

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 566
Committee Substitute Favorable 5/3/95

Short Title: Amend Powers of Fiduciaries.

(Public)

Sponsors:

Referred to:

March 28, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS RELATING TO THE POWERS OF
3 FIDUCIARIES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 32-27(27) reads as rewritten:

6 "(27) Distribute in Cash or Kind. – To make distribution of capital assets of
7 the estate or trust in kind or in cash, or partially in kind and partially in
8 cash, in divided or undivided interests, either pro rata or by a method
9 other than pro rata among all distributees, without regard to the income
10 tax basis or other special tax attributes of such assets, as the fiduciary
11 finds to be most practicable and for the best interests of the distributees;
12 and to determine the value of capital assets for the purpose of making
13 distribution thereof if and when there be more than one distributee
14 thereof, which determination shall be binding upon the distributees
15 unless clearly capricious, erroneous and inequitable; provided, however,
16 that the fiduciary shall not exercise any power under this subdivision
17 unless the fiduciary holds title to or an interest in the property to be
18 distributed and is required or authorized to make distribution thereof."

19 Sec. 2. G.S. 32-27 is amended by adding a new subdivision to read:

1 "(28.1) Pay to Custodian Under Uniform Gifts or Transfers to Minors
2 Act. – To make any distribution of income or principal, including
3 real property, for the benefit of any distributee to a custodian
4 under the North Carolina Uniform Transfers to Minors Act,
5 Chapter 33A of the General Statutes, or under the provisions of
6 any similar statute in the state where the minor or the custodian
7 resides. Unless a custodian is specifically named in the governing
8 instrument, the fiduciary shall have absolute discretion to
9 nominate any qualified individual or financial institution,
10 including the fiduciary, to serve as custodian, and to nominate one
11 or more substitute custodians."

12 Sec. 3. G.S. 32-27(25.1) reads as rewritten:

13 "(25.1) Divide One Trust into Several Trusts and Make
14 Distributions From Those Trusts. – To divide the funds and
15 properties constituting any trusts into two or more identical
16 separate trusts that represent two or more fractional shares of the
17 funds and properties being divided, and to make
18 distributions of income and principal by a method other than pro
19 rata from the separate trusts so created as the fiduciary determines
20 to be in the best interests of the trust beneficiaries. In any case
21 where a single trust has been divided by the fiduciary into two
22 separate trusts, one of which is fully exempt from the federal
23 generation-skipping transfer tax and one of which is fully subject
24 to that tax, the fiduciary may thereafter, to the extent possible
25 consistent with the terms of the governing instrument, determine
26 the value of any mandatory or discretionary distributions to trust
27 beneficiaries on the basis of the combined value of both trusts, but
28 may satisfy such distributions from the separate trusts in a manner
29 designed to minimize the current and potential generation-
30 skipping transfer tax."

31 Sec. 4. G.S. 36A-136 is amended by adding a new subdivision to read:

32 "(24) To divide the funds and properties constituting any trust into two or
33 more identical separate trusts that represent two or more fractional
34 shares of the funds and properties being divided, and to make
35 distributions of income and principal by a method other than pro rata
36 from the separate trusts so created as the fiduciary determines to be in
37 the best interests of the trust beneficiaries. In any case where a single
38 trust has been divided by the fiduciary into two separate trusts, one of
39 which is fully exempt from the federal generation-skipping transfer tax
40 and one of which is fully subject to that tax, the fiduciary may
41 thereafter, to the extent possible consistent with the terms of the
42 governing instrument, determine the value of any mandatory or
43 discretionary distributions to trust beneficiaries on the basis of the

1 combined value of both trusts, but may satisfy such distributions by a
2 method other than pro rata from the separate trusts in a manner designed
3 to minimize the current and potential generation-skipping transfer tax."

