

House Bill 229

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

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:

- 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

29-2-1.

Guardians of minors may be categorized as follows:

- (1) Natural guardians;
- (2) Testamentary guardians;
- (3) Temporary guardians;
- (4) Standby guardians; and
- (5) Permanent guardians.

29-2-2.

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

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

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

Part 2

29-2-3.

(a) For purposes of this Code section, the terms 'joint legal custody' and 'sole custody' shall have the meanings as provided in Code Section 19-9-6.

(b) Except as otherwise provided in this chapter, each parent shall be the natural guardian of any minor child of the parent, except that, if the parents are divorced and one parent has sole custody of the minor, that parent is the sole natural guardian of that minor. If the parents have joint legal custody, both parents are the natural guardians of that minor.

(c) If one parent of a minor dies, the surviving parent is the sole natural guardian of the minor, even if the parents were divorced and the deceased parent had sole custody of the minor.

29-2-4.

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

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

6 Part 3

7 29-2-5.

8 (a) A petition to be appointed the temporary guardian of a minor may be filed by an
9 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:

24 (A) A parent of a minor, provided that he or she has physical custody of the minor and
25 his or her parental rights have not terminated; and provided, further, that the other
26 parent of the minor is deceased, has had his or her parental rights terminated, cannot be
27 found after a diligent search has been made, or has consented to the designation of and
28 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:

3 DESIGNATION OF STANDBY GUARDIAN

4 (1) IDENTIFICATION OF DESIGNATING INDIVIDUAL: I,
5 _____ (insert name of person designating the standby
6 guardian), whose address is _____ (insert address) and whose county and state
7 of domicile are _____ (insert name of county and state), am:

8 (Check and complete the ones which apply)

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

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

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

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

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

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

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

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

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

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

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

20 _____
 21 (Designating individual signs here)
 22 (Print name of designating individual)

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

26 _____
 27 (Signature of first witness) (Print first witness's address)

28 _____
 29 (Signature of second witness) (Print second witness's address)

30 (7) CONSENT OF PARENT (To be completed only if line A-4 in paragraph (1) above
 31 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.

3 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 legitimation 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 legitimation 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 the 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;

- 1 (2) Arrange for the support, care, education, health, and welfare of the minor considering
 2 the minor's available resources;
- 3 (3) Take reasonable care of the minor's personal effects;
- 4 (4) Expend money of the minor that has been received by the guardian for the minor's
 5 current needs for support, care, education, health, and welfare;
- 6 (5) Conserve for the minor's future needs any excess money of the minor received by the
 7 guardian; provided, however, that if a conservator has been appointed for the minor, the
 8 guardian shall pay to the conservator, at least quarterly, money to be conserved for the
 9 minor's future needs;
- 10 (6) If necessary, petition to have a conservator appointed;
- 11 (7) Endeavor to cooperate with the conservator, if any;
- 12 (8) Within 60 days after appointment and within 60 days after each anniversary date of
 13 appointment, file with the court and provide to the conservator, if any, a personal status
 14 report concerning the minor, which shall include:
- 15 (A) A description of the minor's general condition, changes since the last report, and
 16 the minor's needs;
- 17 (B) All addresses of the minor during the reporting period and the living arrangements
 18 of the minor for all addresses; and
- 19 (C) Recommendations for any alteration in the guardianship order;
- 20 (9) Promptly notify the court of any conflict of interest between the minor and the
 21 guardian when the conflict arises or becomes known to the guardian and take such action
 22 as is required by Code Section 29-2-23;
- 23 (10) Keep the court informed of the guardian's current address; and
- 24 (11) Act promptly to terminate the guardianship when the minor reaches the age of
 25 majority.
- 26 (c) A guardian, solely by reason of the guardian-minor relationship, is not personally liable
 27 for:
- 28 (1) The minor's expenses;
- 29 (2) Contracts entered into in the guardian's fiduciary capacity;
- 30 (3) The acts or omissions of the minor;
- 31 (4) Obligations arising from ownership or control of property of the minor; or
- 32 (5) Other acts or omissions occurring in the course of the guardianship.
- 33 29-2-22.
- 34 (a) The appointment of a guardian shall vest in the guardian the exclusive power, without
 35 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 misapplied and can be traced into the hands of persons
34 who have notice of the misapplication, a trust shall attach to the assets.

1 (c) The provision of remedies for breach of fiduciary duty by this Code section does not
2 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

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

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

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

11 (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the
 12 minor determined according to Code Section 53-2-1 of the Revised Probate Code of
 13 1998.

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

16 29-2-52.

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

21 ARTICLE 6

22 Part 1

23 29-2-60.

