

NORTH CAROLINA GENERAL ASSEMBLY  
1971 SESSION

CHAPTER 747  
HOUSE BILL 977

AN ACT WHICH WILL PROHIBIT A BANKING CORPORATION, AUTHORIZED AND  
LICENSED AS A FIDUCIARY, FROM THE PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 84-5, as the same appears in the 1969 Cumulative Supplement to the General Statutes, is hereby amended by adding at the end thereof the following:

"To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (a) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - (1) Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
  - (2) Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
  - (3) Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.
- (b) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:
  - (1) Offering wills for probate.
  - (2) Preparing and publishing notice of administration to creditors.
  - (3) Handling formal court proceedings.
  - (4) Drafting legal papers or giving legal advice to spouses concerning dissent from their spouses' wills.
  - (5) Resolving questions of domicile and residence of a decedent.
  - (6) Handling proceedings involving year's allowances of widows and children.
  - (7) Drafting deeds, notes, deeds of trust, leases, options and other contracts.
  - (8) Drafting instruments releasing deeds of trust.
  - (9) Drafting assignments of rent.
  - (10) Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
  - (11) In matters involving estate and inheritance taxes, gift taxes, and federal and state income taxes:

- a. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  - b. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  - c. Handling petitions to the Tax Court.
- (12) Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
- (13) In connection with the administration of an estate or trust:
- a. Making application for letters testamentary or letters of administration.
  - b. Abstracting or passing upon title to property.
  - c. Handling litigation relating to claims by or against the estate or trust.
  - d. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.
- (c) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:
- (1) The initial opening and inventoring of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
  - (2) The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
  - (3) In matters involving estate and inheritance taxes and federal and state income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.
  - (4) An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing."

**Sec. 2.** This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 5th day of July, 1971.