

The House Committee on Judiciary offers the following substitute to HB 229:

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 provide for specific elements to be included in an evaluation of a proposed
 19 ward; to amend Titles 15, 16, 24, 30, 31, and 53 of the Official Code of Georgia Annotated,
 20 relating to courts, crimes and offenses, evidence, handicapped persons, health, and wills,
 21 respectively, so as to change cross-references; to amend Code Section 50-18-72 of the
 22 Official Code of Georgia Annotated, relating to when public disclosure shall not be required
 23 under Article 4 of Chapter 18 of Title 50, so as to provide that disclosure is not required for
 24 certain records maintained in the probate court; to provide for related matters; to provide for
 25 an effective date and applicability; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 229 (SUB)

- 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 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 testamentary guardian for the parent's minor child.

(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 terminate on the date upon which the earliest of the
 7 following occurs: the minor reaches age 18, the minor is adopted, the minor is
 8 emancipated, the minor dies, the temporary guardian dies, letters of guardianship are issued
 9 to a permanent or testamentary guardian, or a court order terminating the temporary
 10 guardianship is entered. Proof of adoption, death, or emancipation shall be filed with the
 11 court and the court may order a hearing in an appropriate case.

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

21 Part 4

22 29-2-9.

23 As used in this part, the term:

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

25 A designating individual may only be:

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

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

32 (2) 'Health care professional' means a person licensed to practice medicine under Chapter
 33 34 of Title 43 or a person licensed as a registered professional nurse under Chapter 26 of

1 Title 43 and authorized by the Georgia Board of Nursing to practice as a nurse
2 practitioner.

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

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

9 29-2-10.

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

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

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

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

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

24 29-2-11.

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

30 (b) A standby guardian designation shall set forth the name, address, and county of
31 domicile of the designating individual and of the standby guardian; the name, address,
32 county of domicile, and date of birth of the minor; and the circumstances which define the
33 parent or guardian as a designating individual. With regard to a parent of the minor who
34 is not the designating individual, the designation shall state, to the extent known, that
35 parent's name and address and if that parent is deceased, has his or her parental rights

1 terminated, and whether that parent cannot be located. The designation shall include a
2 statement of consent, signed by the standby guardian, to serve in such capacity.

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

5 DESIGNATION OF STANDBY GUARDIAN

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

10 (Check and complete the ones which apply)

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

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

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

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

24 NAME	ADDRESS (include county of	DATE OF BIRTH
	domicile)	
25 _____	_____	_____
26 _____	_____	_____

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

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

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

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

14 Finally, I understand that this standby guardianship will automatically end 120 days after
15 the health care professional makes the determination that I am unable to care for the
16 minor(s), unless the standby guardian has filed a petition for guardianship of the minor.

17 If the standby guardian files such a petition, the standby guardianship will remain in
18 effect, unless otherwise revoked, until the judge rules on the petition. In considering such
19 a petition for guardianship, I understand that the judge will give preference for the
20 appointment to the individual whom I name as the standby guardian in this document.

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

23 _____
24 (Designating individual signs here)
25 (Print name of designating individual)

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

29 _____
30 (Signature of first witness) (Print first witness's address)

31 _____
32 (Signature of second witness) (Print second witness's address)

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

3 I, _____ (insert name of parent other than the one designating the
4 standby guardian), whose address is _____ (insert address), am the
5 parent of the above named minor(s). I understand that by this form, an individual is being
6 designated to serve as a standby guardian of my child (or children). I understand that this
7 standby guardian will have all the rights, duties, and responsibilities under Georgia law
8 of a guardian of the person of a minor who has been appointed by a court.

9 I further understand that I may object to this designation. Knowing this, I consent to the
10 designation of _____ (insert name of standby guardian).

11 This ____ day of _____, ____.

12 _____

13 (Other parent signs here)

14 (Print name of other parent)

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

18 _____

19 (Signature of first witness)

(Print first witness's address)

20 _____

21 (Signature of second witness)

(Print second witness's address)

22 (8) ACCEPTANCE OF DESIGNATION BY STANDBY GUARDIAN:

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

33 This ____ day of _____, ____.

1

2

3

(Standby guardian signs here)

(Print name of standby guardian)

4

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6

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

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8

(Signature of first witness)

(Print first witness's address)

9

10

(Signature of second witness)

(Print second witness's address)

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29-2-12.

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

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

23

29-2-13.

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

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

31

32

(c) If the designating individual dies prior to the entering of an order on a petition for guardianship of the minor, as contemplated by subsection (a) of this Code section, the

1 standby guardianship shall be terminated. If the designating individual dies subsequent to
 2 the entering of an order on such a petition, the guardianship created pursuant to that order
 3 shall terminate in favor of any testamentary designation of a guardian of the minor or, if
 4 there is no testamentary designation, to an order on a petition for guardianship brought
 5 thereafter and subject to Code Section 29-2-17.

6 Part 5

7 29-2-14.

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

14 29-2-15

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

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

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

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

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

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

33 (2) The notice shall advise the biological father that he will lose all rights to object to the
 34 appointment of a permanent guardian for the minor if he does not file an objection with

1 the court within 14 days of the notice and file a petition to legitimate the minor within 30
2 days of the hearing on his objection. The notice shall include the name of the individual
3 who will be the minor's permanent guardian if the petition is granted.

4 (c) If the biological father files a timely objection to the petition, the court shall hear the
5 objection and, if the biological father makes a request, shall continue the hearing for 30
6 days to allow the father to file a petition to legitimate the minor pursuant to Code Section
7 19-7-22. If the biological father's petition for legitimation of the minor is granted, the
8 petition for the appointment of a permanent guardian for the minor shall be dismissed.

9 (d) If the biological father does not file a petition for legitimation within 30 days or files
10 a petition that is subsequently dismissed for failure to prosecute or files a petition and the
11 action is subsequently concluded without a court order declaring that he is the father of the
12 minor, the biological father shall have no further rights to receive notice of or object to the
13 appointment of a permanent guardian for the minor.

14 29-2-16.

15 (a) The court shall appoint as permanent guardian that individual who will serve the best
16 interest of the minor, considering the following order of preferences:

17 (1) The adult who is the preference of the minor if the minor is 14 years of age or older;

18 (2) The nearest adult relative of the minor determined according to Code Section 53-2-1
19 of the Revised Probate Code of 1998;

20 (3) Other adult relatives of the minor;

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

22 (5) An adult who was designated in writing by either of the minor's natural guardians in
23 a notarized document or document witnessed by two or more persons; or

24 (6) An adult who has provided care or support for the minor or with whom the minor has
25 lived.

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

30 29-2-17.

31 (a) Any interested person may file a petition for the appointment of a permanent guardian
32 of a minor.

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

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

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

- 1 (3) The name, address, and county of domicile of the petitioner and the petitioner's
 2 relationship to the minor, if any, and, if different from the petitioner, the name, address,
 3 and county of domicile of the individual nominated by the petitioner to serve as guardian
 4 and that individual's relationship to the minor, if any;
- 5 (4) A statement that the minor has no natural guardian, testamentary guardian, or
 6 permanent guardian;
- 7 (5) A statement of whether the child was born out of wedlock and, if so, the name and
 8 address of the biological father, if known;
- 9 (6) Whether, to the petitioner's knowledge, there exists any notarized or witnessed
 10 document made by a parent of the minor that deals with the guardianship of the minor
 11 and the name and address of any designee named in the document;
- 12 (7) In addition to the petitioner and the nominated guardian, the names and addresses of
 13 the following relatives of the minor whose whereabouts are known:
- 14 (A) The adult siblings of the minor; provided, however, that not more than three adult
 15 siblings need to be listed;
- 16 (B) 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 listed;
- 18 (C) If there is no grandparent of the minor, any three of the nearest adult relatives of
 19 the minor determined according to Code Section 53-2-1 of the Revised Probate Code
 20 of 1998;
- 21 (8) Whether a temporary guardian has been appointed for the minor or a petition for the
 22 appointment of a temporary guardian has been filed or is being filed; and
- 23 (9) The reason for any omission in the petition for appointment of a permanent guardian
 24 for a minor in the event full particulars are lacking.
- 25 (c) In addition to the notice required by Code Section 29-2-15, notice of the petition for
 26 appointment of a permanent guardian for a minor shall be given to any designee named in
 27 paragraph (6) of subsection (b) of this Code section and the individuals named in
 28 paragraph (7) of subsection (b) of this Code section. The notice shall be by personal
 29 service if the individual resides in this state at a known address; by first-class mail if the
 30 individual resides outside this state at a known address; or by publication for two weeks
 31 in the official county legal organ for the county in which the petition is filed if no address
 32 is known. The notice shall state that the individual is entitled to object either to the
 33 establishment of a permanent guardianship or to the selection of the petitioner as permanent
 34 guardian, or both. The notice shall require that any objection be filed in writing with the
 35 court within ten days of the personal service, within 14 days of the mailing of the notice,
 36 or within ten days of the date of the second publication of the notice.

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

3 29-2-18.

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

7 29-2-19.

8 An order granting permanent guardianship shall specify:

9 (1) The name of the permanent guardian and the basis for the selection of the guardian;

10 (2) A specific listing of any of the additional powers which are granted to the permanent
11 guardian as provided in subsection (b) of Code Section 29-2-22;

12 (3) If only a guardian is appointed or if the guardian and the conservator appointed are
13 not the same person, the reasonable sums of property to be provided the guardian to
14 provide adequately for the minor's support, care, education, health, and welfare are
15 subject to modification by subsequent order of the court; and

16 (4) Such other and further provisions of the guardianship as the court shall determine to
17 be in the best interest of the minor.

18 **ARTICLE 2**

19 29-2-20.

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

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

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

23 (3) Have the his or her property utilized as necessary for his or her support, care,
24 education, health, and welfare; and

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

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

29 29-2-21.

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

- 1 (b) A guardian shall:
- 2 (1) Respect the rights and dignity of the minor;
- 3 (2) Arrange for the support, care, education, health, and welfare of the minor considering
- 4 the minor's available resources;
- 5 (3) Take reasonable care of the minor's personal effects;
- 6 (4) Expend money of the minor that has been received by the guardian for the minor's
- 7 current needs for support, care, education, health, and welfare;
- 8 (5) Conserve for the minor's future needs any excess money of the minor received by the
- 9 guardian; provided, however, that if a conservator has been appointed for the minor, the
- 10 guardian shall pay to the conservator, at least quarterly, money to be conserved for the
- 11 minor's future needs;
- 12 (6) If necessary, petition to have a conservator appointed;
- 13 (7) Endeavor to cooperate with the conservator, if any;
- 14 (8) Within 60 days after appointment and within 60 days after each anniversary date of
- 15 appointment, file with the court and provide to the conservator, if any, a personal status
- 16 report concerning the minor, which shall include:
- 17 (A) A description of the minor's general condition, changes since the last report, and
- 18 the minor's needs;
- 19 (B) All addresses of the minor during the reporting period and the living arrangements
- 20 of the minor for all addresses; and
- 21 (C) Recommendations for any alteration in the guardianship order;
- 22 (9) Promptly notify the court of any conflict of interest between the minor and the
- 23 guardian when the conflict arises or becomes known to the guardian and take such action
- 24 as is required by Code Section 29-2-23;
- 25 (10) Keep the court informed of the guardian's current address; and
- 26 (11) Act promptly to terminate the guardianship when the minor dies, reaches age 18,
- 27 is adopted, or is emancipated.
- 28 (c) A guardian, solely by reason of the guardian-minor relationship, is not personally liable
- 29 for:
- 30 (1) The minor's expenses;
- 31 (2) Contracts entered into in the guardian's fiduciary capacity;
- 32 (3) The acts or omissions of the minor;
- 33 (4) Obligations arising from ownership or control of property of the minor; or
- 34 (5) Other acts or omissions occurring in the course of the guardianship.

1 29-2-22.

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

4 (1) Take custody of the person of the minor and establish the minor's place of dwelling
5 within this state;

6 (2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any
7 consent or approval that may be necessary for medical or other professional care, counsel,
8 treatment, or services for the minor;

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

12 (4) Execute a surrender of rights to enable the adoption of the minor pursuant to the
13 provisions of Chapter 8 of Title 19 or the adoption laws of any other state; and

14 (5) Exercise those other powers reasonably necessary to provide adequately for the
15 support, care, education, health, and welfare of the minor.

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

20 (1) To establish the minor's place of dwelling outside this state;

21 (2) To change the jurisdiction of the guardianship to another county in this state that is
22 the county of the minor's place of dwelling, pursuant to Code Section 29-2-60;

23 (3) To change the domicile of the minor to the minor's or the guardian's place of
24 dwelling, in the determination of which the court shall consider the tax ramifications and
25 the succession and inheritance rights of the minor and other parties;

26 (4) To consent to the marriage of the minor;

27 (5) To receive reasonable compensation from the estate of the minor for services
28 rendered to the minor; and

29 (6) If there is no conservator, to disclaim or renounce any property or interest in property
30 of the minor in accordance with the provisions of Code Section 53-1-20 of the Revised
31 Probate Code of 1998.

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

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

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

4 29-2-23.

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

9 29-2-24.

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

17 29-2-25.

18 (a) A guardian may be required to give bond with good and sufficient security in such
19 amount as the court may determine from time to time.

20 (b) The clerk of the court shall record bonds in books kept for that purpose and shall retain
21 custody of the bonds.

22 (c) If a guardian is required to give bond and has given as security one or more licensed
23 commercial sureties authorized to transact business in this state the bond premium may be
24 paid as part of the cost of administration.

25 ARTICLE 3

26 29-2-30.

27 (a) The guardianship of a minor shall terminate on the date upon which the earliest of the
28 following occurs: the minor reaches age 18, the minor is adopted, the minor is
29 emancipated, the minor dies, or a court order terminating the guardianship is entered. Proof
30 of adoption, death, or emancipation shall be filed with the court and the court in its
31 discretion may order a hearing.

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

6 (c) The death of the minor automatically terminates the guardianship, except as otherwise
7 provided in Code Section 29-2-31.

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

12 29-2-31.

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

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

28 ARTICLE 4

29 29-2-40.

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

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

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

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

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

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

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

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

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

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

22 (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the
 23 minor determined according to Code Section 53-2-1 of the Revised Probate Code of
 24 1998.

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

31 29-2-41.

32 (a) In the event of the death of a guardian, and upon the petition of an interested person or
 33 upon the court's own motion, the court shall appoint a successor guardian. The court shall
 34 notify the minor and any guardian ad litem appointed for the minor by personal service.
 35 Notice shall be given by first-class mail to the conservator of the minor, if any, to the
 36 personal representative of the deceased guardian, if any, and, in the following order of

1 preference, to the following relatives of the minor whose whereabouts are known and who
2 must be persons other than the proposed successor guardian:

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

5 (2) 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; or

7 (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the
8 minor determined according to Code Section 53-2-1 of the Revised Probate Code of
9 1998.

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

14 29-2-42.

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

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

21 (1) Revoke or suspend the letters of guardianship;

22 (2) Require additional security;

23 (3) Reduce or deny compensation to the guardian or impose such other sanction or
24 sanctions as the court deems appropriate; and

25 (4) Issue any other order as in the court's judgment is appropriate under the
26 circumstances of the case.

