

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS55081-LL-50 (2/10)

Short Title: North Carolina Uniform Trust Code. (Public)

Sponsors: Senator Hagan.

Referred to:

A BILL TO BE ENTITLED

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 6 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 15 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 The remainder of Chapter 36A of the General Statutes is repealed.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 pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22,

1 business trusts providing for certificates to be issued to beneficiaries, common trust
2 funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary
3 purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or
4 employee benefits of any kind, or any arrangement under which a person is nominee or
5 escrowee for another.

6 **"§ 36C-1-103. Definitions.**

7 In this Chapter:

- 8 (1) "Action", with respect to an act of a trustee, includes a failure to act.
9 (2) "Ascertainable standard" means a standard relating to an individual's
10 health, education, support, or maintenance within the meaning of
11 section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
12 (3) "Beneficiary" means a person who:
13 a. Has a present or future beneficial interest in a trust, vested or
14 contingent, including the owner of an interest by assignment or
15 transfer; or
16 b. In a capacity other than that of trustee, holds a power of
17 appointment over trust property.
18 (4) "Charitable trust" means a trust, including a split-interest trust as
19 described in section 4947 of the Internal Revenue Code, created for a
20 charitable purpose described in G.S. 36C-4-405(a).
21 (5) "Environmental law" means a federal, state, or local law, rule,
22 regulation, or ordinance relating to protection of the environment.
23 (6) "General guardian" means a general guardian as that term is defined in
24 G.S. 35A-1202(7).
25 (7) "Guardian of the estate" means a guardian of the estate as that term is
26 defined in G.S. 35A-1202(9).
27 (8) "Guardian of the person" means a guardian of the person as that term
28 is defined in G.S. 35A-1202(10).
29 (9) "Interests of the beneficiaries" means the beneficial interests provided
30 in the terms of the trust.
31 (10) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
32 amended from time to time. Each reference to a provision of the
33 Internal Revenue Code shall include any successor to that provision.
34 (11) "Jurisdiction", with respect to a geographic area, includes a state or
35 country.
36 (12) "Person" means an individual, corporation, business trust, estate, trust,
37 partnership, limited liability company, association, joint venture,
38 government; governmental subdivision, agency, or instrumentality;
39 public corporation, or any other legal or commercial entity.
40 (13) "Power of withdrawal" means a presently exercisable general power of
41 appointment other than a power:

- 1 a. Exercisable by a trustee and limited by an ascertainable
2 standard; or
3 b. Exercisable by another person only upon consent of the trustee
4 or a person holding an adverse interest.
5 (14) "Property" means anything that may be the subject of ownership,
6 whether real or personal, legal or equitable, or any interest therein.
7 (15) "Qualified beneficiary" means a living beneficiary who, on the date the
8 beneficiary's qualification is determined:
9 a. Is a distributee or permissible distributee of trust income or
10 principal;
11 b. Would be a distributee or permissible distributee of trust
12 income or principal if the interests of the distributees described
13 in sub-subdivision a. of this subdivision terminated on that date
14 without causing the trust to terminate; or
15 c. Would be a distributee or permissible distributee of trust
16 income or principal if the trust terminated on that date.
17 (16) "Revocable", as applied to a trust, means revocable by the settlor
18 without the consent of the trustee or a person holding an adverse
19 interest.
20 (17) "Settlor" means a person, including a testator, who creates, or
21 contributes property to, a trust. If more than one person creates or
22 contributes property to a trust, each person is a settlor of the portion of
23 the trust property attributable to that person's contribution except to the
24 extent another person has the power to revoke or withdraw that
25 portion.
26 (18) "Spendthrift provision" means a term of a trust that restrains both
27 voluntary and involuntary transfer of a beneficiary's interest.
28 (19) "State" means a state of the United States, the District of Columbia,
29 Puerto Rico, the United States Virgin Islands, or any territory or
30 insular possession subject to the jurisdiction of the United States. The
31 term includes an Indian tribe or band recognized by federal law or
32 formally acknowledged by a state.
33 (20) "Terms of a trust" means the manifestation of the settlor's intent
34 regarding a trust's provisions as expressed in the trust instrument or
35 established in a judicial proceeding.
36 (21) "Trust instrument" means an instrument executed by the settlor that
37 contains terms of the trust, including any amendments to the
38 instrument, and any modifications permitted by court order.
39 (22) "Trustee" includes an original, additional, and successor trustee, and a
40 co-trustee, whether or not appointed or confirmed by a court. The term
41 does not include trustees in mortgages and deeds of trusts.

1 **"§ 36C-1-104. Knowledge.**

2 (a) Subject to subsection (b) of this section, a person has knowledge of a fact if
3 the person:

4 (1) Has actual knowledge of it;

5 (2) Has received notice or notification of it; or

6 (3) From all the facts and circumstances known to the person at the time in
7 question, has reason to know it.

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

18 **"§ 36C-1-105. Default and mandatory rules.**

19 (a) Except as otherwise provided in the terms of the trust, this Chapter governs
20 the duties and powers of a trustee, relations among trustees, and the rights and interests
21 of a beneficiary.

22 (b) The terms of a trust prevail over any provision of this Chapter except:

23 (1) The requirements for creating a trust;

24 (2) The duty of a trustee to act in good faith and in accordance with the
25 terms and purposes of the trust and the interests of the beneficiaries;

26 (3) The requirement that a trust and its terms be for the benefit of its
27 beneficiaries, and that the trust have a purpose that is lawful, not
28 contrary to public policy, and possible to achieve;

29 (4) The power of the court to modify or terminate a trust under
30 G.S. 36C-4-410 through G.S. 36C-4-416;

31 (5) The effect of a spendthrift provision and the rights of certain creditors
32 and assignees to reach a trust as provided in Article 5;

33 (6) The effect of an exculpatory term under G.S. 36C-10-1008;

34 (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a
35 person other than a trustee or beneficiary;

36 (8) Periods of limitation for commencing a judicial proceeding;

37 (9) The power of the court to take such action and exercise such
38 jurisdiction as may be necessary in the interests of justice; and

39 (10) The subject-matter jurisdiction of the court and venue for commencing
40 a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

41 **"§ 36C-1-106. Common law of trusts; principles of equity.**

1 The common law of trusts and principles of equity supplement this Chapter, except
2 to the extent modified by this Chapter or another statute of this State.

3 **"§ 36C-1-107. Governing law.**

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

5 (1) The law of the jurisdiction designated in the terms unless the
6 designation of that jurisdiction's law is contrary to a strong public
7 policy of the jurisdiction having the most significant relationship to the
8 matter at issue; or

9 (2) In the absence of a controlling designation in the terms of the trust, the
10 law of the jurisdiction having the most significant relationship to the
11 matter at issue.

12 **"§ 36C-1-108. Principal place of administration.**

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

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

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

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

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

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

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

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

- 1 (2) The address and telephone number at the new location at which the
2 trustee can be contacted;
3 (3) An explanation of the reasons for the proposed transfer;
4 (4) The date on which the proposed transfer is anticipated to occur; and
5 (5) If the proposed transfer is to another state, the date, not less than 60
6 days after the giving of the notice, by which the qualified beneficiary
7 must notify the trustee of an objection to the proposed transfer.

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

11 **"§ 36C-1-109. Methods and waiver of notice.**

12 (a) Notice to a person under this Chapter or the sending of a document to a
13 person under this Chapter must be accomplished in a manner reasonably suitable under
14 the circumstances and likely to result in receipt of the notice or document. Permissible
15 methods of notice or for sending a document include first-class mail, personal delivery,
16 delivery to the person's last known place of residence or place of business, or a properly
17 directed electronic message.

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

21 (c) Notice under this Chapter, or the sending of a document under this Chapter,
22 may be waived by the person to be notified or sent the document.

23 (d) Notice of a judicial proceeding must be given as provided in Article 2 of this
24 Chapter.

25 **"§ 36C-1-110. Others treated as qualified beneficiaries.**

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

- 30 (1) Is a distributee or permissible distributee of trust income or principal;
31 (2) Would be a distributee or permissible distributee of trust income or
32 principal upon the termination of the interest of other distributees or
33 permissible distributees then receiving or eligible to receive
34 distributions, but the termination of those interests would not cause the
35 trust to terminate; or
36 (3) Would be a distributee or permissible distributee of trust income or
37 principal if the trust terminated on that date.

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

41 **"§ 36C-1-111. Nonjudicial settlement agreements.**

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

6 (c) This section does not preclude other methods of obtaining jurisdiction over a
7 trustee, beneficiary, or other person receiving property from the trust.

8 **"§ 36C-2-203. Subject matter jurisdiction.**

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

16 (1) To appoint or remove a trustee;

17 (2) To permit a trustee to resign or renounce; however, unless the trustee
18 is required to account to the clerk of superior court, when the
19 governing instrument names or provides a procedure to name a
20 successor trustee, and the successor trustee is willing to serve, no
21 trustee shall be required to initiate a proceeding to resign or renounce
22 as trustee;

23 (3) To review trustees' fees pursuant to Article 5A of Chapter 32 of the
24 General Statutes and review and settle interim or final accounts;

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

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

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

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

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

38 (9) To ascertain beneficiaries, to determine any question arising in the
39 administration or distribution of any trust, including questions of
40 construction of trust instruments, and to determine the existence or
41 nonexistence of trusts created other than by will and the existence or
42 nonexistence of any immunity, power, privilege, duty, or right. Upon

1 motion of a party, the clerk of superior court may determine that a
2 proceeding to determine an issue listed in this subdivision shall be
3 originally heard by the superior court division of the General Court of
4 Justice.

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

10 (c) Nothing in this section affects the right of a person to file an action for
11 declaratory relief under the provisions of Article 26 of Chapter 1 of the General
12 Statutes. In the event either the petitioner or respondent in a trust proceeding requests
13 declaratory relief under the provisions of Article 26 of Chapter 1 of the General
14 Statutes, either party may move for a transfer of the proceeding to the superior court
15 division of the General Court of Justice as provided in Article 21 of Chapter 7A of the
16 General Statutes. In absence of removal to superior court, the provisions of Article 26 of
17 Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent not
18 inconsistent with this Article.

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

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

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

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

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

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

37 (1) Actions to reform, terminate, or modify a trust as provided by
38 G.S. 36C-4-410 through G.S. 36C-4-416;

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

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

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

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

3 **"§ 36C-2-204. Venue.**

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

8 (1) If the trustee is required to account to the clerk of superior court, then
9 unless the terms of the governing instrument provide otherwise, venue
10 for proceedings under G.S. 36C-2-203 involving trusts is the place
11 where the accountings are filed.

12 (2) If the trustee is not required to account to the clerk of superior court,
13 then unless the terms of the governing instrument provide otherwise,
14 venue for proceedings under G.S. 36C-2-203 involving trusts is:

15 a. In the case of an inter vivos trust, in any county of this State in
16 which the trust has its principal place of administration or
17 where any beneficiary resides; or

18 b. In the case of a testamentary trust, in any county of this State in
19 which the trust has its principal place of administration, where
20 any beneficiary resides, or in which the testator's estate was
21 administered.

22 (3) Unless otherwise designated in the governing instrument, the principal
23 place of administration of the trust is the trustee's usual place of
24 business where the records pertaining to the trust are kept, or at the
25 trustee's residence if the trustee has no such place of business. In the
26 case of co-trustees, the principal place of administration, if not
27 otherwise designated in the governing instrument, is:

28 a. The usual place of business of the corporate trustee if there is
29 but one corporate or co-trustee; or

30 b. The usual place of business or residence of any of the
31 co-trustees.

32 (4) If a trust has no trustee, venue for a judicial proceeding for the
33 appointment of a trustee is in any county of this State in which a
34 beneficiary resides, in any county in which trust property is located, in
35 the county of this State specified in the trust instrument, if any county
36 is so specified, or if the trust is created by will, in the county in which
37 the decedent's estate was or is being administered.

