) Create or modify a power of appointment if the power holder is a remainder beneficiary of the first trust who is not the authorized fiduciary, but the exercise of the power may take effect only after the power holder becomes, or would have become, if then living, a current beneficiary.

(d) A power of appointment described in subsection (c) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(e) If an authorized fiduciary has distributive discretion over part, but not all, of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has distributive discretion.

(f) For purposes of G.S. 36C-8-814, the first trust shall be deemed to include the decanting power. (2017-121, s. 1.)

§ 36C-8B-12. Reserved.

§ 36C-8B-13. Trust for beneficiary with disability.

(a) The following definitions apply in this section:

(1) Beneficiary with a disability. – A beneficiary of a first trust who the special-needs fiduciary believes may qualify, now or in the future, for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits, or is an individual who has been adjudicated incompetent.

(2) Governmental benefits. – Financial aid or services from a State, federal, or other public agency.

(3) Special-needs fiduciary. – With respect to a trust that has a beneficiary with a disability, the term has any of the following meanings:

a. A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries.

b. If no trustee or fiduciary has discretion as described in sub-subdivision a. of this subdivision, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries.

c. If no trustee or fiduciary has discretion as described in sub-subdivisions a. or b. of this subdivision, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) Special-needs trust. – A trust that the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power provided in G.S. 36C-8B-11 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability if both of the following conditions are satisfied:

(1) A second trust is a special-needs trust that benefits the beneficiary with a disability.

(2) The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In exercising the decanting power pursuant to this section, all of the following rules apply:

(1) Notwithstanding G.S. 36C-8B-11(b)(2), the interest in the second trust of a beneficiary with a disability may have either of the following characteristics:
a. Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. § 1396p(d)(4)(C).
b. Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. § 1396p(d)(4)(A).
(2) The restriction contained in G.S. 36C-8B-11(b)(3) shall not apply to the interests of the beneficiary with a disability.
(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

(d) For the purposes of this section, the second trust shall not be deemed a termination of the first trust for the purpose of triggering a payback provision in the first trust provided the second trust contains a payback provision complying with the reimbursement requirement of Medicaid law under 42 U.S.C. § 1396p(d)(4). (2017-121, s. 1; 2020-69, s. 2.)

§ 36C-8B-14. Reserved.

§ 36C-8B-15. Trust limitation on decanting.

(a) An authorized fiduciary shall not exercise the decanting power to the extent the terms of the first trust expressly prohibit exercise of the decanting power or a power granted by State law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power shall be subject to any restriction in the terms of the first trust that expressly applies to the exercise of the following powers:
(1) The decanting power, and any such restriction contained in the terms of the first trust, shall be included in the terms of the second trust.
(2) A power granted by State law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest shall not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this Article even if the first trust permits the authorized fiduciary or another person to modify the terms of the first trust or to distribute part or all of the principal of the first trust to another trust. (2017-121, s. 1.)

§ 36C-8B-16. Change in compensation.

(a) If a first trust specifies an authorized fiduciary's compensation, the fiduciary shall not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless either of the following conditions is satisfied:
(1) All qualified beneficiaries of the second trust consent to the increase in a signed written instrument.

(2) The increase is approved by the clerk of superior court pursuant to G.S. 36C-2-203(a)(3).

(b) For the purposes of this section, a change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power shall not be deemed an increase in the fiduciary's compensation. (2017-121, s. 1.)

§ 36C-8B-17. Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second trust shall not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first trust.

(b) A second trust may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second trust shall not reduce fiduciary liability in the aggregate; provided, however, a second trust may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by the laws of this State other than this Article. (2017-121, s. 1.)

§ 36C-8B-18. Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first trust granting another person power to remove or replace the fiduciary unless one or more of the following occur:

(1) The person holding the power consents to the modification in a signed written instrument and the modification applies only to the person holding the power.

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed written instrument and the modification grants a substantially similar power to another person.

(3) A court approves the modification and the modification grants a substantially similar power to another person. (2017-121, s. 1.)

§ 36C-8B-19. Tax-related limitations.

(a) The following definitions apply in this section:

(1) Grantor trust. – A trust as to which a settlor of a first trust is considered the owner under sections 671 through 677 or section 679 of the Internal Revenue Code.

(2) Nongrantor trust. – A trust that is not a grantor trust.

(3) Qualified benefits property. – Property subject to the minimum distribution requirements of section 401(a)(9), and any applicable regulations, or to any similar requirements that refer to section 401(a)(9) of the Internal Revenue Code or the regulations.