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

30 29-2-43.

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

34 (1) To recover damages;

35 (2) To compel performance of the guardian's duties;

1 (3) To enjoin the commission of a breach of fiduciary duty; or

2 (4) To compel the redress of a breach of fiduciary duty by payment of money or
3 otherwise.

4 (b) When the minor's assets are misapplied and can be traced into the hands of persons
5 who have notice of the misapplication, a trust shall attach to the assets.

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

8 29-2-44.

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

12 ARTICLE 5

13 29-2-50.

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

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

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

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

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

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

1 29-2-51.

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

6 (b) In the event of the resignation or death of the guardian, notice of the proceeding for
7 appointment of a successor guardian shall be given as provided in Code Sections 29-2-40
8 and 29-2-41. In all other cases, notice of the proceeding for appointment of a successor
9 guardian shall be served personally on the minor and a guardian ad litem appointed for the
10 minor. Notice shall be given by first-class mail to the conservator of the minor, if any, and,
11 in the following order of preference, to the following relatives of the minor whose
12 whereabouts are known and who must be persons other than the proposed successor
13 guardian:

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

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

18 (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the
19 minor determined according to Code Section 53-2-1 of the Revised Probate Code of
20 1998.

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

23 29-2-52.

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

28 ARTICLE 6

29 Part 1

30 29-2-60.

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

33 (b) Upon the filing of a petition to remove the guardianship to another county in this state,
34 the court shall appoint a guardian ad litem for the minor. The court of the county in which

1 the guardian was appointed shall grant the petition for removal only if the court determines
2 that the removal is in the best interest of the minor.

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

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

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

13 Part 2

14 29-2-65.

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

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

22 (c) The petition shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 29-2-66.

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

11 (1) State that the minor has a right to a hearing on the petition;

12 (2) Inform the minor of the procedure to exercise the minor's right to a hearing; and

13 (3) State that the minor has the right to independent legal counsel and that the court shall
14 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel
15 has been appointed by the foreign court to represent the minor in the transfer of the
16 guardianship.

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

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

20 (1) Certify whether:

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

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

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

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

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

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

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

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

36 (E) The order to transfer the guardianship.

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

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

8 (e) The court may waive the notice requirements of subsections (a) through (c) of this
9 Code section if it finds that:

10 (1) The guardian has filed a petition in the foreign court for transfer and release of the
11 guardianship to this state;

12 (2) Notice was given to the minor and all interested persons in conjunction with the
13 petition for transfer and release of the guardianship;

14 (3) The petitioner provides the court with an authenticated copy of the petition for
15 transfer and release of the guardianship filed with the foreign court and proof that service
16 was made on the minor not more than 90 days from the date the petition for receipt and
17 acceptance of the guardianship is filed in the court; and

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

20 29-2-67.

21 (a) On the court's own motion or upon timely motion by the minor or by any interested
22 person, the court shall hold a hearing to consider the petition for receipt and acceptance of
23 the foreign guardian.

24 (b) If any interested person challenges the validity of the foreign guardianship or the
25 authority of the foreign court to appoint the guardian, the court may stay its proceeding
26 while the petitioner is afforded the opportunity to have the foreign court hear the challenge
27 and determine its merits.

28 29-2-68.

29 (a) The court may grant a petition for receipt and acceptance of a foreign guardianship
30 provided the court finds that:

31 (1) The guardian is presently in good standing with the foreign court; and

32 (2) The transfer of the guardianship from the foreign jurisdiction is in the best interest
33 of the minor.

1 (b) Subject to subsection (c) of this Code section, at all times following the entry of the
2 order accepting the guardianship the laws of the State of Georgia shall apply to the
3 guardianship.

4 (c) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of
5 the guardianship, the court is authorized to:

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

7 (2) Make the receipt and acceptance contingent upon the release of the guardianship or
8 the termination of the guardianship and the discharge of the guardian in the foreign
9 jurisdiction;

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

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

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

18 Part 3

19 29-2-69.

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

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

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

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

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

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

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

1 29-2-70.

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

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

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

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

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

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

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

15 (7) The name and address of any legal representative, other than the petitioner, including
16 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for
17 the minor;

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

19 (9) The reason for moving the minor; and

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

21 29-2-71.

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

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

26 (2) That the minor has the right to independent legal counsel and that the court shall
27 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel
28 has been appointed by the foreign court to represent the minor in the receipt and
29 acceptance of the guardianship.

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

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

1 29-2-72.

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

4 29-2-73.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 4

1
2 29-2-74.

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

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

16 29-2-75.

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

19 29-2-76.

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

24 29-2-77.

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

27 (1) In this state receiving payment of money or taking delivery of personal property
28 belonging to the minor; or

29 (2) Doing any act as a guardian in this state that would have given this state jurisdiction
30 over the actor as an individual.

CHAPTER 3

ARTICLE 1

29-3-1.

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

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

(c) Upon receiving an affidavit:

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

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

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

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

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

29-3-2.

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

1 29-3-3.

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

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

8 (c) Whether or not legal action has been initiated, if the proposed gross settlement of a
9 minor's claim is \$15,000.00 or less, the natural guardian of the minor may compromise the
10 claim without becoming the conservator of the minor and without court approval. The
11 natural guardian must qualify as the conservator of the minor in order to receive payment
12 of the settlement if necessary to comply with Code Section 29-3-1.

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

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

20 (f) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but the
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 \$15,000.00 or less, the natural guardian may seek approval of the proposed settlement
27 from the appropriate court without becoming the conservator of the minor. The natural
28 guardian must qualify as the conservator of the minor in order to receive payment of the
29 settlement if necessary to comply with Code Section 29-3-1.

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

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

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

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

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

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

10 29-3-4.

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

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

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

16 29-3-5.

17 (a) Every parent, by will, may nominate a testamentary conservator for the parent's minor
18 child for the property that passes to the minors under the parent's will.

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

22 (c) A testamentary conservator shall not be required to give bond and security on the
23 property that passes to the minor under the parent's will, except in the case of waste
24 committed or apprehended, in which case the court may require a bond and security. If the
25 testamentary conservator fails to give bond as required, the court may dismiss the
26 conservator and appoint another conservator. If property accrues or has accrued to the
27 minor from sources other than the parent's will, the court may appoint a different
28 conservator for such property or may appoint the testamentary conservator for such
29 property and require the testamentary conservator to give bond for the property thus
30 accruing.

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

1 29-3-6.

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

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

7 29-3-7.

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

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

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

13 (3) Other adult relatives of the minor;

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

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

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

19 (7) The county guardian.

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

24 29-3-8.

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

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

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

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

29 (3) The name, address, and county of domicile of the petitioner and the petitioner's
30 relationship to the minor, if any, and, if different from the petitioner, the name, address,
31 and county of domicile of the person nominated by the petitioner to serve as conservator
32 and that person's relationship to the minor, if any;

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

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

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

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

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

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

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

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

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

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

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

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

1 29-3-9.

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

5 29-3-10.

6 (a) An order granting conservatorship shall specify:

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

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

10 (3) If a guardian is also appointed and if the guardian and conservator are not the same
11 person, the reasonable sums or property to be provided to the guardian to provide
12 adequately for the minor's support, care, education, health, and welfare, subject to
13 modification by subsequent order of the court;

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

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

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

27 **ARTICLE 2**

28 29-3-20.

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

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

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

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

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

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

5 29-3-21.

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

10 (b) A conservator shall:

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

12 (2) Be reasonably accessible to the minor and maintain regular communication with the
13 minor;

14 (3) Petition to have a guardian appointed if necessary;

15 (4) Endeavor to cooperate with the guardian, if any;

16 (5) Provide for the support, care, education, health, and welfare of the minor, considering
17 available resources;

18 (6) Give such bond as required by Code Section 29-3-40;

19 (7) Within two months of appointment, file with the court and provide to the guardian,
20 if any, an inventory of the minor's property and a plan for administering the property,
21 pursuant to the provisions of Code Section 29-3-30;

22 (8) Take into account any estate plan of the minor known to the conservator in the
23 administration of the conservatorship;

24 (9) Keep accurate records including adequate supporting data and file annual returns as
25 required by Code Section 29-3-60;

26 (10) Promptly notify the court of any conflict of interest between the minor and the
27 conservator when the conflict arises or becomes known to the conservator and take such
28 action as is required by Code Section 29-3-23;

29 (11) Keep the court informed of the conservator's current address; and

30 (12) Act promptly to terminate the conservatorship when the minor reaches the age of
31 majority.

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

34 (1) The minor's expenses;

35 (2) Contracts entered into in the conservator's fiduciary capacity;

36 (3) The acts or omissions of the minor;

1 (4) Obligations arising from ownership or control of property of the minor; or

2 (5) Other acts or omissions occurring in the course of the conservatorship.

3 29-3-22.

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

6 (1) Make reasonable disbursements from the annual income or, if applicable, from the
7 annual budget amount that has been approved by the court pursuant to Code Section
8 29-3-30 for the support, care, education, health, and welfare of the minor;

9 (2) Enter into contracts for labor or services upon such terms as the conservator may
10 deem best, but only to the extent that the annual compensation payable under such
11 contracts when combined with other anticipated disbursements does not exceed the
12 amount of the annual income or, if applicable, the annual budget amount which has been
13 approved by the court pursuant to Code Section 29-3-30;

14 (3) Borrow money for one year or less and bind the minor or the minor's property, but
15 only if the amount of the annual payments when combined with other anticipated
16 disbursements does not exceed the amount of the annual income or, if applicable, the
17 annual budget amount that has been approved by the court pursuant to Code Section
18 29-3-30 and only if done for purposes of paying the minor's debts, providing for the
19 support, care, education, health, or welfare of the minor, or repairing the minor's dwelling
20 place;

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

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

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

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

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

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

34 (10) Invest the minor's property pursuant to the provisions of Code Sections 29-3-32 and
35 29-3-33;

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

3 (12) Compromise any contested or doubtful claim for or against the minor if the
4 proposed gross settlement as defined in Code Section 29-3-3 is in the amount of
5 \$15,000.00 or less; and

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

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

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

13 (B) Sell, rent, lease, exchange, or otherwise dispose of any or all of the minor's real or
14 personal property without complying with the provisions of Code Section 29-3-35,
15 other than the provisions for additional bond set forth in subsection (e) of Code Section
16 2-3-35; or

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

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

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

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

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

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

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

- 1 (1) To make disbursements that exceed by no more than a specific amount the annual
2 income or, if applicable, the annual budget amount which has been approved by the court
3 pursuant to Code Section 29-3-30 for the support, care, education, health, and welfare of
4 the minor;
 - 5 (2) To enter into contracts for labor or services for which the compensation payable
6 under the contracts when combined with other disbursements from the estate exceeds the
7 annual income or, if applicable, the annual budget amount which has been approved by
8 the court pursuant to Code Section 29-3-30;
 - 9 (3) To make specific investments of the minor's property that do not comply with the
10 provisions of Code Section 29-3-32, pursuant to the provisions of Code Section 29-3-34;
 - 11 (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the minor's
12 real or personal property without complying with the provisions of Code Section 29-3-35
13 other than the provisions for additional bond set forth in subsection (e) of Code Section
14 2-3-35;
 - 15 (5) Pursuant to the provisions of Code Section 29-3-3, to compromise a contested or
16 doubtful claim for or against the minor if the proposed gross settlement as defined in
17 Code Section 29-3-3 is more than the amount of \$15,000.00;
 - 18 (6) To release the debtor and compromise a debt which is in the amount of \$15,000.00
19 or more when the collection of the debt is doubtful;
 - 20 (7) To establish or add property to a trust for the benefit of the minor; provided,
21 however, that the trust must provide that the minor may revoke the trust at any time after
22 reaching the age of majority and, unless otherwise provided by court order pursuant to
23 Code Section 29-3-36, the trust shall terminate upon the minor's death and any property
24 remaining in the trust shall be paid to the minor's estate;
 - 25 (8) To disclaim or renounce any property or interest in property of the minor in
26 accordance with the provisions of Code Section 53-1-20 of the Revised Probate Code of
27 1998;
 - 28 (9) To engage in estate planning for the minor pursuant to the provisions of Code Section
29 29-3-36; and
 - 30 (10) To perform such other acts as may be in the best interest of the minor.
- 31 (d) In granting any of the powers described in subsections (b) and (c) of this Code section,
32 the court shall consider the views of the guardian, if available, or, if there is no guardian,
33 of others who have custody of the minor.
- 34 (e) In performing any of the acts described in this Code section, the conservator shall
35 endeavor to cooperate with the guardian or, if there is no guardian, with others who have
36 custody of the minor.

1 29-3-23.

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

4 (b) The conservator must promptly disclose any conflict of interest between the
5 conservator and the minor when it arises or becomes known to the conservator and seek
6 the court's determination as to whether the conflict is insubstantial or whether it is in the
7 best interest of the minor for the conservator to continue to serve and not forfeit any
8 property right. If the court finds that the conflict of interest is substantial or contrary to the
9 best interest of the minor, the conservator may either resign or forfeit the property interest
10 that is the source of the conflict.

11 (c) A transaction affected by a substantial conflict between personal and fiduciary interests
12 includes any sale, encumbrance, or other transaction involving the conservatorship estate
13 entered into by the conservator or the spouse, descendant, agent, or lawyer of the
14 conservator or a corporation or other enterprise in which the conservator has a significant
15 beneficial interest.

16 29-3-24.

17 Before entering upon the duties of the appointment, every conservator appointed pursuant
18 to the terms of this chapter shall take an oath or affirmation before the court to perform
19 well and truly the duties required of a conservator and to account faithfully for the estate.
20 The oath or affirmation of a conservator may be subscribed before the judge or clerk of any
21 probate court of this state. The judge of the probate court who appoints the conservator
22 shall have the authority to grant a commission to a judge or clerk of any court of record of
23 any other state to administer the oath or affirmation.

24 ARTICLE 3

25 29-3-30.

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

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

1 (c) The plan for managing, expending, and distributing the minor's property must be based
2 on the actual needs of the minor and take into consideration the best interest of the minor.
3 The conservator shall include in the plan projections for expenses and resources and any
4 proposals to change the title of any of the assets in the conservatorship estate. The plan and
5 any proposed budget for the expenditure of funds in excess of the anticipated income from
6 the property must be approved by the court. With each annual return filed thereafter, the
7 conservator shall file with the court and provide to the guardian, if any, an updated plan
8 pursuant to the provisions of this subsection.

9 29-3-31.

10 (a) A conservator may retain the property received by the conservator on the creation of
11 the conservatorship, including, in the case of a corporate fiduciary, stock or other securities
12 of its own issue, even though the property may not otherwise be a legal investment and
13 shall not be liable for the retention, except for gross neglect. In the case of corporate
14 securities, the conservator may likewise retain any securities into which the securities
15 originally received may be converted or which may be derived therefrom as a result of
16 merger, consolidation, stock dividends, splits, liquidations, and similar procedures; and the
17 conservator may exercise by purchase or otherwise any rights, warrants, or conversion
18 features attaching to any such securities.

