

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 502
SENATE BILL 153

AN ACT TO REWRITE CHAPTER 36 OF THE GENERAL STATUTES RELATING TO TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36 of the General Statutes is hereby repealed.

Sec. 2. A new Chapter 36A is hereby added to the General Statutes to read as follows:

"CHAPTER 36A.

"Trusts and Trustees.

"ARTICLE 1.

"Investment and Deposit of Trust Funds.

"§ 36A-1. Definition. — (a) For the purpose of this Article, the word 'fiduciary' shall be construed to include a guardian, personal representative, collector, trustee, or any other person charged with the duty of acting for the benefit of another party as to matters coming within the scope of the relationship between them.

(b) As used in subsection (a) above, the word 'person' shall be construed to include an individual, a corporation, or any legal or commercial entity authorized to hold property or do business in the State of North Carolina.

"§ 36A-2. Investment: prudent man rule. — (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent man of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

"§ 36A-3. Terms of creating instrument. — (a) Nothing contained in this Article shall be construed as authorizing any departure from the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's powers and duties.

(b) A fiduciary holding funds for investment who is specifically directed or authorized by an instrument creating the fiduciary relationship to retain the stock of a bank or trust company that is a member of a bank holding company currently fully registered under an act of Congress entitled Bank Holding Company Act of 1956, as the same may be amended from time

to time, shall be considered as being directed or authorized to retain the stock of such bank holding company.

"§ 36A-4. Power of court not restricted. — Nothing contained in this Article shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property.

"§ 36A-5. Applicability of provisions. — This Article shall govern fiduciaries acting under wills, agreements, court orders, and other instruments now existing or hereafter made.

"§ 36A-6. Employee trusts. — Pension, profit sharing, stock bonus, annuity, or other employee trusts established for the purpose of distributing the income and principal thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities, restraints on the power of alienation of title to property, or the accumulation of income; but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purpose for which they were established.

"§ 36A-7. Applicability. — The provisions of this Article shall apply to fiduciary relationships in existence on the effective date of this Chapter or thereafter established.

"ARTICLE 2.

"Removal of Fiduciary Funds.

"§ 36A-10. Removal of fiduciary funds from this State. — Unless the creating instrument contains an express prohibition or provides a method of removal, when any personal property in this State is vested in a resident trustee, guardian, or other fiduciary, the clerk of superior court of the county in which the fiduciary resides may, on petition filed for that purpose by the fiduciary, beneficiary, ward, or other interested person, order the said fiduciary or his personal representative to pay, transfer, and deliver the said property or any part of it, to a nonresident fiduciary appointed by a court of record in another state; provided the clerk of superior court finds that such removal is in accord with the express or implied intention of the settlor, would aid the efficient administration of the trust, or is otherwise in the best interests of the beneficiaries, and further provided that,

(a) no such order of any clerk of superior court shall be valid and in force until approved by the resident judge of said judicial district, or the judge holding court in such district; and

(b) no such order shall be made, in the case of a petition, until after a hearing, as to which notice of the application shall have been given to all persons interested in such property as required in other special proceedings; and

(c) such order may be conditioned on the appointment of a fiduciary in the state to which the property is to be removed and shall be subject to such other terms and conditions as the clerk of superior court deems appropriate for protection of the property and interests of the beneficiaries, provided any North Carolina beneficiary may require that a bond be posted prior to such removal in an amount sufficient to protect his interest, the premium for which shall be charged against his interest.

"§ 36A-11. Provision for discharge of resident fiduciary. — When any trustee, guardian, or other fiduciary in this State, shall pay over, transfer, or deliver any property in his hands or vested in him, under any order or decree made in pursuance of this Article, he shall be discharged from all responsibility therefor.

"§ 36A-12. Removal of fiduciary funds to this State. — A clerk of superior court upon petition of a foreign trustee, guardian, or other fiduciary or of any beneficiary, ward, or other interested party may appoint a local fiduciary to receive and administer fiduciary property then being administered in another state. A fiduciary appointed pursuant to this section may be required to give bond conditioned upon the faithful performance of his duties or to meet any

other conditions required by a court in the other state before permitting removal of the fiduciary property to this State.

"§ 36A-13. Applicability. — The provisions of this Article shall not apply to proceedings begun before the effective date of this Chapter.

"ARTICLE 3.

