

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS85304-RBz-49\* (04/15)

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

Sponsors: Senators Clodfelter, Blue, Brunstetter, Hartsell, Hoyle, Jenkins, Stein, and Tillman.

Referred to:

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.



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

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

11 **"§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents**  
12 **dying in calendar year 2010.**

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

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

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

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

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

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

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

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

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

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

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

- 1 (3) Actions involving claims for monetary damages, including claims for breach  
2 of fiduciary duty, fraud, and ~~negligence~~negligence.
- 3 (4) Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1~~;  
4 G.S. 36C-4-405.1.
- 5 (5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1~~; and  
6 G.S. 36C-4A-1.
- 7 (6) Actions involving the exercise of the trustee's special power to appoint to a  
8 second trust pursuant to G.S. 36C-8-816.1.
- 9 (7) Actions to construe a formula contained in a trust subject to  
10 G.S. 36C-1-113."

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