

Article 8.

Duties and Powers of Trustee.

§ 36C-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, a trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this Chapter. (2005-192, s. 2.)

§ 36C-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

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

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

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

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

(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an advantage and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

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

- (1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually provides notice of the rate and method by which the compensation was determined to each beneficiary of the trust to whom the trustee owes a duty under G.S. 36C-8-813(a)(1) to provide the information described in that subdivision; and
- (2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made for the same or similar services.

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

(h) This section does not preclude any of the following transactions:

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee.
- (2) Payment of compensation to which the trustee is entitled under G.S. 36C-7-708.
- (3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an interest.
- (4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the trustee.
- (5) An advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee. (1999-215, s. 1; 2005-192, s. 2; 2007-106, ss. 31, 32, 33; 2015-205, s. 10.5; 2015-264, s. 31(a).)

§ 36C-8-803. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. (2005-192, s. 2.)

§ 36C-8-805. Cost of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-806. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-8-807. Delegation by trustee.

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

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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

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

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State. (2005-192, s. 2.)

§ 36C-8-808. Powers of a settlor to take certain actions with respect to the trust.

While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the terms of the trust. The duty and liability of the trustee subject to the direction and consent of the settlor is as follows:

- (1) The trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.

- (2) The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent. (2005-192, s. 2; 2007-106, s. 34; 2012-18, s. 3.1.)

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

A trustee shall take reasonable steps to take control of and protect the trust property. (2005-192, s. 2.)

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

- (a) A trustee shall keep adequate records of the administration of the trust.
- (b) A trustee shall keep trust property separate from the trustee's own property.
- (c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.
- (d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts. (2005-192, s. 2; 2007-106, s. 34.1.)

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

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. (2005-192, s. 2.)

§ 36C-8-812. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee. (2005-192, s. 2.)

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

- (a) The trustee is under a duty to do all of the following:
- (1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.
- (2) In response to a reasonable request of any qualified beneficiary:
- a. Provide a copy of the trust instrument.
- b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.
- c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

- (b) Notwithstanding subsection (a) of this section:
- (1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.
 - (2) A trustee is considered to have discharged the trustee's duty under subdivision (1) of subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subdivision (1) of subsection (a) of this section.

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

(d) Repealed by Session Laws 2007-106, s. 35, effective October 1, 2007. (2005-192, s. 2; 2007-106, s. 35.)

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

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute", "sole", or "uncontrolled", a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive, even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust indicate by an express reference to this subsection that a rule in this subsection does not apply:

- (1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.
- (2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit that would, except for this subsection, constitute in whole or in part a general power of appointment, the trustee may exercise the power in accordance with an ascertainable standard.
- (3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
- (4) Any power conferred upon the trustee in the trustee's capacity as a trustee to allocate receipts and expenses as between income and principal in the trustee's own favor must be exercised in accordance with the provisions of Chapter 37A of the General Statutes, the Uniform Principal and Income Act of 2003.

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

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

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

- (1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or section 2523(e) of the Internal Revenue Code, was previously allowed;
- (2) Any trust during any period that the trust may be revoked or amended by its settlor; or
- (3) A trust, if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

(e) If a trust created under a will or trust instrument for the benefit of the spouse of the settlor of the trust, other than a trust that provides that upon the termination of the income interest that the entire remaining trust estate be paid to the estate of the spouse, requires that all the income of the trust be paid not less frequently than annually to the spouse and a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the trust instrument specifically provides otherwise by reference to this section, any investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require either that the asset be made productive of income, or that it be converted to assets productive of income, within a reasonable period of time. (1991, c. 736, s. 2; 2003-232, s. 5a; 2005-192, s. 2; 2007-106, s. 36.)

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

(a) A trustee, without authorization by the court, may exercise any of the following:

- (1) Powers conferred by the terms of the trust.
- (2) Except as limited by the terms of the trust:
 - a. All powers over the trust property that an unmarried competent owner has over individually owned property;
 - b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and
 - c. Any other powers conferred by this Chapter.

(b) No provision of this section shall relieve a trustee of the fiduciary duties under this Article. (2005-192, s. 2; 2006-259, s. 13(k).)

§ 36C-8-816. Specific powers of trustee.

