

## House Bill 229

By: Representatives Oliver of the 56<sup>th</sup>, Post 2, Willard of the 40<sup>th</sup>, Benfield of the 56<sup>th</sup>, Post 1, Bordeaux of the 125<sup>th</sup> and Campbell of the 39<sup>th</sup>

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward,  
2 so as to rewrite said title; to provide for definitions; to provide for the appointment, powers,  
3 duties, termination, resignation, removal, bond, annual returns and status reports,  
4 compensation, modification, and all matters relative to guardians of minors, temporary  
5 guardians, standby guardians, permanent guardians, substitute guardians, successor  
6 guardians, emergency guardians, and foreign guardians; to provide for the rights of minors  
7 and alleged incapacitated adults; to provide for the appointment, powers, duties, termination,  
8 resignation, removal, bond, annual returns and status reports, compensation, modification,  
9 and all matters relative to conservators of minors, conservators of adults, temporary  
10 conservators, substitute conservators, successor conservators, emergency conservators, and  
11 foreign conservators; to provide for transfer of guardianships and conservatorships to a  
12 foreign jurisdiction; to provide for appeals; to designate the probate court judge as custodian  
13 of certain funds; to provide for all matters relative to appointing guardians for persons who  
14 receive benefits from the United States Department of Veterans Affairs; to provide for all  
15 matters relative to appointing county guardians; to provide for guardians ad litem; to provide  
16 for forms of services of process and pleadings; to provide for issuance of citations and the  
17 content requirements; to provide for evaluation and legal fees; to provide for confidentiality  
18 of records; to amend Titles 15, 16, 24, 30, 31, and 53 of the Official Code of Georgia  
19 Annotated, relating to courts, crimes and offenses, evidence, handicapped persons, health,  
20 and wills, respectively, so as to change cross-references; to amend Code Section 50-18-72  
21 of the Official Code of Georgia Annotated, relating to when public disclosure shall not be  
22 required under Article 4 of Chapter 18 of Title 50, so as to provide that disclosure is not  
23 required for certain records maintained in the probate court; to provide for related matters;  
24 to provide for an effective date and applicability; to repeal conflicting laws; and for other  
25 purposes.

26

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

2 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is  
3 amended by striking said title and inserting in lieu thereof the following:

**"TITLE 29****CHAPTER 1**

6 29-1-1.

7 Except as otherwise provided, as used in this title, the term:

8 (1) 'Adult' means an individual who is either 18 years of age or older or an emancipated  
9 minor.

10 (2) 'Conservator' includes a guardian of the property appointed prior to January 1, 2004,  
11 but shall not include a conservator of the estate of an individual who is missing or  
12 believed to be dead, as defined in Article 2 of Chapter 9 of Title 53 or a foreign  
13 conservator as defined in Part 4 of Article 10 of Chapter 3 and Part 4 of Article 13 of  
14 Chapter 5 of this title.

15 (3) 'County guardian' means an individual described in Chapter 8 of this title.

16 (4) 'Court' means the probate court.

17 (5) 'Emergency conservator' means an individual appointed pursuant to the provisions  
18 of Code Section 29-5-15.

19 (6) 'Emergency guardian' means an individual appointed pursuant to the provisions of  
20 Code Section 29-4-14.

21 (7) 'Guardian' means an individual appointed pursuant to the provisions of this title and  
22 includes a guardian of the person appointed prior to January 1, 2004, but shall not include  
23 a guardian ad litem.

24 (8) 'Guardian ad litem' means an individual appointed pursuant to the provisions of Code  
25 Section 29-9-2.

26 (9) 'Interested person' means any person who has an interest in the welfare of a minor,  
27 ward, or proposed ward, or in the management of that individual's assets and may include  
28 a governmental agency paying or planning to pay benefits to that individual.

29 (10) 'Licensed clinical social worker' means a social worker who is licensed in  
30 accordance with the provisions of Chapter 10A of Title 43.

31 (11) 'Minor' means an individual who is under 18 years of age and who is not  
32 emancipated.

33 (12) 'Natural guardian' means an individual appointed pursuant to the provisions of Code  
34 Section 29-2-3.

- 1       (13) 'Parent' means a biological or adoptive father or mother whose parental rights have  
2       not been surrendered or terminated and, in the case of a child born out of wedlock, the  
3       individual or individuals who are entitled to have custody of and exercise parental power  
4       over the child pursuant to Code Section 19-7-25.
- 5       (14) 'Permanent guardian' means an individual appointed as guardian of a minor pursuant  
6       to Part 5 of Article 1 of Chapter 2 of this title.
- 7       (15) 'Personal representative' means an executor, administrator, successor, personal  
8       representative, or the duly qualified and acting personal representative of the estate of a  
9       decedent.
- 10      (16) 'Proposed ward' means an adult for whom a petition for the appointment of a  
11       guardian or a conservator has been filed.
- 12      (17) 'Standby guardian' means an individual appointed pursuant to Part 4 of Article 1 of  
13       Chapter 2 of this title.
- 14      (18) 'Successor conservator' means an individual who has been appointed as conservator  
15       pursuant to Code Section 29-3-91 or 29-5-101.
- 16      (19) 'Successor guardian' means an individual who has been appointed as guardian  
17       pursuant to Code Section 29-2-51 or 29-4-61.
- 18      (20) 'Sui juris' means an adult who is not suffering from any legal disability.
- 19      (21) 'Temporary guardian' means an individual who is appointed as a guardian for a  
20       minor in accordance with the provisions of Part 3 of Article 1 of Chapter 2 of this title.
- 21      (22) 'Temporary substitute conservator' means an individual who has been appointed as  
22       conservator pursuant to Code Section 29-3-90 or 29-5-100.
- 23      (23) 'Temporary substitute guardian' means an individual who has been appointed as  
24       guardian pursuant to Code Section 29-2-50 or 29-4-60.
- 25      (24) 'Testamentary conservator' means a person who has been issued letters of  
26       guardianship pursuant to Code Section 29-3-5.
- 27      (25) 'Testamentary guardian' means a person who has been issued letters of guardianship  
28       pursuant to Code Section 29-2-4.
- 29      (26) 'VA Guardian' means a person appointed pursuant to the provisions of Chapter 7 of  
30       this title.
- 31      (27) 'Ward' means an adult for whom a guardian or conservator has been appointed.

## CHAPTER 2

## ARTICLE 1

## Part 1

4 29-2-1.

5 Guardians of minors may be categorized as follows:

- 6 (1) Natural guardians;
- 7 (2) Testamentary guardians;
- 8 (3) Temporary guardians;
- 9 (4) Standby guardians; and
- 10 (5) Permanent guardians.

11 29-2-2.

12 (a) Only an individual may serve as guardian of a minor.

13 (b) No individual may be appointed as guardian of a minor who:

- 14 (1) Is a minor, a ward, or a protected person; or
- 15 (2) Has a conflict of interest with the minor unless the court determines that the conflict
- 16 of interest is insubstantial or that the appointment would clearly be in the minor's best
- 17 interest.

18 Part 2

19 29-2-3.

20 (a) For purposes of this Code section, the terms 'joint legal custody' and 'sole custody' shall

21 have the meanings as provided in Code Section 19-9-6.

22 (b) Except as otherwise provided in this chapter, each parent shall be the natural guardian

23 of any minor child of the parent, except that, if the parents are divorced and one parent has

24 sole custody of the minor, that parent is the sole natural guardian of that minor. If the

25 parents have joint legal custody, both parents are the natural guardians of that minor.

26 (c) If one parent of a minor dies, the surviving parent is the sole natural guardian of the

27 minor, even if the parents were divorced and the deceased parent had sole custody of the

28 minor.

29 29-2-4.

30 (a) Every parent, by will, may nominate a guardian for the parent's minor children.

31 (b) Unless the minor has another living parent, upon probate of the parent's will, letters

32 of guardianship shall be issued to the individual nominated in the will who shall serve as

1 testamentary guardian without notice or hearing provided that the individual is willing to  
2 serve.

3       (c) A testamentary guardian shall not be required to give bond or security. In all other  
4       respects a testamentary guardian shall have the same rights, powers, and duties as a  
5       permanent guardian appointed by the court.

## Part 3

7 29-2-5.

(a) A petition to be appointed the temporary guardian of a minor may be filed by an individual who has physical custody of the minor.

10 (b) The petition shall be filed in the probate court of the county of domicile of the  
11 petitioner.

12 (c) A petition for the appointment of a temporary guardian shall include the following:

13 (1) The name, address, and date of birth of the minor;

14       (2) The name and address of the petitioner and the petitioner's relationship to the minor,  
15       if any;

16 (3) A statement that the petitioner is domiciled in the county in which the petition is  
17 being filed and has physical custody of the minor;

18 (4) The name, address, and county of domicile of any living parent of the minor and a  
19 statement of whether one or both of the parents is the minor's natural guardian;

20 (5) A statement of whether one or both of the parents have consented in a notarized  
21 writing to the appointment of the petitioner as temporary guardian and, if so, that the  
22 consents are attached to the petition;

23 (6) If the sole parent or both parents have not consented to the appointment of the  
24 temporary guardian, a statement of the circumstances that give rise to the need for the  
25 appointment of a temporary guardian; and

26 (7) The reason for any omission in the petition for temporary guardianship in the event  
27 full particulars are lacking.

28 29-2-6.

29 (a) Except as otherwise provided in subsection (f) of this Code section, if the sole parent  
30 or both parents of the minor have consented to the appointment of the temporary guardian,  
31 as evidenced by notarized written consents attached to the petition, the court shall grant the  
32 petition without further notice or hearing and shall issue letters of guardianship to the  
33 petitioner.

1       (b)(1) If one or both of the parents of the minor have not consented to the appointment  
2       of the temporary guardian, notice of the petition shall be given to any parent who has not  
3       consented.

4       (2) The notice shall be by personal service if the parent resides in this state at a known  
5       address; by first-class mail if the parent resides outside this state at a known address; or  
6       by publication for two weeks in the official county legal organ for the county in which  
7       the petition is filed if no address is known.

8       (3) The notice shall state that the parent is entitled to object either to the establishment  
9       of a temporary guardianship or to the selection of the petitioner as temporary guardian,  
10      or both.

11      (4) The notice shall require that any objection be filed in writing with the court within  
12      ten days of the personal service, within 14 days of the mailing of the notice, or within ten  
13      days of the date of the second publication of the notice.

14      (c) Except as otherwise provided in subsection (f) of this Code section, if no parent who  
15      is entitled to notice under subsection (b) of this Code section files a timely objection to the  
16      petition, the court shall grant the petition without further notice or hearing and shall issue  
17      letters of guardianship to the petitioner.

18      (d) If a natural guardian of the minor files a timely objection to the establishment of the  
19      temporary guardianship, the court shall dismiss the petition. If a natural guardian files a  
20      timely objection to the selection of the petitioner as temporary guardian, the court shall  
21      hold a hearing to determine who shall serve as temporary guardian.

22      (e) If a parent who is not a natural guardian files a timely objection to the establishment  
23      of the temporary guardianship or to the selection of the petitioner as temporary guardian,  
24      the court shall hold a hearing to determine all matters at issue.

25      (f) In all hearings held pursuant to this Code section, the standard for determination for all  
26      matters at issue shall be the best interest of the minor. As to the selection of the temporary  
27      guardian, the preference of the minor may be heard. In all proceedings under this Code  
28      section, the court has the option to refer the petition to the juvenile court which shall, after  
29      notice and hearing, determine whether the temporary guardianship is in the best interest of  
30      the minor.

31      29-2-7.

32      (a) Except as otherwise provided by law, a temporary guardian shall be entitled to exercise  
33      any of the powers of a natural guardian. The court in its discretion may waive the  
34      requirement that a temporary guardian file the personal status reports that are required by  
35      paragraph (8) of subsection (b) of Code Section 29-2-21.

1       (b) If a temporary guardian, in writing, assumes the obligation to support the minor while  
2       the temporary guardianship is in effect, to the extent that no other sources of support are  
3       available, then for purposes of obtaining medical insurance coverage for the minor the  
4       temporary guardianship shall be deemed to be a permanent guardianship.

5 29-2-8.

6       (a) A temporary guardianship shall end when the minor dies or reaches 18 years of age,  
7       when the temporary guardian dies, upon the issuance of letters of guardianship to a  
8       permanent or testamentary guardian, or upon entry of a court order terminating the  
9       temporary guardianship.

10       (b) Either natural guardian of the minor may at any time petition the court to terminate a  
11 temporary guardianship; provided, however, that notice of such petition shall be provided  
12 to the temporary guardian. If no objection to the termination is filed by the temporary  
13 guardian within ten days of the notice, the court shall order the termination of the  
14 temporary guardianship. If the temporary guardian objects to the termination of the  
15 temporary guardianship within ten days of the notice, the court shall have the option to hear  
16 the objection or transfer the records relating to the temporary guardianship to the juvenile  
17 court, which shall determine, after notice and hearing, whether a continuation or  
18 termination of the temporary guardianship is in the best interest of the minor.

19 Part 4

20 29-2-9.

21 As used in this part, the term:

22 (1) 'Designating individual' means a parent or guardian who appoints a standby guardian.

23 A designating individual may only be:

(A) A parent of a minor, provided that he or she has physical custody of the minor and his or her parental rights have not terminated; and provided, further, that the other parent of the minor is deceased, has had his or her parental rights terminated, cannot be found after a diligent search has been made, or has consented to the designation of and service by the standby guardian; or

29 (B) A guardian of the minor who is duly appointed and serving pursuant to court order.

30 (2) 'Health care professional' means a person licensed to practice medicine under Chapter  
31 34 of Title 43 or a person licensed as a registered professional nurse under Chapter 26 of  
32 Title 43 and authorized by the Georgia Board of Nursing to practice as a nurse  
33 practitioner.

1       (3) 'Health determination' means the dated, written determination by a health care  
2 professional that a designating individual is unable to care for a minor due to the  
3 designating individual's physical or mental condition or health including a condition  
4 created by medical treatment.

5       (4) 'Standby guardian' means an adult who is named by a designating individual to serve  
6 as standby guardian of the minor.

7       29-2-10.

8       (a) A designating individual may designate an individual to serve as standby guardian of  
9 a minor upon the health determination being made.

10      (b) Upon the health determination being made and without the necessity of any judicial  
11 intervention, the standby guardian shall assume all the rights, duties, and responsibilities  
12 of guardianship of the person of the minor. Consistent with the designating individual's  
13 physical or mental condition or health, the designating individual may confer with the  
14 standby guardian in decision making concerning the care and welfare of the minor.

15      (c) Upon the health determination being made, the standby guardian shall file with the  
16 probate court of the county of domicile of the minor a notice of the standby guardianship  
17 with a copy of the standby guardianship designation and the health determination attached  
18 thereto.

19      (d) No bond shall be required of a standby guardian.

20      (e) No proceedings under this part shall relieve any parent, custodial or noncustodial, of  
21 a duty to support the minor under the provisions of Chapter 6 of Title 19.

22       29-2-11.

23      (a) A designation of a standby guardian shall be in writing and shall be signed by the  
24 designating individual or by some other individual in the designating individual's presence  
25 and at the designating individual's express direction. The designation shall be attested to  
26 and subscribed by two or more competent witnesses. Neither the witness nor an individual  
27 signing on behalf of the designating individual may be named the standby guardian.

28      (b) A standby guardian designation shall set forth the name, address, and county of  
29 domicile of the designating individual and of the standby guardian; the name, address,  
30 county of domicile, and date of birth of the minor; and the circumstances which define the  
31 parent or guardian as a designating individual. With regard to a parent of the minor who  
32 is not the designating individual, the designation shall state, to the extent known, that  
33 parent's name and address and if that parent is deceased, has his or her parental rights  
34 terminated, and whether that parent cannot be located. The designation shall include a  
35 statement of consent, signed by the standby guardian, to serve in such capacity.

1       (c) A standby guardian designation shall be in substantially the following form and contain  
2       the following information:

## DESIGNATION OF STANDBY GUARDIAN

(1) IDENTIFICATION OF DESIGNATING INDIVIDUAL: I,  
\_\_\_\_\_  
(insert name of person designating the standby  
guardian), whose address is \_\_\_\_\_ (insert address) and whose county and state  
of domicile are \_\_\_\_\_ (insert name of county and state), am:  
(Check and complete the ones which apply)

(A) \_\_\_\_\_ The parent with physical custody of the minor child or children listed below and my parental rights are not terminated; and the other parent, whose name is \_\_\_\_\_ (insert name of other parent) and whose address is \_\_\_\_\_ (insert address of other parent), of the minor child or children listed below:

- (A-1) Is deceased;
- (A-2) Has his or her parental rights to the minor or minors terminated;
- (A-3) Cannot be found after a diligent search has been made; or
- (A-4) Has consented to the designation of and service by the standby guardian as set forth below; or

(B) \_\_\_\_\_ The guardian of the minor child or children listed below, who is duly appointed and serving pursuant to court order.

(2) IDENTIFICATION OF MINOR(S): The minor or minors for whom I am designating a standby guardian are:

22 NAME ADDRESS (include county of DATE OF BIRTH  
domicile)

(3) DESIGNATION AND IDENTIFICATION OF STANDBY GUARDIAN: Pursuant to Part 4 of Article 1 of Chapter 2 of Title 29 of the Official Code of Georgia Annotated, I hereby designate \_\_\_\_\_ (insert name of standby guardian), whose address is \_\_\_\_\_ (insert address) and whose county and state of domicile are \_\_\_\_\_ (insert name of county and state), to serve as the standby guardian of the minor(s) whom I have identified above.

(4) POWERS OF STANDBY GUARDIAN: The standby guardian whom I have designated above shall have all the rights, duties, and responsibilities under Georgia law of a guardian of a minor who has been appointed by a court.

(5) DURATION OF STANDBY GUARDIANSHIP: I understand that upon a health care professional determining in writing that, due to my physical or mental health condition, I am not able to care for the minor(s) identified above, this standby guardianship shall become effective and the person whom I have designated above shall become the standby guardian of the person of the minor(s).

I understand that I can revoke this standby guardianship by destroying this document, obliterating it, or by revoking it in writing with proper witnesses. I understand that if I wish to revoke the standby guardianship after the health determination has been made I must file a notice of the revocation of the standby guardianship with the probate court and mail a copy of the notice of revocation to the standby guardian.

Finally, I understand that this standby guardianship will automatically end 120 days after the health care professional makes the determination that I am unable to care for the minor(s), unless the standby guardian has filed a petition for guardianship of the minor. If the standby guardian files such a petition, the standby guardianship will remain in effect, unless otherwise revoked, until the judge rules on the petition. In considering such a petition for guardianship, I understand that the judge will give preference for the appointment to the individual whom I name as the standby guardian in this document.

(6) SIGNATURE: I certify that the statements contained herein are true and correct, this  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(Designating individual signs here)

(Print name of designating individual)

We, the undersigned witnesses, are at least 18 years of age, are not designated as the standby guardian, and state that the designating individual signed this designation in our presence.

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(Print first witness's address)

(Signature of second witness)

(Print second witness's address)

(7) CONSENT OF PARENT (To be completed only if line A-4 in paragraph (1) above has been checked):

32 I, \_\_\_\_\_ (insert name of parent other than the one designating the  
33 standby guardian), whose address is \_\_\_\_\_ (insert address), am the

1 parent of the above named minor(s). I understand that by this form, an individual is being  
2 designated to serve as a standby guardian of my child (or children). I understand that this  
3 standby guardian will have all the rights, duties, and responsibilities under Georgia law  
4 of a guardian of the person of a minor who has been appointed by a court.

5 I further understand that I may object to this designation. Knowing this, I consent to the  
6 designation of \_\_\_\_\_ (insert name of standby guardian).

7 This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

8 \_\_\_\_\_  
9 (Other parent signs here)

10 \_\_\_\_\_  
(Print name of other parent)

11 We, the undersigned witnesses, are at least 18 years of age, are not designated as the  
12 standby guardian in this document, and state that the above-named parent signed this  
13 consent in our presence.

14 \_\_\_\_\_

15 (Signature of first witness)

(Print first witness's address)

16 \_\_\_\_\_

17 (Signature of second witness)

(Print second witness's address)

18 (8) ACCEPTANCE OF DESIGNATION BY STANDBY GUARDIAN:

19 I, \_\_\_\_\_ (insert name of designated standby guardian), am the  
20 individual designated as the standby guardian in this document. I hereby accept this  
21 designation with full knowledge that upon a health care professional making a written  
22 determination that the parent of the minor(s) is not able to care for the minor(s) due to his  
23 or her physical or mental health or condition, I automatically take on this guardianship.  
24 Further, I understand that I must file a notice of my becoming a standby guardian, a copy  
25 of this designation, and a copy of the health determination with the probate court as soon  
26 as the health determination has been made. I understand that within 120 days of the  
27 health determination being made I must petition the probate court to name me as guardian  
28 of the minor(s).

29 This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

30 \_\_\_\_\_  
31 (Standby guardian signs here)

32 \_\_\_\_\_  
(Print name of standby guardian)

1       We, the undersigned witnesses, are at least 18 years of age, are not designated as the  
2       standby guardian in this document, and state that the standby guardian signed this  
3       document in our presence.

4       \_\_\_\_\_

5       (Signature of first witness)

(Print first witness's address)

6       \_\_\_\_\_

7       (Signature of second witness)

(Print second witness's address)

8       29-2-12.

9       (a) At any time before the health determination is made, a standby guardianship may be  
10      revoked without notice to anyone by destruction or obliteration of the designation done by  
11      the designating individual with an intent to revoke or by a written revocation signed by the  
12      designating individual or by some other individual in the designating person's presence and  
13      at the designating individual's express direction and attested to and subscribed by two or  
14      more competent witnesses.

15      (b) After the health determination has been made the standby guardianship may be  
16      revoked by the designating individual by filing a notice of such revocation with the court  
17      in which the standby guardianship was filed the notice as required by Code Section 29-2-10  
18      and by mailing a copy of the notice of revocation by first-class mail to the standby  
19      guardian.

20      29-2-13.

21      (a) Within 120 days of the health determination being made, the standby guardian shall file  
22      with the probate court in the county of domicile of the minor a petition seeking temporary  
23      guardianship of the minor.

24      (b) Except as otherwise provided, a standby guardianship shall automatically terminate  
25      120 days after the making of the health determination unless the standby guardian has filed  
26      a petition for temporary guardianship of the minor, in which case the standby guardianship  
27      shall remain in effect, unless otherwise revoked, until the petition is ruled upon.

28      (c) If the designating individual dies prior to the entering of an order on a petition for  
29      guardianship of the minor, as contemplated by subsection (a) of this Code section, the  
30      standby guardianship shall be terminated. If the designating individual dies subsequent to  
31      the entering of an order on such a petition, the guardianship created pursuant to that order  
32      shall terminate in favor of any testamentary designation of a guardian of the minor or, if

1 there is no testamentary designation, to an order on a petition for guardianship brought  
2 thereafter and subject to Code Section 29-2-17.

Part 5

4 29-2-14.

5 The probate court of the county in which a minor is found or in which the proposed  
6 permanent guardian is domiciled shall have the power to appoint a permanent guardian for  
7 a minor who has no natural guardian, testamentary guardian, or permanent guardian. In  
8 its discretion, the probate court of the county in which the petition for appointment of a  
9 permanent guardian is filed may transfer the case to the probate court of any other county  
10 in this state if such transfer would serve the best interest of the minor.

11 29-2-15

12 (a) For purposes of this part, the term 'biological father' means a father of a minor born  
13 out of wedlock whose parental rights have not been surrendered or terminated but who is  
14 not entitled to have custody of and exercise parental power over the child pursuant to Code  
15 Section 19-7-25.

16 (b)(1) Notice of a petition for appointment of a permanent guardian of a minor shall be  
17 given to the minor's biological father, if any, in the following circumstances:

18 (A) If the identity of the biological father is known to the petitioner;

19       (B) If the biological father is a registrant on the putative father registry who has  
20       acknowledged paternity of the minor in accordance with subparagraph (d)(2)(A) of  
21       Code Section 19-11-9;

22 (C) If the biological father is a registrant on the putative father registry who has  
23 indicated possible paternity of a child of the minor's mother during a period beginning  
24 two years immediately prior to the minor's date of birth in accordance with  
25 subparagraph (d)(2)(B) of Code Section 19-11-9; or

26 (D) If the biological father has lived with the minor; contributed to the minor's support;  
27 made any attempt to legitimate the minor; or provided support or medical care for the  
28 mother either during her pregnancy or during her hospitalization for the birth of the  
29 minor.

30       (2) The notice shall advise the biological father that he will lose all rights to object to the  
31       appointment of a permanent guardian for the minor if he does not file an objection with  
32       the court within 14 days of the notice and file a petition to legitimate the minor within 30  
33       days of the hearing on his objection. The notice shall include the name of the individual  
34       who will be the minor's permanent guardian if the petition is granted.

1       (c) If the biological father files a timely objection to the petition, the court shall hear the  
2       objection and, if the biological father makes a request, shall continue the hearing for 30  
3       days to allow the father to file a petition to legitimate the minor pursuant to Code Section  
4       19-7-22. If the biological father's petition for legitimization of the minor is granted, the  
5       petition for the appointment of a permanent guardian for the minor shall be dismissed.  
6       (d) If the biological father does not file a petition for legitimization within 30 days or files  
7       a petition that is subsequently dismissed for failure to prosecute or files a petition and the  
8       action is subsequently concluded without a court order declaring that he is the father of the  
9       minor, the biological father shall have no further rights to receive notice of or object to the  
10      appointment of a permanent guardian for the minor.

11      29-2-16.

12       (a) The court shall appoint as permanent guardian that individual who will serve the best  
13       interest of the minor, considering the following order of preferences:  
14           (1) The adult who is the preference of the minor if the minor is 14 years of age or older;  
15           (2) The nearest adult relative of the minor determined according to Code Section 53-2-1  
16           of the Revised Probate Code of 1998;  
17           (3) Other adult relatives of the minor;  
18           (4) Other adults who are related to the minor by marriage;  
19           (5) An adult who was designated in writing by either of the minor's natural guardians in  
20           a notarized document or document witnessed by two or more persons; or  
21           (6) An adult who has provided care or support for the minor or with whom the minor has  
22           lived.  
23       (b) The court may disregard an individual who has preference and appoint an individual  
24       who has a lower preference or no preference. In determining what is in the best interest of  
25       the minor, the court may take into account any facts and circumstances presented to it,  
26       including the statement of a minor who is under 14 years of age.

27      29-2-17.

28       (a) Any interested person may file a petition for the appointment of a permanent guardian  
29       of a minor.  
30       (b) The petition for appointment of a permanent guardian shall set forth:  
31           (1) A statement of the facts upon which the court's jurisdiction is based;  
32           (2) The name, address, and date of birth of the minor;  
33           (3) The name, address, and county of domicile of the petitioner and the petitioner's  
34           relationship to the minor, if any, and, if different from the petitioner, the name, address,

1 and county of domicile of the individual nominated by the petitioner to serve as guardian  
2 and that individual's relationship to the minor, if any;

3 (4) A statement that the minor has no natural guardian, testamentary guardian, or  
4 permanent guardian;

5 (5) A statement of whether the child was born out of wedlock and, if so, the name and  
6 address of the biological father, if known;

7 (6) Whether, to the petitioner's knowledge, there exists any notarized or witnessed  
8 document made by a parent of the minor that deals with the guardianship of the minor  
9 and the name and address of any designee named in the document;

10 (7) In addition to the petitioner and the nominated guardian, the names and addresses of  
11 the following relatives of the minor whose whereabouts are known:

12 (A) The adult siblings of the minor; provided, however, that not more than three adult  
13 siblings need to be listed;

14 (B) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
15 however, that not more than three grandparents need to be listed;

16 (C) If there is no grandparent of the minor, any three of the nearest adult relatives of  
17 the minor determined according to Code Section 53-2-1 of the Revised Probate Code  
18 of 1998;

19 (8) Whether a temporary guardian has been appointed for the minor or a petition for the  
20 appointment of a temporary guardian has been filed or is being filed; and

21 (9) The reason for any omission in the petition for appointment of a permanent guardian  
22 for a minor in the event full particulars are lacking.

23 (c) In addition to the notice required by Code Section 29-2-15, notice of the petition for  
24 appointment of a permanent guardian for a minor shall be given to any designee named in  
25 paragraph (6) of subsection (b) of this Code section and the individuals named in  
26 paragraph (7) of subsection (b) of this Code section. The notice shall be by personal  
27 service if the individual resides in this state at a known address; by first-class mail if the  
28 individual resides outside this state at a known address; or by publication for two weeks  
29 in the official county legal organ for the county in which the petition is filed if no address  
30 is known. The notice shall state that the individual is entitled to object either to the  
31 establishment of a permanent guardianship or to the selection of the petitioner as permanent  
32 guardian, or both. The notice shall require that any objection be filed in writing with the  
33 court within ten days of the personal service, within 14 days of the mailing of the notice,  
34 or within ten days of the date of the second publication of the notice.

35 (d) If the judge deems it necessary, a temporary guardian may be appointed under the same  
36 rules that apply to the appointment of a temporary administrator.

1 29-2-18.

2 Upon the filing of a petition for the appointment of a permanent guardian of a minor and  
3 the giving of notice, the court shall hold a hearing and the standard for determination for  
4 all matters at issue shall be the best interest of the minor.

5 29-2-19.

6 An order granting permanent guardianship shall specify:

7 (1) The name of the permanent guardian and the basis for the selection of the guardian;  
8 (2) A specific listing of any of the additional powers which are granted to the permanent  
9 guardian as provided in subsection (b) of Code Section 29-2-22;  
10 (3) If only a guardian is appointed or if the guardian and the conservator appointed are  
11 not the same person, the reasonable sums of property to be provided the guardian to  
12 provide adequately for the minor's support, care, education, health, and welfare are  
13 subject to modification by subsequent order of the court; and  
14 (4) Such other and further provisions of the guardianship as the court shall determine to  
15 be in the best interest of the minor.

16

## ARTICLE 2

17 29-2-20.

18 (a) In every guardianship, the minor has the right to:

19 (1) A qualified guardian who acts in the best interest of the minor;  
20 (2) A guardian who is reasonably accessible to the minor;  
21 (3) Have his or her property utilized as necessary for his or her support, care,  
22 education, health, and welfare; and  
23 (4) Individually or through the minor's representative or legal counsel, bring an action  
24 relating to the guardianship.

25 (b) The appointment of a guardian is not a determination that a minor who is 14 years of  
26 age or older lacks testamentary capacity.

27 29-2-21.

28 (a) The power of a guardian over the minor shall be the same as that of a parent over a  
29 child; the guardian standing in place of the parent. A guardian shall at all times act as a  
30 fiduciary in the minor's best interest and exercise reasonable care, diligence, and prudence.

31 (b) A guardian shall:

32 (1) Respect the rights and dignity of the minor;

- (2) Arrange for the support, care, education, health, and welfare of the minor considering the minor's available resources;
- (3) Take reasonable care of the minor's personal effects;
- (4) Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health, and welfare;
- (5) Conserve for the minor's future needs any excess money of the minor received by the guardian; provided, however, that if a conservator has been appointed for the minor, the guardian shall pay to the conservator, at least quarterly, money to be conserved for the minor's future needs;
- (6) If necessary, petition to have a conservator appointed;
- (7) Endeavor to cooperate with the conservator, if any;
- (8) Within 60 days after appointment and within 60 days after each anniversary date of appointment, file with the court and provide to the conservator, if any, a personal status report concerning the minor, which shall include:
  - (A) A description of the minor's general condition, changes since the last report, and the minor's needs;
  - (B) All addresses of the minor during the reporting period and the living arrangements of the minor for all addresses; and
  - (C) Recommendations for any alteration in the guardianship order;
- (9) Promptly notify the court of any conflict of interest between the minor and the guardian when the conflict arises or becomes known to the guardian and take such action as is required by Code Section 29-2-23;
- (10) Keep the court informed of the guardian's current address; and
- (11) Act promptly to terminate the guardianship when the minor reaches the age of majority.

(c) A guardian, solely by reason of the guardian-minor relationship, is not personally liable for:

- (1) The minor's expenses;
- (2) Contracts entered into in the guardian's fiduciary capacity;
- (3) The acts or omissions of the minor;
- (4) Obligations arising from ownership or control of property of the minor; or
- (5) Other acts or omissions occurring in the course of the guardianship.

29-2-22.

(a) The appointment of a guardian shall vest in the guardian the exclusive power, without court order, to:

1       (1) Take custody of the person of the minor and establish the minor's place of dwelling  
2       within this state;  
3       (2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any  
4       consent or approval that may be necessary for medical or other professional care, counsel,  
5       treatment, or services for the minor;  
6       (3) Bring, defend, or participate in legal, equitable, or administrative proceedings,  
7       including alternative dispute resolution, as are appropriate for the support, care,  
8       education, health, or welfare of the minor in the name of or on behalf of the minor; and  
9       (4) Exercise those other powers reasonably necessary to provide adequately for the  
10      support, care, education, health, and welfare of the minor.

11      (b) At the time of the appointment of the guardian or at any time thereafter, any of the  
12      following powers may be specifically granted by the court to the guardian upon such  
13      notice, if any, as the court shall determine, provided that no disposition of the minor's  
14      property shall be made without the involvement of a conservator, if any:

15       (1) To establish the minor's place of dwelling outside this state;  
16       (2) To change the jurisdiction of the guardianship to another county in this state that is  
17       the county of the minor's place of dwelling, pursuant to Code Section 29-2-60;  
18       (3) To change the domicile of the minor to the minor's or the guardian's place of  
19       dwelling, in the determination of which the court shall consider the tax ramifications and  
20       the succession and inheritance rights of the minor and other parties;  
21       (4) To consent to the marriage of the minor;  
22       (5) To consent to the adoption of the minor;  
23       (6) To receive reasonable compensation from the estate of the minor for services  
24       rendered to the minor; and  
25       (7) If there is no conservator, to disclaim or renounce any property or interest in property  
26       of the minor in accordance with the provisions of Code Section 53-1-20 of the Revised  
27       Probate Code of 1998.

28      (c) Before granting any of the powers described in subsection (b) of this Code section, the  
29      court shall appoint a guardian ad litem for the minor and shall give notice to any natural  
30      guardian of the minor.

31      (d) In granting any of the powers described in subsection (b) of this Code section, the court  
32      shall consider the property rights of the minor and the views of the conservator, if  
33      available, or, if there is no conservator, of others who have custody of the minor's property.

34      (e) In performing any of the acts described in this Code section, the guardian shall act in  
35      coordination and cooperation with the conservator or, if there is no conservator, with others  
36      who have custody of the minor's property.

1      29-2-23.

2      The guardian must disclose promptly any conflict of interest between the guardian and the  
3      minor when it arises or becomes known to the guardian and seek the court's determination  
4      as to whether the conflict is insubstantial or if it is in the best interest of the minor for the  
5      guardian to continue to serve.

6      29-2-24.

7      Before entering upon the duties of the appointment, every guardian appointed pursuant to  
8      the terms of this chapter shall take an oath or affirmation before the court to perform well  
9      and truly the duties required of a guardian and to account faithfully for the estate. The oath  
10     or affirmation of a guardian may be subscribed before the judge or clerk of any probate  
11     court of this state. The judge of the probate court who appoints the guardian shall have the  
12     authority to grant a commission to a judge or clerk of any court of record of any other state  
13     to administer the oath or affirmation.

14     29-2-25.

15     (a) A guardian may be required to give bond with good and sufficient security in such  
16     amount as the court may determine from time to time.  
17     (b) The clerk of the court shall record bonds in books kept for that purpose and shall retain  
18     custody of the bonds.  
19     (c) If a guardian is required to give bond and has given as security one or more licensed  
20     commercial sureties authorized to transact business in this state the bond premium may be  
21     paid as part of the cost of administration.

22

### ARTICLE 3

23     29-2-30.

24     (a) The guardianship of a minor shall terminate on the date upon which the minor reaches  
25     18 years of age or earlier if the minor becomes emancipated. Proof of emancipation shall  
26     be filed with the court and the court in its discretion may order a hearing.  
27     (b) Within six months prior to the date the minor reaches 18 years of age, the guardian or  
28     any other interested person may file a petition for the appointment of a guardian for the  
29     minor when that minor becomes an adult, in accordance with the provisions of Article 2  
30     of Chapter 5 of this title, to take effect on or after the date the minor reaches 18 years of  
31     age.  
32     (c) The death of the minor automatically terminates the guardianship, except as otherwise  
33     provided in Code Section 29-2-31.

1       (d) Upon termination of the guardianship, the guardian shall deliver any money or property  
2       to the former minor or, if a guardian or conservator has been appointed for the former  
3       minor, to that guardian or conservator or, if the minor is deceased, to the minor's personal  
4       representative.

5 29-2-31.

6       (a) Upon the termination of the guardianship or the resignation of the guardian, the  
7       guardian may petition the court for an order dismissing the guardian from office. The  
8       petition shall include a final status report to the court which covers the period of time from  
9       the latest annual status report filed by the guardian. The final status report shall contain the  
10      information required for annual status reports and shall otherwise comply with the  
11      provisions of paragraph (8) of subsection (b) of Code Section 29-2-21. Notice shall be  
12      published one time in the newspaper in which sheriff's advertisements are published in the  
13      county in which the petition is filed and shall state that any objection must be made in  
14      writing and shall designate the date on or before which objections must be filed in the  
15      court, which shall not be less than 30 days from the date of publication. The court shall  
16      examine any objections filed.

17 (b) If no objection is filed or if, upon hearing any objection, the court is satisfied that the  
18 order dismissing the guardian from office is appropriate, the court shall enter an order  
19 dismissing the guardian from office. Such order shall not bar an action against the  
20 guardian.

21 ARTICLE 4

22 29-2-40.

23 (a) A guardian or the duly authorized guardian, conservator, or attorney in fact of a  
24 guardian, acting on behalf of the guardian, may resign upon petition to the court, showing  
25 to the satisfaction of the court that:

26 (1) The guardian is unable to continue serve due to age, illness, infirmity, or other good  
27 cause;

28 (2) Greater burdens have devolved upon the office of guardian than those that were  
29 originally contemplated or should have been contemplated when the guardian was  
30 qualified and the additional burdens work a hardship upon the guardian;

31 (3) Disagreement exists between the minor and the guardian or between the guardian and  
32 the conservator in respect of the guardian's care of the minor, which disagreement and  
33 conflict appear to be detrimental to the minor;

1       (4) The resignation of the guardian will result in or permit substantial financial benefit  
2       to the minor; or

3       (5) The resignation would not be disadvantageous to the minor.

4       (b) The petition for resignation shall include the name of a suitable person who is willing  
5       to accept the guardianship.

6       (c) Personal service of the petition for resignation shall be made upon the minor and a  
7       guardian ad litem appointed by the court for the minor. Service shall be made by first-class  
8       mail to the parents of the minor in the event of the resignation of a temporary guardian, to  
9       the conservator of the minor, if any, and, in the following order of preference, to the  
10      following relatives of the minor whose whereabouts are known and who must be persons  
11      other than the resigning guardian or the proposed successor guardian:

12      (1) The adult siblings of the minor; provided, however, that not more than three adult  
13      siblings need be served;

14      (2) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
15      however, that not more than three grandparents need be served; or

16      (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the  
17      minor determined according to Code Section 53-2-1 of the Revised Probate Code of  
18      1998.

19      (d) If after such hearing as the court deems appropriate, the court is satisfied that the  
20      petition for the resignation of the guardian and the appointment of the successor guardian  
21      should be granted, the court shall enter an order appointing the successor guardian in  
22      accordance with the provisions of Code Section 29-2-51 and accept the resignation, subject  
23      to the resigning guardian turning over to the successor guardian or conservator all property  
24      held by the guardian.

25      29-2-41.

26      (a) In the event of the death of a guardian, and upon the petition of an interested person or  
27      upon the court's own motion, the court shall appoint a successor guardian. The court shall  
28      notify the minor and any guardian ad litem appointed for the minor by personal service.  
29      Notice shall be given by first-class mail to the conservator of the minor, if any, to the  
30      personal representative of the deceased guardian, if any, and, in the following order of  
31      preference, to the following relatives of the minor whose whereabouts are known and who  
32      must be persons other than the proposed successor guardian:

33      (1) The adult siblings of the minor; provided, however, that not more than three adult  
34      siblings need be served;

35      (2) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
36      however, that not more than three grandparents need be served; or

1       (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the  
2       minor determined according to Code Section 53-2-1 of the Revised Probate Code of  
3       1998.

4       (b) After such hearing as the court deems appropriate, the court shall enter an order  
5       appointing a successor guardian in accordance with the provisions of Code Section 29-2-51  
6       requiring the personal representative of the deceased guardian to turn over to the successor  
7       guardian all property of the minor held by the guardian.

8       29-2-42.

9       (a) Upon the petition of any interested person or whenever it appears to the court that good  
10      cause may exist to revoke or suspend the letters of guardianship or to impose sanctions, the  
11      court shall cite the guardian to answer the charge. The court shall investigate the allegations  
12      and may require such accounting as the court deems appropriate. The court may appoint  
13      a temporary substitute guardian for the minor during the investigation.

14       (b) Upon investigation the court may in its discretion:

15          (1) Revoke or suspend the letters of guardianship;  
16          (2) Require additional security;  
17          (3) Reduce or deny compensation to the guardian or impose such other sanction or  
18          sanctions as the court deems appropriate; and  
19          (4) Issue any other order as in the court's judgment is appropriate under the  
20          circumstances of the case.

21       (c) The revocation or suspension of letters of guardianship shall not abate any action  
22      pending for or against the guardian. The successor guardian shall be made a party to the  
23      action in the manner provided in Code Section 9-11-25.

24       29-2-43.

25       (a) If a guardian commits a breach of fiduciary duty or threatens to commit a breach of  
26      fiduciary duty, a minor or an interested person on behalf of the minor shall have a cause  
27      of action as appropriate:

28          (1) To recover damages;  
29          (2) To compel performance of the guardian's duties;  
30          (3) To enjoin the commission of a breach of fiduciary duty; or  
31          (4) To compel the redress of a breach of fiduciary duty by payment of money or  
32          otherwise.

33       (b) When the minor's assets are misappropriated and can be traced into the hands of persons  
34      who have notice of the misappropriation, a trust shall attach to the assets.

(c) The provision of remedies for breach of fiduciary duty by this Code section does not prevent resort to any other appropriate remedy provided by statute or common law.

3 29-2-44.

4 All actions against a guardian, except on the guardian's bond, shall be brought within six  
5 years of the termination of the guardianship of the minor, except as provided in Code  
6 Section 9-3-90.

7 ARTICLE 5

8 29-2-50.

