

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION

CHAPTER 235  
HOUSE BILL 566

AN ACT TO AMEND THE LAWS RELATING TO THE POWERS OF  
FIDUCIARIES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

"(25.1) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. – To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being ~~divided~~ divided, and to make distributions of income and

principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where a single trust has been divided by the fiduciary into two separate trusts, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax."

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

"(24) To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where a single trust has been divided by the fiduciary into two separate trusts, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. This act is effective October 1, 1995. Section 4 of this act applies to all wills, trusts, and powers of attorney in existence on that date or executed on or after

that date. Section 5 of this act applies to all distributions made on or after that date. Section 10 of this act applies to any receipt received after that date, by any trust or decedent's estate in existence on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1995.

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Dennis A. Wicker  
President of the Senate

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Harold J. Brubaker  
Speaker of the House of Representatives