

Trust Basics and Trust Proceedings

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Clerk is the Judge of Probate, G.S. 7A-241

Fiduciary relationships under the clerk's jurisdiction

Parties	Type	G.S. Chapter
Guardian – Ward	Guardianship (Minors and Adults)	G.S. Chapter 35A
Principal – Agent	Powers of Attorney	G.S. Chapter 32C
Personal Representative – Heirs/Beneficiaries	Decedents' Estates	G.S. Chapter 28A
Trustee – Beneficiaries	Trusts	G.S. Chapter 36C



- Reduce tax liability
- Plan for incapacity
- Provide for family as beneficiaries
- Avoid probate (i) costs, (ii) public filings, and (iii) delay
- Privacy



On August 27, 2020....

Luke signs a revocable living trust



and a pour over will



CONSUMER CONCERNS

Information for Advocates
Representing Older Adults

National Consumer Law Center®

Avoiding Living Trust Scams: A Quick Guide for Advocates

Dishonest living trust salespeople prey on seniors' fears that after their deaths, their life savings and assets will be stolen by the government. These salespeople use high-pressure tactics and deceive seniors into buying a product that many of them don't need.

Seniors may be bombarded with advertisements, push-door salespeople insisting that living trusts are the key to estate planning. This may be true for some. For others, but with limited resources.

Worst of all is over-reliance on trusts by seniors who have cognitive issues, lack clear goals and have not sought a lawyer for advice and guidance. Those seniors are vulnerable to trust mill operators who use estate planning as a prelude to selling insurance and other financial products to seniors.

Living Trust Mills



The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity and respect

About 10,000 baby boomers retire every day. With the aging population, many people are thinking of estate planning. The best course if you want a will or estate plan is to hire an experienced local attorney. You should steer clear of "living trust mills," which hold themselves out as estate planning specialists but churn out boilerplate documents for a high fee, all to get their foot in the door to sell you annuities or insurance products later on that might not be suitable for your needs.

How Living Trust Mills Work

They will try to get you to buy an annuity or other insurance product. He may have several meetings with you before he reveals his true intentions: to sell you insurance.

No "One Size Fits All" Approach

A living trust is an estate planning device created while you are alive. A person may transfer property into a trust before they die and, in some cases, if the trust is set up properly, that property may transfer to another person without going through probate.

A living trust is a complex legal document. Estate planning

Reporting

1. Make an APS report to the NC county department of social services
2. Contact the NC Department of Justice Consumer Protection Division
 - www.ncdoj.gov
 - 877-5-NO-SCAM

