



CHICAGO TITLE INSURANCE COMPANY

TOPIC:	<u>Trusts and Real Estate Conveyances</u>
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I. INTRODUCTION

If you practice real estate, you have almost certainly crossed paths with a buyer or seller who does, did or will have the property titled in a trust of one type or another. As a practitioner of real estate law, you will, of course, be responsible for handling the transaction competently. This seminar section is designed to be a primer on the nature of trusts, the statutes impacting trusts and the proper way to convey and insure real estate to or from a trust. If your client is transferring real estate into or out of a trust, or if there is such a transfer in the chain of title, special consideration should be given to the manner in which it was or will be transferred, and that the transfer was not only proper under the provisions and powers of the trust, but also that the title conveyance was accomplished in a technically correct manner.

The focus of this manuscript will be on the North Carolina Uniform Trust Code (“NCUTC” or “UTC”) which became effective on January 1, 2006, though it may not cover all fact patterns, especially in older trusts (in some circumstances) and where the trust provisions exclude the NCUTC statutory provisions. In the latter scenario, however, if the NCUTC is otherwise applicable, there will be certain provisions that are mandatory.

II. DEFINITIONS: NCGS 36C-1-103

The following definitions apply in this Chapter:

- (1) Action. – When applicable to an act of a trustee, includes a failure to act.
- (2) Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- (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, 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.
- (4) Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in **G.S. 36C-4-405(a)**.
- (5) Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (6) General guardian. – As defined in **G.S. 35A-1202(7)**.

- (7) Guardian of the estate. – As defined in **G.S. 35A-1202(9)**.
- (8) Guardian of the person. – As defined in **G.S. 35A-1202(10)**.
- (9) Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.
- (10) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.
- (11) Jurisdiction. – When applicable to a geographic area, includes a state or country.
- (12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.
- (13) Power of withdrawal. – A presently exercisable general power of appointment other than a power:
- a. Exercisable by a trustee and limited by an ascertainable standard; or
 - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
- (13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of co-trustees, the principal place of administration is one of the following:
- a. The usual place of business of the corporate trustee if there is a corporate co-trustee.
 - b. The usual place of business or residence of any of the co-trustees if there is no corporate co-trustee.
- (14) Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
- (15) Qualified beneficiary. – A living beneficiary to whom, on the date the beneficiary's qualification is determined, any of the following apply:
- a. Is a distributee or permissible distributee of trust income or principal.
 - b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to terminate.
 - c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
- (16) Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
- (17) Settlor. – Except as otherwise provided in **G.S. 36C-8B-25**, a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
- (18) Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(19) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(20) Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.

(21) Trust instrument. – An instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.

(22) Trustee. – Includes an original, additional, and successor trustee, and a co-trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts.

III. TRUST BASICS

Definition: Black's Law Dictionary Sixth Edition defines a trust as "A legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid instrument. The trustee holds a fiduciary responsibility to manage the trust's corpus asset and income for the economic benefit of all of the beneficiaries. A confidence reposed in one person, who is termed trustee, for the benefit of another, who is called cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust.

This definition remains unchanged for real estate conveyances in North Carolina, even though it is not uncommon for real estate to be conveyed by or to the trust itself, rather than the trustee(s). **NCGS 39-6.7** holds that conveyances to or by the trust itself is deemed to be a transfer to or by the trustee(s). While it is still best practices to title real estate, for example, as "John Doe, Trustee of the Doe Family Trust dated January 1, 2019", it is not fatal if transferred to or from "The Doe Family Trust". It will, however, require more due diligence to ascertain the bona fides of the transfer.

PRACTICE TIP: It is best practices to always input the date of creation of the trust to avoid confusion regarding multiple trusts created by the same Settlor/family, including the decanting, combination or splitting of trusts.

