

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1100  
Committee Substitute Favorable 4/20/99

Short Title: Removal/Resignation of Trustees.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL,  
3 AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF  
4 SUCCESSOR TRUSTEES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

7 "ARTICLE 3.

8 "~~Resignation, Removal, and Renunciation of Trustees.~~"Trust Administration.

9 "~~§ 36A. (a) Except when otherwise provided by law, the term "trustee," as used in~~  
10 ~~this Article, includes "trustees," "guardians," and other fiduciaries.~~

11 (b) ~~The resignation, removal, and renunciation of personal representatives and~~  
12 ~~collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

13 (c) ~~The substitution of trustees in mortgages and deeds of trust shall be governed~~  
14 ~~by the provisions of G.S. 45-10.~~

15 "§ 36A-22.1. Definitions.

16 As used in this Article:

17 (1) 'Beneficiary' means a person who has any present or future interest,  
18 vested or contingent, in a trust, including (i) the owner of an interest by

1 assignment or other transfer and (ii) any person entitled to enforce a  
2 charitable trust.

3 (2) 'Fiduciary' includes personal representatives, guardians of the person,  
4 guardians of the estate, attorneys-in-fact, and trustees.

5 (3) 'Interested person' includes creditors, beneficiaries, and any others  
6 having a property right in or a claim against a trust estate which may be  
7 affected by the proceeding. The term also includes fiduciaries  
8 representing interested persons. The meaning of the term as it relates to  
9 particular persons may vary from time to time and must be determined  
10 according to the particular purposes of and matter involved in a  
11 particular proceeding.

12 (4) 'Person' means an individual person, a corporation, an organization, or  
13 other legal entity.

14 (5) 'Trust' includes any express trust, private or charitable, with additions to  
15 the trust, wherever and however created. The term also includes a trust  
16 created for or determined by judgment or decree under which the trust is  
17 to be administered in the manner of an express trust. The term does not  
18 include other constructive trusts, resulting trusts, conservatorships,  
19 personal representatives, trust accounts as defined in G.S. 53-146.2, 54-  
20 109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1  
21 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business  
22 trusts providing for certificates to be issued to beneficiaries, common  
23 trust funds, voting trusts, security arrangements, liquidation trusts, and  
24 trusts for the primary purpose of paying debts, dividends, interest,  
25 salaries, wages, profits, pensions, or employee benefits of any kind, or  
26 any arrangement under which a person is nominee or escrowee for  
27 another.

28 (6) 'Trustee' includes an original, additional, or successor trustee, whether  
29 or not appointed or confirmed by a court. The term does not include  
30 trustees in mortgages and deeds of trust. Substitution of trustees in  
31 mortgages and deeds of trust are governed by the provisions of G.S. 45-  
32 10.

33 ~~"§ 36A The clerks of superior courts of this State have power and jurisdiction to~~  
34 ~~accept the resignation of trustees and to appoint their successors in the~~  
35 ~~manner provided by this Article.~~

36 **"§ 36A-23.1. Court; jurisdiction of trusts.**

37 (a) The clerks of superior court of this State have original jurisdiction over all  
38 proceedings initiated by interested persons concerning the internal affairs of trusts except  
39 proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this  
40 section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under  
41 this section are those concerning the administration and distribution of trusts, the  
42 declaration of rights, and the determination of other matters involving trustees and trust

1 beneficiaries, to the extent that those matters are not otherwise provided for in the  
2 governing instrument. These include proceedings:

3 (1) To appoint or remove a trustee;

4 (2) To review trustees' fees and review and settle interim or final accounts;  
5 and

6 (3) To ascertain beneficiaries, to determine any question arising in the  
7 administration or distribution of any trust, including questions of  
8 construction of trust instruments, and to determine the existence or  
9 nonexistence of trusts created other than by will and the existence or  
10 nonexistence of any immunity, power, privilege, duty, or right. The  
11 clerk, on the clerk's own motion, may determine that a proceeding to  
12 determine an issue listed in this subdivision shall be originally heard by  
13 the superior court.

14 (b) To the extent that the procedures in this Article for proceedings before the  
15 clerk concerning the administration of trusts conflict with the procedures for proceedings  
16 heard by the clerk, the provisions of this Article control.

17 (c) A proceeding under this section does not result in continuing supervisory  
18 proceedings.