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

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

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

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

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

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

6 Part 2

7 29-2-65.

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

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

15 (c) The petition shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

34 (c) The petition may be combined with other petitions related to the guardianship,
35 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;

1 (3) Recognize concurrent jurisdiction over the guardianship for a reasonable period of
 2 time to permit the foreign court to release the guardianship or to terminate the
 3 guardianship and discharge the guardian in the foreign jurisdiction; or

4 (4) Make other arrangements the court deems necessary to effectuate the receipt and
 5 acceptance of the guardianship.

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

9 Part 3

10 29-2-69.

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

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

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

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

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

21 (c) To facilitate the transfer the court may order the guardian to file a petition for receipt
 22 and acceptance of the guardianship in the foreign jurisdiction.

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

26 29-2-70.

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

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

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

33 (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

- 1 (2) Transfer of the guardianship to the foreign jurisdiction is in the best interest of the
2 minor.
- 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,
6 including whether periodic reports and accountings have been filed in a satisfactory
7 manner and whether all bond or other security requirements imposed under the
8 guardianship have 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 filings 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 and mental health practitioners describing the condition of the
16 minor; and
- 17 (D) Periodic status reports on the condition of the minor.
- 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 29-2-74.

- 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.

11 Pending an action brought by a foreign guardian pursuant to Code Section 29-2-75, an
 12 authenticated copy of the letters of guardianship shall be filed with the clerk of the court
 13 to become a part of the record, if the case is pending in a court of record, or filed with the
 14 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.

22 CHAPTER 3

23 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;

1 (2) The nearest adult relative of the minor as set forth in Code Section 53-2-1 of the
2 Revised Probate Code of 1998;

3 (3) Other adult relatives of the minor;

4 (4) Other adults who are related to the minor by marriage;

5 (5) A person who was designated in writing by a minor's natural guardian in a notarized
6 document or document witnessed by two or more persons;

7 (6) A person who has provided care or support for the minor or with whom the minor has
8 lived; or

9 (7) The county guardian.

10 (b) The court may disregard an individual who has preference and appoint a person who
11 has a lower preference or no preference. In determining what is in the best interest of the
12 minor, the court may take into account any facts and circumstances presented to it,
13 including the statement of a minor who is under 14 years of age.

14 29-3-8.

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

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

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

18 (2) The name, address, and date of birth of the minor;

19 (3) The name, address, and county of domicile of the petitioner and the petitioner's
20 relationship to the minor, if any, and, if different from the petitioner, the name, address,
21 and county of domicile of the person nominated by the petitioner to serve as conservator
22 and that person's relationship to the minor, if any;

23 (4) Whether to the petitioner's knowledge there exists any notarized or witnessed
24 document made by a parent of the minor that deals with the conservatorship of the minor
25 and the name and address of any designee named in the document;

26 (5) In addition to the petitioner and the nominated conservator, the names and addresses
27 of the following relatives of the minor whose whereabouts are known:

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

29 (B) If there is no parent of the minor whose parental rights have not been terminated,
30 the adult siblings of the minor; provided, however, that not more than three adult
31 siblings need be listed;

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

34 (D) If there is no grandparent of the minor, any three of the nearest adult relatives of
35 the minor determined according to Code Section 53-2-1 of the Revised Probate Code
36 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

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

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

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

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

16 ARTICLE 2

17 29-3-20.

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

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

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

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

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

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

27 29-3-21.

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

32 (b) A conservator shall:

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

- 1 (2) Be reasonably accessible to the minor and maintain regular communication with the
 - 2 minor;
 - 3 (3) Petition to have a guardian appointed if necessary;
 - 4 (4) Endeavor to cooperate with the guardian, if any;
 - 5 (5) Provide for the support, care, education, health, and welfare of the minor, considering
 - 6 available resources;
 - 7 (6) Give such bond as required by Code Section 29-3-40;
 - 8 (7) Within two months of appointment, file with the court and provide to the guardian,
 - 9 if any, an inventory of the minor's property and a plan for administering the property,
 - 10 pursuant to the provisions of Code Section 29-3-30;
 - 11 (8) Take into account any estate plan of the minor known to the conservator in the
 - 12 administration of the conservatorship;
 - 13 (9) Keep accurate records including adequate supporting data and file annual returns as
 - 14 required by Code Section 29-3-60;
 - 15 (10) Promptly notify the court of any conflict of interest between the minor and the
 - 16 conservator when the conflict arises or becomes known to the conservator and take such
 - 17 action as is required by Code Section 29-3-23;
 - 18 (11) Keep the court informed of the conservator's current address; and
 - 19 (12) Act promptly to terminate the conservatorship when the minor reaches the age of
 - 20 majority.
- 21 (c) A conservator, solely by reason of the conservator-minor relationship, is not personally
- 22 liable for:
- 23 (1) The minor's expenses;
 - 24 (2) Contracts entered into in the conservator's fiduciary capacity;
 - 25 (3) The acts or omissions of the minor;
 - 26 (4) Obligations arising from ownership or control of property of the minor; or
 - 27 (5) Other acts or omissions occurring in the course of the conservatorship.