"Resignation, Removal, and Renunciation of Trustees.

"§ 36A-18. Applicability of this Article. — (a) Except when otherwise provided by law, the term 'trustee', as used in this Article, includes 'trustees', 'guardians', and other fiduciaries.

(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.

(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.

"§ 36A-19. Clerk's power to accept resignations. — The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.

"§ 36A-20. Petition; contents and verification. — When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualification as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.

"§ 36A-21. Parties; hearing, successor appointed. — Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.

"§ 36A-22. Resignation allowed; costs; judge's approval. — In making an order allowing the trustee to resign the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.

"§ 36A-23. Appeal; stay effected by appeal. — Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If the clerk allows the resignation, and an appeal is taken from his decision, such appeal shall have the effect to stay

the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken.

"§ 36A-24. On appeal judge determines facts. — Upon an appeal taken from the clerk to the judge, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"§ 36A-25. Final accounting before resignation. — No trustee shall be allowed or permitted to resign his trust until he shall first file with the court his final account of the trust estate, and until the court shall be satisfied that the said account is true and correct.

"§ 36A-26. Resignation effective on settlement with successor. — In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.

"§ 36A-27. Court to appoint successor; when bond required. — If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court, in sum double the value of the personal property to come into his hands when bond is executed by a personal surety and in an amount not less than one and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of his duties as such trustee and for the payment to the persons entitled to receive the same of all moneys, assets, or other things of value which may come into his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-28. Rights and duties devolve on successor. — Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the creating instrument.

"§ 36A-29. Appointment of successors to deceased or incapacitated trustees. — Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted.

After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-27; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-27. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-23 and 36A-24.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon his own motion.

"§ 36A-30. Testamentary trustee may renounce. — (a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-98 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.

(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.

(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.

(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.

(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.

(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.

"§ 36A-31. Removal of trustee. — Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having

jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-20 through G.S. 36A-28.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.

"§ 36A-32. Appointment of special trustee. — If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction of the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-33. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee. — Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or reincorporated all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

"§ 36A-34. Powers of successor trustee. — Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-64, and are exercisable by the trustee from time to time holding the office.

"§ 36A-35. Powers of cotrustees. — Unless otherwise provided in the creating instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the creating instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is appointed.

"§ 36A-36. Vesting of title. — A special or successor trustee is vested with the title of the original trustee. A trustee who resigns, is removed, or is otherwise severed from his office shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon his failure to do so, the clerk may order him to execute such documents, or may himself transfer title.

"§ 36A-37. Applicability. — The provisions of this Article shall not apply to proceedings begun before the effective date of this Chapter.

"ARTICLE 4.

"Charitable Trusts.

"§ 36A-41. Trustees to file accounts; exceptions. — When real or personal property has been granted by deed, will, or otherwise, for such charitable purposes as are allowed by law, it shall be the duty of those to whom are confided the management of the property and the execution of the trust, to file in writing annually a full and particular account thereof with the clerk of the superior court of the county where the charity is to take effect.

This section shall not apply to real or personal property granted by deed, will or otherwise in trust or any other manner for the use and benefit of churches, hospitals, educational institutions and organizations or other incorporated or unincorporated religious and charitable institutions; provided, however, all trusts for the benefit of churches, hospitals and charitable institutions may be required to file such account upon the request of the clerk of the superior court or the verified written request of an interested citizen when in the opinion of the clerk of the superior court such request is bona fide and the interest of the public would be promoted by the filing of such report.

"§ 36A-42. Action for account; court to enforce trust. — If G.S. 36A-41 be not complied with, or there is reason to believe that the property has been mismanaged through negligence or fraud, it shall be the duty of the clerk of the superior court in his discretion to give notice thereof to the Attorney General or district attorney who represents the State in the superior court for that county; and it shall be the duty of the Attorney General or such district attorney upon notice from the clerk or upon his own motion to bring an action in the name of the State against the grantees, executors, or trustees of the charitable fund, calling on them to render a full and minute account of their proceedings in relation to the administration of the fund and the execution of the trust. The Attorney General or district attorney may also, at the suggestion of two reputable citizens, commence an action as aforesaid, and, in either case, the court may make such order and decree as shall seem best calculated to enforce the performance of the trust.

In furtherance of his responsibilities in the area of charitable trusts the Attorney General may request the result or report of any investigation or audit conducted by any local, State or federal agency.