19 (d) The management and distribution of a trust estate, submission of accounts and  
20 reports to beneficiaries, payment of trustees' fees and other obligations of a trust,  
21 acceptance and change of trusteeship, and other aspects of the administration of a trust  
22 shall proceed expeditiously, consistent with the terms of the trust, free of judicial  
23 intervention and without order, approval, or other action of any court, subject to the  
24 jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as  
25 provided by law. Nothing in this section shall be construed (i) to confer upon the clerk  
26 any authority to regulate or supervise the actions of a trustee except to the extent that the  
27 trustee's actions are inconsistent with the provisions of the governing instrument or of  
28 State law, or (ii) to confer upon any interested person any additional right, remedy, or  
29 cause of action not otherwise conferred by law.

30 (e) Nothing in this section affects the right of a person to file an action for  
31 declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

32 ~~"§-36AC When any trustee desires to resign his trust, he shall file his petition in the~~  
33 ~~office of the clerk of superior court of the county in which he qualified or~~  
34 ~~in which the instrument under which he claims is registered. The petition~~  
35 ~~shall set forth all the facts in connection with the appointment and~~  
36 ~~qualifications as such trustee, with a copy of the instrument under which~~  
37 ~~he acts; shall state the names, ages, and residences of all the beneficiaries~~  
38 ~~and other parties interested in the trust estate; shall contain a full and~~  
39 ~~complete statement of all debts or liabilities due by the estate, and a full~~  
40 ~~and complete statement of all assets belonging to said estate, and a full and~~  
41 ~~complete statement of all moneys, securities, or assets in the hands of the~~  
42 ~~trustee and due the estate, together with a full statement of the reasons the~~

1           ~~applicant should be permitted to resign his trust. The petition shall be~~  
2           ~~verified by the oath of the applicant.~~

3   "§ 36A-24.1. Trust proceedings; venue.

4           (a)   If the trustee is required to account to the clerk, then unless the terms of the  
5           governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1  
6           involving trusts is the place where the accountings are filed.

7           (b)   If the trustee is not required to account to the clerk, then unless the terms of the  
8           governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1  
9           involving trusts is in any county of this State in which the trust has its principal place of  
10           administration or where any beneficiary resides. Unless otherwise designated in the  
11           governing instrument, the principal place of administration of the trust is the trustee's  
12           usual place of business where the records pertaining to the trust are kept, or at the  
13           trustee's residence if the trustee has no such place of business. In the case of cotrustees,  
14           the principal place of administration, if not otherwise designated in the governing  
15           instrument, is:

16           (1)   The usual place of business of the corporate trustee if there is but one  
17           corporate cotrustee;

18           (2)   The usual place of business or residence of the individual trustee who is  
19           a professional fiduciary if there is but one such person and no corporate  
20           trustee; or

21           (3)   The usual place of business or residence of any of the cotrustees as  
22           agreed upon by the cotrustees.

23   ~~"§-36Aâ Upon the filing of the petition, the clerk shall docket the cause as a special~~  
24   ~~proceeding, with the trustee as plaintiff and the beneficiaries as~~  
25   ~~defendants, and shall issue the summons for the defendants, and the~~  
26   ~~procedure shall be the same as in other special proceedings. If any of the~~  
27   ~~defendants be nonresidents, summons may be served by publication; and~~  
28   ~~if any be infants, a guardian ad litem must be appointed by the court to~~  
29   ~~represent their interests in the manner now provided by law. The~~  
30   ~~beneficiaries, creditors, or any other person interested in the trust estate,~~  
31   ~~have the right to answer the petition and to offer evidence why the prayer~~  
32   ~~of the petition should not be granted. The clerk shall then proceed to hear~~  
33   ~~and determine the matter, and if it appears to the court that the best~~  
34   ~~interests of the creditors and the beneficiaries demand that the resignation~~  
35   ~~of the trustee be accepted, or if it appears to the court that sufficient~~  
36   ~~reasons exist for allowing the resignation, and that the resignation can be~~  
37   ~~allowed without prejudice to the rights of creditors or the beneficiaries,~~  
38   ~~the clerk may, in the exercise of his discretion, allow the applicant to~~  
39   ~~resign; and in such case the clerk shall proceed to appoint the successor of~~  
40   ~~the petitioner in the manner provided in this Article.~~

41   "§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

1       The clerk of superior court shall not, over the objection of a party, entertain  
2 proceedings under G.S. 36A-23.1 involving a trust having its principal place of  
3 administration in another state, except:

4           (1) When all appropriate parties could not be bound by litigation in the  
5 courts of the state where the trust has its principal place of  
6 administration; or

7           (2) When the interests of justice otherwise would be seriously impaired.