4 Sec. 5. G.S. 28A-22-5 reads as rewritten:

5 "**§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers**
6 **in trust for surviving spouse-trust.**

7 (a) Subject to the provisions of subsection (b) of this section, whenever ~~Whenever~~
8 under any will or trust indenture the executor, trustee or other fiduciary is required to, or
9 has an option to, satisfy a bequest or transfer in trust ~~to or for the benefit of the surviving~~
10 ~~spouse of a decedent~~ by a transfer of assets of the estate or trust in kind at the values as
11 finally determined for federal estate tax purposes, the executor, trustee or other fiduciary
12 shall, in the absence of contrary provisions in such will or trust indenture, be required to
13 satisfy such bequest or transfer by the distribution of assets fairly representative of the
14 appreciation or depreciation in the value of all property available for distribution in
15 satisfaction of such bequest or transfer.

16 (b) The provisions of subsection (a) of this section shall not apply unless either:

17 (1) The decedent's surviving spouse is the beneficiary of the bequest or trust
18 transfer described in subsection (a) of this section or of the residue of
19 the estate or trust; or

20 (2) Any 'skip person', as that term is defined in Chapter 13 of the Internal
21 Revenue Code of 1986, as amended, is or may be a current or future
22 beneficiary of the bequest or trust transfer described in subsection (a) of
23 this section or of the residue of the estate or trust, and the value of the
24 decedent's gross estate for federal tax purposes exceeds the value of the
25 decedent's unused generation-skipping tax exemption available under
26 Chapter 13 of the Internal Revenue Code of 1986, as amended."

27 Sec. 6. G.S. 35A-1251 is amended by adding a new subdivision to read:

28 "(5a) To renounce any interest in property as provided in Chapter 31B
29 of the General Statutes, or as otherwise allowed by law."

30 Sec. 7. G.S. 35A-1252 is amended by adding a new subdivision to read:

31 "(4a) To renounce any interest in property as provided in Chapter 31B
32 of the General Statutes, or as otherwise allowed by law."

33 Sec. 8. G.S. 35A-1251 is amended by adding two new subdivisions to read:

34 "(22) To transfer to the spouse of the ward those amounts authorized for
35 transfer to the spouse pursuant to 42 United States Code § 1396r-
36 5.

37 (23) To create a trust for the benefit of the ward pursuant to 42 United
38 States Code § 1396p(d)(4), provided that all amounts remaining
39 in the trust upon the death of the ward, other than those amounts
40 which must be paid to a state government, are to be paid to the
41 estate of the ward."

42 Sec. 9. G.S. 35A-1116 is amended by adding a new subsection to read:

1 "(d) The provisions of this section shall also apply to all parties to any proceedings
2 under this Chapter, including a guardian who has been removed from office and the
3 sureties on the guardian's bond."

4 Sec. 10. G.S. 37-22(c) reads as rewritten:

5 "(c) Except as otherwise provided in this section, distributions made from ordinary
6 income ~~or from realized capital gains~~ by a regulated investment company or by a trust
7 qualifying and electing to be taxed under federal law as a real estate investment trust are
8 income. All other distributions made by the company or trust, including short-term and
9 long-term capital gains distributions, whether in the form of cash or an option to take new
10 stock or cash or an option to purchase additional shares, are principal."

11 Sec. 11. Section 8 of Chapter 284 of the 1993 Session Laws reads as rewritten:

12 "Sec. 8. This act becomes effective January 1, 1994, and applies to trusts in existence
13 on that date or established on or after that date and to tax years of decedents' estates
14 beginning on or after that date, ~~except that Sections 4 through 7 of this act apply only to trusts~~
15 ~~established on or after January 1, 1994. except that for trusts established before January 1,~~
16 1994, Sections 4 through 7 of this act apply only to any expenses described in those
17 sections which are paid after October 1, 1995."

18 Sec. 12. This act is effective October 1, 1995. Section 4 of this act applies to
19 all wills, trusts, and powers of attorney in existence on that date or executed on or after
20 that date. Section 5 of this act applies to all distributions made on or after that date.
21 Section 10 of this act applies to any receipt received after that date, by any trust or
22 decedent's estate in existence on or after that date.