

## Article 2.

### Judicial Proceedings.

#### **§ 36C-2-201. Role of court in administration of trust.**

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by a party or as provided by law.

(b) A trust is not subject to continuing judicial supervision, except as provided in G.S. 36C-2-208 and G.S. 36C-2-209, unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights. (2005-192, s. 2.)

#### **§ 36C-2-202. Jurisdiction over trustee and beneficiary.**

(a) By accepting the trusteeship of a trust having its principal place of administration in this State, or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust. (2005-192, s. 2.)

#### **§ 36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

- (1) To appoint or remove a trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b) and the appointment of a special fiduciary pursuant to G.S. 36C-8B-9.
- (2) To approve the resignation of a trustee.
- (3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final accounts.
- (4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in G.S. 37A-1-104.3.
- (5) To transfer a trust's principal place of administration.
- (6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different sureties.

- (7) To make orders with respect to a trust for the care of animals as provided in G.S. 36C-4-408.
- (8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in G.S. 36C-4-409.
- (9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, to create a trust, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall be construed (i) to confer upon the clerk of superior court any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the governing instrument or of State law; or (ii) to confer upon any party any additional right, remedy, or cause of action not otherwise conferred by law.

(c) Nothing in this section affects the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes.

(d) The clerk of superior court shall not, over the objection of a party, entertain proceedings under this section involving a trust having its principal place of administration in another state, except:

- (1) When all appropriate parties could not be bound by litigation in the courts of the state in which the trust had its principal place of administration; or
- (2) When the interests of justice otherwise would be seriously impaired.

The clerk of superior court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk of superior court may grant a continuance or enter any other appropriate order.

(e) Any party to a proceeding before the clerk of superior court may appeal from the decision of the clerk to a superior court judge as provided for estate matters in G.S. 1-301.3.

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of any of the following:

- (1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416. Actions to reform or modify a trust pursuant to G.S. 36C-4-412 through G.S. 36C-4-416 shall include the addition of trust terms to provide for the removal and replacement of the trustee by one or more beneficiaries or other persons.
- (2) Actions by or against creditors or debtors of a trust.
- (3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
- (4) Actions to enforce a charitable trust under G.S. 36C-4-405.1.

- (5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.
- (6) Actions involving the exercise of the decanting power pursuant to Article 8B of this Chapter.
- (7) Actions to construe a formula contained in a trust subject to G.S. 36C-1-113.
- (8) Actions to establish the validity of a revocable trust before death pursuant to Article 4C of this Chapter. (1911, c. 39, s. 4; C.S. s. 4027; 1977, c. 502, s. 2; 1999-216, s. 8; 2001-413, s. 1; 2005-192, s. 2; 2007-106, ss. 6, 7; 2009-267, s. 1; 2009-318, s. 2; 2010-126, s. 3; 2017-121, ss. 2.2, 2.3; 2019-113, s. 5; 2021-53, s. 1.4.)

**§ 36C-2-204. Venue.**

In any trust proceeding, whether brought before the clerk of superior court or the Superior Court Division of the General Court of Justice, the following rules apply:

- (1) If the trustee is required to account to the clerk of superior court, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.
- (2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is either of the following:
  - a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary resides.
  - b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.
- (2a) In the case of a petition to establish the validity of a revocable trust before death pursuant to Article 4C of this Chapter, venue shall be in the county of this State in which the petitioner whose revocable trust is the subject of the petition resides.
- (3) Repealed by Session Laws 2007-106, s. 8, effective October 1, 2007.
- (4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered.
- (5) An objection to improper venue in a trust proceeding shall be subject to the following:
  - a. For a trust proceeding before the clerk of superior court, objection must be made as part of a timely served response to the complaint or petition or, if no response is filed, within 20 days after service of the complaint or petition, including any extensions of time pursuant to G.S. 36C-2-205(d).
  - b. For a trust proceeding before the Superior Court Division of the General Court of Justice, objection shall be governed by the Rules of Civil Procedure.

- (6) The validity of a trust proceeding shall not be affected by any error in venue. (2001-413, s. 1; 2003-261, s. 2; 2005-192, s. 2; 2007-106, s. 8; 2021-53, ss. 1.2, 3.1.)

