

**Summary of Proposed Amendments to G.S. 36C-1-103(3) and
G.S. 36C-3-302**

G.S. 36C-1-103(3) is amended to clarify that a beneficiary as defined in that subsection does not include a permissible appointee under a power of appointment. Such an appointee has a mere expectancy with no vested rights.

G.S. 36C-3-302 is amended to delete the reference to permissible appointees because under the proposed amendment to G.S. 36C-1-103(3) they are not beneficiaries and, as such, have no need for representation under 36C-3-302.

G.S. 36C-3-302 reads as rewritten:

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees, takers in default, or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~

G.S. 36C-1-103(3) reads as rewritten:

- (3) Beneficiary. -- A person who:
 - (a) Has a present or future beneficial interest in trust, vested or contingent, including the owner of an interest by assignment or transfer, but excluding a permissible appointee of a general or nongeneral power of appointment; or
 - (b) In a capacity other than that of trustee, holds a power of appointment over trust property.

G.S. 36C-8-816 is amended as follows:

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- (19) Pledge trust property to guarantee loans made to any beneficiary; Deleted: by others
- (19a) Guarantee loans made to any beneficiary; Deleted: by others
- (19b) Pledge trust property to guarantee loans made to any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest. Deleted: by others
- (19c) Guarantee loans made to a any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest. Deleted: by others

....

Explanation: Makes clear that the loan or pledge by the trustee may be made in connection with a loan of the trustee's own funds. Note that this is a power, and that the exercise of the power is subject to a trustee's fiduciary duty, as G.S. 36C-8-815(b) makes clear. A trustee would use that power in connection with a loan it made subject to the strict conflict of interest rules set forth in G.S. 36C-8-802(f).