

March 9, 2009

S 481. TRUSTEE'S POWER TO APPOINT TO OTHER TRUST. Filed 3/9/09. *TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY AND TO GRANT CLERKS JURISDICTION TO HEAR MOTIONS TO APPROVE THE APPOINTMENT OF TRUST PROPERTY TO ANOTHER TRUST.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Hartsell.

GS 36C

March 10, 2009

S 481. TRUSTEE'S POWER TO APPOINT TO OTHER TRUST. Filed 3/9/09. *TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY AND TO GRANT CLERKS JURISDICTION TO HEAR MOTIONS TO APPROVE THE APPOINTMENT OF TRUST PROPERTY TO ANOTHER TRUST.*

Enacts new GS 36C-8-816.1 authorizing a trustee with discretionary power under an irrevocable trust to distribute principal or income of the trust (first trust) to or for the benefit of one or more trust beneficiaries, to instead exercise the power by appointing all or part of the principal or income subject to the power in favor of a trustee of another trust (second trust) for the benefit of one or more beneficiaries under the same trust instrument or under a different trust instrument created by the trustee. Allows this to be done without authorization by the court. Prohibits a trustee from exercising the power to appoint principal or income if the trustee is a beneficiary of the first trust, but the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

Sets the following conditions of the second trust: (1) the beneficiaries of the second trust may include only beneficiaries of the first trust; (2) a beneficiary who has only a future beneficial trust in the first trust cannot have the future trust accelerated to present interest in the second trust; (3) the second trust may not reduce any fixed income, annuity, or unitrust interest in the first trust's assets; (4) if any contribution to the first trust qualified as a marital or charitable deduction for federal tax purposes, then the second trust must not contain any provision that if including the first trust would have prevented the first trust from qualifying for the deduction or that would have reduced the deduction amount; (5) if contributions to the first trust have been excluded from the gift tax by Sections 2503(b) and (c) of the Internal Revenue Code, then the second trust must provide that the beneficiary's remainder interest in the contributions vest and become distributable by the date on which the interest would have become distributable; (6) if one or more beneficiaries of the first trust has a power of withdrawal over trust property, then the second trust must provide an identical power of withdrawal in the second trust or sufficient trust property must remain in the first trust to satisfy the outstanding power of withdrawal; (7) if the power to distribute principal or income in the first trust is subject to an ascertainable standard, then the power to distribute principal or income in the second trust must be subject to the same ascertainable standard, the second trust may not confer a power of appointment upon a beneficiary of the first trust, and the beneficiaries of the first trust must have the same beneficial interest in the second trust; and (8) if the power to distribute principal or income in the first trust is not subject to an ascertainable standard, then the second trust may confer a power of appointment upon a beneficiary of the first trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the first trust, subject to conditions as to who is considered the permissible appointees and as to the powers of appointment.

Provides that the power to appoint principal or income is (1) considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; (2) subject to the provisions of GS 41-23 (Perpetuities and suspension of power of alienation for trusts) covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienations of the first trust; and (3) not prohibited by a spendthrift provision or a provision in the trust instrument that prohibits amendments or revocation of the trust. Sets forth the conditions that must be met to exercise the power to appoint principal or income under proposed subsection (a), including that the exercise of power to appoint must be

made in writing, signed and acknowledged by the trustee, and that the trustee must give notice to all qualified beneficiaries of the first trust at least 60 days before the effective date of the appointment power.

Provides that nothing in the statute is to be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety is to be made as a result of a trustee not exercising the power to appoint principal or income. Also, nothing is to be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the first trust or under any other provision of law.

Amends GS 36C-2-203 (subject matter jurisdiction) to also give superior court clerks jurisdiction over proceedings to approve the exercise of the trustee's special power to appoint trust principal or income to another trust as provided in new GS 36C-8-816.1.

Effective October 1, 2009.

Intro. by Hartsell.

GS 36C

April 15, 2009

S 481. TRUSTEE'S POWER TO APPOINT TO OTHER TRUST. Filed 3/9/09. Senate committee substitute makes the following changes to 1st edition.

Amends proposed GS 36C-8-816.1 to provide that if the power to distribute principal or income in the first trust is subject to an ascertainable standard, then the terms to which the second trust is subject must include a provision that the second trust may not confer a power of appointment upon any person other than a power of appointment conferred upon that person under the original trust (was, a beneficiary of the first trust). Provides that a trustee or beneficiary may begin a proceeding to approve or disapprove a proposed exercise of the trustee's special power to appoint to another trust pursuant under proposed subsection (a) of GS 36C-8-816.1.

Amends GS 36C-2-203(f) to provide that the clerk of superior court does not have jurisdiction over actions involving the exercise of the trustee's special power to appoint trust principal or income to another trust as provided in proposed GS 36C-8-816.1 (was, the 1st edition provided the clerk of superior court with jurisdiction over actions of this type).

Makes a conforming change to the title.

July 2, 2009

S 481. TRUSTEE'S POWER TO APPOINT TO OTHER TRUST. Filed 3/9/09. House committee substitute makes the following changes to 2nd edition. Reorganizes the bill's provisions and makes the following substantive changes: (1) Deletes a specification that if the power to distribute in the original trust is subject to an ascertainable standard, then the second trust may not confer a power of appointment on a person other than a power of appointment conferred on that person in the original trust. (2) Previous editions specified that a trustee may not exercise powers under the bill if the trustee is a beneficiary of the original trust, but that a majority of cotrustees could act for the trust. This committee substitute adds a provision that if all the trustees are beneficiaries under the original trust, then the court may appoint a special fiduciary with authority to exercise the powers.

July 20, 2009

SL 2009-318 (S 481). TRUSTEE'S POWER TO APPOINT OTHER TRUST. AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY. Summarized in *Daily Bulletin* 3/10/09, 4/15/09, and 7/2/09. Enacted July 17, 2009. Effective October 1, 2009.