

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 747
SENATE BILL 395

AN ACT TO PROVIDE FOR THE TERMINATION OF INEFFICIENT SMALL TRUSTS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO PERMIT REFORMATION OF CERTAIN CHARITABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is hereby amended by inserting the following new Article:

"ARTICLE 11.

"Termination of Small Trusts.

"§ 36A-125. Termination of small trusts.

(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

(b) Any trust property becoming distributable under subsection (a) of this section to a minor or incompetent beneficiary may be distributed:

- (1) To the guardian of the estate or general guardian of such beneficiary;
or
- (2) In accordance with the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes.

The trustee shall be under no duty to see to the application of the payment if the trustee exercised due care in the selection of the person to whom such payment was made. The receipt of such person shall be full acquittance to the trustee to the extent of such payment.

(c) The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not in esse or not determined until the happening of a future event. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

(d) The provisions of this section shall not apply where the instrument creating the trust, by specific reference to this section, provides that it shall not apply.

(e) This section applies to trusts created prior to the effective date of this act unless the trust agreement contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3). This section also applies to trusts created on or after the effective date of this act notwithstanding the existence of spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3), in the trust agreement."

Sec. 2. In the event that the 1991 General Assembly enacts the "North Carolina Uniform Custodial Trust Act", G.S. 36A-125(b), as enacted by this act, is rewritten to read:

"(b) Any trust property becoming distributable under subsection (a) of this section to a minor or incompetent beneficiary may be distributed:

- (1) To the guardian of the estate or general guardian of such beneficiary;
- (2) In accordance with the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes; or
- (3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.

The trustee shall be under no duty to see to the application of the payment if the trustee exercised due care in the selection of the person to whom such payment was made. The receipt of such person shall be full acquittance to the trustee to the extent of such payment."

Sec. 3. G.S. 36A-53(b) is rewritten to read:

~~"(b) In the case of a will executed before December 31, 1978, or a trust created before such date, if~~ If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent under a will or trust to a person, or for a use, described in section 2055(a) of the Internal Revenue Code of 1954, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the Internal Revenue Code of ~~1954, 1986,~~ then in order that such deduction shall nevertheless be allowable under section 2055(e)(3) of the Internal Revenue Code of ~~1954, 1986,~~ any judge of the superior court may, on application of any trustee, executor, administrator or any interested party and either (i) with the written consent of the charitable beneficiaries, the noncharitable beneficiaries not under any legal disability, and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability, or (ii) upon a finding that the interest of such beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust which is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in section 664 of the Internal Revenue Code of ~~1954, 1986~~) or a pooled income fund (as that term is described in section

642(c)(5) of the Internal Revenue Code of ~~1954~~1986), or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly), in accordance with the provisions of section 2055(e)(2)(B) of the Internal Revenue Code of ~~1954~~1986. In every such proceeding, the Attorney General, as representative of the public interest, shall be notified, and given an opportunity to be heard."

Sec. 4. Sections 1 and 2 of this act become effective October 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives