

## Article 4C.

### Judicial Establishment of Validity of a Revocable Trust.

#### **§ 36C-4C-1. Proceedings for validity of a revocable trust.**

A settlor may commence a judicial proceeding to establish the validity of a revocable trust pursuant to this Article. (2021-53, s. 1.1.)

#### **§ 36C-4C-2. Establishing validity of a revocable trust before death.**

(a) During the settlor's lifetime, any settlor of a revocable trust who is a resident of North Carolina may commence a judicial proceeding seeking a judicial declaration that the trust is valid.

(b) The petition shall be filed with the Superior Court Division of the General Court of Justice. At the hearing, the petitioner shall produce the evidence necessary to establish that the revocable trust, including any existing amendments thereto, is valid and enforceable under its terms, subject only to a subsequent amendment or revocation of the revocable trust. Civil summonses shall be issued to those interested persons identified in the settlor's petition, and such parties shall be served with a copy of the summons and petition as provided in Rule 4 of the Rules of Civil Procedure.

(c) The petition filed to determine the validity of a revocable trust may also join as an additional claim a request for a judicial declaration that the petitioner's will or codicil is valid as provided in Article 2B of Chapter 28A of the General Statutes and, notwithstanding G.S. 28A-2B-1(b), the joined action shall be heard in the Superior Court Division of the General Court of Justice as provided in this Article.

(d) Failure to use the procedure authorized by this Article shall not have any evidentiary or procedural effect on any future proceedings, including trust proceedings, civil actions, and estate proceedings.

(e) For purposes of this Article only, a "petitioner" is a person who requests a judicial declaration that confirms the validity of that person's revocable trust. (2021-53, s. 1.1.)

#### **§ 36C-4C-3. Venue.**

The venue for a petition under this Article shall be as provided in G.S. 36C-2-204. (2021-53, s. 1.1.)

#### **§ 36C-4C-4. Contents of petition for revocable trust validity.**

(a) Petition. – A petition requesting an order declaring that a petitioner's revocable trust is valid shall be verified and shall contain the following information:

- (1) A statement that the petitioner is a resident of North Carolina and specifying the county of the petitioner's residence.
- (2) Allegations that the revocable trust was prepared and executed in accordance with North Carolina law and a statement that the revocable trust was created with intent to create the revocable trust.
- (3) A statement that the petitioner had capacity to create a revocable trust at the time the trust was created.
- (4) A statement that the petitioner was free from undue influence and duress and executed the revocable trust in the exercise of the petitioner's free will.
- (5) A statement identifying the petitioner, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall attach a copy of the revocable trust and any amendments then in effect to the petition. If an order is entered declaring the revocable trust to be valid, the petitioner shall tender the original revocable trust and any amendments then in effect at the hearing, and the court shall affix a certificate of validity to such revocable trust and amendments, if any. (2021-53, s. 1.1.)

#### **§ 36C-4C-5. Declaration by court; bar to contesting validity of trust.**

(a) If the court enters a judgment declaring a revocable trust to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding, pursuant to the provisions of Article 3 of Chapter 36C of the General Statutes, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a challenge to the validity of the revocable trust once that trust becomes irrevocable.

(b) If the court declares a revocable trust to be valid, upon the motion of the petitioner or the court, the court may order that the trust cannot be revoked and that no subsequent revocable trust or amendment to the validated trust will be valid unless the revocation or the subsequent amendment to the validated trust is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the trust not declared valid in a proceeding under this Article shall be void, and any subsequent trust or amendment to the validated trust not declared valid in a proceeding under this Article shall be void.

(c) If a revocable trust judicially declared valid is revoked or modified by a subsequent revocable trust or amendment, nothing in this section shall bar an interested person from contesting the validity of that subsequent trust or amendment, unless that subsequent trust or amendment is also declared valid in a proceeding under this Article in which the interested person was a party. If a trust or amendment to a trust judicially declared valid is revoked by a method other than the execution of a subsequent trust, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

(d) Nothing in this Article shall preclude a party from seeking relief from a judgment pursuant to Rule 60 of the North Carolina Rules of Civil Procedure, including, without limitation, for fraud upon the court. (2021-53, s. 1.1.)

#### **§ 36C-4C-6. Confidentiality.**

(a) Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the court shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the court to any person other than the following:

- (1) The petitioner named in the petition.
- (2) The attorney for the petitioner.
- (3) A court of competent jurisdiction hearing or reviewing the matter.

(b) For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section. Following the petitioner's death, a sealed file shall be unsealed upon the request of any interested person for the purpose of other estate proceedings. (2021-53, s. 1.1.)