Types of Trusts

There are many types of trusts and they are created for many different reasons. Trusts are used for many purposes from estate planning to asset protection; from special needs family members to family members in a bad marriage. Tax planning trusts are not as common as they once were, given the large federal estate tax exemption and North Carolina's repeal of estate tax; however, you will encounter tax planning provisions in older trusts or those of very wealthy clients. Some of the most common trusts you will see are:

Revocable Trust. The Settlor creates a trust instrument transfer some or all of his/her/their property – personal and real – to the Trustee(s) for the benefit of the Beneficiaries. Generally, the Settlor(s) are the sole beneficiaries until their demise, at which time the trust become irrevocable and the trust assets will transfer to contingent beneficiaries, frequently spouse and/or children or grandchildren. The Settlor's creditors may attach property while the Settlor is alive and his/her estate may bring as much of the trust assets into the estate as necessary to settle the estate debts and taxes if the estate assets will not be sufficient. **NCGS 36C-5-505.** The Beneficiaries creditors may also have limited claims to distributable trust assets as set forth in **NCGS 36C-5-501 thru 504.**

Irrevocable Trust. The Settlor creates an instrument of trust that removes from the Settlor the ability to use the assets as his/her own. Generally speaking, the Settlor will be entitled to all or some of the income from the

assets, but the assets themselves are beyond the reach of the Settlor and, therefore, they are beyond the reach of most creditors. NCGS 36C-5-505(2),(2A)and(3).

There are sub-sets of irrevocable trusts with similar characteristics, including Life Insurance Trusts, Charitable Remainder Trusts, Charitable Annuity Trusts and Charitable Lead Trusts. While an in depth discussion of these is beyond the scope of this manuscript, you may encounter them in your practice and should be familiar with their general characteristics.

BUSINESS TRUSTS ARE NOT A PART OF THIS DISCUSSION. THEY ARE GOVERNED BY NCGS 39-44 THROUGH 39-47. A "Business Trust" is defined as "any unincorporated association engaged in business or trade under a written instrument or declaration of trust under which the beneficial interest is divided into shares represented by certificates or shares of beneficial interest" NCGS 39-44. Business Trusts may own real property and be conveyed by trustee, president, vice-president or any other authorized officer as long as the requirements under the referenced code sections are met.

IV. THE NORTH CAROLINA UNIFORM TRUST CODE

The North Carolina Uniform Trust Code became effective on January 1, 2006. Most trusts created prior to and since its effective date are affected by its terms, at least as to its default provisions for matters not clearly delineated under the terms of the trust.

There are a number of mandatory provisions for trusts created after the effective date; however, the UTC consists mainly of default provisions that can be incorporated into a trust document, relied upon for matters not addressed in the trust document, or drafted around through the trust document.

NCGS 36C-1-105: Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this Chapter governs the duties and powers of a trustee and a power holder under Article 8A of this Chapter, relations among trustees and those power holders, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust.

(2) The duty of a trustee or a power holder under Article 8A of this Chapter to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except as otherwise provided in subsection (c) of this section.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(4) The power of the court to modify or terminate a trust under **G.S. 36C-4-410 through G.S. 36C-4-416.**

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter.

- (6) The effect of an exculpatory term under **G.S. 36C-10-1008**, except as otherwise provided in subsection (c) of this section.
- (7) The rights under G.S. 36C-10-1010 through **G.S. 36C-10-1013** of a person other than a trustee or beneficiary.
- (8) Periods of limitation for commencing a judicial proceeding.
- (9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.
- (10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in **G.S. 36C-2-203** and **G.S. 36C-2-204**.
- (11) The requirement that the exercise of the powers described in **G.S. 36C-6-602.1(a)** shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.
- (12) The power of a trustee to renounce an interest in or power over property under **G.S. 36C-8-816(32)**.
- (c) The provisions of subdivisions (2) and (6) of subsection (b) of this section shall not apply to a power holder described in Article 8A of this Chapter with respect to powers conferred upon the power holder in a nonfiduciary capacity under **G.S. 36C-8A-3(a)** or under the terms of the trust.

Scope

The UTC is applicable to “any express trust, private or charitable...wherever and however created” (**NCGS 36C-1-102**). It is applicable to both testamentary trusts, inter vivos trusts and to trusts created pursuant to an order of the court. The Act does not apply to constructive trusts, resulting trusts and other less common types of trust arrangements listed within **NCGS 36C-1-102**, however, it does codify prior case law permitting the creation of oral trusts (see **NCGS 36C-4-407**). Any oral trust must be shown by “clear and convincing evidence”. For the purpose of this manuscript, assume that any reference to a trust is to a trust created by an express trust document executed by the trustor with the intent to create an express trust and in the form most commonly encountered by real property practitioners.

