

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 823

Short Title: Removal/Resignation of Trustees.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL,
AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF
SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 3.

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

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

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

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

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, 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
38 proceedings initiated by interested persons concerning the internal affairs of trusts.
39 Except as provided in subsection (b) of this section, the clerk's jurisdiction is exclusive.
40 Proceedings that may be maintained under this section are those concerning the
41 administration and distribution of trusts, the declaration of rights, and the determination
42 of other matters involving trustees and trust beneficiaries, to the extent that those matters
43 are not otherwise provided for in the governing instrument. These include proceedings:

- 1 (1) To appoint or remove a trustee;
2 (2) To review trustees' fees and review and settle interim or final accounts;
3 and
4 (3) To ascertain beneficiaries, to determine any question arising in the
5 administration or distribution of any trust, including questions of
6 construction of trust instruments, and to determine the existence or
7 nonexistence of any immunity, power, privilege, duty, or right. The
8 clerk and all interested persons may agree that a proceeding to
9 determine an issue listed in this subdivision shall be originally heard by
10 the superior court.

11 (b) Nothing in this section affects the right of a person to file an action for
12 declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes,
13 and jurisdiction granted to the clerk under this section is concurrent with that of the court
14 under that Article.

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

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

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

31 ~~"§-36As When any trustee desires to resign his trust, he shall file his petition in the~~
32 ~~office of the clerk of superior court of the county in which he qualified or~~
33 ~~in which the instrument under which he claims is registered. The petition~~
34 ~~shall set forth all the facts in connection with the appointment and~~
35 ~~qualifications as such trustee, with a copy of the instrument under which~~
36 ~~he acts; shall state the names, ages, and residences of all the beneficiaries~~
37 ~~and other parties interested in the trust estate; shall contain a full and~~
38 ~~complete statement of all debts or liabilities due by the estate, and a full~~
39 ~~and complete statement of all assets belonging to said estate, and a full and~~
40 ~~complete statement of all moneys, securities, or assets in the hands of the~~
41 ~~trustee and due the estate, together with a full statement of the reasons the~~
42 ~~applicant should be permitted to resign his trust. The petition shall be~~
43 ~~verified by the oath of the applicant.~~

1 "§ 36A-24.1. Trust proceedings; venue.

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

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

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

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

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

21 ~~"§ 36A-24.1. Upon the filing of the petition, the clerk shall docket the cause as a special~~
22 ~~proceeding, with the trustee as plaintiff and the beneficiaries as~~
23 ~~defendants, and shall issue the summons for the defendants, and the~~
24 ~~procedure shall be the same as in other special proceedings. If any of the~~
25 ~~defendants be nonresidents, summons may be served by publication; and~~
26 ~~if any be infants, a guardian ad litem must be appointed by the court to~~
27 ~~represent their interests in the manner now provided by law. The~~
28 ~~beneficiaries, creditors, or any other person interested in the trust estate,~~
29 ~~have the right to answer the petition and to offer evidence why the prayer~~
30 ~~of the petition should not be granted. The clerk shall then proceed to hear~~
31 ~~and determine the matter, and if it appears to the court that the best~~
32 ~~interests of the creditors and the beneficiaries demand that the resignation~~
33 ~~of the trustee be accepted, or if it appears to the court that sufficient~~
34 ~~reasons exist for allowing the resignation, and that the resignation can be~~
35 ~~allowed without prejudice to the rights of creditors or the beneficiaries,~~
36 ~~the clerk may, in the exercise of his discretion, allow the applicant to~~
37 ~~resign; and in such case the clerk shall proceed to appoint the successor of~~
38 ~~the petitioner in the manner provided in this Article.~~

39 "§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

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

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

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

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

8 ~~"§ 36Aa In making an order allowing the trustee to resign, the clerk shall make such~~
9 ~~order concerning the costs of the proceedings and commissions to the~~
10 ~~trustee as may be just. If there is no appeal from the decision and order of~~
11 ~~the clerk within the time prescribed by law, the proceedings shall be~~
12 ~~submitted to the judge of the superior court and approved by him before~~
13 ~~the same shall become effective.~~

14 **"§ 36A-26.1. Concurrent jurisdiction of clerk of court over litigation involving**
15 **trusts and third parties.**

16 The clerk of superior court has concurrent jurisdiction with other courts of this State
17 over actions and proceedings to determine the existence or nonexistence of trusts created
18 other than by will, of actions by or against creditors or debtors of trusts, and of other
19 actions and proceedings involving trustees and third parties. Venue is determined by the
20 rules generally applicable to civil actions.