28 29-3-22.

29 (a) Without court order, the appointment of a conservator shall vest in the conservator the

30 exclusive power to:

- 31 (1) Make reasonable disbursements from the annual income or, if applicable, from the
- 32 annual budget amount that has been approved by the court pursuant to Code Section
- 33 29-3-30 for the support, care, education, health, and welfare of the minor;
- 34 (2) Enter into contracts for labor or services upon such terms as the conservator may
- 35 deem best, but only to the extent that the annual compensation payable under such
- 36 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;

- 1 (4) Bonds or other obligations issued by the United States government and bonds of any
2 corporation created by an act of Congress, the bonds of which are guaranteed by the
3 United States government;
- 4 (5) Interest-bearing deposits in any financial institution located in this state, to the extent
5 the deposits are insured by the Federal Deposit Insurance Corporation, the National
6 Credit Union Share Insurance Fund, or comparable insurance;
- 7 (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of
8 Chapter 3 of Title 8 or issued by any public housing authority or agency of the United
9 States when such bonds or other obligations are secured by a pledge of annual
10 contributions to be paid by the United States government or any agency thereof, as
11 authorized by Code Section 8-3-81;
- 12 (7) Bonds or other obligations issued by a housing authority in connection with a
13 redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section
14 8-4-11;
- 15 (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11
16 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;
- 17 (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of
18 Chapter 7 of Title 31, as authorized by Code Section 31-7-27;
- 19 (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section
20 32-10-30, as authorized by Code Section 32-10-45;
- 21 (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter
22 61 of Title 36 or by any urban redevelopment agency or housing authority vested with
23 urban redevelopment project powers under Code Section 36-61-17, provided that such
24 bonds or other obligations are secured by an agreement between the issuer and the federal
25 government in accordance with Code Section 36-61-13, as authorized by Code Section
26 36-61-13;
- 27 (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of
28 Title 42, as authorized by Code Section 42-3-21;
- 29 (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
30 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
31 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
32 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as
33 authorized by Code Section 53-12-286;
- 34 (14) Real property loans, as authorized by Code Section 53-12-284:
- 35 (A) Which are not in default;
- 36 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
37 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

1 29-3-52; provided, however, that nothing in this Code section shall prohibit the receipt by
2 the conservator of extra compensation for services rendered in respect to other assets or
3 matters involving the estate.

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

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

11 29-3-54.

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

21 ARTICLE 6

22 29-3-60.

23 (a) Each year, within 60 days of the anniversary date of qualification, every conservator
24 shall file with the court a verified return consisting of a statement of the receipts and
25 expenditures of the conservatorship during the year preceding the anniversary date of
26 qualification, an updated inventory consisting of a statement of the assets and liabilities of
27 the estate as of the anniversary date of qualification, an updated plan for managing,
28 expending, and distributing the minor's property, a note or memorandum of any other fact
29 necessary to show the true condition of the estate, and a statement of the current amount
30 of the bond. The conservator shall mail a copy of the return by first-class mail to the surety
31 on the conservator's bond and the minor's guardian, if any. If the minor has no guardian
32 or if the guardian and the conservator are the same person, the conservator shall mail a
33 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.

ARTICLE 7

1
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
12 the procedure as set forth in Code Section 29-3-71, whether or not the conservator has
13 first resigned or been removed and whether or not a successor conservator has been
14 appointed;

15 (4) Reduce or deny compensation to the conservator or impose such other sanction or
16 sanctions as the court deems appropriate; and

17 (5) Issue such other orders which the court deems appropriate under the circumstances
18 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
24 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
30 otherwise.

31 (b) When the minor's assets are misapplied and can be traced into the hands of persons
32 who have notice of the misapplication, 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.

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

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

4 (2) Make the transfer contingent upon the acceptance of the conservatorship or
5 appointment of the conservator in the foreign jurisdiction;

6 (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period
7 of time to permit the foreign court to accept the conservatorship or appoint the
8 conservator in the foreign jurisdiction; or

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

11 Part 4

12 29-3-115.

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

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

26 29-3-116.

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

30 29-3-117.

