

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55163-ME-25 (2/11)

Short Title: Clarifications to Trust Code.

(Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF
3 APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A
4 LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A
5 LOAN OF THE TRUSTEE'S OWN FUNDS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

8 "§ 36C-1-103. Definitions.

9 The following definitions apply in this Chapter:

10 ...

11 (3) Beneficiary. – A person who:

12 a. Has a present or future beneficial interest in a trust, vested or
13 contingent, including the owner of an interest by assignment or
14 ~~transfer~~; transfer, but excluding a permissible appointee of a general
15 or nongeneral power of appointment; or

16 b. In a capacity other than that of trustee, holds a power of appointment
17 over trust property."

18 SECTION 2. G.S. 36C-3-302 reads as rewritten:

19 "§ 36C-3-302. Representation by holder of general testamentary power of appointment.

20 The sole holder or all coholders of a power of revocation or a presently exercisable or
21 testamentary general power of appointment, including one in the form of a power of
22 amendment, shall represent and bind other persons to the extent that their interests, as
23 ~~permissible appointees~~, takers in default, ~~or otherwise~~, are subject to the power. ~~To the extent~~
24 ~~there is no conflict of interest between the holder of a general testamentary power of~~
25 ~~appointment and the persons represented with respect to the particular question or dispute, the~~
26 ~~holder may represent and bind persons whose interests, as permissible appointees, takers in~~
27 ~~default, or otherwise, are subject to the power."~~

28 SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as
29 rewritten:

30 "§ 36C-8-816. Specific powers of trustee.

31 Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

32 ...

33 (19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;

34 (19a) Guarantee loans made ~~by others~~ to any beneficiary;



1 (19b) Pledge trust property to guarantee loans made ~~by others~~ to any
2 proprietorship, partnership, limited liability company, business trust,
3 corporation, venture, agricultural operation, or other form of business or
4 enterprise in which the trust or any beneficiary has an ownership interest.

5 (19c) Guarantee loans made ~~by others~~ to a any proprietorship, partnership, limited
6 liability company, business trust, corporation, venture, agricultural
7 operation, or other form of business or enterprise in which the trust or any
8 beneficiary has an ownership interest."

9 **SECTION 4.** This act becomes effective October 1, 2009.