9       (a) Upon its own motion or on the petition of any interested party, including the minor, the  
10      court may appoint a temporary substitute guardian for a minor if it appears to the court that  
11      the best interest of the minor requires immediate action.

12 (b) The temporary substitute guardian shall be appointed for a specified period not to  
13 exceed 120 days.

14 (c) The court shall appoint as temporary substitute guardian an appropriate individual who  
15 shall serve the best interest of the minor.

16 (d) Except as otherwise ordered by the court, a temporary substitute guardian has the  
17 powers set forth in the order of appointment. The authority of the previously appointed  
18 guardian is suspended for as long as the temporary substitute guardian has authority to act  
19 on behalf of the minor.

20 (e) Notice of the appointment of a temporary substitute guardian shall be served personally  
21 on the minor. Notice of the appointment shall be served personally on the previously  
22 appointed guardian at the last address provided by that guardian to the court. Notice of the  
23 appointment shall be mailed by first-class mail to the minor's conservator, if any.

24 (f) The court may remove the temporary substitute guardian at any time. A temporary  
25 substitute guardian shall make any report the court requires. In all other respects, the  
26 provisions of this chapter apply to the temporary substitute guardian.

27 29-2-51.

28 (a) The court shall appoint a successor guardian upon the resignation, death, or revocation  
29 of the letters of the guardian if the appointment of a successor guardian is in the best  
30 interest of the minor. The court shall select the successor guardian in the manner provided  
31 in Code Section 29-2-15.

32 (b) In the event of the resignation or death of the guardian, notice of the proceeding for  
33 appointment of a successor guardian shall be given as provided in Code Sections 29-2-40

and 29-2-41. In all other cases, notice of the proceeding for appointment of a successor guardian shall be served personally on the minor and a guardian ad litem appointed for the minor. Notice shall be given by first-class mail to the conservator of the minor, if any, and, in the following order of preference, to the following relatives of the minor whose whereabouts are known and who must be persons other than the proposed successor guardian:

(1) The adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(2) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(3) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1 of the Revised Probate Code of 1998.

(c) After such hearing as the court deems appropriate, the court shall enter an order appointing the successor guardian.

29-2-52.

Upon the appointment of a successor guardian the predecessor guardian or the personal representative of a deceased predecessor guardian shall deliver to the successor guardian all property of the minor held by the guardian and shall submit a final status report covering the period since the guardian's last status report.

## ARTICLE 6

## Part 1

29-2-60.

(a) A guardian may petition to remove the guardianship to the jurisdiction of the court of the county in this state in which the minor resides.

(b) Upon the filing of a petition to remove the guardianship to another county in this state, the court shall appoint a guardian ad litem for the minor. The court of the county in which the guardian was appointed shall grant the petition for removal only if the court determines that the removal is in the best interest of the minor.

(c) Before the removal of the guardianship to another county in this state, the guardian shall file with the court of the county to which the guardianship is to be removed certified copies of all the records pertaining to the guardianship.

(d) Following removal of a guardianship to another county in this state, the court of that county shall have the same jurisdiction over the guardian as if the guardian had been first

appointed in that county, and every case growing out of or affecting the guardianship shall be heard and tried only in the county to which the guardianship has been removed.

(e) The court in which an action or proceeding is pending or which has issued an order for a settlement of accounts, removal, or sanction of a guardian shall retain jurisdiction of such matters even when the guardianship has been removed to another county.

## Part 2

29-2-65.

(a) For purposes of this part and Part 3 of this article, the term 'guardianship' refers to a legal relationship in which a person is given responsibility by a foreign court for the care of a minor, thereby becoming a guardian.

(b) A guardian who has been appointed by a foreign court of competent jurisdiction may petition to have the guardianship transferred to and accepted in this state by filing a petition for receipt and acceptance of the foreign guardianship in the court of the county in this state where the minor resides or may reside.

(c) The petition shall include the following:

(1) An authenticated copy of the foreign guardianship order including:

(A) All attachments describing the duties and powers of the guardian; and

(B) All amendments or modifications to the foreign guardianship order entered subsequent to the original order, including any order to transfer the guardianship;

(2) The address of the foreign court which issued the guardianship order;

(3) A listing of any other guardianship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;

(4) The petitioner's name, address, and county of domicile;

(5) The name, age, and current address of the minor and the new or proposed address of the minor;

(6) The names and current addresses of the adult siblings of the minor, if any;

(7) The name and address of the person responsible for the care and custody of the minor, if other than the petitioner, and of any other person currently serving as guardian;

(8) The name and address of any person currently acting as legal representative, other than the petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for the minor;

(9) The name and address of the minor's conservator, if any; and

(10) The reason the transfer is in the minor's best interest.

(c) The petition may be combined with other petitions related to the guardianship, including a petition to modify the terms of the guardianship.

1 29-2-66.

2 (a) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship  
3 shall be served personally on the minor. The notice shall:

- 4 (1) State that the minor has a right to a hearing on the petition;
- 5 (2) Inform the minor of the procedure to exercise the minor's right to a hearing; and
- 6 (3) State that the minor has the right to independent legal counsel and that the court shall  
7 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel  
8 has been appointed by the foreign court to represent the minor in the transfer of the  
9 guardianship.

10 (b) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship  
11 shall be provided to the foreign court from which the guardianship is to be transferred.

12 Notice to the foreign court shall include a request that the foreign court:

- 13 (1) Certify whether:

14 (A) The foreign court has any record that the guardian has engaged in malfeasance,  
15 misfeasance, or nonfeasance during the guardian's appointment;

16 (B) Periodic status reports have been filed in a satisfactory manner; and

17 (C) All bond or other security requirements imposed under the guardianship have been  
18 performed; and

- 19 (2) Forward copies of all documents filed with the foreign court relating to the  
20 guardianship including but not limited to:

21 (A) The initial petition for guardianship and other filings relevant to the appointment  
22 of the guardian;

23 (B) Reports and recommendations of guardians ad litem, court visitors, or other  
24 individuals appointed by the foreign court to evaluate the appropriateness of the  
25 guardianship;

26 (C) Reports of physical and mental health practitioners describing the condition of the  
27 minor;

28 (D) Periodic status reports on the condition of the minor; and

29 (E) The order to transfer the guardianship.

30 (c) Notice and a copy of the petition for receipt and acceptance of the guardianship shall  
31 be mailed to all other persons named in the petition by first-class mail. The notice shall  
32 inform these persons of their right to object to the receipt and acceptance of the  
33 guardianship by this state.

34 (d) The minor shall have 30 days from the date of service to request a hearing on the  
35 petition. All other persons to whom notice is given under this Code section shall have 30  
36 days from the date of the mailing of the notice to request a hearing on the petition.

1       (e) The court may waive the notice requirements of subsections (a) through (c) of this  
2       Code section if it finds that:  
3           (1) The guardian has filed a petition in the foreign court for transfer and release of the  
4       guardianship to this state;  
5           (2) Notice was given to the minor and all interested persons in conjunction with the  
6       petition for transfer and release of the guardianship;  
7           (3) The petitioner provides the court with an authenticated copy of the petition for  
8       transfer and release of the guardianship filed with the foreign court and proof that service  
9       was made on the minor not more than 90 days from the date the petition for receipt and  
10      acceptance of the guardianship is filed in the court; and  
11      (4) The minor is represented by legal counsel with respect to the petition in the foreign  
12      court.

13     29-2-67.

14     (a) On the court's own motion or upon timely motion by the minor or by any interested  
15      person, the court shall hold a hearing to consider the petition for receipt and acceptance of  
16      the foreign guardian.  
17     (b) If any interested person challenges the validity of the foreign guardianship or the  
18      authority of the foreign court to appoint the guardian, the court may stay its proceeding  
19      while the petitioner is afforded the opportunity to have the foreign court hear the challenge  
20      and determine its merits.

21     29-2-68.

22     (a) The court may grant a petition for receipt and acceptance of a foreign guardianship  
23      provided the court finds that:  
24           (1) The guardian is presently in good standing with the foreign court; and  
25           (2) The transfer of the guardianship from the foreign jurisdiction is in the best interest  
26      of the minor.  
27     (b) Subject to subsection (c) of this Code section, at all times following the entry of the  
28      order accepting the guardianship the laws of the State of Georgia shall apply to the  
29      guardianship.  
30     (c) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
31      the guardianship, the court is authorized to:  
32           (1) Delay the effective date of the receipt and acceptance for a reasonable period of time;  
33           (2) Make the receipt and acceptance contingent upon the release of the guardianship or  
34      the termination of the guardianship and the discharge of the guardian in the foreign  
35      jurisdiction;

- (3) Recognize concurrent jurisdiction over the guardianship for a reasonable period of time to permit the foreign court to release the guardianship or to terminate the guardianship and discharge the guardian in the foreign jurisdiction; or
- (4) Make other arrangements the court deems necessary to effectuate the receipt and acceptance of the guardianship.

(d) The denial of a petition for receipt and acceptance of the foreign guardianship does not affect the right of a guardian appointed by a foreign court of competent jurisdiction to petition for guardianship under Code Section 29-2-16.

## Part 3

29-2-69.

(a) A guardian may petition a court of this state which has jurisdiction over the guardianship to transfer the guardianship to a foreign court of competent jurisdiction if the minor has moved permanently to the foreign jurisdiction.

(b) The minor may be presumed to have moved permanently to the foreign jurisdiction if:

(1) The minor has resided in the foreign jurisdiction for more than 12 consecutive months;

(2) The guardian notifies the court that the minor will move or has moved permanently to the foreign jurisdiction; or

(3) A foreign court of competent jurisdiction notifies the court of the filing of a petition for guardianship for the minor in the foreign jurisdiction.

c) To facilitate the transfer the court may order the guardian to file a petition for receipt

and acceptance of the guardianship in the foreign jurisdiction.

(d) If the foreign jurisdiction does not have a procedure for receiving and accepting a foreign guardianship, the court may order the guardian to file a petition for guardianship in the foreign jurisdiction.

29-2-70.

The petition to transfer a guardianship to a foreign jurisdiction shall include the following:

(1) The name and address of the foreign court to which the guardianship shall be transferred and an authenticated copy of the petition for receipt and acceptance of a foreign guardianship if previously filed in the foreign court;

(2) A listing of any other guardianship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;

(3) The petitioner's name, address, and county of domicile;

- 1       (4) The name, age, and current address of the minor and the new or proposed address of  
2       the minor;
- 3       (5) The names and current addresses of the adult siblings of the minor, if any;
- 4       (6) The name and address of the person responsible for the care and custody of the  
5       minor, if other than the petitioner, and of any other individual currently serving as  
6       guardian;
- 7       (7) The name and address of any legal representative, other than the petitioner, including  
8       any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for  
9       the minor;
- 10      (8) The name and address of the minor's conservator, if any;
- 11      (9) The reason for moving the minor; and
- 12      (10) The reason the transfer of the guardianship is in the minor's best interest.

13     29-2-71.

14     (a) Notice and a copy of the petition to transfer a guardianship to a foreign jurisdiction  
15     shall be served personally on the minor not less than ten days prior to the date set for the  
16     hearing. The notice shall state:

17       (1) The date that the hearing shall be held; and  
18       (2) That the minor has the right to independent legal counsel and that the court shall  
19       appoint legal counsel for the minor unless the minor has retained counsel or legal counsel  
20       has been appointed by the foreign court to represent the minor in the receipt and  
21       acceptance of the guardianship.

22     (b) Notice and a copy of the petition to transfer the guardianship shall be provided to the  
23     foreign court to which the guardianship is to be transferred.

24     (c) Notice and a copy of the petition shall be mailed to all other persons named in the  
25     petition by first-class mail. The notice shall inform these persons of the date of the hearing  
26     and of their right to file objections to the transfer of the guardianship by this state.

27     29-2-72.

28     On the court's own motion or upon timely motion by the minor or by any interested person,  
29     the court shall hold a hearing to consider the petition to transfer the guardianship.

30     29-2-73.

31     (a) The court may grant a petition to transfer a guardianship to a foreign court of  
32     competent jurisdiction if the court finds that the:

33       (1) Guardian is presently in good standing with the court; and

(2) Transfer of the guardianship to the foreign jurisdiction is in the best interest of the minor.

(b) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of the guardianship the court is authorized to:

(1) Notify the foreign court of any significant problems that may have occurred, including whether periodic reports and accountings have been filed in a satisfactory manner and whether all bond or other security requirements imposed under the guardianship have been performed; and

(2) Forward copies of all documents filed with the court relating to the guardianship, including but not limited to:

(A) The initial petition for guardianship and other filings relevant to the appointment of the guardian;

(B) Reports and recommendations of guardians ad litem, court visitors, or other individuals appointed by the court to evaluate the appropriateness of the guardianship;

(C) Reports of physical and mental health practitioners describing the condition of the minor; and

(D) Periodic status reports on the condition of the minor.

(c) As necessary to coordinate the transfer of the guardianship, the court is authorized to:

(1) Delay the effective date of the transfer for a reasonable period of time;

(2) Make the transfer contingent upon the acceptance of the guardianship or appointment of the guardian in the foreign jurisdiction;

(3). Recognize concurrent jurisdiction over the guardianship for a reasonable period of time to permit the foreign court to accept the guardianship or appoint the guardian in the foreign jurisdiction; or

(4) Make other arrangements that in the sound discretion of the court are necessary to transfer the guardianship.

27

Part 4

28

29-2-74.

29 (a) For purposes of this part, the term 'foreign guardian' means a guardian or other person  
30 who has been given responsibility by a court of competent jurisdiction in another state or  
31 territory governed by the Constitution of the United States for the care of a minor and  
32 whose guardianship has not been transferred to and accepted in this state pursuant to the  
33 provisions of Part 2 of this article.

34 (b) Any foreign guardian of a minor who resides in any other state and who is authorized  
35 to sell and convey property of the minor may sell property of the minor which is in this

1 state, under the rules and regulations prescribed for the sale of real estate by conservators  
2 of this state, provided that the foreign guardian must file and have recorded in the court or  
3 other proper court, at the time of petitioning for sale, an authenticated copy of the letters  
4 of appointment as guardian of a minor and must also file with the court or other proper  
5 authority bond with good and sufficient security in double the value of the property to be  
6 sold for the faithful execution of the guardianship as provided by law.

7 29-2-75.

8 A foreign guardian may institute an action in any court in this state to enforce any right or  
9 to recover any property belonging to the minor or accruing to the foreign guardian as such.

10 29-2-76.

Pending an action brought by a foreign guardian pursuant to Code Section 29-2-75, an authenticated copy of the letters of guardianship shall be filed with the clerk of the court to become a part of the record, if the case is pending in a court of record, or filed with the papers if the action is a summary proceeding.

15 29-2-77.

16 A foreign guardian submits personally to the jurisdiction of the courts of this state in any  
17 proceeding relating to the guardianship by:

- 18       (1) In this state receiving payment of money or taking delivery of personal property  
19       belonging to the minor; or  
20       (2) Doing any act as a guardian in this state that would have given this state jurisdiction  
21       over the actor as an individual.

# CHAPTER 3

## ARTICLE 1

24 29-3-1.

- 25 (a) For purposes of this Code section, 'personal property' does not include the value of  
26 property that is held for the minor's benefit in trust or by a custodian under Article 5 of  
27 Chapter 5 of Title 44, 'The Georgia Transfers to Minors Act.'

28 (b) The natural guardian of a minor may not receive the personal property of the minor  
29 until the natural guardian becomes the legally qualified conservator of the minor; provided,  
30 however, that when the total value of all personal property of the minor is \$15,000.00 or  
31 less, the natural guardian may receive and shall thereafter hold and use all or part of the  
32 personal property for the benefit of the minor and shall be accountable for the personal

1      property but shall not be required to become the legally qualified conservator as to that  
2      personal property.

3      (c) Upon receiving an affidavit:

4            (1) That the value of all the personal property of a minor will not exceed \$15,000.00 in  
5            value;

6            (2) That no conservator has been appointed for the minor's estate; and

7            (3) That the affiant is the natural guardian of the minor,

8      any person indebted to or holding personal property of the minor shall be authorized to pay  
9      the amount of the indebtedness or to deliver the personal property to the affiant. In the  
10     same manner and upon like proof, any person having the responsibility for the issuance or  
11     transfer of stocks, bonds, or other personal property shall be authorized to issue or transfer  
12     the stocks, bonds, or personal property to or in the name of the affiant. Upon such  
13     payment, delivery, transfer, or issuance pursuant to the affidavit, the person shall be  
14     released to the same extent as if the payment, delivery, transfer, or issuance had been made  
15     to the legally qualified conservator of the minor and shall not be required to see to the  
16     application or disposition of the personal property.

17     (d) This Code section shall not authorize a temporary, testamentary, or permanent guardian  
18     to receive personal property of the minor unless the guardian becomes the legally qualified  
19     conservator of the minor.

20     29-3-2.

21     The natural guardian of a minor who has no conservator may release the debtor and  
22     compromise a debt when the collection the debt is doubtful without becoming the  
23     conservator of the minor and without such action being approved by the court if the amount  
24     of the debt is \$15,000.00 or less.

25     29-3-3.

26     (a) For purposes of this Code section, the term 'gross settlement' means the present value  
27     of all amounts paid or to be paid in settlement of the claim, including cash, medical  
28     expenses, expenses of litigation, attorney's fees, and any amounts paid to purchase an  
29     annuity or other similar financial arrangement.

30     (b) If the minor has a conservator, the only person who can compromise a minor's claim  
31     is the conservator.

32     (c) Whether or not legal action has been initiated, if the proposed gross settlement of a  
33     minor's claim is \$15,000.00 or less, the natural guardian of the minor may compromise the  
34     claim without becoming the conservator of the minor and without court approval. The

1 natural guardian must qualify as the conservator of the minor in order to receive payment  
2 of the settlement if necessary to comply with Code Section 29-3-1.

3 (d) If no legal action has been initiated and the proposed gross settlement of a minor's  
4 claim is more than \$15,000.00, the settlement must be submitted for approval to the court.

5 (e) If legal action has been initiated and the proposed gross settlement of a minor's claim  
6 is more than \$15,000.00, the settlement must be submitted for approval to the court in  
7 which the action is pending. The natural guardian or conservator shall not be permitted to  
8 dismiss the action and present the settlement to the court for approval without the approval  
9 of the court in which the action is pending.

10 (f) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but the  
11 gross settlement reduced by:

12 (1) Attorney's fees, expenses of litigation, and medical expenses which shall be paid  
13 from the settlement proceeds; and

14 (2) The present value of amounts to be received by the minor after reaching the age of  
15 majority

16 is \$15,000.00 or less, the natural guardian may seek approval of the proposed settlement  
17 from the appropriate court without becoming the conservator of the minor. The natural  
18 guardian must qualify as the conservator of the minor in order to receive payment of the  
19 settlement if necessary to comply with Code Section 29-3-1.

20 (g) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but such  
21 gross settlement reduced by:

22 (1) Attorney's fees, expenses of litigation, and medical expenses which shall be paid  
23 from the settlement proceeds; and

24 (2) The present value of amounts to be received by the minor after reaching the age of  
25 majority

26 is more than \$15,000.00, the natural guardian may not seek approval of the proposed  
27 settlement from the appropriate court without becoming the conservator of the minor.

28 (h) If an order of approval is obtained from the judge of the probate court based upon the  
29 best interest of the minor, the guardian is authorized to compromise any contested or  
30 doubtful claim in favor of the minor without receiving consideration for such compromise  
31 as a lump sum. Without limiting the foregoing, the compromise may be in exchange for  
32 an arrangement that defers receipt of part or all of the consideration for the compromise  
33 until after the minor reaches the age of majority and may involve a structured settlement  
34 or creation of a trust on terms which the court approves.

35 (i) Any settlement entered consistent with the provisions of this Code section shall be final  
36 and binding upon all parties, including the minor.

1 29-3-4.

2 No person may be appointed or continue to serve as conservator of a minor who:

3 (1) Is a minor, a ward, or a protected person; or

4 (2) Has a conflict of interest with the minor unless the court determines that the conflict  
5 of interest is insubstantial or that the appointment clearly would be in the minor's best  
6 interest.

7 29-3-5.

8 (a) Every parent, by will, may nominate a conservator for the parent's minor children for  
9 the property that passes to the minors under the parent's will.

10 (b) Upon probate of the will, letters of conservatorship shall be issued to the individual  
11 nominated in the parent's will who shall serve as testamentary conservator without notice  
12 or hearing.

13 (c) A testamentary conservator shall not be required to give bond and security on the  
14 property that passes to the minor under the parent's will, except in the case of waste  
15 committed or apprehended, in which case the court may require a bond and security. If the  
16 testamentary conservator fails to give bond as required, the court may dismiss the  
17 conservator and appoint another conservator. If property accrues or has accrued to the  
18 minor from sources other than the parent's will, the court may appoint a different  
19 conservator for such property or may appoint the testamentary conservator for such  
20 property and require the testamentary conservator to give bond for the property thus  
21 accruing.

22 (d) In all other respects a testamentary conservator shall have the same rights, powers, and  
23 duties as other conservators appointed by the court.

24 29-3-6.

25 (a) The judge of the court in which a minor is found or in which the proposed conservator  
26 is domiciled shall have the power to appoint a conservator for the minor.

27 (b) If a nonresident minor has property in this state, the judge of the court of the county  
28 in which the property is located may appoint a conservator who shall have control only  
29 over such property.

30 29-3-7.

31 (a) The court shall appoint as conservator that person who shall best serve the interest of  
32 the minor considering the following order of preferences:

33 (1) The individual who is the preference of a minor who is 14 years of age or older;

- (2) The nearest adult relative of the minor as set forth in Code Section 53-2-1 of the Revised Probate Code of 1998;
  - (3) Other adult relatives of the minor;
  - (4) Other adults who are related to the minor by marriage;
  - (5) A person who was designated in writing by a minor's natural guardian in a notarized document or document witnessed by two or more persons;
  - (6) A person who has provided care or support for the minor or with whom the minor has lived; or
  - (7) The county guardian.
- (b) The court may disregard an individual who has preference and appoint a person who has a lower preference or no preference. In determining what is in the best interest of the minor, the court may take into account any facts and circumstances presented to it, including the statement of a minor who is under 14 years of age.

29-3-8.

(a) Any person may file a petition for the appointment of a conservator of a minor.

(b) The petition for appointment of a conservator shall set forth:

- (1) A statement of the facts upon which the court's jurisdiction is based;
- (2) The name, address, and date of birth of the minor;
- (3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the minor, if any, and, if different from the petitioner, the name, address, and county of domicile of the person nominated by the petitioner to serve as conservator and that person's relationship to the minor, if any;
- (4) Whether to the petitioner's knowledge there exists any notarized or witnessed document made by a parent of the minor that deals with the conservatorship of the minor and the name and address of any designee named in the document;
- (5) In addition to the petitioner and the nominated conservator, the names and addresses of the following relatives of the minor whose whereabouts are known:

- (A) Any parent of the minor whose parental rights have not been terminated;
- (B) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need be listed;
- (C) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be listed; or
- (D) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1 of the Revised Probate Code of 1998;

1       (6) A description of all known assets, income, other sources of funds, liabilities, and  
2       expenses of the minor;

3       (7) A disclosure of any financial interest that would cause the proposed conservator to  
4       have a conflict of interest with the minor;

5       (8) A specific listing of any of the additional powers, as described in subsections (b)  
6       and (c) of Code Section 29-3-22, that are requested by the conservator and a statement  
7       of the circumstances that would justify the granting of such powers; and

8       (9) The reason for any omission in the petition for appointment of conservator of a minor  
9       in the event full particulars are lacking.

10     (c) Notice of the petition for appointment of a conservator for a minor shall be given to  
11     any designee named in paragraph (4) of subsection (b) of this Code section and the  
12     individuals named in paragraph (5) of subsection (b) of this Code section. The notice shall  
13     be by personal service if the individual resides in this state at a known current address; by  
14     first-class mail if the individual resides outside this state at a known address; or by  
15     publication for two weeks in the official county legal organ for the county in which the  
16     petition is filed if no address is known. The notice shall state that the individual is entitled  
17     to object either to the establishment of a conservatorship or to the selection of the petitioner  
18     as conservator, or both. The notice shall require that any objection be filed in writing with  
19     the court within ten days of the personal service, within 14 days of the date of the mailing  
20     of the notice, or within ten days of the date of the second publication of the notice.

21     (d) If the judge deems it necessary, a temporary conservator may be appointed under the  
22     same rules that apply to the appointment of a temporary administrator as provided in  
23     Article 4 of Chapter 6 of Title 53.

24     29-3-9.

25     Upon the filing of a petition for the appointment of a conservator of a minor and the giving  
26     of notice, the court may hold a hearing and the standard for determination for all matters  
27     at issue shall be the best interest of the minor.

28     29-3-10.

29     (a) An order granting conservatorship shall specify:

30       (1) The name of the conservator and the basis for the selection;

31       (2) A specific listing of any of the additional powers, as described in subsections (b)  
32       and (c) of Code Section 29-3-22 that are granted to the conservator;

33       (3) If a guardian is also appointed and if the guardian and conservator are not the same  
34       person, the reasonable sums or property to be provided to the guardian to provide

adequately for the minor's support, care, education, health, and welfare, subject to modification by subsequent order of the court;

(4) If the minor has an interest in real property, the name of the county in which the real property is located; and

(5) Such other and further provisions of the conservatorship as the court shall determine to be in the best interest of the minor, stating the reasons therefor.

(b) In any case involving the appointment of a conservator, if the minor has an interest in real property, the court shall file, within 30 days of granting the petition for conservatorship, a certificate with the clerk of the superior court of each county in this state in which the minor owns real property, which shall be recorded in the deed records of the county and indexed under the name of the minor in the grantor index. The certificate shall set forth the name of the minor, the expiration date of the conservatorship, the date of the order granting the conservatorship, and the name of the conservator. The certificate shall be accompanied by the same fee required for filing deeds with the clerk of the superior court. The filing fee and any fee for the certificate shall be taxed as costs to the estate.

## ARTICLE 2

29-3-20.

(a) In every conservatorship, the minor has the right to:

(1) A qualified conservator who acts in the best interest of the minor;

(2) A conservator who is reasonably accessible to the minor;

(3) Have the minor's property utilized as necessary to provide adequately for the minor's support, care, education, health, and welfare; and

(4) Individually or through the minor's representative or legal counsel, bring an action relating to the conservatorship.

(b) The appointment of a conservator is not a determination that an individual who is 14 years of age or older lacks testamentary capacity.

29-3-21.

(a) A conservator shall receive, collect, and make decisions regarding the minor's property, except as otherwise provided by law or by the court. A conservator shall at all times act as a fiduciary in the minor's best interest and exercise reasonable care, diligence, and prudence.

(b) A conservator shall:

(1) Respect the rights and dignity of the minor;

- (2) Be reasonably accessible to the minor and maintain regular communication with the minor;
- (3) Petition to have a guardian appointed if necessary;
- (4) Endeavor to cooperate with the guardian, if any;
- (5) Provide for the support, care, education, health, and welfare of the minor, considering available resources;
- (6) Give such bond as required by Code Section 29-3-40;
- (7) Within two months of appointment, file with the court and provide to the guardian, if any, an inventory of the minor's property and a plan for administering the property, pursuant to the provisions of Code Section 29-3-30;
- (8) Take into account any estate plan of the minor known to the conservator in the administration of the conservatorship;
- (9) Keep accurate records including adequate supporting data and file annual returns as required by Code Section 29-3-60;
- (10) Promptly notify the court of any conflict of interest between the minor and the conservator when the conflict arises or becomes known to the conservator and take such action as is required by Code Section 29-3-23;
- (11) Keep the court informed of the conservator's current address; and
- (12) Act promptly to terminate the conservatorship when the minor reaches the age of majority.

(c) A conservator, solely by reason of the conservator-minor relationship, is not personally liable for:

- (1) The minor's expenses;
- (2) Contracts entered into in the conservator's fiduciary capacity;
- (3) The acts or omissions of the minor;
- (4) Obligations arising from ownership or control of property of the minor; or
- (5) Other acts or omissions occurring in the course of the conservatorship.

29-3-22.

(a) Without court order, the appointment of a conservator shall vest in the conservator the exclusive power to:

- (1) Make reasonable disbursements from the annual income or, if applicable, from the annual budget amount that has been approved by the court pursuant to Code Section 29-3-30 for the support, care, education, health, and welfare of the minor;
- (2) Enter into contracts for labor or services upon such terms as the conservator may deem best, but only to the extent that the annual compensation payable under such contracts when combined with other anticipated disbursements does not exceed the

1 amount of the annual income or, if applicable, the annual budget amount which has been  
2 approved by the court pursuant to Code Section 29-3-30;

3 (3) Borrow money for one year or less and bind the minor or the minor's property, but  
4 only if the amount of the annual payments when combined with other anticipated  
5 disbursements does not exceed the amount of the annual income or, if applicable, the  
6 annual budget amount that has been approved by the court pursuant to Code Section  
7 29-3-30 and only if done for purposes of paying the minor's debts, providing for the  
8 support, care, education, health, or welfare of the minor, or repairing the minor's dwelling  
9 place;

10 (4) Receive, collect, and hold the minor's property, additions to the minor's property,  
11 and all related records;

12 (5) Retain the property received by the conservator upon the creation of the  
13 conservatorship in accordance with the provisions of Code Section 29-3-31;

14 (6) Bring, defend, or participate in legal, equitable, or administrative proceedings,  
15 including alternative dispute resolution, as are appropriate for the support, care,  
16 education, health, or welfare of the minor in the name of or on behalf of the minor;

17 (7) Fulfill, as far as possible, or, to the extent permitted by law, disaffirm the executory  
18 contracts and comply with the executed contracts of the minor;

19 (8) Examine the will and any other estate planning documents of the minor;

20 (9) Appoint an attorney in fact to act for the conservator when the conservator is unable  
21 to act; provided, however, that the conservator and the conservator's sureties shall be  
22 bound for the acts of the attorney as if the acts were the personal acts of the conservator;

23 (10) Invest the minor's property pursuant to the provisions of Code Sections 29-3-32 and  
24 29-3-33;

25 (11) Sell the minor's stocks and bonds pursuant to the provisions of subsection (b) of  
26 Code Section 29-3-35;

27 (12) Compromise any contested or doubtful claim for or against the minor if the  
28 proposed gross settlement as defined in Code Section 29-3-3 is in the amount of  
29 \$15,000.00 or less; and

30 (13) Release the debtor and compromise all debts in the amount of \$15,000.00 or less  
31 when the collection of the debt is doubtful.

32 (b)(1) In the petition for appointment, or at any time during the conservatorship, the  
33 conservator may request the continuing power to:

34 (A) Invest the minor's property in investments other than those authorized in Code  
35 Section 29-3-32, pursuant to the provisions of Code Section 29-3-34, without further  
36 court approval of any investment;

1       (B) Sell, rent, lease, exchange, or otherwise dispose of any or all of the minor's real or  
2 personal property without complying with the provisions of Code Section 29-3-35,  
3 other than the provisions for additional bond set forth in subsection (e) of Code Section  
4 2-3-35; or

5       (C) Continue the operation of any farm or business in which the minor has an interest.

6       (2) Unless the request for the powers described in paragraph (1) of this subsection is  
7 made in the petition for the initial appointment of the conservator, the court shall order  
8 such hearing as the court deems appropriate. Notice shall be given by personal service  
9 to the minor and a guardian ad litem appointed for the minor. Notice shall be given by  
10 first-class mail to the guardian of the minor, if any; the surety on the conservator's bond;  
11 and to the following relatives of the minor whose whereabouts are known:

12       (A) Any parent of the minor whose parental rights have not been terminated;

13       (B) If there is no parent of the minor whose parental rights have not been terminated,  
14 the adult siblings of the minor; provided, however, that not more than three adult  
15 siblings need to be notified;

16       (C) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
17 however, that not more than three grandparents need to be notified;

18       (D) If there is no grandparent of the minor, any three of the nearest adult relatives of  
19 the minor determined as set forth in Code Section 53-2-1 of the Revised Probate Code  
20 of 1998.

21       (c) After appointment of a guardian ad litem for the minor and such hearing as the court  
22 deems appropriate, in granting the petition for appointment of conservator or at any time  
23 during the conservatorship, the court may grant the conservator any of the following  
24 powers on a case-by-case basis:

25       (1) To make disbursements that exceed by no more than a specific amount the annual  
26 income or, if applicable, the annual budget amount which has been approved by the court  
27 pursuant to Code Section 29-3-30 for the support, care, education, health, and welfare of  
28 the minor;

29       (2) To enter into contracts for labor or services for which the compensation payable  
30 under the contracts when combined with other disbursements from the estate exceeds the  
31 annual income or, if applicable, the annual budget amount which has been approved by  
32 the court pursuant to Code Section 29-3-30;

33       (3) To make specific investments of the minor's property that do not comply with the  
34 provisions of Code Section 29-3-32, pursuant to the provisions of Code Section 29-3-34;

35       (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the minor's  
36 real or personal property without complying with the provisions of Code Section 29-3-35

1 other than the provisions for additional bond set forth in subsection (e) of Code Section  
2 2-3-35;

3 (5) Pursuant to the provisions of Code Section 29-3-3, to compromise a contested or  
4 doubtful claim for or against the minor if the proposed gross settlement as defined in  
5 Code Section 29-3-3 is more than the amount of \$15,000.00;

6 (6) To release the debtor and compromise a debt which is in the amount of \$15,000.00  
7 or more when the collection of the debt is doubtful;

8 (7) To establish or add property to a trust for the benefit of the minor; provided,  
9 however, that the trust must provide that the minor may revoke the trust at any time after  
10 reaching the age of majority and, unless otherwise provided by court order pursuant to  
11 Code Section 29-3-36, the trust shall terminate upon the minor's death and any property  
12 remaining in the trust shall be paid to the minor's estate;

13 (8) To disclaim or renounce any property or interest in property of the minor in  
14 accordance with the provisions of Code Section 53-1-20 of the Revised Probate Code of  
15 1998;

16 (9) To engage in estate planning for the minor pursuant to the provisions of Code Section  
17 29-3-36; and

18 (10) To perform such other acts as may be in the best interest of the minor.

19 (d) In granting any of the powers described in subsections (b) and (c) of this Code section,  
20 the court shall consider the views of the guardian, if available, or, if there is no guardian,  
21 of others who have custody of the minor.

22 (e) In performing any of the acts described in this Code section, the conservator shall  
23 endeavor to cooperate with the guardian or, if there is no guardian, with others who have  
24 custody of the minor.

25 29-3-23.

26 (a) The appointment of a conservator shall not automatically cause the conservator to  
27 forfeit any rights to property.

28 (b) The conservator must promptly disclose any conflict of interest between the  
29 conservator and the minor when it arises or becomes known to the conservator and seek  
30 the court's determination as to whether the conflict is insubstantial or whether it is in the  
31 best interest of the minor for the conservator to continue to serve and not forfeit any  
32 property right. If the court finds that the conflict of interest is substantial or contrary to the  
33 best interest of the minor, the conservator may either resign or forfeit the property interest  
34 that is the source of the conflict.

35 (c) A transaction affected by a substantial conflict between personal and fiduciary interests  
36 includes any sale, encumbrance, or other transaction involving the conservatorship estate

1       entered into by the conservator or the spouse, descendant, agent, or lawyer of the  
2       conservator or a corporation or other enterprise in which the conservator has a significant  
3       beneficial interest.

4 29-3-24.

5 Before entering upon the duties of the appointment, every conservator appointed pursuant  
6 to the terms of this chapter shall take an oath or affirmation before the court to perform  
7 well and truly the duties required of a conservator and to account faithfully for the estate.  
8 The oath or affirmation of a conservator may be subscribed before the judge or clerk of any  
9 probate court of this state. The judge of the probate court who appoints the conservator  
10 shall have the authority to grant a commission to a judge or clerk of any court of record of  
11 any other state to administer the oath or affirmation.

12 ARTICLE 3

13 29-3-30.

14 (a) Within two months of appointment, the conservator shall file with the court and  
15 provide to the minor's guardian, if any, an inventory of the minor's property and a plan for  
16 managing, expending, and distributing the property.

17 (b) The inventory shall describe all the assets and liabilities of the minor and shall include  
18 a list of all the personal and real property owned by the minor and describe how the  
19 property is titled. When the inventory is returned to the court, the conservator shall swear  
20 or affirm, in addition to the usual oath on making returns, that the inventory contains a true  
21 statement of all the assets and liabilities of the minor which are known to the conservator

22 (c) The plan for managing, expending, and distributing the minor's property must be based  
23 on the actual needs of the minor and take into consideration the best interest of the minor.

24 The conservator shall include in the plan projections for expenses and resources and any  
25 proposals to change the title of any of the assets in the conservatorship estate. The plan and  
26 any proposed budget for the expenditure of funds in excess of the anticipated income from  
27 the property must be approved by the court. With each annual return filed thereafter, the  
28 conservator shall file with the court and provide to the guardian, if any, an updated plan  
29 pursuant to the provisions of this subsection.

30 29-3-31.

31       (a) A conservator may retain the property received by the conservator on the creation of  
32       the conservatorship, including, in the case of a corporate fiduciary, stock or other securities  
33       of its own issue, even though the property may not otherwise be a legal investment and

1 shall not be liable for the retention, except for gross neglect. In the case of corporate  
2 securities, the conservator may likewise retain any securities into which the securities  
3 originally received may be converted or which may be derived therefrom as a result of  
4 merger, consolidation, stock dividends, splits, liquidations, and similar procedures; and the  
5 conservator may exercise by purchase or otherwise any rights, warrants, or conversion  
6 features attaching to any such securities.

7 (b) In the case of a corporate fiduciary, the authority granted in subsection (a) of this Code  
8 section shall apply to the exchange or conversion of stock or securities of the corporate  
9 fiduciary's own issue, whether or not any new stock or securities received in exchange  
10 therefor are substantially equivalent to those originally held; and such authority shall also  
11 apply to the continued retention of all new stock and securities resulting from merger,  
12 consolidation, stock dividends, splits, liquidations, and similar procedures and received by  
13 virtue of such conversion or exchange of stock or securities of the corporate fiduciary's  
14 own issue, whether or not the new stock or securities are substantially equivalent to those  
15 originally received by the fiduciary. The foregoing authority shall have reference, inter  
16 alia, to the exchange of such stock or securities for stock or securities of any holding  
17 company which owns stock or other interests in one or more other corporations including  
18 the corporate fiduciary, whether the holding company is newly formed or already existing,  
19 and whether or not any of the corporations own assets identical or similar to the assets of  
20 or carry on business identical or similar to the corporation whose stock or securities were  
21 previously received by the fiduciary and the continued retention of stock or securities, or  
22 both, of the holding company; and such authority shall apply regardless of whether any of  
23 the corporations have officers, directors, employees, agents, or trustees in common with  
24 the corporation whose stock or securities were previously received by the fiduciary.

25 29-3-32.

26 A conservator is authorized to invest estate funds in the following and shall not otherwise  
27 be liable for such investment, except in the case of gross neglect:

- 28 (1) Bonds issued by any county or municipality of this state which have been validated  
29 as required by law for the validation of county and municipal bonds;
- 30 (2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article  
31 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which  
32 bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter  
33 82 of Title 36;
- 34 (3) Bonds and other securities issued by this state or by the Board of Regents of the  
35 University System of Georgia;

- (4) Bonds or other obligations issued by the United States government and bonds of any corporation created by an act of Congress, the bonds of which are guaranteed by the United States government;
- (5) Interest-bearing deposits in any financial institution located in this state, to the extent the deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or comparable insurance;
- (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of Chapter 3 of Title 8 or issued by any public housing authority or agency of the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, as authorized by Code Section 8-3-81;
- (7) Bonds or other obligations issued by a housing authority in connection with a redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section 8-4-11;
- (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;
- (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of Chapter 7 of Title 31, as authorized by Code Section 31-7-27;
- (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section 32-10-30, as authorized by Code Section 32-10-45;
- (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter 61 of Title 36 or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds or other obligations are secured by an agreement between the issuer and the federal government in accordance with Code Section 36-61-13, as authorized by Code Section 36-61-13;
- (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of Title 42, as authorized by Code Section 42-3-21;
- (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as authorized by Code Section 53-12-286;
- (14) Real property loans, as authorized by Code Section 53-12-284:
  - (A) Which are not in default;
  - (B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;

- 1       (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,  
2       et seq.; and  
3       (D) With respect to which loans, on or after default, pursuant to such insurance,  
4       debentures in at least the full amount of unpaid principal are issuable, which debentures  
5       are fully and unconditionally guaranteed both as to principal and interest by the United  
6       States; and  
7       (15) Any other investments which are designated under the laws of this state as lawful  
8       or legal investments for guardians or conservators.

9       29-3-33.

10      (a) Whenever by law or by court order the conservator is authorized, permitted, required,  
11       or directed to invest funds in direct and general obligations of the United States  
12       government, obligations unconditionally guaranteed by the United States government, or  
13       obligations of the agencies of the United States government enumerated in Code Section  
14       29-3-32, the conservator may invest in and hold such obligations either directly or in the  
15       form of securities or other interests in any open-end or closed-end management type  
16       investment company or investment trust registered under the Investment Company Act of  
17       1940, 15 U.S.C. Sections 80a-1, et seq., so long as:

- 18       (1) The portfolio of such investment company or investment trust is limited to such  
19       obligations and repurchase agreements fully collateralized by such obligations;  
20       (2) Such investment company or investment trust takes delivery of such collateral, either  
21       directly or through an authorized custodian; and  
22       (3) Such investment company or investment trust is operated so as to provide a constant  
23       net asset value or price per share.

24      (b) The authority granted in this Code section shall be applicable notwithstanding that a  
25       corporate fiduciary or an affiliate of the corporate fiduciary provides services to the  
26       investment company or investment trust as investment adviser, custodian, transfer agent,  
27       registrar, sponsor, distributor, manager, or otherwise and receives compensation for such  
28       services.

29       29-3-34.

30      (a) After receiving court approval as required in subsection (b) or (c) of Code Section  
31       29-3-22, in making investments and in acquiring and retaining those investments and  
32       managing property of the minor, the conservator shall exercise the judgment and care,  
33       under the circumstances then prevailing, that a prudent person acting in a like capacity and  
34       familiar with such matters would use to attain the purposes of the account. In making such  
35       investment decisions, a conservator may consider the general economic conditions, the

1 anticipated tax consequences of the investments, the anticipated duration of the account,  
2 and the needs of the minor.

