

Article 7.

Office of Trustee.

**§ 36C-7-701. Accepting or declining trusteeship.**

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

- (1) By substantially complying with a method of acceptance provided in the terms of the trust; or
- (2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within 120 days after written notice to accept the trusteeship is provided is considered to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

- (1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and
- (2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. (2005-192, s. 2; 2006-259, s. 13(j).)

**§ 36C-7-702. Trustee's bond.**

(a) A trustee shall provide bond to secure the performance of the trustee's duties if:

- (1) The trust instrument was executed before January 1, 2006, unless the terms of the trust instrument provide otherwise;
- (2) The trust instrument was executed on or after January 1, 2006, but only if the terms of the trust instrument require the trustee to provide bond;
- (3) A beneficiary requests the trustee to provide bond, and the court finds the request to be reasonable; or
- (4) The court finds that it is necessary for the trustee to provide bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee if the governing instrument directs otherwise.

(b) If bond is required, it shall be in a sum of double the value of the personal property to come into the trustee's hands if bond is executed by a personal surety, and in an amount not less than one and one-fourth times the value of all personal property of the trust estate if the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the court, when the value of the personal property exceeds one hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) of that value, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive property that may come into the trustee's hands. All bonds executed under this Article shall be filed with the clerk of superior court.

(c) On petition of the trustee or a qualified beneficiary, the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties.

(d) As provided in G.S. 53-159 and G.S. 53-366(a)(10), banks and trust companies licensed to do trust business in this State need not give bond, even if required by the terms of the trust. (1911, c. 39, s. 7; C.S., s. 4031; 1951, c. 264; 1965, c. 1177, s. 1; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 5; 2005-192, s. 2.)

### **§ 36C-7-703. Cotrustees.**

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision if more than two are serving. Unanimity is required when only two cotrustees are serving.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust and exercise all trustee powers, except those powers that the remaining trustees are prohibited from exercising under the trust instrument or by law.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee with the consent of the cotrustee the performance of any function other than those the settlor reasonably expected the trustees to perform jointly. The following functions are not considered to be those that the settlor reasonably expected the trustees to perform jointly:

- (1) Establish and maintain bank accounts for the trust and issue checks for the trust.
- (2) Maintain inventories, accountings, and income and expense records of the trust.
- (3) Enter any safety deposit box rented by the trust.
- (4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.
- (5) List trust property for taxes and prepare and file tax returns for the trust.
- (6) Collect and give receipts for claims and debts of the trust.
- (7) Pay debts, claims, costs of administration, and taxes of the trust.
- (8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the trust.
- (9) Have custody of the trust property.
- (10) Perform any function relating to investment of trust assets.

The list of functions contained in this subsection is not intended to be exclusive of others that may be delegated to a cotrustee in accordance with this subsection.

(e1) Repealed by Session Laws 2015-205, s. 10, effective October 1, 2015.

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care to:

- (1) Avoid enabling a cotrustee to commit a serious breach of trust; and

- (2) Compel a cotrustee to redress a serious breach of trust.
- (g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:
  - (1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.
  - (2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by that cotrustee.
  - (3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:
    - a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.
    - b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.
- (h) If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:
  - (1) The dissenting cotrustee does not join in the action.
  - (2) The dissenting cotrustee joins in the action necessary to carry out the decision of the other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the action.
- (i) Notwithstanding any other provision of this section to the contrary, if two or more trustees own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:
  - (1) If only one votes, in person or by proxy, the act binds all;
  - (2) If more than one vote, in person or by proxy, the act binds all; and
  - (3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately. (2005-192, s. 2; 2007-106, ss. 27, 28, 29; 2012-18, s. 3.2; 2015-205, s. 10.)

**§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

- (a) A vacancy in a trusteeship occurs if:
  - (1) A person designated as trustee rejects the trusteeship;
  - (2) A person designated as trustee cannot be identified or does not exist;
  - (3) A trustee resigns;
  - (4) A trustee is disqualified or removed;
  - (5) A trustee dies; or
  - (6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.
- (b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
- (2) By a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
- (2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;
- (2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or
- (3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

(f) A successor trustee shall succeed to all the rights, powers, and privileges, and is subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee, unless a contrary intent appears from the governing instrument or unless the order appointing the successor trustee provides otherwise. A successor trustee shall be vested with the title to property of the former trustee. (1911, c. 39, s. 8; C.S., s. 4032; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 6; 2005-192, s. 2; 2007-106, s. 30; 2011-339, s. 3.)

#### **§ 36C-7-705. Resignation of trustee.**

(a) A trustee may resign:

- (1) Upon at least 30 days' notice in writing to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- (2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation. (2005-192, s. 2.)

#### **§ 36C-7-706. Removal of trustee.**

(a) For the reasons set forth in subsection (b) of this section, the settlor of an irrevocable trust, a cotrustee of an irrevocable trust, or a beneficiary of an irrevocable trust may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

- (1) The trustee has committed a serious breach of trust;
- (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

- (3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
- (4) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is consistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under G.S. 36C-10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries. (2005-192, s. 2.)

**§ 36C-7-707. Delivery of property by former trustee.**

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. A former trustee shall execute those documents acknowledging the transfer of title to trust property as may be reasonably requested by the cotrustee, successor trustee, or other person entitled to it to facilitate administration of the trust, and in the event that the former trustee fails to do so, the clerk of superior court may order the former trustee to execute those documents. (2005-192, s. 2; 2012-18, s. 3.5.)

**§ 36C-7-708. Compensation of trustee.**

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation determined in accordance with Article 6 of Chapter 32 of the General Statutes.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified. (2005-192, s. 2.)

**§ 36C-7-709. Reimbursement of expenses.**

A trustee is entitled to be reimbursed out of the trust property for expenses properly incurred in the administration of the trust as provided in G.S. 32-58. (2005-192, s. 2.)