

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-192
SENATE BILL 679**

AN ACT TO ADOPT A REVISED VERSION OF THE UNIFORM TRUST CODE
FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 36A of the General Statutes is recodified as Article 7 of Chapter 32 of the General Statutes. G.S. 36A-63, G.S. 36A-66.1, and Article 6 of Chapter 36A are recodified in Article 14 of Chapter 53 of the General Statutes as G.S. 53-163.1 through G.S. 53-163.7. The remainder of Chapter 36A of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"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.

"§ 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, trust accounts as defined in G.S. 53-146.2, 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.

"§ 36C-1-103. Definitions.

In this Chapter:

- (1) "Action", with respect to an act of a trustee, includes a failure to act.

- (2) "Ascertainable standard" means 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" means 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; or
 - b. In a capacity other than that of trustee, holds a power of appointment over trust property.
- (4) "Charitable trust" means 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" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (6) "General guardian" means a general guardian as that term is defined in G.S. 35A-1202(7).
- (7) "Guardian of the estate" means a guardian of the estate as that term is defined in G.S. 35A-1202(9).
- (8) "Guardian of the person" means a guardian of the person as that term is defined in G.S. 35A-1202(10).
- (9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
- (10) "Internal Revenue Code" means 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", with respect to a geographic area, includes a state or country.
- (12) "Person" means 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" means 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.
- (14) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- (15) "Qualified beneficiary" means a living beneficiary who, on the date the beneficiary's qualification is determined:
 - 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; or
 - c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (16) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
 - (17) "Settlor" means 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" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
 - (19) "State" means 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" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.
 - (21) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.
 - (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.

"§ 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.

"§ 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, relations among trustees, 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 to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (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;
- (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; and
- (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.

"§ 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.

"§ 36C-1-107. Governing law.

The meaning and effect of the terms of a trust are determined by:

- (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; or
- (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.

"§ 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.

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

(a) 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. Permissible methods of notice or 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.

(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.

"§ 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.

"§ 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.

"§ 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.

"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.

"§ 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.

"§ 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;
- (2) To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as 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; and
- (9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, 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. Upon motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice.

(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 for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article.

(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 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;
- (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-4-405A; and
- (5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.

"§ 36C-2-204. Venue.

In any trust proceeding or action, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

- (1) If the trustee is 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 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:
 - 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; or
 - 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.
- (3) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:
 - a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or

- b. The usual place of business or residence of any of the cotrustees.
- (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 if the trust is created by will, in the county in which the decedent's estate was or is being administered.

"§ 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 10 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, nor more than once. 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, Rules 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, and 45 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 the following Rules of Civil Procedure shall apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under G.S. 36C-3-305. 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.

(h) Orders Upon Consolidation/Joinder. – Upon the consolidation of a trust proceeding and civil action or joinder of claims under subsection (f) or (g) of this section, the clerk of superior court or the judge may make such orders as appropriate to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the consolidation or joinder of claims under subsection (f) or (g) of this

section, the clerk of court's exclusive jurisdiction as set forth in G.S. 36C-2-203(a) shall not be stayed unless so ordered by the court.

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

In any trust proceeding or action, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

- (1) Parties shall be represented as provided in Article 3 of this Chapter.
- (2) In the case of any party represented by another as provided in subdivision (1) of this section, service of process shall be made by serving such representative.

"§ 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.

"§ 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-4-405A, the clerk of superior court may require a trustee of a charitable trust to account to the clerk of superior court.

"§ 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.

"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).

"§ 36C-3-302. Representation by holder of general testamentary power of appointment.

The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as permissible appointees, takers in default, or otherwise, are subject to the power. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

"§ 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:

- (1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.
- (2) A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.
- (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.

- (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, guardian of the estate, or guardian of the person 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.

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

Unless otherwise represented under this Article, a minor, an incapacitated 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.

"§ 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, incapacitated 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.

"Article 4.

"Creation, Validity, Modification, and Termination of Trust.