→ More resources available
on www.protectadults.sog.unc.edu



ELDER PROTECTION RESOURCES A library of tools to help you



FIND YOUR PEERS. A digital map and directory of



FORUMS A space for discussion among professionals involved



WHAT IS A MULTIDISCIPLINARY TEAM (MDT)? An

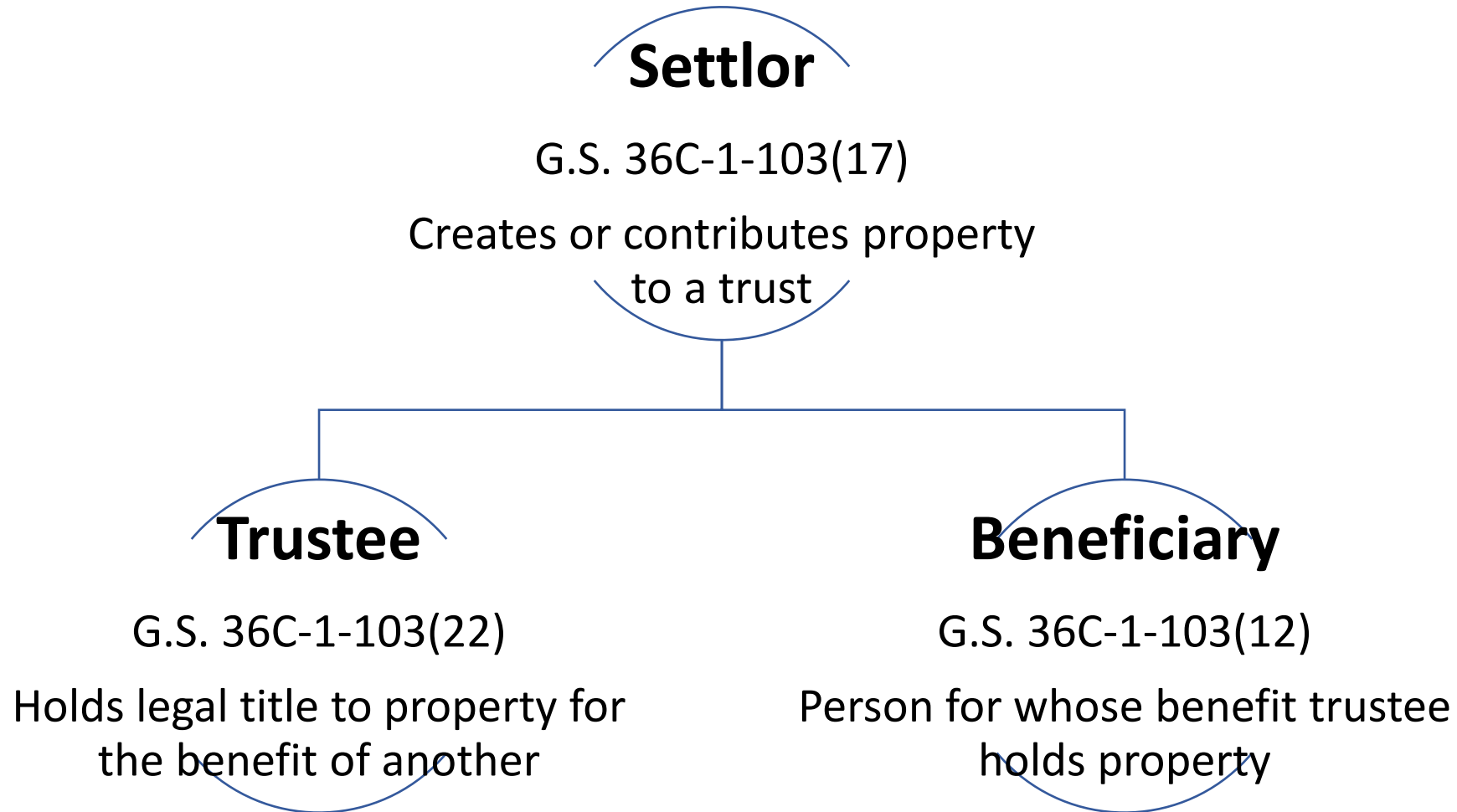
Revocable Living Trust

What is a trust?

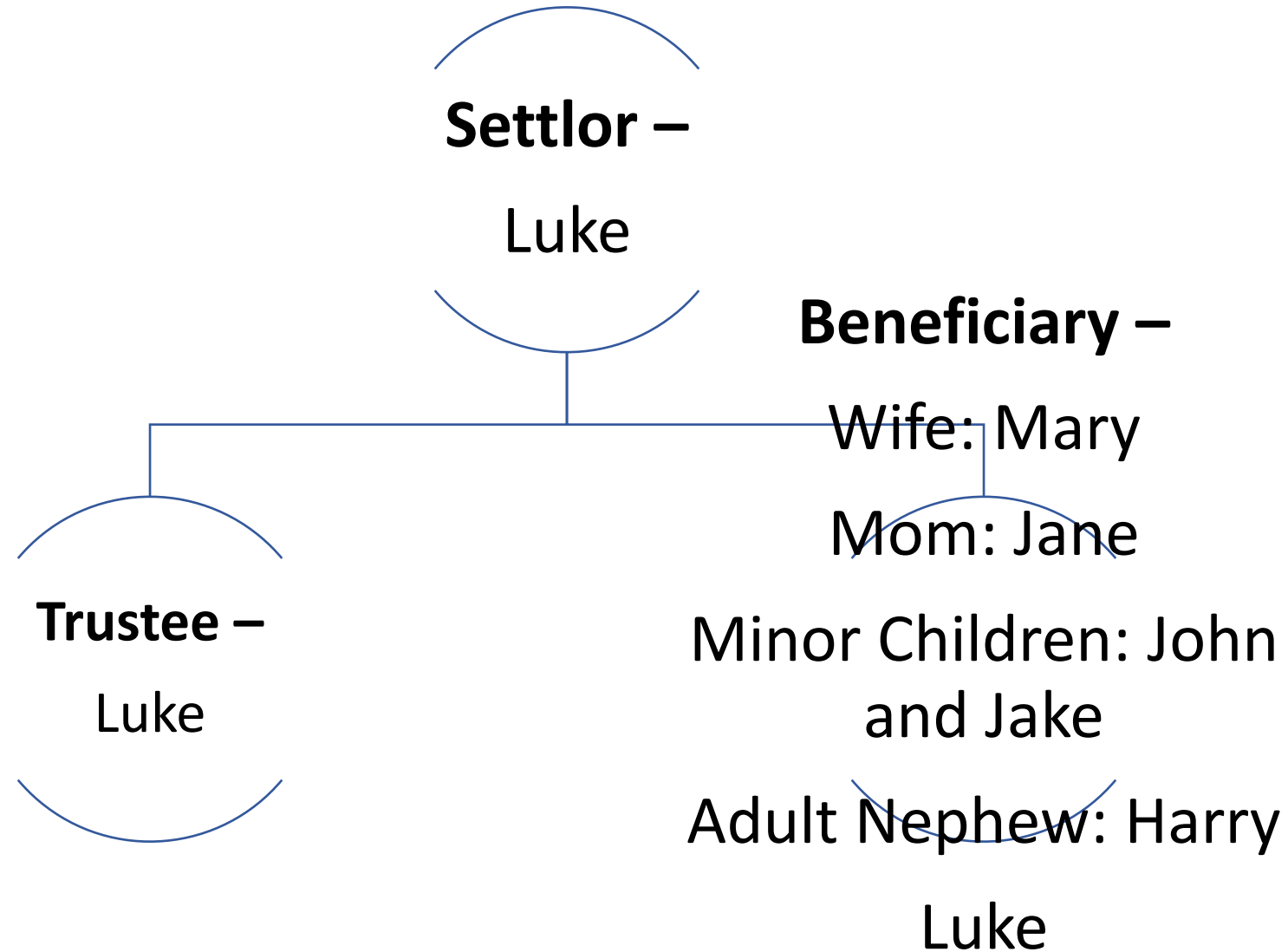
- **Fiduciary relationship** in which one person holds a property interest
- For the benefit of another
- Who is the equitable owner of the property