"§ 36A-43. Not void for indefiniteness; title in trustee; vacancies. — No gift, grant, bequest or devise, whether in trust or otherwise, to religious, educational, charitable or benevolent uses or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, shall be invalid by reason of any indefiniteness or uncertainty of the objects or beneficiaries of such trust, or because said instrument confers upon the trustee or trustees discretionary powers in the selection and designation of the objects or beneficiaries of such trust or in carrying out the purpose thereof, or by reason of the same in contravening any statute or rule against perpetuities. If a trustee or trustees are named in the instrument creating such a gift, grant, bequest or devise, the legal title to the property given, granted, bequeathed or devised for such purpose shall vest in such trustee or trustees and its or their successor or successors duly appointed in accordance with the terms of such instrument. If no trustee or trustees be named in said instrument, or if a vacancy or vacancies shall occur in the trusteeship, and no method is provided in such instrument for filling such vacancy or vacancies, then the clerk of superior court of the proper county shall appoint a trustee or trustees, pursuant to G.S. 36A-19, to execute said trust in accordance with the true intent and meaning of the instrument creating the same. Such trustee or trustees when so appointed shall be vested with all the power and authority, discretionary or otherwise, conferred by such instrument.

"§ 36A-44. Trusts created in other states valid. — Every such religious, educational or charitable trust created by any person domiciled in another state, which shall be valid under the laws of the state of the domicile of such creator or donor, shall be deemed and held in all respects valid under the laws of this State, even though one or more of the trustees named in the instrument creating said trust shall be domiciled in another state or one or more of the beneficiaries named in said trust shall reside or be located in a foreign state.

"§ 36A-45. Application of G.S. 36A-44. — G.S. 36A-44 shall apply to all trusts heretofore or hereafter created in which one or more of the beneficiaries or objects of such trust shall reside or be located in this State.

"§ 36A-46. Gifts, etc., for religious, educational, charitable or benevolent uses or purposes. — (a) Declaration of policy. It is hereby declared to be the policy of the State of

North Carolina that gifts, transfers, grants, bequests, and devises for religious, educational, charitable, or benevolent uses or purposes, or for some or all of such uses or purposes, are and shall be valid, notwithstanding the fact that any such gift, transfer, grant, bequest, or devise shall be in general terms, and this section shall be construed liberally to affect the policy herein declared.

(b) No gift, transfer, etc., invalid for indefiniteness. No gift, transfer, grant, bequest, or devise of property or income, or both, in trust or otherwise, for religious, educational, charitable, or benevolent purposes, or for some or all of such purposes, is or shall be void or invalid because such gift, transfer, grant, bequest, or devise is in general terms, or is uncertain as to the specific purposes, objects, or beneficiaries thereof, or because the trustee, donee, transferee, grantee, legatee, or devisee, or some or all of them, is given no specific instructions, powers, or duties as to the manner or means of affecting such purposes. When any such gift, transfer, grant, bequest, or devise has been or shall be made in general terms the trustee, donee, transferee, grantee, legatee, or devisee, or other person, corporation, association, or entity charged with carrying such purposes into effect, shall have the right and power: To prescribe or to select from time to time one or more specific objects or purposes for which any trust or any property or income shall be held and administered; to select or to create the machinery for the accomplishment of such objects and purposes, selected as hereinabove provided, or as provided by the donor, transferor, grantor, or testator, including, by way of illustration but not of limitation, the accomplishment of such objects and purposes by the acts of such trustee or trustees, donee, transferee, grantee, legatee, or devisee, or their agents or servants, or by the creation of corporations or associations or other legal entities for such purpose, or by making grants to corporations, associations, or other organizations then existing, or to be organized, through and by which such purposes can or may be accomplished, or by some or all of the said means of accomplishment, or any other means of accomplishment not prohibited by law.

(c) Enforcement. Any gift, transfer, grant, bequest, or devise for religious, educational, charitable, or benevolent uses or purposes which is or shall be valid under the provisions of this section may be enforced in a suit for a writ of mandamus by the Attorney General of the State of North Carolina in any court of the State having original jurisdiction in equity, and such court shall have the power to enter judgment requiring the trustee, donee, transferee, grantee, legatee, or devisee, as the case may be, to make such selection as may be required of the purposes for which the property or income, or both, shall be applied, and the means, method, and manner of applying the same. The remedy for enforcement as herein provided is in addition to any other means of enforcement now in existence or which may be hereafter provided for by act of the General Assembly.

(d) Construction with other acts. This section is in addition to any prior act or acts of the General Assembly adopted for the purpose of preserving and sustaining any gift, transfer, grant, bequest, or devise for religious, educational, charitable, or benevolent uses or purposes, and any such prior act or acts or any part thereof which will aid the provisions of this section in sustaining and preserving any such gift, transfer, grant, bequest, or devise shall be read and construed in conjunction herewith.

"§ 36A-47. Charitable Trusts Administration Act. — (a) If a trust for charity is or becomes illegal, or impossible or impracticable of fulfillment or if a devise or bequest for charity, at the time it was intended to become effective is illegal, or impossible or impracticable of fulfillment, and if the settlor, or testator, manifested a general intention to devote the property to charity, any judge of the superior court may, on application of any trustee, executor, administrator or any interested party, or the Attorney General, order an administration of the trust, devise or bequest as nearly as possible to fulfill the manifested general charitable intention of the settlor or testator. In every such proceeding, the Attorney General, as representative of the public interest, shall be notified and given an opportunity to be heard. This section shall not be applicable if the settlor or testator has provided, either directly or indirectly,

for an alternative plan in the event the charitable trust, devise or bequest is or becomes illegal, impossible or impracticable of fulfillment. However, if the alternative plan is also a charitable trust or devise or bequest for charity and such trust, devise or bequest for charity fails, the intention shown in the original plan shall prevail in the application of this section.

(b) In the case of a will executed before December 31, 1977, or a trust created before such date, if a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in Section 2055(a) of the Internal Revenue Code of 1954, to meet the requirements of subsection 2055(e)(2)(A) of the Internal Revenue Code of 1954, then in order that such deduction shall nevertheless be allowable under Section 2055(e)(3) of the Internal Revenue Code of 1954, any judge of the superior court may, on application of any trustee, executor, administrator or any interested party and either (i) with the written consent of the charitable remaindermen, the beneficiaries of the intervening interest not under any legal disability, and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability, or (ii) upon a finding that the interest of such beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust which is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in Section 664 of the Internal Revenue Code of 1954) or a pooled-income fund (as that term is described in Section 642(c)(5) of the Internal Revenue Code of 1954). In every such proceeding, the Attorney General, as representative of the public interest, shall be notified, and given an opportunity to be heard.

(c) The words 'charity' and 'charitable', as used in this section shall include, but shall not be limited to, any eleemosynary, religious, benevolent, educational, scientific, or literary purpose.

(d) The words 'impracticable of fulfillment', as used in this section shall include, but shall not be limited to, the failure of any trust for charity, testamentary or inter vivos, (including, without limitation, trusts described in Section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws and charitable remainder trusts described in Section 664 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws) to include, if required to do so by Section 508(e) or Section 4947(a) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws, the provisions relating to governing instruments set forth in Section 508(e) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws.

"§ 36A-48. Charitable trusts tax exempt status. — (a) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (b), the governing instrument of each trust which is a private foundation described in Section 509 of the Internal Revenue Code of 1954 (including each nonexempt charitable trust described in Section 4947(a)(1) of the code which is treated as a private foundation) and the governing instrument of each nonexempt split-interest trust described in Section 4947(a)(2) of the code (but only to the extent that Section 508(e) of the code is applicable to such nonexempt split-interest trust under Section 4947(a)(2) of the code) shall be deemed to contain the following provisions: 'The trust shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the code; the trust shall not engage in any act of self-dealing which would subject it to tax under Section 4941 of the code; the trust shall not retain any excess business holdings which would subject it to tax under Section 4943 of the code; the trust shall not make any investments which would subject it to tax under Section 4944 of the code; and the trust shall not make any taxable expenditures which would subject it to tax under Section 4945 of the code.' With respect to any such trust created prior to January 1, 1970, this subsection (a) shall apply only for its taxable years beginning on or after January 1, 1972.

(b) The trustee of any trust described in subsection (a) may, (i) without judicial proceedings, amend such trust to expressly exclude the application of subsection (a) by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of the State of North Carolina, and upon filing of such amendment, subsection (a) shall not apply to such trust, or (ii) institute an action in the superior court of North Carolina seeking reformation of the trust instrument pursuant to the authority set forth in G.S. 36A-47.

