

**§ 36C-4-402. Requirements for creation.**

- (a) A trust is created only if:
  - (1) The settlor has capacity to create a trust;
  - (2) The settlor indicates an intention to create the trust;
  - (3) The trust has a definite beneficiary or is:
    - a. A charitable trust;
    - b. A trust for the care of an animal, as provided in G.S. 36C-4-408; or
    - c. A trust for a noncharitable purpose, as provided in G.S. 36C-4-409;
  - (4) The trustee has duties to perform; and
  - (5) The same person is not the sole trustee and sole beneficiary.
- (b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. (2005-192, s. 2.)