8 The clerk may condition a stay or dismissal of a proceeding under this section on the  
9 consent of any party to jurisdiction of the state in which the trust has its principal place of  
10 administration, or the clerk may grant a continuance or enter any other appropriate order.

11 ~~**"§ 36Aa In making an order allowing the trustee to resign, the clerk shall make such**~~  
12 ~~**order concerning the costs of the proceedings and commissions to the**~~  
13 ~~**trustee as may be just. If there is no appeal from the decision and order of**~~  
14 ~~**the clerk within the time prescribed by law, the proceedings shall be**~~  
15 ~~**submitted to the judge of the superior court and approved by him before**~~  
16 ~~**the same shall become effective.**~~

17 **"§ 36A-26.1. Trust proceedings; necessary parties.**

18 Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the  
19 office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket  
20 the cause as a special proceeding, with the petitioner as plaintiff. All known  
21 beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants.  
22 The clerk shall issue the summons for the defendants, and except as provided in this  
23 Article, the procedure shall be the same as in other special proceedings. The clerk may  
24 order notification of additional persons. An order is valid as to all persons who are given  
25 notice of the proceeding even if all interested persons are not notified. The beneficiaries,  
26 creditors, or any other persons interested in the trust estate have the right to answer the  
27 petition and to offer evidence against granting the petition. The clerk shall then proceed  
28 to hear and determine the matter.

29 **"§ 36A-26.2. Waiver of notice.**

30 An interested person, or a person representing an interested person as provided in G.S.  
31 36A-26.3, may waive notice by a writing signed by the person or the person's attorney  
32 and filed in the proceeding.

33 **"§ 36A-26.3. When parties represented by others.**

34 In proceedings involving trusts, the following rules apply:

35           (1) Interests to be affected shall be described in pleadings that give  
36 reasonable information to interested persons by name or class, by  
37 reference to the instrument creating the interests, or in some other  
38 appropriate manner.

39           (2) Interested persons shall be represented by others in the following cases:

40           a. The sole holder or all coholders of a power of revocation or a  
41 presently exercisable general power of appointment, including  
42 one in the form of a power of amendment, shall represent other

- 1                    persons to the extent that their interests, as objects, takers in  
2                    default, or otherwise, are subject to the power.
- 3                    b. If the clerk finds that there is no conflict of interest between the  
4                    interested person and the person representing the interested  
5                    person, or among persons represented, a guardian of the estate  
6                    shall represent the person whose estate the guardian controls; a  
7                    guardian of the person shall represent the ward if no guardian of  
8                    the ward's estate has been appointed; a trustee shall represent  
9                    beneficiaries of the trust in proceedings to probate a will  
10                   establishing or adding to the trust, to review the acts or accounts  
11                   of a prior fiduciary, and in other proceedings involving creditors  
12                   or other third parties; and a personal representative shall  
13                   represent persons interested in the undistributed assets of the  
14                   decedent's estate in actions or proceedings by or against the  
15                   estate. If there is no conflict of interest and no guardian of the  
16                   estate or guardian of the person has been appointed, a parent  
17                   shall represent a minor child.
- 18                   c. If the clerk finds that another party has an interest in the  
19                   proceeding substantially identical to the interest of an unborn or  
20                   unascertained person who is not otherwise represented, that party  
21                   shall represent the unborn or unascertained person.
- 22                   d. At any point in a proceeding, a clerk shall allow an attorney-in-  
23                   fact to represent the attorney-in-fact's principal, provided that, if  
24                   the principal is incapacitated, the power of attorney is durable as  
25                   defined in G.S. 32A-8, and provided that the power of attorney  
26                   grants to the attorney-in-fact either (i) the authority to do,  
27                   execute, or perform any act that the principal might or could do  
28                   or otherwise evidences the principal's intent to give the attorney-  
29                   in-fact full power to handle the principal's affairs or deal with the  
30                   principal's property; (ii) the powers described under G.S. 32A-  
31                   2(2) and G.S. 32A-2(8) and, if interests in real property are  
32                   affected, the powers described in G.S. 32A-2(1); or (iii) other  
33                   direct or indirect authority the clerk deems sufficient in the  
34                   clerk's discretion.
- 35                   (3) At any point in the proceeding, the clerk may appoint a guardian ad  
36                   litem to represent the interest of a minor, an incapacitated, unborn, or  
37                   unascertained person, or a person whose identity is unknown, if the  
38                   clerk determines that representation of the interest otherwise would be  
39                   inadequate. If not precluded by a conflict of interest, a guardian ad  
40                   litem may be appointed to represent several persons or interests. The  
41                   clerk shall set forth the clerk's reasons for appointing a guardian ad  
42                   litem as a part of the record of the proceedings.

1           (4) An order binding a person who represents an interested person binds the  
2           interested person.

3           Nothing in this section authorizes the disbursement of funds distributable to any  
4 person to those authorized to represent that person under this section.

5 **"§ 36A-27. Appeal; stay effected by appeal.**

6           Any party in interest may appeal from the decision of the clerk to the judge at  
7 chambers, superior court, and in such event the procedure shall be the same as in other  
8 special proceedings as now provided by law. ~~If the clerk allows the resignation, and an~~  
9 appeal is taken from his decision, the decision of the clerk, such appeal shall have the  
10 effect to stay the judgment and order of the clerk until the cause is heard and determined  
11 by the judge superior court upon the appeal taken. To the extent that the procedure for an  
12 appeal from an order of the clerk concerning administration of a trust provided under this  
13 Article conflicts with the procedure for appeal from orders of the clerk in other matters,  
14 the provisions of this Article control.

15 **"§ 36A-28. On appeal judge determines facts.**

16           Upon an appeal taken from the clerk to the judge, superior court, the judge shall have  
17 the power to review the findings of fact made by the clerk and to find the facts or to take  
18 other evidence, but the facts found by the judge shall be final and conclusive upon any  
19 appeal to the appellate division.

20 **"§ 36A-29. Final accounting before resignation.**

21           ~~No~~ If the trustee is required to account to the clerk of superior court, then unless the  
22 terms of the governing instrument provide otherwise, no trustee shall be allowed or  
23 permitted to resign his trust as trustee until he shall first file with the court his a final account  
24 of the trust estate, estate is filed with the clerk, and until the court shall be satisfied that  
25 the said account is true and correct.

26 ~~"§ 36Ai In case the resignation of the trustee is accepted by the court, the~~  
27 ~~resignation shall not release or discharge the trustee from liability, until he~~  
28 ~~shall have filed an account acceptable to his successor in full for all~~  
29 ~~moneys, securities, property, or other assets or things of value in his~~  
30 ~~possession or under his control or which should be in his possession or~~  
31 ~~under his control belonging to the trust estate, and such account has been~~  
32 ~~approved by the court.~~

33 **"§ 36A-31. Court to appoint successor; when When bond required.**

34           ~~If the court shall allow any trustee to resign his trust upon compliance with the~~  
35 ~~provisions of this Article, it shall be the duty of the court to proceed to appoint some fit~~  
36 ~~and suitable person as the successor of such trustee; and the court shall require the person~~  
37 ~~so appointed to give bond with sufficient surety, approved by the court, A trustee need~~  
38 ~~not provide bond to secure performance of the trustee's duties unless required by the~~  
39 ~~terms of the governing instrument, or found by the clerk to be necessary to protect the~~  
40 ~~interests of beneficiaries who are not able to protect themselves and whose interests~~  
41 ~~otherwise are not adequately represented. However, in no event shall bond be required if~~  
42 ~~the governing instrument directs otherwise. On petition of the trustee or other interested~~  
43 ~~person, the clerk may excuse a requirement of bond, reduce the amount of the bond,~~

1 release the surety, or permit the substitution of another bond with the same or different  
2 sureties. If bond is required, it shall be in a sum double the value of the personal property  
3 to come into his-~~the trustee's~~ hands when bond is executed by a personal surety-~~surety,~~  
4 and in an amount not less than one and one-fourth times the value of all personal property  
5 of the ~~decedent~~-trust estate when the bond is secured by a suretyship bond executed by a  
6 corporate surety company authorized by the Commissioner of Insurance to do business in  
7 this State, provided that the clerk of superior court, when the value of the personal  
8 property exceeds one hundred thousand dollars (\$100,000), may accept bond in an  
9 amount equal to the value of the personal property plus ten percent (10%) thereof,  
10 conditioned upon the faithful performance of his-the trustee's duties as ~~such trustee and~~  
11 for the payment to the persons entitled to receive ~~the same of all moneys, assets, or other~~  
12 things of value which may come into his hands; ~~provided, that where by the terms of the~~  
13 creating instrument the trustee who has resigned was not required to give bond and did  
14 not give bond and an intent is expressed in the creating instrument that a successor trustee  
15 shall serve without bond, or where the clerk, upon due investigation finds that bond is not  
16 necessary for the protection of the estate, the clerk, with the approval of the judge, upon  
17 the petition of any party in interest, may waive the requirement of a bond for the  
18 successor trustee and permit said successor trustee to serve without bond. the trustee's  
19 hands. All bonds executed under the provisions of this Article shall be filed with the  
20 clerk.