38 **"§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and**
39 **joinder.**

40 (a) Contested Proceedings. – Trust proceedings before the clerk of superior court
41 brought against adverse parties shall be commenced as is prescribed for civil actions.
42 Upon the filing of the petition or complaint, the clerk of superior court shall docket the

1 cause as an estate matter. All parties not joined as petitioners shall be joined as
2 respondents. The clerk of superior court shall issue the summons for the respondents.
3 The clerk of superior court may order that additional persons be joined as respondents
4 and shall issue the summons for the additional persons. The summons shall notify the
5 respondents to appear and answer the petition within 10 days after its service upon the
6 respondents. The summons shall comply with the requirements set forth in G.S. 1-394
7 for a special proceeding summons except that the clerk of superior court shall indicate
8 on the summons by appropriate words that the summons is issued in an estate matter
9 and not in a special proceeding or in a civil action and shall be served upon the
10 respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time
11 for responding to the petition or complaint has expired, any party or the clerk of
12 superior court may give notice to all parties of a hearing.

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

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

34 (d) Extensions of Time. – The clerk of superior court, for cause shown at any
35 time in the clerk's discretion, with or without motion or notice, may enter an order
36 enlarging the period of time within which an act is required or permitted by this Article,
37 by any applicable Rules of Civil Procedure or by order of the court, if the request is
38 made before the expiration of the period originally prescribed, but not to exceed 10
39 days, nor more than once. Upon motion made after the expiration of the specified
40 period, the clerk of superior court may permit the act where the failure to act was the
41 result of excusable neglect. Notwithstanding any other provision of this subsection, the

1 parties to a proceeding may enter into binding stipulations, without approval of the clerk
2 of superior court, enlarging the time within which an act is required or permitted by this
3 Article, by any applicable Rules of Civil Procedure or by order of the court, not to
4 exceed 30 days.

5 (e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise
6 directs, Rules 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, and 45 of the Rules of Civil
7 Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of
8 superior court, the clerk may further direct that the following Rules of Civil Procedure
9 shall apply: 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37; however,
10 nothing in Rule 17 shall require the appointment of a guardian ad litem for a party
11 represented except as provided under G.S. 36C-3-305. In applying these Rules to a trust
12 proceeding pending before the clerk of superior court, the term "judge" shall be
13 construed as "clerk of superior court."

14 (f) Consolidation. – When a trust proceeding pending before the clerk of superior
15 court and a civil action pending before the superior court division of the General Court
16 of Justice involve a common question of law or fact, upon the court's motion or motion
17 of a party to either the trust proceeding or the civil action, a superior court judge may
18 order a consolidation of the trust proceeding and civil action, and the judge may make
19 such orders concerning proceedings therein as may tend to avoid unnecessary costs or
20 delay. Upon the entry of an order consolidating a trust proceeding and civil action, the
21 jurisdiction for all matters pending in both the trust proceeding and the civil action shall
22 be vested in the superior court.

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

29 (h) Orders Upon Consolidation/Joinder. – Upon the consolidation of a trust
30 proceeding and civil action or joinder of claims pursuant to subsection (f) or (g) of this
31 section, the clerk of superior court or the judge may make such orders as appropriate to
32 protect the interests of the parties and to avoid unnecessary costs or delay.
33 Notwithstanding the consolidation or joinder of claims pursuant to subsection (f) or (g)
34 of this section, the clerk of court's exclusive jurisdiction as set forth in
35 G.S. 36C-2-203(a) shall not be stayed unless so ordered by the court.

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

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

41 (1) Parties shall be represented as provided in Article 3 of this Chapter.

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

4 **"§ 36C-2-207. Waiver of notice.**

5 A party, or the representative of the party as provided in G.S. 36C-2-206, may waive
6 notice by a writing signed by the party, the representative, or the attorney of the party or
7 the representative, and filed in the proceeding.

8 **"§ 36C-2-208. Accounting to clerk.**

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

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

17 (c) Notwithstanding the provisions of subsections (a) and (b) of this section,
18 pursuant to a proceeding brought under G.S. 36C-4-405A, the clerk of superior court
19 may require a trustee of a charitable trust to account to the clerk of superior court.

20 **"§ 36C-2-209. Qualification and accounting of trustee of a testamentary trust.**

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

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

1 trustee shall be required to account to the clerk of superior court or unless otherwise
2 required by law.

3 (c) The Administrative Office of the Courts may adopt rules regulating the
4 registration or indexing of testamentary trusts.

5 "Article 3.

6 "Representation.

7 **"§ 36C-3-301. Representation: basic effect.**

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

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

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

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

18 **"§ 36C-3-302. Representation by holder of general testamentary power of**
19 **appointment.**

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

28 **"§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

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

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

34 (2) A guardian of the person may represent and bind the ward if a general
35 guardian or guardian of the estate of the ward's estate has not been
36 appointed.

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

40 (4) A trustee may represent and bind the beneficiaries of the trust.

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

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

11 (7) A person may represent and bind that person's unborn issue.

12 **"§ 36C-3-304. Representation by person having substantially identical interest.**

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

19 **"§ 36C-3-305. Appointment of representative; scope of representation.**

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

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

29 (c) In making decisions, a representative, including a guardian ad litem, may
30 base a decision to consent to an action upon a finding that living members of the
31 individual's family would generally benefit from that action.

32 "Article 4.

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

34 **"§ 36C-4-401. Methods of creating trust.**

35 A trust may be created by:

- 36 (1) Transfer of property by a settlor to a person as trustee during the
37 settlor's lifetime or by will or other disposition taking effect upon the
38 settlor's death;
39 (2) Declaration by the owner of property that the owner holds identifiable
40 property as trustee unless the transfer of title of that property is
41 otherwise required by law; or

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

2 **"§ 36C-4-401A. Interest of trustee as beneficiary of life insurance or other death**
3 **benefit sufficient to support inter vivos or testamentary trust.**

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

9 (1) To change the beneficiary;

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

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

13 (4) To assign the policy; or

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

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

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

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

34 (c) A testator having the right to designate the beneficiary under a life insurance
35 policy, employee benefit plan, or group life insurance policy described in subsection (a)
36 or (b) of this section may designate as that beneficiary a trustee named or to be named
37 in the testator's will whether or not the will is in existence at the time of the designation.
38 The proceeds received by the trustee shall be held and disposed of as part of the trust
39 estate under the terms of the will as they exist at the death of the testator. If no trustee
40 makes claim to the proceeds within six months after the death of the testator, payments
41 shall be made to the personal representative of the estate of the testator unless it is
42 otherwise provided by an alternative designation or by the policy or plan. The proceeds

1 received by the trustee shall not be subject to claims against the estate of the testator to
2 estate or inheritance taxes to any greater extent than if the proceeds were payable
3 directly to the beneficiary or beneficiaries named in the trust. The proceeds may be
4 commingled with any other assets that may properly become part of such trust, but the
5 proceeds shall not become part of the testator's estate for purposes of trust
6 administration unless the will expressly so provides.

7 **"§ 36C-4-402. Requirements for creation.**

8 (a) A trust is created only if:

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

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

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

12 a. A charitable trust;

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

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

17 (4) The trustee has duties to perform; and

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

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

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

25 **"§ 36C-4-403. Trusts created in other jurisdictions.**

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

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

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

31 (3) Any trust property was located.

32 **"§ 36C-4-404. Trust purposes.**

33 A trust may be created only to the extent that its purposes are lawful, not contrary to
34 public policy, and possible to achieve. A trust and its terms must be for the benefit of its
35 beneficiaries.

36 **"§ 36C-4-405. Charitable purposes.**

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

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

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

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

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

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

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

16 (d) When any gift is made in general terms, the trustee or other recipient of the
17 gift shall have the right and power:

18 (1) To select from time to time one or more specific charitable
19 beneficiaries or purposes for which any trust or property or income
20 shall be held and administered; and

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

24 (e) For purposes of this section, the reference to a "gift" or "gifts" includes both
25 inter vivos and testamentary gifts, grants, and other transfers.

26 **"§ 36C-4-405A. Enforcement of charitable gift or trust.**

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

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

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

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

39 (b) The donor of a charitable gift, the Attorney General, the district attorney, or
40 any other interested party may maintain a proceeding to enforce the gift, including a
41 proceeding to require the recipient of the gift to make a selection as may be necessary to

1 establish the charitable beneficiaries or purposes for which the gift was intended, as
2 provided in subsections (d)(1) and (d)(2) of G.S. 36C-4-405.

3 **"§ 36C-4-406. Creation of trust induced by fraud, duress, or undue influence.**

4 A trust is voidable to the extent that its creation was induced by fraud, duress, or
5 undue influence.

6 **"§ 36C-4-407. Evidence of oral trust.**

7 Except as required by a statute other than this Chapter, a trust need not be evidenced
8 by a trust instrument, but the creation of an oral trust and its terms may be established
9 only by clear and convincing evidence.

10 **"§ 36C-4-408. Trust for care of animal.**

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

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

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

19 (1) As directed in the trust instrument;

20 (2) If the trust was created in a preresiduary clause in the transferor's will
21 or in a codicil to the transferor's will, under the residuary clause in the
22 transferor's will;

23 (3) If no taker is produced by the application of subdivision (1) or (2) of
24 this subsection, to the transferor or the transferor's heirs determined as
25 of the date of the transferor's death under Chapter 29 of the General
26 Statutes.

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

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

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

39 (g) The clerk of superior court may reduce the amount of the property
40 transferred, if the clerk of superior court determines that the amount substantially

1 exceeds the amount required for the intended use. The amount of the reduction, if any,
2 passes as unexpended trust property under subsection (c) of this section.

3 (h) If no trustee is designated or if no designated trustee agrees to serve or is able
4 to serve, the clerk of superior court shall name a trustee. The clerk of superior court may
5 order the transfer of the property to another trustee, if required to assure that the
6 intended use is carried out and if no successor trustee is designated in the trust
7 instrument or if no designated successor trustee agrees to serve or is able to serve. The
8 clerk of superior court may also make such other orders and determinations as are
9 advisable to carry out the intent of the transferor and the purpose of this section.

10 **"§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

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

13 (1) A trust may be created for a noncharitable purpose without a definite
14 or definitely ascertainable beneficiary or for a noncharitable but
15 otherwise valid purpose to be selected by the trustee. The trust may not
16 be enforced for more than 21 years.

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

20 (3) Property of a trust authorized by this section may be applied only to its
21 intended use, except to the extent that the court determines that the
22 value of the trust property exceeds the amount required for the
23 intended use. Except as otherwise provided in the terms of the trust,
24 property not required for the intended use must be distributed to the
25 settlor, if then living, or otherwise to the settlor's successors in interest.

26 (4) Notwithstanding subdivisions (1) through (3) of this section, a trust,
27 contract, or other arrangement to provide for the care of a cemetery lot,
28 grave, crypt, niche, mausoleum, columbarium, grave marker, or
29 monument is valid without regard to remoteness of vesting, duration of
30 the arrangement, or lack of definite beneficiaries to enforce the trust,
31 provided that the trust, contract, or other arrangement meets the
32 requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the
33 General Statutes, Article 9 of Chapter 65 of the General Statutes, or
34 other applicable law. This section does not repeal or supersede
35 G.S. 36C-4-413.

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

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

1 (b) A proceeding to approve or disapprove a proposed modification or
2 termination under G.S. 36C-4-411 through G.S. 36C-4-416, or trust combination or
3 division under G.S. 36C-4-417, may be commenced by a trustee or beneficiary, and a
4 proceeding to approve or disapprove a proposed modification or termination under
5 G.S. 36C-4-411 may be commenced by the settlor. The settlor of a charitable trust may
6 maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee shall be a
7 necessary party to any proceeding under this section.