Bogert, Terminology and classification,
The Law of Trusts and Trustees § 1

Parties to a Trust



Parties to a Trust



Split of Legal and Equitable Title



Legal Title → Trustee

Equitable Title → Beneficiary

Luke's Trust

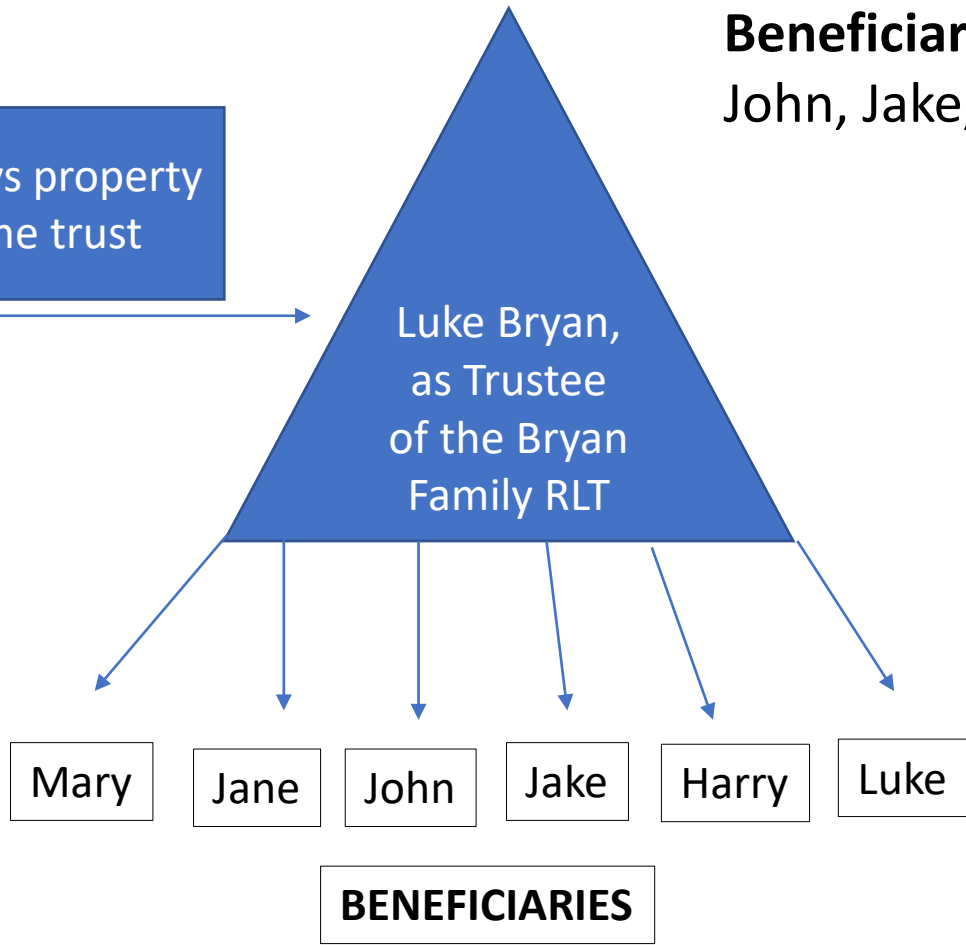
Legal Title → Trustee: Luke Bryan, Trustee of the Bryan Family Revocable Living Trust

Equitable Title → Beneficiaries: Mary, Jane, John, Jake, Harry, and Luke



SETTLOR

Conveys property to the trust



Revocable Living Trust

Revocable vs. Irrevocable

Revocable trust.

A trust in which the **settlor** reserves the right to revoke or amend the trust and recover the trust property without consent of the trustee or a person holding an adverse interest.

G.S. 36C-1-103(16); G.S. 36C-6-602(a).

Question

Who has the authority to modify or terminate the Bryan Family Trust?

In what capacity?

Effect of Incapacity

Of Settlor

- Fact that settlor becomes incapacitated does not convert the revocable trust into an irrevocable trust.
- Trust remains revocable until (i) settlor's death, or (ii) power of revocation is released.

G.S. 36C-6-602(a); G.S. 36C-1-103, Official Comment

Revocable vs. Irrevocable

Irrevocable trust.

A trust that cannot be terminated or materially altered without the involvement of others who are not the settlor.

Irrevocable Trust

For example, in the case of a noncharitable **irrevocable** trust:

- G.S. 36C-4-411(a) – unanimous consent - modification or termination by consent of settlor and all beneficiaries [no court involvement]
- G.S. 36C-4-411(b) and (c)– modification or termination *with* consent of all beneficiaries and **court** approval
- G.S. 36C-4-411(d) – modification or termination with consent of less than all beneficiaries and **court** approval

“Court” is superior court judge, not the clerk. G.S. 36C-2-203(f)(1).

Revocable vs. Irrevocable

Trust created under a trust instrument executed

- **On or after January 1, 2006**, the trust is **revocable** unless the terms of the trust expressly provide that it is irrevocable.
- Before January 1, 2006, the trust is presumed **irrevocable** unless the terms of the trust expressly provide that it is revocable.