31 Pending an action brought by a foreign conservator pursuant to Code Section 29-3-116, an
32 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 (1) Must contain an express nomination of the individual who shall serve as guardian and
 2 must be signed or acknowledged by the individual making the nomination in the presence
 3 of two witnesses who sign in the individual's presence; and

4 (2) May be revoked by the individual by obliteration, cancellation, or by a subsequent
 5 inconsistent writing, whether or not witnessed.

6 ARTICLE 2

7 29-4-10.

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

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

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

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

17 (3) The name, address, and county of domicile of the petitioner or petitioners and the
 18 petitioner's relationship to the proposed ward, if any, and, if different from the petitioner,
 19 the name, address, and county of domicile of the person nominated by the petitioner to
 20 serve as guardian and that person's relationship to the proposed ward, if any;

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

23 (5) Any foreseeable limitations on the guardianship;

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

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

30 (A) The spouse of the proposed ward; and

31 (B) All children of the proposed ward; or

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

34 (i) Lineal descendants of the proposed ward;

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

1 (iii) Friends of the proposed ward;

2 (8) If known, the name and address of any individual nominated to serve as guardian by
3 the proposed ward, as described in paragraph (1) of subsection (b) of Code Section
4 29-4-3;

5 (9) If known, the name and address of any individual nominated to serve as guardian by
6 the proposed ward's spouse, adult child, or parent, as described in paragraph (2), (3),
7 or (4) of subsection (b) of Code Section 29-4-3;

8 (10) Whether any nominated guardian has consented or will consent to serve as guardian;

9 (11) If known, whether any nominated guardian is an owner, operator, or employee of
10 a long-term care or other caregiving institution or facility at which the proposed ward is
11 receiving care, and, if so, whether the nominated guardian is related to the proposed ward
12 by blood, marriage, or adoption;

13 (12) Whether an emergency guardian has been appointed for the proposed ward or a
14 petition for the appointment of an emergency guardian has been filed or is being filed;

15 (13) If known, a disclosure of any ownership or other financial interest that would cause
16 any nominated guardian to have a conflict of interest with the proposed ward;

17 (14) A specific listing of any of the additional powers, as described in subsection (b) of
18 Code Section 29-4-23, that are requested by the guardian and a statement of the
19 circumstances that would justify the granting of additional powers;

20 (15) Whether a guardian or conservator has been appointed in another state or whether
21 a petition for the appointment of a guardian or conservator is pending in another state;

22 (16) That to petitioner's knowledge, there has been no petition for guardianship denied
23 or dismissed within two years by any court of this state or, if so, that there has been a
24 significant change in the condition or circumstances of the individual, as shown by the
25 accompanying affidavits or evaluation; and

26 (17) The reason for any omission in the petition for appointment of a guardian in the
27 event full particulars are lacking.

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

34 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
35 examined the proposed ward within 15 days prior to the filing of the petition and that,
36 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

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

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

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

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

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

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

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

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

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

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

19 ARTICLE 3

20 29-4-20.

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

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

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

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

26 (4) Communicate freely and privately with persons other than the guardian, 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 guardianship, including the right to file a petition alleging that the ward is
30 being unjustly denied a right or privilege granted by this chapter and Chapter 5 of this
31 title and including the right to bring an action to modify or terminate the guardianship
32 pursuant to the provisions of Code Sections 29-4-41 and 29-4-42;

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

35 (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.

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

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

6 29-4-43.

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

21 ARTICLE 6

22 29-4-50.

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 serving due to age, illness, infirmity, or other
27 good 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 ward and the guardian or between the guardian and
32 the conservator in respect of the guardian's care of the ward, which disagreement and
33 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 misapplied and can be traced into the hands of persons who
30 have notice of the misapplication, 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.

6 ARTICLE 9

7 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.

25 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

1 (4) Make other arrangements the court deems necessary to effectuate the receipt and
2 acceptance of the guardianship.

3 (e) The denial of a petition for receipt and acceptance of the foreign guardianship does not
4 affect the right of a guardian appointed by a foreign court of competent jurisdiction to
5 petition for guardianship under Code Section 29-4-11.

6 Part 3

7 29-4-90.

8 (a) A guardian may petition the Georgia court that has jurisdiction over the guardianship
9 to transfer the guardianship to a foreign court of competent jurisdiction if the ward has
10 moved permanently to the foreign jurisdiction.

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

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

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

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

17 (c) To facilitate the transfer, the court may order the guardian to file a petition for receipt
18 and acceptance of the guardianship in the foreign jurisdiction.

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

22 29-4-91.