21 **"§ 36A-26.2. Trust proceedings; initiation by notice; necessary parties.**

22 Proceedings under G.S. 36A-23.1 are initiated by filing a petition in the office of the
23 clerk of superior court and by giving notice pursuant to G.S. 36A-26.3 to interested
24 persons. The clerk may order notification of additional persons. An order is valid as to
25 all persons who are given notice of the proceeding even if not all interested persons are
26 notified.

27 **"§ 36A-26.3. Method and time for giving notice.**

28 (a) Except for specific notice requirements as otherwise provided, if notice of a
29 hearing on any petition is required, the petitioner shall cause notice of the time and place
30 of hearing of any petition to be given to any interested person or the person's attorney if
31 the person has appeared by attorney or requested that notice be sent to the person's
32 attorney. Notice shall be given:

33 (1) By mailing a copy of the notice at least 10 days before the time set for
34 the hearing by certified, registered, or ordinary first-class mail addressed
35 to the person being notified at the post office address given in the
36 person's demand for notice, if any, or at the person's office or place of
37 residence, if known;

38 (2) By delivering a copy of the notice to the person being notified
39 personally at least 10 days before the time set for the hearing; or

40 (3) If the address or identity of any person is not known and cannot be
41 ascertained with reasonable diligence, by publishing at least once a
42 week for three consecutive weeks, a copy of the notice in a newspaper
43 having general circulation in the county where the hearing is to be held,

1 the last publication being made at least 10 days before the time set for
2 the hearing.

3 (b) The clerk of superior court for good cause shown may provide for a different
4 method or time of giving notice for any hearing.

5 (c) Proof of the giving of notice shall be filed in the proceeding on or before the
6 hearing.

7 **"§ 36A-26.4. Waiver of notice.**

8 An interested person, or a person representing an interested person as provided in G.S.
9 36A-26.5, may waive notice by a writing signed by the person or the person's attorney
10 and filed in the proceeding.

11 **"§ 36A-26.5. Pleadings; when parties represented by others; notice.**

12 In proceedings involving trusts, the following rules apply:

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

17 (2) Interested persons may be represented by others in the following cases:

18 a. The sole holder or all coholders of a power of revocation or a
19 presently exercisable general power of appointment, including
20 one in the form of a power of amendment, may represent other
21 persons to the extent that their interests, as objects, takers in
22 default, or otherwise, are subject to the power.

23 b. To the extent that there is no conflict of interest between the
24 interested person and the person representing the interested
25 person, or among persons represented, a guardian of the estate
26 may represent the person whose estate the guardian controls; a
27 guardian of the person may represent the ward if no guardian of
28 the ward's estate has been appointed; a trustee may represent
29 beneficiaries of the trust in proceedings to probate a will
30 establishing or adding to the trust, to review the acts or accounts
31 of a prior fiduciary, and in other proceedings involving creditors
32 or other third parties; and a personal representative may represent
33 persons interested in the undistributed assets of the decedent's
34 estate in actions or proceedings by or against the estate. If there
35 is no conflict of interest and no guardian of the estate or guardian
36 of the person has been appointed, a parent may represent a minor
37 child.

38 c. An unborn or unascertained person who is not otherwise
39 represented may be represented by another party having a
40 substantially identical interest in the proceeding.

41 d. At any point in a proceeding, a clerk may allow an attorney-in-
42 fact to represent the attorney-in-fact's principal, provided that, if
43 the principal is incapacitated, the power of attorney is durable as

1 defined in G.S. 32A-8, and provided that the power of attorney
2 grants to the attorney-in-fact either (i) the authority to do,
3 execute, or perform any act that the principal might or could do
4 or otherwise evidences the principal's intent to give the attorney-
5 in-fact full power to handle the principal's affairs or deal with the
6 principal's property; (ii) the powers described under G.S. 32A-
7 2(2) and G.S. 32A-2(8) and, if interests in real property are
8 affected, the powers described in G.S. 32A-2(1); or (iii) other
9 direct or indirect authority the clerk deems sufficient in the
10 clerk's discretion.

