

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 896

Short Title: Legal Representation of Corporations.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING THE PRACTICE OF LAW BY
ATTORNEYS REPRESENTING CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-5 reads as rewritten:

"§ 84-5. Prohibition as to practice of law by corporation.

(a) 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.

1 Provided, however, this section shall not apply to corporations authorized to practice law
2 under the provisions of Chapter 55B of the General Statutes of North Carolina.

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

5 (1) A corporation authorized and licensed to act in a fiduciary capacity shall
6 not:

- 7 a. Draw wills or trust instruments; provided that this shall not be
8 construed to prohibit an employee of such corporation from
9 conferring and cooperating with an attorney who is not a salaried
10 employee of the corporation, at the request of such attorney, in
11 connection with the attorney's performance of services for a
12 client who desires to appoint the corporation executor or trustee
13 or otherwise to utilize the fiduciary services of the corporation.
- 14 b. Give legal advice or legal counsel, orally or written, to any
15 customer or prospective customer or to any person who is
16 considering renunciation of the right to qualify as executor or
17 administrator or who proposes to resign as guardian or trustee, or
18 to any other person, firm or corporation.
- 19 c. Advertise to perform any of the acts prohibited herein; solicit to
20 perform any of the acts prohibited herein; or offer to perform
21 any of the acts prohibited herein.

22 (2) ~~When~~ Except as provided in subsection (b) of this section, when any of
23 the following acts are to be performed in connection with the fiduciary
24 activities of such a corporation, said acts shall be performed for the
25 corporation by a duly licensed attorney, not a salaried employee of the
26 corporation, retained to perform legal services required in connection
27 with the particular estate, trust or other fiduciary matter:

- 28 a. Offering wills for probate.
- 29 b. Preparing and publishing notice of administration to creditors.
- 30 c. Handling formal court proceedings.
- 31 d. Drafting legal papers or giving legal advice to spouses
32 concerning dissent from their spouses' wills.
- 33 e. Resolving questions of domicile and residence of a decedent.
- 34 f. Handling proceedings involving year's allowances of widows and
35 children.
- 36 g. Drafting deeds, notes, deeds of trust, leases, options and other
37 contracts.
- 38 h. Drafting instruments releasing deeds of trust.
- 39 i. Drafting assignments of rent.
- 40 j. Drafting any formal legal document to be used in the discharge
41 of the corporate fiduciary's duty.
- 42 k. In matters involving estate and inheritance taxes, gift taxes, and
43 federal and State income taxes:

- 1 1. Preparing and filing protests or claims for refund, except
- 2 requests for a refund based on mathematical or clerical
- 3 errors in tax returns filed by it as a fiduciary.
- 4 2. Conferring with tax authorities regarding protests or
- 5 claims for refund, except those based on mathematical or
- 6 clerical errors in tax returns filed by it as a fiduciary.
- 7 3. Handling petitions to the tax court.
- 8 l. Performing legal services in insolvency proceedings or before a
- 9 referee in bankruptcy or in court.
- 10 m. In connection with the administration of an estate or trust:
- 11 1. Making application for letters testamentary or letters of
- 12 administration.
- 13 2. Abstracting or passing upon title to property.
- 14 3. Handling litigation relating to claims by or against the
- 15 estate or trust.
- 16 4. Handling foreclosure proceedings of deeds of trust or
- 17 other security instruments which are in default.
- 18 (3) When any of the following acts are to be performed in connection with
- 19 the fiduciary activities of such a corporation, the corporation shall
- 20 comply with the following:
- 21 a. The initial opening and inventorying of safe deposit boxes in
- 22 connection with the administration of an estate for which the
- 23 corporation is executor or administrator shall be handled by, or
- 24 with the advice of, an attorney, not a salaried employee of the
- 25 corporation, retained by the corporation to perform legal services
- 26 required in connection with that particular estate.
- 27 b. The furnishing of a beneficiary with applicable portions of a
- 28 testator's will relating to such beneficiary shall, if accompanied
- 29 by any legal advice or opinion, be handled by, or with the advice
- 30 of, an attorney, not a salaried employee of the corporation,
- 31 retained by the corporation to perform legal services required in
- 32 connection with that particular estate or matter.
- 33 c. In matters involving estate and inheritance taxes and federal and
- 34 State income taxes, the corporation shall not execute waivers of
- 35 statutes of limitations without the advice of an attorney, not a
- 36 salaried employee of the corporation, retained by the corporation
- 37 to perform legal services in connection with that particular estate
- 38 or matter.
- 39 d. An attorney, not a salaried employee of the corporation, retained
- 40 by the corporation to perform legal services required in
- 41 connection with an estate or trust shall be furnished copies of
- 42 inventories and accounts proposed for filing with any court and
- 43 proposed federal estate and North Carolina inheritance tax

1 returns and, on request, copies of proposed income and
2 intangibles tax returns, and shall be afforded an opportunity to
3 advise and counsel the corporate fiduciary concerning them prior
4 to filing.

5 (b) This section does not prohibit an attorney retained by a corporation, whether or
6 not the attorney is also an employee of the corporation, from representing the corporation
7 or an officer, director, employee, or agent of the corporation in an action, demand, or
8 claim against the corporation or the officer, director, employee, or agent, jointly or
9 severally, so long as the claim arises out of action of the officer, director, employee, or
10 agent that is taken on behalf of the corporation and is within the scope of the employment
11 or agency of the officer, director, employee, or agent."

12 Section 2. This act becomes effective October 1, 1997, and applies to acts
13 from which claims, demands, or actions arise on or after that date.