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

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

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

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

30 (4) The name, age, and current address of the ward and the new or proposed address of
31 the ward;

32 (5) The names and addresses of the following, if living:

33 (A) The spouse of the ward; and

34 (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,

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

11 Pending an action brought by a foreign guardian pursuant to Code Section 29-4-96, an
12 authenticated copy of the letters of guardianship shall be filed with the clerk of the court
13 to become a part of the record, if the case is pending in a court of record, or filed with the
14 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.

22 CHAPTER 5

23 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;

- 1 (4) A statement of the reasons the conservatorship is sought, including the facts which
- 2 support the claim of the need for a conservator;
- 3 (5) Any foreseeable limitations on the conservatorship;
- 4 (6) Whether, to the petitioner's knowledge, there exists any power of attorney, trust, or
- 5 other instrument that deals with the management of the property of the proposed ward in
- 6 the event of incapacity and the name and address of any fiduciary or agent named in the
- 7 instrument;
- 8 (7) A description of all known assets, income, other sources of funds, liabilities, and
- 9 expenses of the proposed ward;
- 10 (8) The names and addresses of the following whose whereabouts are known:
 - 11 (A) The spouse of the proposed ward; and
 - 12 (B) All children of the proposed ward; or
 - 13 (C) If there are no adult children, then at least two adults in the following order of
 - 14 priority:
 - 15 (i) Lineal descendants of the proposed ward;
 - 16 (ii) Parents and siblings of the proposed ward; and
 - 17 (iii) Friends of the proposed ward;
- 18 (9) If known, the name and address of any person nominated to serve as conservator by
- 19 the proposed ward, as described in paragraph (1) of subsection (b) of Code Section
- 20 29-5-3;
- 21 (10) If known, the name and address of any person nominated to serve as conservator by
- 22 the proposed ward's spouse, adult child, or parent, as described in paragraphs (2)
- 23 through (4) of subsection (b) of Code Section 29-5-3;
- 24 (11) The name and address of any person nominated to serve as conservator by the
- 25 petitioner;
- 26 (12) Whether any nominated conservator has consented or will consent to serve as
- 27 conservator;
- 28 (13) If known, whether any nominated conservator is an owner, operator, or employee
- 29 of a long-term care or other caregiving institution or facility at which the proposed ward
- 30 is receiving care, and, if so, whether the nominated conservator is related to the proposed
- 31 ward by blood, marriage, or adoption.
- 32 (14) Whether an emergency conservator has been appointed for the proposed ward or a
- 33 petition for the appointment of an emergency conservator has been filed or is being filed;
- 34 (15) If known, a disclosure of any ownership or other financial interest that would cause
- 35 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

1 such a physician, psychologist, or licensed clinical social worker is not available, a
2 physician, psychologist, or licensed clinical social worker authorized to practice in that
3 facility.

4 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
5 examined the proposed ward within 15 days prior to the filing of the petition and that,
6 based on the examination, the proposed ward was determined to lack sufficient capacity
7 to make or communicate significant, responsible decisions concerning the management
8 of the proposed ward's property and that there is an immediate and substantial risk of
9 irreparable waste or dissipation of the proposed ward's property unless an emergency
10 conservator is appointed.

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

15 29-5-15.

16 (a) Upon the filing of a petition for an emergency conservatorship, the court shall review
17 the 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 conservator within the meaning of Code
19 Section 29-5-149.

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 conservator, 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 conservator, 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 29-5-10, 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 2-5-35;

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;

- 1 (4) Bonds or other obligations issued by the United States government and bonds of any
2 corporation created by an act of Congress, the bonds of which are guaranteed by the
3 United States government;
- 4 (5) Interest-bearing deposits in any financial institution located in this state, to the extent
5 the deposits are insured by the Federal Deposit Insurance Corporation, the National
6 Credit Union Share Insurance Fund, or comparable insurance;
- 7 (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of
8 Chapter 3 of Title 8 or issued by any public housing authority or agency of the United
9 States when such bonds or other obligations are secured by a pledge of annual
10 contributions to be paid by the United States government or any agency thereof, as
11 authorized by Code Section 8-3-81;
- 12 (7) Bonds or other obligations issued by a housing authority in connection with a
13 redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section
14 8-4-11;
- 15 (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11
16 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;
- 17 (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of
18 Chapter 7 of Title 31, as authorized by Code Section 31-7-27;
- 19 (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section
20 32-10-30, as authorized by Code Section 32-10-45;
- 21 (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter
22 61 of Title 36 or by any urban redevelopment agency or housing authority vested with
23 urban redevelopment project powers under Code Section 36-61-17, provided that such
24 bonds or other obligations are secured by an agreement between the issuer and the federal
25 government in accordance with Code Section 36-61-13, as authorized by Code Section
26 36-61-13;
- 27 (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of
28 Title 42, as authorized by Code Section 42-3-21;
- 29 (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
30 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
31 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
32 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as
33 authorized by Code Section 53-12-286;
- 34 (14) Real property loans, as authorized by Code Section 53-12-284:
 - 35 (A) Which are not in default;
 - 36 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
37 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

1 29-5-52; provided, however, that nothing in this Code section shall prohibit the receipt by
2 the conservator of extra compensation for services rendered in respect to other assets or
3 matters involving the estate.