G.S. 36C-6-602(a) and NC Comment.

Question

The trust document that Luke signed did not specify whether it is revocable or irrevocable.

Which is it?

Revocable **Living** Trust

Living vs. Testamentary

Method of Creation of the Trust

- **Living Trust:** a trust that is created and takes effect during the settlor's lifetime ("*inter vivos* trust")
- **Testamentary Trust:** a trust that is created by a will and takes effect when the settlor (testator) dies ("trust under a will")

Classification of Trusts

Revocable + Living

Irrevocable + Living

Irrevocable + Testamentary

Revocable testamentary?

Pour Over **Will**

Pour Over Will

A will that **directs** a testator's property to be distributed to an **existing** trust at the testator's death.



The Car Crash....

Luke is in a car crash and is incapacitated.

Mary files for guardianship; court appoints her as Luke's general guardian.

Mary initiates a personal injury action on Luke's behalf.

Settlement from the personal injury action paid to the general guardian.

Petition filed before the clerk to pay the funds to the RLT....

GS 35A-1251: Powers of the GOE and GG

GG or GG has the power to

(24) To **petition the court for approval** of the exercise of any of the following powers with respect to a revocable trust that the **ward**, if competent, could exercise as **settlor** of the revocable trust:

- a. Revocation of the trust.
- b. Amendment of the trust.
- c. **Additions to the trust.**
- d. Direction to dispose of property of the trust.
- e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

What do you consider?

Guardianship Questions:

- What is reasonable and prudent?
- What is in the ward's best interests?
 - Trust Questions:
 - Inventory?
 - Accountings?
 - Bond?
 - Who is the trustee?
 - What are other terms of trust? Who has power to amend/revoke?
Distributions?

What do you consider?

- **Inventory?**
- **Accountings?**
- **Bond?**
- What are other terms of trust? Who has power to amend/revoke?
Make distributions? Are distributions for the benefit of the ward or others?
- Who is the trustee?

Chapter 36C Trusts: Inventory, Account, & Bond

Default Rule: They are not required.

Exceptions to the Rule: Inventory & Account

Inventory + Accounts (interim, annual, final) are required if:

1. Terms of the trust require inventory and accounts.
2. **Will creating testamentary trust dated before January 1, 2004 and will is silent** – then trustee must **qualify and file** inventory and accounts. [same as required of executors of estates; CSC same power to enforce filings]

GS 36C-2-209(a).

Exceptions to the Rule: Trustee Bond

Trustee **must** post a bond if:

1. Terms of the trust require a bond ***unless*** trustee is a bank or trust company licensed to do trust business in NC
2. Clerk orders a bond in a trust proceeding filed under GS 36C-2-203(a)(6).
 - Beneficiary requests trustee to provide bond and court finds request reasonable
 - Court finds bond necessary to protect interests of beneficiaries
 - Clerk **may not order** bond if trust instrument directs otherwise
3. Trust instrument executed before **January 1, 2006** and the instrument is silent regarding bond.

G.S. 36C-7-702

Example

Luke's pour over will dated August 27, 2000.

Revocable living trust is dated August 27, 2010. It is silent regarding bond.

Accounting required?

Bond required?

Example

Luke's pour over will dated August 27, 2000.

Revocable living trust is dated August 27, 2010.

ANSWER –

Accounting required?

- Not a testamentary trust
- Terms of trust control
- If silent, default rule applies - no inventory and account.

Bond required?

- Date applies to all trusts – need date of the trust instrument
- Executed August 27, 2020, after January 1, 2006 – silent, default rule applies, no bond.

Example

Decedent dies December 27, 2020.

Trust under a will; will admitted to probate.

Will dated October 10, 1993. Will is silent regarding accounting and bond.

Accounting required?

Bond required?

Example

Decedent dies December 27, 2020.

Trust under a will; will admitted to probate.

Will dated October 10, 1993. Will is silent regarding accounting and bond.

ANSWER:

Accounting required?

- Required – will dated prior to January 1, 2004 + silent.

Bond required?

- Required – will dated prior to January 1, 2006 + silent.

The Car Crash....

Luke is in a car crash and is incapacitated.

Mary files for guardianship; court appoints her as Luke's general guardian.

Mary initiates a personal injury action on Luke's behalf.

Settlement from the personal injury action paid to the general guardian.

Petition filed before the clerk to pay the funds to the RLT....

Answer based on the trust instrument.



Certification of Trust

§ 36C-10-1013. 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 cotrustees 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.

Certification of Trust

G.S. 36C-10-1013(i)

(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.

What do you consider?

- Inventory?
- Accountings?
- Bond?
- **What are other terms of trust? Who has power to amend/revoke? Make distributions? Are distributions for the benefit of the ward or others?**
- Who is the trustee?