3 (b) Within the limitations of the standard provided in subsection (a) of this Code section  
4 and with prior approval by the court in accordance with Code Section 29-5-23, a  
5 conservator is authorized to acquire and retain every kind of property, including real,  
6 personal, or mixed and every kind of investment, specifically including, but not by way of  
7 limitation, bonds, debentures and other corporate obligations, and stocks, preferred or  
8 common, including the securities of or other interests in any open-end or closed-end  
9 management investments company or investment trust registered under the Investment  
10 Company Act of 1940, 15 U.S.C. Sections 80a-1, et seq. The propriety of an investment  
11 is to be determined by what the conservator knew or should have known at the time of the  
12 decision about the inherent nature and expected performance of a particular investment,  
13 including probable yield, the attributes of the portfolio, the general economy, and the needs  
14 of the minor as they existed at the time of the decision. Any determination of liability for  
15 investment performance shall consider not only the performance of a particular investment  
16 but also the performance of the minor's portfolio as a whole. Within the limitations of such  
17 standard, a conservator may retain property properly acquired without limitation as to time  
18 and without regard to its suitability for original purchase.

19 (c) A conservator that is a financial institution, trust company, national or state bank,  
20 savings bank, or savings and loan association described in Code Section 7-1-242 shall not  
21 be precluded from acquiring and retaining securities of or other interests in an investment  
22 company or investment trust because the bank or trust company or an affiliate provides  
23 services to the investment company or investment trust as investment adviser, custodian,  
24 transfer agent, registrar, sponsor, distributor, manager, or otherwise and receives  
25 compensation for such services.

26 29-3-35.

27 (a) A conservator may sell perishable property of the minor, property of the minor that is  
28 liable to deteriorate from keeping, or property of the minor that is expensive to keep as  
29 early as practicable and in the manner as the court shall determine is in the best interest of  
30 the minor, after notice and opportunity for hearing, if any, as the court shall deem  
31 practicable under the circumstances.

32 (b) A conservator may sell stocks or bonds of the minor that are either listed or admitted  
33 to unlisted trading privileges upon any stock exchange or quoted regularly in any  
34 newspaper having a general circulation in Georgia at a sales price not less than the stock  
35 exchange bid price or the published bid price at the time of sale and pay reasonable

1 brokerage commissions not in excess of those customarily charged by stock exchange  
2 members.

3 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, a  
4 conservator may petition the court to sell, rent, lease, exchange, or otherwise dispose of  
5 property of the minor, whether real or personal or mixed. The petition shall set forth the  
6 property involved and the interests therein, the specific purpose of the transaction, the  
7 proposed price, the anticipated net proceeds of the sale, all other terms or conditions  
8 proposed for the transaction, and that the proposed transaction is in the best interest of the  
9 minor.

10 (d) Upon the filing of the petition, the court shall appoint a guardian ad litem for the  
11 minor. The petition and notice shall be served personally on the minor and the guardian  
12 ad litem.

13 (e) If no written objection by a person notified pursuant to subsection (d) of this Code  
14 section is filed within 30 days following the mailing of notice or service upon the guardian  
15 ad litem, the court shall order the sale summarily in the manner and under the terms  
16 petitioned; provided, however, that if real property is to be converted to personal property,  
17 the court shall order the conservator to post additional bond to cover the amount of the  
18 anticipated net proceeds of the sale prior to the closing of the sale. If an objection is filed,  
19 the court shall hear the matter and grant or deny the petition for sale or make such other  
20 order as is in the best interest of the minor, which may require the sale to be private or at  
21 public auction, including confirmation of the sale by the court or otherwise.

22 (f) A conservator shall make a full return to the court within 30 days of every sale,  
23 specifying the property sold, the purchasers, and the amounts received, together with the  
24 terms of the sale.

25 (g) The recital in the conservator's deed of a compliance with legal provisions shall be  
26 prima-facie evidence of the facts recited.

27 (h) Where a conservator sells real property under the provisions of this Code section, liens  
28 thereon may be divested and transferred to the proceeds of the sale as a condition of the  
29 sale.

30 (i) A temporary substitute conservator is authorized to petition the court for leave to sell  
31 or otherwise deal with the property of the estate only if good cause is shown for not waiting  
32 until a different type of conservatorship is created or the conservatorship is terminated.

33 29-3-36.

34 (a) After notice to interested parties and other persons as the court may direct, and upon  
35 a showing that the minor shall probably remain in need of a conservator throughout the  
36 minor's lifetime and that it is in the best interest of the minor, the court may order the

1 conservator to apply such principal or income of the minor as is not required for the  
2 support, care, education, health, and welfare of the minor toward the establishment or  
3 continuation of an estate plan for the minor and make transfers of the minor's personal or  
4 real property, outright or in trust, provided that the court finds that a competent, reasonable  
5 person in the minor's circumstances would make such transfers and there is no evidence  
6 that the minor, if not in need of a conservator, would not adopt such an estate plan.

7 (b) Prior to authorizing such transfers, the court shall appoint a guardian ad litem for the  
8 minor and shall consider:

- 9 (1) The composition and value of the entire estate of the minor, other known sources of  
10 support available to the minor, and the income produced thereby;
- 11 (2) The probable expenses for the support, care, education, health, or welfare of the  
12 minor for the remainder of the minor's lifetime in the standard of living to which the  
13 minor has become accustomed;
- 14 (3) The identity of the proposed transferees and, in particular, whether they are natural  
15 objects of the minor's bounty by relationship or prior behavior of the minor;
- 16 (4) The purpose and estate planning benefit to be derived by the transfer as well as the  
17 possible harm to any interested party;
- 18 (5) Any previous history or predisposition toward making similar transfers by the minor.

## 19 ARTICLE 4

20 29-3-40.

- 21 (a) A conservator appointed by the court shall give bond with good and sufficient security.
- 22 (b) A financial institution, trust company, national or state bank, savings bank, or savings  
23 and loan association described in Code Section 7-1-242 that seeks to qualify as a  
24 conservator is not required to give bond for the faithful performance of its duties unless its  
25 combined capital, surplus, and undivided profits are less than \$3 million as reflected in its  
26 last statement filed with the Comptroller of the Currency of the United States or the  
27 commissioner of banking and finance.
- 28 (c) The clerk of the court shall record bonds in books kept for that purpose and shall retain  
29 custody of the bonds.

30 29-3-41.

- 31 (a) The bond of a conservator shall be:
  - 32 (1) Secured by an individual who is a domiciliary of this state or by a licensed  
33 commercial surety authorized to transact business in this state;
  - 34 (2) Payable to the court for the benefit of the minor;

1       (3) Conditioned upon the faithful discharge of the conservator's duty, as is required by  
2 law; and

3       (4) Attested by the judge or clerk of the court.

4       (b) The court may order a conservator who is required to give bond to post bond for a  
5 period of time greater than one year, as may be appropriate in the circumstances. A surety  
6 on a bond posted pursuant to this subsection shall not be relieved of liability merely  
7 because of the expiration of the term of the bond but shall be subject to the provisions of  
8 law for the discharge of a surety applicable to other bonds.

9       (c) The bond shall be in a value equal to double the estimated value of the minor's estate;  
10 provided, however, that the bond shall be in an amount equal to the estimated value of the  
11 estate if secured by a licensed commercial surety authorized to transact business in this  
12 state. The value of the estate for purposes of the bond shall be determined without regard  
13 to the value of any real property or improvements thereon but, upon conversion of the real  
14 property into personal property, a bond shall be given based upon the value of the estate,  
15 including the value of the personal property into which the real property was converted.

16       (d) Substantial compliance with these requirements for the bond shall be deemed  
17 sufficient; and no bond shall be declared invalid by reason of any variation from these  
18 requirements as to payee, amount, or condition, where the manifest intention was to give  
19 bond as conservator and a breach of the fiduciary's duty as such has been proved.

20       29-3-42.

21       If the value of the minor's bonded estate decreases, the court may permit a corresponding  
22 reduction in the value of the bond, but this reduction does not affect the liability of the  
23 surety for prior waste or misconduct of the conservator.

24       29-3-43.

25       (a) When it comes to the attention of the court, either by annual return or otherwise:

26           (1) That additional personal property has accrued to the minor by descent, gift, or  
27 otherwise or that for any other reason the bond or security of the conservator fails to  
28 comply with the minimum statutory bond amount set forth in Code Section 29-3-40; or  
29           (2) That the bond or security is otherwise insufficient in the judgment of the court,

30       the court shall give notice to the conservator to appear and give additional bond or security.

31       Notice shall be mailed by first-class mail to the conservator and to the surety on the  
32 conservator's bond. If the conservator fails to comply with the notice, the court may  
33 revoke the letters of conservatorship in accordance with Code Section 29-3-82.

34       (b) When it comes to the attention of the court that the surety on the conservator's bond  
35 has died, become insolvent, or removed from this state or if from other cause the security

1     becomes insufficient, the court may give notice to the conservator to appear give other and  
2     sufficient security. Notice shall be mailed by first-class mail to the conservator and to the  
3     surety on the conservator's bond. If the conservator fails to comply with the notice, the  
4     court may revoke the letters of conservatorship in accordance with Code Section 29-3-82.

5     29-3-44.

6       (a) A conservator who is required to give bond, and who has given as security on such  
7     bond one or more licensed commercial sureties, may pay any bond premium from the  
8     estate.

9       (b) When the guardian is required to give bond pursuant to Code Section 29-2-25, the  
10     conservator shall pay any bond premium from the estate.

11     29-3-45.

12     If the appointment of a conservator for any cause is declared void, the surety of that  
13     conservator shall nevertheless be responsible on the bond for any property received by the  
14     conservator.

15     29-3-46.

16     The conservator and any surety shall be held and deemed joint and several obligors and  
17     may be subjected jointly and severally to liability in the same action. When a conservator  
18     moves beyond the limits of this state, dies and leaves an unrepresented estate, or is in such  
19     a position that an attachment may be issued as against a debtor, any party in interest or any  
20     person having demands against that conservator in the conservator's representative  
21     capacity may institute an action against any one or more of the sureties on the bond of the  
22     conservator in the first instance, without first obtaining a judgment against the conservator  
23     in that person's representative capacity.

24     29-3-47.

25       (a) When a judgment has been obtained against the conservator or the surety on the bond  
26     of a conservator, or both, a levy may be made upon any property of any defendant in fi. fa.  
27       (b) The court shall be authorized to enter a judgment and to issue a writ of execution  
28     against the conservator and surety on the bond and shall be authorized to grant judgment  
29     and execution in favor of the surety against the conservator upon payment of the judgment  
30     by the surety.

1      29-3-48.

2      In all cases of judgments recovered against a conservator or any surety of a conservator,  
3      the execution shall first be levied on the property of the surety and no levy shall be made  
4      on the property of the conservator until there is a return of nulla bona as to the surety.

5      29-3-49.

6      (a) The surety on the bond of any conservator or, if the surety is dead, the surety's personal  
7      representative, may at any time petition the court regarding any misconduct of the  
8      conservator in the discharge of the conservator's trust or to show the court its desire for any  
9      reason to be relieved as surety. The death of a surety shall be a sufficient ground for the  
10     discharge of the surety from future liability.

11     (b) Upon a petition by the surety or the surety's personal representative, the court shall cite  
12     the conservator to appear and show cause, if any, why the surety should not be discharged.  
13     After hearing the parties and the evidence, the court, in its discretion, may issue an order  
14     discharging the surety from all future liability and requiring the conservator to give new  
15     and sufficient security or be removed as conservator.

16     (c) If new security is given, the discharged surety shall be discharged only from liability  
17     for future misconduct of the conservator from the time the new security is given. The new  
18     surety shall be liable for past as well as future misconduct of the conservator.

19     (d) If new security is not given and the conservator is removed, the discharged surety shall  
20     be bound for a true accounting of the conservator with the successor conservator or with  
21     the minor if no other conservator is appointed. In all cases where letters of conservatorship  
22     are revoked, any surety on the bond shall be liable for all acts of the conservator in relation  
23     to the trust up to the time of the settlement with the new conservator or the minor.

24

## ARTICLE 5

25     29-3-50.

26     (a) Other than an emergency conservator or a temporary substitute conservator, a  
27     conservator shall be entitled to compensation for services rendered equal to:

28        (1) Two and one-half percent commission on all sums of money received by the  
29        conservator on account of the estate, except on money loaned by and repaid to the  
30        conservator, and 2 1/2 percent commission on all sums paid out by the conservator;  
31        (2) An additional commission equal to one-half of 1 percent computed on the market  
32        value of the estate as of the last day of the reporting period. This commission shall be  
33        proportionately reduced for any reporting period of less than 12 months;

1       (3) Ten percent commission on the amount of interest made if, during the course of the  
2 conservatorship, the conservator shall receive interest on money loaned by the  
3 conservator in that capacity and shall include the same on the return to the court so as to  
4 become chargeable with the interest as a part of the corpus of the estate;

5       (4) Reasonable compensation, as determined in the discretion of the court and after such  
6 notice, if any, as the court shall direct, for the delivery over of property in kind, not  
7 exceeding 3 percent of the appraised value and, in cases where there has been no  
8 appraisal, not over 3 percent of the fair value as found by the court, irrespective of  
9 whether delivery over in kind is made pursuant to proceedings for that purpose in the  
10 court and irrespective of whether the property, except money, is tangible or intangible or  
11 personal or real; and

12      (5) In the discretion of the court, compensation for working land for the benefit of the  
13 minor, but not to exceed 10 percent of the annual income of the managed property.

14     (b) Whenever any portion of the dividends, interest, or rents payable to a conservator is  
15 required by law of the United States or other governmental unit to be withheld by the  
16 person paying the same for income tax purposes, the amount withheld shall be deemed to  
17 have been collected by the conservator.

18     (c) Where some or all of the estate passes through the hands of several conservators by  
19 reason of the death, removal, or resignation of the first qualified conservator or otherwise,  
20 the estate shall not be subject to diminution by charges of commission of each successive  
21 conservator holding and receiving in the same right but rather commissions for receiving  
22 the estate shall be paid to the first conservator who receives the property for the benefit of  
23 the estate or that person's representative, and commissions for paying out shall be paid to  
24 the conservator who actually distributes the fund, and no commissions shall be paid for  
25 handing over the fund to a successor conservator. If there is more than one conservator  
26 serving simultaneously, the division of the compensation allowed them shall be according  
27 to the services rendered by each.

28     (d) A conservator shall not be entitled to any commissions for any sums paid to any  
29 conservator of the estate as commissions or other compensation.

30     (e) Conservators who fail to make annual returns as required by law shall forfeit all  
31 commissions for transactions during the year within which no return is made unless the  
32 probate court, upon cause shown, shall by special order entered on the record, relieve them  
33 from the forfeiture.

34     (f) A conservator may renounce the right to all or any part of the compensation to which  
35 the conservator is entitled under this Code section.

1 29-3-51.

2 Conservators shall be allowed reasonable expenses incurred in the administration of the  
3 estate, including without limitation, expenses for travel, employing counsel and other  
4 agents, and the expenses and premiums incurred in securing a bond. Such reasonable  
5 expenses shall be determined after notice, if any, as the court shall direct. The  
6 conservator's commissions are part of the expense of administering the estate and may be  
7 charged against the corpus of the estate as well as the income of the estate.

8 29-3-52.

9 (a) A conservator may petition the court for compensation that is greater than that allowed  
10 under Code Section 29-3-50. Service of notice of the petition for extra compensation shall  
11 be made to the minor and to a guardian ad litem appointed for the minor. Service shall be  
12 made in the manner described in Chapter 9 of this title and shall direct the parties served  
13 to file any written objections to the petition for extra compensation with the court within  
14 ten days.

15 (b) After hearing any objection filed by or on behalf of the minor, the court shall allow  
16 such extra compensation as the court deems reasonable. The allowance of extra  
17 compensation shall be conclusive as to all parties in interest.

18 29-3-53.

19 (a) Any conservator who is a domiciliary of this state may receive compensation for  
20 services, as specified in this subsection, from a corporation or other business enterprise  
21 where the estate of the minor owns an interest in the corporation or other business  
22 enterprise, provided that:

23 (1) The services furnished by the conservator to the corporation or other business  
24 enterprise are of a managerial, executive, or business advisory nature;  
25 (2) The compensation received for the services is reasonable; and  
26 (3) The services are performed and the conservator is paid pursuant to a contract  
27 executed by the conservator and the corporation or business enterprise, which contract  
28 is approved by a majority of those members of the board of directors or other similar  
29 governing authority of the corporation or business enterprise who are not officers or  
30 employees of the conservator and are not related to the conservator and provided the  
31 contract is approved by the court of the county which has jurisdiction over the  
32 conservatorship.

33 (b) Any conservator receiving compensation from a corporation or other business  
34 enterprise for services to it as described in subsection (a) of this Code section shall not  
35 receive extra compensation in respect to such services as provided in Code Section

29-3-52; provided, however, that nothing in this Code section shall prohibit the receipt by the conservator of extra compensation for services rendered in respect to other assets or matters involving the estate.

(c) Nothing in this Code section shall prohibit the receipt by conservators of normal commissions and compensation for the usual services performed by conservators pursuant to law.

(d) The purpose of this Code section is to enable additional compensation to be paid to a conservator for business management and advisory services to corporations and business enterprises pursuant to contract, without the necessity of petitioning for extra compensation pursuant to Code Section 29-3-52.

29-3-54.

An emergency conservator or temporary substitute conservator may apply to the court for reasonable compensation after notice to interested parties in compliance with Chapter 9 of this title. The court shall award reasonable compensation to an emergency conservator or temporary substitute conservator and such compensation shall be the only compensation or commission paid to the emergency conservator or temporary substitute conservator for services performed in that capacity. For good cause, including but not limited to services performed and compensation awarded to an emergency conservator or temporary substitute conservator, the court may reduce the compensation due the conservator under other provisions of this article.

## ARTICLE 6

29-3-60.

(a) Each year, within 60 days of the anniversary date of qualification, every conservator shall file with the court a verified return consisting of a statement of the receipts and expenditures of the conservatorship during the year preceding the anniversary date of qualification, an updated inventory consisting of a statement of the assets and liabilities of the estate as of the anniversary date of qualification, an updated plan for managing, expending, and distributing the minor's property, a note or memorandum of any other fact necessary to show the true condition of the estate, and a statement of the current amount of the bond. The conservator shall mail a copy of the return by first-class mail to the surety on the conservator's bond and the minor's guardian, if any. If the minor has no guardian or if the guardian and the conservator are the same person, the conservator shall mail a copy of the return by first-class mail to the minor.

1       (b) Upon petition of the conservator or upon the court's own motion, the court may change  
2       the reporting period from the year immediately preceding the anniversary date of  
3       qualification to the year immediately preceding a date ordered by the court. In lieu of  
4       changing the reporting date, the court is authorized to accept a return for filing even if the  
5       return does not cover the appropriate reporting period; however, such acceptance shall not  
6       change the reporting period established by either the anniversary date of qualification or  
7       a subsequent order of the court, unless the court also enters an order changing the reporting  
8       date.

9       (c) The court shall carefully examine each return of a conservator and, upon petition of any  
10      interested person or upon the court's own motion, may require the conservator to produce  
11      the original documents that support the return. Except as otherwise provided in this  
12      subsection, if no objection is filed within 30 days of the time the conservator's return is  
13      filed, the court shall record the return within 60 days of its filing. The return shall be kept  
14      on file in the court. The recorded return shall be prima-facie evidence of its correctness.  
15      If there is an objection to the return or if the court on its own motion determines that the  
16      conservator may have wasted the property of the minor or failed in any manner to comply  
17      with applicable law, the court shall hold a hearing or take such other action as the court  
18      deems appropriate.

19       (d) The court shall keep a docket of conservators liable to file returns. Upon the failure  
20      of any conservator to file any return within the time frame required by law, the court shall  
21      cite the conservator to appear and show reason for the delay. A conservator who fails to  
22      file an annual return as required by law shall forfeit all commissions and other  
23      compensation for the year within which no return is filed unless otherwise ordered by the  
24      court. A willful and continued failure to file a return shall be good cause for removal.

25      29-3-61.

26       (a) At any time after the six-month period following qualification, but not more frequently  
27      than once every 24 months, a conservator may petition the court for an interim settlement  
28      of accounts. The court shall appoint a guardian ad litem for the minor upon the filing of  
29      the petition for interim settlement.

30       (b) The petition for an interim settlement of accounts shall be accompanied by a report  
31      which shall set forth all of the information required by law in annual returns and, in  
32      addition thereto, shall show:

- 33           (1) The period which the report covers;
- 34           (2) The name and address of the minor, the name and address of the minor's guardian,  
35           if any, and the name of the surety on the conservator's bond, with the amount of the  
36           bond; and

1       (3) Such other facts as the court may require.

2       (c) The court, upon the petition for an interim settlement of accounts being filed shall issue  
3       a citation and shall require any objections to be filed in accordance with Chapter 9 of this  
4       title. The minor and the guardian ad litem shall be served personally, and the minor's  
5       guardian, if any, and the surety of the conservator's bond shall be served by first-class mail.

6       29-3-62.

7       Any interested person may file an objection to the conservator's interim settlement of  
8       accounts. Upon receipt of objections or on the court's own motion, the court shall hold a  
9       hearing in which it shall consider all objections, hear evidence, and determine whether the  
10      conservator shall be discharged from liability for the period covered by the interim  
11      settlement of accounts.

12      29-3-63.

13      If the court finds that the conservator is liable to the minor, the court shall enter a judgment  
14      against the conservator and any surety in the amount of such liability.

15      29-3-64.

16      (a) The conservatorship of a minor shall terminate on the date upon which the minor  
17       reaches 18 years of age or, earlier, if the minor becomes emancipated. Proof of  
18       emancipation shall be filed with the court and where the court deems appropriate, the court  
19       may order a hearing on the issue of termination.

20      (b) Within six months prior to the date the minor reaches 18 years of age, the conservator  
21       or any other interested person may file a petition for the appointment of a conservator for  
22       the minor when that minor becomes an adult, in accordance with the provisions of Article  
23       2 of Chapter 5 of this title, to take effect on the date the minor reaches 18 years of age.

24      (c) The death of the minor automatically terminates the conservatorship, but the  
25       conservator or the conservator's personal representative must comply with the provisions  
26       in Code Section 29-3-70.

27      (d) Upon termination of the conservatorship, the conservator shall deliver any money or  
28       property to the former minor or, if a conservator has been appointed for the former minor,  
29       to that conservator, or, if the minor is deceased, to the minor's personal representative.

1

## ARTICLE 7

2 29-3-70.

3 (a) Upon the termination of the conservatorship or upon the resignation of the  
4 conservator, the conservator may petition the court for an order dismissing the conservator  
5 from office. The petition shall include a final return to the court which covers the period  
6 from the last annual return filed by the conservator. The final return shall contain the  
7 information required for annual returns and shall otherwise comply with the provisions of  
8 Code Section 29-3-60. Notice shall be published one time in the newspaper in which  
9 sheriff's advertisements are published in the county in which the petition is filed and shall  
10 state that any objection must be made in writing and shall designate the date on or before  
11 which objections must be filed in the court, which date shall not be less than 30 days from  
12 the date of publication. The court shall examine any objections filed.

13 (b) If no objection is filed or if, upon hearing any objection, the court is satisfied that the  
14 order dismissing the conservator from office is appropriate, the court shall enter an order  
15 dismissing the conservator from office. Such order shall not bar an action against the  
16 conservator or the conservator's surety.

17 29-3-71.

18 (a) A minor who has reached the age of majority, the personal representative of a deceased  
19 minor, a successor conservator, or any interested person may petition the court for an order  
20 requiring a conservator or that conservator's personal representative to appear and submit  
21 to a final settlement of the conservator's accounts. Alternatively the court on its own  
22 motion may issue such an order. The settlement period shall be the period of time from the  
23 commencement of the conservatorship or the end of the period covered by the last interim  
24 settlement of accounts. If the conservator fails or refuses to appear as cited, the court may  
25 proceed without the appearance of the conservator. If the conservator has been required  
26 to give bond, the surety on the bond shall be bound by the settlement if the surety is given  
27 notice by first-class mail of the settlement proceeding.

28 (b) A conservator, a former conservator, the conservator of a conservator, or the personal  
29 representative of a deceased conservator shall be allowed to cite the minor, the minor's  
30 personal representative, or a successor conservator to appear and be present at a final  
31 settlement of the conservator's accounts and discharge from liability in the manner  
32 provided for in subsection (a) of this Code section. The settlement period shall be the  
33 period of time from the commencement of the conservatorship or the end of the period  
34 covered by the last interim settlement of accounts. Notice by first-class mail of the  
35 settlement proceeding must be given to the surety on the conservator's bond and to the

1 minor's guardian, if any. If the minor has not reached 18 years of age or if the conservator  
2 is the minor's personal representative, the court shall appoint a guardian ad litem for the  
3 minor who shall be served personally.

4 (c) Upon the return of a notice referred to in subsections (a) and (b) of this Code section,  
5 the court shall proceed to examine all returns and accounts of the conservator during the  
6 settlement period and to hear any objection to the settlement and discharge.

7 (d) The court shall order any property in the hands of the conservator to be delivered to the  
8 minor, the minor's personal representative, or to the successor conservator and shall issue  
9 a judgment, writ of fieri facias, and execution thereon for any sums found to be due from  
10 the conservator. If the court is satisfied that the conservator has faithfully and honestly  
11 discharged the office, an order shall be entered releasing and discharging the conservator  
12 from all liability.

13 **ARTICLE 8**

14 29-3-80.

15 (a) A conservator or the duly authorized guardian, conservator, or attorney in fact of a  
16 conservator acting on behalf of the conservator may resign upon petition to the court  
17 showing to the satisfaction of the court that:

18 (1) The conservator is unable to continue serving due to age, illness, infirmity, or other  
19 good cause;

20 (2) Greater burdens have devolved upon the office of conservator than those that were  
21 originally contemplated or should have been contemplated when the conservator was  
22 qualified and the additional burdens work a hardship upon the conservator;

23 (3) Disagreement exists between the minor and the conservator or between the guardian  
24 and the conservator in respect to the conservator's management of the minor's property,  
25 which disagreement and conflict appear to be detrimental to the minor;

26 (4) The resignation of the conservator will result in or permit substantial financial benefit  
27 to the minor; or

28 (5) The resignation would not be disadvantageous to the minor.

29 (b) The petition for resignation shall include the name of a suitable person who is willing  
30 to accept the conservatorship.

31 (c) Personal service of the petition for resignation shall be made upon the minor and a  
32 guardian ad litem appointed by the court for the minor. Service shall be made by first-class  
33 mail to the guardian of the minor, if any, the surety on the conservator's bond, and to the  
34 following relatives of the minor who are persons other than the resigning conservator or  
35 the proposed successor conservator:

- 1       (1) Any parent of the minor whose parental rights have not been terminated;
- 2       (2) If there is no parent of the minor whose parental rights have not been terminated, the  
3           adult siblings of the minor; provided, however, that not more than three adult siblings  
4           need be served;
- 5       (3) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
6           however, that not more than three grandparents need be served;
- 7       (4) If there is no grandparent of the minor, any three of the nearest adult relatives of the  
8           minor determined according to 53-2-1 of the Revised Probate Code of 1998.

9       (d) If, after such hearing as the court deems appropriate, the court is satisfied that the  
10          petition for the resignation of the conservator and the appointment of the successor  
11          conservator should be granted, the court shall enter an order appointing the successor  
12          conservator in accordance with the provisions of Code Section 29-3-91 and shall accept the  
13          conservator's resignation, subject to the resigning conservator turning over to the successor  
14          conservator all property held by the conservator.

15       29-3-81.

16       (a) In the event of the death of a conservator and upon the petition of an interested person  
17          or upon the court's own motion, the court shall appoint a successor conservator. The court  
18          shall notify the minor and a guardian ad litem appointed for the minor by personal service.  
19          Notice shall be given by first-class mail to the guardian of the minor, if any, the surety on  
20          the conservator's bond, the personal representative of the deceased conservator, if any, and,  
21          in the following order of preference, and to the following relatives of the minor who are  
22          persons other than the proposed successor conservator:

- 23       (1) Any parent of the minor whose parental rights have not been terminated;
- 24       (2) If there is no parent of the minor whose parental rights have not been terminated, the  
25           adult siblings of the minor; provided, however, that not more than three adult siblings  
26           need be served;
- 27       (3) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
28           however, that not more than three grandparents need be served; or
- 29       (4) If there is no grandparent of the minor, any three of the nearest adult relatives of the  
30           minor determined according to Code Section 53-2-1 of the Revised Probate Code of  
31           1998.

32       (b) After such hearing as the court deems appropriate, the court shall enter an order  
33          appointing a successor conservator in accordance with the provisions of Code Section  
34          29-3-91 and require the personal representative of the deceased conservator to turn over  
35          to the successor conservator all property of the minor held by the conservator.

1 29-3-82.

2 (a) Upon the petition of any interested person or whenever it appears to the court that good  
3 cause may exist to revoke or suspend the letters of conservatorship or to impose sanctions,  
4 the court shall cite the conservator to answer the charge. The court shall investigate the  
5 allegations and may require such accounting as the court deems appropriate. The court  
6 may appoint a temporary substitute conservator to take possession of and to administer the  
7 minor's property during the investigation.

8 (b) Upon investigation the court may in its discretion:

- 9 (1) Revoke or suspend the letters of conservatorship;
- 10 (2) Require additional security;
- 11 (3) Require the conservator to appear and submit to a settlement of accounts following  
the procedure as set forth in Code Section 29-3-71, whether or not the conservator has  
first resigned or been removed and whether or not a successor conservator has been  
appointed;
- 15 (4) Reduce or deny compensation to the conservator or impose such other sanction or  
sanctions as the court deems appropriate; and
- 17 (5) Issue such other orders which the court deems appropriate under the circumstances  
of the case.

19 (c) The revocation or suspension of letters of conservatorship shall not abate any action  
20 pending for or against the conservator. The successor conservator shall be made a party  
21 to the action in the manner provided in Code Section 9-11-25.

22 29-3-83.

23 (a) If a conservator commits a breach of fiduciary duty or threatens to commit a breach of  
fiduciary duty, a minor or an interested person on behalf of the minor shall have a cause  
25 of action as appropriate:

- 26 (1) To recover damages;
- 27 (2) To compel performance of the conservator's duties;
- 28 (3) To enjoin the commission of a breach of fiduciary duty; or
- 29 (4) To compel the redress of a breach of fiduciary duty by payment of money or  
otherwise.

31 (b) When the minor's assets are misappropriated and can be traced into the hands of persons  
32 who have notice of the misappropriation, a trust shall attach to the assets.

33 (c) The provision of remedies for breach of fiduciary duty by this Code section does not  
34 prevent resort to any other appropriate remedy provided by statute or common law.

1 29-3-84.

2 All actions against a conservator, except on a conservator's bond, shall be brought within  
3 six years of the termination of the conservatorship of the minor, except as provided in Code  
4 Section 9-3-90.

5 **ARTICLE 9**

6 29-3-90.

7 (a) Upon its own motion or on the petition of any interested party, including the minor, the  
8 court may appoint a temporary substitute conservator for a minor if it appears to the court  
9 that the best interest of the minor requires immediate action.

10 (b) The temporary substitute conservator shall be appointed for a specified period not to  
11 exceed 120 days.

12 (c) The court shall appoint as temporary substitute conservator the county guardian or  
13 some other appropriate person who shall serve the best interest of the minor.

14 (d) Except as otherwise ordered by the court, a temporary substitute conservator has the  
15 powers set forth in the order of appointment. The authority of the previously appointed  
16 conservator is suspended for as long as the temporary substitute conservator has authority.

17 (e) Notice of the appointment of a temporary substitute conservator shall be served  
18 personally on the minor. Notice of the appointment shall be served personally on the  
19 previously appointed conservator at the last address provided by that conservator to the  
20 court. Notice of the appointment shall be mailed by first-class mail to the surety of the  
21 previously appointed conservator and to the minor's guardian, if any.

22 (f) The court may remove the temporary substitute conservator at any time. A temporary  
23 substitute conservator shall make any report and shall give any bond the court deems  
24 appropriate. In all other respects, the provisions of this chapter apply to the temporary  
25 substitute conservator.

26 29-3-91.

27 (a) The court shall appoint a successor conservator upon the resignation, death, or  
28 revocation of the letters of the conservator if the appointment of a successor conservator  
29 is in the best interest of the minor. The court shall select the successor conservator in the  
30 manner provided in Code Section 29-3-7.

31 (b) In the event of the resignation or death of the conservator, notice of the proceeding for  
32 appointment of a successor conservator shall be given as provided in Code Sections  
33 29-3-80 and 29-3-81. In all other cases, notice of the proceeding for appointment of a  
34 successor conservator shall be served personally on the minor and a guardian ad litem

1 appointed for the minor. Notice shall be given by first-class mail to the guardian of the  
2 minor, if any, and to the following relatives of the minor, in the following order of  
3 preference, who are persons other than the proposed successor conservator:

- 4 (1) Any parent of the minor whose parental rights have not been terminated;
  - 5 (2) If there is no parent of the minor whose parental rights have not been terminated, the  
6 adult siblings of the minor; provided, however, that not more than three adult siblings  
7 need be served; or
  - 8 (3) If there is no adult sibling of the minor, the grandparents of the minor; provided,  
9 however, that not more than three grandparents need be served; or
  - 10 (4) If there is no grandparent of the minor, any three of the nearest adult relatives of the  
11 minor determined according to Code Section 53-2-1 of the Revised Probate Code of  
12 1998.
- 13 (c) After any hearing the court deems appropriate the court shall enter an order appointing  
14 the successor conservator and require that bond be posted in the amount set forth in Code  
15 Section 29-3-40.

16 29-3-92.

17 Upon the appointment of a successor conservator, the predecessor conservator or the  
18 personal representative of a deceased predecessor conservator shall deliver to the successor  
19 conservator all property of the minor held by the conservator and shall submit a final return  
20 covering the period since the conservator's last annual return. The surety of the  
21 predecessor conservator shall be liable for all acts of the conservator in relation to the  
22 minor's property up to the time of the receipt of all of the minor's property by the successor  
23 conservator.

## 24 ARTICLE 10

### 25 Part 1

26 29-3-100.

27 (a) A conservator may petition to remove the conservatorship to the jurisdiction of the  
28 court of the county in this state in which the minor resides.

29 (b) Upon the filing of a petition to remove the conservatorship to another county in this  
30 state, the court shall appoint a guardian ad litem for the minor. The court of the county in  
31 which the conservator was appointed shall grant the petition for removal only if the court  
32 determines that the removal is in the best interest of the minor.

33 (c) Before the removal of the conservatorship to another county in this state, the  
34 conservator must give bond and good security to the court of such county as if the

1 conservator had been first appointed by that court and a certificate to this effect shall be  
2 filed in the court in which the conservator was appointed. The conservator shall file with  
3 the court of the county to which the conservatorship is to be removed certified copies of  
4 all the records pertaining to the conservatorship.

5 (d) Following removal of a conservatorship to another county in this state, the court to  
6 which the conservatorship is removed shall have the same jurisdiction over the conservator  
7 as if the conservator had been first appointed in that county, and every case growing out  
8 of or affecting the conservatorship shall be heard and tried only in the county to which the  
9 conservatorship has been removed.

10 (e) The sureties on the conservator's first bond shall be liable only for misconduct of the  
11 conservator up until the giving of new bond and security. The sureties on the new bond  
12 shall be liable for both past and future misconduct of the conservator.

13 (f) The court in which an action or proceeding is pending or which has issued an order for  
14 a settlement of accounts, removal, or sanction of a conservator shall retain jurisdiction of  
15 such matters even though the conservatorship has been removed to another county.

16

## Part 2

17 29-3-105.

18 (a) For purposes of this part and Part 3 of this article, the term 'conservatorship' refers to  
19 a legal relationship in which a person is given responsibility by a court of competent  
20 jurisdiction for the care of the property of a minor, thereby becoming a conservator.

21 (b) A conservator who has been appointed by a foreign court of competent jurisdiction  
22 may petition to have the conservatorship transferred to and accepted in this state by filing  
23 a petition for receipt and acceptance of the foreign conservatorship in the court of the  
24 county in this state where the minor resides or may reside.

25 (c) The petition shall include the following:

26 (1) An authenticated copy of the foreign conservatorship order, including:

27 (A) All attachments describing the duties and powers of the conservator; and  
28 (B) All amendments or modifications to the foreign conservatorship order entered  
29 subsequent to the original order, including any order to transfer the conservatorship;

30 (2) The address of the foreign court which issued the conservatorship order;

31 (3) A listing of any other conservatorship petitions that are pending in any jurisdiction  
32 and the names and addresses of the courts where the petitions have been filed;

33 (4) The petitioner's name, address, and county of domicile;

34 (5) The name, age, and current address of the minor;

35 (6) The names and current addresses of the adult siblings of the minor, if any;

- 1       (7) The name and address of the person responsible for the care and custody of the  
2 minor, if other than the petitioner, and of any other conservator currently serving;  
3       (8) The name and address of any currently acting legal representative, other than the  
4 petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by  
5 the foreign court for the minor;  
6       (9) The name and address of the minor's guardian, if any;  
7       (10) The name and address of the surety on the conservator's bond;  
8       (11) The reason the transfer is in the minor's best interest; and  
9       (12) To the extent known to the petitioner, a statement of the location and estimated  
10 value of the minor's property and the source and amount of any anticipated income or  
11 receipts.
- 12     (d) The petition may be combined with other petitions related to the conservatorship,  
13 including a petition to modify the terms of the conservatorship.

14     29-3-106.

15     (a) Notice and a copy of the petition for receipt and acceptance of a foreign  
16 conservatorship shall be served personally on the minor. The notice shall:

- 17       (1) State that the minor has a right to a hearing on the petition;  
18       (2) Inform the minor of the procedure to exercise the minor's right to a hearing; and  
19       (3) State that the minor has the right to independent legal counsel and that the court shall  
20 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel  
21 has been appointed by the foreign court to represent the minor in the transfer of the  
22 conservatorship.

23     (b) Notice and a copy of the petition for receipt and acceptance of a foreign  
24 conservatorship shall be provided to the court from which the conservatorship is to be  
25 transferred. Notice to the foreign court shall include a request that the foreign court:

- 26       (1) Certify whether:  
27           (A) The foreign court has any record that the conservator has engaged in malfeasance,  
28 misfeasance, or nonfeasance during the conservator's appointment;  
29           (B) Periodic reports have been filed in a satisfactory manner; and  
30           (C) All bond or other security requirements imposed under the conservatorship have  
31 been performed;  
32       (2) Forward copies of all documents filed with the foreign court relating to the  
33 conservatorship, including but not limited to:  
34           (A) The initial petition for conservatorship and other filings relevant to the  
35 appointment of the conservator;

1       (B) Reports and recommendations of guardians ad litem, court visitors, or other  
2       individuals appointed by the foreign court to evaluate the appropriateness of the  
3       conservatorship;

4       (C) Reports of physical and mental health practitioners describing the condition of the  
5       minor;

6       (D) Periodic status reports on the condition of the minor and the minor's assets; and

7       (E) The order to transfer the conservatorship, if any.

8       (c) Notice and a copy of the petition for receipt and acceptance of a foreign  
9       conservatorship shall be mailed to all other persons named in the petition by first-class  
10      mail. The notice shall inform these persons of their right to object to the receipt and  
11      acceptance of the conservatorship by this state.

12      (d) The minor shall have 30 days from the date of service of the petition for receipt and  
13      acceptance of the foreign conservator to request a hearing on the petition. All other  
14      persons to whom notice is given under this Code section shall have 30 days from the  
15      mailing of the notice to request a hearing on the petition.

16      (e) The court may waive the notice requirements of subsections (a) through (c) of this  
17      Code section if:

18       (1) The conservator has filed a petition in the foreign court for transfer and release of the  
19       conservatorship to this state;

20       (2) Notice was given to the minor and all interested persons in conjunction with the  
21       petition for transfer and release of the conservatorship;

22       (3) The petitioner provides the court with an authenticated copy of the petition for  
23       transfer and release of the conservatorship filed with the foreign court and proof that  
24       service was made on the minor not more than 90 days from the date the petition for  
25       receipt and acceptance of the conservatorship is filed in the court; and

26       (4) The minor is represented by legal counsel with respect to the petition in the foreign  
27       court.

28      29-3-107.

29       (a) Upon the court's own motion or upon timely motion by the minor or by any interested  
30       person, the court shall hold a hearing to consider the petition for receipt and acceptance of  
31       the foreign conservator.

32       (b) If any interested person challenges the validity of the foreign conservator or the  
33       authority of the foreign court to appoint the conservator, the court may stay this proceeding  
34       while the petitioner is afforded the opportunity to have the foreign court hear the challenge  
35       and determine its merits.

1 29-3-108.

2 (a) The court may grant a petition for receipt and acceptance of a foreign conservatorship  
3 provided the court finds that:

4 (1) The conservator is presently in good standing with the foreign court; and

5 (2) The transfer of the conservatorship from the foreign jurisdiction is in the best interest  
6 of the minor.

7 (b) The court may require the conservator to file an inventory of the minor's property at  
8 the time of the transfer from the foreign jurisdiction.

9 (c) Subject to subsection (d) of this Code section, at all times following the entry of the  
10 order accepting the guardianship, the laws of the State of Georgia shall apply to the  
11 conservatorship.

12 (d) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
13 the conservatorship, the court is authorized to:

14 (1) Delay the effective date of the receipt and acceptance for a reasonable period of time;

15 (2) Make the receipt and acceptance contingent upon the release of the conservatorship  
16 or the termination of the conservatorship and the discharge of the conservator in the  
17 foreign jurisdiction;

18 (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period  
19 of time to permit the foreign court to release the conservatorship or to terminate the  
20 conservatorship and discharge the conservator in the foreign jurisdiction; or

21 (4) Make other arrangements the court deems necessary to effectuate the receipt and  
22 acceptance of the conservatorship.

23 (e) The denial of a petition for receipt and acceptance of the foreign conservatorship does  
24 not affect the right of a conservator appointed by a foreign court of competent jurisdiction  
25 to petition for conservatorship under Code Section 29-3-8.

26

### Part 3

27 29-3-110.

28 (a) A conservator may petition the Georgia court which has jurisdiction over the  
29 conservatorship to transfer the conservatorship to a foreign court of competent jurisdiction  
30 if the minor has moved permanently to the foreign jurisdiction.

31 (b) The minor may be presumed to have moved permanently to the foreign jurisdiction if:

32 (1) The minor has resided in the foreign jurisdiction for more than 12 consecutive  
33 months;

34 (2) The conservator notifies the court that the minor will move or has moved  
35 permanently to the foreign jurisdiction; or

1       (3) A foreign court of competent jurisdiction notifies the court of the filing of a petition  
2       for conservatorship for the minor in the foreign jurisdiction.

3       (c) To facilitate the transfer of conservatorship the court may order the conservator to file  
4       a petition for receipt and acceptance of the conservatorship in the foreign jurisdiction.

