

## **Statement of Principles Between the North Carolina Bankers Association and the North Carolina Bar Association**

The North Carolina Bankers Association and the North Carolina Bar Association agree that this document, as to the matters specifically covered herein, shall constitute an interpretation of the activities in which North Carolina Banking Corporations may engage in the discharge of their duties within the structures of N.C.G.S. § 84-5.

N.C.G.S. § 84-5 sets forth the limitations on a banking corporation authorized to act in a fiduciary capacity in view of the role of the attorney for the fiduciary. The comments in this Agreement are intended to further amplify this division of duties as to (1) what responsibilities must remain with the attorney; (2) which duties may be delegated, subject to the attorney's continuing supervision and approval; and (3) what duties remain the responsibility of the banking corporation as fiduciary.

To implement and monitor the operation of this Statement, there shall be created and established a Standing Joint Committee consisting of eight members. Four members shall be appointed by the North Carolina Bankers Association and four by the North Carolina Bar Association. Two members shall serve for one year, three for two years, and three for three years, such terms to be chosen at random. As the terms of the respective members expire, their successors shall be named for a term of three years.

The functions of the said Committee shall be confined to the consideration of problems arising under this Statement of Principles and to the consideration of proposed amendments hereto. The Committee shall recommend to their respective Associations any amendments, additions or alterations which it deems advisable to this Statement of Principles.

[The explanatory text follows the appropriate statute section(s) and is set forth in square brackets.]

### **NORTH CAROLINA GENERAL STATUTES CHAPTER 84-5**

Prohibition as to practice of law by corporation. It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations

authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

[The following matters, when performed by the corporation, shall not be construed to be the practice of law under this section: discussing the business and financial aspects of fiduciary relationships with customers and prospective customers and with persons who are considering the renunciation of the right to qualify as personal representative, or who propose to resign as guardian or trustee; performing acts jointly for themselves and for a co-fiduciary relating to their joint duties, provided such duties, under this Statement, are otherwise proper for trust companies acting alone; and acting as an agent for a foreign banking corporation and performing such services as would be permitted under this Statement if the trust company were acting as the fiduciary.]

In addition, the banking corporation may perform the following duties in connection with the administration of an estate or testamentary trust: filing a certified copy of a will in a North Carolina county other than the county of the decedent's domicile; demanding and receiving payment of life insurance policies payable to the estate of the fiduciary's decedent or to the banking corporation as trustee or as guardian; demanding and collecting claims; paying uncontested claims; giving and taking receipts of all types; searching the Public Tax Records to determine the real estate and personal property which the decedent had listed for tax purposes (but, when necessary, a search of the records in the Register of Deed's Office and in the office of the Clerk of the Superior Court shall be made by the attorney for the estate, trust or guardianship); securing death tax waivers in order to transfer property from the decedent's estate; demanding the foreclosure of deeds of trust which are in default; giving notice of the termination of a lease because of default by the lessee; performing ministerial and clerical acts in the preparation and filing of any tax return required of it as a fiduciary; and holding an initial informal conference with a revenue agent in estate and inheritance tax matters. (The attorney for the estate, trust, or guardianship and/or an independent tax attorney shall be notified of the initial inquiry by the banking corporation, if there is advance notice, so that he may attend it or subsequent conferences with the revenue agent.)]

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
  - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.

[Note: The focus here is on "customized" trust agreements or agreements containing testamentary provisions where the property is payable other than to the Estate of the Grantor. Standardized agreements are commonplace in many business settings (such as leases, stock brokerage agreements, and real estate contracts) and

should not be considered to be the "practice of law" under this provision. A trust company may utilize standardized agency, custody, and revocable trust agreements (1) which are not customized, (2) the primary purpose of which is the investment and management of assets and the disposition of income during lifetime, and (3) which do not contain testamentary provision other than provisions requiring payment to the Estate of the Grantor.]

- b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
- c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation, by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

- a. Offering wills for probate.
- b. Preparing and publishing notice of administration to creditors.

