

1 "~~Prior~~ Unless the will of the decedent authorizes the personal representative to
2 take possession, custody, and control over real property of the decedent without a court
3 order, prior to the personal representative exercising possession, custody or control over
4 real property of the estate he shall petition the clerk of court to obtain an order
5 authorizing such possession, custody or control. The petition shall include:

- 6 (1) A description of the real property ~~which~~ that is the subject of the
7 petition;
8 (2) The names, ages, and addresses, if known, of the devisees and heirs of
9 the decedent;
10 (3) A statement by the personal representative that he has determined that
11 such possession, custody or control is in the best interest of the
12 administration of the estate.

13 The devisees and heirs will be made parties to the proceeding by service of
14 summons in the manner prescribed by law. If the clerk of court determines that it is in
15 the best interest of the administration of the estate to authorize the personal
16 representative to take possession, custody or control he shall grant an order authorizing
17 that power."

18 **SECTION 1.2.** G.S. 28A-15-2(b) reads as rewritten:

19 "(b) Real Property. – The title to and right of possession of real property of a
20 decedent is vested in his heirs as of the time of his death; but when title to real property
21 is not devised to the personal representative, the title to and right of possession of real
22 property of a decedent devised under a valid probated will becomes vested in the
23 devisees and shall relate back to the decedent's death, subject to the provisions of G.S.
24 31-39. However, notwithstanding the foregoing provision of this subsection:

- 25 (1) The devisees shall be divested of title upon a sale of real property
26 without a court order made pursuant to authority granted by that will
27 as provided in G.S. 28A-17-8, and the personal representative may,
28 without the joinder or consent of the devisees, execute a deed in favor
29 of a purchaser for value who shall take title free of any rights of the
30 devisees.
31 (2) The personal representative may take possession, custody, and control
32 of real property without a court order pursuant to authority granted by
33 that will."

34 **SECTION 1.3.** G.S. 28A-17-8 is repealed.

35 **SECTION 1.4.** Article 17 of Chapter 28A of the General Statutes is
36 amended by adding a new section to read:

37 "**§ 28A-17-8.1. Sale or other disposition pursuant to authority in will.**

38 (a) Subject to the provisions of subsection (d) of this section, a personal
39 representative has the power to sell, lease, mortgage, exchange, partition, grant options
40 with respect to, or otherwise dispose of the real property of a decedent without a court
41 order if authorized to do so by the will of the decedent, regardless of whether title to the
42 real property was devised to the personal representative.

43 (b) A personal representative who sells, leases, or mortgages real property of a
44 decedent without a court order pursuant to authority granted by the will is not required

1 to institute a proceeding under this Article or to follow any of the procedures set forth in
2 Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales", but shall
3 include in the next account, whether annual or final, a record of any receipts and
4 disbursements incident to any such transaction.

5 (c) A general provision in the will of a decedent granting authority to the personal
6 representative to sell the decedent's real property without a court order, or the
7 incorporation by reference of the provisions of G.S. 332-27(2) in the will, is sufficient
8 to authorize the personal representative to sell that real property without a court order
9 for any reason that the personal representative deems to be for the best interest of the
10 estate, including the payment of debts and other claims against the decedent's estate, the
11 payment of specific cash bequests to devisees, or the distribution of cash to residuary
12 devisees.

13 (d) Notwithstanding the provisions of subsection (c) of this section, a general
14 provision in the will of a decedent granting authority to the personal representative to
15 sell the decedent's property without a court order, or the incorporation by reference of
16 the provisions of G.S. 32-27(2) in the will, shall not be deemed to authorize the personal
17 representative to sell specifically devised property without the joinder or consent of the
18 devisee of that real property.

19 (e) A personal representative authorized by the will of a decedent to sell or lease real
20 property without a court order may request the clerk of superior court to issue an order
21 to sell or lease real property of the decedent. Upon such a request the procedure for the
22 sale shall be as provided in Article 29A of Chapter 1 of the General Statutes, entitled
23 "Judicial Sales."

24 **SECTION 1.5.** G.S. 28A-17-10 reads as rewritten:

25 **"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.**

26 When real property is conveyed to a personal representative for the benefit of the
27 estate he represents, he or any successor personal representative may sell and convey it
28 upon such terms as he may deem just and for the advantage of the estate. ~~The~~ Unless the
29 will of the decedent authorizes the personal representative to sell the real property
30 without a court order, the procedure shall be as is provided in Article 29A of Chapter 1
31 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of
32 superior court by petition and by satisfactory proof that it will be for the best interest of
33 the estate to sell by private sale, the clerk may authorize a private sale in accordance
34 with the provisions of G.S. 1-339.33 through 1-339.40."

