

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 697

Short Title: Trustee Powers Act.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary II.

April 5, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO BE KNOWN AS TRUSTEE POWERS ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 36A of the General Statutes is amended by adding three
5 new Articles to read:

6 **"ARTICLE 13.**
7 **"POWERS OF TRUSTEES.**

8 **"§ 36A-135. Applicability.**

9 (a) Articles 13, 14, and 15 of this Chapter apply only to trustees under express
10 trust agreements, including testamentary trusts, whether the trustee is appointed under
11 an express trust agreement or appointed by the clerk of superior court. Articles 13, 14,
12 and 15 of this Chapter shall not apply to trustees of a resulting or constructive trust, a
13 business trust which provides for certificates to be issued to the beneficiary, an
14 investment trust, a voting trust, a security instrument, a trust created by the judgment or
15 decree of a court, a liquidation trust, or a trust for the primary purpose of paying
16 dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee
17 benefits of any kind, an instrument wherein a person is nominee or escrowee for
18 another, a trust created in deposits in any financial institution, or other trust, the nature
19 of which does not admit of general trust administration. A trustee shall have all the
20 powers and duties under this Article to the extent that such powers and duties are not
21 inconsistent with the powers and duties imposed in the express trust. The powers and
22 duties of more than one trustee are subject to the provisions of G.S. 36A-73.

1 (b) Nothing contained in this Article shall be construed as authorizing any
2 departure from the express terms or limitations set forth in any express trust agreement
3 creating or limiting the trustee's powers and duties.

4 (c) The powers contained in this Article are in addition to any other powers
5 granted or provided by law.

6 **"§ 36A-136. Powers of a trustee.**

7 A trustee has the power to perform in a reasonable and prudent manner every act
8 that a reasonable and prudent person would perform incident to the collection,
9 preservation, management, use and distribution of the trust estate to accomplish the
10 desired result of administering the trust estate legally and in the best interest of the trust
11 beneficiaries, including, but not limited to, the following specific powers:

12 (1) To take possession, custody, or control of assets transferred to the
13 trust.

14 (2) To retain for such time as the trustee shall deem advisable any
15 property, real or personal, which the trustee may receive, even though
16 the retention of such property by reason of its character, amount,
17 proportion to the total estate or otherwise would not be appropriate for
18 the trustee apart from this provision.

19 (3) To receive assets from other fiduciaries or other sources.

20 (4) To compromise, adjust, arbitrate, sue on or defend, abandon, or
21 otherwise deal with and settle claims in favor of or against the trust.

22 (5) To make, execute, and deliver all instruments, under seal or otherwise,
23 as may be necessary in the exercise of the powers herein granted.

24 (6) To abandon or relinquish all rights in any property when, in the
25 trustee's opinion, acting reasonably and in good faith, it is valueless, or
26 is so encumbered or is otherwise in such condition that it is of no
27 benefit or value to the trust.

28 (7) To sell, exchange, or otherwise dispose of, or grant options with
29 respect to, any personal property of the trust in the manner prescribed
30 by the provisions of Article 14 of this Chapter.

31 (8) To sell, exchange, partition, or otherwise dispose of, or grant options
32 with respect to, any real property of the trust in the manner prescribed
33 by the provisions of Article 15 of this Chapter. However, where the
34 terms of an express trust grant the trustee the power to sell, exchange,
35 partition, or otherwise dispose of, or grant options with respect to, any
36 real property, the powers contained in the express trust shall control,
37 and the provisions of Article 15 of this Chapter shall not apply.