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

A trust may be created by:

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

"§ 36C-4-401A. 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 36C-4-405A. 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.

"§ 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.

"§ 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.

"§ 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 transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will;
- (3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the transferor or the transferor's heirs determined as of the date of the transferor'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 decedent's estate 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 transferor. Extrinsic evidence is admissible in determining the transferor'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 transferor and the purpose of this section.

"§ 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.

- (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. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.
- (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.

"§ 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, or trust combination or division under G.S. 36C-4-417. 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 section.

(c) Jurisdiction of a proceeding brought under this section is as provided in G.S. 36C-2-203.

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

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's general guardian or the guardian of the estate with the approval of the

court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so authorized and a general guardian or guardian of the estate has not been appointed.

(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) Where the beneficiaries of an 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 where 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:

- (1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- (2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"§ 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) Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"§ 36C-4-413. Cy pres.

(a) Except as otherwise provided in subsection (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) In every cy pres proceeding, the Attorney General shall be notified and given an opportunity to be heard.

(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.

"§ 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) Jurisdiction of a proceeding brought under this section is as provided in G.S. 36C-2-203.

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

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

"§ 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. Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.

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

(a) Unless otherwise provided in the trust instrument, after notice to the qualified beneficiaries, a trustee may:

- (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; or
- (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.

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

Upon termination of a trust under G.S. 36C-4-411, the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under G.S. 36C-4-412 or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:

- (1) To the guardian of the estate or general guardian of the beneficiary;
- (2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or
- (3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.

"§ 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-4-413 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.

"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.

"§ 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.

"Article 4B.

"Charitable Remainder Trust Administration Act.

"§ 36C-4B-1. Short title.

This Article shall be known as the Charitable Remainder Administration Trust Act.

"§ 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.

"§ 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.

"§ 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.

(bl) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

"§ 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.

"§ 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.

"§ 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.

"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) 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:

- (1) Is subject to a spendthrift provision;
- (2) Is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or
- (3) Is a protective trust interest as described in G.S. 36C-5-508.

"§ 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.

"§ 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.

"§ 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.

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

(a) 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.
- (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 G.S. 28A-19-3.

(b) The lapse, release, or waiver of a power of withdrawal shall not cause the holder to be treated as a settlor of the trust.

"§ 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.

"§ 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.

"§ 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.

"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.

"§ 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) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney provided the exercise of the power of revocation or amendment does not alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan.

(f) A general guardian or a guardian of the estate of the settlor or, if no general guardian or guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(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.

"§ 36C-6-603. Settlor's powers; powers of withdrawal.

(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.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors.

"§ 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:

- (1) Three years after the settlor's death; or
- (2) 120 days after the trustee sent the person a copy of the trust instrument and a notice 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 distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

- (1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or
- (2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

"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 a reasonable time, not to exceed 120 days, after receiving written notice of the trusteeship 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.

"§ 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.

"§ 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.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee 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.

(h) Notwithstanding subsection (f) or (g) of this section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving 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.

"§ 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 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.

"§ 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.

"§ 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.

"§ 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 transferring title to trust property as may be appropriate 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, or the clerk of superior court may transfer title.

"§ 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.

"§ 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.

"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.

"§ 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, 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 has an investment, or to which the trustee, or its affiliate, provides services 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 notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; 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 in the community 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 the following transactions, if fair to the beneficiaries:

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
- (2) Payment of reasonable compensation to the trustee;
- (3) A transaction 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; or
- (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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 36C-8-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust, even if 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.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee must act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust, or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

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

A trustee shall take reasonable steps to take control of and protect the trust property.

"§ 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 as a whole the property of two or more separate trusts.

"§ 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.

"§ 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.

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

(a) The trustee is under a duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect 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 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 subsection (a) of this section.

(c) A 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) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter.

"§ 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 expressly indicate 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, 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.

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.

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

- (a) A trustee, without authorization by the court, may exercise:
 - (1) Powers conferred by the terms of the trust; or
 - (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) The exercise of a power is subject to the fiduciary duties prescribed by this

Article.