35 **SECTION 1.6.** G.S. 32-27(8) reads as rewritten:

36 "(8) Manage Real Property. –

- 37 a. To take possession, custody, and control, improve, manage,
38 protect, and subdivide any real property;
39 b. To dedicate or withdraw from dedication parks, streets,
40 highways, or alleys;
41 c. To terminate any subdivision or part thereof;
42 d. To borrow money for the purposes authorized by this
43 subdivision for such periods of time and upon such terms and
44 conditions as to rates, maturities and renewals as the fiduciary

1 shall deem advisable and to mortgage or otherwise encumber
2 any such property or part thereof, whether in possession or
3 reversion;

4 e. To lease any such property or part thereof to commence at the
5 present or in the future, upon such terms and conditions,
6 including options to renew or purchase, and for such period or
7 periods of time as the fiduciary deems advisable although such
8 period or periods may extend beyond the duration of the trust or
9 the administration of the estate involved;

10 f. To make gravel, sand, oil, gas and other mineral leases,
11 contracts, licenses, conveyances or grants of every nature and
12 kind which are lawful in the jurisdiction in which such property
13 lies;

14 g. To manage and improve timber and forests on such property, to
15 sell the timber and forest products, and to make grants, leases,
16 and contracts with respect thereto;

17 h. To modify, renew or extend leases;

18 i. To employ agents to rent and collect rents;

19 j. To create easements and release, convey, or assign any right,
20 title, or interest with respect to any easement on such property
21 or part thereof;

22 k. To erect, repair or renovate any building or other improvement
23 on such property, and to remove or demolish any building or
24 other improvement in whole or in part; and

25 l. To deal with any such property and every part thereof in all
26 other ways and for such other purposes or considerations as it
27 would be lawful for any person owning the same to deal with
28 such property either in the same or in different ways from those
29 specified elsewhere in this subdivision (8)."
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31 PART II. AUTHORIZE COMBINATION OF HEARINGS FOR CONTROL OF 32 REAL PROPERTY BY PERSONAL REPRESENTATIVE

33 SECTION 2. G.S. 28A-13-3(c) reads as rewritten:

34 "(c) Prior to the personal representative exercising possession, custody or control
35 over real property of the estate he shall petition the clerk of court to obtain an order
36 authorizing such possession, custody or control. The petition shall include:
37

38 (1) A description of the real property ~~which~~ that is the subject of the
39 petition;

40 (2) The names, ages, and addresses, if known, of the devisees and heirs of
41 the decedent;

42 (3) A statement by the personal representative that he has determined that
43 such possession, custody or control is in the best interest of the
44 administration of the estate.

1 The devisees and heirs will be made parties to the proceeding by service of
2 summons in the manner prescribed by law. If the clerk of court determines that it is in
3 the best interest of the administration of the estate to authorize the personal
4 representative to take possession, custody or control he shall grant an order authorizing
5 that power. If a special proceeding has been instituted by the personal representative
6 pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession,
7 custody, or control of any real property as a part of that proceeding and is not required
8 to institute a separate special proceeding."

9 **SECTION 2.1.** G.S. 28A-15-1(c) reads as rewritten:

10 "(c) If it shall be determined by the personal representative that it is in the best
11 interest of the administration of the estate to sell, lease, or mortgage any real estate or
12 interest therein to obtain money for the payment of debts and other claims against the
13 decedent's estate, the personal representative shall institute a special proceeding before
14 the clerk of superior court for such purpose pursuant to Article 17 of this Chapter,
15 except that no such proceeding shall be required for a sale made pursuant to authority
16 given by will. A general provision granting authority to the personal representative to
17 sell the testator's real property, or incorporation by reference of the provisions of G.S.
18 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.
19 If a special proceeding has been instituted by the personal representative pursuant to
20 G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or
21 control of any real property as a part of that proceeding and is not required to institute a
22 separate special proceeding."

24 **PART III. PROVIDE FOR DISTRIBUTION OF ASSETS OF INOPERATIVE** 25 **TRUSTS**

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27 **SECTION 3.** Article 22 of Chapter 28A of the General Statutes is amended
28 by adding a new section to read:

29 **"§ 28A-22-10. Distribution of assets of inoperative trust.**

30 When the facts at the time of distribution of property to a trust are such that the trust
31 would be inoperative under the terms of the instrument creating the trust for any reason,
32 including the death of a beneficiary, renunciation by a beneficiary, the exercise of a
33 right to withdraw the property by a beneficiary, or the attainment of a stipulated age by
34 a beneficiary, the personal representative or the trustee authorized or required to make
35 the distribution of that property to the trust may distribute the property directly to the
36 person or persons entitled to it under the terms of the instrument creating the trust
37 without the interposition of the establishment of the trust. If only a portion of the trust
38 would be inoperative, the property distributable to that portion of the trust may be
39 distributed directly to the person or persons entitled to the property under the terms of
40 the instrument creating the trust."