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

1 29-3-32.

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

4 (1) Bonds issued by any county or municipality of this state which have been validated
5 as required by law for the validation of county and municipal bonds;

6 (2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article
7 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which
8 bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter
9 82 of Title 36;

10 (3) Bonds and other securities issued by this state or by the Board of Regents of the
11 University System of Georgia;

12 (4) Bonds or other obligations issued by the United States government and bonds of any
13 corporation created by an act of Congress, the bonds of which are guaranteed by the
14 United States government;

15 (5) Interest-bearing deposits in any financial institution located in this state, to the extent
16 the deposits are insured by the Federal Deposit Insurance Corporation, the National
17 Credit Union Share Insurance Fund, or comparable insurance;

18 (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of
19 Chapter 3 of Title 8 or issued by any public housing authority or agency of the United
20 States when such bonds or other obligations are secured by a pledge of annual
21 contributions to be paid by the United States government or any agency thereof, as
22 authorized by Code Section 8-3-81;

23 (7) Bonds or other obligations issued by a housing authority in connection with a
24 redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section
25 8-4-11;

26 (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11
27 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;

28 (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of
29 Chapter 7 of Title 31, as authorized by Code Section 31-7-27;

30 (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section
31 32-10-30, as authorized by Code Section 32-10-45;

32 (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter
33 61 of Title 36 or by any urban redevelopment agency or housing authority vested with
34 urban redevelopment project powers under Code Section 36-61-17, provided that such
35 bonds or other obligations are secured by an agreement between the issuer and the federal
36 government in accordance with Code Section 36-61-13, as authorized by Code Section
37 36-61-13;

1 (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of
2 Title 42, as authorized by Code Section 42-3-21;

3 (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
4 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
5 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
6 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as
7 authorized by Code Section 53-12-286;

8 (14) Real property loans, as authorized by Code Section 53-12-284:

9 (A) Which are not in default;

10 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
11 title to improve real property;

12 (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,
13 et seq.; and

14 (D) With respect to which loans, on or after default, pursuant to such insurance,
15 debentures in at least the full amount of unpaid principal are issuable, which debentures
16 are fully and unconditionally guaranteed both as to principal and interest by the United
17 States; and

18 (15) Any other investments which are designated under the laws of this state as lawful
19 or legal investments for guardians or conservators.

20 29-3-33.

21 (a) Whenever by law or by court order the conservator is authorized, permitted, required,
22 or directed to invest funds in direct and general obligations of the United States
23 government, obligations unconditionally guaranteed by the United States government, or
24 obligations of the agencies of the United States government enumerated in Code Section
25 29-3-32, the conservator may invest in and hold such obligations either directly or in the
26 form of securities or other interests in any open-end or closed-end management type
27 investment company or investment trust registered under the Investment Company Act of
28 1940, 15 U.S.C. Sections 80a-1, et seq., so long as:

29 (1) The portfolio of such investment company or investment trust is limited to such
30 obligations and repurchase agreements fully collateralized by such obligations;

31 (2) Such investment company or investment trust takes delivery of such collateral, either
32 directly or through an authorized custodian; and

33 (3) Such investment company or investment trust is operated so as to provide a constant
34 net asset value or price per share.

35 (b) The authority granted in this Code section shall be applicable notwithstanding that a
36 corporate fiduciary or an affiliate of the corporate fiduciary provides services to the

1 investment company or investment trust as investment adviser, custodian, transfer agent,
2 registrar, sponsor, distributor, manager, or otherwise and receives compensation for such
3 services.

4 29-3-34.

5 (a) After receiving court approval as required in subsection (b) or (c) of Code Section
6 29-3-22, in making investments and in acquiring and retaining those investments and
7 managing property of the minor, the conservator shall exercise the judgment and care,
8 under the circumstances then prevailing, that a prudent person acting in a like capacity and
9 familiar with such matters would use to attain the purposes of the account. In making such
10 investment decisions, a conservator may consider the general economic conditions, the
11 anticipated tax consequences of the investments, the anticipated duration of the account,
12 and the needs of the minor.

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

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

1 29-3-35.

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

7 (b) A conservator may sell stocks or bonds of the minor that are either listed or admitted
8 to unlisted trading privileges upon any stock exchange or quoted regularly in any
9 newspaper having a general circulation in Georgia at a sales price not less than the stock
10 exchange bid price or the published bid price at the time of sale and pay reasonable
11 brokerage commissions not in excess of those customarily charged by stock exchange
12 members.

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

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

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

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

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

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

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

7 29-3-36.

8 (a) After notice to interested parties and other persons as the court may direct, and upon
 9 a showing that the minor shall probably remain in need of a conservator throughout the
 10 minor's lifetime and that it is in the best interest of the minor, the court may order the
 11 conservator to apply such principal or income of the minor as is not required for the
 12 support, care, education, health, and welfare of the minor toward the establishment or
 13 continuation of an estate plan for the minor and make transfers of the minor's personal or
 14 real property, outright or in trust, provided that the court finds that a competent, reasonable
 15 person in the minor's circumstances would make such transfers and there is no evidence
 16 that the minor, if not in need of a conservator, would not adopt such an estate plan.

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

19 (1) The composition and value of the entire estate of the minor, other known sources of
 20 support available to the minor, and the income produced thereby;

21 (2) The probable expenses for the support, care, education, health, or welfare of the
 22 minor for the remainder of the minor's lifetime in the standard of living to which the
 23 minor has become accustomed;

24 (3) The identity of the proposed transferees and, in particular, whether they are natural
 25 objects of the minor's bounty by relationship or prior behavior of the minor;

26 (4) The purpose and estate planning benefit to be derived by the transfer as well as the
 27 possible harm to any interested party;

28 (5) Any previous history or predisposition toward making similar transfers by the minor.

29 ARTICLE 4

30 29-3-40.

31 (a) A conservator appointed by the court shall give bond with good and sufficient security.

32 (b) A financial institution, trust company, national or state bank, savings bank, or savings
 33 and loan association described in Code Section 7-1-242 that seeks to qualify as a
 34 conservator is not required to give bond for the faithful performance of its duties unless its

1 combined capital, surplus, and undivided profits are less than \$3 million as reflected in its
2 last statement filed with the Comptroller of the Currency of the United States or the
3 commissioner of banking and finance.

4 (c) The clerk of the court shall record bonds in books kept for that purpose and shall retain
5 custody of the bonds.

6 29-3-41.

7 (a) The bond of a conservator shall be:

8 (1) Secured by an individual who is a domiciliary of this state or by a licensed
9 commercial surety authorized to transact business in this state;

10 (2) Payable to the court for the benefit of the minor;

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

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

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

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

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

30 29-3-42.

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

1 29-3-43.

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

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

6 (2) That the bond or security is otherwise insufficient in the judgment of the court,
7 the court shall give notice to the conservator to appear and give additional bond or security.

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

11 (b) When it comes to the attention of the court that the surety on the conservator's bond
12 has died, become insolvent, or removed from this state or if from other cause the security
13 becomes insufficient, the court may give notice to the conservator to appear give other and
14 sufficient security. Notice shall be mailed by first-class mail to the conservator and to the
15 surety on the conservator's bond. If the conservator fails to comply with the notice, the
16 court may revoke the letters of conservatorship in accordance with Code Section 29-3-82.

17 29-3-44.

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

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

23 29-3-45.

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

27 29-3-46.

28 The conservator and any surety shall be held and deemed joint and several obligors and
29 may be subjected jointly and severally to liability in the same action. When a conservator
30 moves beyond the limits of this state, dies and leaves an unrepresented estate, or is in such
31 a position that an attachment may be issued as against a debtor, any party in interest or any
32 person having demands against that conservator in the conservator's representative
33 capacity may institute an action against any one or more of the sureties on the bond of the

1 conservator in the first instance, without first obtaining a judgment against the conservator
2 in that person's representative capacity.

3 29-3-47.

4 (a) When a judgment has been obtained against the conservator or the surety on the bond
5 of a conservator, or both, a levy may be made upon any property of any defendant in fi. fa.

6 (b) The court shall be authorized to enter a judgment and to issue a writ of execution
7 against the conservator and surety on the bond and shall be authorized to grant judgment
8 and execution in favor of the surety against the conservator upon payment of the judgment
9 by the surety.

10 29-3-48.

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

14 29-3-49.

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

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

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

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

ARTICLE 5

1
2 29-3-50.

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

5 (1) Two and one-half percent commission on all sums of money received by the
6 conservator on account of the estate, except on money loaned by and repaid to the
7 conservator, and 2 1/2 percent commission on all sums paid out by the conservator;

8 (2) An additional commission equal to one-half of 1 percent computed on the market
9 value of the estate as of the last day of the reporting period. This commission shall be
10 proportionately reduced for any reporting period of less than 12 months;

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

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

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

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

28 (c) Where some or all of the estate passes through the hands of several conservators by
29 reason of the death, removal, or resignation of the first qualified conservator or otherwise,
30 the estate shall not be subject to diminution by charges of commission of each successive
31 conservator holding and receiving in the same right but rather commissions for receiving
32 the estate shall be paid to the first conservator who receives the property for the benefit of
33 the estate or that person's representative, and commissions for paying out shall be paid to
34 the conservator who actually distributes the fund, and no commissions shall be paid for
35 handing over the fund to a successor conservator. If there is more than one conservator

1 serving simultaneously, the division of the compensation allowed them shall be according
2 to the services rendered by each.

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

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

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

11 29-3-51.

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

18 29-3-52.

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

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

28 29-3-53.

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

33 (1) The services furnished by the conservator to the corporation or other business
34 enterprise are of a managerial, executive, or business advisory nature;

1 (2) The compensation received for the services is reasonable; and

2 (3) The services are performed and the conservator is paid pursuant to a contract
 3 executed by the conservator and the corporation or business enterprise, which contract
 4 is approved by a majority of those members of the board of directors or other similar
 5 governing authority of the corporation or business enterprise who are not officers or
 6 employees of the conservator and are not related to the conservator and provided the
 7 contract is approved by the court of the county which has jurisdiction over the
 8 conservatorship.

9 (b) Any conservator receiving compensation from a corporation or other business
 10 enterprise for services to it as described in subsection (a) of this Code section shall not
 11 receive extra compensation in respect to such services as provided in Code Section
 12 29-3-52; provided, however, that nothing in this Code section shall prohibit the receipt by
 13 the conservator of extra compensation for services rendered in respect to other assets or
 14 matters involving the estate.

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

18 (d) The purpose of this Code section is to enable additional compensation to be paid to a
 19 conservator 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 29-3-52.

22 29-3-54.

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

31 ARTICLE 6

32 29-3-60.

33 (a) Each year, within 60 days of the anniversary date of qualification, every conservator
 34 shall file with the court a verified return consisting of a statement of the receipts and

1 expenditures of the conservatorship during the year preceding the anniversary date of
2 qualification, an updated inventory consisting of a statement of the assets and liabilities of
3 the estate as of the anniversary date of qualification, an updated plan for managing,
4 expending, and distributing the minor's property, a note or memorandum of any other fact
5 necessary to show the true condition of the estate, and a statement of the current amount
6 of the bond. The conservator shall mail a copy of the return by first-class mail to the surety
7 on the conservator's bond and the minor's guardian, if any. If the minor has no guardian
8 or if the guardian and the conservator are the same person, the conservator shall mail a
9 copy of the return by first-class mail to the minor.

10 (b) Upon petition of the conservator or upon the court's own motion, the court may change
11 the reporting period from the year immediately preceding the anniversary date of
12 qualification to the year immediately preceding a date ordered by the court. In lieu of
13 changing the reporting date, the court is authorized to accept a return for filing even if the
14 return does not cover the appropriate reporting period; however, such acceptance shall not
15 change the reporting period established by either the anniversary date of qualification or
16 a subsequent order of the court, unless the court also enters an order changing the reporting
17 date.

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

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

34 29-3-61.

35 (a) At any time after the six-month period following qualification, but not more frequently
36 than once every 24 months, a conservator may petition the court for an interim settlement

1 of accounts. The court shall appoint a guardian ad litem for the minor upon the filing of
2 the petition for interim settlement.

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

6 (1) The period which the report covers;

7 (2) The name and address of the minor, the name and address of the minor's guardian,
8 if any, and the name of the surety on the conservator's bond, with the amount of the
9 bond; and

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

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

15 29-3-62.

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

21 29-3-63.

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

24 29-3-64.

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

29 (b) Within six months prior to the date the minor reaches 18 years of age, the conservator
30 or any other interested person may file a petition for the appointment of a conservator for
31 the minor when that minor becomes an adult, in accordance with the provisions of Article
32 2 of Chapter 5 of this title, to take effect on the date the minor reaches 18 years of age.

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

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

7 ARTICLE 7

8 29-3-70.

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

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

23 29-3-71.

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

1 (b) A conservator, a former conservator, the conservator of a conservator, or the personal
 2 representative of a deceased conservator shall be allowed to cite the minor, the minor's
 3 personal representative, or a successor conservator to appear and be present at a final
 4 settlement of the conservator's accounts and discharge from liability in the manner
 5 provided for in subsection (a) of this Code section. The settlement period shall be the
 6 period of time from the commencement of the conservatorship or the end of the period
 7 covered by the last interim settlement of accounts. Notice by first-class mail of the
 8 settlement proceeding must be given to the surety on the conservator's bond and to the
 9 minor's guardian, if any. If the minor has not reached 18 years of age or if the conservator
 10 is the minor's personal representative, the court shall appoint a guardian ad litem for the
 11 minor who shall be served personally.

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

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

21 ARTICLE 8

22 29-3-80.

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

26 (1) The conservator 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 conservator than those that were
 29 originally contemplated or should have been contemplated when the conservator was
 30 qualified and the additional burdens work a hardship upon the conservator;

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

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

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

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

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

9 (1) Any parent of the minor whose parental rights have not been terminated;

10 (2) If there is no parent of the minor whose parental rights have not been terminated, the
11 adult siblings of the minor; provided, however, that not more than three adult siblings
12 need be served;

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

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

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

23 29-3-81.

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

31 (1) Any parent of the minor whose parental rights have not been terminated;

32 (2) If there is no parent of the minor whose parental rights have not been terminated, the
33 adult siblings of the minor; provided, however, that not more than three adult siblings
34 need be served;

35 (3) 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 (4) 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 conservator in accordance with the provisions of Code Section
 6 29-3-91 and require the personal representative of the deceased conservator to turn over
 7 to the successor conservator all property of the minor held by the conservator.

8 29-3-82.

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 conservatorship or to impose sanctions,
 11 the court shall cite the conservator to answer the charge. The court shall investigate the
 12 allegations and may require such accounting as the court deems appropriate. The court
 13 may appoint a temporary substitute conservator to take possession of and to administer the
 14 minor's property during the investigation.

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

16 (1) Revoke or suspend the letters of conservatorship;

17 (2) Require additional security;

18 (3) Require the conservator to appear and submit to a settlement of accounts following
 19 the procedure as set forth in Code Section 29-3-71, whether or not the conservator has
 20 first resigned or been removed and whether or not a successor conservator has been
 21 appointed;

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

24 (5) Issue such other orders which the court deems appropriate under the circumstances
 25 of the case.