5       (d) If the foreign jurisdiction does not have a procedure for receiving and accepting a  
6       foreign conservatorship, the court may order the conservator to file a petition for  
7       conservatorship in the foreign jurisdiction.

8       29-3-111.

9       The petition to transfer a conservatorship to a foreign jurisdiction shall include the  
10      following:

11      (1) The name and address of the foreign court to which the conservatorship shall be  
12       transferred and an authenticated copy of the petition for receipt and acceptance of a  
13       foreign conservatorship if previously filed in the foreign court;

14      (2) A listing of any other conservatorship petitions that are pending in any jurisdiction  
15       and the names and addresses of the courts where the petitions have been filed;

16      (3) The petitioner's name, address, and county of domicile;

17      (4) The name, age, and current address of the minor and the new or proposed address of  
18       the minor;

19      (5) The names and current addresses of the adult siblings of the minor, if any;

20      (6) The name and address of the person responsible for the care and custody of the  
21       minor, if other than the petitioner, and of any other conservator currently serving;

22      (7) The name and address of the minor's guardian, if any;

23      (8) The name and address of the surety on the conservator's bond;

24      (9) The name and address of any legal representative, other than the petitioner, including  
25       any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for  
26       the minor;

27      (10) The reason for moving the minor; and

28      (11) The reason the transfer of the conservatorship is in the minor's best interest.

29       29-3-112.

30      (a) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction  
31       shall be served personally on the minor not less than ten days prior to the date set for the  
32       hearing. The notice shall state:

33       (1) The date that the hearing shall be held; and

34       (2) That the minor has the right to independent legal counsel and that the court shall  
35       appoint legal counsel for the minor unless the minor has retained counsel or legal counsel

1 has been appointed by the foreign court to represent the minor in the receipt and  
2 acceptance of the guardianship.

3 (b) Notice and a copy of the petition to transfer the conservatorship shall be provided to  
4 the foreign court to which the conservatorship is to be transferred.

5 (c) Notice and a copy of the petition to transfer the conservatorship shall be mailed to all  
6 other persons named in the petition. The notice shall inform these persons of the date of  
7 the hearing and of their right to file objections to the transfer of the conservatorship by this  
8 state.

9 29-3-113.

10 Upon the court's own motion or upon timely motion by the minor or by any interested  
11 person the court shall hold a hearing to consider the petition to transfer the conservatorship.

12 29-3-114.

13 (a) The court may grant a petition to transfer a conservatorship to a foreign court of  
14 competent jurisdiction if the court finds that:

15 (1) The conservator is presently in good standing with the court; and

16 (2) The transfer of the conservatorship to the foreign jurisdiction is in the best interest  
17 of the minor.

18 (b) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
19 the conservatorship, the court is authorized to:

20 (1) Notify the foreign court of any significant problems that may have occurred,  
21 including whether periodic reports and accountings have been filed in a satisfactory  
22 manner and whether all bond or other security requirements imposed under the  
23 conservatorship have been performed;

24 (2) Forward copies of all documents filed with the court relating to the conservatorship,  
25 including but not limited to:

26 (A) The initial petition for conservatorship and other filings relevant to the  
27 appointment of the conservator;

28 (B) Reports and recommendations of guardians ad litem, court visitors, or other  
29 individuals appointed by the court to evaluate the appropriateness of the  
30 conservatorship;

31 (C) Reports of physical or mental health practitioners describing the condition of the  
32 minor; and

33 (D) Periodic status reports on the condition of the minor and the minor's assets; and

34 (3) Require the conservator to file an inventory of the minor's property at the time of the  
35 transfer to the foreign jurisdiction.

(c) As necessary to coordinate the transfer of the conservatorship the court is authorized to:

- (1) Delay the effective date of the transfer for a reasonable period of time;
- (2) Make the transfer contingent upon the acceptance of the conservatorship or appointment of the conservator in the foreign jurisdiction;
- (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period of time to permit the foreign court to accept the conservatorship or appoint the conservator in the foreign jurisdiction; or
- (4) Make other arrangements that in the sound discretion of the court are necessary to transfer the conservatorship.

Part 4

29-3-115.

(a) For purposes of this part, a 'foreign conservator' is a conservator or other person who has been given responsibility by a court of competent jurisdiction in another state or territory governed by the Constitution of the United States for the care of the property of a minor and whose conservatorship has not been transferred to and accepted in this state pursuant to the provisions of Part 2 of this article.

(b) Any foreign conservator of a minor who resides in any other state and who is authorized to sell and convey property of the minor may sell property of the minor which is in this state, under the rules and regulations prescribed for the sale of real estate by conservators of this state, provided that the foreign conservator must file and have recorded in the court or other proper court, at the time of petitioning for sale, an authenticated copy of the letters of appointment and must also file with the court or other proper authority bond with good and sufficient security, in double the value of the property to be sold, for the faithful execution of the conservatorship, as provided by law.

29-3-116.

A foreign conservator may institute an action in any court in this state to enforce any right or to recover any property belonging to the minor or accruing to the foreign conservator in his or her capacity as conservator.

29-3-117.

Pending an action brought by a foreign conservator pursuant to Code Section 29-3-116, an authenticated copy of the letters of conservatorship shall be filed with the clerk of the court

1 to become a part of the record if the case is pending in a court of record, or filed with the  
2 papers if the action is a summary proceeding.

3 29-3-118.

4 A foreign conservator submits personally to the jurisdiction of the courts of this state in any  
5 proceeding relating to the conservatorship by:

6 (1) Receiving payment of money or taking delivery of personal property in this state  
7 belonging to the minor; or

8 (2) Doing any act as a conservator in this state that would have given this state  
9 jurisdiction over the conservator as an individual.

10 29-3-119.

11 Any resident of this state who is interested as a creditor, heir, or will beneficiary of a minor  
12 whom a foreign conservator represents may apply to the proper court to compel the foreign  
13 conservator to protect his or her interest according to equity and good conscience before  
14 selling the minor's assets or removing the minor's assets beyond the limits of this state.

15 29-3-120.

16 (a) A person who is indebted to or has possession of tangible or intangible property of a  
17 minor may pay the debt or deliver the property to a foreign conservator of the minor.  
18 Payment of the debt or delivery of the property may be made upon proof that the foreign  
19 conservator has been appointed and is entitled to the debt payment or to receive delivery  
20 of the property.

21 (b) Payment of the debt or delivery of the property in response to the demand discharges  
22 the debtor or possessor, unless the debtor or possessor has knowledge of proceedings for  
23 the appointment of a guardian, conservator, or other protective proceeding in this state.

24 CHAPTER 4

25 ARTICLE 1

26 29-4-1.

27 (a) The court may appoint a guardian for an adult only if the court finds the adult lacks  
28 sufficient capacity to make or communicate significant responsible decisions concerning  
29 his or her health or safety.

30 (b) No guardian, other than a guardian ad litem, shall be appointed for an adult except  
31 pursuant to the procedures of this chapter.

- 1       (c) No guardian shall be appointed for an adult unless the appointment is in the best  
2       interest of the adult.
- 3       (d) No guardian shall be appointed for an adult within two years after the denial or  
4       dismissal on the merits of a petition for the appointment of a guardian for that adult unless  
5       the petitioner shows a significant change in the condition or circumstances of the adult.
- 6       (e)(1) No adult shall be presumed to be in need of a guardian unless adjudicated to be in  
7       need of a guardian pursuant to this chapter.
- 8       (2) An adult shall not be presumed to be in need of a guardian solely because of a finding  
9       of criminal insanity or incompetence to stand trial or a finding of a need for treatment or  
10      services pursuant to:
- 11       (A) Code Section 37-1-1;
- 12       (B) Code Sections 37-3-1 through 37-3-6;
- 13       (C) Articles 2 through 6 of Chapter 3 of Title 37;
- 14       (D) Code Sections 37-4-1 through 37-4-3 and 37-4-5 through 37-4-8;
- 15       (E) Articles 2 through 5 of Chapter 4 of Title 37;
- 16       (F) Code Section 37-5-3;
- 17       (G) Code Sections 37-7-1, 37-7-2, and 37-7-4 through 37-7-7; and
- 18       (H) Articles 2 through 6 of Chapter 7 of Title 37.
- 19       (f) All guardianships ordered pursuant to this chapter shall be designed to encourage the  
20      development of maximum self-reliance and independence in the adult and shall be ordered  
21      only to the extent necessitated by the adult's actual and adaptive limitations after a  
22      determination that less restrictive alternatives to the guardianship are not available or  
23      appropriate.

- 24      29-4-2.
- 25       (a) Only an individual may serve as guardian of an adult.
- 26       (b) No individual may be appointed as guardian of an adult who:
- 27           (1) Is a minor, a ward, or a protected person;
- 28           (2) Has a conflict of interest with the adult unless the court determines that the conflict  
29           of interest is insubstantial or that the appointment clearly would be in the adult's best  
30           interest; or
- 31           (3) Is an owner, operator, or employee of a long-term care or other caregiving institution  
32           or facility at which the adult is receiving care, unless related to the adult by blood,  
33           marriage, or adoption.

- 1      29-4-3.
- 2      (a) The court shall appoint as guardian that individual who will best serve the interest of  
3      the adult, considering the order of preferences set forth in this Code section. The court may  
4      disregard an individual who has preference and appoint an individual who has a lower  
5      preference or no preference; provided, however, that the court may disregard the  
6      preferences listed in paragraph (1) of subsection (b) of this Code section only upon good  
7      cause shown.
- 8      (b) Individuals who are eligible have preference in the following order:
- 9        (1) The individual last nominated by the adult in accordance with the provisions of  
10      subsection (c) of this Code section;
- 11        (2) The spouse of the adult or an individual nominated by the adult's spouse in  
12      accordance with the provisions of subsection (d) of this Code section;
- 13        (3) An adult child of the adult or an individual nominated by an adult child of the adult  
14      in accordance with the provisions of subsection (d) of this Code section;
- 15        (4) A parent of the adult or an individual nominated by a parent of the adult in  
16      accordance with the provisions of subsection (d) of this Code section;
- 17        (5) A guardian appointed during the minority of the adult;
- 18        (6) A guardian previously appointed in Georgia or another state;
- 19        (7) A friend, relative, or any other individual; and
- 20        (8) The county guardian or the director of the department of family and children services  
21      of the county of domicile of the adult or of the county in which the adult is found;  
22      provided, however, that the director of the county department of family and children  
23      services may delegate the guardianship duties to responsible employees of the  
24      department.
- 25      (c) At any time prior to the appointment of a guardian, an adult may nominate in writing  
26      an individual to serve as that adult's guardian should the adult be judicially determined to  
27      be in need of a guardian, and that nomination shall be given the preference described in this  
28      Code section, provided that it is signed in accordance with the provisions of subsection (e)  
29      of this Code section or the provisions of Code Section 31-36-5.
- 30      (d) At any time prior to the appointment of a guardian, a spouse, adult child, or parent of  
31      an adult may nominate in writing an individual to serve as that adult's guardian should the  
32      adult be judicially determined to be in need of a guardian, and that nomination shall be  
33      given the preference described in this Code section, provided that it is signed in accordance  
34      with the provisions of subsection (e) of this Code section or, if in a will, is executed in  
35      accordance with the provisions of Code Section 53-4-20 of the Revised Probate Code of  
36      1998.
- 37      (e) A writing nominating the guardian of an adult:

- (1) Must contain an express nomination of the individual who shall serve as guardian and must be signed or acknowledged by the individual making the nomination in the presence of two witnesses who sign in the individual's presence; and
- (2) May be revoked by the individual by obliteration, cancellation, or by a subsequent inconsistent writing, whether or not witnessed.

## ARTICLE 2

29-4-10.

(a) Any interested person or persons, including the proposed ward, may file a petition for the appointment of a guardian. The petition shall be filed in the court of the county in which the proposed ward is domiciled or is found, provided that the court of the county where the proposed ward is found shall not have jurisdiction to hear any guardianship petition if it appears that the proposed ward was removed to that county solely for the purposes of filing a petition for the appointment of a guardian.

(b) The petition for appointment of a guardian shall set forth:

- (1) A statement of the facts upon which the court's jurisdiction is based;
- (2) The name, address, and county of domicile of the proposed ward, if known;
- (3) The name, address, and county of domicile of the petitioner or petitioners and the petitioner's relationship to the proposed ward, if any, and, if different from the petitioner, the name, address, and county of domicile of the person nominated by the petitioner to serve as guardian and that person's relationship to the proposed ward, if any;

(4) A statement of the reasons the guardianship is sought, including the facts which support the claim of the need for a guardian;

(5) Any foreseeable limitations on the guardianship;

(6) Whether, to the petitioner's knowledge, there exists any living will, durable power of attorney for health care, order relating to cardiopulmonary resuscitation, or other instrument that deals with the management of the person of the proposed ward in the event of incapacity and the name and address of any fiduciary or agent named in the instrument;

(7) The names and addresses of the following whose whereabouts are known:

(A) The spouse of the proposed ward; and

(B) All children of the proposed ward; or

(C) If there are no adult children, then at least two adults in the following order of priority:

(i) Lineal descendants of the proposed ward;

(ii) Parents and siblings of the proposed ward; and

- (iii) Friends of the proposed ward;
  - (8) If known, the name and address of any individual nominated to serve as guardian by the proposed ward, as described in paragraph (1) of subsection (b) of Code Section 29-4-3;
  - (9) If known, the name and address of any individual nominated to serve as guardian by the proposed ward's spouse, adult child, or parent, as described in paragraph (2), (3), or (4) of subsection (b) of Code Section 29-4-3;
  - (10) Whether any nominated guardian has consented or will consent to serve as guardian;
  - (11) If known, whether any nominated guardian is an owner, operator, or employee of a long-term care or other caregiving institution or facility at which the proposed ward is receiving care, and, if so, whether the nominated guardian is related to the proposed ward by blood, marriage, or adoption;
  - (12) Whether an emergency guardian has been appointed for the proposed ward or a petition for the appointment of an emergency guardian has been filed or is being filed;
  - (13) If known, a disclosure of any ownership or other financial interest that would cause any nominated guardian to have a conflict of interest with the proposed ward;
  - (14) A specific listing of any of the additional powers, as described in subsection (b) of Code Section 29-4-23, that are requested by the guardian and a statement of the circumstances that would justify the granting of additional powers;
  - (15) Whether a guardian or conservator has been appointed in another state or whether a petition for the appointment of a guardian or conservator is pending in another state;
  - (16) That to petitioner's knowledge, there has been no petition for guardianship denied or dismissed within two years by any court of this state or, if so, that there has been a significant change in the condition or circumstances of the individual, as shown by the accompanying affidavits or evaluation; and
  - (17) The reason for any omission in the petition for appointment of a guardian in the event full particulars are lacking.

(c)(1) The petition shall be sworn to by two or more petitioners or shall be supported by an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, or, if the proposed ward is a patient in any federal medical facility in which such a physician, psychologist, or licensed clinical social worker is not available, a physician or psychologist authorized to practice in that facility.

(2) Any affidavit shall be based on personal knowledge and shall state that the affiant has examined the proposed ward within 15 days prior to the filing of the petition and that, based on the examination, the proposed ward was determined to lack sufficient capacity

1 to make or communicate significant, responsible decisions concerning the proposed  
2 ward's health or safety.

3 (3) In addition to stating the facts that support the claim of the need for a guardian, the  
4 affidavit shall state the foreseeable duration of the guardianship and may set forth the  
5 affiant's opinion as to any other limitations on the guardianship.

6 29-4-11.

7 (a) Upon the filing of a petition for guardianship of an proposed ward, the court shall  
8 review the petition and the affidavit, if any, and determine whether there is probable cause  
9 to believe that the proposed ward is in need of a guardian within the meaning of Code  
10 Section 29-4-1.

11 (b) If the court determines that there is no probable cause to believe that the proposed ward  
12 is in need of a guardian, the court shall dismiss the petition and provide the proposed ward  
13 with a copy of the petition, the affidavit, if any, and the order dismissing the petition.

14 (c) If the court determines that there is probable cause to believe that the proposed ward  
15 is in need of a guardian:

16 (1) The court shall immediately notify the proposed ward of the proceedings by service  
17 of all pleadings on the proposed ward, which notice shall:

18 (A) Be served personally on the proposed ward by an officer of the court and shall not  
19 be served by mail;

20 (B) Inform the proposed ward that a petition has been filed to have a guardian  
21 appointed for the proposed ward, that the proposed ward has the right to attend any  
22 hearing that is held, and that, if a guardian is appointed, the proposed ward may lose  
23 important rights to control the management of the proposed ward's person;

24 (C) Inform the proposed ward of the place and time at which the proposed ward shall  
25 submit to the evaluation provided for by subsection (d) of this Code section; and

26 (D) Inform the proposed ward of the proposed ward's right to independent legal  
27 counsel and that the court shall appoint counsel within two days of service unless the  
28 proposed ward indicates that he or she has retained counsel in that time frame;

29 (2) Upon notice that the proposed ward has retained legal counsel or upon the  
30 appointment of legal counsel by the court, the court shall furnish legal counsel with a  
31 copy of the petition, the affidavit, if any, and the order for evaluation provided for by  
32 subsection (d) of this Code section;

33 (3) The court shall give notice of the petition by first-class mail to all adult individuals  
34 and other persons who are named in the petition pursuant to the requirements of  
35 paragraphs (7), (8), and (9) of subsection (b) of Code Section 29-4-10; and

1       (4) On the motion of any interested person or on the court's own motion, the court shall  
2 determine whether to appoint a guardian ad litem.

3       (d)(1) If the petition is not dismissed under subsection (b) of this Code section, the court  
4 shall appoint an evaluating physician who shall be a physician licensed to practice  
5 medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter  
6 39 of Title 43, or licensed clinical social worker or, if the proposed ward is a patient in  
7 any federal medical facility in which such a physician, psychologist, or licensed clinical  
8 social worker is not available, a physician, psychologist, or licensed clinical social worker  
9 authorized to practice in that federal facility, other than the physician, psychologist, or  
10 licensed clinical social worker who completed the affidavit attached to the petition  
11 pursuant to subsection (c) of Code Section 29-4-10.

12      (2) When evaluating the proposed ward, the physician, psychologist, or licensed clinical  
13 social worker shall explain the purpose of the evaluation to the proposed ward. The  
14 proposed ward may remain silent. Any statements made by the proposed ward during the  
15 evaluation shall be privileged and shall be inadmissible as evidence in any proceeding  
16 other than a proceeding under this chapter. The proposed ward's legal counsel shall have  
17 the right to be present but shall not participate in the evaluation.

18      (3) The evaluation shall be conducted with as little interference with the proposed ward's  
19 activities as possible. The evaluation shall take place at the place and time set in the  
20 notice to the proposed ward and the legal counsel and the time set shall not be sooner  
21 than the fifth day after the service of notice on the proposed ward. The court, however,  
22 shall have the exclusive power to change the place and time of the examination at any  
23 time upon reasonable notice being given to the proposed ward and to his or her legal  
24 counsel. If the proposed ward fails to appear, the court may order that the proposed ward  
25 be taken directly to and from a medical facility or the office of the physician,  
26 psychologist, or licensed clinical social worker for purposes of evaluation only. The  
27 evaluation shall be conducted during the normal business hours of the facility or office  
28 and the proposed ward shall not be detained in the facility or office overnight.

29      (4) A written report shall be filed with the court no later than seven days after the  
30 evaluation and the court shall serve a copy of the report by first-class mail upon the  
31 proposed ward and the proposed ward's legal counsel and, if any, the guardian ad litem.

32      (5) The report shall be signed under oath by the physician, psychologist, or licensed  
33 clinical social worker and shall:

34           (A) State the circumstances and duration of the evaluation, including a summary of  
35 questions or tests utilized;

36           (B) List all persons and other sources of information consulted in evaluating the  
37 proposed ward;

1       (C) Describe the proposed ward's mental and physical state and condition, including  
2       all observed facts considered by the physician or psychologist or licensed clinical social  
3       worker;

4       (D) Describe the overall social condition of the proposed ward, including support, care,  
5       education, and well-being; and

6       (E) Describe the needs of the proposed ward and their foreseeable duration.

7       (6) The proposed ward's legal counsel may file a written response to the evaluation,  
8       provided the response is filed no later than the date of the commencement of the hearing.  
9       The response may include, but is not limited to, independent evaluations, affidavits of  
10      individuals with personal knowledge of the proposed ward, and a statement of applicable  
11      law.

12      29-4-12.

13      (a) After the filing of the evaluation report the court shall review the pleadings and the  
14      evaluation report.

15      (b) If, after the review, the court finds that there is no probable cause to support a finding  
16      that the proposed ward is in need of a guardian within the meaning of Code Section 29-4-1,  
17      the court shall dismiss the petition.

18      (c) If, after the review, the court finds that there is probable cause to support a finding that  
19      the proposed ward is in need of a guardian, the court shall schedule a hearing on the  
20      petition. Notice of the hearing shall be served by first-class mail upon the proposed ward,  
21      the proposed ward's legal counsel, and the proposed ward's guardian ad litem, if any; the  
22      petitioner or the petitioner's legal counsel, if any; and all adult individuals and other  
23      persons who are named in the petition pursuant to the requirements of paragraphs (7), (8),  
24      and (9) of subsection (b) of Code Section 29-4-10. The date of the hearing shall not be less  
25      than ten days after the notice is mailed.

26      (d)(1) The hearing shall be held in a courtroom or, for good cause shown, at such other  
27      place as the court may choose. At the request of the proposed ward or the proposed  
28      ward's legal counsel and for good cause shown, the court may exercise its discretion to  
29      exclude the public from the hearing and the record shall reflect the court's action. The  
30      proposed ward or the proposed ward's legal counsel may waive the appearance of the  
31      proposed ward at the hearing.

32      (2) The hearing shall be recorded by either a certified court reporter or a sound-recording  
33      device. The recording shall be retained for not less than 45 days from the date of the  
34      entry of the order described in Code Section 29-4-13.

35      (3) The court shall apply the rules of evidence applicable in civil cases.

1       (4) The court shall utilize the criteria in Code Section 29-4-1 to determine whether there  
2       is clear and convincing evidence of the need for a guardianship in light of the evidence  
3       taken at the hearing. In addition, the court may consider the evaluation report and any  
4       response filed by the proposed ward. The burden of proof shall be upon the petitioner.

5       (5) Upon determination of the need for a guardianship, the court shall determine the  
6       powers, if any, which are to be retained by the proposed ward, in accordance with the  
7       provisions of Code Section 29-4-21 and whether any additional powers are to be granted  
8       to the guardian, pursuant to the provisions of subsection (b) of Code Section 29-4-23.

9       (6) If the court determines that a guardianship is necessary and the proposed ward is  
10      present, the proposed ward may suggest any individual as guardian. The court shall  
11      select as guardian the individual who will serve the best interest of the ward.

12      (7) In any procedure under this chapter in which the judge of the court is unable to hear  
13      a case within the time required for such hearing, the judge shall appoint an individual to  
14      hear the case and exercise all the jurisdiction of the court in the case. Any individual  
15      appointed shall be a member of the State Bar of Georgia who is qualified to serve as the  
16      probate judge in that county and who is, in the opinion of the appointing judge, qualified  
17      for the duties by training and experience. The appointment may be made on a  
18      case-by-case basis or by making a standing appointment of one or more individuals. Any  
19      individual who receives a standing appointment shall serve at the pleasure of the judge  
20      who makes the appointment or the judge's successor in office. The compensation of an  
21      individual appointed shall be as agreed upon by the judge who makes the appointment  
22      and the individual appointed, with the approval of the governing authority of the county  
23      for which the individual is appointed, and shall be paid from county funds. All fees  
24      collected for the service of the appointed individual shall be paid into the general funds  
25      of the county.

26      29-4-13.

27      (a) The court shall issue an order that sets forth the findings of fact and conclusions of law  
28      that support the grant or denial of the petition. An order granting guardianship shall  
29      specify:

- 30       (1) The name of the guardian and the basis for the selection;
- 31       (2) Any powers retained by the ward pursuant to Code Section 29-4-21;
- 32       (3) The limitations on the guardianship;
- 33       (4) A specific listing of any of the additional powers, as described in subsection (b) of  
34       Code Section 29-4-23, that are granted to the guardian;
- 35       (5) If only a guardian is appointed or if the guardian and the conservator appointed are  
36       not the same person, the reasonable sums of property to be provided the guardian to

1 provide adequately for the ward's support, care, education, health, and welfare, subject  
2 to modification by subsequent order of the court;

3 (6) The type and frequency of any physical, mental, and social evaluations of the ward's  
4 condition which the court may require to supplement the reports submitted pursuant to  
5 paragraph (9) of subsection (a) of Code Section 29-4-22; and

6 (7) Such other and further provisions of the guardianship as the court shall determine to  
7 be in the best interest of the ward, stating the reasons therefor.

8 (b) Service of the court's order shall be made by first-class mail upon the ward, the ward's  
9 legal counsel, the guardian ad litem, if any, the guardian, the petitioner, and other persons  
10 designated for service of the petition for guardianship.

11 (c) After service of an order granting guardianship, the ward's legal counsel shall make  
12 reasonable efforts to explain to the ward the order and the ward's rights under the order.

13 29-4-14.

14 (a) Any interested person, including the proposed ward, may file a petition for the  
15 appointment of an emergency guardian. The petition shall be filed in the court of the  
16 county in which the proposed ward is domiciled or is found.

17 (b) The petition for appointment of an emergency guardian shall set forth:

18 (1) A statement of the facts upon which the court's jurisdiction is based;

19 (2) The name, address, and county of domicile of the proposed ward, if known;

20 (3) The name, address, and county of domicile of the petitioner and the petitioner's  
21 relationship to the proposed ward;

22 (4) A statement of the reasons the emergency guardianship is sought, including the facts  
23 that support the need for a guardian and the facts that establish an immediate and  
24 substantial risk of death or serious physical injury, illness, or disease unless an emergency  
25 guardian is appointed;

26 (5) The reasons why compliance with the procedures of Code Sections 29-4-10 through  
27 29-4-13 is not appropriate in the circumstances;

28 (6) The fact that no other person appears to have authority and willingness to act in the  
29 circumstances, whether under a power of attorney, trust, or otherwise; and

30 (7) The reason for any omission in the petition for appointment of emergency guardian  
31 in the event full particulars are lacking.

32 (c) The petition shall state whether a petition for the appointment of a guardian or  
33 conservator has been filed or is being filed in conjunction with the petition for the  
34 appointment of an emergency guardian.

35 (d)(1) The petition shall be sworn to by two or more petitioners or shall be supported by  
36 an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a

1 psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social  
2 worker or, if the proposed ward is a patient in any federal medical facility in which such  
3 a physician, psychologist, or licensed clinical social worker is not available, a physician,  
4 psychologist, or licensed clinical social worker authorized to practice in that facility.

5 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has  
6 examined the proposed ward within 15 days prior to the filing of the petition and that,  
7 based on the examination, the proposed ward was determined to lack sufficient capacity  
8 to make or communicate significant, responsible decisions concerning the proposed  
9 ward's health or safety and that there is an immediate and substantial risk of death or  
10 serious physical injury, illness, or disease unless an emergency guardian is appointed.

11 (3) In addition to stating the facts that support the claim of the need for an emergency  
12 guardianship, the affidavit shall state the foreseeable duration of the emergency  
13 guardianship and may set forth the affiant's opinion as to any other limitations on the  
14 emergency guardianship.

15 29-4-15.

16 (a) Upon the filing of a petition for an emergency guardianship, the court shall review the  
17 petition and the affidavit, if any, to determine whether there is probable cause to believe  
18 that the proposed ward is in need of an emergency guardian within the meaning of  
19 paragraph (4) of subsection (b) of Code Section 29-4-14.

20 (b) If the court determines that there is no probable cause to believe that the proposed ward  
21 is in need of an emergency guardian, the court shall dismiss the petition and provide the  
22 proposed ward with a copy of the petition, the affidavit, if any, and the order dismissing  
23 the petition.

24 (c) If the court determines that there is probable cause to believe that the proposed ward  
25 is in need of an emergency guardian, the court shall:

26 (1) Immediately appoint legal counsel to represent the proposed ward at the emergency  
27 hearing, which counsel may be the same counsel who is appointed to represent the  
28 proposed ward in the hearing on the petition for guardianship or conservatorship, if any  
29 such petition has been filed, and shall inform counsel of the appointment;

30 (2) Order an emergency hearing to be conducted not sooner than three days nor later than  
31 five days after the filing of the petition;

32 (3) Order an evaluation of the proposed ward by a physician who shall be a physician  
33 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
34 practice under Chapter 39 of Title 43, or a licensed clinical social worker, other than the  
35 physician, psychologist, or licensed clinical social worker who completed the affidavit  
36 attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section

1       29-4-10. The evaluation shall be conducted within 72 hours of the time the order was  
2 issued and a written report shall be furnished to the court and made available to the  
3 parties within this time frame, which evaluation and report shall be governed by the  
4 provisions of subsection (c) of Code Section 29-4-6;

5       (4) Immediately notify the proposed ward of the proceedings by service of all pleadings  
6 on the proposed ward, which notice shall:

7           (A) Be served personally on the proposed ward by an officer of the court and shall not  
8 be served by mail;

9           (B) Inform the proposed ward that a petition has been filed to have an emergency  
10 guardian appointed for the proposed ward, that the proposed ward has the right to attend  
11 any hearing that is held, and that, if an emergency guardian is appointed, the proposed  
12 ward may lose important rights to control the management of the proposed ward's  
13 person;

14           (C) Inform the proposed ward of the place and time at which the proposed ward shall  
15 submit to the evaluation provided for by paragraph (3) of this subsection;

16           (D) Inform the proposed ward of the appointment of legal counsel; and

17           (E) Inform the proposed ward of the date and time of the hearing on the emergency  
18 guardianship; and

19       (5) Appoint an emergency guardian to serve until the emergency hearing, with or without  
20 prior notice to the proposed ward, if the threatened risk is so immediate and the potential  
21 harm so irreparable that any delay is unreasonable and the existence of the threatened risk  
22 and potential for irreparable harm is certified by the affidavit of a physician licensed to  
23 practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under  
24 Chapter 39 of Title 43, or a licensed clinical social worker. Appointment of an  
25 emergency guardian under this paragraph is not a final determination of the proposed  
26 ward's need for a nonemergency guardian. Any emergency guardian appointed under  
27 this paragraph shall have only those powers and duties specifically enumerated in the  
28 letters of emergency guardianship and the powers and duties shall not exceed those  
29 absolutely necessary to respond to the immediate threatened risk to the ward.

30       29-4-16.

31       (a) The court shall conduct the emergency guardianship hearing, at the time and date set  
32 forth in its order, to determine whether there is clear and convincing evidence of the need  
33 for an emergency guardianship in light of the evidence taken at the hearing. In addition to  
34 the evidence at the hearing the court may consider the evaluation report and any response  
35 filed by the proposed ward. The burden of proof shall be upon the petitioner. Upon the

consent of the petitioner and the proposed ward, the court may grant a continuance of the case for a period not to exceed 30 days.

(b) If the court at the emergency hearing finds that an emergency guardianship is necessary, the court shall order the emergency guardianship; provided, however, that:

(1) Any emergency guardian shall have only those powers and duties specifically enumerated in the letters of emergency guardianship and the powers and duties shall not exceed those absolutely necessary to respond to the immediate threatened risk to the ward;

(2) The court may order the emergency guardian to make any report the court requires;  
and

(3) The emergency guardianship shall terminate on the earliest of:

(A) The court's removal of the emergency guardian, with or without cause;

(B) The effective date of the appointment of a guardian;

(C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for appointment of a guardian;

(D) The date specified for the termination in the order appointing the emergency guardian; or

(E) Sixty days from the date of appointment of the emergency guardian.

## ARTICLE 3

29-4-20.

(a) In every guardianship, the ward has the right to:

(1) A qualified guardian who acts in the best interest of the ward;

(2) A guardian who is reasonably accessible to the ward;

(3) Have the ward's property utilized to provide adequately for the ward's support, care, education, health, and welfare;

(4) Communicate freely and privately with persons other than the guardian, except as otherwise ordered by a court of competent jurisdiction;

(5) Individually, or through the ward's representative or legal counsel, bring an action relating to the guardianship, including the right to file a petition alleging that the ward is being unjustly denied a right or privilege granted by this chapter and Chapter 5 of this title and including the right to bring an action to modify or terminate the guardianship pursuant to the provisions of Code Sections 29-4-41 and 29-4-42;

(6) The least restrictive form of guardianship assistance, taking into consideration the ward's functional limitations, personal needs, and preferences; and

(7) Be restored to capacity at the earliest possible time.

- 1     (b) The appointment of a guardian is not a determination regarding the right of the ward  
2     to vote.  
3     (c) The appointment of a guardian is not a determination that the ward lacks testamentary  
4     capacity.

5     29-4-21.

6         (a) Unless the court's order specifies that one or more of the following powers are to be  
7         retained by the ward, the appointment of a guardian shall remove from the ward the power  
8         to:

- 9             (1) Contract marriage;
- 10          (2) Make, modify, or terminate other contracts;
- 11          (3) Consent to medical treatment;
- 12          (4) Establish a residence or dwelling place;
- 13          (5) Change domicile;
- 14          (6) Revoke a revocable trust established by the ward; and
- 15          (7) Bring or defend any action at law or equity, except an action relating to the  
16         guardianship.

17         (b) The mere appointment of a guardian does not revoke the powers of an agent who was  
18         previously appointed by the ward to act as an agent under a durable power of attorney for  
19         health care.

20     29-4-22.

21         (a) Except as otherwise provided by law or by the court, a guardian shall make decisions  
22         regarding the ward's support, care, education, health, and welfare. A guardian shall, to the  
23         extent feasible, encourage the ward to participate in decisions, act on the ward's own  
24         behalf, and develop or regain the capacity to manage the ward's personal affairs. To the  
25         extent known, a guardian, in making decisions, shall consider the expressed desires and  
26         personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's  
27         best interest and exercise reasonable care, diligence, and prudence.

28         (b) A guardian shall:

- 29             (1) Respect the rights and dignity of the ward;
- 30             (2) Become or remain personally acquainted with the ward and maintain sufficient  
31             contact with the ward to know of the ward's capacities, limitations, needs, opportunities,  
32             and physical and mental health;
- 33             (3) If necessary, petition to have a conservator appointed;
- 34             (4) Endeavor to cooperate with the conservator, if any;
- 35             (5) Take reasonable care of the ward's personal effects;

- 1       (6) Arrange for the support, care, education, health, and welfare of the ward, considering  
2       the ward's needs and available resources;
- 3       (7) Expend money of the ward that has been received by the guardian for the ward's  
4       current needs for support, care, education, health, and welfare;
- 5       (8) Conserve for the ward's future needs any excess money of the ward received by the  
6       guardian; provided, however, that if a conservator has been appointed for the ward, the  
7       guardian shall pay to the conservator, at least quarterly, money to be conserved for the  
8       ward's future needs;
- 9       (9) Within 60 days after appointment and within 60 days after each anniversary date of  
10      appointment, file with the court and provide to the ward and to the conservator, if any,  
11      a personal status report concerning the ward, which shall include:
- 12       (A) A description of the ward's general condition, changes since the last report, and  
13       needs;
- 14       (B) All addresses of the ward during the reporting period and the living arrangements  
15       of the ward for all addresses;
- 16       (C) A description of the amount and expenditure of any funds that were received by  
17       the guardian pursuant to paragraph (7) of this subsection; and
- 18       (D) Recommendations for any alteration in the guardianship order;
- 19       (10) Promptly notify the court of any change in the ward's condition that in the opinion  
20       of the guardian might require modification or termination of the guardianship;
- 21       (11) Promptly notify the court of any conflict of interest between the ward and the  
22       guardian when the conflict arises or becomes known to the guardian and take any action  
23       as is required by Code Section 29-4-24; and
- 24       (12) Keep the court informed of the guardian's current address.

25       (c) A guardian, solely by reason of the guardian-ward relationship, is not personally liable  
26       for:

- 27       (1) The ward's expenses or the expenses of those persons who are entitled to be  
28       supported by the ward;
- 29       (2) Contracts entered into in the guardian's fiduciary capacity;
- 30       (3) The acts or omissions of the ward;
- 31       (4) Obligations arising from ownership or control of property of the ward; or
- 32       (5) Other acts or omissions occurring in the course of the guardianship.

33       29-4-23.

34       (a) Unless inconsistent with the terms of any court order relating to the guardianship, a  
35       guardian may:

1       (1) Take custody of the person of the ward and establish the ward's place of dwelling  
2       within this state;

3       (2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any  
4       consents or approvals that may be necessary for medical or other professional care,  
5       counsel, treatment, or service for the ward;

6       (3) Bring, defend, or participate in legal, equitable, or administrative proceedings,  
7       including alternative dispute resolution, as are appropriate for the support, care,  
8       education, health, or welfare of the ward in the name of or on behalf of the ward; and

9       (4) Exercise those other powers reasonably necessary to provide adequately for the  
10      support, care, education, health, and welfare of the ward.

11      (b) At the time of the appointment of the guardian or at any time thereafter, any of the  
12      following powers may be specifically granted by the court to the guardian upon such  
13      notice, if any, as the court shall determine, provided that no disposition of the ward's  
14      property shall be made without the involvement of a conservator, if any:

15       (1) To establish the ward's place of dwelling outside this state;

16       (2) To change the jurisdiction of the guardianship to another county in this state that is  
17       the county of the ward's place of dwelling, pursuant to Code Section 29-4-80;

18       (3) To change the domicile of the ward to the ward's or the guardian's place of dwelling,  
19       in the determination of which the court shall consider the tax ramifications and  
20       succession and inheritance rights of the ward and other parties;

21       (4) To bring an action for the divorce of the ward based on any of the grounds listed in  
22       Code Section 19-5-3, except on the ground that the marriage is irretrievably broken;

23       (5) To consent to the adoption of the ward;

24       (6) To receive reasonable compensation from the estate of the ward for services rendered  
25       to the ward; and

26       (7) If there is no conservator, to disclaim or renounce any property or interest in property  
27       of the ward in accordance with the provisions of Code Section 53-1-20 of the Revised  
28       Probate Code of 1998.

29      (c) Before granting any of the powers described in subsection (b) of this Code section, the  
30      court shall appoint a guardian ad litem for the ward.

31      (d) In granting any of the powers described in subsection (b) of this Code section, the court  
32      shall consider the property rights of the ward and the views of the conservator, if any, or,  
33      if there is no conservator, of others who have custody of the ward's property.

34      (e) In performing any of the acts described in this Code section, the guardian shall act in  
35      coordination and cooperation with the conservator or, if there is no conservator, with others  
36      who have custody of the ward's property.

1 29-4-24.

2 The guardian must promptly disclose any conflict of interest between the guardian and the  
3 ward when it arises or becomes known to the guardian and seek the court's determination  
4 as to whether the conflict is insubstantial or if it is in the best interest of the ward for the  
5 guardian to continue to serve.

6 29-4-25.

7 Before entering upon the duties of the appointment, every guardian appointed pursuant to  
8 the terms of this chapter shall take an oath or affirmation before the court to perform well  
9 and truly the duties required of a guardian and to account faithfully for the estate. The oath  
10 or affirmation of a guardian may be subscribed before the judge or clerk of any probate  
11 court of this state. The judge of the probate court who appoints the guardian shall have the  
12 authority to grant a commission to a judge or clerk of any court of record of any other state  
13 to administer the oath or affirmation.

14 **ARTICLE 4**

15 29-4-30.

16 (a) A guardian may be required to give bond with good and sufficient security in such  
17 amount as the court may determine from time to time.  
18 (b) The clerk of the court shall record bonds in books kept for that purpose and shall retain  
19 custody of the bonds.  
20 (c) If a guardian is required to give bond and has given as security one or more licensed  
21 commercial sureties authorized to transact business in this state the bond premium may be  
22 paid as part of the cost of administration.

23 **ARTICLE 5**

24 29-4-40.

25 (a) Upon the petition of any interested person, including the ward, or upon the court's own  
26 motion, the court may conduct a judicial inquiry into whether the ward is being denied a  
27 right or privilege provided for by this chapter and may issue appropriate orders. Except for  
28 good cause shown, the court shall order that notice of the inquiry be given, in whatever  
29 form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if  
30 any, and the ward's conservator, if any. The court, in its discretion, may appoint legal  
31 counsel for the ward or a guardian ad litem, or both.

1       (b) No petition alleging that the ward is being unjustly denied a right or privilege provided  
2       for by this chapter shall be allowed by the court within two years after the denial or  
3       dismissal on the merits of a petition alleging that the ward is being unjustly denied  
4       substantially the same right or privilege unless the petitioner shows a significant change  
5       in the condition or circumstances of the ward.

6       29-4-41.

7       (a) Upon the petition of any interested person, including the ward, or upon the court's own  
8       motion, the court may modify the guardianship by adjusting the duties or powers of the  
9       guardian, as defined in Code Sections 29-4-14 and 29-4-15, or the powers of the ward, as  
10      defined in Code Section 29-4-13, or by making other appropriate adjustments to reflect the  
11      extent of the current capacity of the ward or other circumstances of the guardianship.  
12      Except for good cause shown, the court shall order that notice of the petition be given, in  
13      whatever form the court deems appropriate, to the ward, the guardian, the ward's legal  
14      counsel, and the ward's conservator, if any. In any proceeding under this Code section that  
15      would expand or increase the powers of the guardian or further restrict the rights of the  
16      ward, the court shall appoint legal counsel for the ward. In all other cases, the court, in its  
17      discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.

18       (b) If the petition for modification alleges a significant change in the capacity of the ward,  
19       it must be supported either by the affidavits of two persons who have knowledge of the  
20       ward, one of whom may be the petitioner, or of a physician licensed to practice medicine  
21       under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title  
22       43, or a licensed clinical social worker, setting forth the supporting facts and  
23       determinations. If, after reviewing the petition and the affidavits, the court determines that  
24       there is no probable cause to believe that there has been a significant change in the capacity  
25       of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court  
26       shall order that an evaluation be conducted, in accordance with the provisions of  
27       subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court  
28       finds that there is no probable cause to believe that there has been a significant change in  
29       the capacity of the ward, the court shall dismiss the petition. If the petition is not  
30       dismissed, the court shall schedule a hearing, with notice as the court deems appropriate.

31       (c) If the petition for modification does not allege a significant change in the capacity of  
32       the ward, the court in its discretion may modify the guardianship upon a showing that the  
33       modification is in the ward's best interest; provided, however, that the court may order  
34       compliance with any of the provisions of subsection (b) of this Code section prior to  
35       granting the petition for modification.

