

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 698

Short Title: Principal and Income Act.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary II.

April 5, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRINCIPAL AND INCOME ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 37-17(a) is amended by adding a new subdivision to read:

"(8) 'Living trust' means a trust created during the lifetime of the grantor which can be amended or revoked in its entirety by the grantor, which is fully includable in the grantor's gross estate for federal estate tax purposes upon his death, and which is used for the disposition of all or part of the grantor's estate at his death to beneficiaries designated in the trust instrument or to further trusts created under the trust instrument."

Sec. 2. G.S. 37-21 reads as rewritten:

"§ 37-21. **Income earned and expenses incurred during administration of a decedent's estate. estate or living trust.**

(a) Unless the will or trust instrument otherwise provides or the court otherwise directs:

(1) All expenses incurred in connection with the administration and settlement of a decedent's estate or in connection with the administration and settlement of a living trust following the grantor's death and prior to the distribution of the trust property to the beneficiaries or to further trusts entitled to succeed to the property after the grantor's death (other than expenses of management and operation of the estate or trust property), including debts, funeral and burial expenses, death taxes, penalties concerning death taxes, and family

- 1 allowances, shall be charged against the principal of the ~~estate; and~~  
2 estate or the living trust;
- 3 (2) ~~Compensation of attorneys—attorneys, trustees, and personal~~  
4 ~~representatives and court costs, to the extent they are incurred in the~~  
5 ~~administration and settlement of a decedent's estate, estate or a~~  
6 ~~decedent's living trust (following the death of the grantor of the trust~~  
7 ~~and prior to distribution of the trust property to the beneficiaries or to~~  
8 ~~further trusts entitled to succeed to the property after the grantor's~~  
9 ~~death), shall be charged against the principal of the estate. estate or the~~  
10 ~~living trust; and~~
- 11 (3) All expenses incurred in the management and operation of ~~the estate~~  
12 ~~property—a decedent's estate or living trust~~ shall be charged against  
13 principal or income of the estate or living trust in accordance with the  
14 rules applicable to a trustee under the succeeding provisions of this  
15 Article.
- 16 (b) Unless the will or trust instrument otherwise provides, or the court otherwise  
17 directs, income from the assets of a decedent's estate or living trust after the death of the  
18 decedent and before distribution, including income from property used to discharge  
19 liabilities, shall be determined in accordance with the rules applicable to a trustee under  
20 this Chapter and distributed as follows:
- 21 (1) To specific ~~legatees and devisees, legatees, devisees, and distributees,~~  
22 the income from the property bequeathed or devised or directed to be  
23 distributed to them respectively, less taxes, ordinary repairs and other  
24 expenses of management and operation of the property, and  
25 appropriate portions of interest expense accrued since the death of the  
26 decedent and taxes imposed on income (excluding taxes chargeable  
27 against principal) which accrue during the period of ~~administration;~~  
28 administration of the decedent's estate or living trust;
- 29 (2) To all legatees or distributees of pecuniary bequests (other than  
30 pecuniary bequests (i) to or for the benefit of the decedent's surviving  
31 spouse which are or can be qualified for the federal estate tax marital  
32 deduction, and (ii) to or for the benefit of charitable organizations  
33 which are qualified for the federal estate tax charitable deduction,  
34 including a charitable remainder trust), as provided in G.S. 37-21.1;
- 35 (3) To all other ~~legatees and devisees—legatees, devisees, and distributees~~  
36 ~~(except legatees of pecuniary bequests not in trust)~~ and to all takers by  
37 intestacy, the balance of the income, less the balance of taxes, ordinary  
38 repairs and other expenses of management and operation of all  
39 property from which the estate or living trust is entitled to income,  
40 interest expense accrued since the death of the decedent and taxes  
41 imposed on income (excluding taxes chargeable against principal)  
42 which accrue during the period of ~~administration, administration of the~~  
43 estate or living trust, in proportion to their respective interests in the

1 undistributed assets of the estate or living trust computed at times of  
2 distribution on the basis of ~~inventory~~ federal estate tax value.

3 (c) Income received under subsection (b) by a trustee shall be treated as income  
4 of the trust."