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

10 **"§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by**
11 **consent.**

12 (a) A noncharitable irrevocable trust may be modified or terminated upon
13 consent of the settlor and all beneficiaries, even if the modification or termination is
14 inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's
15 modification or termination may be exercised by an agent under a power of attorney
16 only to the extent expressly authorized by the power of attorney or the terms of the trust;
17 by the settlor's general guardian or the guardian of the estate with the approval of the
18 court supervising the guardianship if an agent is not so authorized; or by the settlor's
19 guardian of the person with the approval of the court supervising the guardianship if an
20 agent is not so authorized and a general guardian or guardian of the estate has not been
21 appointed.

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

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

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

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

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

3 **"§ 36C-4-412. Modification or termination because of unanticipated circumstances**
4 **or inability to administer trust effectively.**

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

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

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

15 **"§ 36C-4-413. Cy pres.**

16 (a) Except as otherwise provided in subsection (d) of this section, if a charitable
17 trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

18 (1) The trust does not fail, in whole or in part;

19 (2) The trust property does not revert to the settlor or the settlor's
20 successors in interest; and

21 (3) The court may apply cy pres to modify or terminate the trust by
22 directing that the trust property be applied or distributed, in whole or in
23 part, in a manner consistent with the settlor's charitable purposes.

24 (b) The settlor or a trustee of a charitable trust, the Attorney General, a
25 beneficiary or any other interested party may maintain a cy pres proceeding under
26 Article 2 of this Chapter.

27 (c) In every cy pres proceeding, the Attorney General shall be notified and given
28 an opportunity to be heard.

29 (d) This section shall not be applicable if the settlor has provided, either directly
30 or indirectly, for an alternative plan in the event that the charitable trust is or becomes
31 unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative
32 plan is also a charitable trust and that trust fails, the intention shown in the original plan
33 shall prevail in the application of this section.

34 **"§ 36C-4-414. Modification or termination of uneconomic trust.**

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

1 apply. The trustee shall not be liable for that termination and distribution
2 notwithstanding the existence or potential existence of other beneficiaries who are not
3 sui juris. Any beneficiary receiving a distribution from a trust terminated under this
4 section shall incur no liability and shall not be required to account to anyone for such
5 distribution.

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

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

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

12 **"§ 36C-4-415. Reformation to correct mistakes.**

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

18 **"§ 36C-4-416. Modification to achieve settlor's tax objectives.**

19 To achieve a settlor's tax objectives, the court may modify the terms of a trust in a
20 manner that is not contrary to the settlor's probable intention. The court may provide
21 that the modification has retroactive effect. Jurisdiction of a proceeding brought under
22 this section shall be as provided in G.S. 36C-2-203.

23 **"§ 36C-4-417. Combination and division of trusts.**

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

26 (1) Consolidate the assets of more than one trust and administer the assets
27 as one trust under the terms of one of the trusts if the terms of the
28 trusts are substantially similar and the beneficiaries of the trusts are
29 identical; or

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

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

39 (c) In any case where two separate identical trusts are created pursuant to this
40 section, one of which is fully exempt from the federal generation-skipping transfer tax
41 and one of which is fully subject to that tax, the trustee may thereafter, to the extent

1 possible consistent with the terms of the trust, determine the value of any mandatory or
2 discretionary distributions to trust beneficiaries on the basis of the combined value of
3 both trusts, but may satisfy those distributions by a method other than pro rata from the
4 separate trusts in a manner designed to minimize the current and potential
5 generation-skipping transfer tax.

6 **"§ 36C-4-418. Distribution upon termination of trust.**

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

- 12 (1) To the guardian of the estate or general guardian of the beneficiary;
13 (2) In accordance with the North Carolina Uniform Transfer to Minors
14 Act, Chapter 33A of the General Statutes; or
15 (3) In accordance with the North Carolina Custodial Trust Act, Chapter
16 33B of the General Statutes.

17 **"§ 36C-4-419. Effect of inalienable interest on modification or termination.**

18 The court, in exercising its discretion to modify or terminate an irrevocable trust
19 pursuant to the provisions of G.S. 36C-4-411, 36C-4-412 or 36C-4-413 shall consider
20 provisions making the interest of a beneficiary inalienable, including those described in
21 Article 5, but the court is not precluded from the exercise of that discretion solely
22 because of such provisions.

23 "Article 4A.

24 "Tax Status of Charitable Trusts.

25 **"§ 36C-4A-1. Prohibited transactions.**

26 (a) Notwithstanding any provisions in the laws of this State or in the governing
27 instrument to the contrary unless otherwise decreed by a court of competent jurisdiction
28 except as provided in subsection (b), the trust instrument of each trust which is a private
29 foundation described in section 509 of the Internal Revenue Code (including each
30 nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code
31 which is treated as a private foundation) and the trust instrument of each nonexempt
32 split-interest trust described in section 4947(a)(2) of the Internal Revenue Code (but
33 only to the extent that section 508(e) of the Internal Revenue Code is applicable to such
34 nonexempt split-interest trust under section 4947(a)(2) of the Internal Revenue Code)
35 shall be deemed to contain the following provisions: "The trust shall make distributions
36 at such time and in such manner as not to subject it to tax under section 4942 of the
37 Internal Revenue Code; the trust shall not engage in any act of self-dealing which
38 would subject it to tax under section 4941 of the Internal Revenue Code; the trust shall
39 not retain any excess business holdings which would subject it to tax under section
40 4943 of the Internal Revenue Code; the trust shall not make any investments which
41 would subject it to tax under section 4944 of the Internal Revenue Code; and the trust
42 shall not make any taxable expenditures which would subject it to tax under section

1 4945 of the Internal Revenue Code." With respect to any such trust created prior to
2 January 1, 1970, this section shall apply only for its taxable years beginning on or after
3 January 1, 1972.

4 (b) Notwithstanding any provisions in the laws of this State or in the governing
5 instrument to the contrary, unless otherwise decreed by a court of competent
6 jurisdiction except as provided in subsection (a) of this section, the governing
7 instrument of each trust that is a nonexempt charitable trust described in section
8 4947(a)(1) of the Internal Revenue Code shall be deemed to contain the following
9 provisions:

10 (1) The trust shall be operated exclusively for charitable, educational,
11 religious and scientific purposes within the meaning of section
12 501(c)(3) and section 170(c)(2) of the Internal Revenue Code.

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

18 (c) The trustee of any trust described in this section may either:

19 (1) Without judicial proceedings, amend the trust to expressly exclude the
20 application of this section by executing a written amendment to the
21 trust instrument and filing a duplicate original of the amendment with
22 the Attorney General. Upon filing of the amendment, this section
23 shall not apply to that trust.

24 (2) Institute a proceeding under Article 2 of this Chapter seeking
25 reformation of the trust instrument.

26 **"§ 36C-4A-2. Reformation of charitable remainder trust.**

27 If a federal estate tax deduction is not allowable at the time of a decedent's death
28 because of the failure of an interest in property that passes from the decedent under a
29 will or trust to a person, or for a use, described in section 2055(a) of the Internal
30 Revenue Code, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the
31 Internal Revenue Code, then in order that the deduction shall nevertheless be allowable
32 under section 2055(e)(3) of the Internal Revenue Code, the court may, on application of
33 any trustee or interested party with either (i) the written consent of the qualified
34 beneficiaries, or (ii) a finding that the interest of those beneficiaries is substantially
35 preserved, order an amendment to the trust so that the remainder interest is in a trust that
36 is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms
37 are described in section 664 of the Internal Revenue Code), or a pooled income fund (as
38 that term is described in section 642(c)(5) of the Internal Revenue Code), or so that any
39 other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a
40 fixed percentage distributed yearly of the fair market value of the property (to be
41 determined yearly), in accordance with the provisions of section 2055(e)(2)(B) of the

1 Internal Revenue Code. In every such proceeding, the Attorney General shall be
2 notified, and given an opportunity to be heard.

3 "Article 4B.

4 "Charitable Remainder Trust Administration Act.

5 **"§ 36C-4B-1. Short title.**

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

7 **"§ 36C-4B-2. General rule.**

8 Notwithstanding any provisions in the laws of this State or in the governing
9 instruments to the contrary, any charitable remainder annuity trust and any charitable
10 remainder unitrust that cannot qualify for a deduction for federal tax purposes under
11 section 2055 or section 2522 of the Internal Revenue Code in the absence of this Article
12 shall be administered in accordance with this Article.

13 **"§ 36C-4B-3. Definitions.**

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

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

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

- 25 a. From which a sum certain (that is not less than five percent
26 (5%) of the initial net fair market value of all property placed in
27 trust) is to be paid at least annually to one or more persons (at
28 least one of which is not an organization described in section
29 170(c) of the Internal Revenue Code and, in the case of
30 individuals, only to an individual who was living at the time of
31 the creation of the trust) for a term of years (not in excess of 20
32 years) or for the life or lives of that individual or those
33 individuals; however, in the case of an individual, the amount
34 to be paid to that individual may be subject to a qualified
35 contingency according to the terms of the governing instrument;
36 b. From which no amount other than the payments described in
37 sub-subdivision a. of this subdivision may be paid to and/or for
38 the use of anyone other than an organization that is or was
39 described in section 170(c) of the Internal Revenue Code; and
40 c. Following the termination of the payments described in
41 sub-subdivision a. of this subdivision, the remainder interest in
42 the trust is to be transferred to, or for the use of, an organization

1 that is or was described in section 170(c) of the Internal
2 Revenue Code or is to be retained by the trust for such a use.

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

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

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

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

25 Notwithstanding the provisions of sub-subdivisions a. and b. of this
26 subdivision, the trust instrument may provide that the trustee shall pay
27 to the income beneficiary for any year (i) the amount of the trust
28 income if that amount is less than the amount required to be distributed
29 under sub-subdivision a. of this subdivision, and (ii) any amount of the
30 trust income that exceeds the amount required to be distributed under
31 sub-subdivisions a of this subdivision to the extent that (by reason of
32 sub-subdivision a.) the aggregate of the amounts paid in prior years
33 is less than the aggregate of the required amounts.

34 (4) "Qualified contingency" means any provision of the governing
35 instrument that provides that, upon the happening of a contingency, the
36 payments made to an individual noncharitable beneficiary of a
37 charitable remainder trust will terminate not later than those payments
38 would otherwise terminate under the governing instrument.

39 "§ 36C-4B-4. Administrative provisions applicable to both charitable remainder
40 annuity trusts and charitable remainder unit trusts.

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

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

17 (bl) Selection of Alternative Charitable Beneficiary if Remaindermen Do Not
18 Qualify Under Section 170(b)(1)(A) of the Internal Revenue Code at Time of
19 Distribution. – Notwithstanding the provisions of subsection (b) of this section, if the
20 designated charity is, at the time of the creation of the trust, an organization described in
21 both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, and if the
22 designated charity is not an organization described in both section 170(b)(1)(A) and
23 section 170(c) of the Internal Revenue Code when any principal or income of the trust is
24 to be distributed to it, the trustee shall distribute the principal or income to one or more
25 organizations then described in both section 170(b)(1)(A) and section 170(c) of the
26 Internal Revenue Code selected in accordance with the terms of the governing instrument;
27 however, in the event that the governing instrument does not provide a method of
28 selecting alternative charitable beneficiaries that are then described in both section
29 170(b)(1)(A) and section 170(c) of the Internal Revenue Code, the trustee shall, in his
30 sole discretion, select one or more alternative charitable beneficiaries that are described
31 in both section 170(b)(1)(A) and section 170(c) of the Internal Revenue Code and shall
32 distribute the principal or income to the organization or organizations so selected in
33 such shares as the trustee, in the trustee's sole discretion, shall determine.