**§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and joinder.**

(a) **Contested Proceedings.** – Trust proceedings before the clerk of superior court brought against adverse parties shall be commenced as is prescribed for civil actions. Upon the filing of the petition or complaint, the clerk of superior court shall docket the cause as an estate matter. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the summons for the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the summons for the additional persons. The summons shall notify the respondents to appear and answer the petition within 20 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk of superior court shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action and shall be served upon the respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) **Uncontested Proceedings.** – Trust proceedings before the clerk of superior court in which all the parties join in the proceeding shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) **Pleadings.** – The petition or complaint filed in a trust proceeding before the clerk of superior court shall contain a short and plain statement of the claim which is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions, intended to be proved showing that the pleaders entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment of a pleading should be simple, concise, and direct. No technical forms of pleadings or motions are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All pleadings shall be so construed as to do substantial justice.

(d) **Extensions of Time.** – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, except to the extent that the court finds that justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of

superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 52(b), 56, 58, 59, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure, shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

(f) Consolidation. – When a trust proceeding pending before the clerk of superior court and a civil action pending before the superior court division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the trust proceeding or the civil action, a superior court judge may order a consolidation of the trust proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating a trust proceeding and civil action, the jurisdiction for all matters pending in both the trust proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before a superior court division of the General Court of Justice, a party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as that party has against an opposing party notwithstanding the fact that the claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(h) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make appropriate orders to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court.

(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard. (2005-192, s. 2; 2007-106, ss. 9, 9.1, 10; 2011-344, ss. 11, 12; 2012-18, s. 3.11; 2021-53, s. 3.3.)

### **§ 36C-2-206. Representation of parties.**

(a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any trust proceeding, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the parties shall be represented as provided in Article 3 of this Chapter.

(b) In the case of any party represented by another as provided in subsection (a) of this section, service of process shall be made by serving such representative. (2005-192, s. 2; 2006-259, s. 13(a).)

**§ 36C-2-207. Waiver of notice.**

A party, or the representative of the party as provided in G.S. 36C-2-206, may waive notice by a writing signed by the party, the representative, or the attorney of the party or the representative, and filed in the proceeding. (2001-413, s. 1; 2005-192, s. 2.)

**§ 36C-2-208. Accounting to clerk.**

(a) No trustee, including a trustee appointed by the clerk of superior court, is required to account to the clerk of superior court unless the trust instrument directs that the trustee is required to account to the clerk of superior court or unless the trustee is otherwise required by law to account to the clerk of superior court.

(b) If the trustee is required to account to the clerk of superior court, the trustee shall not be permitted to resign as trustee until a final account of the trust estate is filed with the clerk of superior court and until the court is satisfied that the account is true and correct, unless the terms of the trust instrument provide otherwise.

(c) Notwithstanding subsections (a) and (b) of this section, under a proceeding brought under G.S. 36C-4-405.1, the clerk of superior court may require a trustee of a charitable trust to account to the clerk of superior court. (1911, c. 39, s. 6; C.S., s. 4029; 1977, c. 502, s. 2; 2001-413, s. 1; 2003-261, s. 4; 2005-192, s. 2.)

**§ 36C-2-209. Qualification and accounting of trustee of a testamentary trust.**

(a) For any testamentary trust created under a will of a decedent executed before January 1, 2004, the trustee shall first qualify under the laws applicable to executors, and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. This subsection shall not apply to the extent that the will makes a different provision.

(b) For any testamentary trust created under a will of a decedent executed on or after January 1, 2004, that directs the trustee to account to the clerk of superior court, the trustee shall first qualify under the laws applicable to executors and shall file in the office of the clerk of superior court of the county where the will is probated inventories of the assets that come into the trustee's hands and annual and final accounts of the trust that are the same as are required of executors and administrators. The power of the clerk of superior court to enforce the filing and the clerk's duties to audit and approve the trustee's inventories and accounts is the same as the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. No trustee, including a trustee appointed by the clerk of superior court, is required to account to

the clerk of superior court unless the will directs that the trustee is required to account to the clerk of superior court or unless otherwise required by law.

(c) The Administrative Office of the Courts may adopt rules regulating the registration or indexing of testamentary trusts. (1907, c. 804; C.S., s. 51; 1961, c. 519; 1965, c. 1176, s. 1; 1973, c. 1329, s. 4; 1977, c. 502, s. 2; 1985, c. 377, s. 1, 2; 2003-261, s. 7(j); 2005-192, s. 2.)