

Court Oversight Tools as Applicable to Trusts

The Trustee's Duty to Post a Bond, Qualify, and File an Inventory and Accounts with the Court under G.S. Chapter 36C

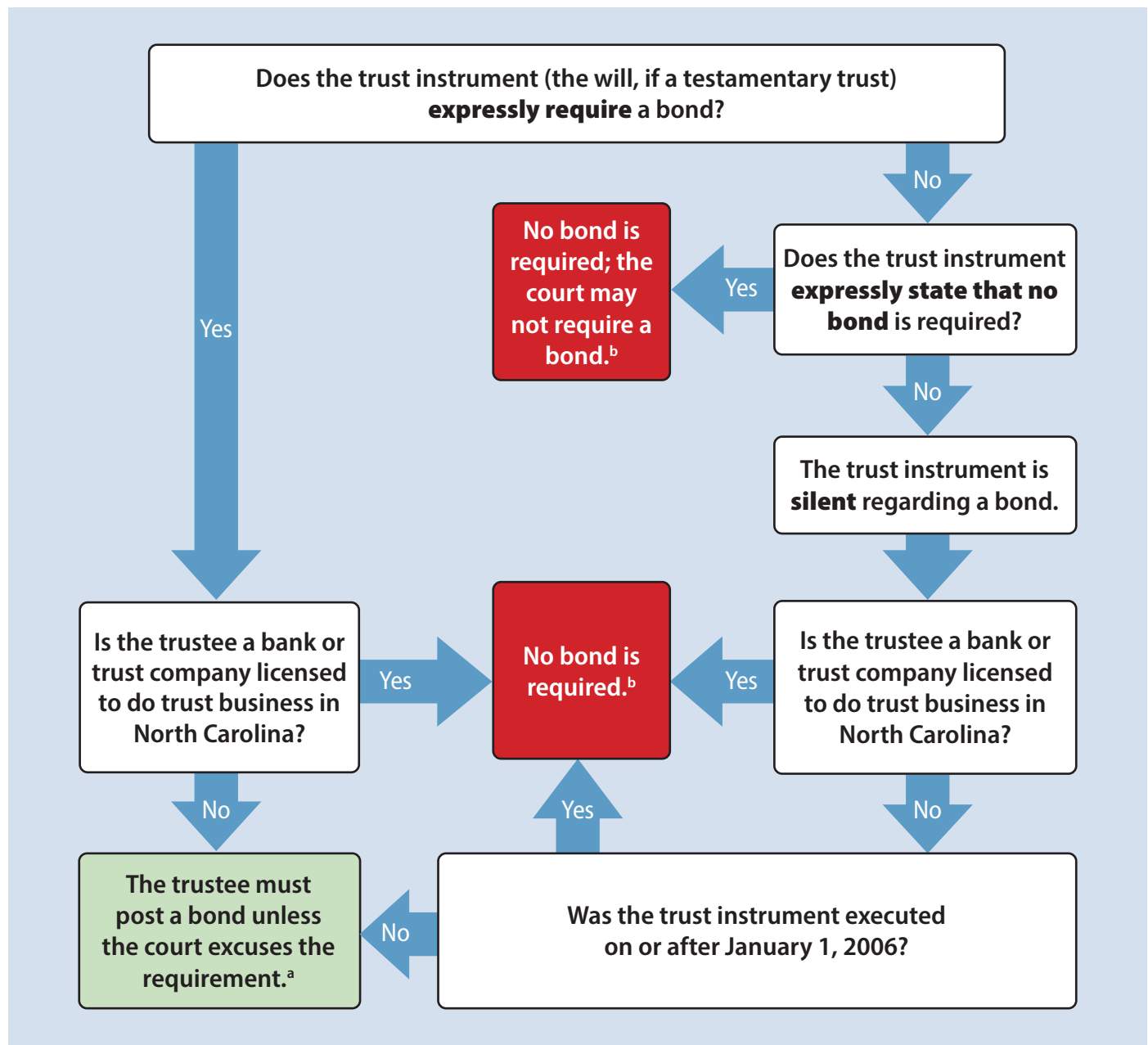
A trust is a fiduciary relationship in which the trustee holds a property interest subject to an equitable obligation to manage or use that property for the benefit of a beneficiary. Unlike other common fiduciary relationships, a trust is not generally under continuing judicial oversight. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by a party or as provided by law. A trust may be in effect for years before an issue arises that necessitates judicial action. When a court proceeding is filed related to the trust, the court may have little familiarity with the trustee, the trust, or the trust administration. Once the court resolves the matter or dispute brought before it, the trustee typically resumes administering the trust without further court oversight.

This absence of ongoing court oversight distinguishes trusts from other fiduciary relationships, such as in the case of guardianships and decedents' estates. In those cases, the default rule is typically that the fiduciary must perform certain actions with the court to serve or to continue serving in their role. This includes qualifying as a fiduciary, posting a bond, and timely filing an inventory and regular accountings, unless an exception applies.

Given the limited judicial supervision of trusts, a common question arises: when is the trustee required to perform the actions required of court-appointed fiduciaries? Specifically, when must a trustee qualify, post a bond, and file an inventory and regular accounts with the court? This flow chart aims to assist court officials, legal practitioners, and others in determining when these obligations apply to a trustee of a trust.

Is the Trustee under a Trust Required to Post a Bond?