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

7 (d) The purpose of this Code section is to enable additional compensation to be paid to a
8 conservator for business management and advisory services to corporations and business
9 enterprises pursuant to a contract without the necessity of petitioning for extra
10 compensation pursuant to Code Section 29-5-52.

11 29-5-54.

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

21 ARTICLE 7

22 29-5-60.

23 (a) Each year, within 60 days of the anniversary date of qualification, every conservator
24 shall file with the court a verified return consisting of a statement of the receipts and
25 expenditures of the conservatorship during the year preceding the anniversary date of
26 qualification, an updated inventory consisting of a statement of the assets and liabilities of
27 the estate as of the anniversary date of qualification, an updated plan for managing,
28 expending, and distributing the ward's property, a note or memorandum of any other fact
29 necessary to show the true condition of the estate, and a statement of the current amount
30 of the bond. The conservator shall mail a copy of the return by first-class mail to the surety
31 on the conservator's bond, the ward, and the ward's guardian, if any.

32 (b) Upon petition of the conservator or upon the court's own motion, the court may change
33 the reporting period from the year immediately preceding the anniversary date of
34 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.

30 ARTICLE 9

31 29-5-80.

32 (a) Upon the termination of the conservatorship or the resignation of the conservator, the
33 conservator may petition the court for an order dismissing the conservator from office. The
34 petition shall include a final return to the court which covers the period from the latest
35 annual return filed by the conservator. The final return shall contain the information

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.

7 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 misapplied and can be traced into the hands of persons who
 21 have notice of the misapplication, 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.

1 (c) After such hearing as the court deems appropriate, the court shall enter an order
2 appointing the successor conservator and requiring that bond be posted in the amount set
3 out in Code Section 29-5-40.

4 29-5-102.

5 Upon the appointment of a successor conservator, the predecessor conservator or the
6 personal representative of a deceased predecessor conservator shall deliver to the successor
7 conservator all property of the ward held by the conservator and shall submit a final return
8 covering the period since the conservator's last annual return. The surety of the
9 predecessor conservator shall be liable for all acts of the conservator in relation to the
10 ward's property up to the time of the receipt of all of the ward's property by the successor
11 conservator.

12 ARTICLE 12

13 29-5-110.

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

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

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

27 (d) Pending any appeal, the superior court or a probate court that is described in
28 paragraph (2) of Code Section 15-9-120 may appoint an emergency conservator with
29 powers and duties as are described in Code Section 29-5-16; provided, however, that such
30 emergency conservator may be appointed only upon the filing of an affidavit of a physician
31 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
32 practice under Chapter 39 of Title 43, or a licensed clinical social worker setting forth the
33 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.

3 ARTICLE 13

4 Part 1

5 29-5-120.

6 (a) A conservator may petition to remove the conservatorship to the jurisdiction of the
7 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 (1) Delay the effective date of the receipt and acceptance for a reasonable period of time;
- 2 (2) Make the receipt and acceptance contingent upon the release of the conservatorship
- 3 or the termination of the conservatorship and the discharge of the conservator in the
- 4 foreign jurisdiction;
- 5 (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period
- 6 of time to permit the foreign court to release the conservatorship or to terminate the
- 7 conservatorship and discharge the conservator in the foreign jurisdiction; or
- 8 (4) Make other arrangements the court deems necessary to effectuate the receipt and
- 9 acceptance of the conservatorship.
- 10 (f) The denial of a petition for receipt and acceptance of the conservatorship does not
- 11 affect the right of a conservator appointed by a foreign court of competent jurisdiction to
- 12 petition for conservatorship under Code Section 29-5-10.

13 Part 3

14 29-5-130.

15 (a) A conservator may petition the Georgia court which has jurisdiction over the

16 conservatorship to transfer the conservatorship to a foreign court of competent jurisdiction

17 if the ward has moved permanently to the foreign jurisdiction.

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

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

20 (2) The conservator notifies the court that the ward will move or has moved permanently

21 to the foreign jurisdiction; or

22 (3) A foreign court of competent jurisdiction notifies the court of the filing of a petition

23 for conservatorship for the ward in the foreign jurisdiction.