1       (d) In any proceeding under this Code section that would expand or increase the powers  
2       of the guardian or further restrict the powers of the ward, the burden is on the petitioner to  
3       show by clear and convincing evidence that the modification is in the ward's best interest.

4       In any proceeding under this Code section that would restrict the powers of the guardian  
5       or restore powers to the ward, the burden is on the petitioner to show by a preponderance  
6       of the evidence that the modification is in the ward's best interest.

7       (e) No petition for modification shall be allowed by the court within two years after the  
8       denial or dismissal on the merits of a petition for substantially the same modification unless  
9       the petitioner shows a significant change in the condition or circumstances of the ward.

10      29-4-42.

11      (a) Upon the petition of any interested person, including the ward, or upon the court's own  
12       motion, and upon a proper showing that the need for a guardianship is ended, the court may  
13       terminate the guardianship and restore all personal and property rights to the ward. Except  
14       for good cause shown, the court shall order that notice of the petition be given, in whatever  
15       form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if  
16       any, and the ward's conservator, if any. The court shall appoint legal counsel for the ward  
17       and may, in its discretion, appoint a guardian ad litem.

18      (b) A petition for termination must be supported either by the affidavits of two persons  
19       who have knowledge of the ward, one of whom may be the petitioner, or of a physician  
20       licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
21       practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the  
22       supporting facts and determinations. If, after reviewing the petition and the affidavits, the  
23       court determines that there is no probable cause to believe that the guardianship should be  
24       terminated, the court shall dismiss the petition. If the petition is not dismissed, the court  
25       shall order that an evaluation be conducted, in accordance with the provisions of  
26       subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court  
27       finds that there is no probable cause to believe that the guardianship should be terminated,  
28       the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule  
29       a hearing, with such notice as the court deems appropriate.

30      (c) In any proceeding under this Code section, the burden is on the petitioner to show by  
31       a preponderance of the evidence that there is no longer a need for the guardianship.

32      (d) No petition for termination of a guardianship shall be allowed by the court within two  
33       years after the denial or dismissal on the merits of a petition for termination of the  
34       guardianship unless the petitioner shows a significant change in the condition or  
35       circumstances of the ward.

(e) The death of the ward automatically terminates the guardianship, except as otherwise provided in Code Section 29-4-43.

(f) Upon termination of the guardianship, the guardian shall deliver any money or property to the ward or, if a conservator has been appointed for the ward, to that conservator or, if the ward is deceased, to the ward's personal representative.

29-4-43.

(a) Upon the termination of the guardianship or the resignation of the guardian, the guardian may petition the court for an order dismissing the guardian from office. The petition shall include a final status report to the court which covers the period of time from the latest annual status report filed by the guardian. The final status report shall contain the information required for annual status reports and shall otherwise comply with the provisions of Code Section 29-4-22. Notice shall be published one time in the newspaper in which sheriff's advertisements are published in the county in which the petition is filed and shall state that any objection must be made in writing and shall designate the date on or before which objections must be filed in the court, which shall not be less than 30 days from the date of publication. The court shall examine any objections filed.

(b) If no objection is filed or if, upon hearing any objection, the court is satisfied that the order dismissing the guardian from office is appropriate, the court shall enter an order dismissing the guardian from office. An order dismissing the guardian shall not bar an action against the guardian.

## ARTICLE 6

29-4-50.

(a) A guardian or the duly authorized guardian, conservator, or attorney in fact of a guardian, acting on behalf of the guardian, may resign upon petition to the court, showing to the satisfaction of the court that:

(1) The guardian is unable to continue serving due to age, illness, infirmity, or other good cause;

(2) Greater burdens have devolved upon the office of guardian than those that were originally contemplated or should have been contemplated when the guardian was qualified and the additional burdens work a hardship upon the guardian;

(3) Disagreement exists between the ward and the guardian or between the guardian and the conservator in respect of the guardian's care of the ward, which disagreement and conflict appear to be detrimental to the ward;

1       (4) The resignation of the guardian will result in or permit substantial financial benefit  
2       to the ward; or

3       (5) The resignation would not be disadvantageous to the ward.

4       (b) The petition for resignation shall include the name of a suitable person who is willing  
5       to accept the guardianship.

6       (c) The court shall appoint legal counsel for the ward and personal service of the petition  
7       for resignation shall be made upon the ward and the ward's legal counsel. Service shall be  
8       made by first-class mail to the conservator of the ward, if any, and to the following persons  
9       whose whereabouts are known and who must be persons other than resigning guardian or  
10      the proposed successor guardian:

11       (1) The spouse of the ward; and

12       (2) All adult children of the ward; or

13       (3) If there is no adult child, then at least two adults in the following order of priority:

14           (A) Lineal descendants of the ward;

15           (B) Parents and siblings of the ward; and

16           (C) Friends of the ward.

17       (d) If, after such hearing as the court deems appropriate, the court is satisfied that the  
18       petition for the resignation of the guardian and the appointment of the successor guardian  
19       should be granted, the court shall enter an order appointing the successor guardian in  
20       accordance with the provisions of Code Section 29-4-61 and accepting the resignation,  
21       subject to the resigning guardian turning over to the successor guardian or conservator all  
22       property held by the guardian.

23       29-4-51.

24       (a) In the event of the death of a guardian, and upon the petition of an interested person or  
25       on the court's own motion, the court shall appoint a successor guardian. The court shall  
26       appoint legal counsel for the ward and personal service of the petition shall be made upon  
27       the ward and the ward's legal counsel. Notice shall be given by first-class mail to the  
28       conservator of the ward, if any, the personal representative of the deceased guardian, if any,  
29       and to the following persons whose whereabouts are known and who must be persons other  
30       than the proposed successor guardian:

31       (1) The spouse of the ward; and

32       (2) All adult children of the ward; or

33       (3) If there is no adult child, then at least two adults in the following order of priority:

34           (A) Lineal descendants of the ward;

35           (B) Parents and siblings of the ward; and

36           (C) Friends of the ward.

1       (b) After such hearing as the court deems appropriate, the court shall enter an order  
2 appointing a successor guardian in accordance with the provisions of Code Section  
3 29-4-61, requiring the personal representative of the deceased guardian to turn over to the  
4 successor guardian all property of the ward held by the guardian.

5       29-4-52.

6       (a) Upon the petition of any interested person or whenever it appears to the court that good  
7 cause may exist to revoke or suspend the letters of a guardian or to impose sanctions, the  
8 court shall cite the guardian to answer the charge. The court shall investigate the  
9 allegations and may require such accounting as the court deems appropriate. The court  
10 may appoint a temporary substitute guardian for the ward during the investigation.

11      (b) Upon investigation, the court may, in the court's discretion:

12       (1) Revoke or suspend the guardian's letters;  
13       (2) Require additional security;  
14       (3) Reduce or deny compensation to the guardian or impose any other sanction or  
15       sanctions as the court deems appropriate; and  
16       (4) Issue any other order as in the court's judgment is appropriate under the  
17       circumstances of the case.

18       (c) The revocation or suspension of letters of guardianship shall not abate any action  
19       pending for or against the guardian. The successor guardian shall be made a party to the  
20       action against the guardian in the manner provided in Code Section 9-11-25.

21       29-4-53.

22       (a) If a guardian commits a breach of fiduciary duty or threatens to commit a breach of  
23       fiduciary duty, a ward or an interested person on behalf of the ward shall have a cause of  
24       action as appropriate to:

25       (1) Recover damages;  
26       (2) Compel performance of the guardian's duties;  
27       (3) Enjoin the commission of a breach of fiduciary duty; or  
28       (4) Compel the redress of a breach of fiduciary duty by payment of money or otherwise.

29       (b) When the ward's assets are misappropriated and can be traced into the hands of persons who  
30       have notice of the misappropriation, a trust shall attach to the assets.

31       (c) The provision of remedies for breach of fiduciary duty by this Code section does not  
32       prevent resort to any other appropriate remedy provided by statute or common law.

1 29-4-54.

2 All actions against a guardian, except on the guardian's bond, shall be brought within six  
3 years of the termination of the guardianship of the ward, except as provided in Code  
4 Section 9-3-90.

5 **ARTICLE 7**

6 29-4-60.

7 (a) Upon its own motion or on the petition of any interested party, including the ward, the  
8 court may appoint a temporary substitute guardian for a ward if it appears to the court that  
9 the best interest of the ward requires immediate action.

10 (b) The temporary substitute guardian shall be appointed for a specified period not to  
11 exceed 120 days.

12 (c) The court shall appoint as temporary substitute guardian an appropriate individual who  
13 shall serve the best interest of the ward.

14 (d) Except as otherwise ordered by the court, a temporary substitute guardian has the  
15 powers set forth in the order of appointment. The authority of the previously appointed  
16 guardian is suspended for as long as the temporary substitute guardian has authority.

17 (e) Notice of the appointment of a temporary substitute guardian shall be served personally  
18 on the ward. Notice of the appointment shall be served personally on the previously  
19 appointed guardian at the last address provided by that guardian to the court. Notice of the  
20 appointment shall be mailed by first-class mail to the ward's conservator, if any.

21 (f) The court may remove the temporary substitute guardian at any time. A temporary  
22 substitute guardian shall make any report the court requires. In all other respects, the  
23 provisions of this chapter apply to the temporary substitute guardian.

24 29-4-61.

25 (a) The court shall appoint a successor guardian upon the resignation, death, or revocation  
26 of the letters of the guardian if the appointment of a successor guardian is in the best  
27 interest of the ward. The court shall select the successor guardian in the manner provided  
28 in Code Section 29-4-11.

29 (b) The court shall appoint legal counsel for the ward. In the event of the resignation or  
30 death of the guardian, notice of the proceeding for appointment of a successor guardian  
31 shall be given as provided in Code Sections 29-4-50 and 29-4-51. In all other cases, notice  
32 of the proceeding for appointment of a successor guardian shall be served personally on the  
33 ward and the ward's legal counsel. Notice shall be made by first-class mail to the

1 conservator of the ward, if any, and to the following persons whose whereabouts are known  
2 and who must be persons other than the proposed successor guardian:  
3 (1) The spouse of the ward; and  
4 (2) All adult children of the ward; or  
5 (3) If there is no adult child, then at least two adults in the following order of priority:  
6 (A) Lineal descendants of the ward;  
7 (B) Parents and siblings of the ward; and  
8 (C) Friends of the ward.  
9 (c) After a hearing which the court deems appropriate, the court shall enter an order  
10 appointing the successor guardian.

11 29-4-62.

12 Upon the appointment of a successor guardian, the predecessor guardian or the personal  
13 representative of a deceased predecessor guardian shall deliver to the successor guardian  
14 all property of the ward held by the guardian and shall submit a final status report covering  
15 the period since the guardian's last status report.

## 16 ARTICLE 8

17 29-4-70.

18 (a) Except as provided in Article 6 of Chapter 9 of Title 15, the ward, individually or by  
19 the ward's legal counsel, representative, or guardian ad litem, or the petitioner may appeal  
20 any final order of the court to the superior court in the county in which the proceedings  
21 were held. The appeal shall be in the same manner as other appeals from the probate court  
22 to the superior court but shall be heard as expeditiously as possible. The appeal shall be  
23 de novo unless the parties by agreement specifically limit the issues. The ward shall retain  
24 the right to counsel or to have counsel appointed; provided, however, that if counsel was  
25 appointed by the probate court, the appointment shall continue on appeal to the superior  
26 court. The burden of proof shall be upon the petitioner and the standard used by the court  
27 in reaching its decision shall be clear and convincing evidence.

28 (b) All rights of appeal from the superior court shall be as provided by law.

29 (c) The filing of an appeal to the superior court from the judgment of the probate court  
30 shall act as a supersedeas.

31 (d) Pending any appeal, the superior court or a probate court that is described in  
32 paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such  
33 powers and duties as are described in Code Section 29-4-16; provided, however, that an  
34 emergency guardian may be appointed only upon the filing of an affidavit of a physician

1 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
2 practice under Chapter 39 of Title 43, or a licensed clinical social worker setting forth the  
3 existence of the emergency circumstances described in subsection (d) of Code Section  
4 29-4-14 and after a hearing at which other evidence may be presented. The appointment  
5 of an emergency guardian is not appealable.

ARTICLE 9

Part 1

8 29-4-80.

9       (a) A guardian may petition to remove the guardianship to the jurisdiction of the court of  
10      the county in this state in which the ward resides.

11 (b) Upon the filing of a petition to remove the guardianship to another county in this state,  
12 the court shall appoint a guardian ad litem for the ward. The court of the county in which  
13 the guardian was appointed shall grant the petition for removal only if the court determines  
14 that the removal is in the best interest of the ward.

15 (c) Before the removal of the guardianship to another county in this state, the guardian  
16 shall file with the court of the county to which the guardianship is to be removed certified  
17 copies of all the records pertaining to the guardianship.

18 (d) Following removal of a guardianship to another county in this state, the court of that  
19 county shall have the same jurisdiction over the guardian as if the guardian had been first  
20 appointed in that county, and every case growing out of or affecting the guardianship shall  
21 be heard and tried only in the county to which the guardianship has been removed.

22 (e) The court in which an action or proceeding is pending or which has issued an order for  
23 a settlement of accounts, removal, or sanction of a guardian shall retain jurisdiction of such  
24 matters even though the guardianship has been removed to another county.

## Part 2

26 29-4-85.

27 (a) For purposes of this part and Part 3 of this article, the term 'guardianship' refers to a  
28 legal relationship in which a person is given responsibility by a foreign court of competent  
29 jurisdiction for the care of an incapacitated adult, referred to as the 'ward,' thereby  
30 becoming a guardian.

31 (b) A guardian who has been appointed by a foreign court of competent jurisdiction may  
32 petition to have the guardianship transferred to and accepted in this state by filing a petition

1 for receipt and acceptance of the foreign guardianship in the court of the county in this state  
2 where the ward resides or may reside.

3 (c) The petition shall include the following:

4 (1) An authenticated copy of the foreign guardianship order including:

5 (A) All attachments describing the duties and powers of the guardian; and  
6 (B) All amendments or modifications to the foreign guardianship order entered  
7 subsequent to the original order, including any order to transfer the guardianship;

8 (2) The address of the foreign court which issued the guardianship order;

9 (3) A listing of any other guardianship petitions that are pending in any jurisdiction and  
10 the names and addresses of the courts where the petitions have been filed;

11 (4) The petitioner's name, address, and county of domicile;

12 (5) The name, age, and address of the ward;

13 (6) The names and addresses of the following, if living:

14 (A) The spouse of the ward; and

15 (B) All children of the ward; or

16 (C) If there are no adult children, then at least two adults in the following order of  
17 priority:

18 (i) Lineal descendants of the ward;

19 (ii) Parents and siblings of the ward; and

20 (iii) Friends of the ward;

21 (7) The name and address of the person responsible for the care and custody of the ward,  
22 if other than the petitioner, and of any other guardian currently serving;

23 (8) The name and address of any currently acting legal representative, other than the  
24 petitioner, including any legal counsel or guardian ad litem appointed by the foreign court  
25 for the ward;

26 (9) The name and address of the ward's conservator, if any; and

27 (10) The reason the transfer is in the ward's best interest.

28 (c) The petition may be combined with other petitions related to the guardianship,  
29 including a petition to modify the terms of the guardianship.

30 29-4-86.

31 (a) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship  
32 shall be served personally on the ward. The notice shall:

33 (1) State that the ward has a right to a hearing on the petition;

34 (2) Inform the ward of the procedure to exercise the ward's right to a hearing; and

35 (3) State that the ward has the right to independent legal counsel and that the court shall  
36 appoint legal counsel for the ward unless the ward has retained counsel or legal counsel

1 has been appointed by the foreign court to represent the ward in the transfer of the  
2 guardianship.

3 (b) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship  
4 shall be provided to the foreign court from which the guardianship is to be transferred.

5 Notice to the foreign court shall include a request that the foreign court:

6 (1) Certify whether:

7 (A) The foreign court has any record that the guardian has engaged in malfeasance,  
8 misfeasance or nonfeasance during the guardian's appointment;

9 (B) Periodic reports have been filed in a satisfactory manner; and

10 (C) All bond or other security requirements imposed under the guardianship have been  
11 performed;

12 (2) Forward copies of all documents filed with the foreign court relating to the  
13 guardianship including but not limited to:

14 (A) The initial petition for guardianship and other filings relevant to the appointment  
15 of the guardian;

16 (B) Reports and recommendations of guardians ad litem, court visitors, or other  
17 individuals appointed by the foreign court to evaluate the appropriateness of the  
18 guardianship;

19 (C) Reports of physical and mental health practitioners describing the capacity of the  
20 ward to care for himself or herself or to manage his or her affairs;

21 (D) Periodic status reports on the condition of the ward; and

22 (E) The order to transfer the guardianship, if any.

23 (c) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship  
24 shall be mailed by first-class mail to all other persons named in the petition. The notice  
25 shall inform these persons of the right to object to the petition for receipt and acceptance  
26 of the guardianship by this state.

27 (d) The ward shall have 30 days from the date of service to request a hearing on the  
28 petition for receipt and acceptance of a foreign guardianship. All other persons to whom  
29 notice is given under this Code section shall have 30 days from the date of the mailing of  
30 the notice to request a hearing on the petition.

31 (e) The court may waive the notice requirements of subsections (a) through (c) of this  
32 Code section if:

33 (1) The guardian has filed a petition in the foreign court for transfer and release of the  
34 guardianship to this state;

35 (2) Notice was given to the ward and all interested persons in conjunction with the  
36 petition for transfer and release of the guardianship;

- 1       (3) The petitioner provides the court with an authenticated copy of the petition for  
2 transfer and release of the guardianship filed with the foreign court and proof that service  
3 was made on the ward not more than 90 days from the date the petition for receipt and  
4 acceptance of the guardianship is filed in the court; and  
5       (4) The ward is represented by legal counsel with respect to the petition in the foreign  
6 court.

7       29-4-87.

- 8       (a) On the court's own motion or upon timely motion by the ward or by any interested  
9 person the court shall hold a hearing to consider the petition for receipt and acceptance of  
10 the foreign guardian.  
11      (b) If any interested person challenges the validity of the foreign guardianship or the  
12 authority of the foreign court to appoint the guardian, the court may stay its proceeding  
13 while the petitioner is afforded the opportunity to have the foreign court hear the challenge  
14 and determine its merits.

15      29-4-88.

- 16      (a) The court may grant a petition for receipt and acceptance of a foreign guardianship  
17 provided the court finds that:  
18        (1) The guardian is presently in good standing with the foreign court; and  
19        (2) The transfer of the guardianship from the foreign jurisdiction is in the best interest  
20 of the ward.  
21      (b) In granting the petition, the court shall give full faith and credit to the provisions of the  
22 foreign guardianship order concerning the determination of the ward's incapacity.  
23      (c) Subject to subsection (d) of this Code section, at all times following the entry of the  
24 order accepting the guardianship the laws of the State of Georgia shall apply to the  
25 guardianship.  
26      (d) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
27 the guardianship, the court is authorized to:  
28        (1) Delay the effective date of the receipt and acceptance for a reasonable period of time;  
29        (2) Make the receipt and acceptance contingent upon the release of the guardianship or  
30 the termination of the guardianship and the discharge of the guardian in the foreign  
31 jurisdiction;  
32        (3) Recognize concurrent jurisdiction over the guardianship for a reasonable period of  
33 time to permit the foreign court to release the guardianship or to terminate the  
34 guardianship and discharge the guardian in the foreign jurisdiction; or

(4) Make other arrangements the court deems necessary to effectuate the receipt and acceptance of the guardianship.

(e) The denial of a petition for receipt and acceptance of the foreign guardianship does not affect the right of a guardian appointed by a foreign court of competent jurisdiction to petition for guardianship under Code Section 29-4-11.

## Part 3

29-4-90.

(a) A guardian may petition the Georgia court that has jurisdiction over the guardianship to transfer the guardianship to a foreign court of competent jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) The ward may be presumed to have moved permanently to the foreign jurisdiction if:

(1) The ward has resided in the foreign jurisdiction for more than 12 consecutive months;

(2) The guardian notifies the court that the ward will move or has moved permanently to the foreign jurisdiction; or

(3) A foreign court of competent jurisdiction notifies the court of the filing of a petition for guardianship for the ward in the foreign jurisdiction.

(c) To facilitate the transfer, the court may order the guardian to file a petition for receipt and acceptance of the guardianship in the foreign jurisdiction.

(d) If the foreign jurisdiction does not have a procedure for receiving and accepting a foreign guardianship, the court may order the guardian to file a petition for guardianship in the foreign jurisdiction.

29-4-91.

The petition to transfer a guardianship to a foreign jurisdiction shall include the following:

(1) The name and address of the foreign court to which the guardianship shall be transferred and an authenticated copy of the petition for receipt and acceptance of a foreign guardianship if previously filed in the foreign court;

(2) A listing of any other guardianship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;

(3) The petitioner's name, address, and county of domicile;

(4) The name, age, and current address of the ward and the new or proposed address of the ward;

(5) The names and addresses of the following, if living:

(A) The spouse of the ward; and

(B) All children of the ward; or

1       (C) If there are no adult children, then at least two adults in the following order of  
2 priority:  
3           (i) Lineal descendants of the ward;  
4           (ii) Parents and siblings of the ward; and  
5           (iii) Friends of the ward;  
6       (6) The name and address of the person responsible for the care and custody of the ward,  
7 if other than the petitioner, and of any other guardian currently serving;  
8       (7) The name and address of any legal representative, other than the petitioner, including  
9 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for  
10 the ward;  
11      (8) The name and address of the ward's conservator, if any; and  
12      (9) The reason for moving the ward and the reason the transfer of the guardianship is in  
13 the ward's best interest.

14 29-4-92.

15     (a) Notice and a copy of the petition to transfer a guardianship to a foreign jurisdiction  
16 shall be served personally on the ward not less than ten days prior to the date set for the  
17 hearing. The notice shall:

18       (1) State the date that the hearing shall be held; and  
19       (2) State that the ward has the right to independent legal counsel and that the court shall  
20 appoint legal counsel for the ward unless the ward has retained counsel or legal counsel  
21 has been appointed by the foreign court to represent the ward in the receipt and  
22 acceptance of the guardianship.

23     (b) Notice and a copy of the petition to transfer the guardianship shall be provided to the  
24 foreign court to which the guardianship is to be transferred.

25     (c) Notice and a copy of the petition shall be mailed to all other persons named in the  
26 petition. The notice shall inform these persons of the date of the hearing and of their right  
27 to file objections to the transfer of the guardianship by this state.

28 29-4-93.

29     Upon the court's own motion or upon timely motion by the ward or by any interested  
30 person, the court shall hold a hearing to consider the petition to transfer the guardianship.

31 29-4-94.

32     (a) The court may grant a petition to transfer a guardianship to a foreign court of  
33 competent jurisdiction if the court finds that:

34       (1) The guardian is presently in good standing with the court; and

- 1       (2) The transfer of the guardianship to the foreign jurisdiction is in the best interest of  
2       the ward.
- 3       (b) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
4       the guardianship, the court is authorized to:
- 5           (1) Notify the foreign court of any significant problems that may have occurred including  
6           whether periodic reports and accountings have been filed in a satisfactory manner and  
7           whether all bond or other security requirements imposed under the guardianship have  
8           been performed; and
- 9           (2) Forward copies of all documents filed with the court relating to the guardianship,  
10          including but not limited to:
- 11              (A) The initial petition for guardianship and other filing relevant to the appointment  
12              of the guardian;
- 13              (B) Reports and recommendations of guardians ad litem, court visitors, or other  
14              individuals appointed by the court to evaluate the appropriateness of the guardianship;
- 15              (C) Reports of physical or mental health practitioners describing the capacity of the  
16              ward to care for himself or herself; and
- 17              (D) Periodic status reports on the condition of the ward.
- 18       (c) As necessary to coordinate the transfer of the guardianship, the court is authorized to:
- 19           (1) Delay the effective date of the transfer for a reasonable period of time;
- 20           (2) Make the transfer contingent upon the acceptance of the guardianship or appointment  
21              of the guardian in the foreign jurisdiction;
- 22           (3) Recognize concurrent jurisdiction over the guardianship for a reasonable period of  
23              time to permit the foreign court to accept the guardianship or appoint the guardian in the  
24              foreign jurisdiction; or
- 25           (4) Make other arrangements that in the sound discretion of the court are necessary to  
26              transfer the guardianship.

27

## Part 4

28       29-4-95.

- 29       (a) For purposes of this part, a 'foreign guardian' is a guardian or other person who has  
30       been given responsibility by a court of competent jurisdiction in another state or territory  
31       governed by the Constitution of the United States for the care of an incapacitated adult  
32       referred to as the 'ward' and whose guardianship has not been transferred to and accepted  
33       in this state pursuant to the provisions of Part 2 of this article.
- 34       (b) Any foreign guardian of a ward who resides in any other state and who is authorized  
35       to sell and convey property of the ward may sell property of the ward which is in this state,

under the rules and regulations prescribed for the sale of real estate by conservators of this state, provided that the foreign guardian must file and have recorded in the court or other proper court, at the time of petitioning for sale, an authenticated copy of the letters of appointment and must also file with the court or other proper authority bond with good and sufficient security in double the value of the property to be sold for the faithful execution of the guardianship as provided by law.

7 29-4-96.

8 A foreign guardian may institute an action in any court in this state to enforce any right or  
9 to recover any property belonging to the ward or accruing to the foreign guardian as such.

10 29-4-97.

Pending an action brought by a foreign guardian pursuant to Code Section 29-4-96, an authenticated copy of the letters of guardianship shall be filed with the clerk of the court to become a part of the record, if the case is pending in a court of record, or filed with the papers if the action is a summary proceeding.

15 29-4-98.

16 A foreign guardian submits personally to the jurisdiction of the courts of this state in any  
17 proceeding relating to the guardianship by:

- 18       (1) Receiving payment of money or taking delivery of personal property in this state  
19       belonging to the ward; or  
20       (2) Doing any act as a guardian in this state that would have given this state jurisdiction  
21       over the actor as an individual.

# CHAPTER 5

ARTICLE 1

24 29-5-1.

- 25 (a) The court may appoint a conservator for an adult only if the court finds the adult lacks  
26 sufficient capacity to make or communicate significant responsible decisions concerning  
27 the management of his or her property.

28 (b) No conservator, except a conservator for the estate of an individual who is missing or  
29 who is believed to be dead, shall be appointed for any adult except pursuant to the  
30 procedures of this chapter.

31 (c) No conservator shall be appointed for an adult unless the appointment is in the best  
32 interest of the adult.

1       (d) No conservator shall be appointed for an adult within two years after the denial or  
2       dismissal on the merits of a petition for the appointment of a conservator for that adult  
3       unless the petitioner shows a significant change in the condition or circumstances of the  
4       adult.

5       (e)(1) No adult shall be presumed to be in need of a conservator unless adjudicated to  
6       be in need of a conservator pursuant to this chapter.

7       (2) An adult shall not be presumed to be in need of a conservator solely because of a  
8       finding of criminal insanity or incompetence to stand trial or a finding of a need for  
9       treatment or services pursuant to:

10      (A) Code Section 37-1-1;

11      (B) Code Sections 37-3-1 through 37-3-6;

12      (C) Articles 2 through 6 of Chapter 3 of Title 37;

13      (D) Code Sections 37-4-1 through 37-4-3 and 37-4-5 through 37-4-8;

14      (E) Articles 2 through 5 of Chapter 4 of Title 37;

15      (F) Code Section 37-5-3;

16      (G) Code Sections 37-7-1, 37-7-2, and 37-7-4 through 37-7-7; and

17      (H) Articles 2 through 6 of Chapter 7 of Title 37.

18       (f) All conservatorships ordered pursuant to this chapter shall be designed to encourage  
19       the development of maximum self-reliance and independence in the adult and shall be  
20       ordered only to the extent necessitated by the adult's actual and adaptive limitations after  
21       a determination that less restrictive alternatives to the conservatorship are not available or  
22       appropriate.

23       29-5-2.

24       No person may be appointed or continue to serve as conservator of the estate of an adult  
25       who:

26       (1) Is a minor, a ward, or a protected person;

27       (2) Who has a conflict of interest with the adult unless the court determines that the  
28       conflict of interest is insubstantial or that the appointment clearly would be in the adult's  
29       best interest; or

30       (3) Is an owner, operator, or employee of a long-term care or other caregiving institution  
31       or facility at which the adult is receiving care, unless related to the adult by blood,  
32       marriage, or adoption.

33       29-5-3.

34       (a) The court shall appoint as conservator that individual who shall best serve the interest  
35       of the adult taking into consideration the order of preferences set forth in this Code section.

1      The court may disregard a person who has preference and appoint a person who has a  
2      lower preference or no preference; provided, however, that the court may disregard the  
3      preferences listed in paragraph (1) of subsection (b) of this Code section only upon good  
4      cause shown.

5      (b) Persons who are eligible and not disqualified have preference in the following order:  
6            (1) The person last nominated by the adult in accordance with the provisions of  
7               subsection (c) of this Code section;  
8            (2) The spouse of the adult or a person nominated by the adult's spouse in accordance  
9               with the provisions of subsection (d) of this Code section;  
10           (3) An adult child of the adult or a person nominated by an adult child of the adult in  
11               accordance with the provisions of subsection (d) of this Code section;  
12           (4) A parent of the adult or a person nominated by a parent of the adult in accordance  
13               with the provisions of subsection (c) of this Code section;  
14           (5) A conservator appointed during the minority of the adult;  
15           (6) A conservator previously appointed in Georgia or another state;  
16           (7) A friend, relative, or any other person; or  
17           (8) The county guardian.

18      (c) At any time prior to the appointment of a conservator, an adult may nominate in  
19      writing a person to serve as that adult's conservator should the adult be judicially  
20      determined to be in need of a conservator, and that nomination shall be given the  
21      preference set forth in this Code section, provided that it is signed in accordance with the  
22      provisions of subsection (e) of this Code section or the provisions of Code Section 31-36-5.

23      (d) At any time prior to the appointment of a conservator, a spouse, adult child, or parent  
24      of an adult may nominate in writing a person to serve as the adult's conservator should the  
25      adult be judicially determined to be in need of a conservator, and that nomination shall be  
26      given the preference described in this Code section, provided that it is signed in accordance  
27      with the provisions of subsection (e) of this Code section or, if in a will, is executed in  
28      accordance with the provisions of Code Section 53-4-20 of the Revised Probate Code of  
29      1998.

30      (e) A writing nominating the conservator of an adult:

31            (1) Must contain an express nomination of the person who shall serve as conservator and  
32               must be signed or acknowledged by the individual making the nomination in the presence  
33               of two witnesses who sign in the individual's presence; and  
34            (2) May be revoked by the individual by obliteration, cancellation, or by a subsequent  
35               inconsistent writing, whether or not witnessed.

1 29-5-4.

2 (a) Upon receiving an affidavit:

3 (1) That the total personal property of an incapacitated adult does not exceed \$2,500.00  
4 in value;

5 (2) That no conservator has been appointed for the incapacitated adult's estate; and

6 (3) That the affiant is the spouse or that there is no spouse and the affiant is a relative  
7 having the responsibility of the support of the incapacitated adult,

8 any person or corporation indebted to or holding personal property of the incapacitated  
9 adult shall be authorized to pay the amount of the indebtedness or deliver the personal  
10 property to the affiant. In the same manner and upon like proof, any person or corporation  
11 having the responsibility for the issuance or transfer of stocks, bonds, or other personal  
12 property shall be authorized to issue or transfer the stocks, bonds, or personal property to  
13 or in the name of the affiant. Upon payment, delivery, transfer, or issuance pursuant to the  
14 affidavit, the person or corporation shall be released to the same extent as if the payment,  
15 delivery, transfer or issuance had been made to the legally qualified conservator of the  
16 incapacitated adult and shall not be required to see to the application or disposition of the  
17 personal property.

18 (b) The person making the affidavit and receiving the personal property shall be authorized  
19 to expend or otherwise dispose of the personal property for the benefit of the incapacitated  
20 adult in the person's judgment as may be just and proper.

## 21 ARTICLE 2

22 29-5-10.

23 (a) Any interested person or persons, including the proposed ward, may file a petition for  
24 the appointment of a conservator. The petition shall be filed in the court of the county in  
25 which the proposed ward is domiciled or is found, provided that the court of the county  
26 where the proposed ward is found shall not have jurisdiction to hear any conservatorship  
27 petition if it appears that the proposed ward was removed to that county solely for the  
28 purposes of filing a petition for the appointment of a conservator.

29 (b) The petition for appointment of a conservator shall set forth:

30 (1) A statement of the facts upon which the court's jurisdiction is based;

31 (2) The name, address, and county of domicile of the proposed ward, if known;

32 (3) The name, address, and county of domicile of the petitioner or petitioners and the  
33 petitioner's relationship to the proposed ward, if any, and, if different from the petitioner,  
34 the name, address, and county of domicile of the person nominated by the petitioner to  
35 serve as conservator and that person's relationship to the proposed ward, if any;

- (4) A statement of the reasons the conservatorship is sought, including the facts which support the claim of the need for a conservator;
- (5) Any foreseeable limitations on the conservatorship;
- (6) Whether, to the petitioner's knowledge, there exists any power of attorney, trust, or other instrument that deals with the management of the property of the proposed ward in the event of incapacity and the name and address of any fiduciary or agent named in the instrument;
- (7) A description of all known assets, income, other sources of funds, liabilities, and expenses of the proposed ward;
- (8) The names and addresses of the following whose whereabouts are known:
  - (A) The spouse of the proposed ward; and
  - (B) All children of the proposed ward; or
  - (C) If there are no adult children, then at least two adults in the following order of priority:
    - (i) Lineal descendants of the proposed ward;
    - (ii) Parents and siblings of the proposed ward; and
    - (iii) Friends of the proposed ward;
- (9) If known, the name and address of any person nominated to serve as conservator by the proposed ward, as described in paragraph (1) of subsection (b) of Code Section 29-5-3;
- (10) If known, the name and address of any person nominated to serve as conservator by the proposed ward's spouse, adult child, or parent, as described in paragraphs (2) through (4) of subsection (b) of Code Section 29-5-3;
- (11) The name and address of any person nominated to serve as conservator by the petitioner;
- (12) Whether any nominated conservator has consented or will consent to serve as conservator;
- (13) If known, whether any nominated conservator is an owner, operator, or employee of a long-term care or other caregiving institution or facility at which the proposed ward is receiving care, and, if so, whether the nominated conservator is related to the proposed ward by blood, marriage, or adoption.
- (14) Whether an emergency conservator has been appointed for the proposed ward or a petition for the appointment of an emergency conservator has been filed or is being filed;
- (15) If known, a disclosure of any ownership or other financial interest that would cause any nominated conservator to have a conflict of interest with the proposed ward;

1       (16) A specific listing of any additional powers, as described in subsections (b) and (c)  
2       of Code Section 29-5-23, that are requested by the conservator and a statement of the  
3       circumstances which would justify the granting of additional powers;

4       (17) Whether a guardian or conservator has been appointed in another state or whether  
5       a petition for the appointment of a guardian or conservator is pending in another state;

6       (18) That to petitioner's knowledge, there has been no petition for conservatorship  
7       denied or dismissed within two years by any court of this state or, if so, that there has  
8       been a significant change in the condition or circumstances of the individual, as shown  
9       by the accompanying affidavits or evaluation; and

10      (19) The reason for any omission in the petition for appointment of conservator in the  
11       event full particulars are lacking.

12      (c)(1) The petition shall be sworn to by two or more petitioners or shall be supported by  
13       an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,  
14       a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical  
15       social worker or, if the proposed ward is a patient in any federal medical facility in which  
16       such a physician, psychologist, or licensed clinical social worker is not available, a  
17       physician, psychologist, or licensed clinical social worker authorized to practice in that  
18       facility.

19      (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has  
20       examined the proposed ward within 15 days prior to the filing of the petition and that,  
21       based upon the examination, the proposed ward was determined to lack sufficient  
22       capacity to make or communicate significant, responsible decisions concerning the  
23       management of the proposed ward's property.

24      (3) In addition to stating the facts that support the claim of the need for a conservator,  
25       the affidavit shall state the foreseeable duration of the conservatorship and may set forth  
26       the affiant's opinion as to any other limitations on the conservatorship.

27  
28      29-5-11.

29      (a) Upon the filing of a petition for conservatorship of the estate of an proposed ward, the  
30       court shall review the petition and the affidavit, if any, and determine whether there is  
31       probable cause to believe that the proposed ward is in need of a conservator within the  
32       meaning of Code Section 29-5-1.

33      (b) If the court determines that there is no probable cause to believe that the proposed ward  
34       is in need of a conservator, the court shall dismiss the petition and provide the proposed  
35       ward with a copy of the petition, the affidavit, if any, and the order dismissing the petition.

36      (c) If the court determines that there is probable cause to believe that the proposed ward  
37       is in need of a conservator:

1       (1) The court shall immediately notify the proposed ward of the proceedings by service  
2       of all pleadings on the proposed ward, which notice shall:

3           (A) Be served personally on the proposed ward by an officer of the court and shall not  
4           be served by mail;

5           (B) Inform the proposed ward that a petition has been filed to have a conservator  
6           appointed for the proposed ward, that the proposed ward has the right to attend any  
7           hearing that is held, and that if a conservator is appointed the proposed ward may lose  
8           important rights to control the management of the proposed ward's property;

9           (C) Inform the proposed ward of the place and time at which the proposed ward shall  
10          submit to the evaluation provided for by subsection (d) of this Code section; and

11          (D) Inform the proposed ward of the proposed ward's right to independent legal  
12          counsel and that the court shall appoint counsel within two days of service unless the  
13          proposed ward indicates that he or she has retained counsel within that time frame;

14       (2) Upon notice that the proposed ward has retained legal counsel or upon the  
15          appointment of legal counsel by the court, the court shall furnish legal counsel with a  
16          copy of the petition, the affidavit, if any, and the order for evaluation provided for by  
17          subsection (d) of this Code section.

18       (3) The court shall give notice of the petition by first-class mail to all adult individuals  
19          and other persons who are named in the petition pursuant to the requirements of  
20          paragraphs (8) through (10) of subsection (b) of Code Section 29-5-10; and

21       (4) Upon the court's own motion or upon the motion of any interested person, the court  
22          shall determine whether to appoint a guardian ad litem.

23       (d)(1) If the petition is not dismissed pursuant to subsection (b) of this Code section, the  
24          court shall appoint an evaluating physician who shall be a physician licensed to practice  
25          medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter  
26          39 of Title 43, or a licensed clinical social worker or, if the proposed ward is a patient in  
27          any federal medical facility in which such a physician, psychologist, or licensed clinical  
28          social worker is not available, a physician, psychologist, or licensed clinical social worker  
29          authorized to practice in that federal facility, other than the physician, psychologist, or  
30          licensed clinical social worker who completed the affidavit attached to the petition  
31          pursuant to subsection (c) of Code Section 29-5-10.

32       (2) When evaluating the proposed ward, the physician, psychologist, or licensed clinical  
33          social worker shall explain the purpose of the evaluation to the proposed ward. The  
34          proposed ward may remain silent. Any statements made by the proposed ward during the  
35          evaluation shall be privileged and shall be inadmissible as evidence in any proceeding  
36          other than a proceeding under this chapter. The proposed ward's legal counsel shall have  
37          the right to be present but shall not participate in the evaluation.

1       (3) The evaluation shall be conducted with as little interference with the proposed ward's  
2       activities as possible. The evaluation shall take place at the place and time set in the  
3       notice to the proposed ward and to his or her legal counsel and the time set shall not be  
4       sooner than the fifth day after the service of notice on the proposed ward. The court,  
5       however, shall have the exclusive power to change the place and time of the examination  
6       at any time upon reasonable notice being given to the proposed ward and to his or her  
7       legal counsel. If the proposed ward fails to appear, the court may order that the proposed  
8       ward be taken directly to and from a medical facility, office of a physician, psychologist,  
9       or licensed clinical social worker for purposes of evaluation only. The evaluation shall  
10      be conducted during the normal business hours of the facility or office and the proposed  
11      ward shall not be detained in the facility or office overnight.

12      (4) A written report shall be filed with the court no later than seven days after the  
13      evaluation and the court shall serve a copy of the report by first-class mail upon the  
14      proposed ward and the proposed ward's legal counsel and guardian ad litem, if appointed.

15      (5) The report shall be signed under oath by the physician, psychologist, or licensed  
16      clinical social worker and shall:

17           (A) State the circumstances and duration of the evaluation, including a summary of  
18           questions or tests utilized;

19           (B) List all persons and other sources of information consulted in evaluating the  
20           proposed ward;

21           (C) Describe the proposed ward's mental and physical state and condition, including  
22           all observed facts considered by the physician, psychologist, or licensed clinical social  
23           worker;

24           (D) Describe the overall social condition of the proposed ward, including support, care,  
25           education, and well-being; and

26           (E) Describe the needs of the proposed ward and their foreseeable duration.

27      (6) The proposed ward's legal counsel may file a written response to the evaluation,  
28      provided the response is filed no later than the date of the commencement of the hearing  
29      on the petition for conservatorship. The response may include, but is not limited to,  
30      independent evaluations, affidavits of individuals with personal knowledge of the  
31      proposed ward, and a statement of applicable law.

32      29-5-12.

33      (a) After the filing of the evaluation report the court shall review the pleadings and the  
34      evaluation report.

1       (b) If, after the review, the court finds that there is no probable cause to support a finding  
2       that the proposed ward is in need of a conservator within the meaning of Code Section  
3       29-5-1, the court shall dismiss the petition.

4       (c) If, after the review, the court finds that there is probable cause to support a finding that  
5       the proposed ward is in need of a conservator, the court shall schedule a hearing on the  
6       petition. Notice of the hearing shall be served by first-class mail upon the proposed ward,  
7       the proposed ward's legal counsel, and the proposed ward's guardian ad litem, if any; the  
8       petitioner or the petitioner's legal counsel, if any; and all adult individuals and other  
9       persons who are named in the petition pursuant to the requirements of paragraphs (8)  
10      through (10) of subsection (b) of Code Section 29-5-10. The date of the hearing shall not  
11      be less than ten days after the date the notice is mailed.

12      (d)(1) The hearing shall be held in a courtroom or, for good cause shown, at any other  
13      place as the court may set. At the request of the proposed ward or the proposed ward's  
14      legal counsel and for good cause shown, the court may exercise its discretion to exclude  
15      the public from the hearing and the record shall reflect the court's action. The proposed  
16      ward or the proposed ward's legal counsel may waive the appearance of the proposed  
17      ward at the hearing.

18      (2) The hearing shall be recorded by either a certified court reporter or a sound-recording  
19      device. The recording shall be retained for not less than 45 days from the date of the  
20      entry of the order described in Code Section 29-5-138.

