

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1865\*

Short Title: Construction of Wills and Trusts. (Public)

Sponsors: Representatives Carney; Brubaker, Dockham, Gibson, Hill, Howard, Hughes, Luebke, McGee, Wainwright, Weiss, and Womble.

Referred to: Judiciary I, if favorable, Finance.

May 20, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL  
3 ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding  
6 a new section to read:

7 **"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents**  
8 **dying in calendar year 2010.**

9 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired  
10 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills  
11 and trusts, and to promote judicial economy in the administration of trusts and estates, this  
12 section construes certain formula clauses that reference federal estate and generation-skipping  
13 transfer tax laws and that are used in wills of decedents who die in calendar year 2010.

14 (b) Applicability. – This section applies to a will of a decedent who dies after December  
15 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement  
16 of the federal estate tax and generation-skipping transfer tax. This section does not apply to a  
17 will that is executed or amended after December 31, 2009, or to a will that clearly manifests an  
18 intent that a contrary rule applies when a decedent dies on a date on which there is no  
19 then-applicable federal estate or generation-skipping transfer tax.

20 (c) Construction. – A will that is subject to this section is considered to refer to the  
21 federal estate and generation-skipping transfer tax laws as they applied with respect to estates  
22 of decedents dying on December 31, 2009, if the will contains a formula that meets one or  
23 more of the following conditions:

24 (1) The formula refers to any of the following: 'applicable credit amount,'  
25 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable  
26 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'  
27 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital  
28 deduction,' 'unified credit,' or 'unlimited marital deduction.'

29 (2) The formula measures a share of an estate or trust based on the amount that  
30 can pass free of federal estate taxes or the amount that can pass free of  
31 federal generation-skipping transfer taxes.

32 (3) The formula is otherwise based on a provision of federal estate tax or federal  
33 generation-skipping transfer tax law similar to the provisions in subdivision  
34 (1) or (2) of this subsection.

35 (d) Judicial Determination. – The personal representative or an affected beneficiary  
36 under a will or testamentary trust may bring an action in the superior court division of the



1 General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee  
2 of a trust created under the will or an affected beneficiary under the trust may bring a  
3 proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine  
4 whether the decedent intended that the references under subsection (c) of this section be  
5 construed with respect to the federal law as it existed after December 31, 2009. The action must  
6 be commenced within 12 months following the death of the decedent."

7 **SECTION 2.** Article 1 of Chapter 36C of the General Statutes is amended by  
8 adding a new section to read:

9 **"§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents**  
10 **dying in calendar year 2010.**

11 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired  
12 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills  
13 and trusts, and to promote judicial economy in the administration of trusts and estates, this  
14 section construes certain formula clauses that reference federal estate and generation-skipping  
15 transfer tax laws and that are used in trusts created by settlors who die in calendar year 2010.

16 (b) Applicability. – This section applies to a trust created by a settlor who dies after  
17 December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the  
18 reinstatement of the federal estate tax and generation-skipping transfer tax. This section does  
19 not apply to a trust that is executed or amended after December 31, 2009, or to a trust that  
20 clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which  
21 there is no then-applicable federal estate or generation-skipping transfer tax.

22 (c) Construction. – A trust subject to this section is considered to refer to the federal  
23 estate and generation-skipping transfer tax laws as they applied with respect to estates of  
24 decedents dying on December 31, 2009, if the trust contains a formula that meets one or more  
25 of the following conditions:

26 (1) The formula refers to any of the following: 'applicable credit amount,'  
27 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable  
28 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'  
29 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital  
30 deduction,' 'unified credit,' or 'unlimited marital deduction.'

31 (2) The formula measures a share of a trust based on the amount that can pass  
32 free of federal estate taxes or the amount that can pass free of federal  
33 generation-skipping transfer taxes.

34 (3) The formula is otherwise based on a provision of federal estate tax or federal  
35 generation-skipping transfer tax law similar to the provisions in subdivision  
36 (1) or (2) of this subsection.

37 (d) Judicial Determination. – The trustee of the trust or an affected beneficiary under  
38 the trust may commence a proceeding to determine whether the settlor intended that the  
39 references under subsection (c) of this section be construed with respect to the federal law as it  
40 existed after December 31, 2009. The proceeding must be commenced within 12 months  
41 following the death of the settlor."

42 **SECTION 3.** G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

43 "(f) Without otherwise limiting the jurisdiction of the superior court division of the  
44 General Court of Justice, proceedings concerning the internal affairs of trusts shall not include,  
45 and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this  
46 section of any of the following:

47 (1) Actions to reform, terminate, or modify a trust as provided by  
48 G.S. 36C-4-410 through ~~G.S. 36C-4-416~~; G.S. 36C-4-416.

49 (2) Actions by or against creditors or debtors of a ~~trust~~; trust.

50 (3) Actions involving claims for monetary damages, including claims for breach  
51 of fiduciary duty, fraud, and ~~negligence~~; negligence.

- 1           (4)    Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1;~~  
2                    G.S. 36C-4-405.1.  
3           (5)    Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1;~~ and  
4                    G.S. 36C-4A-1.  
5           (6)    Actions involving the exercise of the trustee's special power to appoint to a  
6                    second trust pursuant to G.S. 36C-8-816.1.  
7           (7)    Actions to construe a formula contained in a trust subject to  
8                    G.S. 36C-1-113."

9           **SECTION 4.** This act is effective when it becomes law and applies to the estates of  
10 decedents dying after December 31, 2009, and to trusts created by settlors who die after  
11 December 31, 2009.