

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 201

Short Title: Appointment of Successor Trustees/AB.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE APPOINTMENT OF SUCCESSOR TRUSTEES TO CONFORM TO THE RULES OF CIVIL PROCEDURE AND TO UPDATE STATUTORY LANGUAGE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36A-25 reads as rewritten:

**"§ 36A-25. Parties; hearing; successor appointed.**

Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. Proceedings under this section are subject to Article 33 of Chapter 1 of the General Statutes. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have A beneficiary, creditor, or other person interested in the trust estate has the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if matter. If it appears to the court clerk that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted,

1 ~~accepted~~ or if it appears to the ~~court~~ clerk that sufficient reasons exist for allowing the  
2 ~~resignation, resignation~~ and that the resignation can be allowed without prejudice to the  
3 rights of creditors or the beneficiaries, the clerk may, in the exercise of ~~his~~ the clerk's  
4 discretion, allow the applicant to ~~resign; and in such case the clerk shall proceed to resign.~~  
5 The clerk shall appoint the successor of the petitioner in the manner provided in this  
6 Article."

7 Section 2. G.S. 36A-33 reads as rewritten:

8 **"§ 36A-33. Appointment of successors to deceased or incapacitated trustees.**

9 Upon the death or incapacity of a trustee, a new trustee may be appointed on  
10 application by ~~any beneficiary, a beneficiary~~ or other interested ~~persons, person~~ by petition  
11 to the clerk of the superior court of the county in which the instrument under which the  
12 deceased or incapacitated trustee claimed is ~~registered, making registered.~~ The petition  
13 shall make all necessary parties defendants. The clerk shall docket the cause as a special  
14 proceeding and issue summons for the defendants, and the procedure shall be the same as in  
15 other special proceedings. Proceedings under this section are special proceedings subject to  
16 Article 33 of Chapter 1 of the General Statutes. If any of the defendants be nonresidents,  
17 summons may be served by publication; and if any be infants, a guardian ad litem must be  
18 appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall  
19 have—A beneficiary, creditor, or other person interested in the trust estate has the right to  
20 answer the petition and to offer evidence why the prayer of the petition should not be  
21 granted. After hearing the matter, the clerk may appoint the person so named in the  
22 petition, or he may appoint petition or some other fit and suitable person or corporation to  
23 act as the successor of the deceased or incapacitated trustee; and the trustee. The clerk  
24 shall require the person so appointed to give bond as required in G.S. 36A-31; provided,  
25 that where by the terms of the instrument upon G.S. 36A-31. If the instrument under which  
26 the deceased or incapacitated trustee claimed, said trustee was not required—however, does  
27 not require the trustee to give bond and did not give bond and an intent is expressed in the  
28 creating instrument expresses an intent that a successor trustee shall serve without bond, or  
29 where—if the clerk upon due investigation, finds that bond is not necessary for the  
30 protection of the estate, the requirement of a bond for the successor trustee may be  
31 waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision  
32 of the clerk as provided in G.S. 36A-27 and 36A-28.

33 Nothing in this section shall be construed to limit the authority of the clerk of superior  
34 court to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the  
35 clerk's own motion."

36 Section 3. This act is effective when it becomes law.