

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1070

Short Title: Removal/Resignation of Trustees.

(Public)

Sponsors: Representative Haire.

Referred to: Judiciary II, if favorable, Finance.

April 10, 2001

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
7 rewritten:

"Article 3.

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

10 ~~"§ 36A-22. Applicability of this Article.~~

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

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

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

17 ~~"§ 36A-22.1. Definitions.~~

18 ~~As used in this Article:~~

19 (1) ~~"Beneficiary" means a person who has any present or future interest,~~
20 ~~vested or contingent, in a trust, including (i) the owner of an interest by~~
21 ~~assignment or other transfer; and (ii) any person entitled to enforce a~~
22 ~~charitable trust.~~

23 (2) ~~"Fiduciary" includes personal representatives, guardians of the person,~~
24 ~~guardians of the estate, attorneys-in-fact, and trustees.~~

25 (3) ~~"Interested person" includes creditors, beneficiaries, and any others~~
26 ~~having a property right in or a claim against a trust estate which may~~
27 ~~be affected by the proceeding. The term also includes fiduciaries~~
28 ~~representing interested persons. The meaning of the term as it relates~~

1 to particular persons may vary from time to time and must be
2 determined according to the particular purposes of and matter involved
3 in a particular proceeding.

4 (4) "Person" means an individual person, a corporation, an organization,
5 or other legal entity.

6 (5) "Trust" includes any express trust, private or charitable, with
7 additions to the trust, wherever and however created. The term
8 includes both testamentary and inter vivos trusts, regardless of whether
9 the trustee is required to account to the clerk. The term also includes a
10 trust created for or determined by judgment or decree under which the
11 trust is to be administered in the manner of an express trust. The term
12 does not include other constructive trusts, resulting trusts,
13 conservatorships, personal representatives, trust accounts as defined in
14 G.S. 53-146.2, 54-109.57, 54B-130, and 54C-166, trust funds subject
15 to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1
16 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business
17 trusts providing for certificates to be issued to beneficiaries, common
18 trust funds, voting trusts, security arrangements, liquidation trusts, and
19 trusts for the primary purpose of paying debts, dividends, interest,
20 salaries, wages, profits, pensions, or employee benefits of any kind, or
21 any arrangement under which a person is nominee or escrowee for
22 another.

23 (6) "Trustee" includes an original, additional, or successor trustee, whether
24 or not appointed or confirmed by a court. The term does not include
25 trustees in mortgages and deeds of trust. Substitution of trustees in
26 mortgages and deeds of trust are governed by the provisions of G.S.
27 45-10.

28 ~~"§36A-23. Clerk's power to accept resignations.~~

29 ~~The clerks of superior courts of this State have power and jurisdiction to accept the~~
30 ~~resignation of trustees and to appoint their successors in the manner provided by this~~
31 ~~Article.~~

32 **"§ 36A-23.1. Court; jurisdiction of trusts.**

33 (a) The clerks of superior court of this State have original jurisdiction over all
34 proceedings initiated by interested persons concerning the internal affairs of trusts
35 except proceedings to modify or terminate trusts. Except as provided in subdivision (3)
36 of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be
37 maintained under this subsection are those concerning the administration and
38 distribution of trusts, the declaration of rights, and the determination of other matters
39 involving trustees and trust beneficiaries, to the extent that those matters are not
40 otherwise provided for in the governing instrument. These include proceedings:

41 (1) To appoint or remove a trustee;

42 (2) To review trustees' fees pursuant to G.S. 32-50 and review and settle
43 interim or final accounts; and

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

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

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

23 **"§ 36A-24. Petition; contents and verification.**

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

35 **"§ 36A-24.1. Trust proceedings; venue.**

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

39 (b) If the trustee is not required to account to the clerk, then unless the terms of the
40 governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1
41 involving trusts is in any county of this State in which the trust has its principal place of
42 administration or where any beneficiary resides. Unless otherwise designated in the
43 governing instrument, the principal place of administration of the trust is the trustee's
44 usual place of business where the records pertaining to the trust are kept, or at the

1 trustee's residence if the trustee has no such place of business. In the case of cotrustees,
2 the principal place of administration, if not otherwise designated in the governing
3 instrument, is:

4 (1) The usual place of business of the corporate trustee if there is but one
5 corporate cotrustee; or

6 (2) The usual place of business or residence of any of the cotrustees.