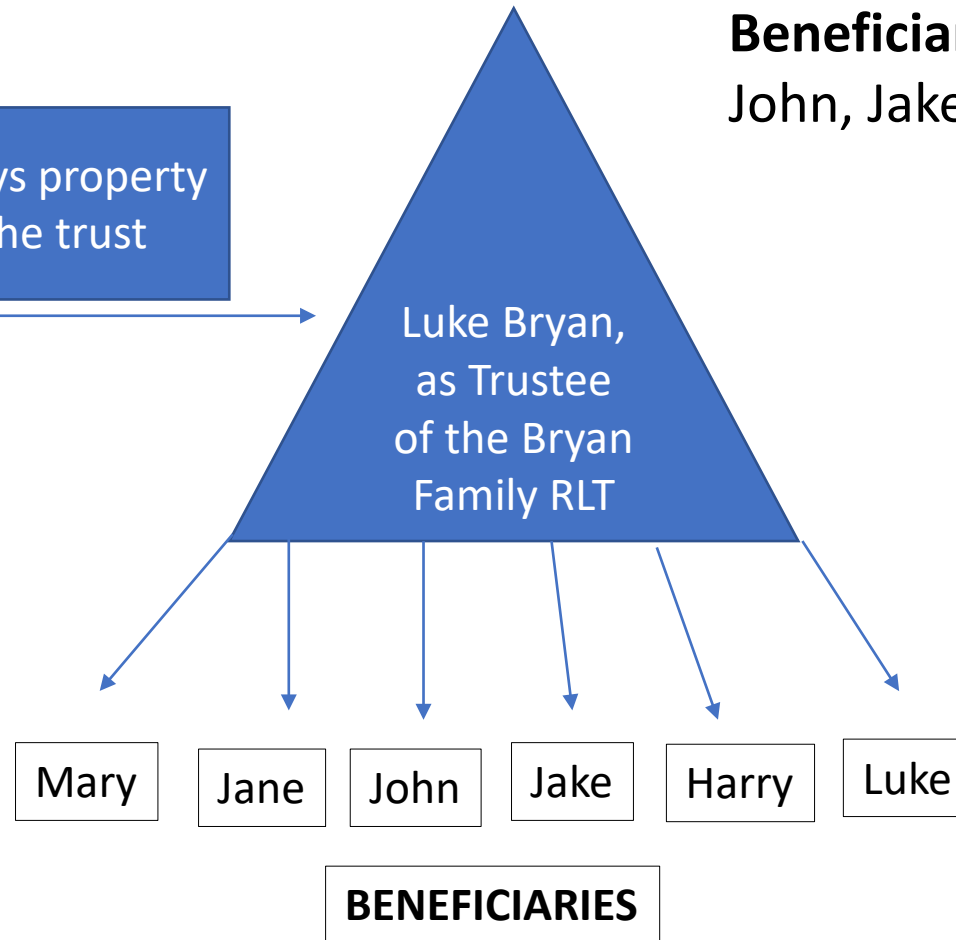
What do you consider?

- Inventory?
- Accountings?
- Bond?
- What are other terms of trust? Who has power to amend/revoke? Make distributions? Are distributions for the benefit of the ward or others?
- **Who is the trustee?**

Luke's Trust



Conveys property
to the trust



Legal Title → Trustee: Luke Bryan, Trustee of the Bryan Family Revocable Living Trust

Equitable Title → Beneficiaries: Mary, Jane, John, Jake, Harry, and Luke

No successor trustee named.

Effect of Incapacity of Trustee

§ 36C-7-704. Vacancy in trusteeship; appointment of successor.

- (a) A vacancy in a trusteeship occurs if:
- (1) A person designated as trustee rejects the trusteeship;
 - (2) A person designated as trustee cannot be identified or does not exist;
 - (3) A trustee resigns;
 - (4) A trustee is disqualified or removed;
 - (5) A trustee dies; or
 - (6) A general guardian, guardian of the estate, or guardian of the person is appointed for an individual serving as trustee.

Vacancy in Trusteeship

A vacancy in a trusteeship **MUST** be filled if the trust has no remaining trustee.

G.S. 36C-7-704(a).

A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

1. By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;
2. By a person appointed by unanimous agreement of the “qualified beneficiaries” (defined in G.S. 36C-1-103(15)); or
3. By a person appointed by the **court**.

G.S. 36C-7-704(c).

“Court” here means _____.

Clerk's Jurisdiction

The clerk of superior court has **exclusive** jurisdiction ... “to **appoint** or **remove** a trustee.”

GS 36C-2-203(a)(1)

Clerk's Jurisdiction: Exclusive or Non-exclusive

Proceedings that fall under the clerk's original jurisdiction are either

Exclusive:
May not be transferred to another court



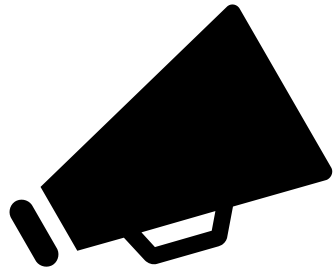
Non-exclusive:
May be transferred to another court

Refer to G.S. 36C-2-203.

- G.S. 36C-2-203(a)(1) to (8) – exclusive
- G.S. 36C-2-203(a)(9) - non-exclusive

Vacancy in the Bryan Family Trust

Mary files a petition initiating a trust proceeding before the clerk requesting the court appoint her as trustee of the revocable trust.



**THIS IS A TRUST PROCEEDING – NOT FILED IN
THE GUARDIANSHIP “E” FILE – NEW “E” FILE**

Vacancy in the Bryan Family Trust

Mary files a petition initiating a trust proceeding before the clerk requesting the court appoint her as trustee of the revocable trust.