21 **"§ 36A-32. Rights and duties devolve on successor.**

22 ~~Upon the acceptance by the court of the resignation of any trustee, and upon the~~  
23 ~~appointment by the court of his successor in the manner provided by this Article, the A~~  
24 ~~successor trustee shall succeed to all the rights, powers, and privileges, and shall be~~  
25 ~~subject to all the duties, liabilities, and responsibilities that were imposed upon the~~  
26 ~~original trustee unless a contrary intent appears from the creating governing instrument.~~

27 **"§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor**  
28 **trustee on clerk's own motion.**

29 ~~Upon the death or incapacity of a trustee, a new trustee may be appointed on~~  
30 ~~application by any beneficiary, or other interested persons, by petition to the clerk of the~~  
31 ~~superior court of the county in which the instrument under which the deceased or~~  
32 ~~incapacitated trustee claimed is registered, making all necessary parties defendants. The~~  
33 ~~clerk shall docket the cause as a special proceeding and issue summons for the~~  
34 ~~defendants, and the procedure shall be the same as in other special proceedings. If any of~~  
35 ~~the defendants be nonresidents, summons may be served by publication; and if any be~~  
36 ~~infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other~~  
37 ~~persons interested in the trust estate shall have the right to answer the petition and to offer~~  
38 ~~evidence why the prayer of the petition should not be granted. After hearing the matter,~~  
39 ~~the clerk may appoint the person so named in the petition, or he may appoint some other~~  
40 ~~fit and suitable person or corporation to act as the successor of the deceased or~~  
41 ~~incapacitated trustee; and the clerk shall require the person so appointed to give bond as~~  
42 ~~required in G.S. 36A-31; provided, that where by the terms of the instrument upon which~~  
43 ~~the deceased or incapacitated trustee claimed, said trustee was not required to give bond~~



1 and did not give bond and an intent is expressed in the creating instrument that a  
2 successor trustee shall serve without bond, or where the clerk upon due investigation,  
3 finds that bond is not necessary for the protection of the estate, the requirement of a bond  
4 for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest  
5 may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.

6 ~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required  
7 to account to the clerk of court, nothing in this section ~~Article~~ shall be construed to limit  
8 the authority of the clerk of superior court to appoint a successor trustee to a deceased or  
9 incapacitated trustee upon ~~his~~ the clerk's own motion.

10 ~~"§ 36Ac (a) Any person or corporation named as trustee in any will admitted to~~  
11 ~~probate in this State, or any substitute trustee, may at any time prior to~~  
12 ~~qualifying as required by G.S. 36A-107 or taking any action as trustee if~~  
13 ~~such qualification is not required, and whether or not such person or~~  
14 ~~corporation is entitled to so qualify or act, renounce such trusteeship by a~~  
15 ~~writing filed with the clerk of superior court of the county in which the~~  
16 ~~will is admitted to probate. Upon receipt of such renunciation the clerk~~  
17 ~~shall give notice thereof to all persons interested in the trust, including~~  
18 ~~successor or substitute trustees named in the will, which notice shall also~~  
19 ~~comply with the requirements of subsection (c) of this section.~~

20 (b) If the will names or identifies a substitute trustee in case of renunciation, the  
21 provisions of the will shall be complied with, and the clerk shall enter an appropriate  
22 order appointing the substitute trustee in accordance therewith unless the substitute  
23 trustee also renounces. A substitute trustee so named shall succeed to the office of trustee  
24 upon the date of the order of appointment by the clerk unless the will provides otherwise.

25 (c) If the will does not name or identify a substitute trustee in case of renunciation,  
26 and it appears that a substitute trustee should be appointed, the clerk shall appoint some  
27 fit and suitable person or corporation as substitute trustee. If the will does not name or  
28 identify a substitute trustee, but contains provisions regarding the selection of a substitute  
29 trustee, such provisions shall be complied with unless the clerk determines that such  
30 provisions would result in the selection of an unfit or unsuitable trustee. A substitute  
31 trustee so appointed shall succeed to the office of trustee upon the date of the order of  
32 appointment unless the will provides otherwise.

33 (d) A substitute trustee shall, upon succeeding to the office of trustee, unless the  
34 will provides otherwise, have such powers and duties and be vested with the title to the  
35 property included in the trust, as if the substitute trustee had been originally named in the  
36 will.