7 **"§ 36A-25. Parties; hearing; successor appointed.**

8 ~~Upon the filing of the petition, the clerk shall docket the cause as a special~~
9 ~~proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall~~
10 ~~issue the summons for the defendants. Proceedings under this section are subject to~~
11 ~~Article 33 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person~~
12 ~~interested in the trust estate has the right to answer the petition and to offer evidence~~
13 ~~why the prayer of the petition should not be granted. The clerk shall then proceed to~~
14 ~~hear and determine the matter. If it appears to the clerk that the best interests of the~~
15 ~~creditors and the beneficiaries demand that the resignation of the trustee be accepted or~~
16 ~~if it appears to the clerk that sufficient reasons exist for allowing the resignation and that~~
17 ~~the resignation can be allowed without prejudice to the rights of creditors or the~~
18 ~~beneficiaries, the clerk may, in the exercise of the clerk's discretion, allow the applicant~~
19 ~~to resign. The clerk shall appoint the successor of the petitioner in the manner provided~~
20 ~~in this Article.~~

21 **"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.**

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

25 (1) When all appropriate parties could not be bound by litigation in the
26 courts of the state in which the trust had its principal place of
27 administration; or

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

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

33 **"§ 36A-26. Resignation allowed; costs; judge's approval.**

34 ~~In making an order allowing the trustee to resign, the clerk shall make such order~~
35 ~~concerning the costs of the proceedings and commissions to the trustee as may be just.~~
36 ~~If there is no appeal from the decision and order of the clerk within the time prescribed~~
37 ~~by law, the proceedings shall be submitted to the judge of the superior court and~~
38 ~~approved by him before the same shall become effective.~~

39 **"§ 36A-26.1. Trust proceedings; necessary parties.**

40 Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the
41 office of the clerk of superior court. Upon the filing of the petition, the clerk shall
42 docket the cause as an estate matter. All known beneficiaries, trustees, or cotrustees not
43 joined as petitioners shall be joined as respondents. The clerk shall issue the summons
44 for the respondents. The clerk may order notification of additional persons. An order is

1 valid as to all persons who are given notice of the proceeding even if all interested
2 persons are not notified. The beneficiaries, creditors, or any other persons interested in
3 the trust estate have the right to answer the petition and to offer evidence against
4 granting the petition. The clerk shall then proceed to hear and determine the matter as
5 provided for in G.S. 1-301.3.

6 **"§ 36A-26.2. Waiver of notice.**

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

10 **"§ 36A-26.3. When parties represented by others.**

11 In proceedings involving trusts, the following rules apply:

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

16 (2) Interested persons shall be represented by others in the following
17 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, shall 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. If the clerk finds 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 shall represent the person whose estate the guardian controls; a
27 guardian of the person shall represent the ward if no guardian of
28 the ward's estate has been appointed; a trustee shall 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
32 creditors or other third parties; and a personal representative
33 shall represent persons interested in the undistributed assets of
34 the decedent's estate in actions or proceedings by or against the
35 estate. If there is no conflict of interest and no guardian of the
36 estate or guardian of the person has been appointed, a parent
37 shall represent a minor child.

38 c. If the clerk finds that another party has an interest in the
39 proceeding substantially identical to the interest of an unborn or
40 unascertained person who is not otherwise represented, that
41 party shall represent the unborn or unascertained person.

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

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

11 (3) At any point in the proceeding, the clerk may appoint a guardian ad
12 litem to 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 Nothing in this section authorizes the disbursement of funds distributable to an
20 interested person to a person authorized to represent that person under this section.

21 ~~"§ 36A-27. Appeal; stay effected by appeal. Appeal.~~

22 ~~Any party in interest may appeal from the decision of the clerk to the judge at~~
23 ~~chambers, and in such event the procedure for appeal is governed by Article 27A of~~
24 ~~Chapter 1 of the General Statutes. If the clerk allows the resignation and an appeal is~~
25 ~~taken from the decision of the clerk, the appeal stays the judgment and order of the clerk~~
26 ~~until the cause is heard and determined by the judge upon the appeal taken. a superior~~
27 ~~court judge as provided for in G.S. 1-301.3.~~

28 ~~"§ 36A-28: Repealed by Session Laws 1999-216, s. 2, effective January 1, 2000.~~

29 ~~"§ 36A-29. Final accounting before resignation.~~

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

35 ~~§ 36A-30. Resignation effective on settlement with successor.~~

36 ~~In case the resignation of the trustee is accepted by the court, the resignation shall~~
37 ~~not release or discharge the trustee from liability, until he shall have filed an account~~
38 ~~acceptable to his successor in full for all moneys, securities, property, or other assets or~~
39 ~~things of value in his possession or under his control or which should be in his~~
40 ~~possession or under his control belonging to the trust estate, and such account has been~~
41 ~~approved by the court.~~

