

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 656
Committee Substitute Favorable 4/7/03
Committee Substitute #2 Favorable 4/29/03
Senate Judiciary II Committee Substitute Adopted 6/3/03

Short Title: Amend Trust Administration Act.

(Public)

Sponsors:

Referred to:

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRUST ADMINISTRATION ACT AND TO MAKE
RELATED CHANGES TO THE LAW GOVERNING ACCOUNTINGS IN
TESTAMENTARY TRUSTS.

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, unless the trustee is required to account to the clerk, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee shall be required to initiate a proceeding to resign or renounce as trustee;

(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

1 nonexistence of trusts created other than by will and the existence or
2 nonexistence of any immunity, power, privilege, duty, or right. The
3 clerk, on the clerk's own motion, may determine that a proceeding to
4 determine an issue listed in this subdivision shall be originally heard
5 by a superior court judge."

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

7 "(b) If the trustee is not required to account to the clerk, then unless the terms of
8 the governing instrument provide otherwise, venue for proceedings under G.S.
9 36A-23.1 involving trusts ~~is in~~ is:

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

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

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

17 **"§ 36A-26.1. Trust proceedings; necessary parties.**

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

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

40 **"§ 36A-29. Final accounting before resignation. Accounting to the clerk.**

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

1 (b) If the trustee is required to account to the clerk of superior court, ~~then unless~~
2 ~~the terms of the governing instrument provide otherwise, no court, the trustee shall not~~
3 be permitted to resign as trustee until a final account of the trust estate is filed with the
4 ~~clerk, clerk~~ and until the court shall be satisfied that the account is true and ~~correct.~~
5 correct, unless the terms of the governing instrument provide otherwise."

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

7 "**§ 36A-31. When bond required.**

8 (a) ~~A~~ For any testamentary trust created under a will of a decedent executed on
9 or after January 1, 2004, and any inter vivos trust created on or after January 1, 2004, a
10 trustee need not shall provide bond to secure performance of the trustee's duties unless
11 required by the if the terms of the governing instrument, reasonably requested by a
12 beneficiary, or found by the clerk to be necessary instrument require the trustee to
13 provide bond. For any testamentary trust created under a will of a decedent executed
14 before January 1, 2004, and for any inter vivos trust created before January 1, 2004, a
15 trustee shall provide bond to secure performance of the trustee's duties unless the terms
16 of the governing instrument provide otherwise. In addition, regardless of when a trust
17 was created, a trustee shall provide bond to secure performance of the trustee's duties if:

- 18 (1) A beneficiary requests the trustee to provide bond and the clerk finds
19 the request to be reasonable; or
20 (2) The clerk finds that it is necessary for the trustee to provide bond in
21 order to protect the interests of beneficiaries who are not able to
22 protect themselves and whose interests otherwise are not adequately
23 represented.

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

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

1 **"§ 36A-32. Rights and duties devolve on successor.**

2 A successor ~~trustee~~-trustee, including a successor trustee appointed by the clerk,
3 shall succeed to all the rights, powers, and privileges, and shall be subject to all the
4 duties, liabilities, and responsibilities that were imposed upon the original trustee unless
5 a contrary intent appears from the governing ~~instrument~~-instrument or unless the order
6 appointing the successor trustee provides otherwise."

7 **SECTION 7.** G.S. 36A-107 reads as rewritten:

8 **"§ 36A-107. Trustees in wills to qualify and file inventories and accounts.**

9 (a) ~~Trustees appointed in any will admitted to probate in this State, into whose~~
10 ~~hands assets come under the provisions of the will,~~ For any testamentary trust created
11 under a will of a decedent executed before January 1, 2004, the trustee shall first qualify
12 under the laws applicable to executors, and shall file in the office of the clerk of the
13 county where the will is probated inventories of the assets ~~which~~ that come into ~~his~~ the
14 trustee's hands and annual and final accounts ~~thereof, such~~ of the trust that are the same
15 as required of executors and administrators. The power of the clerk to enforce the filing
16 and ~~his~~the clerk's duties in respect to auditing and approving to audit and approve the
17 trustee's inventories and accounts shall be the same as ~~in such cases,~~ the clerk's powers
18 and duties with respect to the inventories and accounts of executors and administrators.
19 This ~~section~~-subsection shall not apply to the extent that any will makes a different
20 provision.

21 (b) For any testamentary trust created under a will of a decedent executed on or
22 after January 1, 2004, the provisions of which direct the trustee to account to the clerk,
23 the trustee shall first qualify under the laws applicable to executors and shall file in the
24 office of the clerk of the county where the will is probated inventories of the assets that
25 come into the trustee's hands and annual and final accounts of the trust that are the
26 same as are required of executors and administrators. The power of the clerk to enforce
27 the filing and the clerk's duties to audit and approve the trustee's inventories and
28 accounts shall be the same as the clerk's powers and duties with respect to the
29 inventories and accounts of executors and administrators. No trustee, including a trustee
30 appointed by the clerk, shall be required to account to the clerk unless the subject will
31 directs that the trustee shall be required to account to the clerk or unless otherwise
32 required by law."

33 **SECTION 8.** This act becomes effective January 1, 2004, and applies to all
34 trusts created before or after that date.