38 (9) To comply with environmental law. –

39 a. To inspect property held by the trustee, including interests in
40 sole proprietorships, partnerships, or corporations and any
41 assets owned by any such business enterprise, for the purpose of
42 determining compliance with environmental law affecting such
43 property and to respond to any actual or threatened violation of
44 any environmental law affecting property held by the trustee;

- 1 **b.** To take, on behalf of the estate or trust, any action necessary to
2 prevent, abate, or otherwise remedy any actual or threatened
3 violation of any environmental law affecting property held by
4 the trustee, either before or after the initiation of an enforcement
5 action by any governmental body;
- 6 **c.** To refuse to accept property in trust if the trustee determines
7 that any property to be donated to the trust either is
8 contaminated by any hazardous substance or is being used or
9 has been used for any activity directly or indirectly involving
10 hazardous substance which could result in liability to the trust
11 or otherwise impair the value of the assets held therein;
- 12 **d.** To settle or compromise at any time any and all claims against
13 the trust which may be asserted by any governmental body or
14 private party involving the alleged violation of any
15 environmental law affecting property held in trust;
- 16 **e.** To disclaim any power granted by any document, statute, or
17 rule of law which, in the sole discretion of the trustee, may
18 cause the trustee to incur personal liability under any
19 environmental law;
- 20 **f.** To decline to serve as a trustee if the trustee reasonably believes
21 that there is or may be a conflict of interest between it in its
22 fiduciary capacity and in its individual capacity because of
23 potential claims or liabilities which may be asserted against it
24 on behalf of the trust because of the type or condition of assets
25 held therein;
- 26 **g.** For purposes of this subdivision, 'environmental law' means any
27 federal, state, or local law, rule, regulation, or ordinance
28 relating to protection of the environment or human health. For
29 purposes of this subdivision, 'hazardous substance' means any
30 substance defined as hazardous or toxic or otherwise regulated
31 by any environmental law. The trustee shall be entitled to
32 charge the cost of any inspection, review, abatement, response,
33 cleanup, or remedial action authorized herein against the
34 income or principal of the trust. A trustee shall not be
35 personally liable to any beneficiary or other party for any
36 decrease in value of assets in trust by reason of the trustee's
37 compliance with any environmental law, specifically including
38 any reporting requirement under such law. Neither the
39 acceptance by the trustee of property or a failure by the trustee
40 to inspect property shall be deemed to create any inference as to
41 whether or not there is or may be any liability under any
42 environmental law with respect to such property.
- 43 **(10)** To sell or exercise stock subscription or conversion rights; to consent,
44 directly or through a committee or other agent, to the reorganization,

- 1 consolidation, merger, dissolution, or liquidation of a corporate or
2 other business enterprise.
- 3 (11) To insure the trust's assets against damage or loss, at the expense of the
4 trust.
- 5 (12) To pay taxes, assessments, and other expenses incident to the
6 collection, care, administration, and protection of the trust property.
- 7 (13) To pay necessary expenses of administering the trust from the trust
8 property.
- 9 (14) To employ persons, firms, and corporations including, but not limited
10 to, agents, auditors, accountants, brokers, attorneys-at-law, attorneys-
11 in-fact, investment advisors, appraisers, custodians, rental agents,
12 realtors, and tax specialists to advise or assist the trustee in the
13 performance of the trustee's administrative duties, and to charge the
14 expense of such employment to the trust.
- 15 (15) To continue any business or venture or farming operation in which the
16 trust has an interest, where such continuation is reasonably necessary
17 or desirable to preserve the value, including goodwill, of the trust's
18 interest in such business.
- 19 (16) To incorporate or participate in the incorporation of any business or
20 venture in which the trust may have an interest.
- 21 (17) To invest and reinvest trust property, as the trustee shall deem
22 advisable in accordance with the provisions of the trust or as provided
23 by law.
- 24 (18) To lease any property of the trust for a term of not more than three
25 years.
- 26 (19) To foreclose, as an incident to the collection of any bond, note, or
27 other obligation, any mortgage, deed of trust, or other lien securing
28 such bond, note, or other obligation, and to bid in the property at such
29 foreclosure sale, or to acquire the property from the mortgagor or
30 obligor without foreclosure; and to retain the property so bid in or
31 taken over without foreclosure.
- 32 (20) To borrow money for such periods of time and upon such terms and
33 conditions as to rates, maturities, renewals, and security as the trustee
34 shall deem advisable, including the power of a corporate trustee to
35 borrow from its own banking department, for the purpose of paying
36 debts, taxes, and other claims against the trust and to mortgage, pledge,
37 or otherwise encumber such portion of the trust property as may be
38 required to secure such loan or loans; and to renew existing loans
39 either as maker or endorser.
- 40 (21) To allocate items of income or expense to either trust income or
41 principal, as permitted by law.
- 42 (22) To make payments in money, or in property in lieu of money, to or for
43 a minor or incompetent in any one or more of the following ways:
44 a. Directly to such minor or incompetent;

