



SENATE BILL 450: Uniform Trust Decanting Act.

2017-2018 General Assembly

Committee:		Date:	August 11, 2017
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2017-121		

OVERVIEW: S.L. 2017-121 adopts the North Carolina Uniform Trust Decanting Act, which replaces existing law governing the circumstances under which a trustee is permitted to distribute assets from one trust into a second trust without the approval of a court. The act became effective on July 18, 2017.

CURRENT LAW: Chapter 36C of the General Statutes is the North Carolina Uniform Trust Code, which contains default provisions that set forth, among other things, the duty of trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

Decanting is a term referring to a trustee's distribution of assets from one trust into a second trust. The circumstances under which a trustee may do this without the approval of a court are set forth in G.S. 36C-8-816.1 in Article 8 of Chapter 36C, "Duties and Powers of Trustee."

BILL ANALYSIS: S.L. 2017-121 repeals G.S. 36C-8-816.1 and replaces it with new Article 8B, the "North Carolina Uniform Trust Decanting Act" (UTDA).

The UTDA applies to any trust having a principal place of administration in North Carolina and to any trust that provides that North Carolina law will govern its administration or construction (G.S. 36C-8b-5). Among other things, the UTDA:

- Relieves persons who reasonably rely on the validity of a decanting power under Article 8B from liability to any person for any action or failure to act as a result of the reliance. (G.S. 36C-8B-6)
- Requires notice of a proposed decanting to be given to all qualified beneficiaries of the first trust and to other specified persons. (G.S. 36C-8B-7)
- Permits an authorized fiduciary, a beneficiary, or persons entitled to notice of a proposed decanting to commence a proceeding to seek approval or disapproval of the proposed exercise of the fiduciary's decanting power. (G.S. 36C-8B-9)
- Requires exercise of the decanting power to be made in a written instrument signed by an authorized fiduciary. (G.S. 36C-8B-10)
- Sets forth requirements for and restrictions on the exercise of the decanting power. (G.S. 36C-8B-11)
- Provides exceptions to otherwise applicable restrictions on the decanting power to permit a fiduciary to decant to a special needs trust for the benefit of a disabled beneficiary who may be

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eligible to qualify for governmental benefits or who has been adjudicated incompetent. (G.S. 36C-8B-13)

- Requires all qualified beneficiaries or the clerk of superior court to approve any increase in an authorized fiduciary's compensation. (G.S. 36C-8B-16)
- Prohibits a second trust from relieving the liability of an authorized fiduciary for breach of trust to a greater extent than the first trust or from reducing the aggregate liability of the fiduciary. (G.S. 36C-8B-17)
- Limits an authorized fiduciary's ability to change provisions in a first trust permitting the fiduciary's removal by another person. (G.S. 36C-8B-18)
- Provides more detailed tax-related limitations on the exercise of the decanting power. (G.S. 36C-8B-19)
- Provides rules for determining which trust holds property discovered subsequent to a decanting. (G.S. 36C-8B-26)

EFFECTIVE DATE: This act became effective on July 18, 2017.

BACKGROUND: The UTDA is a result of work done by the Uniform Decanting Subcommittee of the North Carolina Bar Association Estate Planning and Fiduciary Law Section, which analyzed the Uniform Decanting Act, adopted by the Uniform Laws Commission in 2015, to evaluate its practical effect and the consistency between its provisions and current North Carolina law.