41 **SECTION 3.1.** Article 13 of Chapter 36A is amended by adding a new
42 section to read:

43 **"§ 36A-141. Distribution of assets of inoperative trust.**

1 A trustee may distribute the assets of an inoperative trust consistent with the
2 authority granted under the provisions of G.S. 28A-22-10."

3
4 **PART IV. PROVIDE THAT A FIDUCIARY EXPRESSLY EXCLUDED FROM**
5 **INVESTMENT DECISIONS IS NOT LIABLE FOR DECISIONS MADE BY**
6 **THOSE AUTHORIZED TO MAKE INVESTMENT DECISIONS**

7
8 **SECTION 4.** G.S. 36A-3 is amended by adding a new subsection to read:

9 "(d) Whenever an instrument reserves to the settlor or vests in any person, including
10 an advisory or investment committee or one or more co-fiduciaries, the authority to
11 direct the making or retention of any investment to the exclusion of the fiduciary or to
12 the exclusion of one or more of several co-fiduciaries, the excluded fiduciary or co-
13 fiduciary who has no discretion in selecting the person authorized to make or retain
14 investments is not liable to the beneficiaries or to the trust for the decisions or actions of
15 the settlor or other person authorized to direct the making or retention of investments.
16 As used in this subsection, the term 'person' includes an individual, a corporation, or any
17 legal or commercial entity authorized to hold property or do business in the State of
18 North Carolina."

19
20 **PART V. TECHNICAL CORRECTIONS TO REFERENCES TO THE**
21 **INTERNAL REVENUE CODE**

22
23 **SECTION 5.** G.S. 32-34(a) reads as rewritten:

24 "(a) For purposes of this section:

- 25 (1) "General power of appointment" means any power that would cause
26 income to be taxed to the fiduciary in his individual capacity under
27 section 678 of the Internal Revenue Code and any power that would be
28 a general power of appointment, in whole or in part, under section
29 2041(b)(1) or 2514(c) of the Internal Revenue Code.
30 (2) "Internal Revenue Code" means the "Code" as defined in ~~G.S. 105-2-1.~~
31 G.S. 105-228.90.
32 (3) The term "fiduciary" has the meaning set forth in G.S. 32-25."

33 **SECTION 5.1.** G.S. 32A-2(14) reads as rewritten:

34 "(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact.

- 35 a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of
36 the principal's property to any individual other than the
37 attorney-in-fact or to any organization described in sections
38 170(c) and 2522(a) of the Internal Revenue Code or
39 corresponding future provisions of federal tax law, or both, in
40 accordance with the principal's personal history of making or
41 joining in the making of lifetime gifts. As used in this
42 subdivision "Internal Revenue Code" means the "Code" as
43 defined in ~~G.S. 105-2-1.~~ G.S. 105-228.90.

- 1 b. Except as provided in G.S. 32A-2(14)c., or unless gifts are
2 expressly authorized by the power of attorney under G.S. 32A-
3 2(15), a power described in G.S. 32A-2(14)a. may not be
4 exercised by the attorney-in-fact in favor of the attorney-in-fact
5 or the estate, creditors, or creditors of the estate of the attorney-
6 in-fact.
- 7 c. If the power described in G.S. 32A-2(14)a. is conferred upon
8 two or more attorneys-in-fact, it may be exercised by the
9 attorney-in-fact or attorneys-in-fact who are not disqualified by
10 G.S. 32A-2(14)b. from exercising the power of appointment as
11 if they were the only attorney-in-fact or attorneys-in-fact.
- 12 d. An attorney-in-fact expressly authorized by this section to make
13 gifts of the principal's property may elect to request the clerk of
14 the superior court to issue an order to make a gift of the
15 property of the principal."

16 **SECTION 5.2.** G.S. 32A-14.1(a) reads as rewritten:

17 "(a) Except as provided in subsection (b) of this section, if any power of attorney
18 authorizes an attorney-in-fact to do, execute, or perform any act that the principal might
19 or could do or evidences the principal's intent to give the attorney-in-fact full power to
20 handle the principal's affairs or deal with the principal's property, the attorney-in-fact
21 shall have the power and authority to make gifts in any amount of any of the principal's
22 property to any individual or to any organization described in sections 170(c) and
23 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax
24 law, or both, in accordance with the principal's personal history of making or joining in
25 the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means
26 the "Code" as defined in ~~G.S. 105-2.1~~. G.S. 105-228.90."

27
28 **PART VI. EFFECTIVE DATES**

29
30 **SECTION 6.** Parts I through IV of this act are effective when they become
31 law and apply to actions by personal representatives on or after that date. The remainder
32 of this act is effective when it becomes law.