She names no respondents in the petition.

She requests the court enter an order deciding the matter without a hearing.

Does the clerk issue summons?

Uncontested Trust Proceeding

- All the parties join in the proceeding.
- Commenced by petition.
- Clerk may hear and decide the matter summarily.
- Filed as an estate matter.

G.S. 36C-2-205(b).

Contested Trust Proceeding

- Proceeding brought against **adverse parties** as prescribed for civil actions.
- Commenced by petition or *compliant*.
- Filed as an estate matter.

G.S. 36C-2-205(b)

Trust Proceeding: Parties

Petitioner – person bringing the petition.

Respondent – adverse parties.

All parties not joined as petitioners must be joined as respondents.

The clerk may order additional persons joined as respondents and shall issue summons to those persons.

G.S. 36C-2-205(a).

Summons (E-150)

Summons only required for **respondents** to a **CONTESTED** trust proceeding.

G.S. 36C-2-205.

What is uncontested?

- All parties join in the proceeding.

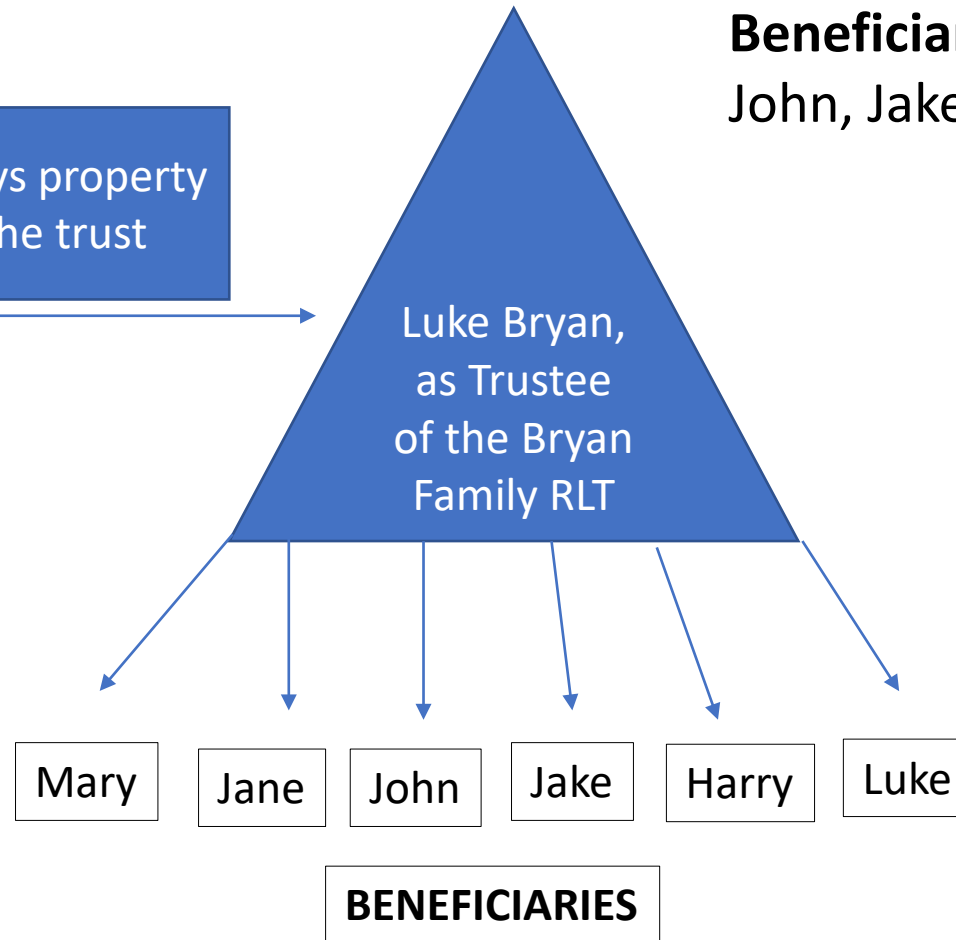
G.S. 36C-2-205(b).

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice Superior Court Division Before The Clerk
Name Of Petitioner(s)	ESTATE SUMMONS FOR TRUST PROCEEDING <input type="checkbox"/> ALIAS AND PLURIES SUMMONS G.S. 36C-2-205, G.S. 1-394	
VERSUS		Date Original Summons Issued _____
Name Of Respondent(s)	Date(s) Subsequent Summons(es) Issued _____	
To Each Of The Respondent(s) Named Below:		
Name And Address Of Respondent 1	Name And Address Of Respondent 2	
A Trust Proceeding Has Been Commenced Against You! You are notified to appear and answer the attached petition as follows: 1. Answer in writing. 2. File the original of your written answer in the office of the Clerk of Superior Court of the county named above. 3. Serve a copy of your written answer on the petitioner's attorney or petitioner, as named below. 4. Serve the copy within 10 days after you have been served with this summons. 5. Serve the copy by delivering it to the person named below, or by mailing it to that person at the address shown below.		

Luke's Trust



Conveys property
to the trust



Legal Title → Trustee: Luke Bryan, Trustee of the Bryan Family Revocable Living Trust

Equitable Title → Beneficiaries: Mary, Jane, John, Jake, Harry, and Luke

No successor trustee named.