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

29 29-3-83.

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

33 (1) To recover damages;

34 (2) To compel performance of the conservator's duties;

35 (3) To enjoin the commission of a breach of fiduciary duty; or

1 (4) To compel the redress of a breach of fiduciary duty by payment of money or
2 otherwise.

3 (b) When the minor's assets are misapplied and can be traced into the hands of persons
4 who have notice of the misapplication, a trust shall attach to the assets.

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

7 29-3-84.

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

11 ARTICLE 9

12 29-3-90.

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

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

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

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

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

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

1 29-3-91.

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

6 (b) In the event of the resignation or death of the conservator, notice of the proceeding for
7 appointment of a successor conservator shall be given as provided in Code Sections
8 29-3-80 and 29-3-81. In all other cases, notice of the proceeding for appointment of a
9 successor conservator shall be served personally on the minor and a guardian ad litem
10 appointed for the minor. Notice shall be given by first-class mail to the guardian of the
11 minor, if any, and to the following relatives of the minor, in the following order of
12 preference, who are persons other than the proposed successor conservator:

13 (1) Any parent of the minor whose parental rights have not been terminated;

14 (2) If there is no parent of the minor whose parental rights have not been terminated, the
15 adult siblings of the minor; provided, however, that not more than three adult siblings
16 need be served; or

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

19 (4) If there is no grandparent of the minor, any three of the nearest adult relatives of the
20 minor determined according to Code Section 53-2-1 of the Revised Probate Code of
21 1998.

22 (c) After any hearing the court deems appropriate the court shall enter an order appointing
23 the successor conservator and require that bond be posted in the amount set forth in Code
24 Section 29-3-40.

25 29-3-92.

26 Upon the appointment of a successor conservator, the predecessor conservator or the
27 personal representative of a deceased predecessor conservator shall deliver to the successor
28 conservator all property of the minor held by the conservator and shall submit a final return
29 covering the period since the conservator's last annual return. The surety of the
30 predecessor conservator shall be liable for all acts of the conservator in relation to the
31 minor's property up to the time of the receipt of all of the minor's property by the successor
32 conservator.

ARTICLE 10

Part 1

29-3-100.

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

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

(c) Before the removal of the conservatorship to another county in this state, the conservator must give bond and good security to the court of such county as if the conservator had been first appointed by that court and a certificate to this effect shall be filed in the court in which the conservator was appointed. The conservator shall file with the court of the county to which the conservatorship is to be removed certified copies of all the records pertaining to the conservatorship.

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

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

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

Part 2

29-3-105.

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

(b) A conservator who has been appointed by a foreign court of competent jurisdiction may petition to have the conservatorship transferred to and accepted in this state by filing

1 a petition for receipt and acceptance of the foreign conservatorship in the court of the
2 county in this state where the minor resides or may reside.

3 (c) The petition shall include the following:

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

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

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

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

9 (3) A listing of any other conservatorship petitions that are pending in any jurisdiction
10 and 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 current address of the minor;

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

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

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

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

20 (10) The name and address of the surety on the conservator's bond;

21 (11) The reason the transfer is in the minor's best interest; and

22 (12) To the extent known to the petitioner, a statement of the location and estimated
23 value of the minor's property and the source and amount of any anticipated income or
24 receipts.

25 (d) The petition may be combined with other petitions related to the conservatorship,
26 including a petition to modify the terms of the conservatorship.

27 29-3-106.

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

30 (1) State that the minor has a right to a hearing on the petition;

31 (2) Inform the minor of the procedure to exercise the minor's right to a hearing; and

32 (3) State that the minor has the right to independent legal counsel and that the court shall
33 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel
34 has been appointed by the foreign court to represent the minor in the transfer of the
35 conservatorship.

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

4 (1) Certify whether:

5 (A) The foreign court has any record that the conservator has engaged in malfeasance,
6 misfeasance, or nonfeasance during the conservator's appointment;

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

8 (C) All bond or other security requirements imposed under the conservatorship have
9 been performed;

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

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

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

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

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

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

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

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

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

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

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

35 (3) The petitioner provides the court with an authenticated copy of the petition for
36 transfer and release of the conservatorship filed with the foreign court and proof that

1 service was made on the minor not more than 90 days from the date the petition for
2 receipt and acceptance of the conservatorship is filed in the court; and

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

5 29-3-107.

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

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

13 29-3-108.

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

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

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

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

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

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

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

27 (2) Make the receipt and acceptance contingent upon the release of the conservatorship
28 or the termination of the conservatorship and the discharge of the conservator in the
29 foreign jurisdiction;

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

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

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

4 Part 3

5 29-3-110.

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

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

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

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

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

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

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

21 29-3-111.

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

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

27 (2) A listing of any other conservatorship petitions that are pending in any jurisdiction
28 and 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 minor and the new or proposed address of
31 the minor;

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

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

- 1 (7) The name and address of the minor's guardian, if any;
- 2 (8) The name and address of the surety on the conservator's bond;
- 3 (9) The name and address of any legal representative, other than the petitioner, including
- 4 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for
- 5 the minor;
- 6 (10) The reason for moving the minor; and
- 7 (11) The reason the transfer of the conservatorship is in the minor's best interest.

8 29-3-112.

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

- 12 (1) The date that the hearing shall be held; and
- 13 (2) That the minor has the right to independent legal counsel and that the court shall
- 14 appoint legal counsel for the minor unless the minor has retained counsel or legal counsel
- 15 has been appointed by the foreign court to represent the minor in the receipt and
- 16 acceptance of the guardianship.

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

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

23 29-3-113.

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

26 29-3-114.

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

- 29 (1) The conservator is presently in good standing with the court; and
- 30 (2) The transfer of the conservatorship to the foreign jurisdiction is in the best interest
- 31 of the minor.

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

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

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

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

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

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

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

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

17 (c) As necessary to coordinate the transfer of the conservatorship the court is authorized
 18 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 conservatorship or
 21 appointment of the conservator in the foreign jurisdiction;

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

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

27 Part 4

28 29-3-115.

29 (a) For purposes of this part, a 'foreign conservator' is a conservator or other person who
 30 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 the property of
 32 a minor and whose conservatorship has not been transferred to and accepted in this state
 33 pursuant to the provisions of Part 2 of this article.

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

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

7 29-3-116.

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

11 29-3-117.

12 Pending an action brought by a foreign conservator pursuant to Code Section 29-3-116, an
13 authenticated copy of the letters of conservatorship shall be filed with the clerk of the court
14 to become a part of the record if the case is pending in a court of record, or filed with the
15 papers if the action is a summary proceeding.

16 29-3-118.

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

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

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

23 29-3-119.

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

28 29-3-120.

29 (a) A person who is indebted to or has possession of tangible or intangible property of a
30 minor may pay the debt or deliver the property to a foreign conservator of the minor.
31 Payment of the debt or delivery of the property may be made upon proof that the foreign

1 conservator has been appointed and is entitled to the debt payment or to receive delivery
2 of the property.

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

6 CHAPTER 4

7 ARTICLE 1

8 29-4-1.

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

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

14 (c) No guardian shall be appointed for an adult unless the appointment is in the best
15 interest of the adult.

16 (d) No guardian shall be appointed for an adult within two years after the denial or
17 dismissal on the merits of a petition for the appointment of a guardian for that adult unless
18 the petitioner shows a significant change in the condition or circumstances of the adult.

19 (e)(1) No adult shall be presumed to be in need of a guardian unless adjudicated to be in
20 need of a guardian pursuant to this chapter.

21 (2) An adult shall not be presumed to be in need of a guardian solely because of a finding
22 of criminal insanity or incompetence to stand trial or a finding of a need for treatment or
23 services pursuant to:

24 (A) Code Section 37-1-1;

25 (B) Code Sections 37-3-1 through 37-3-6;

26 (C) Articles 2 through 6 of Chapter 3 of Title 37;

27 (D) Code Sections 37-4-1 through 37-4-3 and 37-4-5 through 37-4-8;

28 (E) Articles 2 through 5 of Chapter 4 of Title 37;

29 (F) Code Section 37-5-3;

30 (G) Code Sections 37-7-1, 37-7-2, and 37-7-4 through 37-7-7; and

31 (H) Articles 2 through 6 of Chapter 7 of Title 37.

32 (f) All guardianships ordered pursuant to this chapter shall be designed to encourage the
33 development of maximum self-reliance and independence in the adult and shall be ordered
34 only to the extent necessitated by the adult's actual and adaptive limitations after a

1 determination that less restrictive alternatives to the guardianship are not available or
2 appropriate.

3 29-4-2.

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

5 (b) No individual may be appointed as guardian of an adult who:

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

7 (2) Has a conflict of interest with the adult unless the court determines that the conflict
8 of interest is insubstantial or that the appointment would be in the adult's best interest;
9 or

10 (3) Is an owner, operator, or employee of a long-term care or other caregiving institution
11 or facility at which the adult is receiving care, unless related to the adult by blood,
12 marriage, or adoption.

13 29-4-3.

14 (a) The court shall appoint as guardian that individual who will best serve the interest of
15 the adult, considering the order of preferences set forth in this Code section. The court may
16 disregard an individual who has preference and appoint an individual who has a lower
17 preference or no preference; provided, however, that the court may disregard the
18 preferences listed in paragraph (1) of subsection (b) of this Code section only upon good
19 cause shown.

20 (b) Individuals who are eligible have preference in the following order:

21 (1) The individual last nominated by the adult in accordance with the provisions of
22 subsection (c) of this Code section;

23 (2) The spouse of the adult or an individual nominated by the adult's spouse in
24 accordance with the provisions of subsection (d) of this Code section;

25 (3) An adult child of the adult or an individual nominated by an adult child of the adult
26 in accordance with the provisions of subsection (d) of this Code section;

27 (4) A parent of the adult or an individual nominated by a parent of the adult in
28 accordance with the provisions of subsection (d) of this Code section;

29 (5) A guardian appointed during the minority of the adult;

30 (6) A guardian previously appointed in Georgia or another state;

31 (7) A friend, relative, or any other individual; and

32 (8) The county guardian or the director of the department of family and children services
33 of the county of domicile of the adult or of the county in which the adult is found;
34 provided, however, that the director of the county department of family and children

1 services may delegate the guardianship duties to responsible employees of the
2 department.

3 (c) At any time prior to the appointment of a guardian, an adult may nominate in writing
4 an individual to serve as that adult's guardian should the adult be judicially determined to
5 be in need of a guardian, and that nomination shall be given the preference described in this
6 Code section, provided that it is signed in accordance with the provisions of subsection (e)
7 of this Code section or the provisions of Code Section 31-36-5.

8 (d) At any time prior to the appointment of a guardian, a spouse, adult child, or parent of
9 an adult may nominate in writing an individual to serve as that adult's guardian should the
10 adult be judicially determined to be in need of a guardian, and that nomination shall be
11 given the preference described in this Code section, provided that it is signed in accordance
12 with the provisions of subsection (e) of this Code section or, if in a will, is executed in
13 accordance with the provisions of Code Section 53-4-20 of the Revised Probate Code of
14 1998.

15 (e) A writing nominating the guardian of an adult:

16 (1) Must contain an express nomination of the individual who shall serve as guardian and
17 must be signed or acknowledged by the individual making the nomination in the presence
18 of two witnesses who sign in the individual's presence; and

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

21 ARTICLE 2

22 29-4-10.

23 (a) Any interested person or persons, including the proposed ward, may file a petition for
24 the appointment of a guardian. 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 guardianship
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 guardian.

29 (b) The petition for appointment of a guardian 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 guardian and that person's relationship to the proposed ward, if any;

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

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

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

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

14 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
 15 examined the proposed ward within 15 days prior to the filing of the petition and that,
 16 based on the examination, the proposed ward was determined to lack sufficient capacity
 17 to make or communicate significant, responsible decisions concerning the proposed
 18 ward's health or safety.

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

22 29-4-11.

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

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

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

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

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

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

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

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

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

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

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

19 (d)(1) If the petition is not dismissed under subsection (b) of this Code section, the court
 20 shall appoint an evaluating physician who shall be a physician licensed to practice
 21 medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter
 22 39 of Title 43, or licensed clinical social worker or, if the proposed ward is a patient in
 23 any federal medical facility in which such a physician, psychologist, or licensed clinical
 24 social worker is not available, a physician, psychologist, or licensed clinical social worker
 25 authorized to practice in that federal facility, other than the physician, psychologist, or
 26 licensed clinical social worker who completed the affidavit attached to the petition
 27 pursuant to subsection (c) of Code Section 29-4-10.

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

34 (3) The evaluation shall be conducted with as little interference with the proposed ward's
 35 activities as possible. The evaluation shall take place at the place and time set in the
 36 notice to the proposed ward and the legal counsel and the time set shall not be sooner
 37 than the fifth day after the service of notice on the proposed ward. The court, however,

1 shall have the exclusive power to change the place and time of the examination at any
2 time upon reasonable notice being given to the proposed ward and to his or her legal
3 counsel. If the proposed ward fails to appear, the court may order that the proposed ward
4 be taken directly to and from a medical facility or the office of the physician,
5 psychologist, or licensed clinical social worker for purposes of evaluation only. The
6 evaluation shall be conducted during the normal business hours of the facility or office
7 and the proposed ward shall not be detained in the facility or office overnight. The
8 evaluation may include, but not be limited to:

9 (A) A self-report from the proposed ward, if possible;

10 (B) Questions and observations of the proposed ward to assess the functional abilities
11 of the proposed ward;

12 (C) A review of the records for the proposed ward including, but not limited to,
13 medical records, medication charts, and other available records;

14 (D) An assessment of cultural factors and language barriers that may impact the
15 proposed ward's abilities and living environment; and

16 (E) All other factors the evaluator determines to be appropriate to the evaluation.

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

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

22 (A) State the circumstances and duration of the evaluation, including a summary of
23 questions or tests utilized, and the elements of the evaluation;

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

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

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

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

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

1 29-4-12.

2 (a) After the filing of the evaluation report the court shall review the pleadings and the
3 evaluation report.

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

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

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

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

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

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

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

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

36 (7) In any procedure under this chapter in which the judge of the court is unable to hear
37 a case within the time required for such hearing, the judge shall appoint an individual to

1 hear the case and exercise all the jurisdiction of the court in the case. Any individual
 2 appointed shall be a member of the State Bar of Georgia who is qualified to serve as the
 3 probate judge in that county and who is, in the opinion of the appointing judge, qualified
 4 for the duties by training and experience. The appointment may be made on a
 5 case-by-case basis or by making a standing appointment of one or more individuals. Any
 6 individual who receives a standing appointment shall serve at the pleasure of the judge
 7 who makes the appointment or the judge's successor in office. The compensation of an
 8 individual appointed shall be as agreed upon by the judge who makes the appointment
 9 and the individual appointed, with the approval of the governing authority of the county
 10 for which the individual is appointed, and shall be paid from county funds. All fees
 11 collected for the service of the appointed individual shall be paid into the general funds
 12 of the county.

13 29-4-13.

