

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-261
HOUSE BILL 656**

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

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

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

- (1) In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary resides; ~~resides~~; or
- (2) In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered."

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

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

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

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

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

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

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

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

"§ 36A-31. When bond required.

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

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

(b) However, Notwithstanding subsection (a) of this section, in no event shall bond be required of a trustee, including a trustee appointed by the clerk, if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If

~~the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision.~~ If bond is required, it shall be in a sum double the value of the personal property to come into the trustee's hands when bond is executed by a personal surety, and in an amount not less than one and one-fourth times the value of all personal property of the trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive all moneys, assets, or other things of value which may come into the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk."

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 18th day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:51 p.m. this 26th day of June, 2003