42 ~~"§ 36A-31. Court to appoint successor; when When bond required.~~

43 ~~If the court shall allow any trustee to resign his trust upon compliance with the~~
44 ~~provisions of this Article, it shall be the duty of the court to proceed to appoint some fit~~

1 ~~and suitable person as the successor of such trustee; and the court shall require the~~
2 ~~person so appointed to give bond with sufficient surety, approved by the court, A trustee~~
3 ~~need not provide bond to secure performance of the trustee's duties unless required by~~
4 ~~the terms of the governing instrument, reasonably requested by a beneficiary, or found~~
5 ~~by the clerk to be necessary to protect the interests of beneficiaries who are not able to~~
6 ~~protect themselves and whose interests otherwise are not adequately represented.~~
7 ~~However, in no event shall bond be required if the governing instrument directs~~
8 ~~otherwise. On petition of the trustee or other interested person, the clerk may excuse a~~
9 ~~requirement of bond, reduce the amount of the bond, release the surety, or permit the~~
10 ~~substitution of another bond with the same or different sureties. If the governing~~
11 ~~instrument is silent as to the requirement of a bond and the clerk finds that no bond is~~
12 ~~necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision~~
13 ~~must be approved by a superior court judge unless all beneficiaries have been notified of~~
14 ~~the decision. If bond is required, it shall be in a sum double the value of the personal~~
15 ~~property to come into his the trustee's hands when bond is executed by a personal surety~~
16 ~~surety, and in an amount not less than one and one-fourth times the value of all personal~~
17 ~~property of the decedent trust estate when the bond is secured by a suretyship bond~~
18 ~~executed by a corporate surety company authorized by the Commissioner of Insurance~~
19 ~~to do business in this State, provided that the clerk of superior court, when the value of~~
20 ~~the personal property exceeds one hundred thousand dollars (\$100,000), may accept~~
21 ~~bond in an amount equal to the value of the personal property plus ten percent (10%)~~
22 ~~thereof, conditioned upon the faithful performance of his the trustee's duties as such~~
23 ~~trustee and for the payment to the persons entitled to receive the same of all moneys,~~
24 ~~assets, or other things of value which may come into his hands; provided, that where by~~
25 ~~the terms of the creating instrument the trustee who has resigned was not required to~~
26 ~~give bond and did not give bond and an intent is expressed in the creating instrument~~
27 ~~that a successor trustee shall serve without bond, or where the clerk, upon due~~
28 ~~investigation finds that bond is not necessary for the protection of the estate, the clerk,~~
29 ~~with the approval of the judge, upon the petition of any party in interest, may waive the~~
30 ~~requirement of a bond for the successor trustee and permit said successor trustee to~~
31 ~~serve without bond. the trustee's hands. All bonds executed under the provisions of this~~
32 ~~Article shall be filed with the clerk.~~

33 **"§ 36A-32. Rights and duties devolve on successor.**

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

39 **~~"§ 36A-33. Appointment of successors to deceased or incapacitated trustees.~~**
40 **successor trustee on clerk's own motion.**

41 ~~Upon the death or incapacity of a trustee, a new trustee may be appointed on~~
42 ~~application by a beneficiary or other interested person by petition to the clerk of the~~
43 ~~superior court of the county in which the instrument under which the deceased or~~
44 ~~incapacitated trustee claimed is registered. The petition shall make all necessary parties~~

1 defendants. Proceedings under this section are special proceedings subject to Article 33
2 of Chapter 1 of the General Statutes. A beneficiary, creditor, or other person interested
3 in the trust estate has the right to answer the petition and to offer evidence why the
4 prayer of the petition should not be granted. After hearing the matter, the clerk may
5 appoint the person named in the petition or some other fit and suitable person or
6 corporation to act as the successor of the deceased or incapacitated trustee. The clerk
7 shall require the person so appointed to give bond as required in G.S. 36A-31. If the
8 instrument under which the deceased or incapacitated trustee claimed, however, does
9 not require the trustee to give bond and expresses an intent that a successor trustee serve
10 without bond, or if the clerk upon due investigation, finds that bond is not necessary for
11 the protection of the estate, the requirement of a bond for the successor trustee may be
12 waived as provided in G.S. 36A-31. Any party in interest may appeal from the order or
13 judgment of the clerk as provided in Article 27A of Chapter 1 of the General Statutes.