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

17 (1) The name of the guardian and the basis for the selection;

18 (2) Any powers retained by the ward pursuant to Code Section 29-4-21;

19 (3) The limitations on the guardianship;

20 (4) A specific listing of any of the additional powers, as described in subsection (b) of
 21 Code Section 29-4-23, that are granted to the guardian;

22 (5) If only a guardian is appointed or if the guardian and the conservator appointed are
 23 not the same person, the reasonable sums of property to be provided the guardian to
 24 provide adequately for the ward's support, care, education, health, and welfare, subject
 25 to modification by subsequent order of the court;

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

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

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

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

- 1 29-4-14.
- 2 (a) Any interested person, including the proposed ward, may file a petition for the
3 appointment of an emergency guardian. The petition shall be filed in the court of the
4 county in which the proposed ward is domiciled or is found.
- 5 (b) The petition for appointment of an emergency guardian shall set forth:
- 6 (1) A statement of the facts upon which the court's jurisdiction is based;
- 7 (2) The name, address, and county of domicile of the proposed ward, if known;
- 8 (3) The name, address, and county of domicile of the petitioner and the petitioner's
9 relationship to the proposed ward;
- 10 (4) A statement of the reasons the emergency guardianship is sought, including the facts
11 that support the need for a guardian and the facts that establish an immediate and
12 substantial risk of death or serious physical injury, illness, or disease unless an emergency
13 guardian is appointed;
- 14 (5) The reasons why compliance with the procedures of Code Sections 29-4-10 through
15 29-4-13 is not appropriate in the circumstances;
- 16 (6) The fact that no other person appears to have authority and willingness to act in the
17 circumstances, whether under a power of attorney, trust, or otherwise; and
- 18 (7) The reason for any omission in the petition for appointment of emergency guardian
19 in the event full particulars are lacking.
- 20 (c) The petition shall state whether a petition for the appointment of a guardian or
21 conservator has been filed or is being filed in conjunction with the petition for the
22 appointment of an emergency guardian.
- 23 (d)(1) The petition shall be sworn to by two or more petitioners or shall be supported by
24 an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a
25 psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social
26 worker or, if the proposed ward is a patient in any federal medical facility in which such
27 a physician, psychologist, or licensed clinical social worker is not available, a physician,
28 psychologist, or licensed clinical social worker authorized to practice in that facility.
- 29 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
30 examined the proposed ward within 15 days prior to the filing of the petition and that,
31 based on the examination, the proposed ward was determined to lack sufficient capacity
32 to make or communicate significant, responsible decisions concerning the proposed
33 ward's health or safety and that there is an immediate and substantial risk of death or
34 serious physical injury, illness, or disease unless an emergency guardian is appointed.
- 35 (3) In addition to stating the facts that support the claim of the need for an emergency
36 guardianship, the affidavit shall state the foreseeable duration of the emergency

1 guardianship and may set forth the affiant's opinion as to any other limitations on the
2 emergency guardianship.

3 29-4-15.

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

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

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

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

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

20 (3) Order an evaluation of the proposed ward by a physician who shall be a physician
21 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
22 practice under Chapter 39 of Title 43, or a licensed clinical social worker, other than the
23 physician, psychologist, or licensed clinical social worker who completed the affidavit
24 attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section
25 29-4-10. The evaluation shall be conducted within 72 hours of the time the order was
26 issued and a written report shall be furnished to the court and made available to the
27 parties within this time frame, which evaluation and report shall be governed by the
28 provisions of subsection (c) of Code Section 29-4-6;

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

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

33 (B) Inform the proposed ward that a petition has been filed to have an emergency
34 guardian appointed for the proposed ward, that the proposed ward has the right to attend
35 any hearing that is held, and that, if an emergency guardian is appointed, the proposed

1 ward may lose important rights to control the management of the proposed ward's
2 person;

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

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

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

8 (5) Appoint an emergency guardian to serve until the emergency hearing, with or without
9 prior notice to the proposed ward, if the threatened risk is so immediate and the potential
10 harm so irreparable that any delay is unreasonable and the existence of the threatened risk
11 and potential for irreparable harm is certified by the affidavit of a physician licensed to
12 practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under
13 Chapter 39 of Title 43, or a licensed clinical social worker. Appointment of an
14 emergency guardian under this paragraph is not a final determination of the proposed
15 ward's need for a nonemergency guardian. Any emergency guardian appointed under
16 this paragraph shall have only those powers and duties specifically enumerated in the
17 letters of emergency guardianship and the powers and duties shall not exceed those
18 absolutely necessary to respond to the immediate threatened risk to the ward.

19 29-4-16.

20 (a) The court shall conduct the emergency guardianship hearing, at the time and date set
21 forth in its order, to determine whether there is clear and convincing evidence of the need
22 for an emergency guardianship in light of the evidence taken at the hearing. In addition to
23 the evidence at the hearing the court may consider the evaluation report and any response
24 filed by the proposed ward. The burden of proof shall be upon the petitioner. Upon the
25 consent of the petitioner and the proposed ward, the court may grant a continuance of the
26 case for a period not to exceed 30 days.

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

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

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

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

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

- 1 (B) The effective date of the appointment of a guardian;
 2 (C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for
 3 appointment of a guardian;
 4 (D) The date specified for the termination in the order appointing the emergency
 5 guardian; or
 6 (E) Sixty days from the date of appointment of the emergency guardian.

7 ARTICLE 3

8 29-4-20.

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

- 10 (1) A qualified guardian who acts in the best interest of the ward;
 11 (2) A guardian who is reasonably accessible to the ward;
 12 (3) Have the ward's property utilized to provide adequately for the ward's support, care,
 13 education, health, and welfare;
 14 (4) Communicate freely and privately with persons other than the guardian, except as
 15 otherwise ordered by a court of competent jurisdiction;
 16 (5) Individually, or through the ward's representative or legal counsel, bring an action
 17 relating to the guardianship, including the right to file a petition alleging that the ward is
 18 being unjustly denied a right or privilege granted by this chapter and Chapter 5 of this
 19 title and including the right to bring an action to modify or terminate the guardianship
 20 pursuant to the provisions of Code Sections 29-4-41 and 29-4-42;
 21 (6) The least restrictive form of guardianship assistance, taking into consideration the
 22 ward's functional limitations, personal needs, and preferences; and
 23 (7) Be restored to capacity at the earliest possible time.
 24 (b) The appointment of a guardian is not a determination regarding the right of the ward
 25 to vote.
 26 (c) The appointment of a guardian is not a determination that the ward lacks testamentary
 27 capacity.

28 29-4-21.

- 29 (a) Unless the court's order specifies that one or more of the following powers are to be
 30 retained by the ward, the appointment of a guardian shall remove from the ward the power
 31 to:
 32 (1) Contract marriage;
 33 (2) Make, modify, or terminate other contracts;
 34 (3) Consent to medical treatment;

- 1 (4) Establish a residence or dwelling place;
- 2 (5) Change domicile;
- 3 (6) Revoke a revocable trust established by the ward; and
- 4 (7) Bring or defend any action at law or equity, except an action relating to the
- 5 guardianship.
- 6 (b) The mere appointment of a guardian does not revoke the powers of an agent who was
- 7 previously appointed by the ward to act as an agent under a durable power of attorney for
- 8 health care.

- 9 29-4-22.
- 10 (a) Except as otherwise provided by law or by the court, a guardian shall make decisions
- 11 regarding the ward's support, care, education, health, and welfare. A guardian shall, to the
- 12 extent feasible, encourage the ward to participate in decisions, act on the ward's own
- 13 behalf, and develop or regain the capacity to manage the ward's personal affairs. To the
- 14 extent known, a guardian, in making decisions, shall consider the expressed desires and
- 15 personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's
- 16 best interest and exercise reasonable care, diligence, and prudence.
- 17 (b) A guardian shall:
 - 18 (1) Respect the rights and dignity of the ward;
 - 19 (2) Become or remain personally acquainted with the ward and maintain sufficient
 - 20 contact with the ward to know of the ward's capacities, limitations, needs, opportunities,
 - 21 and physical and mental health;
 - 22 (3) If necessary, petition to have a conservator appointed;
 - 23 (4) Endeavor to cooperate with the conservator, if any;
 - 24 (5) Take reasonable care of the ward's personal effects;
 - 25 (6) Arrange for the support, care, education, health, and welfare of the ward, considering
 - 26 the ward's needs and available resources;
 - 27 (7) Expend money of the ward that has been received by the guardian for the ward's
 - 28 current needs for support, care, education, health, and welfare;
 - 29 (8) Conserve for the ward's future needs any excess money of the ward received by the
 - 30 guardian; provided, however, that if a conservator has been appointed for the ward, the
 - 31 guardian shall pay to the conservator, at least quarterly, money to be conserved for the
 - 32 ward's future needs;
 - 33 (9) Within 60 days after appointment and within 60 days after each anniversary date of
 - 34 appointment, file with the court and provide to the ward and to the conservator, if any,
 - 35 a personal status report concerning the ward, which shall include:

- 1 (A) A description of the ward's general condition, changes since the last report, and
 2 needs;
- 3 (B) All addresses of the ward during the reporting period and the living arrangements
 4 of the ward for all addresses;
- 5 (C) A description of the amount and expenditure of any funds that were received by
 6 the guardian pursuant to paragraph (7) of this subsection; and
- 7 (D) Recommendations for any alteration in the guardianship order;
- 8 (10) Promptly notify the court of any change in the ward's condition that in the opinion
 9 of the guardian might require modification or termination of the guardianship;
- 10 (11) Promptly notify the court of any conflict of interest between the ward and the
 11 guardian when the conflict arises or becomes known to the guardian and take any action
 12 as is required by Code Section 29-4-24; and
- 13 (12) Keep the court informed of the guardian's current address.
- 14 (c) A guardian, solely by reason of the guardian-ward relationship, is not personally liable
 15 for:
- 16 (1) The ward's expenses or the expenses of those persons who are entitled to be
 17 supported by the ward;
- 18 (2) Contracts entered into in the guardian's fiduciary capacity;
- 19 (3) The acts or omissions of the ward;
- 20 (4) Obligations arising from ownership or control of property of the ward; or
- 21 (5) Other acts or omissions occurring in the course of the guardianship.
- 22 29-4-23.
- 23 (a) Unless inconsistent with the terms of any court order relating to the guardianship, a
 24 guardian may:
- 25 (1) Take custody of the person of the ward and establish the ward's place of dwelling
 26 within this state;
- 27 (2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any
 28 consents or approvals that may be necessary for medical or other professional care,
 29 counsel, treatment, or service for the ward;
- 30 (3) Bring, defend, or participate in legal, equitable, or administrative proceedings,
 31 including alternative dispute resolution, as are appropriate for the support, care,
 32 education, health, or welfare of the ward in the name of or on behalf of the ward; and
- 33 (4) Exercise those other powers reasonably necessary to provide adequately for the
 34 support, care, education, health, and welfare of the ward.
- 35 (b) At the time of the appointment of the guardian or at any time thereafter, any of the
 36 following powers may be specifically granted by the court to the guardian upon such

1 notice, if any, as the court shall determine, provided that no disposition of the ward's
2 property shall be made without the involvement of a conservator, if any:

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

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

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

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

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

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

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

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

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

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

25 29-4-24.

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

30 29-4-25.

31 Before entering upon the duties of the appointment, every guardian appointed pursuant to
32 the terms of this chapter shall take an oath or affirmation before the court to perform well
33 and truly the duties required of a guardian and to account faithfully for the estate. The oath
34 or affirmation of a guardian may be subscribed before the judge or clerk of any probate
35 court of this state. The judge of the probate court who appoints the guardian shall have the

1 authority to grant a commission to a judge or clerk of any court of record of any other state
2 to administer the oath or affirmation.

3 ARTICLE 4

4 29-4-30.

5 (a) A guardian may be required to give bond with good and sufficient security in such
6 amount as the court may determine from time to time.

7 (b) The clerk of the court shall record bonds in books kept for that purpose and shall retain
8 custody of the bonds.

9 (c) If a guardian is required to give bond and has given as security one or more licensed
10 commercial sureties authorized to transact business in this state the bond premium may be
11 paid as part of the cost of administration.

12 ARTICLE 5

13 29-4-40.

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 guardian, the ward's legal counsel, if
19 any, and the ward's conservator, 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 29-4-41.

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 guardianship by adjusting the duties or powers of the
29 guardian, as defined in Code Sections 29-4-14 and 29-4-15, or the powers of the ward, as
30 defined in Code Section 29-4-13, or by making other appropriate adjustments to reflect the
31 extent of the current capacity of the ward or other circumstances of the guardianship.
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 guardian, the ward's legal
2 counsel, and the ward's conservator, if any. In any proceeding under this Code section that
3 would expand or increase the powers of the guardian or further restrict the rights of the
4 ward, the court shall appoint legal counsel for the ward. In all other cases, the court, in its
5 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, a 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 29-4-11. 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 notice as the court deems appropriate.

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

24 (d) In any proceeding under this Code section that would expand or increase the powers
25 of the guardian or further restrict the powers of the ward, the burden is on the petitioner to
26 show by clear and convincing evidence that the modification is in the ward's best interest.
27 In any proceeding under this Code section that would restrict the powers of the guardian
28 or restore powers to the ward, the burden is on the petitioner to show by a preponderance
29 of the evidence that the modification is in the ward's best interest.

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

33 29-4-42.

34 (a) Upon the petition of any interested person, including the ward, or upon the court's own
35 motion, and upon a proper showing that the need for a guardianship is ended, the court may
36 terminate the guardianship and restore all personal and property rights to the ward. Except

1 for good cause shown, the court shall order that notice of the petition be given, in whatever
2 form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, if
3 any, and the ward's conservator, if any. The court shall appoint legal counsel for the ward
4 and may, in its discretion, appoint a guardian ad litem.

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

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

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

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

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

28 29-4-43.

29 (a) Upon the termination of the guardianship or the resignation of the guardian, the
30 guardian may petition the court for an order dismissing the guardian from office. The
31 petition shall include a final status report to the court which covers the period of time from
32 the latest annual status report filed by the guardian. The final status report shall contain the
33 information required for annual status reports and shall otherwise comply with the
34 provisions of Code Section 29-4-22. Notice shall be published one time in the newspaper
35 in which sheriff's advertisements are published in the county in which the petition is filed
36 and shall state that any objection must be made in writing and shall designate the date on

1 or before which objections must be filed in the court, which shall not be less than 30 days
2 from the date of publication. The court shall examine any objections filed.

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

7 ARTICLE 6

8 29-4-50.

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

12 (1) The guardian 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 guardian than those that were
15 originally contemplated or should have been contemplated when the guardian was
16 qualified and the additional burdens work a hardship upon the guardian;

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

20 (4) The resignation of the guardian 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 guardianship.

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 conservator of the ward, if any, and to the following persons
28 whose whereabouts are known and who must be persons other than resigning guardian or
29 the proposed successor guardian:

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 guardian and the appointment of the successor guardian
3 should be granted, the court shall enter an order appointing the successor guardian in
4 accordance with the provisions of Code Section 29-4-61 and accepting the resignation,
5 subject to the resigning guardian turning over to the successor guardian or conservator all
6 property held by the guardian.

7 29-4-51.

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

15 (1) The spouse of the ward; and

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

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

18 (A) Lineal descendants of the ward;

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

20 (C) Friends of the ward.

21 (b) After such hearing as the court deems appropriate, the court shall enter an order
22 appointing a successor guardian in accordance with the provisions of Code Section
23 29-4-61, requiring the personal representative of the deceased guardian to turn over to the
24 successor guardian all property of the ward held by the guardian.

25 29-4-52.

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

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

32 (1) Revoke or suspend the guardian's letters;

33 (2) Require additional security;

34 (3) Reduce or deny compensation to the guardian or impose any other sanction or
35 sanctions as the court deems appropriate; and

1 (4) Issue any other order as in the court's judgment is appropriate under the
2 circumstances of the case.

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

6 29-4-53.

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

10 (1) Recover damages;

11 (2) Compel performance of the guardian's duties;

12 (3) Enjoin the commission of a breach of fiduciary duty; or

13 (4) Compel the redress of a breach of fiduciary duty by payment of money or otherwise.

14 (b) When the ward's assets are misapplied and can be traced into the hands of persons who
15 have notice of the misapplication, a trust shall attach to the assets.

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

18 29-4-54.

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

22 ARTICLE 7

23 29-4-60.

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

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

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

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

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

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

8 29-4-61.

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

13 (b) The court shall appoint legal counsel for the ward. In the event of the resignation or
14 death of the guardian, notice of the proceeding for appointment of a successor guardian
15 shall be given as provided in Code Sections 29-4-50 and 29-4-51. In all other cases, notice
16 of the proceeding for appointment of a successor guardian shall be served personally on the
17 ward and the ward's legal counsel. Notice shall be made by first-class mail to the
18 conservator of the ward, if any, and to the following persons whose whereabouts are known
19 and who must be persons other than the proposed successor guardian:

20 (1) The spouse of the ward; and

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

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

23 (A) Lineal descendants of the ward;

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

25 (C) Friends of the ward.

26 (c) After a hearing which the court deems appropriate, the court shall enter an order
27 appointing the successor guardian.

28 29-4-62.

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

ARTICLE 8

29-4-70.

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

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

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

(d) Pending any appeal, the superior court or a probate court that is described in paragraph (2) of Code Section 15-9-120 may appoint an emergency guardian with such powers and duties as are described in Code Section 29-4-16; provided, however, that an emergency guardian may be appointed only upon the filing of an affidavit of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker setting forth the existence of the emergency circumstances described in subsection (d) of Code Section 29-4-14 and after a hearing at which other evidence may be presented. The appointment of an emergency guardian is not appealable.

ARTICLE 9

Part 1

29-4-80.

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

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

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

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

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

11 Part 2

12 29-4-85.

13 (a) For purposes of this part and Part 3 of this article, the term 'guardianship' refers to a
 14 legal relationship in which a person is given responsibility by a foreign court of competent
 15 jurisdiction for the care of an incapacitated adult, referred to as the 'ward,' thereby
 16 becoming a guardian.

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

21 (c) The petition shall include the following:

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

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

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

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

27 (3) 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 (4) The petitioner's name, address, and county of domicile;

30 (5) The name, age, and address of the ward;

31 (6) The names and addresses of the following, if living:

32 (A) The spouse of the ward; and

33 (B) All children of the ward; or

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

- 1 (i) Lineal descendants of the ward;
- 2 (ii) Parents and siblings of the ward; and
- 3 (iii) Friends of the ward;
- 4 (7) The name and address of the person responsible for the care and custody of the ward,
- 5 if other than the petitioner, and of any other guardian currently serving;
- 6 (8) The name and address of any currently acting legal representative, other than the
- 7 petitioner, including any legal counsel or guardian ad litem appointed by the foreign court
- 8 for the ward;
- 9 (9) The name and address of the ward's conservator, if any; and
- 10 (10) The reason the transfer is in the ward's best interest.
- 11 (c) The petition may be combined with other petitions related to the guardianship,
- 12 including a petition to modify the terms of the guardianship.

13 29-4-86.

14 (a) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship

15 shall be served personally on the ward. The notice shall:

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

22 (b) Notice and a copy of the petition for receipt and acceptance of a foreign guardianship

23 shall be provided to the foreign court from which the guardianship is to be transferred.

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

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

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 guardianship;

4 (C) Reports of physical and mental health practitioners describing the capacity of the
5 ward to care for himself or herself or to manage his or her affairs;

6 (D) Periodic status reports on the condition of the ward; and

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

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

12 (d) The ward shall have 30 days from the date of service to request a hearing on the
13 petition for receipt and acceptance of a foreign guardianship. All other persons to whom
14 notice is given under this Code section shall have 30 days from the date of the mailing of
15 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 guardian has filed a petition in the foreign court for transfer and release of the
19 guardianship to this state;

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

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

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

28 29-4-87.

29 (a) On 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 for receipt and acceptance of
31 the foreign guardian.

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

1 29-4-88.

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

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

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

7 (b) In granting the petition, the court shall give full faith and credit to the provisions of the
8 foreign guardianship order concerning the determination of the ward's incapacity.

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 guardianship.

12 (d) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of
13 the guardianship, 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 guardianship or
16 the termination of the guardianship and the discharge of the guardian in the foreign
17 jurisdiction;

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

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

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

26 Part 3

27 29-4-90.

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

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

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

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

- 1 (3) A foreign court of competent jurisdiction notifies the court of the filing of a petition
2 for guardianship for the ward in the foreign jurisdiction.
- 3 (c) To facilitate the transfer, the court may order the guardian to file a petition for receipt
4 and acceptance of the guardianship in the foreign jurisdiction.
- 5 (d) If the foreign jurisdiction does not have a procedure for receiving and accepting a
6 foreign guardianship, the court may order the guardian to file a petition for guardianship
7 in the foreign jurisdiction.

8 29-4-91.

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

- 10 (1) The name and address of the foreign court to which the guardianship shall be
11 transferred and an authenticated copy of the petition for receipt and acceptance of a
12 foreign guardianship if previously filed in the foreign court;
- 13 (2) A listing of any other guardianship petitions that are pending in any jurisdiction and
14 the names and addresses of the courts where the petitions have been filed;
- 15 (3) The petitioner's name, address, and county of domicile;
- 16 (4) The name, age, and current address of the ward and the new or proposed address of
17 the ward;
- 18 (5) The names and addresses of the following, if living:
- 19 (A) The spouse of the ward; and
- 20 (B) All children of the ward; or
- 21 (C) If there are no adult children, then at least two adults in the following order of
22 priority:
- 23 (i) Lineal descendants of the ward;
- 24 (ii) Parents and siblings of the ward; and
- 25 (iii) Friends of the ward;
- 26 (6) The name and address of the person responsible for the care and custody of the ward,
27 if other than the petitioner, and of any other guardian currently serving;
- 28 (7) The name and address of any legal representative, other than the petitioner, including
29 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for
30 the ward;
- 31 (8) The name and address of the ward's conservator, if any; and
- 32 (9) The reason for moving the ward and the reason the transfer of the guardianship is in
33 the ward's best interest.

1 29-4-92.

2 (a) Notice and a copy of the petition to transfer a guardianship to a foreign jurisdiction
3 shall be served personally on the ward not less than ten days prior to the date set for the
4 hearing. The notice shall:

5 (1) State the date that the hearing shall be held; and

6 (2) 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 receipt and
9 acceptance of the guardianship.

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

12 (c) Notice and a copy of the petition shall be mailed to all other persons named in the
13 petition. The notice shall inform these persons of the date of the hearing and of their right
14 to file objections to the transfer of the guardianship by this state.

15 29-4-93.

16 Upon the court's own motion or upon timely motion by the ward or by any interested
17 person, the court shall hold a hearing to consider the petition to transfer the guardianship.

18 29-4-94.

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

21 (1) The guardian is presently in good standing with the court; and

22 (2) The transfer of the guardianship to the foreign jurisdiction is in the best interest of
23 the ward.

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

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

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

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

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

1 (C) Reports of physical or mental health practitioners describing the capacity of the
2 ward to care for himself or herself; and

3 (D) Periodic status reports on the condition of the ward.

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

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

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

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

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

13 Part 4

14 29-4-95.

15 (a) For purposes of this part, a 'foreign guardian' is a guardian or other person who has
16 been given responsibility by a court of competent jurisdiction in another state or territory
17 governed by the Constitution of the United States for the care of an incapacitated adult
18 referred to as the 'ward' and whose guardianship has not been transferred to and accepted
19 in this state pursuant to the provisions of Part 2 of this article.

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

28 29-4-96.

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

31 29-4-97.

32 Pending an action brought by a foreign guardian pursuant to Code Section 29-4-96, an
33 authenticated copy of the letters of guardianship 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 29-4-98.

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

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

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

10 CHAPTER 5

11 ARTICLE 1

12 29-5-1.

13 (a) The court may appoint a conservator for an adult only if the court finds the adult lacks
14 sufficient capacity to make or communicate significant responsible decisions concerning
15 the management of his or her property.

16 (b) No conservator, except a conservator for the estate of an individual who is missing or
17 who is believed to be dead, shall be appointed for any adult except pursuant to the
18 procedures of this chapter.

19 (c) No conservator shall be appointed for an adult unless the appointment is in the best
20 interest of the adult.

21 (d) No conservator shall be appointed for an adult within two years after the denial or
22 dismissal on the merits of a petition for the appointment of a conservator for that adult
23 unless the petitioner shows a significant change in the condition or circumstances of the
24 adult.

25 (e)(1) No adult shall be presumed to be in need of a conservator unless adjudicated to
26 be in need of a conservator pursuant to this chapter.

27 (2) An adult shall not be presumed to be in need of a conservator solely because of a
28 finding of criminal insanity or incompetence to stand trial or a finding of a need for
29 treatment or services pursuant to:

30 (A) Code Section 37-1-1;

31 (B) Code Sections 37-3-1 through 37-3-6;

32 (C) Articles 2 through 6 of Chapter 3 of Title 37;

33 (D) Code Sections 37-4-1 through 37-4-3 and 37-4-5 through 37-4-8;

34 (E) Articles 2 through 5 of Chapter 4 of Title 37;

1 (F) Code Section 37-5-3;

2 (G) Code Sections 37-7-1, 37-7-2, and 37-7-4 through 37-7-7; and

3 (H) Articles 2 through 6 of Chapter 7 of Title 37.

4 (f) All conservatorships ordered pursuant to this chapter shall be designed to encourage
5 the development of maximum self-reliance and independence in the adult and shall be
6 ordered only to the extent necessitated by the adult's actual and adaptive limitations after
7 a determination that less restrictive alternatives to the conservatorship are not available or
8 appropriate.

9 29-5-2.

10 No person may be appointed or continue to serve as conservator of the estate of an adult
11 who:

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

13 (2) Who has a conflict of interest with the adult unless the court determines that the
14 conflict of interest is insubstantial or that the appointment clearly would be in the adult's
15 best interest; or

16 (3) Is an owner, operator, or employee of a long-term care or other caregiving institution
17 or facility at which the adult is receiving care, unless related to the adult by blood,
18 marriage, or adoption.

19 29-5-3.

20 (a) The court shall appoint as conservator that individual who shall best serve the interest
21 of the adult taking into consideration the order of preferences set forth in this Code section.
22 The court may disregard a person who has preference and appoint a person who has a
23 lower preference or no preference; provided, however, that the court may disregard the
24 preferences listed in paragraph (1) of subsection (b) of this Code section only upon good
25 cause shown.

26 (b) Persons who are eligible and not disqualified have preference in the following order:

27 (1) The person last nominated by the adult in accordance with the provisions of
28 subsection (c) of this Code section;

29 (2) The spouse of the adult or a person nominated by the adult's spouse in accordance
30 with the provisions of subsection (d) of this Code section;

31 (3) An adult child of the adult or a person nominated by an adult child of the adult in
32 accordance with the provisions of subsection (d) of this Code section;

33 (4) A parent of the adult or a person nominated by a parent of the adult in accordance
34 with the provisions of subsection (c) of this Code section;

35 (5) A conservator appointed during the minority of the adult;

1 (6) A conservator previously appointed in Georgia or another state;

2 (7) A friend, relative, or any other person; or

3 (8) The county guardian.

4 (c) At any time prior to the appointment of a conservator, an adult may nominate in
5 writing a person to serve as that adult's conservator should the adult be judicially
6 determined to be in need of a conservator, and that nomination shall be given the
7 preference set forth in this Code section, provided that it is signed in accordance with the
8 provisions of subsection (e) of this Code section or the provisions of Code Section 31-36-5.

9 (d) At any time prior to the appointment of a conservator, a spouse, adult child, or parent
10 of an adult may nominate in writing a person to serve as the adult's conservator should the
11 adult be judicially determined to be in need of a conservator, and that nomination shall be
12 given the preference described in this Code section, provided that it is signed in accordance
13 with the provisions of subsection (e) of this Code section or, if in a will, is executed in
14 accordance with the provisions of Code Section 53-4-20 of the Revised Probate Code of
15 1998.

16 (e) A writing nominating the conservator of an adult:

17 (1) Must contain an express nomination of the person who shall serve as conservator and
18 must be signed or acknowledged by the individual making the nomination in the presence
19 of two witnesses who sign in the individual's presence; and

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

22 29-5-4.

23 (a) Upon receiving an affidavit:

24 (1) That the total personal property of an incapacitated adult does not exceed \$2,500.00
25 in value;

26 (2) That no conservator has been appointed for the incapacitated adult's estate; and

27 (3) That the affiant is the spouse or that there is no spouse and the affiant is a relative
28 having the responsibility of the support of the incapacitated adult,

29 any person or corporation indebted to or holding personal property of the incapacitated
30 adult shall be authorized to pay the amount of the indebtedness or deliver the personal
31 property to the affiant. In the same manner and upon like proof, any person or corporation
32 having the responsibility for the issuance or transfer of stocks, bonds, or other personal
33 property shall be authorized to issue or transfer the stocks, bonds, or personal property to
34 or in the name of the affiant. Upon payment, delivery, transfer, or issuance pursuant to the
35 affidavit, the person or corporation shall be released to the same extent as if the payment,
36 delivery, transfer or issuance had been made to the legally qualified conservator of the

1 incapacitated adult and shall not be required to see to the application or disposition of the
2 personal property.

3 (b) The person making the affidavit and receiving the personal property shall be authorized
4 to expend or otherwise dispose of the personal property for the benefit of the incapacitated
5 adult in the person's judgment as may be just and proper.

6 ARTICLE 2

7 29-5-10.

8 (a) Any interested person or persons, including the proposed ward, may file a petition for
9 the appointment of a conservator. 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 conservatorship
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 conservator.