G.S. 36C-7-702



Notes.

a. If the trustee must post a bond, the amount of the bond is determined pursuant to G.S. 36C-7-702(b).

b. A beneficiary or other petitioner may file a trust proceeding under the clerk's original, exclusive jurisdiction requesting that the trustee post bond. G.S. 36C-2-203(a)(6); -2-205(a); -11-1106(a). The clerk may order the trustee to post a bond if the clerk finds

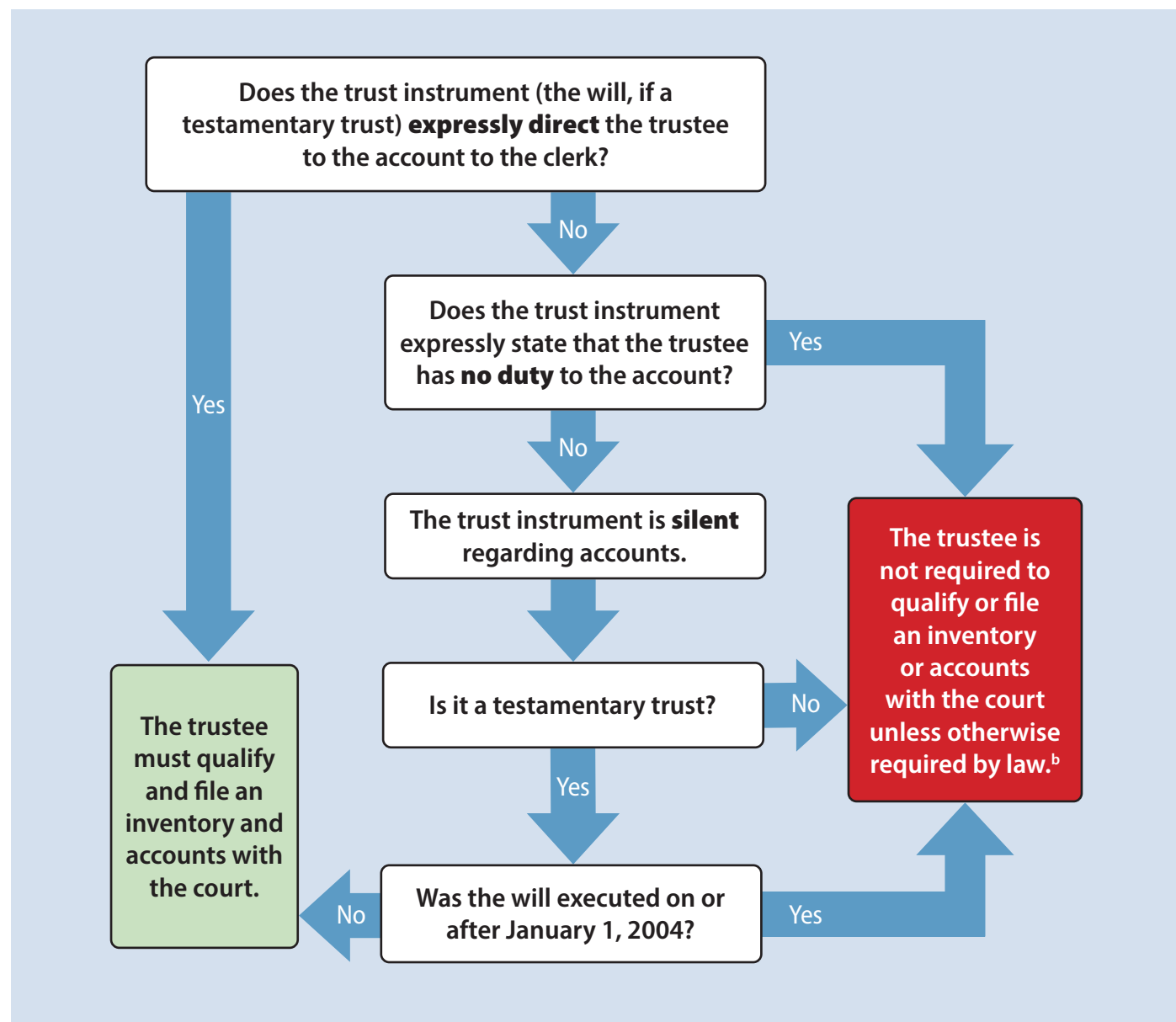
(1) a request to post a bond by the beneficiary is reasonable or

(2) it is necessary for the trustee to provide a bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented

unless the trust instrument expressly states that the trustee is not required to post a bond. G.S. 36C-7-702(a). Notwithstanding the prohibition on the requirement of a bond set out in G.S. 36C-7-702(a), the court may have authority in a judicial action or proceeding to order the trustee to post a bond (i) to remedy a breach of trust that has occurred or may occur, 36C-10-1001(b)(10); or (ii) despite the terms of the trust as may be necessary in the interests of justice, G.S. 36C-1-105(b)(9).

Is the Trustee under a Trust Required to Qualify and File an Inventory and Accounts with the Court?^a

G.S. 36C-2-208; 36C-2-209



Notes.

a. A court of competent jurisdiction may enter an order requiring a trustee to qualify and file inventories and accounts with the court. This flow chart applies when there is no court order requiring the trustee to account.

b. A trustee may choose to qualify for the purpose of obtaining letters of authority despite not being legally required to do so.



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