



# SENATE BILL 50: Estate Planning Law Changes.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 18, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Kara McCraw Staff Attorney
<b>Analysis of:</b>	S.L. 2021-53		

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**OVERVIEW:** *S.L. 2021-53 does the following:*

- *Permits the settlor of a revocable trust to seek a judicial determination that the trust is valid.*
- *Permits the clerk of superior court to authorize single transactions benefiting a minor or other incompetent without appointing a guardian.*
- *Updates venue and procedural rules governing estate proceedings and trust proceedings.*
- *Updates the North Carolina Uniform Powers of Appointment Act to broaden the list of permissible appointees for holders of a nongeneral power of appointment.*

*Parts I, II, and III of the act became effective October 1, 2021, and apply to proceedings initiated on or after that date. The remainder of the act became effective when it became law. Please see the summary for more information on dates of application for Part IV.*

## **CURRENT LAW AND BILL ANALYSIS:**

### **Part I: Living Probate for Trusts**

Under current law a North Carolina resident who has executed a will or codicil can file a petition seeking a judicial declaration that the will or codicil is valid, pursuant to Article 2B of Chapter 28A of the General Statutes. There is currently no similar procedure by which the settlor of a revocable trust can seek a judicial declaration that the trust is valid.

**Section 1.1** of the act enacts new Article 4C in Chapter 36C of the General Statutes to permit the settlor of a revocable trust who is a resident of North Carolina to seek a judicial declaration of the validity of the trust, by filing a verified petition in superior court in the settlor's county of residence. The petition can also contain a request for a judicial declaration of the validity of the petitioner's will or codicil.

The petition must state:

- The petitioner's county of residence.
- That the petitioner had the capacity to create a revocable trust at the time it was created.
- That the trust was created in accordance with State law and with the intent to create a revocable trust.
- That the petitioner executed the trust in the exercise of free will and free from undue influence and duress.
- The identity of the petitioner and all persons believed to have an interest in the proceeding, including the appropriate representatives for any interested parties who are minors.

All interested persons identified in the petition must be served with a copy of the summons and petition. Any judgment declaring the trust to be valid is binding on the parties to the proceeding and bars them

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from challenging the trust's validity once it becomes irrevocable, except for relief pursuant to Rule 60 of the Rules of Civil Procedure.

The court file of the proceeding must be sealed by order of the court upon motion of any party to the proceeding. Without a showing of good cause, the contents of the sealed file are not released to anyone other than the petitioner, the petitioner's attorney, or a court of competent jurisdiction hearing or reviewing the matter. After the petitioner's death a sealed file must be unsealed upon request of any interested person for the purpose of other estate proceedings.

**Sections 1.2, 1.3, and 1.4** of the act make conforming statutory changes in Chapter 36C. **Sec. 1.4A** makes harmonizing changes to language in Chapter 28A related to living probates of wills.

## **Part II: Changes to Appointment of Guardians for Single Transactions**

Under Chapter 35A of the General Statutes governing the appointment of a guardian, there is currently no alternative to a full guardianship proceeding in cases where the needs of the minor or other incompetent person could be met with a single protective arrangement or other single transaction.

**Section 2.2** of the act amends Article 2 of Chapter 35A to authorize the clerk of superior court, without appointing a guardian, to authorize, direct, or ratify:

- Any single protective arrangement or single transaction necessary or desirable to meet the foreseeable needs of a minor or incompetent person.
- Any contract, trust, or other transaction relating to the property or business affairs of the minor or other incompetent person that is determined to be in their best interest.

The court can also authorize a special fiduciary to execute those transactions.

Before approving a transaction, the clerk must consider the interests of creditors and dependents of the minor or incompetent person and whether there is a need for the continuing protection of a guardian. The clerk has discretion to appoint a temporary guardian to assist in completing the authorized transaction, to be discharged by order after report to the clerk of all matters done pursuant to the appointment.

Transactions related to property made by a special fiduciary or temporary guardian are subject to the same procedural and reporting requirements as for guardians of the estate or general guardians.

**Section 2.1** of the act makes a conforming statutory change.

## **Part III: Changes to Trusts and Estates Proceedings**

G.S. 36C-1-105(b)(10) provides that rules of venue in trust proceedings cannot be modified by the terms of the trust. **Section 3.1** of the act deletes a conflicting provision in G.S. 36C-2-204(1) to permit the trust terms to override the venue rules.

**Section 3.1** also amends G.S. 36C-2-204 to provide that:

- An objection to venue in trust proceedings before the clerk must be made as part of any timely response to the complaint or petition, or if no response is filed, the objection is due within 20 days after service of the complaint or petition.
- An objection to venue in trust proceedings before the Superior Court Division is governed by the Rules of Civil Procedure.
- The validity of a trust proceeding is not affected by an error in venue.

**Sections 3.2 and 3.3** of the act add the following to the Rules of Civil Procedure that apply to trust and estate proceedings:

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- Rule 52(b) governing motions to amend court findings of fact.
- Rule 58 governing entry of judgment.
- Rule 59 governing new trials and amendment of judgments.

**Section 3.3** lengthens the response time in trust proceedings from 10 to 20 days after service of the petition, making the response time the same in both estate and trust proceedings.

**Sections 3.4 and 3.5** of the act clarify the time for and effect of an appeal to superior court in estate and trust proceedings.

## **Part IV. Changes to Powers of Appointment**

The North Carolina Uniform Powers of Appointment Act (NCUPAA), enacted in 2015 as Chapter 31D of the General Statutes, was modeled after the Uniform Powers of Appointment Act (UPAA) drafted by the Uniform Laws Commission (ULC).

In 2018, the ULC amended Section 305 of the UPAA to broaden the appointments that can be made by the power holder of a nongeneral power of appointment.

**Section 4.2** of the act amends G.S. 31D-3-305 to update the NCUPAA in accordance with the 2018 change to Section 305 of the UPAA. With this change the holder of a nongeneral power of appointment is permitted to create a new nongeneral power of appointment in a permissible appointee to appoint to one or more persons, provided that the permissible appointees of the new nongeneral power include at least one of the permissible appointees of the original nongeneral power.

**Section 4.1** of the act makes a conforming statutory change.

## **Part V. Severability**

**Section 5.1** of the act is a severability clause that provides that if any provision of this act or its application is held invalid, it will not affect other provisions of this act that can be given effect without the invalid provision.

**EFFECTIVE DATE:** Parts I, II, and III of the act became effective October 1, 2021, and apply to proceedings initiated on or after that date. The remainder of the act became effective June 25, 2021. Section 4.1 applies to powers of appointment created on after the effective date of the act. Section 4.2 applies to the exercise, on or after the effective date of the act, of a power of appointment created before, on, or after that date.

*\*This summary was substantially contributed to by Bill Patterson, Staff Attorney.*