14 (b) The petition for appointment of a conservator 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 conservator and that person's relationship to the proposed ward, if any;

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

23 (5) Any foreseeable limitations on the conservatorship;

24 (6) Whether, to the petitioner's knowledge, there exists any power of attorney, trust, or
25 other instrument that deals with the management of the property of the proposed ward in
26 the event of incapacity and the name and address of any fiduciary or agent named in the
27 instrument;

28 (7) A description of all known assets, income, other sources of funds, liabilities, and
29 expenses of the proposed ward;

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

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

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

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

35 (i) Lineal descendants of the proposed ward;

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

2 (iii) Friends of the proposed ward;

3 (9) If known, the name and address of any person nominated to serve as conservator by
4 the proposed ward, as described in paragraph (1) of subsection (b) of Code Section
5 29-5-3;

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

9 (11) The name and address of any person nominated to serve as conservator by the
10 petitioner;

11 (12) Whether any nominated conservator has consented or will consent to serve as
12 conservator;

13 (13) If known, whether any nominated conservator is an owner, operator, or employee
14 of a long-term care or other caregiving institution or facility at which the proposed ward
15 is receiving care, and, if so, whether the nominated conservator is related to the proposed
16 ward by blood, marriage, or adoption.

17 (14) Whether an emergency conservator has been appointed for the proposed ward or a
18 petition for the appointment of an emergency conservator has been filed or is being filed;

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

21 (16) A specific listing of any additional powers, as described in subsections (b) and (c)
22 of Code Section 29-5-23, that are requested by the conservator and a statement of the
23 circumstances which would justify the granting of additional powers;

24 (17) Whether a guardian or conservator has been appointed in another state or whether
25 a petition for the appointment of a guardian or conservator is pending in another state;

26 (18) That to petitioner's knowledge, there has been no petition for conservatorship
27 denied or dismissed within two years by any court of this state or, if so, that there has
28 been a significant change in the condition or circumstances of the individual, as shown
29 by the accompanying affidavits or evaluation; and

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

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

1 physician, psychologist, or licensed clinical social worker authorized to practice in that
2 facility.

3 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
4 examined the proposed ward within 15 days prior to the filing of the petition and that,
5 based upon the examination, the proposed ward was determined to lack sufficient
6 capacity to make or communicate significant, responsible decisions concerning the
7 management of the proposed ward's property.

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

11
12 29-5-11.

13 (a) Upon the filing of a petition for conservatorship of the estate of an proposed ward, the
14 court shall review the petition and the affidavit, if any, and determine whether there is
15 probable cause to believe that the proposed ward is in need of a conservator within the
16 meaning of Code Section 29-5-1.

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

20 (c) If the court determines that there is probable cause to believe that the proposed ward
21 is in need of a conservator:

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

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

26 (B) Inform the proposed ward that a petition has been filed to have a conservator
27 appointed for the proposed ward, that the proposed ward has the right to attend any
28 hearing that is held, and that if a conservator is appointed the proposed ward may lose
29 important rights to control the management of the proposed ward's property;

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

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

35 (2) Upon notice that the proposed ward has retained legal counsel or upon the
36 appointment of legal counsel by the court, the court shall furnish legal counsel with a

1 copy of the petition, the affidavit, if any, and the order for evaluation provided for by
2 subsection (d) of this Code section.

3 (3) The court shall give notice of the petition by first-class mail to all adult individuals
4 and other persons who are named in the petition pursuant to the requirements of
5 paragraphs (8) through (10) of subsection (b) of Code Section 29-5-10; and

6 (4) Upon the court's own motion or upon the motion of any interested person, the court
7 shall determine whether to appoint a guardian ad litem.

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

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

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

35 (A) A self-report from the proposed ward, if possible;

36 (B) Questions and observations of the proposed ward to assess the functional abilities
37 of the proposed ward;

1 (C) A review of the records for the proposed ward including, but not limited to,
2 medical records, medication charts, and other available records;

3 (D) An assessment of cultural factors and language barriers that may impact the
4 proposed ward's abilities and living environment; and

5 (E) All other factors the evaluator determines to be appropriate to the evaluation.

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

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

11 (A) State the circumstances and duration of the evaluation, including a summary of
12 questions or tests utilized, and the elements of the evaluation;

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

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

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

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

21 (6) The proposed ward's legal counsel may file a written response to the evaluation,
22 provided the response is filed no later than the date of the commencement of the hearing
23 on the petition for conservatorship. The response may include, but is not limited to,
24 independent evaluations, affidavits of individuals with personal knowledge of the
25 proposed ward, and a statement of applicable law.

26 29-5-12.

27 (a) After the filing of the evaluation report the court shall review the pleadings and the
28 evaluation report.

29 (b) If, after the review, the court finds that there is no probable cause to support a finding
30 that the proposed ward is in need of a conservator within the meaning of Code Section
31 29-5-1, the court shall dismiss the petition.

32 (c) If, after the review, the court finds that there is probable cause to support a finding that
33 the proposed ward is in need of a conservator, the court shall schedule a hearing on the
34 petition. Notice of the hearing shall be served by first-class mail upon the proposed ward,
35 the proposed ward's legal counsel, and the proposed ward's guardian ad litem, if any; the
36 petitioner or the petitioner's legal counsel, if any; and all adult individuals and other

1 persons who are named in the petition pursuant to the requirements of paragraphs (8)
2 through (10) of subsection (b) of Code Section 29-5-10. The date of the hearing shall not
3 be less than ten days after the date the notice is mailed.

4 (d)(1) The hearing shall be held in a courtroom or, for good cause shown, at any other
5 place as the court may set. At the request of the proposed ward or the proposed ward's
6 legal counsel and for good cause shown, the court may exercise its discretion to exclude
7 the public from the hearing and the record shall reflect the court's action. The proposed
8 ward or the proposed ward's legal counsel may waive the appearance of the proposed
9 ward at the hearing.

10 (2) The hearing shall be recorded by either a certified court reporter or a sound-recording
11 device. The recording shall be retained for not less than 45 days from the date of the
12 entry of the order described in Code Section 29-5-138.

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

14 (4) The court shall utilize the criteria in Code Section 29-5-1 to determine whether there
15 is clear and convincing evidence of the need for a conservatorship in light of the evidence
16 taken at the hearing. In addition to the evidence at the hearing, the court may consider
17 the evaluation report and any response filed by the proposed ward. The burden of proof
18 shall be upon the petitioner.

19 (5) Upon determination of the need for a conservatorship, the court shall determine the
20 powers, if any, which are to be retained by the proposed ward, in accordance with the
21 provisions of Code Section 29-5-21 and whether any additional powers shall be granted
22 to the conservator pursuant to the provisions of subsections (b) and (c) of Code Section
23 29-5-23.

24 (6) If the court determines that a conservatorship is necessary and the proposed ward is
25 present, the proposed ward may suggest any person as conservator. The court shall select
26 as conservator the person who shall serve the best interest of the ward.

27 (7) In any procedure under this chapter in which the judge of the court is unable to hear
28 a case within the time required for a hearing on the petition for conservatorship, the judge
29 shall appoint an individual to serve to hear the case and exercise all the jurisdiction of the
30 court in the case. Any individual so appointed shall be a member of the State Bar of
31 Georgia who is qualified to serve as the probate judge in that county and who is, in the
32 opinion of the appointing judge, qualified for the duties by training and experience. The
33 appointment may be made on a case-by-case basis or by making a standing appointment
34 of one or more individuals. Any individual who receives a standing appointment shall
35 serve at the pleasure of the judge who makes the appointment or the judge's successor
36 in office. The compensation of an individual so appointed shall be as agreed upon by the
37 judge who makes the appointment and the individual appointed, with the approval of the

1 governing authority of the county for which the individual is appointed, and shall be paid
2 from county funds. All fees collected for the service of the appointed individual shall be
3 paid into the general funds of the county.

4 29-5-13.

5 (a) The court shall issue an order that sets forth the findings of fact and conclusions of law
6 that support the grant or denial of the petition. An order granting conservatorship shall
7 specify:

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

9 (2) Any powers retained by the ward pursuant to Code Section 29-5-21;

10 (3) The limitations on the conservatorship;

11 (4) A specific listing of any additional powers which are granted to the conservator as
12 set forth in subsections (b) and (c) of Code Section 29-5-23;

13 (5) If a guardian is also appointed and if the guardian and conservator are not the same
14 person, the reasonable sums or property to be furnished to the guardian to provide
15 adequately for the ward's support, care, education, health, and welfare, subject to
16 modification by subsequent order of the court;

17 (6) If the ward has an interest in real property, the name of the county in which the real
18 property is located; and

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

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

24 (c) After service of an order granting a conservatorship, the ward's legal counsel shall
25 make reasonable efforts to explain to the ward the order of conservatorship and the ward's
26 rights under the order.

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

1 29-5-14.

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

5 (b) The petition for appointment of an emergency conservator shall set forth:

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

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

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

10 (4) A statement of the reasons the emergency conservatorship is sought, including the
11 facts which support the need for a conservator and the facts which establish an immediate
12 and substantial risk of irreparable waste or dissipation of the proposed ward's property
13 unless an emergency conservator is appointed;

14 (5) The reasons why compliance with the procedures of Code Sections 29-5-10 through
15 29-5-13 is not appropriate in the circumstances;

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

18 (7) The reason for any omission to the petition for appointment of emergency
19 conservator in the event full particulars are lacking.

20 (c) The petition shall state whether a petition for the appointment of a conservator or
21 guardian has been filed or is being filed in conjunction with the petition for the
22 appointment of an emergency conservator; and, if no other petition has been filed or is
23 being filed, shall include a summary description of all known assets, income, other sources
24 of funds, liabilities, and expenses of the proposed ward.

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

32 (2) Any affidavit shall be based on personal knowledge and shall state that the affiant has
33 examined the proposed ward within 15 days prior to the filing of the petition and that,
34 based on the examination, the proposed ward was determined to lack sufficient capacity
35 to make or communicate significant, responsible decisions concerning the management
36 of the proposed ward's property and that there is an immediate and substantial risk of

1 irreparable waste or dissipation of the proposed ward's property unless an emergency
2 conservator is appointed.

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

7 29-5-15.

8 (a) Upon the filing of a petition for an emergency conservatorship, the court shall review
9 the petition and the affidavit, if any, to determine whether there is probable cause to believe
10 that the proposed ward is in need of an emergency conservator within the meaning of Code
11 Section 29-5-149.

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

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

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

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

24 (3) Order an evaluation of the proposed ward by a physician who shall be a physician
25 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
26 practice under Chapter 39 of Title 43, or a licensed clinical social worker, other than the
27 physician, psychologist, or licensed clinical social worker who completed the affidavit
28 attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section
29 29-5-10, to be conducted within 72 hours and a written report to be furnished to the court
30 and made available to the parties within 72 hours, which evaluation and report shall be
31 governed by the provisions of subsection (d) of Code Section 29-5-14;

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

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

1 (B) Inform the proposed ward that a petition has been filed to have an emergency
 2 conservator appointed for the proposed ward, that the proposed ward has the right to
 3 attend any hearing that is held, and that, if an emergency conservator is appointed, the
 4 proposed ward may lose important rights to control the management of the proposed
 5 ward's property;

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

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

9 (E) Inform the proposed ward of the date and time of the hearing on the emergency
 10 conservatorship; and

11 (5) Appoint an emergency conservator to serve until the emergency hearing, with or
 12 without prior notice to the proposed ward, if the threatened risk is so immediate and the
 13 potential harm so irreparable that any delay is unreasonable and the existence of the
 14 threatened risk and potential for irreparable harm is certified by the affidavit of a
 15 physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist
 16 licensed to practice under Chapter 39 of Title 43, or licensed clinical social worker;
 17 provided, however, that, pending the emergency hearing, the court shall order that no
 18 withdrawals may be made from any account on the authority of the proposed ward's
 19 signature without the court's prior approval and that the emergency conservator shall not
 20 expend any funds of the proposed ward without prior court approval. Appointment of an
 21 emergency conservator under this paragraph is not a final determination of the proposed
 22 ward's need for a nonemergency conservator.

23 29-5-16.

24 (a) The court shall conduct the emergency conservatorship hearing at the time and date set
 25 forth in its order to determine whether there is clear and convincing evidence of the need
 26 for an emergency conservatorship in light of the evidence taken at the hearing. In addition
 27 to the evidence at the hearing, the court may consider the evaluation report and any
 28 response filed by the proposed ward. The burden of proof shall be upon the petitioner.
 29 Upon the consent of the petitioner and the proposed ward, the court may grant a
 30 continuance of the case for a period not to exceed 30 days.

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

33 (1) Any emergency conservator shall have only those powers and duties specifically
 34 enumerated in the letters of emergency conservatorship and the powers and duties shall
 35 not exceed those absolutely necessary to respond to the immediate threatened risk to the
 36 ward;

- 1 (2) The court may order the emergency conservator to make any report the court
2 requires; and
- 3 (3) The emergency conservatorship shall terminate on the earliest of:
- 4 (A) The court's removal of the emergency conservator, with or without cause;
- 5 (B) The effective date of the appointment of a conservator;
- 6 (C) Unless otherwise specified in the order of dismissal, the dismissal of a petition for
7 appointment of a conservator;
- 8 (D) The date specified for the termination in the order appointing the emergency
9 conservator; or
- 10 (E) Sixty days from the date of appointment of the emergency conservator.

11 ARTICLE 3

12 29-5-20.

- 13 (a) In every conservatorship the ward has the right to:
- 14 (1) A qualified conservator who acts in the best interest of the ward;
- 15 (2) A conservator who is reasonably accessible to the ward;
- 16 (3) Have the ward's property utilized as necessary to provide adequately for the ward's
17 support, care, education, health, and welfare;
- 18 (4) Communicate freely and privately with persons other than the conservator, except as
19 otherwise ordered by a court of competent jurisdiction;
- 20 (5) Individually, or through the ward's representative or legal counsel, bring an action
21 relating to the conservatorship, including the right to file a petition alleging that the ward
22 is being unjustly denied a right or privilege granted by Chapter 4 of this title and this
23 chapter and the right to bring an action to modify or terminate the conservatorship
24 pursuant to the provisions of Code Sections 29-5-71 and 29-5-72;
- 25 (6) The least restrictive form of conservatorship, taking into consideration the ward's
26 functional limitations, personal needs, and preferences; and
- 27 (7) Be restored to capacity at the earliest possible time.
- 28 (b) The appointment of a conservator is not a determination regarding the right of the ward
29 to vote.
- 30 (c) The appointment of a conservator is not a determination that the ward lacks
31 testamentary capacity.

1 29-5-21.

2 (a) Unless the court's order specifies that one or more of the following powers are to be
3 retained by the ward, the appointment of a conservator shall remove from the ward the
4 power to:

5 (1) Make, modify, or terminate contracts, other than the power to contract marriage;

6 (2) To buy, sell, or otherwise dispose of or encumber property;

7 (3) Enter into or conduct other business or commercial transactions;

8 (4) Revoke a revocable trust established by the ward; and

9 (5) Bring or defend any action at law or equity, except an action relating to the
10 conservatorship.

11 (b) The mere appointment of a conservator does not revoke the powers of an agent who
12 was previously appointed by the ward to act as the ward's agent under a durable power of
13 attorney for health care.

14 29-5-22.