34 (c) Prohibitions Governing Trustees. – Except for payment of the annuity amount
35 or the unitrust amount to the beneficiaries, whichever is applicable, the trustee is
36 prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the
37 Internal Revenue Code, retaining any excess business holdings as defined in section
38 4943(c) of the Internal Revenue Code that would subject the trust to tax under section
39 4943 of the Code, making any investments that would subject the trust to tax under
40 section 4944 of the Internal Revenue Code, and making any taxable expenditures as
41 defined in section 4945(d) of the Code. The trustee shall make distributions at a time

1 and in a manner as not to subject the trust to tax under section 4942 of the Internal
2 Revenue Code.

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

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

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

28 (g) Payment of Taxes by Noncharitable Beneficiary. – In the case of any inter
29 vivos charitable remainder trust that is liable to pay, from trust property, any federal
30 estate, state inheritance, or other similar death taxes by reason of the death of the settlor
31 of the trust, the interest of any noncharitable beneficiary of the trust shall terminate
32 upon the death of the settlor unless the noncharitable beneficiary furnishes to the trust
33 sufficient funds for payment of all those taxes attributable to the interest of the
34 noncharitable beneficiary in the trust property, and the termination shall be deemed as
35 the occurrence of a qualified contingency.

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

38 (a) Creation of Annuity Amount for Period of Years or Life. – The trustee shall
39 pay the annuity amount designated in the trust instrument to the beneficiaries named in
40 the trust instrument during their lives (or if the governing instrument so provides, for a
41 period of 20 years or less) in each taxable year of the trust. The annuity amount shall be

1 paid annually or in more frequent equal or unequal installments if the governing
2 instrument so provides. The annuity amount shall be paid from income and, to the
3 extent that income is not sufficient, from principal. Any income of the trust for a taxable
4 year in excess of the annuity amount shall be added to principal.

5 The total amount payable at least annually to a person or persons named in the trust
6 document, at least one of which is not an organization described in section 170(c) of the
7 Internal Revenue Code, may not be less than five percent (5%) of the initial net fair
8 market value of the property placed in trust as finally determined for federal tax
9 purposes, except as provided in subsection (g) of this section.

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

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

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

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

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

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

36 (e) Dollar Amount Annuity May Be Stated as Fraction or Percentage. – If the
37 governing instrument of the trust states the amount of the annuity as a fraction or a
38 percentage, the trustee shall pay to the beneficiaries in each taxable year of the trust
39 during their lives an annuity amount equal to a percentage (that percentage being
40 stipulated in the governing instrument of the trust and, in any event, being five percent
41 (5%) or greater) of the initial net fair market value of the assets constituting the trust. In
42 determining this amount, assets shall be valued at their values as finally determined for

1 federal tax purposes. If the fiduciary incorrectly determines the initial net fair market
2 value of the assets constituting the trust, then, within a reasonable period after a final
3 determination, the trustee shall pay to the beneficiaries, in the case of an undervaluation
4 or shall receive from the beneficiaries, in the case of an overvaluation, an amount
5 equal to the difference between the annuity amount properly payable and the annuity
6 amount actually paid.

7 (f) Annuity Amount May Be Allocated Among Class of Noncharitable
8 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
9 provides that the annuity trust amount may be allocated among a class of
10 noncharitable beneficiaries in the discretion of the trustee, then the trustee shall pay the
11 annuity amount, which is defined in the governing instrument of the trust, in each
12 taxable year of the trust, to the member or members of the class of noncharitable
13 beneficiaries in an amount and proportions as the trustee in the trustee's absolute
14 discretion shall from time to time determine until the last of the noncharitable
15 beneficiaries dies. The trustee may pay the entire annuity amount to one member of this
16 class or may apportion it among the various members in a manner as the trustee from
17 time to time deems advisable as long as the power to allocate does not cause any
18 person to be treated as the owner of any part of the trust under the rules of section 671
19 through section 678 of the Internal Revenue Code. If the class provided for in the
20 governing instrument is open, then the distribution shall be for a period of years not to
21 exceed 20 years, notwithstanding a provision to the contrary in the trust instrument. If
22 the class provided for in the governing instrument is closed at the creation of the trust,
23 and all members of the class are ascertainable, the distribution may be for the lives of
24 the members of the class or for a period not exceeding 20 years. The trustee shall pay
25 the entire annuity amount for each taxable year annually and may not delay payment of
26 the annuity amount.

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

1 or percentage of trust assets distributed to the charity, bears to the net fair market value
2 of the trust assets as of the date of distribution.

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

11 (i) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
12 governing instrument of the trust provides that the settlor of the trust retains the
13 power, exercisable only by will, to revoke or terminate the interest of any recipient
14 other than an organization described in section 170(c) of the Internal Revenue Code,
15 then the trustee shall pay to the settlor during his life the annuity amount, as defined in
16 the governing instrument of the trust and, upon the death of the settlor, if the
17 noncharitable beneficiary survives the settlor, the trustee shall pay to the noncharitable
18 beneficiary during his life the annuity amount equal to the amount paid to the settlor.
19 The settlor shall have the power, exercisable only by will, to revoke and terminate the
20 interest of the noncharitable beneficiary under the trust. Upon the first to occur of (i)
21 the death of the survivor of the settlor and noncharitable beneficiary; or (ii) the death
22 of the settlor if he effectively exercised his testamentary power to revoke and terminate
23 the interest of the noncharitable beneficiary; the trustee shall distribute all of the then
24 principal and income of the trust, other than any amount due the settlor or
25 noncharitable beneficiary, to the charity named in the trust document or, if the
26 governing instrument so provides, the trustee shall continue to hold the principal and
27 income in trust for the charity or for the charitable purposes specified in the trust. No
28 other retained power to terminate an interest in the trust shall be effective.

29 **"§ 36C-4B-6. Administrative provisions applicable to charitable remainder**
30 **unitrusts only.**

31 (a) Creation of Unitrust Amount for a Period of Years or Life. – The trustee shall
32 pay to the beneficiaries named in the trust investment in each taxable year of the trust
33 during their lives or, if the governing instrument so provides, for a period not exceeding
34 20 years, a unitrust amount equal to a fixed percentage, as stated in the governing
35 instrument of the trust, of the net fair market value of the trust assets valued annually
36 on the date or by the method designated in the governing instrument of the trust or, if
37 no date or method is specified, on the date or by the method selected by the trustee in
38 his discretion, so long as the same valuation date or dates or valuation methods are used
39 each year. The unitrust amount shall be paid annually or in more frequent equal or
40 unequal installments if the governing instrument so provides. The unitrust amount shall
41 be paid from income and, to the extent that income is not sufficient, from principal. Any
42 income of the trust for a taxable year in excess of the unitrust amount shall be added

1 to principal. The fixed percentage to be paid at least annually to all beneficiaries cannot
2 be less than five percent (5%).

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

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

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

36 (d) Computation of Unitrust Amount in Short and Final Taxable Years. – For a
37 short taxable year and for the taxable year in which the noncharitable beneficiary's
38 interest terminates by death or otherwise, the trustee shall prorate the unitrust amount on
39 a daily basis. If a trust provides for a valuation date other than the first day of the
40 taxable year, and the valuation date does not occur in a taxable year of the trust
41 because the taxable year is either a short taxable year or is the taxable year in which the

1 noncharitable interests terminate, the trust assets shall be valued as of the last day of the
2 short taxable year or the day on which the noncharitable interests terminate, as
3 appropriate.

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

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

- 27 (1) Any unitrust amounts actually paid, plus interest on those amounts
28 computed at ten percent (10%) a year, compounded annually; and
29 (2) The unitrust amounts payable, determined under the method described
30 in section 1.664-1(a)(5) of the federal income tax regulations, plus
31 interest on those amounts computed at ten percent (10%) a year,
32 compounded annually.

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

39 (g) Unitrust Amount May Be Allocated Among Class of Noncharitable
40 Beneficiaries in Discretion of Trustee. – If the governing instrument of the trust
41 provides that the unitrust amount may be allocated to a class of noncharitable
42 beneficiaries in the discretion of the trustee, then the trustee shall pay, in each taxable

1 year of the trust, the unitrust amount to the member or members of the class of
2 noncharitable beneficiaries in amounts and proportions as the trustee in the trustee's
3 absolute discretion shall from time to time determine until the last of the noncharitable
4 beneficiaries dies. The trustee may pay the unitrust amount to any one member of the
5 class or may apportion it among the various members in a manner that the trustee shall
6 from time to time deem advisable as long as the power to allocate does not cause any
7 person to be treated as the owner of any part of the trust under the rules of section
8 671 through section 678 of the Internal Revenue Code. If the class provided for in the
9 governing instrument is open, the distribution shall be for a period not exceeding 20
10 years, notwithstanding a provision to the contrary in the trust instrument. If the class
11 provided for in the governing instrument is closed at the creation of the trust, and all
12 members of the class are ascertainable, the distribution may be for the lives of the
13 members of the class or for a period not exceeding 20 years. The trustee shall pay the
14 entire unitrust amount for each taxable year annually and may not delay payment of the
15 unitrust amount.

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

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

39 (j) Retention of Testamentary Power to Revoke Noncharitable Interest. – If the
40 governing instrument of the trust provides that the settlor of the trust shall retain the
41 power, exercisable only by will, to revoke or terminate the interest of any recipient

1 other than an organization described in section 170(c) of the Internal Revenue Code,
2 then the trustee shall pay the unitrust amount to the settlor during his life and, upon the
3 death of the settlor, shall pay the unitrust amount to the noncharitable beneficiary during
4 his life, provided the noncharitable beneficiary survives the settlor. The settlor shall
5 have the power, exercisable only by will, to revoke and terminate the interest of the
6 noncharitable beneficiary under the trust. Upon the first to occur of (i) the death of the
7 survivor of the settlor and the noncharitable beneficiary; or (ii) the death of the settlor if
8 the settlor effectively exercised the testamentary power to revoke and terminate the
9 interest of the noncharitable beneficiary; the trustee shall distribute all of the then
10 principal and income of the trust, other than any amount due the noncharitable
11 beneficiaries, to the charity named in the trust document or, if the governing instrument
12 so provides, the trustee shall continue to hold the principal and income in trust for the
13 charity or for the charitable purposes specified in the trust. No other retained power to
14 terminate an interest in the trust shall be effective.

15 **"§ 36C-4B-7. Interpretation.**

16 This Article shall be interpreted and construed to effectuate its general purpose to
17 cause all charitable remainder annuity trusts and all charitable remainder unitrusts to be
18 administered in accordance with the provisions of section 2055 and section 2522 of
19 the Internal Revenue Code and the regulations under those sections.

20 "Article 5.

21 "Creditors' Claims; Spendthrift and Discretionary Trusts.

22 **"§ 36C-5-501. Rights of beneficiary's creditor or assignee.**

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

27 (b) This section shall not apply and a trustee shall have no liability to any creditor
28 of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the
29 extent that a beneficiary's interest:

30 (1) Is subject to a spendthrift provision;

31 (2) Is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or

32 (3) Is a protective trust interest as described in G.S. 36C-5-508.

33 **"§ 36C-5-502. Spendthrift provision.**

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

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

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

1 **"§ 36C-5-503. Exceptions to spendthrift provision.**

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

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

10 **"§ 36C-5-504. Discretionary trusts; effect of standard.**

11 (a) In this section:

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

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

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

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

29 (b) A discretionary trust interest may not be transferred by the beneficiary and,
30 except as otherwise provided in this Article, a creditor or assignee of a beneficiary may
31 not reach such an interest or a distribution by the trustee before its receipt by the
32 beneficiary.