21      (3) The court shall apply the rules of evidence applicable in civil cases.

22      (4) The court shall utilize the criteria in Code Section 29-5-1 to determine whether there  
23      is clear and convincing evidence of the need for a conservatorship in light of the evidence  
24      taken at the hearing. In addition to the evidence at the hearing, the court may consider  
25      the evaluation report and any response filed by the proposed ward. The burden of proof  
26      shall be upon the petitioner.

27      (5) Upon determination of the need for a conservatorship, the court shall determine the  
28      powers, if any, which are to be retained by the proposed ward, in accordance with the  
29      provisions of Code Section 29-5-21 and whether any additional powers shall be granted  
30      to the conservator pursuant to the provisions of subsections (b) and (c) of Code Section  
31      29-5-23.

32      (6) If the court determines that a conservatorship is necessary and the proposed ward is  
33      present, the proposed ward may suggest any person as conservator. The court shall select  
34      as conservator the person who shall serve the best interest of the ward.

35      (7) In any procedure under this chapter in which the judge of the court is unable to hear  
36      a case within the time required for a hearing on the petition for conservatorship, the judge  
37      shall appoint an individual to serve to hear the case and exercise all the jurisdiction of the

1       court in the case. Any individual so appointed shall be a member of the State Bar of  
2       Georgia who is qualified to serve as the probate judge in that county and who is, in the  
3       opinion of the appointing judge, qualified for the duties by training and experience. The  
4       appointment may be made on a case-by-case basis or by making a standing appointment  
5       of one or more individuals. Any individual who receives a standing appointment shall  
6       serve at the pleasure of the judge who makes the appointment or the judge's successor  
7       in office. The compensation of an individual so appointed shall be as agreed upon by the  
8       judge who makes the appointment and the individual appointed, with the approval of the  
9       governing authority of the county for which the individual is appointed, and shall be paid  
10      from county funds. All fees collected for the service of the appointed individual shall be  
11      paid into the general funds of the county.

12     29-5-13.

13     (a) The court shall issue an order that sets forth the findings of fact and conclusions of law  
14      that support the grant or denial of the petition. An order granting conservatorship shall  
15      specify:

- 16       (1) The name of the conservator and the basis for the selection;
- 17       (2) Any powers retained by the ward pursuant to Code Section 29-5-21;
- 18       (3) The limitations on the conservatorship;
- 19       (4) A specific listing of any additional powers which are granted to the conservator as  
20       set forth in subsections (b) and (c) of Code Section 29-5-23;
- 21       (5) If a guardian is also appointed and if the guardian and conservator are not the same  
22       person, the reasonable sums or property to be furnished to the guardian to provide  
23       adequately for the ward's support, care, education, health, and welfare, subject to  
24       modification by subsequent order of the court;
- 25       (6) If the ward has an interest in real property, the name of the county in which the real  
26       property is located; and
- 27       (7) Such other and further provisions of the conservatorship as the court shall determine  
28       to be in the best interest of the ward, stating the reasons therefor.

29     (b) Service of the court's order shall be made by first-class mail upon the ward, the ward's  
30       legal counsel, the guardian ad litem, if any, the conservator, the petitioner, and other  
31       persons designated for service of the petition for conservatorship.

32     (c) After service of an order granting a conservatorship, the ward's legal counsel shall  
33       make reasonable efforts to explain to the ward the order of conservatorship and the ward's  
34       rights under the order.

35     (d) In any case involving the appointment of a conservator, if the ward has an interest in  
36       real property, the court shall file, within 30 days of granting the petition for

1 conservatorship, a certificate with the clerk of the superior court of each county in this state  
2 in which the ward owns real property, to be recorded in the deed records of the county and  
3 indexed under the name of the ward in the grantor index. The certificate shall set forth the  
4 name of the ward, the expiration date of the conservatorship, if limited by court order, the  
5 date of the order granting the conservatorship, and the name of the conservator. The  
6 certificate shall be accompanied by the same fee required for filing deeds with the clerk of  
7 the superior court. The filing fee and any fee for the certificate shall be taxed as costs to  
8 the estate.

9 29-5-14.

10 (a) Any interested person, including the proposed ward, may file a petition for the  
11 appointment of an emergency conservator. The petition shall be filed in the court of the  
12 county in which the proposed ward is domiciled or is found.

13 (b) The petition for appointment of an emergency conservator shall set forth:

14 (1) A statement of the facts upon which the court's jurisdiction is based;

15 (2) The name, address, and county of domicile of the proposed ward, if known;

16 (3) The name, address, and county of domicile of the petitioner and the petitioner's  
17 relationship to the proposed ward;

18 (4) A statement of the reasons the emergency conservatorship is sought, including the  
19 facts which support the need for a conservator and the facts which establish an immediate  
20 and substantial risk of irreparable waste or dissipation of the proposed ward's property  
21 unless an emergency conservator is appointed;

22 (5) The reasons why compliance with the procedures of Code Sections 29-5-10 through  
23 29-5-13 is not appropriate in the circumstances;

24 (6) The fact that no other person appears to have authority and willingness to act in the  
25 circumstances, whether under a power of attorney, trust, or otherwise; and

26 (7) The reason for any omission to the petition for appointment of emergency  
27 conservator in the event full particulars are lacking.

28 (c) The petition shall state whether a petition for the appointment of a conservator or  
29 guardian has been filed or is being filed in conjunction with the petition for the  
30 appointment of an emergency conservator; and, if no other petition has been filed or is  
31 being filed, shall include a summary description of all known assets, income, other sources  
32 of funds, liabilities, and expenses of the proposed ward.

33 (d)(1) The petition shall be sworn to by two or more petitioners or shall be supported by  
34 an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43,  
35 a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical  
36 social worker or, if the proposed ward is a patient in any federal medical facility in which

such a physician, psychologist, or licensed clinical social worker is not available, a physician, psychologist, or licensed clinical social worker authorized to practice in that facility.

(2) Any affidavit shall be based on personal knowledge and shall state that the affiant has examined the proposed ward within 15 days prior to the filing of the petition and that, based on the examination, the proposed ward was determined to lack sufficient capacity to make or communicate significant, responsible decisions concerning the management of the proposed ward's property and that there is an immediate and substantial risk of irreparable waste or dissipation of the proposed ward's property unless an emergency conservator is appointed.

(3) In addition to stating the facts that support the need for an emergency conservator, the affidavit shall state the foreseeable duration of the emergency conservatorship and may set forth the affiant's opinion as to any other limitations on the emergency conservatorship.

29-5-15.

(a) Upon the filing of a petition for an emergency conservatorship, the court shall review the petition and the affidavit, if any, to determine whether there is probable cause to believe that the proposed ward is in need of an emergency conservator within the meaning of Code Section 29-5-149.

(b) If the court determines that there is no probable cause to believe that the proposed ward is in need of an emergency conservator, the court shall dismiss the petition and provide the proposed ward with a copy of the petition, the affidavit, if any, and the order dismissing the petition.

(c) If the court determines that there is probable cause to believe that the proposed ward is in need of an emergency conservator, the court shall:

(1) Immediately appoint legal counsel to represent the proposed ward at the emergency hearing, which counsel may be the same counsel who is appointed to represent the proposed ward in the hearing on the petition for guardianship or conservatorship, if any such petition has been filed, and shall inform counsel of the appointment;

(2) Order an emergency hearing to be conducted not sooner than three days nor later than five days after the filing of the petition;

(3) Order an evaluation of the proposed ward by a physician who shall be a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, other than the physician, psychologist, or licensed clinical social worker who completed the affidavit attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section

1       29-5-10, to be conducted within 72 hours and a written report to be furnished to the court  
2       and made available to the parties within 72 hours, which evaluation and report shall be  
3       governed by the provisions of subsection (d) of Code Section 29-5-14;

4       (4) Immediately notify the proposed ward of the proceedings by service of all pleadings  
5       on the proposed ward, which notice shall:

6           (A) Be served personally on the proposed ward by an officer of the court and shall not  
7       be served by mail;

8           (B) Inform the proposed ward that a petition has been filed to have an emergency  
9       conservator appointed for the proposed ward, that the proposed ward has the right to  
10      attend any hearing that is held, and that, if an emergency conservator is appointed, the  
11      proposed ward may lose important rights to control the management of the proposed  
12      ward's property;

13          (C) Inform the proposed ward of the place and time at which the proposed ward shall  
14       submit to the evaluation provided for by paragraph (3) of this subsection;

15          (D) Inform the proposed ward of the appointment of legal counsel; and

16          (E) Inform the proposed ward of the date and time of the hearing on the emergency  
17       conservatorship; and

18       (5) Appoint an emergency conservator to serve until the emergency hearing, with or  
19       without prior notice to the proposed ward, if the threatened risk is so immediate and the  
20       potential harm so irreparable that any delay is unreasonable and the existence of the  
21       threatened risk and potential for irreparable harm is certified by the affidavit of a  
22       physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist  
23       licensed to practice under Chapter 39 of Title 43, or licensed clinical social worker;  
24       provided, however, that, pending the emergency hearing, the court shall order that no  
25       withdrawals may be made from any account on the authority of the proposed ward's  
26       signature without the court's prior approval and that the emergency conservator shall not  
27       expend any funds of the proposed ward without prior court approval. Appointment of an  
28       emergency conservator under this paragraph is not a final determination of the proposed  
29       ward's need for a nonemergency conservator.

30       29-5-16.

31       (a) The court shall conduct the emergency conservatorship hearing at the time and date set  
32       forth in its order to determine whether there is clear and convincing evidence of the need  
33       for an emergency conservatorship in light of the evidence taken at the hearing. In addition  
34       to the evidence at the hearing, the court may consider the evaluation report and any  
35       response filed by the proposed ward. The burden of proof shall be upon the petitioner.

1      Upon the consent of the petitioner and the proposed ward, the court may grant a  
2      continuance of the case for a period not to exceed 30 days.

3      (b) If the court at the emergency hearing finds that an emergency conservatorship is  
4      necessary, the court shall order the emergency conservatorship; provided, however, that:

5        (1) Any emergency conservator shall have only those powers and duties specifically  
6      enumerated in the letters of emergency conservatorship and the powers and duties shall  
7      not exceed those absolutely necessary to respond to the immediate threatened risk to the  
8      ward;

9        (2) The court may order the emergency conservator to make any report the court  
10     requires; and

11        (3) The emergency conservatorship shall terminate on the earliest of:

12            (A) The court's removal of the emergency conservator, with or without cause;

13            (B) The effective date of the appointment of a conservator;

14            (C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for  
15      appointment of a conservator;

16            (D) The date specified for the termination in the order appointing the emergency  
17      conservator; or

18            (E) Sixty days from the date of appointment of the emergency conservator.

19

### ARTICLE 3

20      29-5-20.

21      (a) In every conservatorship the ward has the right to:

22            (1) A qualified conservator who acts in the best interest of the ward;

23            (2) A conservator who is reasonably accessible to the ward;

24            (3) Have the ward's property utilized as necessary to provide adequately for the ward's  
25      support, care, education, health, and welfare;

26            (4) Communicate freely and privately with persons other than the conservator, except as  
27      otherwise ordered by a court of competent jurisdiction;

28            (5) Individually, or through the ward's representative or legal counsel, bring an action  
29      relating to the conservatorship, including the right to file a petition alleging that the ward  
30      is being unjustly denied a right or privilege granted by Chapter 4 of this title and this  
31      chapter and the right to bring an action to modify or terminate the conservatorship  
32      pursuant to the provisions of Code Sections 29-5-71 and 29-5-72;

33            (6) The least restrictive form of conservatorship, taking into consideration the ward's  
34      functional limitations, personal needs, and preferences; and

35            (7) Be restored to capacity at the earliest possible time.

- 1       (b) The appointment of a conservator is not a determination regarding the right of the ward  
2       to vote.  
3       (c) The appointment of a conservator is not a determination that the ward lacks  
4       testamentary capacity.

5       29-5-21.

6       (a) Unless the court's order specifies that one or more of the following powers are to be  
7       retained by the ward, the appointment of a conservator shall remove from the ward the  
8       power to:

- 9           (1) Make, modify, or terminate contracts, other than the power to contract marriage;
- 10          (2) To buy, sell, or otherwise dispose of or encumber property;
- 11          (3) Enter into or conduct other business or commercial transactions;
- 12          (4) Revoke a revocable trust established by the ward; and
- 13          (5) Bring or defend any action at law or equity, except an action relating to the  
14       conservatorship.

15       (b) The mere appointment of a conservator does not revoke the powers of an agent who  
16       was previously appointed by the ward to act as the ward's agent under a durable power of  
17       attorney for health care.

18       29-5-22.

19       (a) Except as otherwise provided by law or by the court, a conservator shall receive,  
20       collect, and make decisions regarding the ward's property. A conservator shall, to the  
21       extent feasible, encourage the ward to participate in decisions, act on the ward's own  
22       behalf, and develop or regain the ability to manage the ward's property. A conservator, in  
23       making decisions, shall consider the expressed desires and personal values of the ward  
24       which are known to the conservator. A conservator shall at all times act as a fiduciary in  
25       the ward's best interest and exercise reasonable care, diligence, and prudence.

26       (b) A conservator shall:

- 27           (1) Respect the rights and dignity of the ward;
- 28           (2) Be reasonably accessible to the ward and maintain regular communication with the  
29       ward;
- 30           (3) If necessary, petition to have a guardian appointed;
- 31           (4) Endeavor to cooperate with the guardian, if any;
- 32           (5) Provide for the support, care, education, health, and welfare of the ward and persons  
33       who are entitled to be supported by the ward, to the extent consistent with the current and  
34       future needs and resources of the ward;
- 35           (6) Give such bond as required by Code Section 29-5-40;

1       (7) Within two months of appointment, file with the court and provide to the guardian,  
2 if any, an inventory of the ward's property and a plan for administering the property,  
3 pursuant to the provisions of Code Section 29-5-30.

4       (8) Take into account any estate plan of the ward known to the conservator in the  
5 administration of the conservatorship;

6       (9) Keep accurate records, including adequate supporting data, and file annual returns,  
7 as required by Code Section 29-5-60;

8       (10) Promptly notify the court of any change in the ward's condition that in the opinion  
9 of the conservator might require modification or termination of the conservatorship;

10      (11) Promptly notify the court of any conflict of interest between the ward and the  
11 conservator when the conflict arises or becomes known to the conservator and take such  
12 action as is required by Code Section 29-5-24; and

13      (12) Keep the court informed of the conservator's current address.

14      (c) A conservator, solely by reason of the conservator-ward relationship, is not personally  
15 liable for:

16       (1) The ward's expenses or the expenses of those entitled to be supported by the ward;

17       (2) Contracts entered into in the conservator's fiduciary capacity;

18       (3) The acts or omissions of the ward;

19       (4) Obligations arising from ownership or control of property of the ward; or

20       (5) Other acts or omissions occurring in the course of the conservatorship.

21      29-5-23.

22      (a) Unless inconsistent with the terms of any court order relating to the conservatorship,  
23 a conservator without court order may:

24       (1) Make reasonable disbursements from the annual income or, if applicable, from the  
25 annual budget amount that has been approved by the court pursuant to Code Section  
26 29-5-30 for the support, care, education, health, and welfare of the ward and those  
27 persons who are entitled to be supported by the ward;

28       (2) Enter into contracts for labor or service upon such terms as the conservator may deem  
29 best, but only to the extent that the annual compensation payable under such contracts,  
30 when combined with other anticipated disbursements, does not exceed the amount of the  
31 annual income or, if applicable, the annual budget amount that has been approved by the  
32 court pursuant to Code Section 29-5-30;

33       (3) Borrow money for one year or less and bind the ward or the ward's property, but only  
34 if the amount of the annual payments, when combined with other anticipated  
35 disbursements, does not exceed the amount of the annual income or, if applicable, the  
36 annual budget amount that has been approved by the court pursuant to Code Section

1       29-5-30 and only if done for purposes of paying the ward's debts, repairing the ward's  
2 dwelling place, or providing for the support, care, education, health, or welfare of the  
3 ward and the persons who are entitled to be supported by the ward;

4       (4) Receive, collect, and hold the ward's property, additions to the ward's property, and  
5 all related records;

6       (5) Retain the property received by the conservator upon the creation of the  
7 conservatorship in accordance with the provisions of Code Section 29-5-31;

8       (6) Bring, defend, or participate in legal, equitable, or administrative proceedings,  
9 including alternative dispute resolution, as are appropriate for the support, care,  
10 education, health, or welfare of the ward in the name of or on behalf of the ward;

11      (7) Fulfill, as far as possible, or, to the extent permitted by law, disaffirm the executory  
12 contracts and comply with the executed contracts of the ward;

13      (8) Revoke a revocable trust set up by the ward or exercise such other powers of  
14 revocation, amendment, or withdrawal that are exercisable by the ward, but only if the  
15 governing instrument expressly allows a conservator to revoke the trust or exercise the  
16 powers;

17      (9) Examine the will and any other estate planning documents of the ward;

18      (10) Appoint an attorney in fact to act for the conservator when the conservator is unable  
19 to act; provided, however, that the conservator and the conservator's sureties shall be  
20 bound for the acts of the attorney as if the acts were the personal acts of the conservator;

21      (11) Invest the ward's property pursuant to the provisions of Code Sections 29-5-32 and  
22 29-5-33;

23      (12) Sell the ward's stocks and bonds pursuant to the provisions of subsection (b) of  
24 Code Section 29-5-35;

25      (13) Compromise any contested or doubtful claim for or against the ward if the proposed  
26 gross settlement as defined in Code Section 29-3-3 is in the amount of \$15,000.00 or less;  
27 and

28      (14) Release the debtor and compromise all debts in the amount of \$15,000.00 or less  
29 when the collection of the debt is doubtful.

30      (b)(1) In the petition for appointment, or at any time during the conservatorship, the  
31 conservator may request the continuing power:

32       (A) To invest the ward's property in investments other than those authorized in Code  
33 Section 29-5-32, pursuant to the provisions of Code Section 29-5-34, without further  
34 court approval of any investment;

35       (B) To sell, rent, lease, exchange, or otherwise dispose of any or all of the ward's real  
36 or personal property without complying with the provisions of Code Section 29-5-35

1       other than the provisions for additional bond set forth in subsection (e) of Code Section  
2       29-5-35; or

3       (C) To continue the operation of any farm or business in which the ward has an  
4       interest.

5       (2) Unless the request for the powers described in paragraph (1) of this subsection is  
6       made in the petition for the initial appointment of the conservator, the court shall order  
7       a hearing as the court deems appropriate. Notice shall be given by personal service to the  
8       ward and a guardian ad litem appointed for the ward. Notice shall be given by first-class  
9       mail to the guardian of the ward, if any; the surety on the conservator's bond; and to the  
10      following relatives of the ward whose whereabouts are known:

11       (A) The spouse of the ward; and

12       (B) All adult children of the ward; or

13       (C) If there is no adult child, then at least two adults in the following order of priority:

14           (i) Lineal descendants of the ward;

15           (ii) Parents and siblings of the ward; and

16           (iii) Friends of the ward.

17       (c) At the time of the appointment of the conservator or at any time thereafter, and after  
18       appointment of a guardian ad litem for the ward and a hearing as the court deems  
19       appropriate, any of the following powers may be specifically granted to the conservator on  
20       a case-by-case basis, upon notice as the court shall determine:

21       (1) To make disbursements that exceed by no more than a specific amount the annual  
22       income or, if applicable, the annual budget amount that has been approved by the court  
23       pursuant to Code Section 29-5-30 for the support, care, education, health, and welfare of  
24       the ward and those persons who are entitled to be supported by the ward;

25       (2) To enter into contracts for labor or service for which the compensation payable under  
26       such contracts, when combined with other disbursements from the estate, exceeds the  
27       annual income or, if applicable, the annual budget amount that has been approved by the  
28       court pursuant to Code Section 29-5-30;

29       (3) To make specific investments of the ward's property that do not comply with the  
30       provisions of Code Section 29-5-32, pursuant to the provisions of Code Section 29-5-34;

31       (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the ward's  
32       real or personal property without complying with the provisions of Code Section 29-5-35  
33       other than the provisions for additional bond set forth in subsection (e) of Code Section  
34       29-5-35;

35       (5) To compromise a contested or doubtful claim for or against the ward if the proposed  
36       gross settlement as defined in Code Section 29-3-3, is more than \$15,000.00;

- 1       (6) To release the debtor and compromise all debts for which the collection is doubtful  
2       when the amount of the debt is \$15,000.00 or more;
- 3       (7) To use the ward's property to erect a dwelling for the ward or make an addition or  
4       renovation to the ward's dwelling place;
- 5       (8) To establish or add property to a trust for the benefit of the ward and, if applicable,  
6       those individuals who are entitled to support from the ward; provided, however, unless  
7       otherwise provided by court order pursuant to Code Section 29-5-36, the trust must  
8       provide that the ward may revoke the trust if the ward is restored to capacity and the trust  
9       shall terminate upon the ward's death and any property remaining in the trust shall be  
10      paid to the ward's estate;
- 11      (9) To disclaim or renounce any property or interest in property of the ward in  
12      accordance with the provisions of Code Section 53-1-20 of the Revised Probate Code of  
13      1998;
- 14      (10) To engage in estate planning for the ward pursuant to the provisions of Code  
15      Section 29-5-36; and
- 16      (11) To perform such other acts as may be in the best interest of the ward.

17      (d) In granting any of the powers described in subsections (b) and (c) of this Code section,  
18      the court shall consider the views of the guardian, if available, or, if there is no guardian,  
19      of others who have custody of the ward.

20      (e) In performing any of the acts described in this Code section, the conservator shall  
21      endeavor to cooperate with the guardian or, if there is no guardian, with others who have  
22      custody of the ward.

23      29-5-24.

24      (a) The appointment of a conservator shall not automatically cause the conservator to  
25      forfeit any rights to property.

26      (b) The conservator must disclose promptly any conflict of interest between the  
27      conservator and the ward when it arises or becomes known to the conservator. The  
28      conservator must seek the court's determination as to whether the conflict is insubstantial  
29      or whether it is in the best interest of the ward for the conservator to continue to serve and  
30      not forfeit any property right. If the court finds that the conflict of interest is substantial  
31      or contrary to the best interest of the ward, the conservator may either resign or forfeit the  
32      property interest that is the source of the conflict.

33      (c) A transaction affected by a substantial conflict between personal and fiduciary interests  
34      includes any sale, encumbrance, or other transaction involving the conservatorship estate  
35      entered into by the conservator or the spouse, descendant, agent, or lawyer of the

1 conservator or a corporation or other enterprise in which the conservator has a significant  
2 beneficial interest.

3 29-5-25.

4 Before entering upon the duties of the appointment, every conservator appointed pursuant  
5 to the terms of this chapter shall take an oath or affirmation before the court to perform  
6 well and truly the duties required of a conservator and to account faithfully for the estate.  
7 The oath or affirmation of a conservator may be subscribed before the judge or clerk of any  
8 probate court of this state. The judge of the probate court who appoints the conservator  
9 shall have the authority to grant a commission to a judge or clerk of any court of record of  
10 any other state to administer the oath or affirmation.

11 **ARTICLE 4**

12 29-5-30.

13 (a) Within two months of appointment, the conservator shall file with the court and  
14 provide to the ward's guardian, if any, an inventory of the ward's property and a plan for  
15 managing, expending, and distributing the property.

16 (b) The inventory shall describe all the assets and liabilities of the ward and shall include  
17 a list of all the personal and real property owned by the ward and describe how the property  
18 is titled. When the inventory is returned to the court, the conservator shall swear or affirm,  
19 in addition to the usual oath on making returns, that the inventory contains a true statement  
20 of all the assets and liabilities of the ward known to the conservator.

21 (c) The plan for managing, expending, and distributing the ward's property must be based  
22 on the actual needs of the ward and take into consideration the best interest of the ward.  
23 The conservator shall include in the plan an estimate of the duration of the conservatorship,  
24 projections for expenses and resources, and any proposals to change the title of any of the  
25 assets in the conservatorship estate. The plan and any proposed budget for the expenditure  
26 of funds in excess of the anticipated income from the property must be approved by the  
27 court. With each annual return filed thereafter, the conservator shall file with the court and  
28 provide to the guardian, if any, an updated plan pursuant to the provisions of this  
29 subsection.

30 29-5-31.

31 (a) A conservator may retain the property received by the conservator on the creation of  
32 the conservatorship, including, in the case of a corporate fiduciary, stock or other securities  
33 of its own issue, even though the property may not otherwise be a legal investment and

1 shall not be liable for the retention, except for gross neglect. In the case of corporate  
2 securities, the conservator may likewise retain any securities into which the securities  
3 originally received may be converted or which may be derived therefrom as a result of  
4 merger, consolidation, stock dividends, splits, liquidations, and similar procedures; and the  
5 conservator may exercise by purchase or otherwise any rights, warrants, or conversion  
6 features attaching to any such securities.

7 (b) In the case of a corporate fiduciary, the authority granted in subsection (a) of this Code  
8 section shall apply to the exchange or conversion of stock or securities of the corporate  
9 fiduciary's own issue, whether or not any new stock or securities received in exchange  
10 therefor are substantially equivalent to those originally held; and such authority shall also  
11 apply to the continued retention of all new stock and securities resulting from merger,  
12 consolidation, stock dividends, splits, liquidations, and similar procedures and received by  
13 virtue of such conversion or exchange of stock or securities of the corporate fiduciary's  
14 own issue, whether or not the new stock or securities are substantially equivalent to those  
15 originally received by the fiduciary. The foregoing authority shall have reference, inter  
16 alia, to the exchange of such stock or securities for stock or securities of any holding  
17 company which owns stock or other interests in one or more other corporations including  
18 the corporate fiduciary, whether the holding company is newly formed or already existing,  
19 and whether or not any of the corporations own assets identical or similar to the assets of  
20 or carry on business identical or similar to the corporation whose stock or securities were  
21 previously received by the fiduciary and the continued retention of stock or securities, or  
22 both, of the holding company; and such authority shall apply regardless of whether any of  
23 the corporations have officers, directors, employees, agents, or trustees in common with  
24 the corporation whose stock or securities were previously received by the fiduciary.

25 29-5-32.

26 A conservator is authorized to invest estate funds in the following and shall not otherwise  
27 be liable for such investment, except in the case of gross neglect:

- 28 (1) Bonds issued by any county or municipality of this state which have been validated  
29 as required by law for the validation of county and municipal bonds;
- 30 (2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article  
31 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which  
32 bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter  
33 82 of Title 36;
- 34 (3) Bonds and other securities issued by this state or by the Board of Regents of the  
35 University System of Georgia;

- (4) Bonds or other obligations issued by the United States government and bonds of any corporation created by an act of Congress, the bonds of which are guaranteed by the United States government;
- (5) Interest-bearing deposits in any financial institution located in this state, to the extent the deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or comparable insurance;
- (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of Chapter 3 of Title 8 or issued by any public housing authority or agency of the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, as authorized by Code Section 8-3-81;
- (7) Bonds or other obligations issued by a housing authority in connection with a redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section 8-4-11;
- (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;
- (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of Chapter 7 of Title 31, as authorized by Code Section 31-7-27;
- (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section 32-10-30, as authorized by Code Section 32-10-45;
- (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter 61 of Title 36 or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds or other obligations are secured by an agreement between the issuer and the federal government in accordance with Code Section 36-61-13, as authorized by Code Section 36-61-13;
- (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of Title 42, as authorized by Code Section 42-3-21;
- (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as authorized by Code Section 53-12-286;
- (14) Real property loans, as authorized by Code Section 53-12-284:
  - (A) Which are not in default;
  - (B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;

- 1       (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,  
2       et seq.; and  
3       (D) With respect to which loans, on or after default, pursuant to such insurance,  
4       debentures in at least the full amount of unpaid principal are issuable, which debentures  
5       are fully and unconditionally guaranteed both as to principal and interest by the United  
6       States; and  
7       (15) Any other investments which are designated under the laws of this state as lawful  
8       or legal investments for guardians or conservators.

9       29-5-33.

10      (a) Whenever by law or by court order the conservator is authorized, permitted, required,  
11       or directed to invest funds in direct and general obligations of the United States  
12       government, obligations unconditionally guaranteed by the United States government, or  
13       obligations of the agencies of the United States government enumerated in Code Section  
14       29-5-32, the conservator may invest in and hold such obligations either directly or in the  
15       form of securities or other interests in any open-end or closed-end management type  
16       investment company or investment trust registered under the Investment Company Act of  
17       1940, 15 U.S.C. Sections 80a-1, et seq., so long as:

- 18       (1) The portfolio of such investment company or investment trust is limited to such  
19       obligations and repurchase agreements fully collateralized by such obligations;  
20       (2) Such investment company or investment trust takes delivery of such collateral, either  
21       directly or through an authorized custodian; and  
22       (3) Such investment company or investment trust is operated so as to provide a constant  
23       net asset value or price per share.

24      (b) The authority granted in this Code section shall be applicable notwithstanding that a  
25       corporate fiduciary or an affiliate of the corporate fiduciary provides services to the  
26       investment company or investment trust as investment adviser, custodian, transfer agent,  
27       registrar, sponsor, distributor, manager, or otherwise and receives compensation for such  
28       services.

29       29-5-34.

30      (a) After receiving court approval as required in subsections (b) and (c) of Code Section  
31       29-5-23, in making investments and in acquiring and retaining those investments and  
32       managing property of the ward, the conservator shall exercise the judgment and care, under  
33       the circumstances then prevailing, that a prudent person acting in a like capacity and  
34       familiar with such matters would use to attain the purposes of the account. In making such  
35       investment decisions, a conservator may consider the general economic conditions, the

1 anticipated tax consequences of the investments, the anticipated duration of the account,  
2 and the needs of the ward and those entitled to support from the ward.

3 (b) Within the limitations of the standard provided in subsection (a) of this Code section  
4 and with prior approval by the court in accordance with Code Section 29-5-23, a  
5 conservator is authorized to acquire and retain every kind of property, including real,  
6 personal, or mixed and every kind of investment, specifically including, but not by way of  
7 limitation, bonds, debentures and other corporate obligations, and stocks, preferred or  
8 common, including the securities of or other interests in any open-end or closed-end  
9 management investments company or investment trust registered under the Investment  
10 Company Act of 1940, 15 U.S.C. Sections 80a-1, et seq. The propriety of an investment  
11 is to be determined by what the conservator knew or should have known at the time of the  
12 decision about the inherent nature and expected performance of a particular investment,  
13 including probable yield, the attributes of the portfolio, the general economy, and the needs  
14 of the ward and those entitled to support from the ward as they existed at the time of the  
15 decision. Any determination of liability for investment performance shall consider not only  
16 the performance of a particular investment but also the performance of the ward's portfolio  
17 as a whole. Within the limitations of such standard, a conservator may retain property  
18 properly acquired, without limitation as to time and without regard to its suitability for  
19 original purchase.

20 (c) A conservator that is a financial institution, trust company, national or state bank,  
21 savings bank, or savings and loan association described in Code Section 7-1-242 shall not  
22 be precluded from acquiring and retaining securities of or other interests in an investment  
23 company or investment trust because the bank or trust company or an affiliate provides  
24 services to the investment company or investment trust as investment adviser, custodian,  
25 transfer agent, registrar, sponsor, distributor, manager, or otherwise and receives  
26 compensation for such services.

27 29-5-35.

28 (a) A conservator may sell perishable property of the ward, property of the ward that is  
29 liable to deteriorate from keeping, or property of the ward that is expensive to keep, as  
30 early as practicable and in such manner as the court shall determine is in the best interest  
31 of the ward, after such notice and opportunity for hearing, if any, as the court shall deem  
32 practicable under the circumstances.

33 (b) A conservator may sell stocks or bonds of the ward that are either listed or admitted  
34 to unlisted trading privileges upon any stock exchange or quoted regularly in any  
35 newspaper having a general circulation in Georgia at a sales price not less than the stock  
36 exchange bid price or the published bid price at the time of sale and pay reasonable

1 brokerage commissions not in excess of those customarily charged by stock exchange  
2 members.

3 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, a  
4 conservator may petition the court to sell, rent, lease, exchange, or otherwise dispose of  
5 property of the ward, whether real or personal or mixed. The petition shall set forth the  
6 property involved and the interests therein, the specific purpose of the transaction, the  
7 proposed price, the anticipated net proceeds of the sale, all other terms or conditions  
8 proposed for the transaction, and that the proposed transaction is in the best interest of the  
9 ward.

10 (d) Upon the filing of the petition, the court shall appoint a guardian ad litem for the ward.

11 The petition and notice shall be served personally on the ward and the guardian ad litem.

12 (e) If no written objection by a person notified pursuant to subsection (d) of this Code  
13 section is filed within 30 days following the mailing of notice or service upon the guardian  
14 ad litem, the court shall order such sale summarily in the manner and terms petitioned;  
15 provided, however, that if real property is to be converted to personal property, the court  
16 shall order the conservator to post additional bond to cover the amount of the anticipated  
17 net proceeds of the sale prior to the closing of the sale. If an objection is filed, the court  
18 shall hear the matter and grant or deny the petition for sale or make such other order as is  
19 in the best interest of the ward, which may require the sale to be private or at public  
20 auction, including confirmation of the sale by the court or otherwise.

21 (f) A conservator shall make a full return to the court within 30 days of every sale,  
22 specifying the property sold, the purchasers, and the amounts received, together with the  
23 terms of the sale.

24 (g) The recital in the conservator's deed of a compliance with legal provisions shall be  
25 prima-facie evidence of the facts recited.

26 (h) Where a conservator sells real property under the provisions of this Code section, liens  
27 thereon may be divested and transferred to the proceeds of the sale as a condition of the  
28 sale.

29 (i) An emergency or temporary substitute conservator is authorized to petition the court  
30 for leave to sell or otherwise deal with the property of the estate only if good cause is  
31 shown for not waiting until a different type of conservatorship is created or the  
32 conservatorship is terminated.

33 29-5-36.

34 (a) After notice to interested parties and other persons as the court may direct, and upon  
35 a showing that the ward will probably remain in need of a conservator throughout the  
36 ward's lifetime and that it is in the best interest of the ward, the court may order the

1 conservator to apply such principal or income of the ward as is not required for the support,  
2 care, education, health, and welfare of the ward and such individuals who are entitled to  
3 support from the ward toward the establishment or continuation of an estate plan for the  
4 ward and make transfers of the ward's personal or real property, outright or in trust,  
5 provided that the court finds that a competent, reasonable person in the ward's  
6 circumstances would make such transfers and there is no evidence that the ward, if not in  
7 need of a conservator, would not adopt such an estate plan.

8 (b) Prior to authorizing such transfers, the court shall appoint a guardian ad litem for the  
9 ward and shall consider:

- 10 (1) The composition and value of the entire estate of the ward, other known sources of  
11 support available to the ward and individuals who are entitled to be supported by the  
12 ward, and the income produced thereby;
- 13 (2) The probable expenses for the support, care, education, health, or welfare of the ward  
14 and such individuals who are entitled to be supported by the ward for the remainder of  
15 the ward's lifetime in the standard of living to which the ward and the other individuals  
16 have become accustomed;
- 17 (3) The identity of the proposed transferees and, in particular, whether they are natural  
18 objects of the ward's bounty by relationship or prior behavior of the ward;
- 19 (4) The purpose and estate planning benefit to be derived by the transfer as well as the  
20 possible harm to any interested party;
- 21 (5) Any previous history or predisposition toward making similar transfers by the ward.

## 22 ARTICLE 5

23 29-5-40.

24 (a) A conservator appointed by the court shall give bond with good and sufficient security.  
25 (b) A financial institution, trust company, national or state bank, savings bank, or savings  
26 and loan association described in Code Section 7-1-242 that seeks to qualify as a  
27 conservator is not required to give bond for the faithful performance of its duties unless its  
28 combined capital, surplus, and undivided profits are less than \$3 million as reflected in its  
29 last statements signed by the Comptroller of the Currency of the United States or the  
30 commissioner of banking and finance.

31 (c) The clerk of the court shall record bonds in books kept for that purpose and shall retain  
32 custody of the bonds.

33 29-5-41.

34 (a) The bond of a conservator shall be:

1       (1) Secured by an individual who is a domiciliary of this state or by a licensed  
2       commercial surety authorized to transact business in this state;  
3       (2) Payable to the court for the benefit of the ward;  
4       (3) Conditioned upon the faithful discharge of the conservator's duty, as such is required  
5       by law; and  
6       (4) Attested by the judge or clerk of the court.

7       (b) The court may order a conservator who is required to give bond to post bond for a  
8       period of time greater than one year, as may be appropriate in the circumstances. A surety  
9       on a bond posted pursuant to this subsection shall not be relieved of liability merely  
10      because of the expiration of the term of the bond but shall be subject to the provisions of  
11      law for the discharge of a surety applicable to other bonds.

12      (c) The bond shall be in a value equal to double the estimated value of the ward's estate;  
13      provided, however, that the bond shall be in an amount equal to the estimated value of the  
14      estate if secured by a licensed commercial surety authorized to transact business in this  
15      state. The value of the estate for purposes of the bond shall be determined without regard  
16      to the value of any real property or improvements thereon but upon conversion of the real  
17      property into personal property, a bond shall be given based upon the value of the estate  
18      including the value of the personal property into which the real property was converted.

19      (d) Substantial compliance with these requirements for the bond shall be deemed  
20      sufficient; and no bond shall be declared invalid by reason of any variation from these  
21      requirements as to payee, amount, or condition, where the manifest intention was to give  
22      bond as conservator and a breach of the fiduciary's duty as such has been proved.

23      29-5-42.

24      If the value of the ward's bonded estate decreases, the court may permit a corresponding  
25      reduction in the value of the bond, but this reduction does not affect the liability of the  
26      surety for prior waste or misconduct of the conservator.

27      29-5-43.

28      (a) Whenever it comes to the knowledge of the court, either by annual returns or otherwise  
29      that:

30       (1) Additional personal property has accrued to the ward by descent, gift, or otherwise;  
31       (2) For any other reason the bond or security of the conservator fails to comply with the  
32       minimum statutory bond amount set forth in Code Section 29-5-40; or  
33       (3) The bond or security is otherwise insufficient in the judgment of the court,

34      the court shall give notice to the conservator to appear and give additional bond or security.

35      Notice shall be mailed by first-class mail to the conservator and to the surety on the

1 conservator's bond. If the conservator fails to comply with the notice, the court may  
2 revoke the letters of conservatorship in accordance with Code Section 29-5-92.

3 (b) When it comes to the knowledge of the court that the surety on the conservator's bond  
4 has died, become insolvent, or removed from this state or if from other cause the security  
5 becomes insufficient, the court may give notice to the conservator to appear and give other  
6 and sufficient security. Notice shall be mailed by first-class mail to the conservator and to  
7 the surety on the conservator's bond. If the conservator fails to comply with the notice, the  
8 court may revoke the letters of conservatorship in accordance with Code Section 29-5-102.

9 29-5-44.

10 (a) A conservator who is required to give bond, and who has given as security on the bond  
11 one or more licensed commercial sureties, may pay any bond premium from the estate.

12 (b) When the guardian is required to give bond pursuant to Code Section 29-4-30, the  
13 conservator shall pay any bond premium from the estate.

14 29-5-45.

15 If the appointment of a conservator for any cause is declared void, the surety of that  
16 conservator shall nevertheless be responsible on the bond for any property received by the  
17 conservator.

18 29-5-46.

19 The conservator and any surety shall be held and deemed joint and several obligors and  
20 may be subjected jointly and severally to liability in the same action. When a conservator  
21 moves beyond the limits of this state, dies, and leaves an unrepresented estate, or is in a  
22 position that an attachment may be issued as against a debtor, any party in interest or any  
23 person having demands against that conservator in the conservator's representative  
24 capacity may institute an action against any one or more of the sureties on the bond of the  
25 conservator in the first instance, without first obtaining a judgment against the conservator  
26 in that person's representative capacity.

27 29-5-47.

28 (a) When a judgment has been obtained against the conservator or the surety on the bond  
29 of a conservator, or both, a levy may be made upon any property of any defendant in fi. fa.

30 (b) The court shall be authorized to enter a judgment and to issue a writ of execution  
31 against the conservator and surety on the bond and shall be authorized to grant judgment  
32 and execution in favor of the surety against the conservator upon payment of the judgment  
33 by the surety.

1 29-5-48.

2 In all cases of judgments recovered against a conservator or any surety of a conservator,  
3 the execution shall first be levied on the property of the surety and no levy shall be made  
4 on the property of the conservator until there is a return of nulla bona as to the surety.

5 29-5-49.

6 (a) The surety on the bond of any conservator or, if the surety is dead, the surety's personal  
7 representative, may at any time petition the court regarding any misconduct of the  
8 conservator in the discharge of the conservator's trust or to show the court its desire for any  
9 reason to be relieved as surety. The death of a surety shall be a sufficient ground for the  
10 discharge of the surety from future liability.

11 (b) Upon a petition by the surety or the surety's personal representative, the court shall cite  
12 the conservator to appear and show cause, if any, why the surety should not be discharged.  
13 After hearing the parties and the evidence, the court, in its discretion, may issue an order  
14 discharging the surety from all future liability and require the conservator to give new and  
15 sufficient security or be removed.

16 (c) If new security is given, the discharged surety shall be discharged only from liability  
17 for future misconduct of the conservator from the time the new security is given. The new  
18 surety shall be liable for past as well as future misconduct of the conservator.

19 (d) If new security is not given and the conservator is removed, the discharged surety shall  
20 be bound for a true accounting of the conservator with the successor conservator or with  
21 the ward if no other conservator is appointed. In all cases where letters of conservatorship  
22 are revoked, any surety on the bond shall be liable for all acts of the conservator in relation  
23 to the trust up until the time of the settlement with the new conservator or the ward.

24

## ARTICLE 6

25 29-5-50.

26 (a) Other than an emergency conservator or a temporary substitute conservator, a  
27 conservator shall be entitled to compensation for services rendered equal to:

28 (1) Two and one-half percent commission on all sums of money received by the  
29 conservator on account of the estate, except on money loaned by and repaid to the  
30 conservator, and 2 1/2 percent commission on all sums paid out by the conservator;  
31 (2) An additional commission equal to one-half of 1 percent computed on the market  
32 value of the estate as of the last day of the reporting period. This commission shall be  
33 proportionately reduced for any reporting period of less than 12 months;

1       (3) Ten percent commission on the amount of interest earned if it is earned during the  
2 course of the conservatorship. The conservator shall receive interest on money loaned  
3 by the conservator in that capacity and shall include the interest on the money loaned on  
4 the return to the court so as to become chargeable with the interest as a part of the corpus  
5 of the estate;

6       (4) Reasonable compensation, as determined in the discretion of the court and after such  
7 notice, if any, as the court shall direct, for the delivery over of property in kind, not  
8 exceeding 3 percent of the appraised value and, in cases where there has been no  
9 appraisal, not over 3 percent of the fair value as found by the court, irrespective of  
10 whether delivery over in kind is made pursuant to proceedings for that purpose in the  
11 court and irrespective of whether the property, except money, is tangible or intangible or  
12 personal or real; and

13       (5) In the discretion of the court, compensation for working land for the benefit of the  
14 parties in interest, but not to exceed 10 percent of the annual income of the managed  
15 property.