Service of the Summons

- Service by the petitioner pursuant to Rule 4 on all respondents, including any respondents ordered joined by the clerk.
- Notifies the respondent to appear and answer the petition within 10 days of service on the respondents.
- If **charitable** trust proceeding – must notify and give the Attorney General an opportunity to be heard.

G.S. 36C-2-205(a) and (i)

Question

Mary files a petition initiating a trust proceeding before the clerk requesting the court appoint her as trustee of the revocable trust.

She names no respondents in the petition.

She requests the court enter an order deciding the matter without a hearing.

→ Who else should be included: Other beneficiaries – minor children – John and Jake

Does the court appoint a GAL for the minors?

The court is not required to appoint a Rule 17 GAL for a party (minor, incompetent adult, etc.) who is “otherwise represented.”

G.S. 36C-2-205(e); G.S. 36C-3-303.

Does the court appoint a GAL for the minors?

Who may act as representative (provided no conflict of interests exists)

1. A **general guardian** or a **guardian of the estate** may represent and bind the estate that the guardian controls.
2. An **agent under a power of attorney** having authority to act with respect to the particular question or dispute may represent and bind the principal.
3. A **trustee** may represent and bind the beneficiaries of the trust unless the question or dispute involves the internal affairs of the trust.

G.S. 36C-3-303.

Does the court appoint a GAL for the minors?

Who may act as representative (provided no conflict of interests exists)

4. A **personal representative** of a decedent's estate may represent and bind persons interested in the estate.

5. A **parent** may represent and bind the parent's minor child if a general guardian or guardian of the estate for the child has not been appointed.

1. If a disagreement, the parent who is a beneficiary of the trust is entitled to represent the minor child.
2. If no parent is a beneficiary of the trust, a parent who is a lineal descendant of the settlor is entitled to represent the minor child.
3. If no parent is a lineal descendant of the settlor, a GAL appointed to represent the minor child.

6. A person may represent and bind that **person's unborn issue**.

G.S. 36C-3-303.

Does the court appoint a GAL for the minors?

A **minor**, an incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable may be represented and bound by a person with a **substantially identical interest** with respect to the particular question or dispute, if

1. the minor, incompetent or unborn individual, or person whose identity or location is unknown and not reasonably ascertainable is not otherwise represented, and
2. there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

G.S. 36C-3-304.

Luke's Case: GAL for the minors?

- No GG, GOE
- No agent under POA
- No trustee (vacancy is the reason for the proceeding)
- No PR
- No unborn issue
- Parent(s)?

If none of the above, is there someone with a substantially identical interest and no conflict of interest?

- Nephew? Grandmother?

Luke's Case: GAL for Luke?

- Mary is general guardian but is there a conflict of interest?
- If so, clerk may appoint a GAL if Mary's representation is inadequate.

Does the court appoint a GAL?

The court may appoint a GAL to otherwise represent, bind, and act on behalf of a minor, incompetent or unborn individual, or person whose identity or location is unknown if

1. The court determines an interest is **not represented**.
2. The court determines that the available representation is **inadequate**.
3. A **disagreement** arises between parents seeking to represent the same minor child.

G.S. 36C-3-305.

Appointment of a GAL



The clerk **always** has the authority appoint a GAL for a party if the party is not represented or if the party is otherwise represented but the clerk finds the representation is inadequate.

NC AOC, IDS GAL Chart

NORTH CAROLINA PROCEEDINGS THAT INVOLVE GUARDIANS AD LITEM (GALS)

This chart summarizes the types of proceedings in which a GAL shall or may be appointed, as well as the agency or person responsible for payment.

CASE TYPE	TYPE OF PROCEEDING	STATUTORY PAYMENT RESPONSIBILITY	GOVERNING STATUTES
Guardianship	Proceedings under Chapter 35A involving the modification of a guardianship order, removal of a guardian, resignation of a guardian, or appointment of a successor guardian.	1) The respondent if the respondent is not indigent; 2) the movant if relief is not granted and there were no reasonable grounds to bring the proceeding; and 3) IDS in all other cases.	35A-1116(c), (d); 35A-1207; 35A-1290; 35A-1292; 35A-1293.
Guardianship	Sterilization proceedings following an adjudication of incompetence when an attorney-GAL is appointed to represent the ward.	1) The ward if the ward is not indigent; 2) the guardian if relief is not granted and there were no reasonable grounds to bring the proceeding; and 3) IDS in all other cases.	35A-1107; 35A-1116(c), (d); 35A-1245(c).
Guardianship	Chapter 35A cases other than incompetency and sterilization where a GAL is appointed.	The GAL serves pro bono or the fees are taxed to the parties as part of the costs. There are no State funds to pay for these GALs.	1A-1, Rule 17(b)(2); 35A-1116(c).
Guardianship-Minors	Estate (guardianship) or special proceedings where a GAL is appointed to assist the court in determining who should serve as general guardian, guardian of the estate, or guardian of the person for a minor.	The minor's estate if there are estate funds. Otherwise the GAL serves pro bono or the fees are taxed to the parties as part of the costs. There are no State funds to pay for these GALs.	1A-1, Rule 17(b)(2).
Minors	Cases in which a minor is petitioning to marry and a GAL-attorney is appointed to represent the minor's best interests.	IDS.	7A-451(f); 51-2.1(b), (d).
Minors	Cases in which a minor is seeking judicial consent for an abortion and a GAL-attorney is appointed for the minor.	IDS.	90-21.8.
Termination Parental Rights	Termination of parental rights proceedings where a GAL is appointed to represent the parent-respondent.	IDS under the circumstances set forth in G.S. 7B-1101.1(b) or (c). In all other cases, the respondent.	7B-1101.1; 1A-1, Rule 17(b)(2).
Termination Parental Rights	Private termination of parental rights proceedings where the petition is filed by an individual and not DSS, and the court appoints a GAL for the child.	AOC.	7B-601; 7B-603(a), (a1); 7B-1103; 7B-1108(b).
Other	Civil, civil custody, estate, equitable distribution, Chapter 50B cases, certain SP proceedings, and other proceedings where a GAL is appointed under G.S. 1A-1, Rule 17.	The GAL serves pro bono or the fees are taxed to the parties as part of the costs. There are no State funds to pay for these GALs.	1A-1, Rule 17(b)(2).