"§ 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 depository 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. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
 - 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;
- (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 by others to a beneficiary;
- (19a) Guarantee loans made by others to a beneficiary;
- (19b) Pledge trust property to guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust has an ownership interest.
- (19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture,

agricultural operation, or other form of business or enterprise in which the trust 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 who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
- a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person;
 - 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 the minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the trustee;
- (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 the 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; and
- (31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-10.

"§ 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.

"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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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).

"§ 36C-9-907. Short title.

This Article may be cited as the "North Carolina Uniform Prudent Investor Act."

"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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"§ 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.

"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.

"§ 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.

"§ 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."

SECTION 3. The General Statutes are amended by adding a new Chapter to read:

"Chapter 36D.

"North Carolina Community Trust for Persons With Severe Chronic Disabilities.

"§ 36D-1. Title; findings.

(a) This Article shall be known and may be cited as the "North Carolina Community Trust for Persons With Severe Chronic Disabilities Act".

(b) The General Assembly finds that it is in the public interest to encourage activities by voluntary associations and private citizens that will supplement and augment those services provided by local, State, and federal government agencies in discharge of their responsibilities toward individuals with severe chronic disabilities. The General Assembly further finds that, as a result of changing social, economic, and demographic trends, families of persons with severe chronic disabilities are increasingly aware of the need for a vehicle by which they can assure ongoing individualized personal concern for a severely disabled family member who may survive that disabled person's parents or other family members, and provide for the efficient management of small legacies or trust funds to be used for the benefit of that disabled person. In a number of other states, voluntary associations have established foundations or trusts intended to be responsive to these concerns. Therefore, the General Assembly finds that North Carolina will benefit by the enactment of enabling legislation expressly authorizing the formation of community trusts in accordance with criteria set forth by statute and administered by the Secretary of State, under Chapter 55A of the General Statutes. These community trusts permit the pooling of resources contributed by

families or persons with philanthropic intent, along with the reservation of portions of these funds for the use and benefit of designated beneficiaries.

(c) This Article shall be liberally construed and applied to promote its underlying purposes and policies, which are, among others, to:

- (1) Encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;
- (2) Ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest;
- (3) Facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;
- (4) Provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated;
- (5) Help make guardians available for persons with severe chronic disabilities who are incompetent, when no other family member is available for this purpose;
- (6) Encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those that are not available from other sources;
- (7) Encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and
- (8) Remove the disincentives that discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interest of beneficiaries in community trusts are not considered assets or income that would disqualify them from any governmental or charitable entitlement program with an economic means test.

"§ 36D-2. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) "Beneficiary" means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.
- (2) "Community trust" means a nonprofit organization that offers the following services:

- a. Administration of special trust funds for persons with severe chronic disabilities;
 - b. Follow along services;
 - c. Guardianship for persons with severe chronic disabilities who are incompetent, when no other family member or immediate friend is available for this purpose; and
 - d. Advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.
- (3) "Follow along services" means (i) those services offered by community trusts that are designed to ensure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, (ii) participation in the development of individualized plans being made by service providers for the beneficiary, and (iii) other similar services consistent with the purposes of this Article.
- (4) "Severe chronic disability" means a physical or mental impairment that is expected to give rise to a long-term need for specialized health, social, and other services, and that makes the person with the disability dependent upon others for assistance to secure these services.
- (5) "Trustee" means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.
- (6) "Surplus trust funds" means funds accumulated in the trust from contributions made on behalf of an individual beneficiary that, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs.

"§ 36D-3. Scope.

This Article applies to every community trust established in this State. In addition to meeting the other requirements of this Article, every board that administers a community trust shall incorporate as a nonprofit corporation under Chapter 55A of the General Statutes. Except as otherwise provided in this Chapter, Chapter 55A of the General Statutes applies to community trusts.

"§ 36D-4. Administration; powers and duties.