24 (c) To facilitate the transfer of the conservatorship the court may order the conservator to

25 file a petition for receipt and acceptance of the conservatorship in the foreign jurisdiction.

26 (d) If the foreign jurisdiction does not have a procedure for receiving and accepting a

27 foreign conservatorship, the court may order the conservator to file a petition for

28 conservatorship in the foreign jurisdiction.

29 29-5-131.

30 The petition to transfer a conservatorship to a foreign jurisdiction shall include the

31 following:

32 (1) The name and address of the foreign court to which the conservatorship shall be

33 transferred and an authenticated copy of the petition for receipt and acceptance of a

34 foreign conservatorship if previously filed in the foreign court;

- 1 (2) A listing of any other conservatorship petitions that are pending in any jurisdiction
2 and the names and addresses of the courts where the petitions have been filed;
- 3 (3) The petitioner's name, address, and county of domicile;
- 4 (4) The name, age, and current address of the ward and the new or proposed address of
5 the ward;
- 6 (5) The names and addresses of the following, if living:
- 7 (A) The spouse of the ward; and
- 8 (B) All children of the ward; or
- 9 (C) If there are no adult children, then at least two adults in the following order of
10 priority:
- 11 (i) Lineal descendants of the ward;
- 12 (ii) Parents and siblings of the ward; and
- 13 (iii) Friends of the ward;
- 14 (6) The name and address of the person responsible for the care and custody of the ward,
15 if other than the petitioner, and of any other conservator currently serving;
- 16 (7) The name and address of the ward's guardian, if any;
- 17 (8) The name and address of the surety on the conservator's bond;
- 18 (9) The name and address of any legal representative, other than the petitioner, including
19 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for
20 the ward;
- 21 (10) The reason for moving the ward; and
- 22 (11) The reason the transfer of the conservatorship is in the ward's best interest.
- 23 29-5-132.
- 24 (a) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction
25 shall be served personally on the ward not less than ten days prior to the date set for the
26 hearing. The notice shall state:
- 27 (1) The date that the hearing shall be held; and
- 28 (2) That the ward has the right to independent legal counsel and that the court shall
29 appoint legal counsel for the ward unless the ward has retained counsel or legal counsel
30 has been appointed by the foreign court to represent the ward in the receipt and
31 acceptance of the guardianship.
- 32 (b) Notice and a copy of the petition to transfer the conservatorship shall be provided to
33 the foreign court to which the conservatorship is to be transferred.
- 34 (c) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction
35 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;

1 (3) Recognize concurrent jurisdiction over the conservatorship for a reasonable period
2 of time to permit the foreign court to accept the conservatorship or appoint the
3 conservator in the foreign jurisdiction; or

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

6 Part 4

7 29-5-135.

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

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

21 29-5-136.

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

25 29-5-137.

26 Pending an action brought by a foreign conservator pursuant to Code Section 29-5-136, an
27 authenticated copy of the letters of conservatorship shall be filed with the clerk of the court
28 to become a part of the record, if the case is pending in a court of record, or filed with the
29 papers, if the action is a summary proceeding.

30 29-5-138.

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

- 1 (1) Receiving payment of money or taking delivery of personal property in this state
2 belonging to the ward; or
3 (2) Doing any act as a conservator in this state that would have given this state
4 jurisdiction over the actor as an individual.

5 29-5-139.

6 Any resident of this state who is interested as a creditor, heir, or will beneficiary of a ward
7 whom a foreign conservator represents may apply to the proper court to compel the foreign
8 conservator to protect that interest according to equity and good conscience before selling
9 the ward's assets or removing the ward's assets beyond the limits of this state.

10 29-5-140.

11 (a) A person who is indebted to or has possession of tangible or intangible property of a
12 ward may pay the debt or deliver the property to a foreign conservator of the ward.
13 Payment of the debt or delivery of the property may be made upon proof of appointment
14 and proof that the foreign conservator has been appointed and is entitled to debt payment
15 or to receive delivery of the property.

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

19 CHAPTER 6

20 29-6-1.

21 The judges of the probate courts are, in their discretion, made the legal custodians and
22 distributors of all moneys up to \$2,500.00 due and owing to any minor or incapacitated
23 adult who is in need of a conservator but who has no legal and qualified conservator; and
24 the judges are authorized to receive and collect all such moneys arising from insurance
25 policies, benefit societies, legacies, inheritances, or any other source. Without any
26 appointment or qualifying order, the judge is authorized to take charge of the moneys or
27 funds of the minor or adult by virtue of the judge's office as judge of the probate court in
28 the county of residence of the minor or adult; provided, however, that notice shall be given
29 to the living parents of a minor, if any, or the guardian of an adult, if any. The certificate
30 of the judge that no legally qualified conservator has been appointed shall be conclusive
31 and shall be sufficient authority to justify any debtor in making payment on claims made
32 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.