(c) All references in this section to the 'code' are to the Internal Revenue Code of 1954, and all references in this section to specific sections of the code include corresponding provisions of any subsequent federal tax laws.

"ARTICLE 5.

"Uniform Trusts Act.

"§ 36A-52. Definitions. — As used in this Article unless the context or subject matter otherwise requires:

- (1) 'Affiliate' means any person directly or indirectly controlling or controlled by another person, as herein defined, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.
- (2) 'Person' means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.
- (3) 'Relative' means a spouse, ancestor, descendant, brother or sister.
- (4) 'Trust' means an express trust only.
- (5) 'Trustee' includes trustees, a corporate as well as a natural person and a successor or substitute trustee.

"§ 36A-53. Bank account to pay special debts. — (a) Whenever a bank account shall, by entries made on the books of the depositor and the bank at the time of the deposit, be created exclusively for the purpose of paying dividends, interest or interest coupons, salaries, wages, or pensions or other benefits to employees, and the depositor at the time of opening such account does not expressly otherwise declare, the depositor shall be deemed a trustee of such account for the creditors to be paid therefrom, subject to such power or revocation as the depositor may have reserved by agreement with the bank.

(b) If any beneficiary for whom such a trust is created does not present his claim to the bank for payment within one year after it is due, the depositor who created such trust may revoke it as to such creditor.

"§ 36A-54. Loan of trust funds. — Except as hereinafter provided in this Article, no corporate trustee shall lend trust funds to itself or an affiliate, or other business associate, or to any director, officer, or employee of itself or of an affiliate, nor shall any noncorporate trustee lend trust funds to himself, or to his relative, employer, employee, partner, affiliate, or other business associate.

"§ 36A-55. Funds held by a bank awaiting investment or distribution. — (a) Funds held in a fiduciary capacity by a bank awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(b) Funds held in trust by a bank, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in the commercial or savings or other department of the bank, provided that it shall first set aside under control of the trust department as collateral security, such securities as may be found listed in G.S. 142-34 as being eligible for the investment of the sinking funds of the State of North Carolina equal in market value of such deposited funds, or readily marketable commercial bonds having not less than a

recognized 'A' rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6).

If such funds are deposited in a bank insured under the provisions of the Federal Deposit Insurance Corporation, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that corporation.

"§ 36A-56. Loan to trust. — A trustee may make a loan to a trust account and may take as security therefor assets of the trust account provided that such transaction is fair.

"§ 36A-57. Trustee loaning from one trust to another trust. — A trustee may make a loan to a trust account from the funds belonging to another trust account, when the instrument creating the account from which the loan is made (i) authorizes the making of such loan and (ii) designates the trust account to which the loan is made, provided that the transaction is fair to both accounts.

"§ 36A-58. Trustee buying from or selling to self. — No trustee shall directly or indirectly buy or sell any property for the trust from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee or of an affiliate, or from or to a relative, employer, partner, or other business associate.

"§ 36A-59. Corporate trustee buying its own stock. — No corporate trustee shall purchase for a trust shares of its own stock, or its bonds or other securities, or the stocks, bonds or other securities of an affiliate.

"§ 36A-60. Trustee selling assets from one trust to another trust. — A trustee may sell assets held by it as fiduciary in one trust account to itself as trustee in another trust account if the transaction is fair to both accounts and if the transaction is expressly authorized by the instrument or instruments creating the accounts.

"§ 36A-61. Voting stock. — A trustee owning shares of corporate stock or other securities may vote it in person or by general or limited proxy, but shall be liable for any loss resulting to the beneficiaries from a failure to use reasonable care in deciding how to vote the stock, in voting it or in not voting it.

"§ 36A-62. Trustees holding stock or other securities in name of nominee. — A trustee may hold shares of stock or other securities in the name of a nominee, without mention of the trust relationship in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

- (1) the records and all reports or accounts rendered by the trustee clearly show the ownership of the stock or other securities by the trustee and the facts regarding its holdings, and
- (2) the nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the trustee or when such securities are deposited by the fiduciary in a clearing corporation as defined in G.S. 25-8-102(3).

The trustee shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such had done such acts or been guilty of such omissions.

