



- 1           (3)    The amount and character of the trust assets;
- 2           (4)    The skill, experience, expertise, and facilities of the trustee;
- 3           (5)    The quality of the trustee's performance;
- 4           (6)    Comparable charges for similar services;
- 5           (7)    Time devoted to administering the trust;
- 6           (8)    Time constraints imposed upon the trustee in administering the trust;
- 7           (9)    Nature and costs of services delegated to others by the trustee;
- 8           (10) Where more than one trustee is serving, the reasonableness of the total
- 9                fees paid to all trustees; and
- 10          (11) Other factors which the trustee or the clerk of superior court deems to
- 11                be relevant.

12 **"§ 32-55. Reimbursement for expenses incurred.**

13       In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled

14 to reimbursement out of the assets of the trust for expenses properly incurred in the

15 administration of the trust.

16 **"§ 32-56. Notice of compensation and other payments.**

17       Within a reasonable period of time after the end of each fiscal year of the trust,

18 regardless of whether an accounting is otherwise required by law or by the trust

19 instrument, the trustee shall give written notice to all interested persons of any

20 compensation, expense reimbursement, professional fee, counsel fees allowed under

21 G.S. 32-60, distribution, or payment of any kind made to the trustee in such fiscal year

22 from the assets of the trust. If any interested person is then under a legal disability, such

23 notice shall be given to such person's guardian or agent under a durable power of

24 attorney or to a parent of such person if such person is then a minor; and such notice

25 shall have the same effect as if given directly to the interested person while not under a

26 legal disability so long as the person receiving the notice is not also the trustee. An

27 annual accounting provided by the trustee to all interested persons who are not then

28 under a legal disability and to the guardian, agent, or parent of any interested person

29 who is then under a legal disability within a reasonable time after the end of the fiscal

30 year of the trust shall be deemed sufficient notice under this section provided that it sets

31 forth and clearly identifies all compensation, expense reimbursements, professional

32 fees, counsel fees allowed under G.S. 32-60, distributions, and other payments of any

33 kind to the trustee during such fiscal year from the assets of the trust.

34 **"§ 32-57. Judicial review of compensation and other payments to trustee.**

35       (a) Unless specifically prohibited by the trust instrument, any interested person,

36 or the guardian, agent, or parent of any interested person who is then under a legal

37 disability, may initiate a proceeding under Article 3 of Chapter 36A of the General

38 Statutes for the review of the reasonableness of any compensation or expense

39 reimbursement paid under this Article. The provisions of Article 3 of Chapter 36A shall

40 govern that proceeding and any appeal from that proceeding, except that:

- 41           (1) The definition of "interested person" contained in G.S. 32-53(1) shall
- 42                control in all matters relating to such review, including the
- 43                determination of who may initiate a proceeding under G.S 36A-23.1

1           and the determination of when an interested person may be represented  
2           by others under G.S. 36A-26.3(2).

3           (2) For purposes of G.S. 36A-26.1, it shall be necessary that all interested  
4           persons not joined as petitioners be joined as respondents, but it shall  
5           not be necessary that all known beneficiaries be joined as respondents  
6           unless they are interested persons.

7           (3) In addition to other powers of the clerk of superior court acting under  
8           Article 3 of Chapter 36A of the General Statutes if the clerk of  
9           superior court determines upon review that a trustee has received  
10           excessive compensation or expense reimbursement, the clerk may  
11           order such trustee to make appropriate refunds.

12           (b) Notwithstanding the foregoing, if a proceeding for review of the  
13           reasonableness of compensation or expense reimbursement paid to a trustee is not  
14           initiated within one year from the date when notice of such payment is given pursuant to  
15           G.S. 32-56, then it shall be presumed that such compensation or expense reimbursement  
16           was reasonable.

17           **"§ 32-58. Compensation of other fiduciaries.**

18           In the case of a fiduciary other than a trustee under a trust, where the instrument  
19           creating the fiduciary relationship does not contain a provision relating to compensation  
20           and where there is no provision in the General Statutes providing for compensation for  
21           such fiduciary, such fiduciary shall be entitled to reasonable compensation determined  
22           in writing by the clerk of superior court in its discretion and to reimbursement of  
23           expenses properly incurred in the administration of the fiduciary relationship. Upon  
24           written request by the fiduciary, the clerk of superior court may allow the  
25           reimbursement of such expenses and such reasonable compensation after taking into  
26           account the factors set forth in G.S. 32-54(b).

