

75-7-402 Requirements for creation.

- (1) A trust is created only if:
 - (a) the settlor has capacity to create a trust, which standard of capacity shall be the same as for a person to create a will;
 - (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree authorizes the creation of a trust;
 - (c) the trust has a definite beneficiary or is:
 - (i) a charitable trust;
 - (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or
 - (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;
 - (d) the trustee has duties to perform; and
 - (e) the same person is not the sole trustee and sole beneficiary.
- (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Repealed and Re-enacted by Chapter 89, 2004 General Session