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

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

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

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

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

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

12 **"§ 36C-5-505. Creditor's claim against settlor.**

13 (a) Whether or not the terms of a trust contain a spendthrift provision or the
14 interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a
15 protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

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

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

24 (3) After the death of a settlor, and subject to the settlor's right to direct
25 the source from which liabilities will be paid, the property of a trust
26 that was revocable at the settlor's death is subject to claims of the
27 settlor's creditors, costs of administration of the settlor's estate, the
28 expenses of the settlor's funeral and disposal of remains, and statutory
29 allowances to a surviving spouse and children to the extent that the
30 settlor's probate estate is inadequate to satisfy those claims, costs,
31 expenses, and allowances, unless barred by G.S. 28A-19-3.

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

34 **"§ 36C-5-506. Overdue distribution.**

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

- 1 b. By oral statement to the trustee if the trust was created orally; or
2 c. Any other written method delivered to the trustee manifesting
3 clear and convincing evidence of the settlor's intent.

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

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

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

17 (g) A trustee who does not know that a trust has been revoked or amended is not
18 liable to the settlor or settlor's successors in interest for distributions made and other
19 actions taken on the assumption that the trust had not been amended or revoked.

20 **"§ 36C-6-603. Settlor's powers; powers of withdrawal.**

21 (a) While a trust is revocable, rights of the beneficiaries are subject to the control
22 of, and the duties of the trustee are owed exclusively to, the settlor.

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

25 **"§ 36C-6-604. Limitation on action contesting validity of revocable trust;**
26 **distribution of trust property.**

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

29 (1) Three years after the settlor's death; or

30 (2) 120 days after the trustee sent the person a copy of the trust instrument
31 and a notice informing the person of the trust's existence, of the
32 trustee's name and address, and of the time allowed for commencing a
33 proceeding.

34 (b) Upon the death of the settlor of a trust that was revocable at the settlor's
35 death, the trustee may proceed to distribute the trust property in accordance with the
36 terms of the trust. The trustee is not subject to liability for doing so unless:

37 (1) The trustee knows of a pending judicial proceeding contesting the
38 validity of the trust; or

39 (2) A potential contestant has notified the trustee of a possible judicial
40 proceeding to contest the trust, and a judicial proceeding is
41 commenced within 60 days after the contestant sent the notification.

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

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

13 (d) As provided in G.S. 53-159 and G.S. 53-366(a)(10), banks and trust
14 companies licensed to do trust business in this State need not give bond, even if required
15 by the terms of the trust.

16 **"§ 36C-7-703. Co-trustees.**

17 (a) Co-trustees who are unable to reach a unanimous decision may act by
18 majority decision if more than two are serving. Unanimity is required when only two
19 co-trustees are serving.

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

23 (c) A co-trustee must participate in the performance of a trustee's function unless
24 the cotrustee is unavailable to perform the function because of absence, illness,
25 disqualification under other law, or other temporary incapacity, or the co-trustee has
26 properly delegated the performance of the function to another trustee.

27 (d) If a co-trustee is unavailable to perform duties because of absence, illness,
28 disqualification under other law, or other temporary incapacity, and prompt action is
29 necessary to achieve the purposes of the trust or to avoid injury to the trust property, the
30 remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

31 (e) A trustee may delegate to a co-trustee with the consent of the co-trustee the
32 performance of any function other than those the settlor reasonably expected the trustees
33 to perform jointly. The following functions shall not be deemed to be those that the
34 settlor reasonably expected the trustees to perform jointly:

- 35 (1) Establish and maintain bank accounts for the trust and issue checks for
36 the trust.
- 37 (2) Maintain inventories, accountings, and income and expense records of
38 the trust.
- 39 (3) Enter any safety deposit box rented by the trust.
- 40 (4) Employ persons as advisors or assistants in the performance of
41 administrative duties, including agents, attorneys, accountants,
42 brokers, appraisers, and custodians.

- 1 (5) List trust property for taxes and prepare and file tax returns for the
2 trust.
3 (6) Collect and give receipts for claims and debts of the trust.
4 (7) Pay debts, claims, costs of administration, and taxes of the trust.
5 (8) Compromise, adjust, or otherwise settle any claim by or against the
6 trust and release, in whole or in part, a claim belonging to the trust.
7 (9) Have custody of the trust property.

8 The list of functions contained in this subsection is not intended to be exclusive of
9 others that may be delegated to a co-trustee in accordance with this subsection.

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

12 (g) Each trustee shall exercise reasonable care to:

- 13 (1) Avoid enabling a co-trustee to commit a serious breach of trust; and
14 (2) Compel a co-trustee to redress a serious breach of trust.

15 (h) Notwithstanding subsection (f) or (g) of this section, a trustee who has not
16 joined in an action approved by a majority of the other trustees shall not be liable for the
17 action, nor shall a dissenting trustee who joins in an action at the direction of the
18 majority of the trustees but who notified in writing any co-trustee of the dissent at or
19 before the time of the action be liable for the action, unless that trustee had knowledge
20 that the action taken involved intentional misconduct or was taken with an intention to
21 directly or indirectly provide an improper personal benefit to one or more trustees
22 approving the action.

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

- 26 (1) If only one votes, in person or by proxy, the act binds all;
27 (2) If more than one vote, in person or by proxy, the act binds all; and
28 (3) If more than one vote, in person or by proxy, but the vote is evenly
29 split on any particular matter, each faction is entitled to vote the stock
30 or other securities in question proportionately.

31 **"§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

32 (a) A vacancy in a trusteeship occurs if:

- 33 (1) A person designated as trustee rejects the trusteeship;
34 (2) A person designated as trustee cannot be identified or does not exist;
35 (3) A trustee resigns;
36 (4) A trustee is disqualified or removed;
37 (5) A trustee dies; or
38 (6) A general guardian, guardian of the estate, or guardian of the person is
39 appointed for an individual serving as trustee.

1 (b) If one or more co-trustees remain in office, a vacancy in a trusteeship need
2 not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining
3 trustee.

4 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled
5 must be filled in the following order of priority:

6 (1) By a person designated in the terms of the trust or appointed pursuant
7 to the terms of the trust to act as successor trustee;

8 (2) By a person appointed by unanimous agreement of the qualified
9 beneficiaries; or

10 (3) By a person appointed by the court.

11 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled
12 must be filled in the following order of priority:

13 (1) By a person designated in the terms of the trust or appointed pursuant
14 to the terms of the trust to act as successor trustee;

15 (2) By a person selected by majority agreement of the charitable
16 organizations expressly designated to receive distributions under the
17 terms of the trust; or

18 (3) By a person appointed by the court.

19 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the
20 court may appoint an additional trustee or special fiduciary whenever the court
21 considers the appointment necessary for the administration of the trust.

22 (f) A successor trustee shall succeed to all the rights, powers, and privileges, and
23 shall be subject to all the duties, liabilities, and responsibilities that were imposed upon
24 the original trustee, unless a contrary intent appears from the governing instrument or
25 unless the order appointing the successor trustee provides otherwise.

26 **"§ 36C-7-705. Resignation of trustee.**

27 (a) A trustee may resign:

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

30 (2) With the approval of the court.

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

33 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for
34 acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

35 **"§ 36C-7-706. Removal of trustee.**

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

39 (b) The court may remove a trustee if:

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

41 (2) Lack of cooperation among co-trustees substantially impairs the
42 administration of the trust;

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

- 7 (1) The transaction was authorized by the terms of the trust;
- 8 (2) The transaction was approved by the court;
- 9 (3) The beneficiary did not commence a judicial proceeding within the
10 time allowed by G.S. 36C-10-1005;
- 11 (4) The beneficiary consented to the trustee's conduct, ratified the
12 transaction, or released the trustee in compliance with
13 G.S. 36C-10-1009; or
- 14 (5) The transaction involves a contract entered into, or claim acquired by,
15 the trustee before the person became or contemplated becoming
16 trustee.

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

- 21 (1) The trustee's spouse or a parent of the trustee's spouse;
- 22 (2) The trustee's descendants, siblings, ancestors, or their spouses;
- 23 (3) An agent, attorney, employee, officer, director, member, manager, or
24 partner of the trustee, or an entity that controls, is controlled by, or is
25 under common control with the trustee; or
- 26 (4) Any other person or entity in which the trustee, or a person that owns a
27 significant interest in the trust, has an interest or relationship that
28 might affect the trustee's best judgment;

29 (d) A transaction between a trustee and a beneficiary that does not concern trust
30 property, but that occurs during the existence of the trust or while the trustee retains
31 significant influence over the beneficiary, and from which the trustee obtains an
32 advantage, is voidable by the beneficiary unless the trustee establishes that the
33 transaction was fair to the beneficiary.

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

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

- 38 (1) An investment by a trustee in securities of an investment company,
39 investment trust, or pooled investment vehicle in which the trustee has
40 an investment, or to which the trustee, or its affiliate, provides services
41 is not presumed to be affected by a conflict between personal and
42 fiduciary interests if the investment otherwise complies with the

1 prudent investor rule of Article 9 of this Chapter. The trustee may be
2 compensated by the investment company, investment trust, or pooled
3 investment vehicle for providing those services out of fees charged to
4 the trust if the trustee at least annually notifies the persons entitled
5 under G.S. 36C-8-813 to receive a copy of the trustee's annual report
6 of the rate and method by which the compensation was determined;
7 and

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

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

19 (h) This section does not preclude the following transactions, if fair to the
20 beneficiaries:

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

23 (2) Payment of reasonable compensation to the trustee;

24 (3) A transaction between a trust and another trust, decedent's estate, or
25 guardianship, or similar relationship of which the trustee is a fiduciary
26 or in which a beneficiary has an interest;

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

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

30 (i) The court may appoint a special fiduciary to make a decision with respect to
31 any proposed transaction that might violate this section if entered into by the trustee.

32 "**§ 36C-8-803. Impartiality.**

33 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,
34 managing, and distributing the trust property, giving due regard to the beneficiaries'
35 respective interests.

36 "**§ 36C-8-804. Prudent administration.**

37 A trustee shall administer the trust as a prudent person would, by considering the
38 purposes, terms, distributional requirements, and other circumstances of the trust. In
39 satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

40 "**§ 36C-8-805. Cost of administration.**

1 In administering a trust, the trustee may incur only costs that are reasonable in
2 relation to the trust property, the purposes of the trust, and the skills of the trustee.

3 **"§ 36C-8-806. Trustee's skills.**

4 A trustee who has special skills or expertise, or is named trustee in reliance upon the
5 trustee's representation that the trustee has special skills or expertise, shall use those
6 special skills or expertise.

7 **"§ 36C-8-807. Delegation by trustee.**

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

11 (1) Selecting an agent;

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

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

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

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

21 (d) By accepting a delegation of powers or duties from the trustee of a trust that
22 is subject to the law of this State, an agent submits to the jurisdiction of the courts of
23 this State.

24 **"§ 36C-8-808. Powers to direct.**

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

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

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

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

39 **"§ 36C-8-809. Control and protection of trust property.**

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

41 **"§ 36C-8-810. Record keeping and identification of trust property.**

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

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

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

5 **(d)** If the trustee maintains records clearly indicating the respective interests, a
6 trustee may invest as a whole the property of two or more separate trusts.

7 **"§ 36C-8-811. Enforcement and defense of claims.**

8 A trustee shall take reasonable steps to enforce claims of the trust and to defend
9 claims against the trust.

10 **"§ 36C-8-812. Collecting trust property.**

11 A trustee shall take reasonable steps to compel a former trustee or other person to
12 deliver trust property to the trustee, and to redress a breach of trust known to the trustee
13 to have been committed by a former trustee.

14 **"§ 36C-8-813. Duty to inform and report.**

15 **(a)** The trustee is under a duty to a qualified beneficiary to give that beneficiary
16 upon request and at reasonable times complete and accurate information as to the nature
17 and amount of the trust property and to permit the beneficiary, or the beneficiary's
18 representative, to inspect the subject matter of the trust and the accounts and other
19 documents relating to the trust.