(b) An exercise of the decanting power shall be subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for the provisions of this Chapter other than this section, for a marital deduction or a charitable deduction for purposes of the gift or estate tax under the Internal Revenue Code or a State gift, estate, or inheritance tax, the second trust must include or omit any term that, if included in or omitted from the trust instrument

for the trust to which the property was transferred, would have prevented the transfer from qualifying for the marital deduction or charitable deduction, as the case may be, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or State law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for the provisions of this Chapter other than this section, for the exclusion from gift tax described in section 2503(b) of the Internal Revenue Code, or section 2503(b) by the application of section 2503(c) of the Internal Revenue Code, the second trust may not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under section 2503(b) or section 2503(c) of the Internal Revenue Code.

(3) If the property of the first trust includes shares of stock in an S Corporation, as defined in section 1361 of the Internal Revenue Code, the following provisions apply:

a. If the first trust is, or but for the provisions of this Chapter other than this section would be, a permitted shareholder under any provision of section 1361 of the Internal Revenue Code, an authorized fiduciary may exercise the power with respect to part or all of the S Corporation stock only if any second trust receiving the stock is a permitted shareholder under section 1361(c)(2) of the Internal Revenue Code.

b. If the first trust is, or but for the provisions of this Chapter other than this section would be, a qualified Subchapter-S trust within the meaning of section 1361(d) of the Internal Revenue Code, the second trust must not include or omit a term that prevents the second trust from qualifying as a qualified Subchapter-S trust.

(4) If the first trust contains property that qualified, or would have qualified but for the provisions of this Chapter other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under section 2642(c) of the Internal Revenue Code, the second trust must not include or omit a term that, if included in or omitted from the first trust, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under section 2642(c) of the Internal Revenue Code.

(5) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second trust may not include or omit any term that, if included in or omitted from the first trust, would have increased the minimum distribution required with respect to the qualified benefits property under section 401(a)(9) of the Internal Revenue Code and any applicable regulations thereunder, or similar requirements that refer to section 401(a)(9) of the Internal Revenue Code or the regulations thereunder. If an attempted exercise of the decanting power violates this subdivision, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and G.S. 36C-8B-22 applies to the separate share.

(6) The following provisions apply to a grantor trust:

a. If the first trust qualifies as a grantor trust because of the application of section 672(f)(2)(A) of the Internal Revenue Code, the second trust may not include or omit a term that, if included in or omitted from the first trust, would have prevented the first trust from qualifying under section 672(f)(2)(A) of the Internal Revenue Code.

b. Subject to subdivision (3) of this subsection relating to S corporation stock, (i) except as otherwise provided in sub-subdivision a. of this subdivision, the second trust may be a nongrantor trust even if the first trust is a grantor trust, and (ii) except as otherwise provided in sub-subdivision c. of this subdivision, the second trust may be a grantor trust even if the first trust is a nongrantor trust.

c. An authorized fiduciary may not exercise the decanting power if the settlor objects in a signed written instrument delivered to the fiduciary within the notice period and (i) the first trust and the second trust are both grantor trusts, in whole or in part, and the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or another person, or (ii) the first trust is a nongrantor trust and the second trust is a grantor trust, in whole or in part, with respect to the settlor, unless the settlor has the power at all times to cause the trust to cease to be a grantor trust, or the first trust contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second trust contains the same provision.

(7) For the purposes of this subdivision, the term "tax benefit" means a federal or State tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to sub-subdivision b. of subdivision (6) of this subsection, a second trust may not include or omit a term that, if included in or omitted from the first trust, would have prevented qualification of the second trust for a tax benefit if both of the following apply:

a. The first trust expressly indicates an attempt to qualify for the benefit, or the first trust clearly is designed to enable the first trust to qualify for the tax benefit.

b. The transfer of property held by the first trust or the first trust qualified, or but for the provisions of this Chapter other than this section would have qualified, for the tax benefit. (2017-121, s. 1.)

§ 36C-8B-20. Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust. (2017-121, s. 1.)

§ 36C-8B-21. Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of exercise. (2017-121, s. 1.)

§ 36C-8B-22. Saving provision.

(a) If exercise of the decanting power would be effective under this Article except that the second trust in part does not comply with this Article, the exercise of the decanting power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second trust which is not permitted under this Article is void to the extent necessary to comply with this Article.

(2) A provision required by this Article to be in the second trust which is not contained in the second trust is deemed to be included in the second trust to the extent necessary to comply with this Article.

(b) If a trustee of other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties. (2017-121, s. 1.)