Luke's story....

Before the clerk can rule on the guardianship petition, Luke passes away.

Guardianship terminates at death. G.S. 35A-1295.

Assets distributed by the guardian to the personal representative of Luke's estate.

Pour over Will and Inter Vivos Trust

Residuary clause directs remaining assets to the trust.

→ What happens to the trust proceeding related to the vacancy?

Pour over Will and Inter Vivos Trust

- Pour over will has specific devise of \$600,000 to each of Luke's minor children.
 - G.S 32-27(28) – not incorporated by reference IN THE WILL
 - Too much for payment to clerk (over \$50,000) – GS 7A-111
- Appointment of guardian of the estate to receive funds – court appoints an attorney to serve as GOE for both minor children.

§ 32-27. Powers which may be incorporated by reference in trust instrument.
distribution thereof.

- (28) Pay to or for Minors or Incompetents. – To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:
- a. Directly to such minor or incompetent;
 - b. To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent;
 - c. To the legal or natural guardian of such minor or incompetent;
 - d. To any other person, whether or not appointed guardian of the person by any court, who shall, in fact, have the care and custody of the person of such minor or incompetent.

The fiduciary shall not be under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom such payments were made; and the receipt of such person shall be full acquittance to the fiduciary.

Special Needs Trust

One child, John, has severe developmental disabilities.

Mary creates a special needs trust for John, naming herself as trustee.

Mary files a motion in the cause to **transfer guardianship assets** to a special needs trust. G.S. 35A-1207.

	Self-Settled SNT	Third-Party SNT	Sole Benefit SNT	Pooled SNT
Authorizing Law	42 U.S.C. 1396p(d)(4)(A)	42 U.S.C. 1396p(d)	42 U.S.C. 1396p(d)(4)(B)	42 U.S.C. 1396p(d)(4)(C)
Owner of Funds Used to Create Trust	Disabled individual i.e. personal injury funds, inheritance	Not disabled individual's funds	Not disabled individual's funds	Either disabled individual or third-party
Beneficiary Age Limitations	Beneficiary must be under 65 when created	None	Beneficiary is settlor's disabled child of any age; any other beneficiary is disabled person under 65	Disabled person of any age, except must be disabled before age 65
State Payback	Yes	No	Yes	Yes
Trustee	Anyone other than beneficiary	Anyone other than beneficiary	Anyone other than beneficiary	Non-profit professional trustee organization
How create	Disabled individual Parent Grandparent Guardian Court (GS 36C-4-401.2)	Any third party, usually parent or grandparent of disabled individual.	Settlor spending down so settlor may qualify for benefits	Disabled individual Parent Grandparent Guardian Court (GS 36C-4-401.2)
Revocable /Irrevocable	Irrevocable	Revocable or irrevocable during settlor's life; irrevocable at death	Irrevocable	Irrevocable

Key Court Considerations

WHAT IS IN **BEST INTERESTS** OF THE WARD....

- Consider whether type of SNT is appropriate given amount of money
- Consider impact on ward's governmental benefits, if any
- Consider requiring SNT trustee to file accountings, post a bond
- Consider who is serving as trustee
- Review compensation of trustee (look to G.S. 32-53 for guidance on appropriate standard)

Trust out of Guardianship

- **Guardianship** – ward retains ownership + assets counted for purposes of Medicaid and other benefits
- **Trust** – default rule is no qualify, account, or bond
 - Court require as condition of approving petition?



DHHS Special Needs Trust Review Unit

Both self-settled and pooled SNTs -

North Carolina Department of Health & Human Services

Division of Medical Assistance

Trust Review Unit

Post Office Box 18869

Raleigh, NC 27619

Office 919-424-2805

Fax - 844-586-2657

How many files?

How many court files in Luke's story???

How many files?

- Luke's guardianship – 35A guardianship proceeding – SP + E
 - Petition to transfer assets to the RLT
- Vacancy in the trusteeship – 36C trust proceeding – E
- Luke's decedent's estate – 28A estate proceeding – E
- John's minor guardianship – 35A minor guardianship – E
 - Petition to transfer assets to SNT
- Jake's minor guardianship – 35A minor guardianship - E