11 (3) At any point in a proceeding, a clerk may appoint a guardian ad litem to
12 represent the interest of a minor, an incapacitated, unborn, or
13 unascertained person, or a person whose identity is unknown, if the
14 clerk determines that representation of the interest otherwise would be
15 inadequate. If not precluded by a conflict of interest, a guardian ad
16 litem may be appointed to represent several persons or interests. The
17 clerk shall set forth the clerk's reasons for appointing a guardian ad
18 litem as a part of the record of the proceedings.

19 (4) Notice as prescribed by G.S. 36A-26.3 shall be given to every interested
20 person or to one who can represent an interested person as described in
21 subdivisions (2) and (3) of this section. Notice may be given to both an
22 interested person and to a person who may bind an interested person.

23 (5) An order binding a person who represents an interested person binds the
24 interested person.

25 **"§ 36A-27. Appeal; stay effected by appeal.**

26 Any party in interest may appeal from the decision of the clerk to the ~~judge at~~
27 ~~chambers, superior court, and in such event the procedure shall be the same as in other~~
28 ~~special proceedings as now provided by law. If the clerk allows the resignation, and an~~
29 ~~appeal is taken from his decision, the decision of the clerk, such appeal shall have the~~
30 ~~effect to stay the judgment and order of the clerk until the cause is heard and determined~~
31 ~~by the judge superior court upon the appeal taken. To the extent that the procedure for an~~
32 ~~appeal from an order of the clerk concerning administration of a trust provided under this~~
33 ~~Article conflicts with the procedure for appeal from orders of the clerk in other matters,~~
34 ~~the provisions of this Article control.~~

35 **"§ 36A-28. On appeal judge determines facts.**

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

40 **"§ 36A-29. Final accounting before resignation.**

41 ~~No~~ If the trustee is required to account to the clerk of superior court, then unless the
42 terms of the governing instrument provide otherwise, no trustee shall be allowed or
43 permitted to resign his trust as trustee until he shall first file with the court his a final account

1 of the trust estate, ~~estate is filed with the clerk, and until the court shall be satisfied that~~
2 ~~the said account is true and correct.~~

3 ~~"§ 36Ai In case the resignation of the trustee is accepted by the court, the~~
4 ~~resignation shall not release or discharge the trustee from liability, until he~~
5 ~~shall have filed an account acceptable to his successor in full for all~~
6 ~~moneys, securities, property, or other assets or things of value in his~~
7 ~~possession or under his control or which should be in his possession or~~
8 ~~under his control belonging to the trust estate, and such account has been~~
9 ~~approved by the court.~~

10 **"§ 36A-30.1. Limitations on proceedings by beneficiaries against trustees.**

11 Unless previously barred by adjudication, consent, or limitation, any claim against a
12 trustee for breach of trust is barred as to any beneficiary who has received a final account
13 or other statement fully disclosing the matter and showing termination of the trust
14 relationship between the trustee and the beneficiary unless a proceeding to assert the
15 claim is commenced within one year after receipt of the final account or statement. In
16 any event, and notwithstanding the trustee's failure to make full disclosure, a beneficiary's
17 claim for breach of trust is barred three years from the date upon which the beneficiary
18 received a final account or statement issued by the trustee and the trustee informed the
19 beneficiary of the location and availability of records for the beneficiary's examination.
20 A beneficiary is deemed to have received a final account or statement if an adult
21 beneficiary receives the account or statement personally and if the representative of a
22 minor or disabled beneficiary as described in G.S. 36A-26.5 receives the account or
23 statement.