§ 36C-8B-23. Reserved.

§ 36C-8B-24. Terms of second trust.

A reference in this Chapter to a trust instrument or terms of the trust includes a second trust and the terms of the second trust. (2017-121, s. 1.)

§ 36C-8B-25. Settlor.

(a) For the purposes of the laws of this State other than this Article and subject to subsection (b) of this section, a settlor of a first trust shall be deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered. (2017-121, s. 1.)

§ 36C-8B-26. Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power. (2017-121, s. 1.)

§ 36C-8B-27. Reserved.

§ 36C-8B-28. Reserved.

§ 36C-8B-29. Reserved.

§ 36C-8B-30. Reserved.

Article 9.

Uniform Prudent Investor Act.

§ 36C-9-901. Prudent investor rule; applicability.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust that govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

(c) The following terms or comparable language in a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this Article: "Chapter 36A", "investments in accordance with Article 15 of Chapter 36A", "investments in accordance with Article 9 of Chapter 36C", "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule". This Article also applies where a trust contains no investment standard.

(d) This Article does not apply to:

(1) Unless the trust provides otherwise by specific reference to this Article:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts that are created by legislative act;

c. Trusts that are created by or under premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under a Uniform Transfers to Minors Act;

e. Transfers under a Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) Trusts imposed or required under another Chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other Chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article. (1999-215, s. 1; 2001-267, s. 7; 2005-192, s. 2.)

§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(1) General economic conditions;
(2) The possible effect of inflation or deflation;
(3) The expected tax consequences of investment decisions or strategies;
(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
(5) The expected total return from income and the appreciation of capital;
(6) Other resources of the beneficiaries known to the trustee;
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-903. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-903.1. Duties as to life insurance.

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

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply. (2007-106, s. 37.1.)

§ 36C-9-904. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Chapter. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-905. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-906. Effect on charitable remainder trusts.

Nothing in this Article shall prevent the application of Article 4B of this Chapter to a "charitable remainder trust" as defined in G.S. 36C-4B-3(1). (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-907. Short title.

This Article may be cited as the "North Carolina Uniform Prudent Investor Act." (1999-215, s. 1; 2005-192, s. 2.)

Article 10.

Liability of Trustees and Rights of Persons Dealing with Trustees.

§ 36C-10-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes under a trust is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

- (1) Compel the trustee to perform the trustee's duties;
- (2) Enjoin the trustee from committing a breach of trust;
- (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Order a trustee to account;
- (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspend the trustee;
- (7) Remove the trustee as provided in G.S. 36C-7-706;
- (8) Reduce or deny compensation to the trustee;
- (9) Subject to G.S. 36C-10-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) Order any other appropriate relief.

(c) The court may, for cause shown, relieve a trustee from liability for any breach of trust, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for a breach of trust. (2005-192, s. 2.)

§ 36C-10-1002. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable for the greater of:

- (1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received. (2005-192, s. 2.)

§ 36C-10-1003. Liability in absence of breach.

(a) A trustee is accountable for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to compensation under G.S. 36C-7-708 or payments allowed under G.S. 36C-8-802(f).

(b) Absent a breach of trust, a trustee is not liable for a loss or depreciation in the value of trust property or for not having made a profit. (2005-192, s. 2.)

§ 36C-10-1004. Attorneys' fees and costs.

In a judicial proceeding involving the administration of a trust, the court may award costs and expenses, including reasonable attorneys' fees, as provided in the General Statutes, except that, in the case of a proceeding to establish the validity of a trust under Article 4C of this Chapter, the court shall allow for attorneys' fees for the attorneys of a party contesting the proceeding only if the court finds the party had reasonable grounds for contesting the proceeding. (2005-192, s. 2; 2021-53, s. 1.3.)

§ 36C-10-1005. Limitation of action against trustee.

(a) No proceeding against a trustee for breach of trust may be commenced more than five years after the first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination of the beneficiary's interest in the trust; or (iii) the termination of the trust.

(b) Except as provided in subsection (a) of this section, Chapter 1 of the General Statutes governs the limitations of actions on judicial proceedings involving trusts. However, for purposes of those limitations both of the following apply:

(1) On the date that any limitation starts running as to a person with respect to a claim held by the person involving a trust, the limitation also shall start running as to all other persons the person would be entitled to represent under Article 3 of this Chapter, whether or not the person consented to serve as a representative.