5 Judges of the probate courts shall be held accountable on their official bonds for the faithful
6 discharge of their duties pursuant to Code Section 29-6-1 as custodians and for the proper
7 distribution of funds coming into their hands as such custodians. It is the judge's
8 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.

18 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

1 security, the court shall have the authority to fix the amount of the bond and shall cite the
2 county guardian to appear and show cause, if any, why the additional bond or additional
3 security should not be given.

4 (b) If upon the hearing the county guardian fails to show good cause why the additional
5 bond or additional security should not be given, the court shall issue an order fixing the
6 amount of the bond and direct the county guardian to give additional security on or before
7 a certain date, which date shall be within 30 days of the date of the order.

8 (c) Should the county guardian fail, refuse, or neglect to give additional bond or additional
9 security on or before the date fixed in the order of the court and fail to show good cause
10 why further time should be allowed, it shall be the duty of the court to remove the county
11 guardian and to appoint another county guardian for the unexpired term of office. The
12 order of removal shall be recorded as provided for the order of appointment.

13 29-8-5.

14 The court may, for good cause shown, as provided in Code Section 29-5-14, revoke the
15 letters of guardianship or conservatorship of the county guardian, require additional
16 security on the county guardian's bond, or issue any other order as is expedient and
17 necessary for the good of any particular conservatorship in the hands of the county
18 guardian.

19 CHAPTER 9

20 29-9-1.

21 Except as otherwise specifically provided by law, the provisions of this chapter shall apply
22 to any proceeding in the court that arises under this title. Compliance with the provisions
23 of this chapter shall be deemed to be sufficient for proceedings in the court arising under
24 this title except as otherwise provided in Chapter 11 of Title 9 and Chapter 9 of Title 15.

25 29-9-2.

26 (a) The court in its discretion may at any time appoint a guardian ad litem to represent the
27 interests of a minor, a proposed ward, or a ward in proceedings relating to the guardianship
28 or conservatorship of that individual. However, the appointment of a guardian ad litem
29 does not supersede any specific requirement that individual be served by personal service
30 and the guardian ad litem may not waive personal service for that individual.

31 (b) Except as provided in subsection (a) of this Code section, when a person who is
32 entitled to notice under any provision of this title is not sui juris, the interests of that person
33 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
12 be 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."

25 **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."

7 **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.

12 Probate courts subject to this article shall have concurrent jurisdiction with superior courts
 13 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."

28 **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.

Title 53 of the Official Code of Georgia Annotated, relating to wills, is amended by striking subsection (b) of Code Section 53-6-35 of the Revised Probate Code of 1998, relating to appointment of county administrators, and inserting in lieu thereof the following:

"(b) In all counties of this state the probate court is authorized to appoint, in the same manner as the county administrator is appointed, one or more additional county administrators who shall have the same powers, duties, and authority and be subject to the same laws, including Chapter 3 8 of Title 29, relating to county guardians, as county administrators."

SECTION 9.

Said title is further amended by striking Code Section 53-6-42 of the Revised Probate Code of 1998, relating to the power of the court to revoke letters of administration and require additional security, and inserting in lieu thereof the following:

"53-6-42.

The probate court may, for good cause shown, as provided in Code Sections ~~29-4-14,~~ ~~29-4-15~~ 29-3-82, 29-5-92, and 53-7-14, revoke the letters of administration of the county administrator or letters of guardianship of the county administrator, require additional security on the county administrator's bond, or pass such other order as is expedient and necessary for the good of any particular estate in the hands of any county administrator."

SECTION 10.

Said title is further amended by striking subsection (b) Code Section 53-6-90 of the Pre-1998 Probate Code, relating to the appointment of county administrator and assistant county administrators, and inserting in lieu thereof the following:

"(b) In all counties of this state the judge of the probate court is authorized to appoint, in the same manner as the county administrator is appointed, one or more assistant county administrators who shall have the same powers, duties, and authority and be subject to the same laws, including Chapter 3 8 of Title 29, relating to county guardians, as the county administrators."

SECTION 11.

Said title is further amended by striking Code Section 53-8-29 of the Pre-1998 Probate Code, relating to the sale of real property which is held pending arrival of beneficiaries at age of majority or subject to future contingency for payment of debts, and inserting in lieu thereof 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.