24 **"§ 36A-31. Court to appoint successor; when ~~When~~ bond required.**

25 ~~If the court shall allow any trustee to resign his trust upon compliance with the~~
26 ~~provisions of this Article, it shall be the duty of the court to proceed to appoint some fit~~
27 ~~and suitable person as the successor of such trustee; and the court shall require the person~~
28 ~~so appointed to give bond with sufficient surety, approved by the court. A trustee need~~
29 ~~not provide bond to secure performance of the trustee's duties unless required by the~~
30 ~~terms of the governing instrument, or found by the clerk to be necessary to protect the~~
31 ~~interests of beneficiaries who are not able to protect themselves and whose interests~~
32 ~~otherwise are not adequately represented. However, in no event shall bond be required if~~
33 ~~the governing instrument directs otherwise. On petition of the trustee or other interested~~
34 ~~person, the clerk may excuse a requirement of bond, reduce the amount of the bond,~~
35 ~~release the surety, or permit the substitution of another bond with the same or different~~
36 ~~sureties. If bond is required, it shall be in a sum double the value of the personal property~~
37 ~~to come into his ~~the trustee's~~ hands when bond is executed by a personal ~~surety~~ surety,~~
38 ~~and in an amount not less than one and one-fourth times the value of all personal property~~
39 ~~of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a~~
40 ~~corporate surety company authorized by the Commissioner of Insurance to do business in~~
41 ~~this State, provided that the clerk of superior court, when the value of the personal~~
42 ~~property exceeds one hundred thousand dollars (\$100,000), may accept bond in an~~
43 ~~amount equal to the value of the personal property plus ten percent (10%) thereof,~~

1 conditioned upon the faithful performance of ~~his~~ the trustee's duties as ~~such trustee and~~
2 for the payment to the persons entitled to receive ~~the same of all moneys, assets, or other~~
3 things of value which may come into his hands; ~~provided, that where by the terms of the~~
4 creating instrument the trustee who has resigned was not required to give bond and did
5 not give bond and an intent is expressed in the creating instrument that a successor trustee
6 shall serve without bond, or where the clerk, upon due investigation finds that bond is not
7 necessary for the protection of the estate, the clerk, with the approval of the judge, upon
8 the petition of any party in interest, may waive the requirement of a bond for the
9 successor trustee and permit said successor trustee to serve without bond. the trustee's
10 hands. All bonds executed under the provisions of this Article shall be filed with the
11 clerk.

12 **"§ 36A-32. Rights and duties devolve on successor.**

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

18 **"§ 36A-33. Appointment of successors to deceased or incapacitated trustees. successor**
19 **trustee on clerk's own motion.**

20 Upon ~~the death or incapacity of a trustee, a new trustee may be appointed on~~
21 application by any beneficiary, or other interested persons, by petition to the clerk of the
22 superior court of the county in which the instrument under which the deceased or
23 incapacitated trustee claimed is registered, making all necessary parties defendants. The
24 clerk shall docket the cause as a special proceeding and issue summons for the
25 defendants, and the procedure shall be the same as in other special proceedings. If any of
26 the defendants be nonresidents, summons may be served by publication; and if any be
27 infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other
28 persons interested in the trust estate shall have the right to answer the petition and to offer
29 evidence why the prayer of the petition should not be granted. After hearing the matter,
30 the clerk may appoint the person so named in the petition, or he may appoint some other
31 fit and suitable person or corporation to act as the successor of the deceased or
32 incapacitated trustee; and the clerk shall require the person so appointed to give bond as
33 required in G.S. 36A-31; provided, that where by the terms of the instrument upon which
34 the deceased or incapacitated trustee claimed, said trustee was not required to give bond
35 and did not give bond and an intent is expressed in the creating instrument that a
36 successor trustee shall serve without bond, or where the clerk upon due investigation,
37 finds that bond is not necessary for the protection of the estate, the requirement of a bond
38 for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest
39 may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.

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

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

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

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

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

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

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

~~"§ 36A Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of~~

~~a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

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

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

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

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

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

~~"§ 36A-38. Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed~~.

1 appointed, except those powers which the remaining trustees are prohibited from
2 exercising under the governing instrument or by law.

3 **"§ 36A-40. Vesting of title.**

4 A special or successor trustee is vested with the title of the ~~original-predecessor~~
5 trustee. A predecessor trustee who resigns, is removed, or is otherwise severed from his office
6 shall execute such documents transferring title to trust property as may be appropriate to
7 facilitate administration of the trust and upon his-the predecessor trustee's failure to do so,
8 the clerk may order ~~him-the predecessor trustee~~ to execute such documents, or the clerk
9 may ~~himself~~ transfer title.

10 ~~"§ 36A—The provisions of this Article shall not apply to proceedings begun before~~
11 ~~**January 1, 1978.**~~

12 "§§ 36A-42 through 36A-46: **Reserved for future codification purposes."**

13 Section 2. This act becomes effective July 1, 1997, and applies to all trustees
14 covered by the provisions of Article 36A of the General Statutes, whether administering
15 trusts established before or after that date.