- 1 b. To apply directly in payment for the support, maintenance,
 2 education, and medical, surgical, hospital, or other institutional
 3 care of such minor or incompetent;
 4 c. To the legal or natural guardian of such minor or incompetent;
 5 d. To any other person, whether or not appointed guardian of the
 6 person by any court, who shall, in fact, have the care and
 7 custody of the person of such minor or incompetent.
 8 e. To a custodian for such beneficiary under a uniform gifts or
 9 transfers to minors act. The fiduciary shall not be under any
 10 duty to see to the application of the payments so made, if the
 11 fiduciary exercised due care in the selection of the person,
 12 including the minor or incompetent, to whom such payments
 13 were made; and the receipt of such person shall be full
 14 acquittance to the fiduciary.
 15 (23) To deposit, as a trustee, funds of the trust in a bank, including a bank
 16 operated by the trustee upon compliance with the provisions of G.S.
 17 36A-63.

"ARTICLE 14.

"DISPOSITION OF PERSONAL PROPERTY.

"§ 36A-137. Disposition of personal property without court order.

20 Pursuant to the authority contained in G.S. 36A-136(7), the trustee has the power to
 21 sell at either a public or private sale, or to exchange, or otherwise dispose of, or grant
 22 options with respect to, personal property of the trust without court order.

"§ 36A-138. Disposition of personal property by court order.

25 (a) A trustee may, if he so desires, request the clerk of superior court to issue to
 26 him an order to sell, exchange, or otherwise dispose of, or grant options with respect to,
 27 personal property of the trust.

28 (b) Sales of personal property shall be conducted as provided in Article 29A of
 29 Chapter 1 of the General Statutes, entitled 'Judicial Sales'.

"ARTICLE 15.

"DISPOSITION OF REAL ESTATE.

"§ 36A-139. Disposition of real property without court order.

33 Pursuant to the authority contained in G.S. 36A-136(8), the trustee has the power to
 34 sell, exchange, partition, or otherwise dispose of, or grant options with respect to, real
 35 property of the trust upon such terms as he may deem just and for the advantage of the
 36 trust. The procedure shall be as provided in Article 29 of Chapter 1 of the General
 37 Statutes, entitled 'Judicial Sales'. If it is made to appear to the clerk of superior court by
 38 petition and by satisfactory proof that it will be for the best interest of the estate to sell
 39 by private sale, the clerk may authorize a private sale in accordance with the provisions
 40 of G.S. 1-339.33 through G.S. 1-339.40.

"§ 36A-140. Disposition of real property by court order.

42 (a) A trustee may, if he so desires, request the clerk of superior court to issue to
 43 him an order to sell, exchange, partition, or otherwise dispose of, or grant options with
 44 respect to, real property of the trust.

1 (b) Sales of real property shall be conducted as provided in Article 29 of Chapter
2 7 of the General Statutes, entitled 'Judicial Sales.'"

3 Sec. 2. G.S. 1-339.4 is amended by adding the following new subdivision:

4 "(6a) In a proceeding to sell property of a trust, the trustee;".

5 Sec. 3. G.S. 1-339.10(c) reads as rewritten:

6 "(c) Whenever an executor or trustee of a testamentary trust is ordered to sell real
7 property, the judge or clerk having jurisdiction shall require such executor or trustee of
8 a testamentary trust, before receiving the proceeds of the sale, to furnish bond to cover
9 such proceeds, unless the will provides otherwise, in which case the judge or clerk may
10 require such bond."

11 Sec. 4. This act is effective for all trusts in existence or created on or after the
12 date of ratification of this act.