37 (e) Each notice required by this section shall be written notice, and shall identify  
38 the proceeding and apprise the person to be notified of the nature of the action to be  
39 taken. Service of such notice may be in the same manner as is provided for service of  
40 notice in civil actions, or by mailing the notice to the person to be notified at his last  
41 known address. Service of notice must be completed not less than 10 days prior to the  
42 date the hearing is held or the action is taken. Service by mail shall be complete upon  
43 deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office

1 or official depository under the exclusive care and custody of the United States Post  
2 Office Department.

3 (f) The clerk of superior court shall file, docket, and index all proceedings  
4 pursuant to this section in the same manner as special proceedings, and shall also enter  
5 with the will a notation that the trustee has renounced and a reference to the file, or other  
6 place where the record may be found.

7 ~~"§ 36A Any beneficiary, cotrustee or other person interested in the trust estate may  
8 file a petition in the office of the clerk of superior court of the county  
9 having jurisdiction over the administration of the trust for the removal of  
10 a trustee or cotrustee who fails to comply with the requirements of this  
11 Chapter or a court order, or who is otherwise unsuitable to continue in  
12 office. Upon the filing of the petition, the clerk shall docket the cause as a  
13 special proceeding, with the petitioner as plaintiff. All known  
14 beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined  
15 as defendants. Upon proper notice and hearing, the clerk may, in the  
16 exercise of his discretion, order the removal of the trustee or cotrustee and  
17 proceed to appoint a successor. The procedure for notice, hearing,  
18 appeals, and the effective date of the order, shall be in accord with that  
19 provided for in the case of a resignation of a trustee and the appointment  
20 of a successor in G.S. 36A-24 through 36A-32.~~

21 Nothing in this section shall be construed to limit the authority of the clerk of superior  
22 court to remove a trustee or cotrustee for failure to comply with the requirements of this  
23 Chapter or a court order, or who is otherwise unsuitable to continue in office.

24 **"§ 36A-36. Appointment of special trustee.**

25 If it appears necessary to the protection of the trust estate, the clerk of superior court  
26 having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee  
27 until a successor trustee can be appointed or, where a trust has terminated, to distribute  
28 the assets. A special trustee may be appointed without notice and may be removed  
29 whenever the court so orders. The special trustee shall give such bond, if any, as the  
30 court may require and shall have the powers conferred by the order of appointment.

31 **"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of  
32 assets and liabilities by a corporate trustee.**

33 Whenever any corporate trustee doing business in this State shall consolidate or  
34 merge with or shall sell to and transfer its assets and liabilities to any other corporation,  
35 or where such corporate trustee is in any manner reorganized or ~~reincorporated~~  
36 reincorporated, all existing rights, powers, duties, and liabilities of such consolidating,  
37 merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon  
38 the effective date of such consolidation, merger, reorganization or reincorporation, or sale  
39 and transfer, vest in and devolve upon the transferee corporation or the consolidated,  
40 merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-  
41 17.

42 ~~"§ 36AS Unless otherwise provided in the creating instrument, all powers conferred  
43 upon the trustee by such instrument attached to the office, as provided in~~

1 ~~G.S. 36A-72, and are exercisable by the trustee from time to time holding~~  
2 ~~the office.~~

3 **"§ 36A-39. Powers of cotrustees.**

4 Unless otherwise provided in the ~~creating~~ governing instrument, if one of several  
5 trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and  
6 powers of all the original trustees. If the ~~creating~~ governing instrument manifests an  
7 intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may  
8 exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~  
9 appointed, except those powers which the remaining trustees are prohibited from  
10 exercising under the governing instrument or by law.

11 **"§ 36A-40. Vesting of title.**

12 A special or successor trustee is vested with the title of the ~~original~~ predecessor  
13 trustee. A predecessor trustee who resigns, is removed, or is otherwise severed from his office  
14 shall execute such documents transferring title to trust property as may be appropriate to  
15 facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so,  
16 the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk  
17 may ~~himself~~ transfer title.

18 ~~"§ 36A The provisions of this Article shall not apply to proceedings begun before~~  
19 ~~January 1, 1978.~~

20 "§§ 36A-42 through 36A-46: **Reserved for future codification purposes."**

21 Section 2. This act becomes effective October 1, 1999, and applies to all  
22 trustees covered by the provisions of Article 36A of the General Statutes, whether  
23 administering trusts established before or after that date.