

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE DRH30137-LL-67 (3/5)

Short Title: Amend Trust Administration Act.

(Public)

Sponsors: Representative Culpepper.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRUST ADMINISTRATION ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 36A-23.1(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings ~~to modify or terminate trusts~~ governed by Article 11A of this Chapter. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(1a) To permit a trustee to resign or renounce; however, no trustee shall be required to initiate a proceeding to resign or renounce as trustee where a successor trustee named in the governing instrument or in accordance with a procedure provided in the governing instrument is willing to serve, unless the trustee is required to account to the clerk;

(2) To review trustees' fees pursuant to ~~G.S. 32-50~~ Article 5 of Chapter 32 of the General Statutes and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The

1 clerk, on the clerk's own motion, may determine that a proceeding to  
2 determine an issue listed in this subdivision shall be originally heard  
3 by a superior court judge."

4 **SECTION 2.** G.S. 36A-24.1(b) reads as rewritten:

5 "(b) If the trustee is not required to account to the clerk, then unless the terms of  
6 the governing instrument provide otherwise, venue for proceedings under G.S.  
7 36A-23.1 involving trusts ~~is in~~ is:

8 (1) In the case of an inter vivos trust, in any county of this State in which  
9 the trust has its principal place of administration or where any  
10 beneficiary resides. resides; or

11 (2) In the case of a testamentary trust, in any county of this State in which  
12 the trust has its principal place of administration, where any  
13 beneficiary resides, or in which the testator's estate was administered."

14 **SECTION 3.** G.S. 36A-26.1 reads as rewritten:

15 **"§ 36A-26.1. Trust proceedings; necessary parties.**

16 Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the  
17 office of the clerk of superior court. Upon the filing of the petition, the clerk shall  
18 docket the cause as an estate matter. All ~~known beneficiaries, trustees, or cotrustees~~  
19 trustees and interested persons not joined as petitioners shall be joined as respondents.  
20 The clerk shall issue the summons for the respondents. The clerk may order ~~notification~~  
21 of that additional persons be joined as respondents and shall issue the summons for such  
22 additional persons. An order is valid as to all persons who are given notice of the  
23 proceeding even if all interested persons are not notified. The beneficiaries, creditors, or  
24 any other persons interested in the trust estate have the right to- The summons shall  
25 notify the respondents to appear and answer the petition and to offer evidence against  
26 granting the petition. The clerk shall then proceed to hear within 10 days after its service  
27 upon the respondents. The summons shall comply with the requirements set forth in  
28 G.S. 1-394 for a special proceeding summons except that the clerk shall indicate on the  
29 summons by appropriate words that the summons is issued in an estate matter and not in  
30 a special proceeding or in a civil action. The clerk shall set the matter for hearing after  
31 the period for respondents to answer the petition has expired and shall provide notice of  
32 such hearing to respondents. At the hearing, petitioners and respondents shall have the  
33 right to offer evidence for and against granting the petition, and the clerk shall decide  
34 and determine the matter as provided for in G.S. 1-301.3. in G.S. 1-301.3. An order  
35 entered by the clerk is valid as to all persons to whom a summons is issued."

36 **SECTION 4.** G.S. 36A-29 reads as rewritten:

37 **"§ 36A-29. Final accounting before resignation. Accounting to the clerk.**

38 (a) No trustee, including a trustee appointed by the clerk, shall be required to  
39 account to the clerk of superior court unless the governing instrument directs that the  
40 trustee shall be required to account to the clerk or unless the trustee is otherwise  
41 required by law to account to the clerk.

42 (b) If the trustee is required to account to the clerk of superior court, then unless  
43 the terms of the governing instrument provide otherwise, no trustee shall be permitted to

1 resign as trustee until a final account of the trust estate is filed with the clerk, and until  
2 the court shall be satisfied that the account is true and correct."

3 **SECTION 5.** G.S. 36A-31 reads as rewritten:

4 "**§ 36A-31. When bond required.**

5 A trustee ~~need not~~ shall provide bond to secure performance of the trustee's duties  
6 ~~unless required by the if:~~

7 (1) The terms of the governing instrument, reasonably requested by a  
8 beneficiary, or found by the clerk to be necessary instrument require  
9 the trustee to provide bond;

10 (2) A beneficiary requests the trustee to provide bond and the clerk finds  
11 the request to be reasonable; or

12 (3) The clerk finds that it is necessary for the trustee to provide bond in  
13 order to protect the interests of beneficiaries who are not able to  
14 protect themselves and whose interests otherwise are not adequately  
15 represented.

16 However, in no event shall bond be required of a trustee, including a trustee appointed  
17 by the clerk, if the governing instrument directs otherwise. On petition of the trustee or  
18 other interested person, the clerk may excuse a requirement of bond, reduce the amount  
19 of the bond, release the surety, or permit the substitution of another bond with the same  
20 or different sureties. ~~If the governing instrument is silent as to the requirement of a bond~~  
21 ~~and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond~~  
22 ~~requirement, the clerk's decision must be approved by a superior court judge unless all~~  
23 ~~beneficiaries have been notified of the decision.~~ If bond is required, it shall be in a sum  
24 double the value of the personal property to come into the trustee's hands when bond is  
25 executed by a personal surety, and in an amount not less than one and one-fourth times  
26 the value of all personal property of the trust estate when the bond is secured by a  
27 suretyship bond executed by a corporate surety company authorized by the  
28 Commissioner of Insurance to do business in this State, provided that the clerk of  
29 superior court, when the value of the personal property exceeds one hundred thousand  
30 dollars (\$100,000), may accept bond in an amount equal to the value of the personal  
31 property plus ten percent (10%) thereof, conditioned upon the faithful performance of  
32 the trustee's duties and for the payment to the persons entitled to receive all moneys,  
33 assets, or other things of value which may come into the trustee's hands. All bonds  
34 executed under the provisions of this Article shall be filed with the clerk."

35 **SECTION 6.** G.S. 36A-32 reads as rewritten:

36 "**§ 36A-32. Rights and duties devolve on successor.**

37 A successor ~~trustee~~ trustee, including a successor trustee appointed by the clerk,  
38 shall succeed to all the rights, powers, and privileges, and shall be subject to all the  
39 duties, liabilities, and responsibilities that were imposed upon the original trustee unless  
40 a contrary intent appears from the governing ~~instrument~~ instrument or unless the order  
41 appointing the successor trustee provides otherwise."

42 **SECTION 7.** This act becomes effective January 1, 2004, and applies to all  
43 trusts created before or after that date.