16       (b) Whenever any portion of the dividends, interest, or rents payable to a conservator is  
17 required by law of the United States or other governmental unit to be withheld by the  
18 person paying the same for income tax purposes, the amount withheld shall be deemed to  
19 have been collected by the conservator.

20       (c) Where some or all of the estate passes through the hands of several conservators by  
21 reason of the death, removal, or resignation of the first qualified conservator or otherwise,  
22 the estate shall not be subject to diminution by charges of commission of each successive  
23 conservator holding and receiving in the same right but rather commissions for receiving  
24 the estate shall be paid to the first conservator who receives the property for the benefit of  
25 the estate or that person's representative, and commissions for paying out shall be paid to  
26 the conservator who actually distributes the fund. No commissions shall be paid for  
27 handing over the fund to a successor conservator. If there is more than one conservator  
28 serving simultaneously, the division of the compensation allowed each conservator shall  
29 be according to the services rendered by each conservator.

30       (d) A conservator shall not be entitled to a commission for any sums paid to any  
31 conservator of the estate as commissions or other compensation.

32       (e) Conservators who fail to make annual returns as required by law shall forfeit all  
33 commission for transactions during the year within which no return is made unless the  
34 court, upon cause shown, shall by special order entered on the record, relieve the  
35 conservator from the forfeiture.

36       (f) A conservator may renounce his or her right to all or any part of the compensation to  
37 which the conservator is entitled under this Code section.

1 29-5-51.

2 Conservators shall be allowed reasonable expenses incurred in the administration of the  
3 estate, including without limitation, expenses for travel, employing counsel and other  
4 agents, and the expenses and premiums incurred in securing a bond. Such reasonable  
5 expenses shall be determined after notice, if any, as the court shall direct. The conservator's  
6 commissions are part of the expense of administering the estate and may be charged against  
7 the corpus of the estate as well as the income of the estate.

8 29-5-52.

9 (a) A conservator may petition the court for compensation that is greater than the  
10 commissions allowed under Code Section 29-5-50. Service of notice of the petition for  
11 extra compensation shall be made to the ward and to a guardian ad litem appointed for the  
12 ward. Service shall be made in the manner described in Chapter 9 of this title and shall  
13 direct the parties served to file any written objections to the petition for extra compensation  
14 with the court within ten days from the date of service.

15 (b) After hearing any objection filed by or on behalf of the ward, the court shall allow such  
16 extra compensation as the court deems reasonable. The allowance of extra compensation  
17 shall be conclusive as to all parties in interest.

18 29-5-53.

19 (a) Any conservator who is a domiciliary of this state may receive compensation for  
20 services, as specified in this subsection, from a corporation or other business enterprise  
21 where the estate of the ward owns an interest in the corporation or other business  
22 enterprise, provided that:

- 23 (1) The services furnished by the conservator to the corporation or other business  
24 enterprise are of a managerial, executive, or business advisory nature;
- 25 (2) The compensation received for the services is reasonable; and
- 26 (3) The services are performed and the conservator is paid pursuant to a contract  
27 executed by the conservator and the corporation or business enterprise, which contract  
28 is approved by a majority of those members of the board of directors or other similar  
29 governing authority of the corporation or business enterprise who are not officers or  
30 employees of the conservator and who are not related to the conservator and provided the  
31 contract is approved by the court of the county which has jurisdiction over the  
32 conservatorship.

33 (b) Any conservator receiving compensation from a corporation or other business  
34 enterprise for services to it as described in subsection (a) of this Code section shall not  
35 receive extra compensation in respect to such services as provided in Code Section

29-5-52; provided, however, that nothing in this Code section shall prohibit the receipt by the conservator of extra compensation for services rendered in respect to other assets or matters involving the estate.

(c) Nothing in this Code section shall prohibit the receipt by a conservator of normal commissions and compensation for the usual services performed by a conservator pursuant to law.

(d) The purpose of this Code section is to enable additional compensation to be paid to a conservator for business management and advisory services to corporations and business enterprises pursuant to a contract without the necessity of petitioning for extra compensation pursuant to Code Section 29-5-52.

29-5-54.

An emergency conservator or temporary substitute conservator may apply to the court for reasonable compensation after notice to interested parties in compliance with Chapter 9 of this title. The court shall award reasonable compensation to an emergency conservator or temporary substitute conservator and such compensation shall be the only compensation or commission paid to the emergency conservator or temporary substitute conservator for services performed in that capacity. For good cause, including but not limited to services performed and compensation awarded to an emergency conservator or temporary substitute conservator, the court may reduce the compensation due the conservator under other provisions of this article.

## ARTICLE 7

29-5-60.

(a) Each year, within 60 days of the anniversary date of qualification, every conservator shall file with the court a verified return consisting of a statement of the receipts and expenditures of the conservatorship during the year preceding the anniversary date of qualification, an updated inventory consisting of a statement of the assets and liabilities of the estate as of the anniversary date of qualification, an updated plan for managing, expending, and distributing the ward's property, a note or memorandum of any other fact necessary to show the true condition of the estate, and a statement of the current amount of the bond. The conservator shall mail a copy of the return by first-class mail to the surety on the conservator's bond, the ward, and the ward's guardian, if any.

(b) Upon petition of the conservator or upon the court's own motion, the court may change the reporting period from the year immediately preceding the anniversary date of qualification to the year immediately preceding a date ordered by the court. In lieu of

1 changing the reporting date, the court is authorized to accept a return for filing even if the  
2 return does not cover the appropriate reporting period; however, such acceptance shall not  
3 change the reporting period established by either the anniversary date of qualification or  
4 a subsequent order of the court, unless the court also enters an order changing the reporting  
5 date.

6 (c) The court shall carefully examine each return of a conservator and, upon petition of any  
7 interested person or upon the court's own motion, may require the conservator to produce  
8 the original documents that support the return. Except as otherwise provided in this  
9 subsection, if no objection is filed within 30 days of the time the return is filed, the court  
10 shall record the return within 60 days of its filing. The return shall be kept on file in the  
11 court. The recorded return shall be prima-facie evidence of its correctness. If there is an  
12 objection to the return or if the court on its own motion determines that the conservator  
13 may have wasted the property of the ward or failed in any manner to comply with  
14 applicable law, the court shall hold a hearing or take such other action as the court deems  
15 appropriate.

16 (d) The court shall keep a docket of conservators liable to file returns. Upon the failure  
17 of any conservator to file any return by the time frame required by law, the court shall cite  
18 the conservator to appear and show reason for the delay. A conservator who fails to file  
19 an annual return as required by law shall forfeit all commissions and other compensation  
20 for the year within which no return is filed unless otherwise ordered by the court. A willful  
21 and continued failure to file a return shall be good cause for removal.

22 29-5-61.

23 (a) At any time after the six-month period following qualification, but not more frequently  
24 than once every 24 months, a conservator may petition the court for an interim settlement  
25 of accounts. The court shall appoint a guardian ad litem for the ward upon the filing of the  
26 petition for an interim settlement of accounts.

27 (b) The petition for an interim settlement of accounts shall be accompanied by a report  
28 which shall set forth all of the information required by law in annual returns and, in  
29 addition thereto, shall show:

30 (1) The period which the report covers;  
31 (2) The name and address of the ward, the name and address of the ward's guardian, if  
32 any, and the name of the surety on the conservator's bond, with the amount of the bond;  
33 and  
34 (3) Such other facts as the court may require.

35 (c) The court, upon the petition for an interim settlement of accounts being filed, shall  
36 issue a citation and shall require any objections to be filed in accordance with Chapter 9

1 of this title. The ward and the guardian ad litem shall be served personally, and the ward's  
2 guardian, if any, and the surety of the conservator's bond shall be served by first-class mail.

3 29-5-62.

4 Any interested person may file an objection to the conservator's interim settlement of  
5 accounts. Upon receipt of objections or upon the court's own motion, the court shall hold  
6 a hearing in which it shall consider all objections, hear evidence, and determine whether  
7 the conservator shall be discharged from liability for the period covered by the interim  
8 settlement of accounts.

9 29-5-63.

10 If the court finds that the conservator is liable to the ward, the court shall enter a judgment  
11 against the conservator and any surety in the amount of such liability.

12 **ARTICLE 8**

13 29-5-70.

14 (a) Upon the petition of any interested person, including the ward, or upon the court's own  
15 motion, the court may conduct a judicial inquiry into whether the ward is being denied a  
16 right or privilege provided for by this chapter and may issue appropriate orders. Except for  
17 good cause shown, the court shall order that notice of the inquiry be given, in whatever  
18 form the court deems appropriate, to the ward, the conservator, the ward's legal counsel,  
19 if any, and the ward's guardian, if any. The court, in its discretion, may appoint legal  
20 counsel for the ward or a guardian ad litem, or both.

21 (b) No petition alleging that the ward is being unjustly denied a right or privilege provided  
22 for by this chapter shall be allowed by the court within two years after the denial or  
23 dismissal on the merits of a petition alleging that the ward is being unjustly denied  
24 substantially the same right or privilege unless the petitioner shows a significant change  
25 in the condition or circumstances of the ward.

26 29-5-71.

27 (a) Upon the petition of any interested person, including the ward, or upon the court's own  
28 motion, the court may modify the conservatorship by adjusting the duties or powers of the  
29 conservator, as defined in Code Sections 29-5-14 and 29-5-15, or the powers of the ward,  
30 as defined in Code Section 29-5-13, or by making other appropriate adjustments to reflect  
31 the extent of the current capacity of the ward or other circumstances of the conservatorship.  
32 Except for good cause shown, the court shall order that notice of the petition be given, in

1      whatever form the court deems appropriate, to the ward, the conservator, the ward's legal  
2      counsel, if any, and the ward's guardian, if any. In any proceeding under this Code section  
3      that would expand or increase the powers of the conservator or further restrict the rights  
4      of the ward, the court shall appoint legal counsel for the ward. In all other cases, the court,  
5      in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.

6      (b) If the petition for modification alleges a significant change in the capacity of the ward,  
7      it must be supported either by the affidavits of two persons who have knowledge of the  
8      ward, one of whom may be the petitioner, or of a physician licensed to practice medicine  
9      under Chapter 34 of Title 43, psychologist licensed to practice under Chapter 39 of Title  
10     43, or a licensed clinical social worker, setting forth the supporting facts and  
11     determinations. If, after reviewing the petition and the affidavits, the court determines that  
12     there is no probable cause to believe that there has been a significant change in the capacity  
13     of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court  
14     shall order that an evaluation be conducted, in accordance with the provisions of  
15     subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court  
16     finds that there is no probable cause to believe that there has been a significant change in  
17     the capacity of the ward, the court shall dismiss the petition. If the petition is not  
18     dismissed, the court shall schedule a hearing, with such notice as the court deems  
19     appropriate.

20     (c) If the petition for modification does not allege a significant change in the capacity of  
21     the ward, the court in its discretion may modify the conservatorship upon a showing that  
22     the modification is in the ward's best interest; provided, however, that the court may order  
23     compliance with any of the provisions of subsection (b) of this Code section prior to  
24     granting the petition for modification.

25     (d) In any proceeding under this Code section that would expand or increase the powers  
26     of the conservator or further restrict the powers of the ward, the burden is on the petitioner  
27     to show by clear and convincing evidence that the modification is in the ward's best  
28     interest. In any proceeding under this Code section that would restrict the powers of the  
29     conservator or restore powers to the ward, the burden is on the petitioner to show by a  
30     preponderance of the evidence that the modification is in the ward's best interest.

31     (e) No petition for modification shall be allowed by the court within two years after the  
32     denial or dismissal on the merits of a petition for substantially the same modification unless  
33     the petitioner shows a significant change in the condition or circumstances of the ward.

34     29-5-72.

35     (a) Upon the petition of any interested person, including the ward, or upon the court's own  
36     motion, and upon a proper showing that the need for a conservatorship has ended, the court

1 may terminate the conservatorship and restore all personal and property rights to the ward.  
2 Except for good cause shown, the court shall order that notice of the petition be given, in  
3 whatever form the court deems appropriate, to the ward, the conservator, the ward's legal  
4 counsel, and the ward's guardian, if any. The court shall appoint legal counsel for the ward  
5 and may, in its discretion, appoint a guardian ad litem.

6 (b) A petition for termination must be supported either by the affidavits of two persons  
7 who have knowledge of the ward, one of whom may be the petitioner, or of a physician  
8 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to  
9 practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the  
10 supporting facts and determinations. If, after reviewing the petition and the affidavits, the  
11 court determines that there is no probable cause to believe that the conservatorship should  
12 be terminated, the court shall dismiss the petition. If the petition is not dismissed the court  
13 shall order that an evaluation be conducted in accordance with the provisions of  
14 subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court  
15 finds that there is no probable cause to believe that the conservatorship should be  
16 terminated, the court shall dismiss the petition. If the petition is not dismissed the court  
17 shall schedule a hearing with such notice as the court deems appropriate.

18 (c) In any proceeding under this Code section the burden is on the petitioner to show by  
19 a preponderance of the evidence that there is no longer a need for the conservatorship.

20 (d) No petition for termination of a conservatorship shall be allowed by the court within  
21 two years after the denial or dismissal on the merits of a petition for termination of the  
22 conservatorship unless the petitioner shows a significant change in the condition or  
23 circumstances of the ward.

24 (e) The death of the ward automatically terminates the conservatorship except for purposes  
25 of the final settlement of the petition for letters of discharge, as provided in Code Section  
26 29-5-81.

27 (f) Upon termination of the conservatorship, the conservator shall deliver any money or  
28 property to the former ward or, if the ward is deceased, to the ward's personal  
29 representative.

1 required for annual returns and shall otherwise comply with the provisions of Code Section  
2 29-5-60. Notice shall be published one time in the newspaper in which sheriff's  
3 advertisements are published in the county in which the petition is filed and shall state that  
4 any objection must be made in writing and shall designate the date on or before which  
5 objections must be filed in the court, which shall not be less than 30 days from the date of  
6 publication. The court shall examine any objections filed.

7 (b) If no objection is filed or if, upon hearing any objection, the court is satisfied that the  
8 order dismissing the conservator from office is appropriate, the court shall enter an order  
9 dismissing the conservator from office. Such order shall not bar an action against the  
10 conservator or the conservator's surety.

11 29-5-81.

12 (a) A ward who has been restored to capacity, the personal representative of a deceased  
13 ward, a successor conservator, or any interested person may petition the court for an order  
14 requiring a conservator or that conservator's personal representative to appear and submit  
15 to a final settlement of the conservator's accounts. Alternatively, the court on its own  
16 motion may issue such an order. The settlement period shall begin from the  
17 commencement of the conservatorship or the end of the period covered by the last interim  
18 settlement of accounts. If the conservator fails or refuses to appear as cited, the court may  
19 proceed without the appearance of the conservator. If the conservator has been required  
20 to give bond, the surety on the bond shall be bound by the settlement if the surety is given  
21 notice by first-class mail of the settlement proceeding.

22 (b) A conservator, a former conservator, the conservator of a conservator, or the personal  
23 representative of a deceased conservator shall be allowed to cite the ward, the ward's  
24 personal representative, or a successor conservator to appear and be present at a final  
25 settlement of the conservator's accounts and discharge from liability in the manner  
26 provided in this Code section. The settlement period shall begin with the period of time  
27 from the commencement of the conservatorship or the end of the period covered by the last  
28 interim settlement of accounts. Notice by first-class mail of the settlement proceeding must  
29 be given to the surety on the conservator's bond and to the ward's guardian, if any. If the  
30 ward has not been restored to capacity or if the conservator is the ward's personal  
31 representative, the court shall appoint a guardian ad litem for the ward who shall be served  
32 personally.

33 (c) Upon the return of a notice referred to in subsections (a) and (b) of this Code Section,  
34 the court shall proceed to examine all returns and accounts of the conservator during the  
35 settlement period and to hear any objection to the settlement and discharge.

1       (d) The court shall order any property in the hands of the conservator to be delivered to the  
2       ward, the ward's personal representative, or to the successor conservator and shall issue a  
3       judgment, writ of fieri facias, and execution thereon for any sums found to be due from the  
4       conservator. If the court is satisfied that the conservator has faithfully and honestly  
5       discharged the office, an order shall be entered releasing and discharging the conservator  
6       from all liability.

ARTICLE 10

8 29-5-90.

9       (a) A conservator or the duly authorized guardian, conservator, or attorney in fact of a  
10      conservator, acting on behalf of the conservator, may resign upon petition to the court  
11      showing to the satisfaction of the court that:

- 12       (1) The conservator is unable to continue serving due to age, illness, infirmity, or other  
13       good cause;

14       (2) Greater burdens have devolved upon the office of conservator than those that were  
15       originally contemplated or should have been contemplated when the conservator was  
16       qualified and the additional burdens work a hardship upon the conservator;

17       (3) Disagreement exists between the ward and the conservator or between the guardian  
18       and the conservator in respect of the conservator's management of the ward's property,  
19       which disagreement and conflict appear to be detrimental to the ward;

20       (4) The resignation of the conservator will result in or permit substantial financial benefit  
21       to the ward; or

22       (5) The resignation would not be disadvantageous to the ward.

23 (b) The petition for resignation shall include the name of a suitable person who is willing  
24 to accept the conservatorship.

25 (c) The court shall appoint legal counsel for the ward and personal service of the petition  
26 for resignation shall be made upon the ward and the ward's legal counsel. Service shall be  
27 made by first-class mail to the guardian of the ward, if any, the surety on the conservator's  
28 bond, and to the following persons whose whereabouts are known and who must be  
29 persons other than the resigning conservator or the proposed successor conservator:

- 30       (1) The spouse of the ward; and  
31       (2) All adult children of the ward; or  
32       (3) If there is no adult child, then at least two adults in the following order of priority:  
33           (A) Lineal descendants of the ward;  
34           (B) Parents and siblings of the ward; and  
35           (C) Friends of the ward.

1       (d) If, after such hearing as the court deems appropriate, the court is satisfied that the  
2       petition for the resignation of the conservator and the appointment of the successor  
3       conservator should be granted, the court shall enter an order appointing the successor  
4       conservator in accordance with the provisions of Code Section 29-5-101 and shall accept  
5       the resignation, subject to the resigning conservator turning over to the successor  
6       conservator all property held by the conservator.

7       29-5-91.

8       (a) In the event of the death of a conservator and upon the petition of an interested person  
9       or upon the court's own motion, the court shall appoint a successor conservator. The court  
10      shall appoint legal counsel for the ward and personal service of the petition shall be made  
11      upon the ward and the ward's legal counsel. Notice shall be given by first-class mail to the  
12      guardian of the ward, if any, the surety on the conservator's bond, the personal  
13      representative of the deceased conservator, if any, and to the following persons whose  
14      whereabouts are known and who must be persons other than the proposed successor  
15      conservator:

- 16       (1) The spouse of the ward; and  
17       (2) All adult children of the ward; or  
18       (3) If there is no adult child, then at least two adults in the following order of priority:  
19           (A) Lineal descendants of the ward;  
20           (B) Parents and siblings of the ward; and  
21           (C) Friends of the ward.

22       (b) After such hearing as the court deems appropriate, the court shall enter an order  
23      appointing a successor conservator in accordance with the provisions of Code Section  
24      29-5-101 and requiring the personal representative of the deceased conservator to turn over  
25      to the successor conservator all property of the ward held by the conservator.

26       29-5-92.

27       (a) Upon the petition of any interested person or whenever it appears to the court that good  
28       cause may exist to revoke or suspend the letters of conservatorship or to impose sanctions,  
29       the court shall cite the conservator to answer the charge. The court shall investigate the  
30       allegations and may require such accounting as the court deems appropriate. The court  
31       may appoint a temporary substitute conservator to take possession of and administer the  
32       ward's property during the investigation.

33       (b) Upon investigation, the court may, in its discretion:  
34           (1) Revoke or suspend the letters of conservatorship;  
35           (2) Require additional security;

1       (3) Require the conservator to appear and submit to a settlement of accounts following  
2       the procedure set forth in Code Section 29-5-81, whether or not the conservator has first  
3       resigned or been removed and whether or not a successor conservator has been appointed;  
4       (4) Reduce or deny compensation to the conservator or impose any other sanction or  
5       sanctions as the court deems appropriate; and  
6       (5) Issue such other orders as in the court's judgment are appropriate under the  
7       circumstances of the case.

8       (c) The revocation or suspension of letters of conservatorship shall not abate any action  
9       pending for or against the conservator. The successor conservator shall be made a party  
10      to the action in the manner provided in Code Section 9-11-25.

11 29-5-93.

12       (a) If a conservator commits a breach of fiduciary duty or threatens to commit a breach of  
13       fiduciary duty, a ward or an interested person on behalf of the ward shall have a cause of  
14       action as appropriate:

15 (1) To recover damages;

16 (2) To compel performance of the conservator's duties;

17 (3) To enjoin the commission of a breach of fiduciary duty; or

18 (4) To compel the redress of a breach of fiduciary duty by payment of money or  
19 otherwise.

20 (b) When the ward's assets are misappropriated and can be traced into the hands of persons who  
21 have notice of the misappropriation, a trust shall attach to the assets.

22 (c) The provision of remedies for breach of fiduciary duty by this Code section does not  
23 prevent resort to any other appropriate remedy provided by statute or common law.

24 29-5-94.

25 All actions against a conservator, except on a conservator's bond, shall be brought within  
26 six years of the termination of the conservatorship of the ward, except as provided in Code  
27 Section 9-3-90.

28 ARTICLE 11

29 29-5-100.

30 (a) Upon its own motion or upon the petition of any interested party, including the ward,  
31 the court may appoint a temporary substitute conservator for a ward if it appears to the  
32 court that the best interest of the ward requires immediate action.

1       (b) The temporary substitute conservator shall be appointed for a specified period not to  
2 exceed 120 days.

3       (c) The court shall appoint as temporary substitute conservator the county guardian or  
4 some other appropriate person who shall serve the best interest of the ward.

5       (d) Except as otherwise ordered by the court, a temporary substitute conservator has the  
6 powers set forth in the order of appointment. The authority of the previously appointed  
7 conservator is suspended for as long as the temporary substitute conservator has authority.

8       (e) Notice of the appointment of a temporary substitute conservator shall be served  
9 personally on the ward. Notice of the appointment shall be served personally on the  
10 previously appointed conservator at the last address provided by that conservator to the  
11 court. Notice of the appointment shall be mailed by first-class mail to the surety of the  
12 previously appointed conservator and to the ward's guardian, if any.

13       (f) The court may remove the temporary substitute conservator at any time. A temporary  
14 substitute conservator shall make any report and shall give any bond the court deems  
15 appropriate. In all other respects, the provisions of this chapter apply to the temporary  
16 substitute conservator.

17       29-5-101.

18       (a) The court shall appoint a successor conservator upon the resignation, death, or  
19 revocation of the letters of the conservator if the appointment of a successor conservator  
20 is in the best interest of the ward. The court shall select the successor conservator in the  
21 manner provided in Code Section 29-5-3.

22       (b) The court shall appoint legal counsel for the ward. In the event of the resignation or  
23 death of the conservator, notice of the proceeding for appointment of a successor  
24 conservator shall be given as provided in Code Sections 29-5-90 and 29-5-91. In all other  
25 cases, notice of the proceeding for appointment of a successor conservator shall be served  
26 personally on the ward and the ward's legal counsel. Notice shall be made by first-class  
27 mail to the guardian of the ward, if any, and to the following persons whose whereabouts  
28 are known and who must be persons other than the proposed successor conservator:

29           (1) The spouse of the ward; and

30           (2) All adult children of the ward; or

31           (3) If there is no adult child, then at least two adults in the following order of priority:

32              (A) Lineal descendants of the ward;

33              (B) Parents and siblings of the ward; and

34              (C) Friends of the ward.

(c) After such hearing as the court deems appropriate, the court shall enter an order appointing the successor conservator and requiring that bond be posted in the amount set out in Code Section 29-5-40.

29-5-102.

Upon the appointment of a successor conservator, the predecessor conservator or the personal representative of a deceased predecessor conservator shall deliver to the successor conservator all property of the ward held by the conservator and shall submit a final return covering the period since the conservator's last annual return. The surety of the predecessor conservator shall be liable for all acts of the conservator in relation to the ward's property up to the time of the receipt of all of the ward's property by the successor conservator.

ARTICLE 12

29-5-110.

(a) Except as provided in Article 6 of Chapter 9 of Title 15, the ward, individually or by the ward's legal counsel, representative, or guardian ad litem, or the petitioner may appeal any final order of the court to the superior court in the county in which the proceedings were held. The appeal shall be in the same manner as other appeals from the probate court to the superior court but shall be heard as expeditiously as possible. The appeal shall be de novo unless by agreement the parties specifically limit the issues. The ward shall retain the right to counsel or to have counsel appointed; provided, however, that if counsel was appointed by the probate court, the appointment shall continue on appeal to the superior court. The burden of proof shall be upon the petitioner and the standard used by the court in reaching its decision shall be clear and convincing evidence.

(b) All rights of appeal from the superior court shall be as provided by law.

(c) The filing of an appeal to the superior court from the judgment of the probate court shall act as a supersedeas.

(d) Pending any appeal, the superior court or a probate court that is described in paragraph (2) of Code Section 15-9-120 may appoint an emergency conservator with powers and duties as are described in Code Section 29-5-16; provided, however, that such emergency conservator may be appointed only upon the filing of an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker setting forth the existence of the emergency circumstances described in subsection (d) of Code Section

1 29-5-14 and after a hearing at which other evidence may be presented. The appointment  
2 of an emergency conservator is not appealable.

ARTICLE 13

## Part 1

5 29-5-120.

(a) A conservator may petition to remove the conservatorship to the jurisdiction of the court of the county in this state in which the ward resides.

8       (b) Upon the filing of a petition to remove the conservatorship to another county in this  
9 state, the court shall appoint a guardian ad litem for the ward. The court of the county in  
10 which the conservator was appointed shall grant the petition for removal only if the court  
11 determines that the removal is in the best interest of the ward.

12 (c) Before the removal of the conservatorship to another county in this state, the  
13 conservator must give bond and good security to the court of such county as if the  
14 conservator had been first appointed by that court and a certificate to this effect shall be  
15 filed in the court in which the conservator was appointed. The conservator shall file with  
16 the court of the county to which the conservatorship is to be removed certified copies of  
17 all the records pertaining to the conservatorship.

18 (d) Following removal of a conservatorship to another county in this state, the court to  
19 which the conservatorship is removed shall have the same jurisdiction over the conservator  
20 as if the conservator had been first appointed in that county, and every case growing out  
21 of or affecting the conservatorship shall be heard and tried only in the county to which the  
22 conservatorship has been removed.

23 (e) The sureties on the conservator's first bond shall be liable only for misconduct of the  
24 conservator up until the giving of new bond and security. The sureties on the new bond  
25 shall be liable for both past and future misconduct of the conservator.

26 (f) The court in which an action or proceeding is pending or which has issued an order for  
27 a settlement of accounts, removal, or sanction of a conservator shall retain jurisdiction of  
28 such matters even though the conservatorship has been removed to another county.

29 Part 2

30 29-5-125.

31 (a) For purposes of this part and Part 3 of this article, the term 'conservatorship' refers to  
32 a legal relationship in which a person is given responsibility by a court of competent

1 jurisdiction for the care of the property of an incapacitated adult who shall be referred to  
2 with the term ward, and the individual thereby becomes a conservator.

3 (b) A conservator who has been appointed by a foreign court of competent jurisdiction  
4 may petition to have the conservatorship transferred to and accepted in this state by filing  
5 a petition for receipt and acceptance of the foreign conservatorship in the court of the  
6 county in this state where the ward resides or may reside.

7 (c) The petition shall include the following:

8 (1) An authenticated copy of the foreign conservatorship order, including:

9 (A) All attachments describing the duties and powers of the conservator; and  
10 (B) All amendments or modifications to the foreign conservatorship order entered  
11 subsequent to the original order, including any order to transfer the conservatorship;

12 (2) The address of the foreign court which issued the conservatorship order;

13 (3) A listing of any other conservatorship petitions that are pending in any jurisdiction  
14 and the names and addresses of the courts where the petitions have been filed;

15 (4) The petitioner's name, address, and county of domicile;

16 (5) The name, age, and address of the ward;

17 (6) The names and addresses of the following, if living:

18 (A) The spouse of the ward; and

19 (B) All children of the ward; or

20 (C) If there are no adult children, then at least two adults in the following order of  
21 priority:

22 (i) Lineal descendants of the ward;

23 (ii) Parents and siblings of the ward; and

24 (iii) Friends of the ward;

25 (7) The name and address of the person responsible for the care and custody of the ward,  
26 if other than the petitioner, and of any other conservator currently serving;

27 (8) The name and address of any currently acting legal representative, other than the  
28 petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by  
29 the foreign court for the ward;

30 (9) The name and address of the ward's guardian, if any;

31 (10) The name and address of the surety on the conservator's bond;

32 (11) The reason the transfer is in the ward's best interest; and

33 (12) To the extent known to the petitioner, a statement of the location and estimated  
34 value of the ward's property and the source and amount of any anticipated income or  
35 receipts.

36 (c) The petition may be combined with other petitions related to the conservatorship,  
37 including a petition to modify the terms of the conservatorship.

- 1      29-5-126.
- 2      (a) Notice and a copy of the petition for receipt and acceptance of a foreign  
3      conservatorship shall be served personally on the ward. The notice shall:  
4            (1) State that the ward has a right to a hearing on the petition;  
5            (2) Inform the ward of the procedure to exercise the ward's right to a hearing; and  
6            (3) State that the ward has the right to independent legal counsel and that the court shall  
7      appoint legal counsel for the ward unless the ward has retained counsel or legal counsel  
8      has been appointed by the foreign court to represent the ward in the transfer of the  
9      conservatorship.
- 10     (b) Notice and a copy of the petition for receipt and acceptance of a foreign  
11      conservatorship shall be provided to the court from which the conservatorship is to be  
12      transferred. Notice to the foreign court shall include a request that the foreign court to:  
13            (1) Certify whether:  
14                (A) The foreign court has any record that the conservator has engaged in malfeasance,  
15                misfeasance, or nonfeasance during the conservator's appointment;  
16                (B) Periodic reports have been filed in a satisfactory manner; and  
17                (C) All bond or other security requirements imposed under the conservatorship have  
18                been performed; and  
19            (2) Forward copies of all documents filed with the foreign court relating to the  
20      conservatorship, including but not limited to:  
21                (A) The initial petition for conservatorship and other filings relevant to the  
22                appointment of the conservator;  
23                (B) Reports and recommendations of guardians ad litem, court visitors, or other  
24                individuals appointed by the foreign court to evaluate the appropriateness of the  
25                conservatorship;  
26                (C) Reports of physical and mental health practitioners describing the capacity of the  
27                ward to care for himself or herself or to manage his or her affairs;  
28                (D) Periodic status reports on the condition of the ward and the ward's assets; and  
29                (E) The order to transfer the conservatorship, if any.  
30     (c) Notice and a copy of the petition for receipt and acceptance of a foreign  
31      conservatorship shall be mailed by first-class mail to all other persons named in the  
32      petition. The notice shall inform these persons of the right to object to the receipt and  
33      acceptance of the conservatorship by this state.  
34     (d) The ward shall have 30 days from the date of service of the petition for receipt and  
35      acceptance of a foreign conservatorship to request a hearing on the petition. All other  
36      persons to whom notice is given under this Code section shall have 30 days from the date  
37      of the mailing of the notice to request a hearing on the petition.

1       (e) The court may waive the notice requirements of subsections (a) through (c) of this  
2       Code section if:

3           (1) The conservator has filed a petition in the foreign court for transfer and release of the  
4           conservatorship to this state;

5           (2) Notice was given to the ward and all interested persons in conjunction with the  
6           petition for transfer and release of the conservatorship;

7           (3) The petitioner provides the court with an authenticated copy of the petition for  
8           transfer and release of the conservatorship filed with the foreign court and proof that  
9           service was made on the ward not more than 90 days from the date the petition for receipt  
10          and acceptance of the conservatorship is filed in the court; and

11          (4) The ward is represented by legal counsel with respect to the petition in the foreign  
12          court.

13       29-5-127.

14       (a) Upon the court's own motion or upon timely motion by the ward or by any interested  
15       person the court shall hold a hearing to consider the petition for receipt and acceptance of  
16       the foreign conservator.

17       (b) If any interested person challenges the validity of the foreign conservator or the  
18       authority of the foreign court to appoint the conservator, the court may stay its proceeding  
19       while the petitioner is afforded the opportunity to have the foreign court hear the challenge  
20       and determine its merits.

21       29-5-128.

22       (a) The court may grant a petition for receipt and acceptance of a foreign conservatorship  
23       provided the court finds that:

24           (1) The conservator is presently in good standing with the foreign court; and

25           (2) The transfer of the conservatorship from the foreign jurisdiction is in the best interest  
26       of the ward.

27       (b) In granting the petition, the court shall give full faith and credit to the provisions of the  
28       foreign conservatorship order concerning the determination of the ward's incapacity.

29       (c) The court may require the conservator to file an inventory of the ward's property at the  
30       time of the transfer from the foreign jurisdiction.

31       (d) Subject to subsection (e) of this Code section, at all times following the entry of the  
32       order accepting the guardianship, the laws of the state of Georgia shall apply to the  
33       conservatorship.

34       (e) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
35       the conservatorship, the court is authorized to:

- (1) Delay the effective date of the receipt and acceptance for a reasonable period of time;
- (2) Make the receipt and acceptance contingent upon the release of the conservatorship or the termination of the conservatorship and the discharge of the conservator in the foreign jurisdiction;
- (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period of time to permit the foreign court to release the conservatorship or to terminate the conservatorship and discharge the conservator in the foreign jurisdiction; or
- (4) Make other arrangements the court deems necessary to effectuate the receipt and acceptance of the conservatorship.

(f) The denial of a petition for receipt and acceptance of the conservatorship does not affect the right of a conservator appointed by a foreign court of competent jurisdiction to petition for conservatorship under Code Section 29-5-10.

### Part 3

29-5-130.

(a) A conservator may petition the Georgia court which has jurisdiction over the conservatorship to transfer the conservatorship to a foreign court of competent jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) The ward may be presumed to have moved permanently to the foreign jurisdiction if:  
(1) The ward has resided in the foreign jurisdiction for more than 12 consecutive months;  
(2) The conservator notifies the court that the ward will move or has moved permanently to the foreign jurisdiction; or

(3) A foreign court of competent jurisdiction notifies the court of the filing of a petition for conservatorship for the ward in the foreign jurisdiction.

(c) To facilitate the transfer of the conservatorship the court may order the conservator to file a petition for receipt and acceptance of the conservatorship in the foreign jurisdiction.

(d) If the foreign jurisdiction does not have a procedure for receiving and accepting a foreign conservatorship, the court may order the conservator to file a petition for conservatorship in the foreign jurisdiction.

29-5-131.

The petition to transfer a conservatorship to a foreign jurisdiction shall include the following:

(1) The name and address of the foreign court to which the conservatorship shall be transferred and an authenticated copy of the petition for receipt and acceptance of a foreign conservatorship if previously filed in the foreign court;

- (2) A listing of any other conservatorship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;
- (3) The petitioner's name, address, and county of domicile;
- (4) The name, age, and current address of the ward and the new or proposed address of the ward;
- (5) The names and addresses of the following, if living:
  - (A) The spouse of the ward; and
  - (B) All children of the ward; or
  - (C) If there are no adult children, then at least two adults in the following order of priority:
    - (i) Lineal descendants of the ward;
    - (ii) Parents and siblings of the ward; and
    - (iii) Friends of the ward;
- (6) The name and address of the person responsible for the care and custody of the ward, if other than the petitioner, and of any other conservator currently serving;
- (7) The name and address of the ward's guardian, if any;
- (8) The name and address of the surety on the conservator's bond;
- (9) The name and address of any legal representative, other than the petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for the ward;
- (10) The reason for moving the ward; and
- (11) The reason the transfer of the conservatorship is in the ward's best interest.

29-5-132.

(a) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction shall be served personally on the ward not less than ten days prior to the date set for the hearing. The notice shall state:

- (1) The date that the hearing shall be held; and
- (2) That the ward has the right to independent legal counsel and that the court shall appoint legal counsel for the ward unless the ward has retained counsel or legal counsel has been appointed by the foreign court to represent the ward in the receipt and acceptance of the guardianship.

(b) Notice and a copy of the petition to transfer the conservatorship shall be provided to the foreign court to which the conservatorship is to be transferred.

(c) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction shall be mailed by first-class mail to all other persons named in the petition. The notice

1 shall inform these persons of the date of the hearing and of their right to file objections to  
2 the transfer of the conservatorship by this state.

3 29-5-133.

4 Upon the timely filed motion by the court, the ward, or any interested person, the court  
5 shall hold a hearing to consider the petition to transfer the conservatorship.

6 29-5-134.

7 (a) The court may grant a petition to transfer a conservatorship to a foreign court of  
8 competent jurisdiction if the court finds that:

9 (1) The conservator is presently in good standing with the court; and  
10 (2) The transfer of the conservatorship to the foreign jurisdiction is in the best interest  
11 of the ward.

12 (b) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of  
13 the conservatorship, the court is authorized to:

14 (1) Notify the foreign court of any significant problems that may have occurred,  
15 including whether periodic reports and accountings have been filed in a satisfactory  
16 manner and whether all bond or other security requirements imposed under the  
17 conservatorship have been performed;

18 (2) Forward copies of all documents filed with the court relating to the conservatorship,  
19 including but not limited to:

20 (A) The initial petition for conservatorship and other filings relevant to the  
21 appointment of the conservator;

22 (B) Reports and recommendations of guardians ad litem, court visitors, or other  
23 individuals appointed by the court to evaluate the appropriateness of the  
24 conservatorship;

25 (C) Reports of physical or mental health practitioners describing the capacity of the  
26 ward to care for himself or herself or to manage the ward's affairs; and

27 (D) Periodic status reports on the condition of the ward and the ward's assets; and

28 (3) Require the conservator to file an inventory of the ward's property at the time of the  
29 transfer to the foreign jurisdiction.

30 (c) As necessary to coordinate the transfer of the conservatorship, the court is authorized  
31 to:

32 (1) Delay the effective date of the transfer for a reasonable period of time;

33 (2) Make the transfer contingent upon the acceptance of the conservatorship or  
34 appointment of the conservator in the foreign jurisdiction;

- (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period of time to permit the foreign court to accept the conservatorship or appoint the conservator in the foreign jurisdiction; or
- (4) Make other arrangements that in the sound discretion of the court are necessary to transfer the conservatorship.

Part 4

29-5-135.

(a) For purposes of this part, a 'foreign conservator' is a conservator or other person who has been given responsibility by a court of competent jurisdiction in another state or territory governed by the Constitution of the United States for the care of the property of an incapacitated adult, referred to as the 'ward' and whose conservatorship has not been transferred to and accepted in this state pursuant to the provisions of Part 2 of this article.

(b) Any foreign conservator of a ward who resides in any other state and who is authorized to sell and convey property of the ward may sell property of the ward which is in this state, under the rules and regulations prescribed for the sale of real estate by conservators of this state, provided that the foreign conservator must file and have recorded in the court or other proper court, at the time of petitioning for sale, an authenticated copy of the letters of appointment and must also file with the court or other proper authority bond with good and sufficient security, in double the value of the property to be sold, for the faithful execution of the conservatorship as provided by law.

29-5-136.

A foreign conservator may institute an action in any court in this state to enforce any right or to recover any property belonging to the ward or accruing to the foreign conservator in his or her capacity as conservator.

29-5-137.

Pending an action brought by a foreign conservator pursuant to Code Section 29-5-136, an authenticated copy of the letters of conservatorship shall be filed with the clerk of the court to become a part of the record, if the case is pending in a court of record, or filed with the papers, if the action is a summary proceeding.

29-5-138.

A foreign conservator submits personally to the jurisdiction of the courts of this state in any proceeding relating to the conservatorship by:

- (1) Receiving payment of money or taking delivery of personal property in this state belonging to the ward; or
- (2) Doing any act as a conservator in this state that would have given this state jurisdiction over the actor as an individual.

29-5-139.

Any resident of this state who is interested as a creditor, heir, or will beneficiary of a ward whom a foreign conservator represents may apply to the proper court to compel the foreign conservator to protect that interest according to equity and good conscience before selling the ward's assets or removing the ward's assets beyond the limits of this state.

29-5-140.

(a) A person who is indebted to or has possession of tangible or intangible property of a ward may pay the debt or deliver the property to a foreign conservator of the ward. Payment of the debt or delivery of the property may be made upon proof of appointment and proof that the foreign conservator has been appointed and is entitled to debt payment or to receive delivery of the property.

(b) Payment of the debt or delivery of the property in response to the demand discharges the debtor or possessor, unless the debtor or possessor has knowledge of proceedings for the appointment of a guardian, conservator, or other protective proceeding in this state.

CHAPTER 6

29-6-1.

The judges of the probate courts are, in their discretion, made the legal custodians and distributors of all moneys up to \$2,500.00 due and owing to any minor or incapacitated adult who is in need of a conservator but who has no legal and qualified conservator; and the judges are authorized to receive and collect all such moneys arising from insurance policies, benefit societies, legacies, inheritances, or any other source. Without any appointment or qualifying order, the judge is authorized to take charge of the moneys or funds of the minor or adult by virtue of the judge's office as judge of the probate court in the county of residence of the minor or adult; provided, however, that notice shall be given to the living parents of a minor, if any, or the guardian of an adult, if any. The certificate of the judge that no legally qualified conservator has been appointed shall be conclusive and shall be sufficient authority to justify any debtor in making payment on claims made by the judge.

1      29-6-2.

2      The judge of the probate court is authorized, in the judge's discretion, to employ counsel  
3      to bring an action to recover any amount due to a minor or adult described in Code Section  
4      29-6-1, in the minor's or adult's name or in the name of the judge as custodian, in any court  
5      having jurisdiction thereof. The judge of the probate court shall have authority to pay to  
6      counsel a reasonable fee out of the funds collected for counsel's services in the proceeding  
7      which were necessary to enforce the right of the minor or adult.