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

18 **"§ 36A-34. Testamentary trustee may renounce.**

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

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

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

42 (d) A substitute trustee shall, upon succeeding to the office of trustee, unless the
43 will provides otherwise, have such powers and duties and be vested with the title to the

1 property included in the trust, as if the substitute trustee had been originally named in
2 the will.

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

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

16 **~~§ 36A-35. Removal of trustee.~~**

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

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

33 **~~§ 36A-36. Appointment of special trustee.~~**

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

40 **~~§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of~~**
41 **~~assets and liabilities by a corporate trustee.~~**

42 ~~Whenever any corporate trustee doing business in this State shall consolidate or~~
43 ~~merge with or shall sell to and transfer its assets and liabilities to any other corporation,~~
44 ~~or where such corporate trustee is in any manner reorganized or reincorporated~~

1 reincorporated, all existing rights, powers, duties, and liabilities of such consolidating,
2 merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon
3 the effective date of such consolidation, merger, reorganization or reincorporation, or
4 sale and transfer, vest in and devolve upon the transferee corporation or the
5 consolidated, merged, reorganized or reincorporated corporation in the manner
6 prescribed in G.S. 53-17.

7 ~~"§ 36A-38. Powers of successor trustee.~~

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

11 **"§ 36A-39. Powers of cotrustees.**

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

19 **"§ 36A-40. Vesting of title.**

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

26 ~~"§ 36A-41. Applicability.~~

27 ~~The provisions of this Article shall not apply to proceedings begun before January 1,~~
28 ~~1978.~~

29 **"§ 36A-42 through 36A-46: Reserved for future codification purposes."**

30 **SECTION 2.** G.S. 7A-307(a) reads as rewritten:

31 "(a) In the administration of the estates of decedents, minors, incompetents, of
32 missing persons, and of trusts under wills and under powers of attorney, in trust
33 proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit,
34 the following costs shall be assessed:

- 35 (1) For the use of the courtroom and related judicial facilities, the sum of
36 ten dollars (\$10.00), to be remitted to the county. Funds derived from
37 the facilities fees shall be used in the same manner, for the same
38 purposes, and subject to the same restrictions, as facilities fees
39 assessed in criminal actions.
- 40 (2) For support of the General Court of Justice, the sum of twenty-six
41 dollars (\$26.00), plus an additional forty cents (40¢) per one hundred
42 dollars (\$100.00), or major fraction thereof, of the gross estate, not to
43 exceed three thousand dollars (\$3,000). Gross estate shall include the
44 fair market value of all personalty when received, and all proceeds

1 from the sale of realty coming into the hands of the fiduciary, but shall
2 not include the value of realty. In collections of personal property by
3 affidavit, the fee based on the gross estate shall be computed from the
4 information in the final affidavit of collection made pursuant to G.S.
5 28A-25-3 and shall be paid when that affidavit is filed. In all other
6 cases, this fee shall be computed from the information reported in the
7 inventory and shall be paid when the inventory is filed with the clerk.
8 If additional gross estate, including income, comes into the hands of
9 the fiduciary after the filing of the inventory, the fee for such
10 additional value shall be assessed and paid upon the filing of any
11 account or report disclosing such additional value. For each filing the
12 minimum fee shall be ten dollars (\$10.00). Sums collected under this
13 subsection shall be remitted to the State Treasurer.

14 (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty
15 cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the
16 gross estate, not to exceed three thousand dollars (\$3,000), shall not be
17 assessed on personalty received by a trust under a will when the estate
18 of the decedent was administered under Chapters 28 or 28A of the
19 General Statutes. Instead, a fee of fifteen dollars (\$15.00) shall be
20 assessed on the filing of each annual and final account.

21 (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs
22 shall be assessed when the estate is administered or settled pursuant to
23 G.S. 28A-25-6.

24 (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty
25 cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the
26 gross estate shall not be assessed on the gross estate of a trust that is
27 the subject of a proceeding under G.S. 36A-23.1 if there is no
28 requirement in the trust that accountings be filed with the clerk.

29 (3) For probate of a will without qualification of a personal representative,
30 the clerk shall assess a facilities fee as provided in subdivision (1) of
31 this subsection and shall assess for support of the General Court of
32 Justice, the sum of seventeen dollars (\$17.00)."

33 **SECTION 3.** This act becomes effective January 1, 2002, and applies to all
34 trustees covered by the provisions of Article 36A of the General Statutes, whether
35 administering trusts established on or after that date.