

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 482
PROPOSED COMMITTEE SUBSTITUTE S482-PCS15244-RC-7

Short Title: Clarifications to Trust Code.

(Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"§ 36C-1-103. **Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

- a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or ~~transfer;~~transfer, but excluding a permissible appointee of a power of ~~appointment;~~ or
- b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"§ 36C-3-302. **Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or ~~testamentary~~ general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees, takers in default, or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power."~~

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"§ 36C-8-816. **Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

- (19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;
- (19a) Guarantee loans made ~~by others~~ to any beneficiary;



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1 (19b) Pledge trust property to guarantee loans made ~~by others~~ to any
2 proprietorship, partnership, limited liability company, business trust,
3 corporation, venture, agricultural operation, or other form of business or
4 enterprise in which the trust or any beneficiary has an ownership interest.

5 (19c) Guarantee loans made ~~by others~~ to any proprietorship, partnership, limited
6 liability company, business trust, corporation, venture, agricultural
7 operation, or other form of business or enterprise in which the trust or any
8 beneficiary has an ownership interest."

9 **SECTION 4.** This act becomes effective October 1, 2009.