

§ 36C-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a trustee and a power holder under Article 8A of this Chapter, relations among trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

- (1) The requirements for creating a trust.
- (2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except as follows:
 - a. This duty is subject to G.S. 36C-8A-4 with respect to the trustee.
 - b. This duty does not apply to the extent the power holder is acting in a nonfiduciary capacity as provided in G.S. 36C-8A-3.
- (3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- (4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416.
- (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.
- (6) The effect of an exculpatory term under G.S. 36C-10-1008, except to the extent the power holder is acting in a nonfiduciary capacity as provided in G.S. 36C-8A-3.
- (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary.
- (8) Periods of limitation for commencing a judicial proceeding.
- (9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.
- (10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.
- (11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.
- (12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32).

(c) Repealed by Session Laws 2021-85, s. 2(b), effective July 8, 2021, and applicable to trusts created before, on, or after that date. (2005-192, s. 2; 2007-106, s. 3; 2009-48, s. 15; 2015-205, s. 7; 2021-85, s. 2(b).)