"§ 36A-63. Bank and trust company assets kept separate, records of securities. — Every trust company shall keep its trust assets separate and distinct from assets owned by the bank. The books and accounts of the trust company shall at all times show the ownership of all moneys, funds, investments, and property held by the company. Stock or other securities may be kept by the company in either of the following ways:

- (1) All certificates representing the securities of an account may be held separate from those of all other accounts; or
- (2) Certificates representing the securities of the same class of the same issuer held for particular accounts may be held in bulk without certification as to ownership attached and, to the extent feasible, certificates of small denomination may be merged into one or more certificates of larger denomination, provided that the trust company, when operating under the method of safekeeping security certificates described in this subdivision shall be subject to such rules and regulations as, in the case of State-chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue and, upon demand by any person to whom it has a duty to account, it shall certify in writing the securities held by it for an account.

"§ 36A-64. Powers attached to office. — Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order, all powers of a trustee shall be attached to the office and shall not be personal.

"§ 36A-65. Powers exercisable by one or more trustees. — (a) If there are more than two trustees and the trust instrument expressly makes provision for the execution of any of the powers of trustees by all of them or by any one or more of them, the provisions of the trust instrument govern.

(b) If there is no governing provision in the trust instrument, cotrustees may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county which is the principal place of administration of the trust, provide that any one or more of the following powers of trustees may be exercised by any designated one or more of them:

- (1) open bank accounts and draw checks thereon;
- (2) subject to the provisions of G.S. 105-24, enter any safe-deposit box of the deceased or any safe-deposit box rented by the trust;
- (3) employ attorneys and accountants;
- (4) list property for taxes and prepare and file State, municipal and county tax returns;
- (5) collect claims and debts due the trust and give receipts therefor;
- (6) pay claims against and debts of the trust;
- (7) compromise claims in favor of or against the trust;
- (8) have custody of property of the trust.

For the purposes of this subsection, when there are cotrustees, the principal place of administration of the trust is (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee, and (3) the usual place of business or residence of any of the cotrustees as agreed upon by them.

(c) The voting of corporate shares of stock by cotrustees is governed by G.S. 55-69(f).

(d) Subject to the provisions of subsections (a), (b) and (c) of this section, all other acts and duties must be performed by both of the trustees if there are two, or by a majority of them if there are more than two.

No trustee who has not joined in exercising a power shall be liable to the beneficiaries or to others for the consequences of such exercise, nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of his cotrustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of such joinder.

(e) No trustee shall be relieved of liability on his bond or otherwise by entering into any agreement under this section.

"§ 36A-66. Contracts of trustee. — (a) Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action shall arise thereon, the party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectable (by execution) out of the trust property. In such an action the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

(b) No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within 30 days after the beginning of such action, or within such other time as the court may fix, and more than 30 days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present interest, or in the case of a charitable trust the Attorney General and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof in postpaid envelopes addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the parties to be notified, and their addresses, within 10 days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section. Any beneficiary, or in the case of charitable trusts the Attorney General and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover.

(c) The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word 'trustee' or the words 'as trustee' after the signature of a trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability.

"§ 36A-67. Exoneration or reimbursement for torts. — (a) A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property if he has not discharged the claim, or to be reimbursed therefor out of trust funds if he has paid the claim, if

- (1) the tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or,
- (2) although the tort was not a common incident of such activity if neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability.

(b) If a trustee commits a tort which increases the value of the trust property, he shall be entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though he would not otherwise be entitled to exoneration or reimbursement.

(c) Nothing in this section shall be construed to change the existing law with regard to the liability of trustees of charitable trusts for torts of themselves or their employees.

"§ 36A-68. Tort liability of trust estate. — (a) Where a trustee or his predecessor has incurred personal liability for a tort committed in the course of his administration, the trustee in his representative capacity may be sued and collection had from the trust property, if the court shall determine in such action that

- (1) the tort was a common incident of the kind of business activity in which the trustee or his predecessor was properly engaged for the trust; or
- (2) that, although the tort was not a common incident of such activity, neither the trustee nor his predecessor, nor any officer or employee of the trustee or his predecessor, was guilty of personal fault in incurring the liability; or
- (3) that, although the tort did not fall within subdivision (1) or (2) above, it increased the value of the trust property.