20 **(b)** Notwithstanding the provisions of subsection (a) of this section:

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

24 **(2)** A trustee shall be deemed to have discharged the trustee's duty under
25 subsection (a) of this section as to a qualified beneficiary for matters
26 disclosed by a report sent at least annually and at termination of the
27 trust to the beneficiary that describes the trust property, liabilities,
28 receipts, and disbursements, including the source and amount of the
29 trustee's compensation, and lists the trust assets and their respective
30 market values (including estimated values of assets with uncertain
31 values). No presumption shall arise that a trustee who does not comply
32 with the provisions of this subdivision failed to discharge the trustee's
33 duty under subsection (a) of this section.

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

37 **(d)** Subsection (b) of this section applies only to a trust created pursuant to a trust
38 instrument executed on or after the effective date of this Chapter.

39 **"§ 36C-8-814. Discretionary powers; tax savings.**

40 **(a)** Notwithstanding the breadth of discretion granted to a trustee in the terms of
41 the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a

1 trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary
2 power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive,
3 even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in
4 accordance with the terms and purposes of the trust and the interests of the
5 beneficiaries.

6 (b) Subject to subsection (d) of this section, and unless the terms of the trust
7 expressly indicate that a rule in this subsection does not apply:

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

15 (2) Notwithstanding the provisions of subdivision (1) of this subsection, if
16 the trust confers on the trustee the power to make discretionary
17 distributions to or for the trustee's personal benefit, the trustee may
18 exercise the power in accordance with an ascertainable standard.

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

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

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

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

33 (1) A power held by the settlor's spouse who is the trustee of a trust for
34 which a marital deduction, as defined in section 2056(b)(5) or section
35 2523(e) of the Internal Revenue Code, was previously allowed;

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

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

40 (e) If a trust created under a will or trust instrument for the benefit of the spouse
41 of the settlor of the trust, other than a trust that provides that upon the termination of the
42 income interest that the entire remaining trust estate be paid to the estate of the spouse,

1 requires that all the income of the trust be paid not less frequently than annually to the
2 spouse and a federal estate or gift tax marital deduction is claimed with respect to the
3 trust, then, unless the trust instrument specifically provides otherwise by reference to
4 this section, any investment in or retention of unproductive property as an asset of the
5 trust is subject to the power of the spouse to require either that the asset be made
6 productive of income, or that it be converted to assets productive of income, within a
7 reasonable period of time.

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

9 (a) A trustee, without authorization by the court, may exercise:

10 (1) Powers conferred by the terms of the trust; or

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

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

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

17 c. Any other powers conferred by this Chapter.

18 (b) The exercise of a power is subject to the fiduciary duties prescribed by this
19 Article.

20 **"§ 36C-8-816. Specific powers of trustee.**

21 Without limiting the authority conferred by G.S. 36C-8-816, a trustee may:

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

24 (2) Invest and reinvest trust property as the trustee deems advisable in
25 accordance with the provisions of the trust, and to acquire or sell
26 property, for cash or on credit, at public or private sale;

27 (3) Exchange, partition, or otherwise change the character of trust
28 property;

29 (4) Deposit trust money in an account in a regulated financial services
30 institution, including an institution operated by the trustee or an
31 affiliate of the trustee upon compliance with any applicable
32 requirements for the deposit;

33 (5) Borrow money, with or without security, including from a corporate
34 trustee's lending department, renew or modify loans, and mortgage or
35 pledge trust property for a period within or extending beyond the
36 duration of the trust;

37 (6) With respect to an interest in a proprietorship, partnership, limited
38 liability company, business trust, corporation, venture, agricultural
39 operation, or other form of business or enterprise, form and transfer,
40 assign, and convey to that form of business or enterprise all or any part
41 of the trust property in exchange for the stock, securities, or

1 obligations of that form of business or enterprise, continue any
2 business or other enterprise and take any action that may be taken by
3 shareholders, members, or property owners, including merging,
4 dissolving, or otherwise changing the form of business organization, or
5 contributing additional capital;

6 (7) With respect to stocks or other securities, exercise the rights of an
7 absolute owner, including the right to:

8 a. Vote, or give general or limited proxies to vote, with or without
9 power of substitution, or enter into or continue a voting trust
10 agreement, or execute waivers, consents, or objections with
11 respect to those securities;

12 b. Hold a security in the name of a nominee or in other form
13 without disclosure of the trust so that title may pass by delivery;

14 c. Pay calls, assessments, and other sums chargeable or accruing
15 against the securities, and sell or exercise stock subscription or
16 conversion rights;

17 d. Deposit the securities with a depository or other regulated
18 financial-service institution; and

19 e. Consent, directly or through a committee or other agent, to the
20 merger, consolidation, reorganization, readjustment of capital or
21 financial structure, lease, sale, dissolution, or liquidation of a
22 business enterprise, and elect whether to participate as a
23 member of a class in any litigation involving the securities;

24 (8) With respect to an interest in real property, construct, or make ordinary
25 or extraordinary repairs to, alterations to, or improvements in,
26 buildings or other structures, demolish improvements, raze existing
27 party walls or buildings or erect new party walls or buildings,
28 subdivide or develop land, dedicate land to public use or grant public
29 or private easements, and make or vacate plats and adjust boundaries,
30 make contracts, licenses, leases, conveyances, or grants of every nature
31 and kind with respect to crops, gravel, sand, oil, gas, timber and forest
32 products, other usufructs or natural resources, and other benefits or
33 incidents of the real property;

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

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

- 1 (11) Insure the property of the trust against damage or loss and insure the
2 trustee, the trustee's agents, and beneficiaries against liability arising
3 from the administration of the trust at the expense of the trust;
4 (12) Abandon, relinquish any or all rights to, or decline to administer
5 property of no value or of insufficient benefit or value to the trust to
6 justify its collection or continued administration;
7 (13) With respect to possible liability for violation of environmental law:
8 a. Inspect or investigate property the trustee holds or has been
9 asked to hold, or property owned or operated by an organization
10 in which the trustee holds or has been asked to hold an interest,
11 for the purpose of determining the application of environmental
12 law with respect to the property;
13 b. Take action to prevent, abate, or otherwise remedy any actual or
14 potential violation of any environmental law affecting property
15 held directly or indirectly by the trustee, whether taken before
16 or after the assertion of a claim or the initiation of governmental
17 enforcement;
18 c. Decline to accept property into trust or disclaim any power with
19 respect to property that is or may be burdened with liability for
20 violation of environmental law;
21 d. Compromise claims against the trust which may be asserted for
22 an alleged violation of environmental law; and
23 e. Pay the expense of any inspection, review, abatement, or
24 remedial action to comply with environmental law;
25 (14) Pay or contest any claim, compromise, adjust or otherwise settle a
26 claim by or against the trust, and release, in whole or in part, a claim
27 belonging to the trust;
28 (15) Pay from the trust property taxes, assessments, compensation of the
29 trustee and of employees and agents of the trust, and other expenses
30 incurred in the administration of the trust and the protection of the trust
31 property;
32 (16) Exercise elections with respect to federal, state, and local taxes;
33 (17) Select a mode of payment under any employee benefit or retirement
34 plan, annuity, or life insurance payable to the trustee, exercise rights
35 under such a plan, including exercise of the right to indemnification
36 for expenses and against liabilities, and take appropriate action to
37 collect the proceeds;
38 (18) Make loans out of trust property, including loans to a beneficiary on
39 terms and conditions the trustee considers to be fair and reasonable
40 under the circumstances, and acquire a lien on future distributions for
41 repayment of those loans;

- 1 (19) Pledge trust property to guarantee loans made by others to a
2 beneficiary;
- 3 (20) Appoint a trustee to act in another jurisdiction with respect to trust
4 property located in the other jurisdiction, confer upon the appointed
5 trustee all of the powers and duties of the appointing trustee, limit
6 those powers the appointed trustee may exercise and the duties for
7 which the appointed trustee is responsible, require that the appointed
8 trustee furnish security, and remove any trustee so appointed;
- 9 (21) Pay an amount distributable to a beneficiary who is under a legal
10 disability or who the trustee reasonably believes is incapacitated, by
11 paying it directly to the beneficiary or applying it for the beneficiary's
12 benefit, or by:
- 13 a. Paying it to the beneficiary's general guardian or the guardian of
14 the beneficiary's estate or, if the beneficiary does not have a
15 general guardian or guardian of the beneficiary's estate, the
16 guardian of the beneficiary's person;
- 17 b. Paying it to a custodian under a uniform transfer to minors act
18 or custodial trustee under a uniform custodial trust act and, for
19 that purpose, creating a custodianship or custodial trust for the
20 benefit of the beneficiary;
- 21 c. Paying it to an adult relative or other person having legal or
22 physical care or custody of the beneficiary, to be expended on
23 the beneficiary's behalf; or
- 24 d. Managing it as a separate fund on the beneficiary's behalf.
25 A trustee making payments under this subdivision does not have any
26 duty to see to the application of the payments so made, if the trustee
27 exercised due care in the selection of the person, including the minor
28 or incompetent, to whom the payments were made, and the receipt of
29 that person shall be full acquittance to the trustee;
- 30 (22) On distribution of trust property or the division or termination of a
31 trust, make distributions in divided or undivided interests, allocate
32 particular assets in proportionate or disproportionate shares without
33 regard to the income tax basis or other special tax attributes of such
34 assets, as the trustee finds to be most practicable and for the best
35 interests of the distributees, value the trust property for those purposes,
36 and adjust for resulting differences in valuation; and to distribute trust
37 property in kind or in cash, or partially in kind and partially in cash, in
38 divided or undivided interests;
- 39 (23) Resolve a dispute concerning the interpretation of the trust or its
40 administration by mediation, arbitration, or other procedure for
41 alternative dispute resolution;

- 1 (24) Prosecute or defend an action, claim, or judicial proceeding in any
2 jurisdiction to protect trust property and the trustee in the performance
3 of the trustee's duties;
4 (25) Make, execute, and deliver contracts and other instruments, including
5 instruments under seal, that are useful to achieve or facilitate the
6 exercise of the trustee's powers;
7 (26) On termination of the trust, exercise the powers appropriate to wind up
8 the administration of the trust and distribute the trust property to the
9 persons entitled to it;
10 (27) Employ as advisors or assistants in the performance of administrative
11 duties, or delegate administrative duties in the manner provided in
12 G.S. 36C-8-807, to persons, firms, and corporations, including agents,
13 auditors, accountants, brokers, attorneys-at-law, attorneys-in-fact,
14 investment advisors, appraisers, custodians, rental agents, realtors, and
15 tax specialists;
16 (28) Bid on property at a foreclosure sale, or acquire property from a
17 mortgagor or obligor without foreclosure, and to retain the property so
18 bid on or taken over without foreclosure;
19 (29) Divide one trust into several trusts and make distributions from those
20 trusts in the manner provided in G.S. 36C-4-417;
21 (30) Request an order from the court for the sale of real or personal
22 property under Article 29A of Chapter 1 of the General Statutes, or for
23 the exchange, partition, or other disposition or change in the character
24 of, or for the grant of options or other rights in or to, such property;
25 and
26 (31) Distribute the assets of an inoperative trust consistent with the
27 authority granted under the provisions of G.S. 28A-22-10.

28 **"§ 36C-8-817. Distribution upon termination.**

29 Upon the occurrence of an event terminating or partially terminating a trust, the
30 trustee shall proceed expeditiously to distribute the trust property to the persons entitled
31 to it, subject to the right of the trustee to retain a reasonable reserve for the payment of
32 debts, expenses, and taxes.

33 "Article 9.

34 "Uniform Prudent Investor Act.

35 **"§ 36C-9-901. Prudent investor rule; applicability.**

36 (a) Except as otherwise provided in subsection (b) of this section, a trustee who
37 invests and manages trust assets owes a duty to the beneficiaries of the trust to comply
38 with the prudent investor rule set forth in this Article.