27           **"§ 32-59. Effect of provisions in instrument.**

28           In those instances where the instrument creating the trust or other fiduciary  
29           relationship provides that the compensation of the fiduciary shall be the amount  
30           "provided by law", the "maximum amount provided by law", or other similar language,  
31           or references former G.S. 32-50, such language shall be construed as an intention that  
32           the trustee or other fiduciary shall receive reasonable compensation as allowed under  
33           this Article. In those instances where the instrument creating the trust or other fiduciary  
34           relationship provides that the trustee or other fiduciary shall serve without  
35           compensation, such language shall be construed as being a provision relating to  
36           compensation, and the trustee or other fiduciary shall not be entitled to receive  
37           reasonable compensation as allowed under this Article.

38           **"§ 32-60. Counsel fees allowable to attorneys serving as fiduciaries.**

39           The clerk of superior court may exercise discretion to allow counsel fees to an  
40           attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the  
41           attorney as a fiduciary or trustee) where such attorney, on behalf of the trust or fiduciary  
42           relationship, renders professional services as an attorney that are different from the  
43           services normally performed by a fiduciary or trustee and of a type which would

1 reasonably justify the retention of legal counsel by any fiduciary or trustee who is not  
2 licensed to practice law.

3 **"§ 32-61. Applicability.**

4 The provisions of this Article shall apply to all payments made to a fiduciary after  
5 the enactment of this Article, including fiduciary compensation earned or paid after the  
6 enactment of this Article, with respect to trusts and fiduciary relationships created on or  
7 after January 1, 2004, and with respect to all trusts and fiduciary relationships existing  
8 on January 1, 2004."

9 **SECTION 3.** G.S. 32A-11(c) reads as rewritten:

10 "(c) In the event that any power of attorney executed pursuant to the provisions of  
11 this Article does not contain the amount of ~~commissions~~ compensation that the  
12 attorney-in-fact is entitled to receive or the way such ~~commissions are~~ compensation is  
13 to be determined, and the principal should thereafter become incapacitated or mentally  
14 incompetent, ~~the commissions such attorney in fact shall receive subsequent to the~~  
15 ~~principal's incapacity or mental incompetence shall be fixed in the discretion of the~~  
16 ~~clerk of superior court pursuant to the provisions of G.S. 32-50(e).~~ then, subsequent to  
17 the principal's incapacity or mental incompetence, the attorney-in-fact shall be entitled  
18 to receive such reasonable compensation as determined by the clerk of superior court  
19 after considering the factors set forth in G.S. 32-54(b)."

20 **SECTION 4.** G.S. 36A-23.1(a) reads as rewritten:

21 "(a) The clerks of superior court of this State have original jurisdiction over all  
22 proceedings initiated by interested persons concerning the internal affairs of trusts  
23 except proceedings to modify or terminate trusts. Except as provided in subdivision (3)  
24 of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be  
25 maintained under this subsection are those concerning the administration and  
26 distribution of trusts, the declaration of rights, and the determination of other matters  
27 involving trustees and trust beneficiaries, to the extent that those matters are not  
28 otherwise provided for in the governing instrument. These include proceedings:

- 29 (1) To appoint or remove a trustee;  
30 (2) To review trustees' fees ~~pursuant to G.S. 32-50~~ and expenses pursuant  
31 to Article 5A of Chapter 32 of the General Statutes and to review and  
32 settle interim or final accounts; and  
33 (3) To ascertain beneficiaries, to determine any question arising in the  
34 administration or distribution of any trust, including questions of  
35 construction of trust instruments, and to determine the existence or  
36 nonexistence of trusts created other than by will and the existence or  
37 nonexistence of any immunity, power, privilege, duty, or right. The  
38 clerk, on the clerk's own motion, may determine that a proceeding to  
39 determine an issue listed in this subdivision shall be originally heard  
40 by a superior court judge."

41 **SECTION 5.** G.S. 36A-63(d) reads as rewritten:

42 "(d) In addition to any other compensation to which it may be entitled under G.S.  
43 28A-23-3, ~~32-50~~, 34-12, 35A-1269, or under any other authority, a corporation acting in  
44 a fiduciary capacity shall be allowed to charge a fee for the temporary investment of

1 funds held awaiting investment or distribution, which fee may be calculated upon the  
2 amount of such funds actually invested and upon the income produced thereby. The fee  
3 authorized by this subsection shall not exceed twelve percent (12%) of the income  
4 produced by such investment. A corporation acting in a fiduciary capacity has complied  
5 with its duty to disclose fees and practices in connection with the investment of  
6 fiduciary funds awaiting investment or distribution if the corporation's periodic  
7 statements set forth the method of computing such fees."

8           **SECTION 6.** This act becomes effective January 1, 2004, and applies to  
9 payments made to a fiduciary on or after that date.