[These provisions (a & b) shall not be construed to prevent the attorney from obtaining the assistance of the banking corporation in the performance of these duties after the attorney's review and approval of the proposed documents (for example, in filing the application for letters of administration)].

- c. Handling formal court proceedings.

["Formal court proceedings" are any proceedings in District or Superior Court, any North Carolina Appellate Court, any Federal Court, and Special Proceedings and any matter in dispute before the Clerk of Superior Court. This language shall not be construed to apply to other administrative filings before the Clerk of Superior Court except as may be clearly prohibited by other provisions herein, nor does it imply that the filing of inventories or accountings with the Clerk of Court constitutes "formal court proceedings".]

- d. Drafting legal papers or giving legal advice to spouses and other beneficiaries regarding their additional and alternative rights to a decedent's estate including without limitation spousal elective shares, spousal elective life estates, statutory allowances and dissents.

- e. Resolving questions of domicile and residence of a decedent.
- f. Handling proceedings involving year's allowances of widows and children.
- g. Drafting deeds, notes, deeds of trust, leases, options, and other contracts.

[The intent here is to prohibit customized drafting by the banking corporation; however, the corporation may utilize standard forms and agreements which do not require the insertion of other than minimal terms.]

- h. Drafting instruments releasing deeds of trust.

[This shall not prohibit the bank's marking a deed of trust as "paid in full" and releasing such instrument to the maker and/or having the same canceled of record.]

- i. Drafting assignments of rent.

- j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

[This provision shall not be construed to apply to routine ministerial documents such as Petitions for fees, Orders allowing fees, and Releases by beneficiaries.]

- k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical errors in tax returns filed by it as a fiduciary.

[Provisions 1 and 2 shall apply to tax matters arising out of the Estate administration itself, such as estate and inheritance tax matters or Estate income tax matters. This provision does not apply to income tax matters arising from testamentary or other trusts, since these are continuing, ongoing tax returns, not directly related to the Estate administration process.]

3. Handling petitions to the tax court.

1. performing legal services in insolvency proceedings or before a referee in Bankruptcy or in Court.

[This provision shall not prohibit the corporation from acting for the protection of its interest as fiduciary in insolvency proceedings short of formal hearings before a referee in Bankruptcy or in Court.]

- m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters of administration.

[This provision shall not be construed to prevent the attorney from obtaining the assistance of the banking corporation in the performance of these duties after the attorney's review and approval of the proposed documents (for example, in filing the application for letters of administration).]

2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

- (3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
- b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
- c. In matters involving estate and inheritance taxes and federal and state income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.

[This provision applies to tax matters arising out of the estate administration itself, such as estate and inheritance tax matters or Estate income tax matters. It does not apply to income tax matters arising from testamentary or other trusts, since these are continuing, ongoing tax returns, not directly related to the estate administration process.]

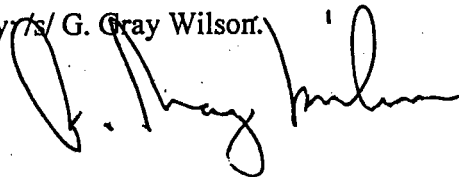
- d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

[This provision does not mandate the retention of an attorney in a trust administration solely for the purpose of reviewing trust inventories and accountings, or income and intangibles tax returns of the trust.] (1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2; 1969, c. 718, s. 20; 1971, c. 747.)

IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands and seals, each by its President, duly authorized to execute this document by the respective organizations and the governing body thereof. This 1 day of June, 2005.

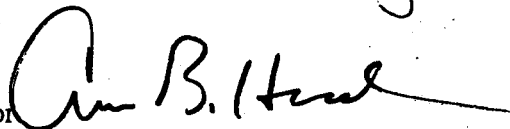
NORTH CAROLINA BAR  
ASSOCIATION

By: /s/ G. Gray Wilson  
G. Gray Wilson  
President



Attest:

/s/ Allan B. Head  
Allan B. Head  
Executive Director



NORTH CAROLINA BANKERS  
ASSOCIATION

By: /s/ Thad Woodard  
Thad Woodard  
President



Attest:

/s/ Paul H. Stock  
Paul H. Stock  
Executive Director