If the tort is within subdivision (1) or (2) above, collection may be had of the full amount of damage proved; and if the tort is within subdivision (3) above, collection may be had only to the extent of the increase in the value of the trust property.

(b) In an action against the trustee in his representative capacity under this section the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

(c) No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within 30 days after the beginning of the action, or within such other period as the court may fix and more than 30 days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustees who then had a present interest of the existence and nature of the action. Such notice shall be given by mailing copies thereof in postpaid envelopes addressed to such beneficiaries at their last known addresses. The trustees shall furnish the plaintiff a list of such beneficiaries and their addresses, within 10 days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section. Any beneficiary may intervene in such action and contest the right of the plaintiff to recover.

(d) The trustee may also be held personally liable for any tort committed by him, or by his agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement provided in G.S. 36A-67.

(e) Nothing in this section shall be construed to change the existing law with regard to the liability of trustees of charitable trusts for torts of themselves or their employees.

"§ 36A-69. Withdrawals from mingled trust funds. — Where a person who is a trustee of two or more trusts has mingled the funds of two or more trusts in the same aggregate of cash, or in the same bank or brokerage account or other investment, and a withdrawal is made therefrom by the trustee for his own benefit, or for the benefit of a third person not a beneficiary or creditor of one or more of the trusts, or for an unknown purpose, such a withdrawal shall be charged first to the amount of cash, credit, or other property of the trustee in the mingled fund, if any, and after the exhaustion of the trustee's cash, credit, or other property, then to the several trusts in proportion to their several interests in the cash, credit, or other property at the time of the withdrawal.

"§ 36A-70. Power of settlor. — The settlor of any trust affected by this Article may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve liabilities which would otherwise be imposed upon him by this Article; or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by this Article; or add duties, restrictions, liabilities, privileges, or powers, to those imposed or granted by this Article; but no act of the settlor shall relieve a trustee from the duties, restrictions, and liabilities imposed upon him by G.S. 36A-54, G.S. 36A-55 and G.S. 36A-58.

"§ 36A-71. Power of beneficiary. — Any beneficiary of a trust affected by this Article may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee relieve the trustee as to such beneficiary from any or all of the duties, restrictions, and liabilities which would otherwise be imposed on the trustee by this Article, except as to the duties, restrictions, and liabilities imposed by G.S. 36A-54, G.S. 36A-55 and G.S. 36A-58. Any such beneficiary may release the trustee from liability to such beneficiary for past violations of any of the provisions of this Article.

"§ 36A-72. Power of the court. — A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries relieve a trustee from any or all of the duties and restrictions which would otherwise be placed upon him by this Article, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for violations of the provisions of this Article.

"§ 36A-73. **Liabilities for violations of Article.** — If a trustee violated any of the provisions of this Article, he may be removed and denied compensation in whole or in part; and any beneficiary, cotrustee, or successor trustee may treat the violation as a breach of trust.

"§ 36A-74. **Uniformity of interpretation.** — This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 36A-75. **Short title.** — This Article may be cited as the Uniform Trusts Act.

"§ 36A-76. **Time of taking effect.** — This Article shall take effect and shall apply in the construction of and operation under

- (1) all agreements containing trust provisions entered into on or after the effective date of this Chapter;
- (2) all wills made by testators who shall die on or after the effective date of this Chapter; and
- (3) all other wills and trust agreements and trust relations insofar as such terms do not impair the obligation of contract or deprive persons of property without due process of law under the Constitution of the State of North Carolina or of the United States of America.

"ARTICLE 6.

"Uniform Common Trust Fund Act.

"§ 36A-82. **Establishment of common trust funds.** — (a) Any bank or trust company duly authorized to act as a fiduciary in this State may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by such bank or trust company hereafter referred to as the 'maintaining bank'. The maintaining bank may include for the purposes of collective investment in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any other bank or trust company duly authorized to act as a fiduciary, wherever located, which other bank or trust company is hereinafter referred to as the 'participating bank'.

Provided, however, that the relationship between the maintaining bank and the participating bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank.

(b) For the purposes of this section, a bank or trust company shall be considered to be owned, controlled or affiliated if twenty-five percent (25%) or more of any class of its voting stock is owned by a bank or bank holding company or if twenty-five percent (25%) or more of any class of its voting stock is owned by one person or no more than 10 persons who are the same person or persons who own twenty-five percent (25%) or more of any class of the voting stock of the maintaining bank.