39 (b) The prudent investor rule is a default rule and may be expanded, restricted,
40 eliminated, or otherwise altered by the provisions of a trust which govern or direct
41 investments in a manner inconsistent with this Article. A trustee is not liable to a

1 beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the
2 trust.

3 (c) The following terms or comparable language in the provisions of a trust,
4 unless otherwise limited or modified, authorize any investment or strategy permitted
5 under this Article: "Chapter 36A", "investments in accordance with Article 15 of
6 Chapter 36A", "investments in accordance with Article 9 of Chapter 36C", "investments
7 permissible by law for investment of trust funds", "legal investments", "authorized
8 investments", "using the judgment and care under the circumstances then prevailing that
9 persons of prudence, discretion, and intelligence exercise in the management of their
10 own affairs, not in regard to speculation but in regard to the permanent disposition of
11 their funds, considering the probable income as well as the probable safety of their
12 capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent
13 investor rule". This Article also applies where a trust contains no investment standard.

14 (d) This Article does not apply to:

15 (1) Unless the provisions of the trust provide otherwise by specific
16 reference to this Article:

17 a. Trusts under any federal employee retirement income security
18 statute or other retirement or pension trusts;

19 b. Trusts that are created by legislative act;

20 c. Trusts that are created by or pursuant to premarital or
21 postmarital agreements, divorce settlements, settlements of
22 other proceedings or disputes;

23 d. Transfers under the Uniform Transfers to Minors Act;

24 e. Transfers under the Uniform Custodial Trust Act; or

25 f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

26 (2) Trusts imposed or required under another chapter of the General
27 Statutes or by rule in which the investment of the trust funds is
28 regulated by the other chapter or by rule, unless a provision of the
29 other chapter or the rule provides otherwise by a specific reference to
30 this Article.

31 **§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.**

32 (a) A trustee shall invest and manage trust assets as a prudent investor would, by
33 considering the purposes, terms, distribution requirements, and other circumstances of
34 the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and
35 caution.

36 (b) A trustee's investment and management decisions respecting individual assets
37 must be evaluated not in isolation but in the context of the trust portfolio as a whole and
38 as a part of an overall investment strategy having risk and return objectives reasonably
39 suited to the trust.

40 (c) Among circumstances that a trustee shall consider in investing and managing
41 trust assets are any of the following that are relevant to the trust or its beneficiaries:

42 (1) General economic conditions;

- 1 (2) Enjoin the trustee from committing a breach of trust;
- 2 (3) Compel the trustee to redress a breach of trust by paying money,
- 3 restoring property, or other means;
- 4 (4) Order a trustee to account;
- 5 (5) Appoint a special fiduciary to take possession of the trust property and
- 6 administer the trust;
- 7 (6) Suspend the trustee;
- 8 (7) Remove the trustee as provided in G.S. 36C-7-706;
- 9 (8) Reduce or deny compensation to the trustee;
- 10 (9) Subject to G.S. 36C-10-1012, void an act of the trustee, impose a lien
- 11 or a constructive trust on trust property, or trace trust property
- 12 wrongfully disposed of and recover the property or its proceeds; or
- 13 (10) Order any other appropriate relief.

14 (c) The court may, for cause shown, relieve a trustee from liability for any breach
15 of trust, or wholly or partly excuse a trustee who has acted honestly and reasonably
16 from liability for a breach of trust.

17 **"§ 36C-10-1002. Damages for breach of trust.**

- 18 (a) A trustee who commits a breach of trust is liable for the greater of:
- 19 (1) The amount required to restore the value of the trust property and trust
 - 20 distributions to what they would have been had the breach not
 - 21 occurred; or
 - 22 (2) The profit the trustee made by reason of the breach.

23 (b) Except as otherwise provided in this subsection, if more than one trustee is
24 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from
25 the other trustee or trustees. A trustee is not entitled to contribution if the trustee was
26 substantially more at fault than another trustee or if the trustee committed the breach of
27 trust in bad faith or with reckless indifference to the purposes of the trust or the interests
28 of the beneficiaries. A trustee who received a benefit from the breach of trust is not
29 entitled to contribution from another trustee to the extent of the benefit received.

30 **"§ 36C-10-1003. Liability in absence of breach.**

31 (a) A trustee is accountable for any profit made by the trustee arising from the
32 administration of the trust, even absent a breach of trust. Nothing in this section limits a
33 trustee's right to compensation under G.S. 36C-7-708 or payments allowed under
34 G.S. 36C-8-802(f).

35 (b) Absent a breach of trust, a trustee is not liable for a loss or depreciation in the
36 value of trust property or for not having made a profit.

37 **"§ 36C-10-1004. Attorney's fees and costs.**

38 In a judicial proceeding involving the administration of a trust, the court may award
39 costs and expenses, including reasonable attorney fees, as provided in the General
40 Statutes.

41 **"§ 36C-10-1005. Limitation of action against trustee.**

1 Limitation of actions on judicial proceedings involving trusts shall be governed by
2 applicable provisions of Chapter 1 of the General Statutes, except that no proceeding
3 against a trustee for breach of trust may be commenced more than five years after the
4 first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination
5 of the beneficiary's interest in the trust; or (iii) the termination of the trust.

6 **"§ 36C-10-1006. Reliance on trust instrument.**

7 A trustee who acts in reasonable reliance on the terms of the trust as expressed in a
8 trust instrument is not liable for a breach of trust to the extent that the breach resulted
9 from the reliance.

10 **"§ 36C-10-1007. Event affecting administration or distribution.**

11 If the happening of an event, including marriage, divorce, performance of
12 educational requirements, or death, affects the administration or distribution of a trust, a
13 trustee who has exercised reasonable care to ascertain the happening of the event is not
14 liable for a loss resulting from the trustee's lack of knowledge.

15 **"§ 36C-10-1008. Exculpation of trustee.**

16 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
17 the extent that it relieves the trustee of liability for breach of trust committed in bad faith
18 or with reckless indifference to the purposes of the trust or the interests of the
19 beneficiaries.

20 **"§ 36C-10-1009. Beneficiary's consent, release, or ratification.**

21 (a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary
22 consented to the conduct constituting the breach, released the trustee from liability for
23 the breach, or ratified the transaction constituting the breach, unless:

- 24 (1) The consent, release, or ratification of the beneficiary was induced by
25 improper conduct of the trustee; or
26 (2) At the time of the consent, release, or ratification, the beneficiary did
27 not have knowledge of the beneficiary's rights or of the material facts
28 relating to the breach.

29 (b) No consideration is required for the consent, release, or ratification to be
30 valid.

31 **"§ 36C-10-1010. Limitation on personal liability of trustee.**

32 (a) Except as otherwise provided in the contract, a trustee is not personally liable
33 on a contract properly entered into in the trustee's fiduciary capacity in the course of
34 administering the trust if the trustee in making the contract disclosed the fiduciary
35 capacity. The addition of the phrases "trustee," or "as trustee," or similar designations to
36 the signature of a trustee on a written contract shall be deemed prima facie evidence of a
37 disclosure of fiduciary capacity.

38 (b) A trustee is personally liable for torts committed in the course of
39 administering a trust, or for obligations arising from ownership or control of trust
40 property, including liability for violation of environmental law, only if the trustee is
41 personally at fault.

1 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
2 capacity, on an obligation arising from ownership or control of trust property, or on a
3 tort committed in the course of administering a trust, may be asserted in a judicial
4 proceeding against the trustee in the trustee's fiduciary capacity, whether or not the
5 trustee is personally liable for the claim. Any judgment rendered in favor of a claimant
6 in such a judicial proceeding against a trust may be recovered from the trust property,
7 without proof that the trustee could have obtained reimbursement from the trust if the
8 trustee had paid the claim.

9 (d) A trustee shall be entitled to indemnity from the trust for any claim, other
10 than a breach of trust, for which the trustee is liable:

11 (1) If the claim arose from a common incident of activity in which the
12 trustee was properly engaged for the trust;

13 (2) If the trustee was not personally at fault; or

14 (3) To the extent that the trustee's actions increased the value of trust
15 property.

16 (e) A decision by a trustee not to inspect property, or to decline to accept
17 property, shall not create any inference as to liability, under any environmental law,
18 with respect to that property. A trustee shall have no liability for a decrease in value of
19 property in a trust by reason of the trustee's compliance with any environmental law,
20 including reporting requirements.

21 **"§ 36C-10-1011. Interest as general partner.**

22 (a) Except as otherwise provided in subsection (c) of this section or unless
23 personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity,
24 an interest as a general partner in a general or limited partnership is not personally liable
25 on a contract entered into by the partnership if the fiduciary capacity was disclosed. The
26 addition of the phrases "trustee", or "as trustee", or similar designations to the signature
27 of a trustee on a written partnership document shall be deemed prima facie evidence of
28 a disclosure of fiduciary capacity.

29 (b) A trustee who holds, in a fiduciary capacity, an interest as a general partner is
30 not personally liable for torts committed by the partnership or for obligations arising
31 from ownership or control of the interest unless the trustee is personally at fault. This
32 subsection does not apply to additional ownership interests of the trustee held in a
33 nonfiduciary capacity.

34 (c) If the settlor transfers an existing general partnership interest to a revocable
35 trust, the settlor remains personally liable for partnership obligations as if the settlor
36 were a general partner.

37 **"§ 36C-10-1012. Protection of person dealing with trustee.**

38 (a) A person other than a beneficiary who in good faith assists a trustee, or who
39 in good faith and for value deals with a trustee, without knowledge that the trustee is
40 exceeding or improperly exercising the trustee's powers, is protected from liability as if
41 the trustee properly exercised the power.

1 **(b)** A person other than a beneficiary who in good faith deals with a trustee is not
2 required to inquire into the extent of the trustee's powers or the propriety of their
3 exercise.

4 **(c)** A person who in good faith delivers assets to a trustee need not ensure their
5 proper application.

6 **(d)** A person other than a beneficiary who in good faith assists a former trustee,
7 or who in good faith and for value deals with a former trustee, without knowledge that
8 the trusteeship has terminated is protected from liability as if the former trustee were
9 still a trustee.

10 **(e)** Comparable protective provisions of other laws relating to commercial
11 transactions or transfer of securities by fiduciaries prevail over the protection provided
12 by this section.

13 **(f)** A person is not required to obtain a certification under G.S. 36C-10-1013 in
14 order to be entitled to the protections of this section.

15 **"§ 36C-10-1013. Certification of trust.**

16 **(a)** Instead of furnishing a copy of the trust instrument to a person other than a
17 beneficiary, the trustee may furnish to the person a certification of trust containing the
18 following information:

19 **(1)** The existence of the trust and the date the trust instrument was
20 executed;

21 **(2)** The identity of the settlor, unless withheld pursuant to a provision in
22 the trust instrument;

23 **(3)** The identity and address of the currently acting trustee;

24 **(4)** The powers of the trustee;

25 **(5)** The revocability or irrevocability of the trust and the identity of any
26 person holding a power to revoke the trust;

27 **(6)** The authority of co-trustees to sign or otherwise authenticate and
28 whether all or less than all are required in order to exercise powers of
29 the trustee;

30 **(7)** The trust's taxpayer identification number; and

31 **(8)** The manner of taking title to trust property.

32 **(b)** A certification of trust may be signed or otherwise authenticated by any
33 trustee.

34 **(c)** A certification of trust must state that the trust has not been revoked,
35 modified, or amended in any manner that would cause the representations contained in
36 the certification of trust to be incorrect.

37 **(d)** A certification of trust need not contain the dispositive terms of a trust.

38 **(e)** A recipient of a certification of trust may require the trustee to furnish copies
39 of those excerpts from the original trust instrument and later amendments which
40 designate the trustee and confer upon the trustee the power to act in the pending
41 transaction.