8      29-6-3.

9      It shall be the duty of the judge of the probate court to keep a properly indexed complete  
10     record of all money received by the judge for minors or adults by virtue of the judge's  
11     services under Code Section 29-6-1. The record shall show from what source the funds  
12     were derived and to whom and for what the money was paid. The record shall be open for  
13     inspection by the public.

14     29-6-4.

15     The judge of the probate court who, pursuant to Code Section 29-6-1, receives funds due  
16     and owing a minor or adult is authorized and directed to pay from the funds so received  
17     whatever amount the judge may think necessary for the support, care, education, health,  
18     and welfare of the minor or adult, as well as the funeral and burial expenses of the minor  
19     or adult, in case of the individual's death, as in the judge's opinion may be proper and  
20     right. The expenditures made by the judge shall be final and no liability shall attach to the  
21     judge or the judge's bond by reason of the expenditures when made in good faith.

22     29-6-5.

23     In appropriate cases, the judge of the probate court who holds property or funds pursuant  
24     to this chapter may order that a conservatorship be established in accordance with the  
25     provisions of Chapter 3 or 5 of this title and shall distribute any or all of such property or  
26     funds to the conservator.

27     29-6-6.

28     When any funds due and owing a minor or adult come into the hands of the judge of the  
29     probate court and the funds are not needed for the support, care, education, health, and  
30     welfare of the minor or adult, it shall be the duty of the judge to place the funds in an  
31     account insured by the Federal Deposit Insurance Corporation in the name of the judge as  
32     custodian for the minor or adult. There shall be no further liability against the judge or the  
33     judge's bond when the deposit is made in good faith.

1 29-6-7.

2 The judges of the probate courts shall receive as compensation for their services under  
3 Code Section 29-6-1 the fee specified in subsection (j) of Code Section 15-9-60.

4 29-6-8.

Judges of the probate courts shall be held accountable on their official bonds for the faithful discharge of their duties pursuant to Code Section 29-6-1 as custodians and for the proper distribution of funds coming into their hands as such custodians. It is the judge's responsibility to increase his or her official bond if necessary.

9 29-6-9.

10 The judge shall turn over all custodial property held pursuant to this chapter to:

- 11       (1) A conservator if the custodial funds exceed \$2,500.00;  
12       (2) A minor upon reaching the age of majority;  
13       (3) A former incapacitated adult upon restoration to capacity;  
14       (4) The personal representative of the a deceased minor or incapacitated adult; or  
15       (5) The Department of Revenue four years after the death of a minor or incapacitated  
16       adult if no proceedings are commenced on that individual´s estate or four years after the  
17       date a minor who cannot be located would have reached the age of majority.

CHAPTER 7

19 29-7-1.

20 As used in this chapter, the term:

- 21 (1) 'Benefits' means all moneys paid or payable by the United States through the United  
22 States Department of Veterans Affairs.

23 (2) 'Department' means the United States Department of Veterans Affairs, its  
24 predecessors, or its successors.

25 (3) 'Estate' means income on hand and assets acquired partially or wholly with income.

26 (4) 'Income' means moneys received from the United States Department of Veterans  
27 Affairs and revenue or profit from any property wholly or partially acquired therewith.

28 (5) 'Person' means an individual, a partnership, a corporation, or an association.

29 (6) 'Secretary' means the secretary of veterans affairs of the United States Department  
30 of Veterans Affairs or the secretary's successor.

31 (7) 'VA guardian' means a person appointed pursuant to the provisions of this chapter.

32 (8) 'Ward' means a beneficiary of the United States Department of Veterans Affairs.

- 1      29-7-2.
- 2      (a) The secretary shall be a party in interest in any proceedings for the appointment or  
3      discharge of a VA guardian and in any proceedings involving the administration of the  
4      estate of the ward. Written notice of the time and place for hearing on any petition or  
5      pleading or in connection with any proceeding pertaining to a VA guardianship pursuant  
6      to this chapter shall be given by certified mail or statutory overnight delivery to the office  
7      of the department having jurisdiction over the area in which the ward resides. The notice  
8      shall include a copy of the petition or other pleadings and shall be given so as to arrive in  
9      due course of mailing not less than 15 days before the date of a hearing or other  
10     proceedings, unless otherwise provided in this chapter.
- 11     (b) In any proceeding involving a guardianship or conservatorship established pursuant to  
12     any other chapter of this title, the office of the department having jurisdiction over the area  
13     in which the ward resides may, by giving written notice to the court having jurisdiction  
14     over such proceedings and to the guardian or conservator or proposed guardian or  
15     conservator, become a party in interest as to the guardianship or conservatorship or  
16     proposed guardianship or conservatorship and shall thereafter be entitled to notice as if a  
17     guardianship or conservatorship was originally established under this chapter.
- 18     (c) The court shall mail to the department office a copy of each order entered in any VA  
19     guardianship or other guardianship or conservatorship proceeding wherein the secretary is  
20     an interested party.

21     29-7-3.

22     Whenever, pursuant to any law of the United States or regulation of the department, the  
23     secretary requires, prior to payment of benefits, that a VA guardian be appointed for a  
24     ward, the appointment shall be made in the manner provided in this chapter.

25     29-7-4.

26     Where a petition is filed for the appointment of a VA guardian for a mentally incompetent  
27     ward, a certificate of the secretary or the secretary's duly authorized representative stating  
28     that such individual has been rated incompetent by the department on examination in  
29     accordance with the laws and regulations governing the department and that the  
30     appointment of a VA guardian is a condition precedent to the payment of any moneys due  
31     such ward by the department shall be prima-facie evidence of the necessity for the  
32     appointment of a VA guardian. The courts are authorized to appoint a VA guardian for an  
33     incompetent ward entitled to any benefits which may be payable to a ward by the  
34     department.

1 29-7-5.

2 Where a petition is filed for the appointment of a VA guardian for a minor, a certificate of  
3 the secretary or the secretary's authorized representative setting forth the age of the minor  
4 as shown by the records of the department and the fact that the appointment of a VA  
5 guardian is a condition precedent to the payment of any moneys due the minor by the  
6 department shall be *prima-facie* evidence of the necessity for the appointment of a VA  
7 guardian.

8 29-7-6.

9 Upon a petition for the appointment of a VA guardian, notice shall be given to the  
10 department office having jurisdiction over the area in which the ward resides, to the  
11 proposed ward, and to two adult relatives of the proposed ward by certified mail or  
12 statutory overnight delivery by the court. If two adult relatives of the proposed ward  
13 cannot be located, notice to one adult relative shall be sufficient. If no adult relative can  
14 be located, the court shall give notice of the petition in the newspaper in which legal  
15 advertisements of the county in which the ward resides are published once a week for two  
16 weeks. After notice has been given or published, the letters of guardianship may, in the  
17 discretion of the court, be granted to the petitioner or to some other suitable person. If all  
18 parties entitled to notice waive further notice and consent to the notice *instanter*, the court  
19 may, in its discretion, grant letters of guardianship *instanter* to the petitioner.

20 29-7-7.

21 (a) A petition for the appointment of a VA guardian may be filed in the court having  
22 jurisdiction by or on behalf of the department or any person designated by the secretary or  
23 the secretary's representative.

24 (b) The petition shall set forth:

- 25 (1) The name, age, and place of residence of the ward;
- 26 (2) The names and places of residence of the nearest two adult relatives, if known;
- 27 (3) The fact that the ward is entitled to receive moneys payable by or through the  
28 department;
- 29 (4) The amount of money then due and the amount of probable future payments;
- 30 (5) The name and address of the person or institution, if any, having actual custody of  
31 the ward;
- 32 (6) In the case of a mentally incompetent ward, that the ward has been rated incompetent  
33 on examination by the department in accordance with the laws and regulations governing  
34 the department; and

1       (7) The name and address of the person or institution sought to be appointed as VA  
2       guardian of the ward and the relationship, if any, of the proposed VA guardian to the  
3       ward.

4       (c) Preferences for appointment of a VA guardian shall be as provided in Code Section  
5       29-5-3.

6       29-7-8.

7       Before making an appointment under this chapter, the court hearing the petition shall be  
8       satisfied that the VA guardian whose appointment is sought is a fit and proper person to be  
9       appointed. The nomination of a person by the department shall be *prima-facie* evidence  
10      of the person's fitness. A qualified individual shall ordinarily be preferred for appointment  
11      as VA guardian, but the court may, in the court's discretion, appoint any qualified person  
12      as VA guardian.

13      29-7-9.

14      (a) The following persons and entities may serve as VA guardians subject to the  
15      restrictions listed:

16       (1) An individual deemed fit and proper by the court may be a VA guardian of that  
17       individual's children, parents, and grandparents without limitation;

18       (2) A bank or trust company doing business in this state may serve as a VA guardian  
19       under this chapter for an unlimited number of beneficiaries;

20       (3) A person appointed while serving as county guardian in any county in this state may  
21       serve as a VA guardian under this chapter for an unlimited number of beneficiaries; or

22       (4) Any other person, provided that any person who is currently serving as the VA  
23       guardian for ten or more wards must so state in that person's petition to be appointed as  
24       the VA guardian for additional wards, and provided, further, the department shall have  
25       the right to direct the court in writing to deny the petition.

26      (b) Upon presentation of a petition by the department alleging that the VA guardian is  
27       acting in a fiduciary capacity in violation of this Code section and requesting the discharge  
28       of that VA guardian, the court upon proof substantiating the petition shall:

29       (1) Require a final accounting immediately from a sufficient number of VA  
30       guardianships, in reverse chronological order, to bring the VA guardian within  
31       compliance of this Code section;

32       (2) Require final settlements of accounts immediately on the VA guardianships described  
33       in paragraph (1) of this subsection; and

34       (3) Discharge the VA guardian in cases as the court deems proper.

1 29-7-10.

2 (a) A bank or trust company doing business in this state shall not be required to file a bond  
3 for any VA guardianship unless required by the department.

4 (b) Any other person serving as a VA guardian shall execute and file a bond, to be  
5 approved by the court, in an amount not less than the sum of the value of the estate, other  
6 than real property, at the time of the last accounting and funds estimated to become payable  
7 during the ensuing year, which bond shall be a security bond made by a solvent and  
8 acceptable surety company in the form required for bonds of guardians or conservators  
9 appointed under the general guardianship or conservatorship laws and shall be conditioned  
10 as are such bonds. After each annual accounting, the court shall review the amount of the  
11 bond and shall order such increase or decrease as shall be warranted by the accounting. No  
12 reduction in the bond amount shall affect the liability of the surety for past waste or  
13 misconduct of the VA guardian.

14 (c) A surety on a bond posted pursuant to this Code section shall not be relieved from  
15 liability merely because of the expiration of the term of the bond but shall be subject to  
16 provisions of law for discharge of a surety applicable to other bonds.

17 29-7-11.

18 Every VA guardian shall invest the surplus funds of the ward's estate in such securities or  
19 property as authorized under the laws of this state but only upon prior order of the court;  
20 except that the funds may be invested, without prior court authorization, in direct  
21 unconditional interest-bearing obligations of this state or of the United States or in  
22 obligations the interest and principal of which are unconditionally guaranteed by the United  
23 States. A signed duplicate or certified copy of the petition for authority to invest surplus  
24 funds shall be furnished the proper area office of the department, and notice of hearing on  
25 the petition shall be given said office in the case of a VA guardian's account.

26 29-7-12.

27 (a) A VA guardian shall not apply any portion of the estate of the ward for the support,  
28 maintenance, or education of any person other than the ward, the ward's spouse, and the  
29 children of the ward who are legally dependent on the ward, except upon order of the court  
30 after a hearing, notice of which has been given by certified mail or statutory overnight  
31 delivery to the department not less than 30 days prior to a hearing on the petition, unless  
32 the department consents in writing to the petition, in which case no hearing need be had.  
33 (b) No VA guardian shall name himself or herself as beneficiary of any insurance policy  
34 which insures the life of the ward. As to any insurance policy that is purchased after

1 establishment of the VA guardianship where premiums are or have been paid from  
2 benefits, the VA guardian shall ensure that the beneficiary named is the estate of the ward.  
3 (c) All property of a ward having a VA guardian which is purchased with benefits shall  
4 be titled in the name of the current VA guardian or any successor VA guardian for (name  
5 of ward), a beneficiary of the department, further indicating the fact of VA guardianship  
6 and the name of the beneficiary on any documents of title. Any such assets which should  
7 be prudently insured shall be insured with a policy of insurance denominated in the same  
8 manner.

9 29-7-13.

10 Every VA guardian shall file with the court annually, in the same manner as provided  
11 under the general law for conservators, a full, true, and accurate accounting, on oath, of all  
12 moneys received by the VA guardian and disbursements of all moneys, showing the  
13 balance in the VA guardian's hands at the date of the accounting and how it is invested.  
14 The VA guardian shall list in each accounting all the investments of the ward's funds,  
15 showing the amount of each investment, the date made, the interest rate, the date of  
16 maturity, the dates and amounts of any liquidations, and the dates and amounts of interest  
17 payments. A certified copy of each of accounting filed with the court shall be sent by the  
18 court within ten days after the accounting is filed to the office of the department having  
19 jurisdiction over the area in which the court is located. Each accounting shall include a  
20 computation of commissions allowed and taken during the period covered by the  
21 accounting. No accounting shall be allowed or admitted to record for a period of 60 days  
22 following the date of filing the accounting.

23 29-7-14.

24 If any VA guardian fails to file the accounting required by Code Section 29-7-13, the  
25 failure shall be grounds for removal. If any VA guardian fails to file any accounting within  
26 30 days after demand is made by the court to do so, the court shall notify the surety for the  
27 VA guardian of the failure by certified mail or statutory overnight delivery. Thereafter, on  
28 motion of any interested party, including the surety, or on its own motion, the court may  
29 enter an order removing the VA guardian without further notice or hearing. Every VA  
30 guardian who fails or refuses to file the accounting by the due date shall receive no  
31 commission or compensation for any service during that year unless by special order of the  
32 court the VA guardian is exonerated from all fault.

1 29-7-15.

2 (a) As compensation for service, a VA guardian shall earn a commission of 5 percent on  
3 all income of the ward coming into the VA guardian's hands during any months while the  
4 VA guardian serves. If the ward receives less than \$350.00 per month, the minimum fee  
5 shall be \$35.00 per month.

6 (b) In the event the ward's monthly service connected disability compensation payment  
7 from the department is discontinued or suspended, the VA guardian, subject to court  
8 approval which shall be given unless it appears to the court that the estate is unfairly  
9 prejudiced or the payment would be a manifest injustice, shall be entitled to 5 percent  
10 additional commission on all sums paid out by the VA guardian from the time the disability  
11 compensation payment is discontinued or suspended until the time the disability  
12 compensation payment is resumed.

13 (c) In the event that extraordinary services are rendered by the VA guardian, the court,  
14 upon petition and after hearing thereon, may authorize additional compensation payable  
15 from the estate of the ward. Notice of the petition and hearing shall be given by certified  
16 mail or statutory overnight delivery to the department office having jurisdiction over the  
17 area in which the ward resides not less than 30 days prior to the hearing on the petition.  
18 No compensation shall be allowed on the corpus of an estate received from a previous VA  
19 guardian.

20 (d) A VA guardian shall be allowed to pay from the ward's estate reasonable premiums  
21 for any corporate surety on the VA guardian's bond.

22 29-7-16.

23 (a) A VA guardian, upon filing a petition and making satisfactory accounting, shall be  
24 discharged when the ward dies, reaches the age of majority, or is declared competent by  
25 the department or the court.

26 (b) A county guardian who ceases to serve as county guardian continues to serve as a VA  
27 guardian at the pleasure of the court for which the VA guardian formerly served as county  
28 guardian. The court may at any time require the VA guardian's final accounting and  
29 discharge as to any or all VA guardianships which the VA guardian accepted as county  
30 guardian, whereupon the court shall appoint as successor VA guardian the new county  
31 guardian or other person as shall be requested by the department. A former county  
32 guardian may file a petition with the court, a copy of which shall be served by certified  
33 mail or statutory overnight delivery upon the area office of the department, together with  
34 the VA guardian's final accounting, as to any or all VA guardianships; whereupon the court  
35 shall appoint as the VA guardian's successor the new county guardian or other person as  
36 shall be designated by the department.

1 29-7-17.

2 Except where inconsistent with this chapter, the general guardianship and conservatorship  
3 laws of this state and the laws establishing the practice in such matters, including the rights  
4 of appeal, shall be applicable to wards and their estates governed by this chapter.

5 29-7-18.

6 This chapter shall be construed liberally to secure the beneficial intents and purposes  
7 thereof and shall apply only to beneficiaries of the department who are entitled to benefits  
8 from the department.

9 **CHAPTER 8**

10 29-8-1.

11 County administrators as provided for in Article 5 of Chapter 6 of Title 53 of the Revised  
12 Probate Code of 1998 are ex officio county guardians and shall serve as guardians or  
13 conservators in all cases where appointed by the court.

14 29-8-2.

15 In addition to the bond required in Code Section 53-6-41 of the Revised Probate Code of  
16 1998, county guardians shall give another bond with good security, to be judged by the  
17 court, in the sum of \$5,000.00. The bond shall be payable to the court for the benefit of all  
18 concerned. It shall be attested by the judge or clerk of the court and shall be conditioned  
19 upon the faithful discharge of the county guardian's duty as such, as required by law.  
20 Actions on the bond may be brought by any person aggrieved by the misconduct of the  
21 county guardian, as provided by law for actions on the bonds of other guardians.

22 29-8-3.

23 The court shall grant to the county guardian separate letters of guardianship or  
24 conservatorship upon each appointment. The county guardian shall be subject to all  
25 liabilities and entitled to all the rights and emoluments provided for other guardians or  
26 conservators and shall be governed by the law provided for other guardians or  
27 conservators.

28 29-8-4.

29 (a) If in the opinion of the court it shall become necessary for the good of any  
30 conservatorship placed or about to be placed in the hands of the county guardian for the  
31 county guardian to give additional security on the bond or to give additional bond with

security, the court shall have the authority to fix the amount of the bond and shall cite the county guardian to appear and show cause, if any, why the additional bond or additional security should not be given.

(b) If upon the hearing the county guardian fails to show good cause why the additional bond or additional security should not be given, the court shall issue an order fixing the amount of the bond and direct the county guardian to give additional security on or before a certain date, which date shall be within 30 days of the date of the order.

(c) Should the county guardian fail, refuse, or neglect to give additional bond or additional security on or before the date fixed in the order of the court and fail to show good cause why further time should be allowed, it shall be the duty of the court to remove the county guardian and to appoint another county guardian for the unexpired term of office. The order of removal shall be recorded as provided for the order of appointment.

29-8-5.

The court may, for good cause shown, as provided in Code Section 29-5-14, revoke the letters of guardianship or conservatorship of the county guardian, require additional security on the county guardian's bond, or issue any other order as is expedient and necessary for the good of any particular conservatorship in the hands of the county guardian.

CHAPTER 9

29-9-1.

Except as otherwise specifically provided by law, the provisions of this chapter shall apply to any proceeding in the court that arises under this title. Compliance with the provisions of this chapter shall be deemed to be sufficient for proceedings in the court arising under this title except as otherwise provided in Chapter 11 of Title 9 and Chapter 9 of Title 15.

29-9-2.

(a) The court in its discretion may at any time appoint a guardian ad litem to represent the interests of a minor, a proposed ward, or a ward in proceedings relating to the guardianship or conservatorship of that individual. However, the appointment of a guardian ad litem does not supersede any specific requirement that individual be served by personal service and the guardian ad litem may not waive personal service for that individual.

(b) Except as provided in subsection (a) of this Code section, when a person who is entitled to notice under any provision of this title is not *sui juris*, the interests of that person shall be represented in the proceeding by a guardian ad litem; provided, however, that the

1     court may determine for the purpose of the particular proceeding that the natural guardian,  
2     if any, or the testamentary guardian, if any, or the duly constituted conservator, if any, or  
3     the duly constituted guardian, if any, has no conflict of interest and thus may represent for  
4     the purpose of the proceeding a person who is not *sui juris*. Service upon or notice to a  
5     guardian ad litem shall constitute service upon or notice to that person who is not *sui juris*  
6     and no additional service upon or notice to that person shall be required. Waivers,  
7     acknowledgments, consents, answers, objections, or other documents executed by a  
8     guardian ad litem shall be binding upon the person represented. The guardian ad litem may  
9     represent a single person or more than one person or a class of persons with common or  
10    nonadverse interests.

11    (c) Whenever a guardian ad litem is appointed, the court may limit the appointment, may  
12    remove the guardian ad litem, or may at any time for cause appoint a successor guardian  
13    ad litem.

14    (d) In every petition filed in the court, the petitioner shall identify each person who  
15    requires a guardian ad litem and the name and address of any person who is acting as  
16    conservator or guardian of the party. A copy of the letters appointing the conservator or  
17    guardian shall be attached to the petition or the petition shall allege such facts as shall show  
18    the authority of such conservator or guardian to act; provided, however, that the court may  
19    take judicial notice of the issuance of the letters or of the authority.

20    29-9-3.

21    A person who is appointed as counsel for a ward, proposed ward, or alleged incapacitated  
22    person is not eligible to be appointed as guardian ad litem for the same individual, and a  
23    person who is appointed as guardian ad litem for a ward, proposed ward, or alleged  
24    incapacitated person is not eligible to be appointed as counsel for the same individual.

25    29-9-4.

26    (a) Except as otherwise provided by law, a party in interest who is a resident of this state  
27    is entitled to personal service of any petition and citation for proceedings that are subject  
28    to the provisions of this chapter.

29    (b) Except as otherwise provided in this Code section, personal service shall be made by  
30    delivery of a copy of the petition and citation by the sheriff or some other lawful officer at  
31    least ten days before the hearing except that, if waived in writing, the ten-day provision  
32    shall not apply. An entry of service shall be made on the original and the copy for the party  
33    served.

1       (c) A party who is in the military service may be served by any commissioned officer who  
2       shall file with the court a certificate stating that copies of the petition and citation were  
3       served in person.

4       (d) Individuals who are not *sui juris* shall be served as provided in this chapter or as  
5       provided in Code Section 15-9-17.

6       (e) When personal service is required by this Code section, unless otherwise directed by  
7       the court, service may be made by registered or certified mail or statutory overnight  
8       delivery if the petitioner so requests in the petition. The court shall cause a copy of the  
9       petition and the citation to be sent by registered or certified mail or statutory overnight  
10      delivery with return receipt requested and with delivery restricted to addressee only. If the  
11      return receipt is not signed by the addressee, dated at least ten days before the date  
12      specified in the citation, and received by the court before the date specified in the citation  
13      for the filing of objections, service shall be made as otherwise required by this Code  
14      section.

15      29-9-5.

16       (a) Except as otherwise provided by law or directed by the probate judge pursuant to Code  
17       Section 29-9-6, the provisions of this Code section shall apply in cases when a person to  
18       be served has a known current residence address outside this state or whose current address  
19       is unknown.

20       (b) Unless all persons have known current residence addresses, the court shall order service  
21       to be perfected by publication of the citation in the newspaper in which the sheriff's  
22       advertisements are published in the county in which the petition is filed. The citation shall  
23       be published once a week for four weeks prior to the date on which objections must be  
24       filed. The records of the court shall show the persons notified and the character of the  
25       notice given. The published citation shall be directed to the person to be served.

26       (c) If the current residence address of a person is known, service shall be made by mailing  
27       by first-class mail a copy of the petition and the citation.

28       (d) When service by publication is ordered pursuant to this Code section, compliance with  
29       the provisions of this Code section relating to a person to be notified who is known but  
30       whose current residence address is unknown shall be equivalent to personal service of a  
31       copy of the petition and citation when the fact appears in the records of the court showing  
32       the persons notified and the character of the notice given. In the case of a known person  
33       whose current residence address is unknown, that person's name shall appear in the records  
34       of the court, and the records shall show service by publication as to that person in  
35       compliance with this Code section. In any case in which service by publication is granted,

1     one order for publication shall be sufficient and the published citation shall be directed as  
2     provided in subsection (b) of this Code section.

3     29-9-6.

4     If one or more unsuccessful attempts at personal service are made by the sheriff or deputy  
5     upon a conservator or guardian appointed in this state at the last known address of the  
6     conservator or guardian that appears in the court records and it appears to the court that  
7     further attempts are likely to be futile, then service shall be sufficient upon the conservator  
8     or guardian if the citation is mailed by first-class mail to the last known address of the  
9     conservator or guardian.

10    29-9-7.

11    The probate judge may direct any additional service or notice or extend the time to respond  
12    with respect to any proceedings covered by this title as the judge may determine to be  
13    proper in the interest of due process and reasonable opportunity for any party or interest  
14    to be heard.

15    29-9-8.

16    (a) Service or notice may be waived or acknowledged before or after the filing of the  
17    petition. The waiver or acknowledgment of service shall be in writing, signed by the  
18    person to be served or some person competent to do so, shall be sworn before the court or  
19    a notary public, and shall be filed with the court.

20    (b) The written consent of a party to the granting of any relief or the entry of any order  
21    sought in a proceeding, whether executed before or after the filing of the petition, shall  
22    constitute a waiver and acknowledgment of notice and service of the proceedings, waiver  
23    of citation, entry of appearance, answer admitting all allegations of facts set forth in the  
24    petition as true and correct, and consent to the granting of the relief or the order sought.

25    (c) A person in military service, regardless of age, shall be permitted to make any waiver,  
26    acknowledgment, or consent described in this Code section.

27    29-9-9.

28    An oath or affirmation or affidavit required or allowed to be made before or attested by a  
29    notary public may be made before any notary public or other officer authorized to  
30    administer oaths by the state in which the oath or affirmation or affidavit is made. The oath  
31    or affirmation or affidavit, if made outside this state, shall have the same force and effect  
32    as if it had been made before an officer of this state authorized to administer oaths. The  
33    official attestation of the officer before whom the oath or affirmation or affidavit is made

1 shall be prima-facie evidence of the official character of the officer and that the officer was  
2 authorized by law to administer oaths.

3 29-9-10.

4 The director of the county department of family and children services or a duly appointed  
5 delegate is authorized to take the oath of conservatorship or guardianship before the judge  
6 of the Probate Court of Fulton County or before the judge of the court making the  
7 appointment of conservatorship or guardianship.

8 29-9-11.

9 (a) Every petition and return filed in the court shall be verified by an oath sworn to or  
10 affirmed before the court or a notary public.

11 (b) Where appropriate, petitions for separate appointments, such as the appointment of a  
12 guardian and a conservator or the appointment of a guardian and an emergency guardian,  
13 may be consolidated into one petition and the filing and giving of notice of the petitions  
14 may occur simultaneously.

15 (c) If the petition for the appointment of a guardian or a conservator of a minor or a  
16 proposed ward is originally filed in the county in which the minor or proposed ward is  
17 found, on motion of either party, if appropriate, the case may be transferred to the county  
18 of the minor's or proposed ward's domicile.

19 29-9-12.

20 (a) For purposes of this Code section, the terms 'citation' and 'notice' shall have the same  
21 meaning unless the context otherwise requires.

22 (b) Upon the filing of a petition, a citation shall be issued addressed to the persons required  
23 to be served or entitled to notice; provided, however, if all parties have acknowledged  
24 service and assented to the petition, no citation need issue. The citation shall state that any  
25 objection must be made in writing and shall designate the date on or before which  
26 objections must be filed in the court. The citation shall also state whether the hearing shall  
27 take place on a certain date or be specially scheduled for a later date. With respect to all  
28 proceedings under this title, the citation, if any, may state that if no objections are filed, the  
29 petition may be granted without a hearing.

30 29-9-13.

31 (a) Except as otherwise provided by law or directed by the judge with respect to any  
32 particular proceeding, the date on or before which any objection is required to be filed shall  
33 be not less than ten days after the date the person is personally served. For persons within

1 the United States who are served by registered or certified mail or statutory overnight  
2 delivery, return receipt requested, the date on or before any objection is required to be filed  
3 shall not be less than 14 days from the date of mailing or delivering; provided, however,  
4 that if a return receipt from any recipient is received by the court within 14 days from the  
5 date of mailing or delivering, the date on or before which any objection is required to be  
6 filed by such recipient shall be ten days from the date of receipt as shown on the return  
7 receipt. For a person outside the United States who is served by registered or certified mail  
8 or statutory overnight delivery, return receipt requested, the date on or before any objection  
9 is required to be filed shall not be less than 30 days from the date the citation is mailed or  
10 delivered; provided, however, that if the return receipt from any recipient is received by the  
11 court during such 30 day period the date on or before which any objection is required to be  
12 filed by such recipient shall not be earlier than ten days from the date of receipt shown  
13 on such return receipt. For a person served by publication, the date on or before which any  
14 objection is required to be filed shall be no sooner than the first day of the week following  
15 publication once each week for four weeks.

16 (b) Except as otherwise provided by law or directed by the judge with respect to any  
17 particular proceeding, the date on which any required hearing shall be held shall be the date  
18 by which any objection is required to be filed or such later date as the court may specify.  
19 When the matter is set for hearing on a date that was not specified in the citation, the court  
20 shall send by first-class mail a notice of the time of the hearing to the petitioner and all  
21 parties who have served responses at the addresses given by each of them in their  
22 pleadings.

23 (c) Except as otherwise provided by law, the date on which any required hearing shall be  
24 held shall be the date by which any objection is required to be filed or such later date as the  
25 court may specify. When the matter is set for hearing on a date that was not specified in  
26 the petition, the court shall, by first-class mail, send a notice of the time of the hearing to  
27 the petitioner and all parties who have served responses at the addresses given by each of  
28 them in their pleadings.

29 (d) Notwithstanding the other provisions of this Code section, the date by which objections  
30 must be filed or on which the hearing shall be held shall be no earlier than ten days after  
31 the date of service on any person who is entitled to personal service.

32 29-9-13.

33 Whenever it is required that a document which is to be filed in the court be authenticated  
34 or exemplified, such requirement shall be met by complying with the provisions of Code  
35 Section 24-7-24 and such full faith and credit shall be given to the document as is provided  
36 in that Code section.

1 29-9-14.

2 The court on its own motion may order a hearing on any matter related to a conservatorship  
3 or guardianship even if no objection is filed.

4 29-9-15.

5 Any legal counsel or guardian ad litem who is appointed by the court in a guardianship or  
6 conservatorship proceeding shall be awarded reasonable fees commensurate with the tasks  
7 performed and time devoted to the proceeding, including any appeals.

8 29-9-16.

9 For the evaluation or examination required by subsection (d) of Code Section 29-4-11 or  
10 subsection (d) of Code Section 29-5-11, the evaluating physician, psychologist, or licensed  
11 clinical social worker shall receive a reasonable fee commensurate with the task performed,  
12 plus actual expenses. For the hearing under subsection (d) of Code Section 29-4-12 or  
13 subsection (d) of Code Section 29-5-12, the evaluating physician, psychologist, or licensed  
14 clinical social worker shall receive an amount not to exceed \$75.00 plus actual expenses.

15 29-9-17.

16 At the time of appointment and at any time throughout the conservatorship or guardianship,  
17 the court may order the conservator or guardian to undergo such instruction as the court  
18 deems appropriate.

19 29-9-18.

20 All of the records relating to any guardianship or conservatorship that are granted under  
21 this title shall be kept sealed, except for a record of the names and addresses of the ward  
22 and the guardian or conservator. The records may be examined by the ward and the ward's  
23 legal counsel at any time. The court in its discretion may permit examination of the records  
24 by other interested parties."

## SECTION 2.

26 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in  
27 Chapter 9, relating to probate courts, by striking subsection (a) of Code Section 15-9-121,  
28 relating to jury trials in civil cases, and inserting in lieu thereof the following:

29       "(a) A party to a civil case in the probate court shall have the right to a jury trial if such  
30       right is asserted by a written demand for jury trial within 30 days after the filing of the first  
31       pleading of the party or within 15 days after the filing of the first pleading of an opposing  
32       party, whichever is later, except that with respect to a petition pursuant to Code Section

1   29-5-6 Sections 29-4-10 and 29-5-10, relating to guardianship of an incapacitated adult, if  
2   any interested party desires a trial by jury, such party must make such request for a jury  
3   within ten days after the date of mailing of the notice provided for by paragraph (1) of  
4   subsection (d) (c) of Code Section 29-5-6 29-4-12 and subsection (c) of Code Section  
5   29-5-12. If a party fails to assert the right to a jury trial, the right shall be deemed waived  
6   and may not thereafter be asserted."

### **SECTION 3.**

8 Said title is further amended in said chapter by striking Code Section 15-9-127, relating to  
9 additional concurrent jurisdiction with superior courts, and inserting in lieu thereof the  
10 following:

11 "15-9-127.

Probate courts subject to this article shall have concurrent jurisdiction with superior courts with regard to the proceedings for:

- 14 (1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5,  
15 and 9-4-6;

16 (2) Tax motivated estate planning dispositions of wards' property pursuant to Code  
17 Section 29-5-5.1 Sections 29-3-36 and 29-5-36;

18 (3) Approval of settlement agreements pursuant to Code Section 53-3-22 of the  
19 'Pre-1998 Probate Code,' if applicable, or Code Section 53-5-25 of the 'Revised Probate  
20 Code of 1998';

21 (4) Appointment of new trustee to replace trustee pursuant to Code Section 53-12-170;

22 (5) Acceptance of the resignation of a trustee upon written request of the beneficiaries  
23 pursuant to Code Section 53-12-175;

24 (6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code  
25 Section 53-12-175; and

26 (7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing  
27 as provided in Code Section 53-2-27."

## SECTION 4.

29 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
30 amended in Code Section 16-14-3, relating to definitions in the "Georgia RICO (Racketeer  
31 Influenced and Corrupt Organization) Act," by striking division (12)(B)(i) and inserting in  
32 lieu thereof the following:

33        "(i) Any person appointed or acting as a ~~personal representative~~ guardian or  
34        conservator under Title 29, relating to guardian and ward, or ~~personal representative~~  
35        under Chapter 6 of Title 53 of the 'Pre-1998 Probate Code,' relating to the

1 administration of estates, if applicable, or Chapter 6 of Title 53 of the 'Revised  
2 Probate Code of 1998' and other provisions in such revised probate code relating to  
3 the administration of estates; or".

4 **SECTION 5.**

5 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended in Code  
6 Section 24-9-47, relating to the disclosure of AIDS confidential information, by striking  
7 division (bb)(3)(C)(i) and inserting in lieu thereof the following:

8 "(C)(i) If the court determines there is a compelling need for such information in  
9 connection with the particular proceeding or procedure, petition a superior court of  
10 competent jurisdiction for permission to obtain or disclose that information. If the  
11 person identified by the information is not yet represented by an attorney in the  
12 proceeding or procedure in connection with which the information is sought, the  
13 petitioning court shall appoint an attorney for such person. The petitioning court shall  
14 have both that person and that person's attorney personally served with notice of the  
15 petition and time and place of the superior court hearing thereon. Such hearing shall  
16 not be held sooner than 72 hours after service, unless the information is to be used in  
17 connection with an emergency guardianship proceeding under ~~Chapter 5 of Title 29~~  
18 Code Section 29-4-14, in which event the hearing shall not be held sooner than 48  
19 hours after service."

20 **SECTION 6.**

21 Title 30 of the Official Code of Georgia Annotated, relating to handicapped persons, is  
22 amended in Code Section 30-5-5, relating to providing protective services and the  
23 investigative reports associated with protective services, by striking subsection (e) and  
24 inserting in lieu thereof the following:

25 "(e) Protective services may not be provided under this chapter to any person who does not  
26 consent to such services or who, having consented, withdraws such consent. Nothing in this  
27 chapter shall prohibit the department from petitioning for the appointment of a guardian  
28 for a disabled adult or elder person pursuant to ~~Chapter 5~~ Chapters 4 and 5 of Title 29."

29 **SECTION 7.**

30 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code  
31 Section 31-39-2, relating to definitions concerning cardiopulmonary resuscitation, by striking  
32 subparagraph (C) of paragraph (3) and inserting in lieu thereof the following:

33 "(C) A guardian over the person appointed pursuant to the provisions of Code Section  
34 ~~29-5-1~~ 29-4-1;"

**SECTION 8.**

2 Title 53 of the Official Code of Georgia Annotated, relating to wills, is amended by striking  
3 subsection (b) of Code Section 53-6-35 of the Revised Probate Code of 1998, relating to  
4 appointment of county administrators, and inserting in lieu thereof the following:

5 "(b) In all counties of this state the probate court is authorized to appoint, in the same  
6 manner as the county administrator is appointed, one or more additional county  
7 administrators who shall have the same powers, duties, and authority and be subject to the  
8 same laws, including Chapter 3 § 8 of Title 29, relating to county guardians, as county  
9 administrators."

**SECTION 9.**

10 Said title is further amended by striking Code Section 53-6-42 of the Revised Probate Code  
11 of 1998, relating to the power of the court to revoke letters of administration and require  
12 additional security, and inserting in lieu thereof the following:

13 "53-6-42.

14 The probate court may, for good cause shown, as provided in Code Sections ~~29-4-14~~,  
15 ~~29-4-15~~ 29-3-82, 29-5-92, and 53-7-14, revoke the letters of administration of the county  
16 administrator or letters of guardianship of the county administrator, require additional  
17 security on the county administrator's bond, or pass such other order as is expedient and  
18 necessary for the good of any particular estate in the hands of any county administrator."

**SECTION 10.**

20 Said title is further amended by striking subsection (b) Code Section 53-6-90 of the Pre-1998  
21 Probate Code, relating to the appointment of county administrator and assistant county  
22 administrators, and inserting in lieu thereof the following:

23 "(b) In all counties of this state the judge of the probate court is authorized to appoint, in  
24 the same manner as the county administrator is appointed, one or more assistant county  
25 administrators who shall have the same powers, duties, and authority and be subject to the  
26 same laws, including Chapter 3 § 8 of Title 29, relating to county guardians, as the county  
27 administrators."

**SECTION 11.**

29 Said title is further amended by striking Code Section 53-8-29 of the Pre-1998 Probate Code,  
30 relating to the sale of real property which is held pending arrival of beneficiaries at age of  
31 majority or subject to future contingency for payment of debts, and inserting in lieu thereof  
32 the following:

1 "53-8-29.

2 In all respects other than as provided in Code Sections 53-8-27 and 53-8-28, all sales  
3 pursuant to Code Section 53-8-27 shall be made as provided in Code Sections ~~29-2-3 and~~  
4 ~~29-2-4~~ 29-3-35 and 29-5-35, relating to sales for reinvestment by guardians. All such sales  
5 shall be approved and confirmed by the judge of the superior court by appropriate order,  
6 and the entire proceedings shall be recorded on the minutes of the superior court and  
7 properly indexed."

8 **SECTION 12.**

9 Said title is further amended by striking subsection (a) of Code Section 53-8-34 of the  
10 Pre-1998 Probate Code, relating to the private sale of estate property, and inserting in lieu  
11 thereof the following:

12 "(a) The administrator or executor of an estate may petition the judge of the probate court  
13 for leave to sell property of the estate, both real and personal, at private sale, to pay debts  
14 as well as for distribution. Except as otherwise provided, the method of private sale shall  
15 be in the same manner as that prescribed for the sale of property by guardians under Code  
16 Sections ~~29-2-3 and 29-2-4~~ 29-3-35 and 29-5-35; provided, however, that the judge shall  
17 consider the petition and shall hear evidence thereon and, if the judge shall determine from  
18 a consideration of the evidence that the proposed transaction is fair and in the best interests  
19 of the estate, the judge shall, by appropriate order, permit the sale and direct the disposition  
20 of the proceeds of the sale."

21 **SECTION 13.**

22 Said title is further amended by striking Code Section 53-9-14 of the Revised Probate Code  
23 of 1998, relating to the report of a conservator, and inserting in lieu thereof the following:  
24 "53-9-14.

25 The conservator shall within 60 days after appointment make a written report to the probate  
26 court setting forth the condition of the estate of the missing individual, together with a  
27 schedule of any debts that may be owed by the missing person, an estimate of the income  
28 from the estate and the expenses necessary to its preservation, a statement showing the  
29 names, ages, and condition of any individuals who may have been dependent on the  
30 missing person for support, and a recommendation as to how the estate should be  
31 distributed. The court, after considering the report and making any further investigation  
32 the court may deem necessary, shall make such order as will most effectively tend to  
33 provide for the support of any individuals who may have been dependent upon the missing  
34 individual for support and for the handling of the property, including any business or  
35 business interest, owned by the missing person. The order may provide for the payment of

1 those debts of the missing person as the court deems just and proper. An order of an  
2 appropriate court may allow the conservator to engage in such estate planning dispositions  
3 of the missing person's property as are authorized by Code ~~Section 29-5-5.1 Sections~~  
4 ~~29-3-36 and 29-5-36~~. The order may be modified in the discretion of the court at any time  
5 upon petition by the conservator, any individual dependent upon the missing individual for  
6 support, the guardian of any such individual, or any person having an interest in the  
7 property or in any business of the missing individual."

8 **SECTION 14.**

9 Said title is further amended by striking subsections (b) and (d) of Code Section 53-12-173.1,  
10 relating to compensation from a business enterprise, and inserting in their respective places  
11 the following:

12 "(b) Any trustee receiving compensation from a corporation or other business enterprise  
13 for services to it as described in subsection (a) of this Code section shall not receive extra  
14 compensation in respect to such services as provided in Code ~~Section 29-2-42.1 Sections~~  
15 ~~29-3-52 and 29-5-52~~; provided, however, that nothing in this Code section shall prohibit  
16 the receipt by the trustee of extra compensation for services rendered in respect to other  
17 assets or matters involving the trust estate."

18 "(d) The purpose of this Code section is to enable additional compensation to be paid to  
19 trustees for business management and advisory services to corporations and business  
20 enterprises pursuant to contract, without the necessity of petitioning for extra compensation  
21 pursuant to Code ~~Section 29-2-42.1 Sections 29-3-52 and 29-5-52~~."

22 **SECTION 15.**

23 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public  
24 disclosure shall not be required under Article 4 of Chapter 18 of Title 50, is amended by  
25 striking the "or" at the end of paragraph (13.1) of subsection (a) and inserting a new  
26 paragraph to read as follows:

27 "(13.2) Records that are kept by the probate court pertaining to guardianships and  
28 conservatorships except as provided in Code Section 29-9-18; or".

29 **SECTION 16.**

30 This Act shall become effective on January 1, 2004 and all appointments of guardians of the  
31 person or property made pursuant to former Title 29 shall continue in effect and shall  
32 thereafter be governed by the provisions of this Act.

1

**SECTION 17.**

2 All laws and parts of laws in conflict with this Act are repealed.