(c) Such common trust funds may include a fund composed solely of funds held under an agency agreement in which the bank or trust company assumes investment discretion and assumes fiduciary responsibility.

(d) Such bank or trust company may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof; (ii) in the case of co-fiduciaries the written consent of the co-fiduciary is obtained by the bank or trust company; and (iii) that the bank has no interest in the assets of the common trust fund other than as a fiduciary.

"§ 36A-83. **Court accountings.** — Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may

establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

"§ 36A-84. Supervision by State Banking Commission. — All common trust funds established under the provisions of this Article shall be subject to the rules and regulations of the State Banking Commission.

"§ 36A-85. Uniformity of interpretation. — This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

"§ 36A-86. Short title. — This Article may be cited as the Uniform Common Trust Fund Act.

"ARTICLE 7.

"Trusts of Death Benefits.

"§ 36A-92. Interest of trustee as beneficiary of life insurance or other death benefit sufficient to support inter vivos or testamentary trust. — (a) The interest of a trustee as the beneficiary of a life insurance policy is a sufficient property interest or res to support the creation of an inter vivos or testamentary trust notwithstanding the fact that the insured or any other person or persons reserves or has the right to exercise any one or more of the following rights or powers:

- (1) to change the beneficiary,
- (2) to surrender the policy and receive the cash surrender value,
- (3) to borrow from the insurance company issuing the said policy or elsewhere using the said policy as collateral security,
- (4) to assign the said policy, or
- (5) to exercise any other right in connection with the said policy commonly known as an incident of ownership thereof.

The term 'life insurance policy' includes but is not limited to life, annuity, and endowment contracts, or any variation or combination thereof, and any agreement entered into by an insurance company in connection therewith.

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

The term 'employee benefit plan' includes but is not limited to pension, retirement, death benefit, deferred compensation, employment, agency, retirement annuity, stock bonus, profit-sharing or employees' savings contracts, plans, systems or trusts; and trusts, securities or accounts established or held pursuant to the federal Self-Employed Individuals Tax Retirement Act of 1962, the federal Employee Retirement Income Security Act of 1974, or similar legislation. The term 'group life insurance policy' includes but is not limited to group life, industrial life, accident, and health insurance policies having death benefits.

(c) A person having the right to designate the beneficiary under a life insurance policy, employee benefit plan or group life insurance policy described in subsection (a) or (b) of this section may designate as such beneficiary a trustee named or to be named in his will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no qualified trustee makes claim to the proceeds within six months after the death of the decedent or if within that period it is established that no trustee can qualify to receive the proceeds, payments shall be made to the personal representative of the estate of the person making the designation unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee shall not be subject to claims against the estate of the decedent or to inheritance taxes to any greater extent than if the

proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets which may properly become part of such trust, but the proceeds shall not become part of the decedent's estate for purposes of trust administration unless the will of the decedent expressly so provides.

(d) Pursuant to the preceding subsection (c) of this section, a decedent may designate a trustee named or to be named in his will as beneficiary of an annuity or other payment described in Section 2039(c) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws. The decedent's will may prohibit the use of such an annuity or other payment for the benefit of the decedent's estate.

"§36A-93. Applicability and construction of Article. — G.S. 36A-92 applies to any beneficiary designation made before or after the effective date of this Article by a person who dies on or after that date. It does not create any implication of invalidity or ineffectiveness as to any beneficiary designation made by a person who dies before the effective date of this Article. If any part of the Article is held invalid, such invalidity shall not affect the validity of the remaining provisions of this Article.

"ARTICLE 8.

"Testamentary Trustees.

"§ 36A-98. Trustees in wills to qualify and file inventories and accounts. — Trustees appointed in any will admitted to probate in this State, into whose hands assets come under the provisions of the will, shall first qualify under the laws applicable to executors, and shall file in the office of the clerk of the county where the will is probated inventories of the assets which come into his hands and annual and final accounts thereof, such as are required of executors and administrators. The power of the clerk to enforce the filing and his duties in respect to auditing and approving shall be the same as in such cases. This section shall not apply to the extent that any will makes a different provision in regard to the requirements for filing inventories and accounts."

Sec. 3. Except as otherwise specifically provided, this act shall become effective January 1, 1978.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.