1 discharge of their responsibilities toward individuals with severe chronic disabilities.
2 The General Assembly further finds that, as a result of changing social, economic, and
3 demographic trends, families of persons with severe chronic disabilities are increasingly
4 aware of the need for a vehicle by which they can assure ongoing individualized
5 personal concern for a severely disabled family member who may survive his parents or
6 other family members, and provide for the efficient management of small legacies or
7 trust funds to be used for the benefit of such a disabled person. In a number of other
8 states voluntary associations have established foundations or trusts intended to be
9 responsive to these concerns. Therefore, the General Assembly finds that North
10 Carolina will benefit by the enactment of enabling legislation expressly authorizing the
11 formation of community trusts in accordance with criteria set forth by statute and
12 administered by the Secretary of State, pursuant to Chapter 55A of the General Statutes.
13 These community trusts permit the pooling of resources contributed by families or
14 persons with philanthropic intent, along with the reservation of portions of these
15 funds for the use and benefit of designated beneficiaries.

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

- 18 (1) Encourage the orderly establishment of community trusts for the
19 benefit of persons with severe chronic disabilities;
- 20 (2) Ensure that community trusts are administered properly and that the
21 managing boards of the trusts are free from conflicts of interest;
- 22 (3) Facilitate sound administration of trust funds for persons with severe
23 chronic disabilities by allowing family members and others to pool
24 resources in order to make professional management investment more
25 efficient;
- 26 (4) Provide parents of persons with severe chronic disabilities peace of
27 mind in knowing that a means exists to ensure that the interests of their
28 children who have severe chronic disabilities are properly looked after
29 and managed after the parents die or become incapacitated;
- 30 (5) Help make guardians available for persons with severe chronic
31 disabilities who are incompetent, when no other family member is
32 available for this purpose;
- 33 (6) Encourage the availability of private resources to purchase for
34 persons with severe chronic disabilities goods and services that are
35 not available through any governmental or charitable program and to
36 conserve these resources by limiting purchases to those that are not
37 available from other sources;
- 38 (7) Encourage the inclusion, as beneficiaries of community trusts, of
39 persons who lack resources and whose families are indigent, in a way
40 that does not diminish the resources available to other beneficiaries
41 whose families have contributed to the trust; and

- 1 (8) Remove the disincentives that discourage parents and others from
2 setting aside funds for the future protection of persons with severe
3 chronic disabilities by ensuring that the interest of beneficiaries in
4 community trusts are not considered assets or income that would
5 disqualify them from any governmental or charitable entitlement
6 program with an economic means test.

7 **"§ 36D-2. Definitions.**

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

- 9 (1) "Beneficiary" means any person with a severe chronic disability who
10 has qualified as a member of the community trust program and who
11 has the right to receive those services and benefits vested with the
12 management of the business and affairs of a corporation, formed for
13 the purpose of managing a community trust, irrespective of the name
14 by which the group is designated.
- 15 (2) "Community trust" means a nonprofit organization that offers the
16 following services:
- 17 a. Administration of special trust funds for persons with severe
18 chronic disabilities;
- 19 b. Follow along services;
- 20 c. Guardianship for persons with severe chronic disabilities who
21 are incompetent, when no other family member or immediate
22 friend is available for this purpose; and
- 23 d. Advice and counsel to persons who have been appointed as
24 individual guardians of the persons or estates of persons with
25 severe chronic disabilities.
- 26 (3) "Follow along services" means those services offered by community
27 trusts that are designed to ensure that the needs of each beneficiary are
28 being met for as long as may be required and may include periodic
29 visits to the beneficiary and to the places where the beneficiary
30 receives services, participation in the development of individualized
31 plans being made by service providers for the beneficiary, and other
32 similar services consistent with the purposes of this Article.
- 33 (4) "Severe chronic disability" means a physical or mental impairment that
34 is expected to give rise to a long-term need for specialized health,
35 social, and other services, and which makes the person with the
36 disability dependent upon others for assistance to secure these
37 services.
- 38 (5) "Trustee" means any member of the board of a corporation, formed for
39 the purpose of managing a community trust, whether that member is
40 designated as a trustee, director, manager, governor, or by any other
41 title.

1 (6) "Surplus trust funds" means funds accumulated in the trust from
2 contributions made on behalf of an individual beneficiary that, after
3 the death of the beneficiary, are determined by the board to be in
4 excess of the actual cost of providing services during the beneficiary's
5 lifetime, including the beneficiary's share of administrative costs.

6 **"§ 36D-3. Scope.**

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

12 **"§ 36D-4. Administration; powers and duties.**

13 (a) Every community trust shall be administered by a board. The board shall be
14 comprised of no less than nine and no more than 21 members, at least one-third of
15 whom shall be parents or relatives of persons with severe chronic disabilities. No
16 board member shall be a provider of habilitative, health, social, or educational
17 services to persons with severe chronic disabilities or an employee of such a service
18 provider. The board may, however, allow service providers to serve on the board in an
19 advisory capacity. Board members shall be selected, to the maximum extent possible,
20 from geographic areas throughout the area served by the trust.

21 The certificate of incorporation filed with the Secretary of State pursuant to Chapter
22 55A of the General Statutes shall, in addition to the requirements set forth in that
23 Chapter, demonstrate that the requirements of this section have been met.

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

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

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

36 (d) The board may retain paid staff as it considers necessary to provide follow
37 along services to the extent required by each beneficiary. The community trust may
38 authorize the expenditure of funds for any goods or services that, in its sole discretion, it
39 determines will promote the well-being of any beneficiary, including recreational
40 services. The community trust may pay for the burial of any beneficiary. The
41 community trust, however, may not expend funds for any goods or services of

1 comparable quality to those available to any particular beneficiary through any
2 governmental or charitable program, insurance, or other sources. The community trust
3 may expend funds to meet the reasonable costs of administering the community trust.

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

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

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

19 (h) At the time a contribution, bequest, or assignment of insurance proceeds is
20 made, the trustor shall receive a written statement of the services to be provided to the
21 beneficiary. The statement shall include a starting date for the delivery of services or the
22 condition precedent, such as the death of the trustor, which shall determine the starting
23 date. The statement shall describe the frequency with which services shall be provided
24 and their duration, and the criteria or procedures for modifying the program of services
25 from time to time in the best interests of the beneficiary.

26 **"§ 36D-5. Accountability.**

27 Along with the annual report filed with the Secretary of State pursuant to Chapter
28 55A of the General Statutes, the community trust shall file an itemized statement that
29 shows the funds collected for the year, income earned, salaries, other expenses incurred,
30 and the opening and final trust balances. A copy of this statement shall be made
31 available, upon request, to any beneficiary, trustor, or designee of the trustor. In
32 addition, once annually, each trustor or the trustor's designee shall receive a detailed
33 individual statement of the services provided to the trustor's beneficiary during the
34 previous 12 months and the services to be provided during the following 12 months.
35 The community trust shall make a copy of the individual statement available to any
36 beneficiary, upon request.

37 **"§ 36D-6. Gifts, surplus trust funds.**

38 The community trust may accept gifts and use surplus trust funds for the purpose of
39 qualifying as beneficiary any indigent person whose family members lack the resources
40 to make a full contribution on that person's behalf. The extent and character of the
41 services and selection of beneficiaries are at the discretion of the community trust. The
42 community trust may not use surplus trust funds to make any charitable contribution on

1 behalf of any beneficiary or any group or class of beneficiaries. The community trust
2 may accept gifts to meet start-up costs, reduce the charges to the trust for the cost of
3 administration, and for any other purpose that is consistent with this Article. Gifts made
4 to the trust for an unspecified purpose shall be used by the community trust either to
5 qualify indigent persons whose families lack the means to qualify them as beneficiaries
6 of the trust or to meet any start-up costs that the trust incurs.

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

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

15 **"§ 36D-8. Irrevocability; impossibility of fulfillment.**

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

22 **"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility**
23 **determination.**

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

30 **"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.**

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

34 **"§ 36D-11. Settlement; trustee limitations.**

35 The community trust shall settle a community trust by filing a final accounting in
36 the superior court. In addition, at anytime prior to the settlement of the final account, the
37 community trust, the Secretary of State, or the Attorney General may bring an action for
38 the dissolution of a nonprofit corporation in the superior court for the purpose of
39 terminating the trust or merging it with another charitable trust.

40 No trustee or any private individual shall be entitled to share in the distribution of
41 any of the trust assets upon dissolution, merger, or settlement of the community trust.

1 Upon dissolution, merger, or settlement, the superior court shall distribute all of the
2 remaining net assets of the community trust in a manner that is consistent with the
3 purposes of this Article."

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

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

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

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

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

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

18 (1) ~~Open bank accounts and draw checks thereon;~~

19 (2) ~~Subject to the provisions of G.S. 105-24, enter any safe deposit box of~~
20 ~~the deceased or any safe deposit box rented by the personal~~
21 ~~representative or representatives;~~

22 (3) ~~Employ attorneys and accountants;~~

23 (4) ~~List property for taxes and prepare and file State, municipal and~~
24 ~~county tax returns;~~

25 (5) ~~Collect claims and debts due the estate and give receipts therefor;~~

26 (6) ~~Pay claims against and debts of the estate;~~

27 (7) ~~Compromise claims in favor of or against the estate;~~

28 (8) ~~Have custody of property of the estate.~~

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

34 (1) Establish and maintain bank accounts for the trust and issue checks for
35 the trust.

36 (2) Maintain inventories, accountings, and income and expense records of
37 the trust.

38 (3) Enter any safety deposit box rented by the trust.

39 (4) Employ persons as advisors or assistants in the performance of
40 administrative duties, including agents, attorneys, accountants,
41 brokers, appraisers and custodians.

1 (5) List trust property for taxes and prepare and file tax returns for the
2 trust.

3 (6) Collect and give receipts for claims and debts of the trust.

4 (7) Pay debts, claims, costs of administration, and taxes of the trust.

5 (8) Compromise, adjust or otherwise settle any claim by or against the
6 trust and release, in whole or in part, a claim belonging to the trust.

7 (9) Have custody of the trust property.

8 (d) Subject to subsection (b) of this section, if two or more personal
9 representatives own shares of corporate stock or other securities, their acts with respect
10 to voting shall have the following effect:

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

12 (2) If more than one vote, in person or by proxy, the act of the majority so
13 voting binds all;

14 (3) If more than one vote, in person or by proxy, but the vote is evenly
15 split on any particular matter, each faction is entitled to vote the stock
16 or other securities in question proportionately.

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

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

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

31 **SECTION 7.(a)** Section 2 of this act becomes effective January 1, 2006, and
32 except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act,
33 applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings
34 concerning trusts commenced on or after that date; and (iii) judicial proceedings
35 concerning trusts commenced before that date unless the court finds that application of a
36 particular provision of Chapter 36C would substantially interfere with the effective
37 conduct of the judicial proceedings or prejudice the rights of the parties, in which case
38 the particular provision of Chapter 36C does not apply and the superseded law applies.

39 Except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act,
40 any rule of construction or presumption provided in Chapter 36C applies to trust
41 instruments executed before the effective date of Section 2 of this act unless there is a

1 clear indication of a contrary intent in the terms of the trust or unless application of that
2 rule of construction or presumption would impair substantial rights of a beneficiary.
3 Except as otherwise provided in Chapter 36C, as enacted by Section 2 of this act, an act
4 done before the effective date of Section 2 of this act is not affected by Chapter 36C. If
5 a right is acquired, extinguished, or barred upon the expiration of a prescribed period
6 that has commenced to run under any other statute before the effective date of Section 2
7 of this act, that statute continues to apply to the right even if it has been repealed or
8 superseded.

9 **SECTION 7.(b)** Sections 1 through 5 of this act become effective January 1,
10 2006. The remainder of this act is effective when it becomes law.