Effect on Real Property Transactions

Vesting Title in a Trust/Trustee

It has long been the rule that conveyances of trust assets should be made to or by the person acting as trustee. However, it is fairly common to see instruments of conveyance showing the trust as the grantee or grantor rather than the individual trustee. The NCUTC does not address this issue, but rather leaves the issue to **NCGS 39 – Conveyances**.

Under **NCGS 39-6.7**, conveyances by deed, will or other instruments of trust assets are deemed to be made to the trustee of the trust if, in fact, the conveyances were made to the trust itself. Likewise, any security instrument given to a lender or other creditor by a trust rather than the trustee shall not fail for that reason.

Best practices, however, would be for the trustee to take title, convey title or convey a security interest. This helps to alleviate ambiguities that may delay or otherwise hinder the transfer of title in the future. The preferred vesting would be similar to: “John Doe, as Trustee of the John Doe Trust, dated January 1, 2019”. There are numerous instances where a settlor has more than one trust – either intentionally or through a misunderstanding – that have very different purposes and terms.

Powers of Sale and Mortgage of Real Property

The UTC grants trustees broad powers with regard to real property. The general grant of authority in the Act is that the trustee may, without a court order and except as limited by the trust, exercise “all powers over the trust property that an unmarried competent owner has over individually owned property” (**NCGS 36C-8-815**). This authority is clarified and not limited by the provisions of **NCGS 36C-8-816** which provides an extensive list of “specific” powers. Among these specific powers are the following:

- To acquire, or sell property for cash or credit, at public or private sale;
- To exchange, partition or otherwise change the nature of trust property;
- To borrow money, with or without security...and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- To make repairs, alterations or improvements to real property;
- To subdivide and develop land;
- To dedicate land to public use;
- To grant public or private easements;
- To make contracts, licenses, leases, conveyances or grants of every nature and kind with respect to crops, gravel, sand, oil, gas, timber or other natural resources; and
- To grant or make an option involving the sale, acquisition, lease or other disposition of trust property.

Because all general and specific powers of the trustee are subject to restriction in the trust document, one cannot rely on the authorities provided for in the statute alone. However the Act does provide for reliance on the acts of the trustee claiming authority to act in a particular manner as discussed herein below.

Co-trustees

The Act also clarifies and defines the role that co-trustees play in administering trust property. Though generally consistent with the former statute (**NCGS 36A-73(d)**), the UTC better describes when a co-trustee may act. Essentially, the new rules (set forth in **NCGS 36C-7-7-3**) are as follows:

1. Unanimity is required for two trustees to act;
2. A majority decision is required where there are more than two trustees;
3. If a vacancy occurs, the remaining trustees may exercise all trustee powers unless limited by the terms of the trust; and
4. If a co-trustee is unavailable to act due to absence, illness, disqualification under law or “other *temporary* incapacity” AND prompt action is necessary, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

Beneficiary Ratification

The UTC changes North Carolina law by providing that a beneficiary may relieve the trustee of liability for a breach of the trust terms (see **NCGS 36C-10-1009**). The ability of the beneficiary to acknowledge the acts of the trustee is broader under the new provision in the UTC. The provision in the former **NCGS 36A-79** limited the ability of the beneficiary to sanction certain acts (regarding the loan of trust funds, the investment of trust funds and self-dealing). The former statute also required a written instrument in order to relieve the trustee of liability. Proper ratification under the UTC requires an affirmative act on the part of the beneficiary and the mere failure to object is not sufficient. In a real property transaction that would otherwise violate the terms of the trust, the joinder of the beneficiary in the deed or deed of trust would be advisable.

Reliance on Trustee

Another significant change within the UTC is that third party purchasers, other than beneficiaries of the trust, who, in good faith, deal with the trustee are not required to inquire into the extent of the trustee's powers (**see NCGS 36C-1-1012**). The comments to this section of the Act indicate that it is the intent of the drafters that this provision negate the rule followed by some courts charging third parties with constructive knowledge of the trust document and its contents. The former rule in North Carolina was that a person dealing with a trustee was charged with constructive notice of facts which a reasonable investigation would disclose, including a trust instrument (**See Kaplan v. First Union National Bank, 99 N.C. App. 570, 393 S.E.2d 344 (1990)**). Under the UTC then, third parties dealing in good faith are not presumed to have knowledge of the contents of the trust document and the third party may assume that the trustee has the requisite authority.

Nevertheless, the UTC contemplates that such reliance may not be palatable to some and provides an additional measure for verifying the authority of the trustee. **NCGS 36C-10-1013** provides authority for a Certification of Trust as "another layer of protection" (**see Comment to NCGS 36C-10-1013**), such that it will be unnecessary for a third party to gain access to the actual trust document. Included as **GS 36C-10-1013(f)** is the statement that knowledge may not be inferred solely from the fact that the person relying on the certification holds a copy of all or part of the trust instrument. This creates a heavy burden to impute knowledge to a third party relying on a Certification of Trust, even if the third party has a copy of the trust document. However, the UTC indicates that a person has "knowledge" when the person has actual knowledge, has received notice of a fact or has reason to know a fact based on circumstances and facts known to the person (**see NCGS 36C-1-104**).

Indeed, the Act seems to provide a disincentive to requesting a copy of the trust document. Reliance on the certification of the trustee does seem to provide the necessary shield to the buyer who is without knowledge. The attorney would be well-advised however to review any copies of the trust document(s) that may be provided and to continue to consider the authority of the trustee when the opportunity to do so arises.

The Trust Certification

NCGS 36C-10-1013 outlines the contents of and information about reliance upon a certification of trust:

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

- (1) The existence of the trust and the date the trust instrument was executed;
- (2) The identity of the settlor, unless withheld under a provision in the trust instrument;
- (3) The identity and address of the currently acting trustee;
- (4) The powers of the trustee;
- (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- (6) The authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
- (7) The trust's taxpayer identification number; and
- (8) The manner of taking title to trust property.

- (b) Any trustee may sign or otherwise authenticate a certification of trust.
- (c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- (d) A certification of trust need not contain the dispositive terms of a trust.
- (e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.
- (f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that the person relying upon the certification holds a copy of all or part of the trust instrument.
- (g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.
- (h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.
- (i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
- (j) In transactions involving real property, a person who acts in reliance upon a certification of trust may require that the certification of trust be executed and acknowledged in a manner that will permit its registration in the office of the register of deeds in the county where the real property is located. The certification of trust need not contain the trust's taxpayer identification number if that taxpayer identification number is also the social security number of a grantor. However, the trust's taxpayer identification number shall be certified by the trustee to the person acting in reliance upon the certification of trust in a manner reasonably satisfactory to that person.

V. SPECIAL CONSIDERATIONS

There are numerous matters that can have an effect upon the vesting of title and/or conveyance. These particular matters might be discovered in the land records, upon review of the trust document or upon discussion a party to the transaction. This material is intended to call your attention to issues that have occurred with some frequency and it not intended as an in depth treatment of these considerations and the attorney is advised to consult the code and case law to form an opinion on any specific case, as there may be exception and special provisions based upon any particular fact pattern.

Rights of Creditors

Article 5 of the NCUTC provides for the rights of creditors as against trust assets. Creditors of the settlor can attach judgments, lien and claims to assets of the trust because the settlor retains full powers over the trust assets while the trust is revocable (prior to death). **NCGS 36C-5-505(a)(1)**. Upon the death of the settlor of a revocable trust, the trust assets are subject to the claims of the 1. The settlor's creditors; 2. Costs of administration of his probate estate; 3.

Funeral expenses; and, 4. Statutory allowances for surviving spouse and children. However, the assets are available only to the extent that the probate estate has insufficient assets with which to satisfy these liabilities. **NCGS 36C-5-505(a)(3)**.

The assets of an irrevocable trust are subject to the claims of creditors are available only to the maximum amount that can be distributed to or for the settlor's benefit by the trustee, exclusive of any payments for taxes on trust income and/or principal made by the trustee or reimbursed to the settlor. **NCGS 36C-5-505(a)(2) and (2a)**.

Rights of a beneficiary's creditors are available to satisfy judgments and liens only to the extent of the maximum amount available to the beneficiary by way of distribution. **NCGS 36C-5-501**. This provision is modified in the direction of more protection in the event of appropriate spendthrift, discretionary or protective language is included in the trust agreement. (**NCGS 36C-5-501 thru 504**).

In 2015, **NCGS 39-13.7** became effective to allow a husband and wife who hold property as tenants by the entireties to retain the creditor protections of said tenancy, though not the tenancy itself, if they transfer the property into a joint trust or in equal shares into separate trusts. The immunity from claims of creditors against one spouse remains in effect as long as: 1. They remain married; 2. The real property is not transferred out of the trust(s); and, 3. The husband and wife are current beneficiaries, though they need not be the only beneficiaries.

Decanting of Trust

NCGS 36C-8A North Carolina Uniform Trust Decanting Act

North Carolina is one of 28 states that provide for the decanting of one trust into another. The act of decanting a trust involves pouring the assets of one trust into one or more trusts to gain certain advantages to the beneficiaries while maintaining the duty to administer and the duty of loyalty that the trustee owes under the original trust document. In order to decant a trust (first trust) into another trust or trusts (second trust(s)), the trustee must have the power to distribute the principal assets of the trust, not just the income.

When a trust is decanted into a new (second) trust, a corresponding deed must be executed and recorded transferring the property from the first trust to the second trust. The names of the trusts are likely to be very similar to each other; therefore, caution should be exercised.

Appointment of Agent (i.e. attorney-in-fact, among others)

A question frequently arises as to whether a trustee can appoint an agent, through a properly prepared, executed and recorded power of attorney, to convey or purchase real estate, execute deeds of trust and otherwise handle transactions involving real property owned by the trust. While the NCUTC allows for it in both **NCGS 36C-8-807** and under the specific trustee powers under **36C-8-816**, these are default provisions that can be drafted around in the trust document. As such, the trust agreement must be reviewed by the attorney to ascertain that the use of a power of attorney is permitted.

§ 36C-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

There are other provisions of the NCUTC that allow a settlor of a trust to exercise his or her power through the use of an Agent. Specifically, NCGS 36C-4-411(a) allows the settlor to delegate the exercise his power of consent (in conjunction with all beneficiaries) to terminate a noncharitable irrevocable trust. Likewise, NCGS 36C-6-602.1 allows a settlor to delegate to her agent the power to terminate a revocable trust. Under these and any other allowable delegations of powers under the NCUTC, they are expressly conditioned upon the proviso that any such exercise be “only to the extent expressly authorized by the power of attorney or the terms of the trust.

VI. TITLE INSURANCE REQUIREMENTS, EXCEPTIONS, COVERAGE

Requirements:

1. Trustee’s Deed from the authorized trustee(s) of the xxx trust, dated dd/mm/yyyy to Buyer.

2. Verification of (1) existence of the trust as of the date of recording of an instrument creating an interest to be insured, (2) the identity of the currently acting (co)trustee(s), and (3) the authority of the (co)trustee(s) to enter into the transaction to be insured pursuant to duly recorded current certification of trust (NCGS 36C-10-1013) or review of applicable trust documents.

Exceptions:

1. None. Exceptions are usually not applicable in a trust situation or in identifying trust problems. Such problems would most likely prevent a trust from holding or conveying title and the transaction would be uninsurable.

Coverage in Policies:

1. **The ALTA Owner’s Policy:** under “Conditions”, Section 1(d)(i)(D) defines “insured” to include “a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title...(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes”.

2. **The ALTA Enhanced Owner’s Policy:** The policy may only be issued to a “Natural Person” which is defined under Conditions in Section 1(e) as “a human being, not a commercial or legal organization or entity. Natural Person includes a trustee of a Trust even if the trustee is not a human being”.

3. **Under either owner’s policy,** the Insured itself may be a trust.

Forms: There are no statutorily prescribed forms for trust agreements or Certificates of Trust. The Certificate of Trust requirements are set for hereinabove.