



# SENATE BILL 197: GSC Trusts & Estates Amendments.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 22, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Keshawna Roberts
<b>Analysis of:</b>	S.L. 2021-85		Research Assistant

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**OVERVIEW:** *S.L. 2021-85 removes the location requirement for holographic wills to align North Carolina with all other states recognizing holographic wills, updates definitions of "Terms of a Trust" and "Trust Instrument" and revises the article on power holders of trusts, clarifies the trust exclusion to the rule against perpetuities, and make technical changes in the surrounding language, as recommended by the General Statutes Commission.*

*The act has multiple effective dates. See the full summary for details.*

## **BILL ANALYSIS:**

**Part I** of the act removes the location requirement for holographic wills as follows:

- Removes the requirement that a witness testify to the location of the will for the will to be probated as a holographic will.
- Removes the requirement that a will be found in a certain location to be a holographic will.

**Part II** of the act updates the Trust Code definitions and revises the article on power holders as follows:

- Adding to the definition of "terms of trust" a list of all the ways a trust's provisions may be established, determined, or amended.
- Adding that the duty to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries is also subject to the article on power holders with respect to a trustee.
- Revising G.S. 36C-8A-1 as follows:
  - By adding that a power holder is not a person in which a donor creates a power of appointment, a person that has authority to consent to the exercise of a power of appointment, or a beneficiary with a certain type of power over a trust.
  - By adding that a power holder may be one or more individuals, one or more other persons qualified to exercise trust powers, or a combination thereof.
  - By adding that a person is a power holder whether or not the terms of the trust refer to the person as a power holder and generally whether or not the person is a beneficiary or settlor of the trust.
- Revising G.S. 36C-8A-2 as follows:
  - Providing that a power holder may exercise any further power appropriate to the exercise or nonexercise of a power granted to power holder.
  - Providing that the power holder's powers are subject to the same provisions of G.S. 36C-8-814 regarding discretionary powers and tax savings as apply to a similarly situated trustee.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

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- Revising G.S. 36C-8A-3 as follows:
  - Sets out a nonexclusive list of provisions applicable to trustees that are also generally applicable to power holders.
  - Provides that the terms of a trust may provide that a power holder is a nonfiduciary with respect to the exercise or nonexercise of a power, including the power to achieve the settlor's tax objectives, and that generally the power to remove and appoint a trustee or power holder shall be deemed to be held in a nonfiduciary capacity.
  - Adds a new provision that a power holder has a duty to provide certain information to a trustee or another power holder, but a power holder does not have the duty to monitor a trustee or another power holder or inform or give advice to a settlor, beneficiary, trustee, or another power holder.
- Revising G.S. 36C-8A-4 by adding that a trustee shall provide certain information to a power holder.
- Adding new sections (G.S. 36C-8A-4.1) that provide default rules for an action against a power holder for breach of trust as follows:
  - Providing that the same limitations of actions apply to a power holder that apply to a similarly situated trustee.
  - Providing that a power holder may assert the same defenses as a similarly situated trustee and setting out a nonexclusive list of examples.
- Adding to G.S. 36C-8A-8, regarding the vacancy in the office of the power holder, the following:
  - The vacancy need not be filled if one or more power holders remain in office.
  - If the terms of a trust provide for a successor power holder, that person shall act as the successor power holder.
  - The court may appoint a power holder when necessary.
  - Generally, the successor power holder shall succeed to the powers of the original power holder and is subject to the duties and liabilities of the original power holder.
- Adding a new section (G.S. 36C-8A-12) that provides that a bond shall be required from the power holder only if the terms of the trust require it and sets out which provisions apply if no bond is required and which provisions apply if a bond is required.

**Part III** of the act clarifies the trust exclusion to the statutory rule against perpetuities by adding to the list of exclusions from the statutory rule against perpetuities a nonvested property interest in or a power of appointment over property or property interests of a trust to which G.S. 41-23 (Perpetuities and suspension of power of alienation of trusts) applies. This part applies to trusts created before, on, or after August 19, 2007 (being the date that S.L. 2007-390 became law).

**EFFECTIVE DATE:** Unless otherwise stated, this act became effective July 8, 2021.