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

- (1) Collect and control trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) Invest and reinvest trust property as the trustee considers advisable in accordance with the trust, and to acquire or sell property, for cash or on credit, at public or private sale;

- (3) Exchange, partition, or otherwise change the character of trust property;
- (4) Deposit trust money in an account in a regulated financial services institution, including an institution operated by the trustee or an affiliate of the trustee upon compliance with any applicable requirements for the deposit;
- (5) Borrow money, with or without security, including from a corporate trustee's lending department, renew or modify loans, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise, form and transfer, assign, and convey to that form of business or enterprise all or any part of the trust property in exchange for the stock, securities, or obligations of that form of business or enterprise, continue any business or other enterprise, and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization, or contributing additional capital;
- (7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - a. Vote, or give general or limited proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement, or execute waivers, consents, or objections with respect to those securities;
 - b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights;
 - d. Deposit the securities with a depository or other regulated financial service institution; and
 - e. Consent, directly or through a committee or other agent, to the merger, consolidation, reorganization, readjustment of capital or financial structure, lease, sale, dissolution, or liquidation of a business enterprise, and elect whether to participate as a member of a class in any litigation involving the securities;
- (8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing party walls or buildings or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries, make contracts, licenses, leases, conveyances, or grants of every nature and kind with respect to crops, gravel, sand, oil, gas, timber and forest products, other usufructs or natural resources, and other benefits or incidents of the real property;
- (9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without

- the option to purchase or renew, for a period within or extending beyond the duration of the trust;
- (10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
 - (11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust at the expense of the trust;
 - (12) Abandon, relinquish any or all rights to, or decline to administer property of no value or of insufficient benefit or value to the trust to justify its collection or continued administration;
 - (13) With respect to possible liability for violation of environmental law:
 - a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
 - b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
 - c. Repealed by Session Laws 2009-48, s. 17, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.
 - d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and
 - e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
 - (14) Pay or contest any claim, compromise, adjust or otherwise settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
 - (15) Pay from the trust property taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust and the protection of the trust property;
 - (16) Exercise elections with respect to federal, state, and local taxes including, but not limited to, considering discretionary distributions to a beneficiary as being made from capital gains realized during the year;
 - (17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights under that plan, annuity, or life insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
 - (18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the

circumstances, and acquire a lien on future distributions for repayment of those loans;

- (19) Pledge trust property to guarantee loans made to any beneficiary;
- (19a) Guarantee loans made to any beneficiary;
- (19b) Pledge trust property to guarantee loans made to any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.
- (19c) Guarantee loans made to any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.
- (20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, limit those powers the appointed trustee may exercise and the duties for which the appointed trustee is responsible, require that the appointed trustee furnish security, and remove any trustee so appointed;
- (21) Pay an amount distributable to a beneficiary regardless of whether the beneficiary is a minor or incompetent or whether the trustee reasonably believes the beneficiary to be incompetent, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:
 - a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's estate;
 - b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;
 - c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
 - d. Managing it as a separate fund on the beneficiary's behalf.A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including a minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the trustee. Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, the distribution may be applied for the beneficiary's benefit only with the beneficiary's consent;
- (22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares without regard to the income tax basis or other special tax attributes of the assets, as the trustee finds to be most practicable and for the best interests of the distributees, value the trust property

- for those purposes, and adjust for resulting differences in valuation; and to distribute trust property in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests;
- (23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;
 - (24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
 - (25) Make, execute, and deliver contracts and other instruments, including instruments under seal, that are useful to achieve or facilitate the exercise of the trustee's powers;
 - (26) On termination of the trust, exercise all of the powers otherwise exercisable by the trustee during the administration of the trust, including, without limitation, the trustee's investment powers, the power to sell assets, and the powers set forth in subdivision (22) of this section, and exercise the additional powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;
 - (27) Employ as advisors or assistants in the performance of administrative duties, or delegate administrative duties in the manner provided in G.S. 36C-8-807, to persons, firms, and corporations, including agents, auditors, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment advisors, appraisers, custodians, rental agents, realtors, and tax specialists;
 - (28) Bid on property at a foreclosure sale, or acquire property from a mortgagor or obligor without foreclosure, and retain the property so bid on or taken over without foreclosure;
 - (29) Divide one trust into several trusts and make distributions from those trusts in the manner provided in G.S. 36C-4-417;
 - (30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such property;
 - (31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-10;
 - (32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law; and
 - (33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets. (2005-192, s. 2; 2007-106, s. 37; 2009-48, ss. 16, 17; 2009-222, s. 3; 2011-339, s. 4; 2013-91, s. 2(c); 2016-53, s. 9; 2017-25, s. 3.)

§ 36C-8-816.1: Repealed by Session 2017-121, s. 2.4, effective July 18, 2017.

§ 36C-8-817. Distribution upon termination.

Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. (2005-192, s. 2.)

§ 36C-8-818. Notice of deceased Medicaid beneficiaries.

If a trust was established by a person who at the time of that person's death was receiving medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time of that person's death, then any trustee of that trust who knows of the medical assistance within 90 days of the person's death shall provide notice of that person's death to the Department of Health and Human Services, Division of Medical Assistance, within 90 days of the person's death. This section does not apply to trustees of preneed funeral trusts established or created pursuant to Article 13D of Chapter 90 of the General Statutes. (2013-378, s. 5.)