(2) G.S. 1-17 of the General Statutes shall not apply to toll the running of the limitation as to the persons described in subdivision (1) of this subsection. Those persons shall be treated as if they were under no disability on the date that the limitation starts running. (2005-192, s. 2; 2015-205, s. 6.)

§ 36C-10-1006. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in a trust instrument is not liable for a breach of trust to the extent that the breach resulted from the reliance. (2005-192, s. 2.)

§ 36C-10-1007. Event affecting administration or distribution.

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge. (2005-192, s. 2.)

§ 36C-10-1008. Exculpation of trustee.

A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. (2005-192, s. 2.)

§ 36C-10-1009. Beneficiary's consent, release, or ratification.

(a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not have knowledge of the beneficiary's rights or of the material facts relating to the breach.

(b) No consideration is required for the consent, release, or ratification to be valid. (2005-192, s. 2.)

§ 36C-10-1010. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim. Any judgment rendered in favor of a claimant in such a judicial proceeding against a trust may be recovered from the trust property without proof that the trustee could have obtained reimbursement from the trust if the trustee had paid the claim.

(d) A trustee is entitled to indemnity from the trust for any claim, other than a breach of trust, for which the trustee is liable:

(1) If the claim arose from a common incident of activity in which the trustee was properly engaged for the trust;

(2) If the trustee was not personally at fault; or

(3) To the extent that the trustee's actions increased the value of trust property.

(e) A decision by a trustee not to inspect property, or to decline to accept property, shall not create any inference as to liability, under any environmental law, with respect to that property. A

trustee shall have no liability for a decrease in value of property in a trust by reason of the trustee's compliance with any environmental law, including reporting requirements. (2005-192, s. 2.)

§ 36C-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership if the fiduciary capacity was disclosed. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written partnership document is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee who holds, in a fiduciary capacity, an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault. This subsection does not apply to additional ownership interests of the trustee held in a nonfiduciary capacity.

(c) If the settlor transfers an existing general partnership interest to a revocable trust, the settlor remains personally liable for partnership obligations as if the settlor were a general partner. (2005-192, s. 2.)

§ 36C-10-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

(f) A person is not required to obtain a certification under G.S. 36C-10-1013 in order to be entitled to the protections of this section. (2005-192, s. 2.)

§ 36C-10-1013. Certification of trust.

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) The existence of the trust and the date the trust instrument was executed;
(2) The identity of the settlor, unless withheld under a provision in the trust instrument;
(3) The identity and address of the currently acting trustee;
(4) The powers of the trustee;
(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
(7) The trust's taxpayer identification number; and
(8) The manner of taking title to trust property.

(b) Any trustee may sign or otherwise authenticate a certification of trust.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that the person relying upon the certification holds a copy of all or part of the trust instrument.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(j) In transactions involving real property, a person who acts in reliance upon a certification of trust may require that the certification of trust be executed and acknowledged in a manner that will permit its registration in the office of the register of deeds in the county where the real property is located. The certification of trust need not contain the trust's taxpayer identification number if that taxpayer identification number is also the social security number of a grantor. However, the trust's taxpayer identification number shall be certified by the trustee to the person acting in reliance upon the certification of trust in a manner reasonably satisfactory to that person. (2005-192, s. 2.)

Article 11.

Miscellaneous Provisions.

§ 36C-11-1101. Uniformity of application and construction.

In applying and construing this Chapter, consideration may be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (2005-192, s. 2.)

§ 36C-11-1102. Electronic records and signatures.

The provisions of this Chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of those records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and

limit the requirements of the Electronic Signatures in Global and National Commerce Act. (2005-192, s. 2.)

§ 36C-11-1103. Severability clause.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable. (2005-192, s. 2.)

§ 36C-11-1104. Trustee signatures.

The signature of a trustee of a trust who signs a document for or on behalf of the trust shall be deemed to be the signature of the trustee as such. A document which identifies a trust shall be deemed to include the trustee or the trustees as such. (2007-106, s. 54.)

§ 36C-11-1105: Reserved for future codification purposes.

§ 36C-11-1106. Application to existing relationships.

(a) Except as otherwise provided in this Chapter, this Chapter applies to (i) all trusts created before, on, or after January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before January 1, 2006, unless the court finds that application of a particular provision of this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Chapter does not apply and the superseded law applies.

(b) Except as otherwise provided in this Chapter, any rule of construction or presumption provided in this Chapter applies to trust instruments executed before January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. Except as otherwise provided in this Chapter, an act done before January 1, 2006, is not affected by this Chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded.(2005-192, ss. 7(a), (b); 2006-226, ss. 31(a), (b).)