

Renumbered 5/7/2025

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.