

§ 36C-8A-3. Duty and liability of power holder.

(a) Except as otherwise provided in subsection (f) of this section, a power holder is a fiduciary with respect to the exercise or nonexercise of a power and has the same duty and liability as the following:

- (1) If the power is not held jointly with the trustee or another power holder, as a sole trustee in a like position and under similar circumstances.
- (2) If the power is held jointly with the trustee or another power holder, as a cotrustee in a like position and under similar circumstances.

(b) Repealed by Session Laws 2021-85, s. 2(c), effective July 8, 2021, and applicable to trusts created before, on, or after that date.

(c) The provisions regarding the same duty and liability of a power holder as a trustee in a like position and under similar circumstances include all of the following:

- (1) The provisions of Article 8 of this Chapter regarding the duties of a trustee.
- (2) The provisions of G.S. 36C-10-1001 through G.S. 36C-10-1012 regarding liability of trustees and rights of third persons dealing with trustees.
- (3) The provisions of Article 9 of this Chapter regarding the uniform prudent investor rule.
- (4) The provisions of G.S. 36C-7-703 regarding cotrustees.

(d) Subject to subsection (e) of this section, a power holder shall provide information to a trustee or another power holder to the extent the information is reasonably related both to the powers and duties of a power holder and the powers and duties of the trustee or the other power holder. A trustee or other power holder that acts in reliance on information provided by the power holder is not liable for breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee or the other power holder engages in intentional misconduct.

(e) A power holder does not have a duty to monitor a trustee or another power holder or inform or give advice to a settlor, beneficiary, trustee, or another power holder concerning an instance in which the power holder might have acted differently than a trustee or another power holder. By taking the action described in this subsection, the power holder does not assume the duty excluded under this subsection.

(f) The terms of a trust may provide that a power holder is a nonfiduciary with respect to the exercise or nonexercise of a power, including the power to achieve the settlor's tax objectives under the Internal Revenue Code. Unless the terms of a trust provide otherwise, the power to remove and appoint a trustee or power holder shall be deemed to be held in a nonfiduciary capacity. (2012-18, s. 3.4; 2021-85, s. 2(c).)