

March 10, 2005

**S 461. UNITRUST AMENDMENTS. TO AMEND THE LAW RELATING TO UNITRUSTS.**

Amends Part 2, Article 1 of GS Chapter 37A, regarding conversion to unitrusts as follows: (1) Defines "income trust" as a trust which directs or permits the trustee to distribute net income of the trust to one or more persons, in fixed proportions or in amounts or proportions determined by the trustee, regardless of whether the trust directs or permits the trustee to distribute principal to one or more of those persons; (2) requires trustee who intends to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used for calculating the unitrust amount or method for calculating the fair market value of the trust to send written notice to all competent beneficiaries who would be eligible to receive the distributions of income of the trust if the interests of beneficiaries currently receiving the income terminated at the time of the giving of notice; (3) sets out special notice provisions for trust for which both income and principal have been permanently set aside for charitable purposes; (4) deletes provision in GS 37A-1-104.4 that assets may be excluded from valuation of unitrust amount if all income from the assets is distributable in accordance with the terms of the trust and adds provision that assets used by the trust beneficiary (such as residence or tangible personal property) may be excluded from the fair market value; (5) sets out how trustee must treat unitrust amount following conversion of an income trust to a total return unitrust. Amends GS 37A-1-104.9, applicability provision, to provide that Part 2 of Article 1 of GS Chapter 37A does not apply to (1) trusts for which any amount is permanently set aside for charitable purposes unless the income is also permanently set aside for charitable purposes or (2) trusts where the governing instrument expressly states the grantor's intent that net income not be calculated as a unitrust amount. Specifies that provision in governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A or any corresponding provision of future law shall not be used in the administration of this trust" or "the trustee shall not determine the distributions to the income beneficiary as a unitrust amount" preclude Part 1 from applying to trust. Adds new Part 2A to GS Chapter 37A governing "express total return unitrusts," defined as a trust which by its governing instrument requires the distribution at least annually of a unitrust amount equal to a fixed percentage of not less than 3% nor more than 5% per year of the net fair market value of the trust assets, valued at least annually. Specifies how to determine unitrust amount; the effect of distribution; the method for converting from a unitrust to an income trust, changing the unitrust percentage or reconversion of income trust to a unitrust; and how to determine the character of unitrust amount. Deems trust that provides for fixed percentage payout in excess of 5% per year to be an express total return unitrust that pays out a fixed percentage of 5% per year and pays out principal to the extent that the fixed percentage payout exceeds 5% per year. Effective when it becomes law except that applicability provision of Part 2 of Article 1 is retroactive to October 1, 2004.

**Intro. by Hartsell.**

Ref. to Judiciary II

GS 37A

April 5, 2005

**S 461. UNITRUST AMENDMENTS.** Intro. 3/10/05. Senate committee substitute makes the following changes to 1st edition. Makes technical changes only.

June 22, 2005

**S 461. UNITRUST AMENDMENTS.** Intro. 3/10/05. House committee substitute makes the following changes to 2nd edition. Makes technical changes only.

August 1, 2005

**SL 2005-244 (S 461). UNITRUST AMENDMENTS. AN ACT TO AMEND THE LAW RELATING TO UNITRUSTS.** Summarized in *Daily Bulletin* 3/10/05, 4/5/05, and 6/22/05. Enacted July 30, 2005. Effective July 30, 2005, except that applicability provision of Part 2 of Article 1 is retroactive to October 1, 2004.