

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 377
HOUSE BILL 437

AN ACT TO GRANT STATUTORY POWERS TO TRUSTEES UNDER EXPRESS
TRUST INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 13.
"Powers of Trustees.

"§ 36A-135. Applicability.

(a) This Article applies only to trustees under express trust agreements, including testamentary trusts, whether the trustee is appointed under an express trust agreement or appointed by the clerk of superior court. This Article does not apply to trustees of:

- (1) Resulting or constructive trusts;
- (2) Business trusts that provide for certificates to be issued to the beneficiary;
- (3) Investment trusts;
- (4) Voting trusts;
- (5) Security instruments;
- (6) Trusts created by the judgment or decree of a court;
- (7) Liquidation trusts;
- (8) Trusts created for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind;
- (9) Instruments in which a person is nominee or escrowee for another;
- (10) Trusts created in deposits in any financial institution; or
- (11) Any other trust the nature of which does not allow for general trust administration.

A trustee shall have all the powers and duties under this Article to the extent that such powers and duties are not inconsistent with the powers and duties imposed in the express trust. The powers and duties of more than one trustee are subject to the provisions of G.S. 36A-73.

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

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

"§ 36A-136. Powers of a trustee.

A trustee has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, use, and distribution of the trust estate to accomplish the desired result of administering the trust estate legally and in the best interest of the trust beneficiaries, including the following specific powers:

- (1) To take possession, custody, or control of assets transferred to the trust.
- (2) To retain for such time as the trustee shall deem advisable any property, real or personal, which the trustee may receive, even though the retention of such property by reason of its character, amount, or proportion to the total estate, or for any other reason, would not be appropriate for the trustee apart from this provision.
- (3) To receive assets from other fiduciaries or other sources.
- (4) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.
- (5) To make, execute, and deliver all instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this section.
- (6) To abandon or relinquish all rights in any property when, in the trustee's opinion, acting reasonably and in good faith, the property is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the trust.
- (7) To sell, exchange or otherwise dispose of, or grant options with respect to, any personal property of the trust in the manner prescribed by G.S. 36A-137 and G.S. 36A-138.
- (8) To sell, exchange, partition, or otherwise dispose of, or grant options with respect to, any real property of the trust in the manner prescribed by G.S. 36A-139 and G.S. 36A-140, provided that if the terms of an express trust grant the trustee the power to sell, exchange, partition, or otherwise dispose of, or grant options with respect to, any real property, the powers contained in the express trust shall control, and the provisions of G.S. 36A-139 and G.S. 36A-140 shall not apply.
- (9) To comply with environmental law:
 - a. To inspect property held by the trustee, including interests in sole proprietorships, partnerships, or corporations, and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to any actual or threatened violation of any environmental law affecting the property held by the trustee;
 - b. To take any action necessary, on behalf of the estate or trust, to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by

the trustee, either before or after the initiation of an enforcement action by any governmental body;

- c. To refuse to accept property in trust if the trustee determines that the property to be donated to the trust either is contaminated by a hazardous substance or is being used for an activity directly or indirectly involving a hazardous substance that could result in liability to the trust or otherwise impair the value of the assets held by the trust;
- d. To settle or compromise at any time any and all claims against the trust that may be asserted by a governmental body or private party involving the alleged violation of any environmental law affecting the property held in trust;
- e. To disclaim any power granted by a document, statute, or rule of law that, in the sole discretion of the trustee, may cause the trustee to incur personal liability under any environmental law;
or
- f. To decline to serve as a trustee if the trustee reasonably believes that there is or may be a conflict of interest between the trustee in his fiduciary capacity and the trustee in his individual capacity because of potential claims or liabilities that may be asserted against the trustee on behalf of the trust because of the type or condition of assets held by the trust.

For purposes of this subdivision, the term 'environmental law' means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health. For purposes of this subdivision, the term 'hazardous substance' means any substance defined as hazardous or toxic or otherwise regulated by environmental law. The trustee shall be entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized by this subdivision against the income or principal of the trust. A trustee shall not be personally liable to any beneficiary or other party for a decrease in value of assets in trust by reason of the trustee's compliance with any environmental law, specifically including reporting requirements under such law. Neither the acceptance by the trustee of property or a failure by the trustee to inspect property creates any inference as to whether or not there is or may be liability under any environmental law with respect to such property.

- (10) To sell or exercise stock subscription or conversion rights, or to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporate or other business enterprise.
- (11) To insure the trust's assets against damage or loss, at the expense of the trust.

- (12) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the trust property.
- (13) To pay necessary expenses of administering the trust from the trust property.
- (14) To employ 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 to advise or assist the trustee in the performance of the trustee's administrative duties, and to charge the expense of such employment to the trust.
- (15) To continue any business, venture, or farming operation in which the trust has an interest, when such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the trust's interest in such business.
- (16) To incorporate, or participate in the incorporation of, any business or venture in which the trust may have an interest.
- (17) To invest and reinvest trust property as the trustee deems advisable in accordance with the provisions of the trust or as provided by law.
- (18) To lease any property of the trust for a term of not more than three years.
- (19) To foreclose, as an incident to the collection of any bond, note, or other obligation, any mortgage, deed of trust, or other lien securing such bond, note, or other obligation, and to bid on the property at the foreclosure sale, or to acquire the property from the mortgagor or obligor without foreclosure, and to retain the property so bid on or taken over without foreclosure.
- (20) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the trustee deems advisable, including the power of a corporate trustee to borrow from the trustee's own banking department, for the sole purpose of paying debts, taxes, and other claims against the trust property as may be required to secure such loan or loans, and to renew existing loans either as to make or endorser.
- (21) To allocate items of income or expense to either trust income or principal, as permitted or provided by law.
- (22) To make payments of money, or of property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:
 - a. To such minor or incompetent directly;
 - b. To any person or institution providing support, maintenance, education, or medical, surgical, hospital, or other institutional care of such minor or incompetent in direct payment for those services;
 - c. To the legal or natural guardian of such minor or incompetent;

- d. To any person, whether or not appointed guardian of the person by any court, who shall in fact have the care and custody of the person of such minor or incompetent;
- e. To a custodian for such beneficiary under a uniform gifts or transfers to minors act.

The fiduciary shall not be under any duty to see the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made. The receipt by such person shall be full acquittance to the fiduciary.

- (23) To deposit, as a trustee, funds of the trust in a bank, including a bank operated by the trustee upon compliance with the provisions of G.S. 36A-63.

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

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

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

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

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

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

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

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

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

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

Sec. 2. G.S. 1-339.4 is amended by adding a new subdivision to read:

"(8) In a proceeding to sell property of a trust, the trustee."

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

"(c) Whenever an executor or trustee of a testamentary trust is ordered to sell real property, the judge or clerk having jurisdiction shall require such ~~executor, executor or trustee~~ of a testamentary trust, before receiving the proceeds of the sale, to furnish bond

to cover such proceeds, unless the will provides otherwise, in which case the judge or clerk may require such bond."

Sec. 4. This act becomes effective on December 1, 1993, and applies to all trusts in existence on December 1, 1993 or created on or after December 1, 1993.

In the General Assembly read three times and ratified this the 17th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives