

## Chapter 36C.

### North Carolina Uniform Trust Code.

#### Article 1.

##### General Provisions and Definitions.

#### § 36C-1-101. Short title.

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

#### § 36C-1-102. Scope.

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

#### § 36C-1-103. Definitions.

The following definitions apply in this Chapter:

- (1) Action. – When applicable to an act of a trustee, includes a failure to act.
- (2) Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- (3) Beneficiary. – A person who:
  - a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer, but excluding a permissible appointee of a power of appointment; or
  - b. In a capacity other than that of trustee, holds a power of appointment over trust property.
- (4) Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).
- (5) Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (6) General guardian. – As defined in G.S. 35A-1202(7).
- (7) Guardian of the estate. – As defined in G.S. 35A-1202(9).
- (8) Guardian of the person. – As defined in G.S. 35A-1202(10).
- (9) Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.

- (10) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.
- (11) Jurisdiction. – When applicable to a geographic area, includes a state or country.
- (12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.
- (13) Power of withdrawal. – A presently exercisable general power of appointment other than a power:
  - a. Exercisable by a trustee and limited by an ascertainable standard; or
  - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
- (13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is one of the following:
  - a. The usual place of business of the corporate trustee if there is a corporate cotrustee.
  - b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.
- (14) Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- (15) Qualified beneficiary. – A living beneficiary to whom, on the date the beneficiary's qualification is determined, any of the following apply:
  - a. Is a distributee or permissible distributee of trust income or principal.
  - b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to terminate.
  - c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (16) Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- (17) Settlor. – Except as otherwise provided in G.S. 36C-8B-25, a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
- (18) Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
- (19) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

- (20) Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as established, determined, or amended by any of the following:
  - a. A judicial proceeding.
  - b. A nonjudicial settlement agreement.
  - c. A nonjudicial modification with the consent of the settlor and all beneficiaries under G.S. 36C-4-411(a) or other law.
  - d. A trustee or other person in accordance with law, including a power holder under Article 8A of this Chapter or a trustee under Article 8B of this Chapter.
- (21) Trust instrument. – An instrument that contains the terms of a trust.
- (22) Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts. (2001-413, s. 1; 2005-192, s. 2; 2007-106, s. 2; 2009-222, s. 1; 2017-121, s. 2.1; 2021-85, s. 2(a).)

**§ 36C-1-104. Knowledge.**

- (a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:
  - (1) Has actual knowledge of it;
  - (2) Has received notice or notification of it; or
  - (3) From all the facts and circumstances known to the person at the time in question, has reason to know it.
- (b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows a matter involving the trust would be materially affected by the information. (2005-192, s. 2.)

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

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

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

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

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

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

**§ 36C-1-107. Governing law.**

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

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

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

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

- (1) A trustee's principal place of business is located in, or a trustee is a resident of, the designated jurisdiction; or
  - (2) All or part of the administration occurs in the designated jurisdiction.
- (b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another jurisdiction in accordance with this subsection:
- (1) If the trustee is transferring the trust's principal place of administration to another state, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust not less than 60 days before initiating the transfer. If no qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the trustee may make the transfer. If a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice, the authority of the trustee to transfer the trust's principal place of administration in accordance with this section terminates.
  - (2) If the trustee is transferring the trust's principal place of administration to a jurisdiction outside of the United States, the trustee must provide written notice of the proposed transfer to the qualified beneficiaries of the trust, and the transfer cannot be made until the written consent of all the qualified beneficiaries is obtained.
- (c) Anytime a trustee is required to provide a qualified beneficiary with written notice of a proposed transfer of a trust's principal place of administration, the notice of proposed transfer must include:
- (1) The name of the jurisdiction to which the principal place of administration is to be transferred;
  - (2) The address and telephone number at the new location at which the trustee can be contacted;
  - (3) An explanation of the reasons for the proposed transfer;
  - (4) The date on which the proposed transfer is anticipated to occur; and
  - (5) If the proposed transfer is to another state, the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.
- (d) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under G.S. 36C-7-704. (2005-192, s. 2.)

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

- (a) Subject to subsection (d) of this section, notice to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.
- (1) Permissible methods of notice or methods for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.
  - (2) Notice shall be deemed to be given upon the occurrence of any of the following:
    - a. When personally delivered by hand to the person.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The approval of a trustee's report or accounting;
- (2) Direction to a trustee to perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power, including a power granted under G.S. 36C-8-816;
- (3) The resignation or appointment of a trustee and the determination of a trustee's compensation;
- (4) Transfer of a trust's principal place of administration; and

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

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

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

### **§ 36C-1-112. Rules of construction.**

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

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

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

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

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

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

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

- (1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."
- (2) The formula measures a share of a trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.
- (3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

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

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

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

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

- (1) The insured is either of the following:
  - a. A settlor of the trust.
  - b. An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest.
- (2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured.

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