5 Sec. 3. Article 2 of Chapter 37 of the General Statutes is amended by adding  
6 a new section to read:

7 "**§ 37-21.1. Interest on pecuniary bequests.**

8 (a) Unless the will or trust instrument otherwise provides, or the court otherwise  
9 directs, interest on pecuniary bequests (other than pecuniary bequests (i) to or for the  
10 benefit of a decedent's surviving spouse which are or can be qualified for the federal  
11 estate tax marital deduction and (ii) to or for the benefit of charitable organizations  
12 which are qualified for the federal estate tax charitable deduction, including a charitable  
13 remainder trust), whether outright or in trust, shall be computed as provided in G.S. 24-  
14 1 and shall begin to accrue on the date that is one year following:

- 15 (1) The date of death of the person whose death gives rise to the payment  
16 of the pecuniary bequest, or  
17 (2) The happening of any other contingency which gives rise to the  
18 payment of the pecuniary bequest.

19 (b) For purposes of this section and G.S. 37-21, a 'pecuniary bequest' shall mean  
20 either:

- 21 (1) A bequest of a specific sum of money directed under a will; or  
22 (2) A distribution or allocation, either outright or in trust, of a specific sum  
23 of money directed under a trust instrument to be made upon the death  
24 of the grantor of the trust, upon the death of any beneficiary of the  
25 trust, or upon the happening of any other contingency.

26 A 'pecuniary bequest' shall include sums determined under a mathematical formula  
27 contained in the will or governing trust instrument and sums which can be satisfied by a  
28 distribution in kind in lieu of a distribution of money."

29 Sec. 4. G.S. 37-30 reads as rewritten:

30 "**§ 37-30. Taxes.**

31 (a) ~~Regularly~~ Except as provided in this section, regularly recurring taxes  
32 assessed against any portion of the principal and any tax levied on receipts defined as  
33 income under this Article or the trust instrument shall be charged against income.

34 (b) Any tax levied upon profits, gains or receipts allocated to principal shall be  
35 charged against principal notwithstanding denomination of the tax as an income tax by  
36 the taxing authority.

37 (c) If an estate or inheritance tax is levied in respect of a trust in which both an  
38 income beneficiary and a remainderman have an interest, any amount apportioned to the  
39 trust shall be charged against principal even though the income beneficiary also has  
40 rights in the principal.

41 (d) One-half of ad valorem taxes and intangibles taxes shall be charged against  
42 income, and one-half of such taxes shall be charged against principal."

43 Sec. 5. G.S. 37-31(b) reads as rewritten:

1       "(b) Unless the court otherwise directs, compensation of the trustee other than  
2 regular compensation shall be charged against ~~income if the matter primarily concerns~~  
3 ~~the income interest, shall be charged against principal if the matter primarily concerns~~  
4 ~~principal and shall be charged one half against each if the primary concern cannot~~  
5 ~~readily be determined; provided that compensation principal including compensation~~  
6 relating to environmental remediation; provided if the matter relates only to the income  
7 interest, the compensation shall be charged to income. Compensation computed on  
8 principal as an acceptance, distribution or termination fee shall be charged against  
9 principal."

10       Sec. 6. G.S. 37-33 reads as rewritten:

11 **"§ 37-33. Management of principal and application of income.**

12       ~~All~~One-half of all expenses reasonably incurred for current management of  
13 principal ~~and application of income shall be charged against income; income, and one-half~~  
14 of such expenses shall be charged against principal; except that the direct costs of  
15 investing and reinvesting principal shall be charged against principal."

16       Sec. 7. G.S. 37-35 reads as rewritten:

17 **"§ 37-35. Premiums on insurance.**

18       Premiums on insurance taken upon the interests of the income beneficiary,  
19 remainderman, or trustee shall be charged against ~~income; income; except that~~  
20 premiums for surety bonds shall be charged one-half against income and one-half  
21 against principal."

22       Sec. 8. This act becomes effective:

23       (1) January 1, 1994, for trusts; and

24       (2) For tax years beginning on or after January 1, 1994, for estates.