(a) Every community trust shall be administered by a board. The board shall be comprised of no less than nine and no more than 21 members, at least one-third of whom are parents or relatives of persons with severe chronic disabilities. No board member shall be a provider of habilitative, health, social, or educational services to persons with severe chronic disabilities or an employee of such a service provider. The board may, however, allow service providers to serve on the board in an advisory

capacity. Board members shall be selected, to the maximum extent possible, from geographic areas throughout the area served by the trust.

The certificate of incorporation filed with the Secretary of State under Chapter 55A of the General Statutes shall, in addition to the requirements set forth in that Chapter, demonstrate that the requirements of this section have been met.

(b) Notwithstanding any other law, no trustee may be compensated for services provided as a member of the board of a community trust. No fees or commissions shall be paid to these trustees; however, a trustee may be paid for necessary expenses incurred by the trustee and may receive indemnification as permitted under Chapter 55A of the General Statutes.

(bl) For every community trust incorporated under this Article, the corporation itself is considered the trustee of any funds administered by it. No individual board member is considered to be trustee of any fund deposited on behalf of any individual beneficiary with severe chronic disabilities.

(c) The board shall adopt bylaws that include a declaration delineating the primary geographic area serviced by the trust and the principal services to be provided. The board shall file the bylaws with the Secretary of State.

(d) The board may retain paid staff as it considers necessary to provide follow along services to the extent required by each beneficiary. The community trust may authorize the expenditure of funds for any goods or services, including recreational services, which the board, in its sole discretion, determines will promote the well-being of any beneficiary. The community trust may pay for the burial of any beneficiary. The community trust, however, may not expend funds for any goods or services of comparable quality to those available to any particular beneficiary through any governmental or charitable program, insurance, or other sources. The community trust may expend funds to meet the reasonable costs of administering the community trust.

(e) The community trust is not required to provide services to a beneficiary who is a competent adult and who has refused to accept the services. Further, the community trust shall not provide services of a nature or in a manner that would be contrary to the public policy of this State at the time the services are to be provided. In either case, the community trust may offer alternate services that are consistent with the purposes of this Article and in keeping with the best interests of the beneficiary.

(f) The community trust may accept appointment as guardian of the person, guardian of the estate, or guardian of both on behalf of any beneficiary. If the community trust accepts appointment as guardian of the person of an individual, it shall assign a staff member to carry out its responsibilities as the guardian. The community trust may, upon request, offer consultative and professional assistance to an individual, private or public guardian of any of its beneficiaries.

(g) The community trust may accept contributions, bequests, and designations under life insurance policies to the community trust on behalf of individuals with severe chronic disabilities for the purpose of qualifying them as beneficiaries.

(h) At the time a contribution, bequest, or assignment of insurance proceeds is made, the trustor shall receive a written statement of the services to be provided to the beneficiary. The statement shall include a starting date for the delivery of services or the

condition precedent, such as the death of the trustor, which shall determine the starting date. The statement shall describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary.

"§ 36D-5. Accountability.

Along with the annual report filed with the Secretary of State under Chapter 55A of the General Statutes, the community trust shall file an itemized statement that shows the funds collected for the year, income earned, salaries, other expenses incurred, and the opening and final trust balances. A copy of this statement shall be made available, upon request, to any beneficiary, trustor, or designee of the trustor. In addition, once annually, each trustor or the trustor's designee shall receive a detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and the services to be provided during the following 12 months. The community trust shall make a copy of the individual statement available to any beneficiary, upon request.

"§ 36D-6. Gifts, surplus trust funds.

The community trust may accept gifts and use surplus trust funds for the purpose of qualifying as beneficiary any indigent person whose family members lack the resources to make a full contribution on that person's behalf. The extent and character of the services and selection of beneficiaries are at the discretion of the community trust. The community trust may not use surplus trust funds to make any charitable contribution on behalf of any beneficiary or any group or class of beneficiaries. The community trust may accept gifts to meet start-up costs, reduce the charges to the trust for the cost of administration, and for any other purpose that is consistent with this Article. Gifts made to the trust for an unspecified purpose shall be used by the community trust either to qualify indigent persons whose families lack the means to qualify them as beneficiaries of the trust or to meet any start-up costs that the trust incurs.

"§ 36D-7. Special requests on behalf of beneficiary.

The community trust may agree to fulfill any special requests made on behalf of a beneficiary as long as the requests are consistent with this Article and provided that an adequate contribution has been made for this purpose on behalf of a beneficiary. The community trust may agree to serve as trustee for any individual trust created on behalf of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other condition, so long as the individual trust is consistent with the purposes of this Article.

"§ 36D-8. Irrevocability; impossibility of fulfillment.

A community trust for persons with severe chronic disabilities is irrevocable, but the trustees in their sole discretion may provide compensation for any contribution to the trust to any trustor who, upon good cause, withdraws a beneficiary designated by the trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust with regard to an individual beneficiary for reasons other than the death of the beneficiary.

"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility determination.

Notwithstanding any provisions of Chapter 108A of the General Statutes, the beneficiary's interest in any community trust is not considered to be an asset for the purpose of determining income eligibility for any publicly operated program, nor shall that interest be reached in satisfaction of a claim for support and maintenance of the beneficiary. No agency shall reduce the benefits of services available to any individual because that person is the beneficiary of a community trust.

"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.

A community trust shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

"§ 36D-11. Settlement; trustee limitations.

The community trust shall settle a community trust by filing a final accounting in the superior court. In addition, at any time before the settlement of the final account, the community trust, the Secretary of State, or the Attorney General may bring an action for the dissolution of a nonprofit corporation in the superior court for the purpose of terminating the trust or merging it with another charitable trust.

No trustee or any private individual is entitled to share in the distribution of any of the trust assets upon dissolution, merger, or settlement of the community trust. Upon dissolution, merger, or settlement, the superior court shall distribute all of the remaining net assets of the community trust in a manner that is consistent with the purposes of this Article."

SECTION 4. G.S. 32-28 and G.S. 32-34 are repealed.

SECTION 5. G.S. 28A-13-6 reads as rewritten:

"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than one.

~~(a) As used in this section, the term "personal representatives" includes testamentary trustees.~~

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

~~(c) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which such personal representatives qualified, provide that any one or more of the following powers of personal representatives may be exercised by any designated one or more of them:~~

- ~~(1) Open bank accounts and draw checks thereon;~~
- ~~(2) Subject to the provisions of G.S. 105-24, enter any safe deposit box of the deceased or any safe deposit box rented by the personal representative or representatives;~~
- ~~(3) Employ attorneys and accountants;~~
- ~~(4) List property for taxes and prepare and file State, municipal and county tax returns;~~
- ~~(5) Collect claims and debts due the estate and give receipts therefor;~~
- ~~(6) Pay claims against and debts of the estate;~~

- (7) ~~Compromise claims in favor of or against the estate;~~
- (8) ~~Have custody of property of the estate.~~

(c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:

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

(d) Subject to subsection (b) of this section, if two or more personal representatives 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, ~~his~~that personal representative's act binds all;
- (2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;
- (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.

(e) Subject to ~~the provisions of~~ subsections (b), ~~(c)~~ (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which ~~he~~the personal representative joins at the direction of the majority of the personal representatives, if ~~he~~that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section."

SECTION 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform Trust Code and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 7.(a) Section 2 of this act becomes effective January 1, 2006, and except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of Chapter 36C of the General Statutes 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 Chapter 36C of the General Statutes does not apply and the superseded law applies.

Except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act, any rule of construction or presumption provided in Chapter 36C of the General Statutes applies to trust instruments executed before the effective date of Section 2 of this act 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 Chapter 36C of the General Statutes, as enacted by Section 2 of this act, an act done before the effective date of Section 2 of this act is not affected by Chapter 36C of the General Statutes. 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 the effective date of Section 2 of this act, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 7.(b) Section 1 and Sections 3 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:48 p.m. this 15th day of July, 2005