15 (a) Except as otherwise provided by law or by the court, a conservator shall receive,
16 collect, and make decisions regarding the ward's property. A conservator shall, to the
17 extent feasible, encourage the ward to participate in decisions, act on the ward's own
18 behalf, and develop or regain the ability to manage the ward's property. A conservator, in
19 making decisions, shall consider the expressed desires and personal values of the ward
20 which are known to the conservator. A conservator shall at all times act as a fiduciary in
21 the ward's best interest and exercise reasonable care, diligence, and prudence.

22 (b) A conservator shall:

23 (1) Respect the rights and dignity of the ward;

24 (2) Be reasonably accessible to the ward and maintain regular communication with the
25 ward;

26 (3) If necessary, petition to have a guardian appointed;

27 (4) Endeavor to cooperate with the guardian, if any;

28 (5) Provide for the support, care, education, health, and welfare of the ward and persons
29 who are entitled to be supported by the ward, to the extent consistent with the current and
30 future needs and resources of the ward;

31 (6) Give such bond as required by Code Section 29-5-40;

32 (7) Within two months of appointment, file with the court and provide to the guardian,
33 if any, an inventory of the ward's property and a plan for administering the property,
34 pursuant to the provisions of Code Section 29-5-30.

35 (8) Take into account any estate plan of the ward known to the conservator in the
36 administration of the conservatorship;

- 1 (9) Keep accurate records, including adequate supporting data, and file annual returns,
 2 as required by Code Section 29-5-60;
- 3 (10) Promptly notify the court of any change in the ward's condition that in the opinion
 4 of the conservator might require modification or termination of the conservatorship;
- 5 (11) Promptly notify the court of any conflict of interest between the ward and the
 6 conservator when the conflict arises or becomes known to the conservator and take such
 7 action as is required by Code Section 29-5-24; and
- 8 (12) Keep the court informed of the conservator's current address.
- 9 (c) A conservator, solely by reason of the conservator-ward relationship, is not personally
 10 liable for:
- 11 (1) The ward's expenses or the expenses of those entitled to be supported by the ward;
 12 (2) Contracts entered into in the conservator's fiduciary capacity;
 13 (3) The acts or omissions of the ward;
 14 (4) Obligations arising from ownership or control of property of the ward; or
 15 (5) Other acts or omissions occurring in the course of the conservatorship.
- 16 29-5-23.
- 17 (a) Unless inconsistent with the terms of any court order relating to the conservatorship,
 18 a conservator without court order may:
- 19 (1) Make reasonable disbursements from the annual income or, if applicable, from the
 20 annual budget amount that has been approved by the court pursuant to Code Section
 21 29-5-30 for the support, care, education, health, and welfare of the ward and those
 22 persons who are entitled to be supported by the ward;
- 23 (2) Enter into contracts for labor or service upon such terms as the conservator may deem
 24 best, but only to the extent that the annual compensation payable under such contracts,
 25 when combined with other anticipated disbursements, does not exceed the amount of the
 26 annual income or, if applicable, the annual budget amount that has been approved by the
 27 court pursuant to Code Section 29-5-30;
- 28 (3) Borrow money for one year or less and bind the ward or the ward's property, but only
 29 if the amount of the annual payments, when combined with other anticipated
 30 disbursements, does not exceed the amount of the annual income or, if applicable, the
 31 annual budget amount that has been approved by the court pursuant to Code Section
 32 29-5-30 and only if done for purposes of paying the ward's debts, repairing the ward's
 33 dwelling place, or providing for the support, care, education, health, or welfare of the
 34 ward and the persons who are entitled to be supported by the ward;
- 35 (4) Receive, collect, and hold the ward's property, additions to the ward's property, and
 36 all related records;

- 1 (5) Retain the property received by the conservator upon the creation of the
 2 conservatorship in accordance with the provisions of Code Section 29-5-31;
- 3 (6) Bring, defend, or participate in legal, equitable, or administrative proceedings,
 4 including alternative dispute resolution, as are appropriate for the support, care,
 5 education, health, or welfare of the ward in the name of or on behalf of the ward;
- 6 (7) Fulfill, as far as possible, or, to the extent permitted by law, disaffirm the executory
 7 contracts and comply with the executed contracts of the ward;
- 8 (8) Revoke a revocable trust set up by the ward or exercise such other powers of
 9 revocation, amendment, or withdrawal that are exercisable by the ward, but only if the
 10 governing instrument expressly allows a conservator to revoke the trust or exercise the
 11 powers;
- 12 (9) Examine the will and any other estate planning documents of the ward;
- 13 (10) Appoint an attorney in fact to act for the conservator when the conservator is unable
 14 to act; provided, however, that the conservator and the conservator's sureties shall be
 15 bound for the acts of the attorney as if the acts were the personal acts of the conservator;
- 16 (11) Invest the ward's property pursuant to the provisions of Code Sections 29-5-32 and
 17 29-5-33;
- 18 (12) Sell the ward's stocks and bonds pursuant to the provisions of subsection (b) of
 19 Code Section 29-5-35;
- 20 (13) Compromise any contested or doubtful claim for or against the ward if the proposed
 21 gross settlement as defined in Code Section 29-3-3 is in the amount of \$15,000.00 or less;
 22 and
- 23 (14) Release the debtor and compromise all debts in the amount of \$15,000.00 or less
 24 when the collection of the debt is doubtful.
- 25 (b)(1) In the petition for appointment, or at any time during the conservatorship, the
 26 conservator may request the continuing power:
- 27 (A) To invest the ward's property in investments other than those authorized in Code
 28 Section 29-5-32, pursuant to the provisions of Code Section 29-5-34, without further
 29 court approval of any investment;
- 30 (B) To sell, rent, lease, exchange, or otherwise dispose of any or all of the ward's real
 31 or personal property without complying with the provisions of Code Section 29-5-35
 32 other than the provisions for additional bond set forth in subsection (e) of Code Section
 33 29-5-35; or
- 34 (C) To continue the operation of any farm or business in which the ward has an
 35 interest.
- 36 (2) Unless the request for the powers described in paragraph (1) of this subsection is
 37 made in the petition for the initial appointment of the conservator, the court shall order

1 a hearing as the court deems appropriate. Notice shall be given by personal service to the
 2 ward and a guardian ad litem appointed for the ward. Notice shall be given by first-class
 3 mail to the guardian of the ward, if any; the surety on the conservator's bond; and to the
 4 following relatives of the ward whose whereabouts are known:

5 (A) The spouse of the ward; and

6 (B) All adult children of the ward; or

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

8 (i) Lineal descendants of the ward;

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

10 (iii) Friends of the ward.

11 (c) At the time of the appointment of the conservator or at any time thereafter, and after
 12 appointment of a guardian ad litem for the ward and a hearing as the court deems
 13 appropriate, any of the following powers may be specifically granted to the conservator on
 14 a case-by-case basis, upon notice as the court shall determine:

15 (1) To make disbursements that exceed by no more than a specific amount the annual
 16 income or, if applicable, the annual budget amount that has been approved by the court
 17 pursuant to Code Section 29-5-30 for the support, care, education, health, and welfare of
 18 the ward and those persons who are entitled to be supported by the ward;

19 (2) To enter into contracts for labor or service for which the compensation payable under
 20 such contracts, when combined with other disbursements from the estate, exceeds the
 21 annual income or, if applicable, the annual budget amount that has been approved by the
 22 court pursuant to Code Section 29-5-30;

23 (3) To make specific investments of the ward's property that do not comply with the
 24 provisions of Code Section 29-5-32, pursuant to the provisions of Code Section 29-5-34;

25 (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the ward's
 26 real or personal property without complying with the provisions of Code Section 29-5-35
 27 other than the provisions for additional bond set forth in subsection (e) of Code Section
 28 2-5-35;

29 (5) To compromise a contested or doubtful claim for or against the ward if the proposed
 30 gross settlement as defined in Code Section 29-3-3, is more than \$15,000.00;

31 (6) To release the debtor and compromise all debts for which the collection is doubtful
 32 when the amount of the debt is \$15,000.00 or more;

33 (7) To use the ward's property to erect a dwelling for the ward or make an addition or
 34 renovation to the ward's dwelling place;

35 (8) To establish or add property to a trust for the benefit of the ward and, if applicable,
 36 those individuals who are entitled to support from the ward; provided, however, unless
 37 otherwise provided by court order pursuant to Code Section 29-5-36, the trust must

1 provide that the ward may revoke the trust if the ward is restored to capacity and the trust
2 shall terminate upon the ward's death and any property remaining in the trust shall be
3 paid to the ward's estate;

4 (9) To disclaim or renounce any property or interest in property of the ward in
5 accordance with the provisions of Code Section 53-1-20 of the Revised Probate Code of
6 1998;

7 (10) To engage in estate planning for the ward pursuant to the provisions of Code
8 Section 29-5-36; and

9 (11) To perform such other acts as may be in the best interest of the ward.

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

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

16 29-5-24.

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

19 (b) The conservator must disclose promptly any conflict of interest between the
20 conservator and the ward when it arises or becomes known to the conservator. The
21 conservator must seek the court's determination as to whether the conflict is insubstantial
22 or whether it is in the best interest of the ward for the conservator to continue to serve and
23 not forfeit any property right. If the court finds that the conflict of interest is substantial
24 or contrary to the best interest of the ward, the conservator may either resign or forfeit the
25 property interest that is the source of the conflict.

26 (c) A transaction affected by a substantial conflict between personal and fiduciary interests
27 includes any sale, encumbrance, or other transaction involving the conservatorship estate
28 entered into by the conservator or the spouse, descendant, agent, or lawyer of the
29 conservator or a corporation or other enterprise in which the conservator has a significant
30 beneficial interest.

31 29-5-25.

32 Before entering upon the duties of the appointment, every conservator appointed pursuant
33 to the terms of this chapter shall take an oath or affirmation before the court to perform
34 well and truly the duties required of a conservator and to account faithfully for the estate.
35 The oath or affirmation of a conservator may be subscribed before the judge or clerk of any

1 probate court of this state. The judge of the probate court who appoints the conservator
2 shall have the authority to grant a commission to a judge or clerk of any court of record of
3 any other state to administer the oath or affirmation.

4 ARTICLE 4

5 29-5-30.

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

9 (b) The inventory shall describe all the assets and liabilities of the ward and shall include
10 a list of all the personal and real property owned by the ward and describe how the property
11 is titled. When the inventory is returned to the court, the conservator shall swear or affirm,
12 in addition to the usual oath on making returns, that the inventory contains a true statement
13 of all the assets and liabilities of the ward known to the conservator.

14 (c) The plan for managing, expending, and distributing the ward's property must be based
15 on the actual needs of the ward and take into consideration the best interest of the ward.
16 The conservator shall include in the plan an estimate of the duration of the conservatorship,
17 projections for expenses and resources, and any proposals to change the title of any of the
18 assets in the conservatorship estate. The plan and any proposed budget for the expenditure
19 of funds in excess of the anticipated income from the property must be approved by the
20 court. With each annual return filed thereafter, the conservator shall file with the court and
21 provide to the guardian, if any, an updated plan pursuant to the provisions of this
22 subsection.

23 29-5-31.

24 (a) A conservator may retain the property received by the conservator on the creation of
25 the conservatorship, including, in the case of a corporate fiduciary, stock or other securities
26 of its own issue, even though the property may not otherwise be a legal investment and
27 shall not be liable for the retention, except for gross neglect. In the case of corporate
28 securities, the conservator may likewise retain any securities into which the securities
29 originally received may be converted or which may be derived therefrom as a result of
30 merger, consolidation, stock dividends, splits, liquidations, and similar procedures; and the
31 conservator may exercise by purchase or otherwise any rights, warrants, or conversion
32 features attaching to any such securities.

33 (b) In the case of a corporate fiduciary, the authority granted in subsection (a) of this Code
34 section shall apply to the exchange or conversion of stock or securities of the corporate

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

17 29-5-32.

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

20 (1) Bonds issued by any county or municipality of this state which have been validated
 21 as required by law for the validation of county and municipal bonds;

22 (2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article
 23 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which
 24 bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter
 25 82 of Title 36;

26 (3) Bonds and other securities issued by this state or by the Board of Regents of the
 27 University System of Georgia;

28 (4) Bonds or other obligations issued by the United States government and bonds of any
 29 corporation created by an act of Congress, the bonds of which are guaranteed by the
 30 United States government;

31 (5) Interest-bearing deposits in any financial institution located in this state, to the extent
 32 the deposits are insured by the Federal Deposit Insurance Corporation, the National
 33 Credit Union Share Insurance Fund, or comparable insurance;

34 (6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of
 35 Chapter 3 of Title 8 or issued by any public housing authority or agency of the United
 36 States when such bonds or other obligations are secured by a pledge of annual

- 1 contributions to be paid by the United States government or any agency thereof, as
2 authorized by Code Section 8-3-81;
- 3 (7) Bonds or other obligations issued by a housing authority in connection with a
4 redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section
5 8-4-11;
- 6 (8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11
7 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;
- 8 (9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of
9 Chapter 7 of Title 31, as authorized by Code Section 31-7-27;
- 10 (10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section
11 32-10-30, as authorized by Code Section 32-10-45;
- 12 (11) Bonds or other obligations issued by a municipality or county pursuant to Chapter
13 61 of Title 36 or by any urban redevelopment agency or housing authority vested with
14 urban redevelopment project powers under Code Section 36-61-17, provided that such
15 bonds or other obligations are secured by an agreement between the issuer and the federal
16 government in accordance with Code Section 36-61-13, as authorized by Code Section
17 36-61-13;
- 18 (12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of
19 Title 42, as authorized by Code Section 42-3-21;
- 20 (13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
21 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
22 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
23 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., as
24 authorized by Code Section 53-12-286;
- 25 (14) Real property loans, as authorized by Code Section 53-12-284:
- 26 (A) Which are not in default;
- 27 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
28 title to improve real property;
- 29 (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,
30 et seq.; and
- 31 (D) With respect to which loans, on or after default, pursuant to such insurance,
32 debentures in at least the full amount of unpaid principal are issuable, which debentures
33 are fully and unconditionally guaranteed both as to principal and interest by the United
34 States; and
- 35 (15) Any other investments which are designated under the laws of this state as lawful
36 or legal investments for guardians or conservators.

1 29-5-33.

2 (a) Whenever by law or by court order the conservator is authorized, permitted, required,
3 or directed to invest funds in direct and general obligations of the United States
4 government, obligations unconditionally guaranteed by the United States government, or
5 obligations of the agencies of the United States government enumerated in Code Section
6 29-5-32, the conservator may invest in and hold such obligations either directly or in the
7 form of securities or other interests in any open-end or closed-end management type
8 investment company or investment trust registered under the Investment Company Act of
9 1940, 15 U.S.C. Sections 80a-1, et seq., so long as:

10 (1) The portfolio of such investment company or investment trust is limited to such
11 obligations and repurchase agreements fully collateralized by such obligations;

12 (2) Such investment company or investment trust takes delivery of such collateral, either
13 directly or through an authorized custodian; and

14 (3) Such investment company or investment trust is operated so as to provide a constant
15 net asset value or price per share.

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

21 29-5-34.

22 (a) After receiving court approval as required in subsections (b) and (c) of Code Section
23 29-5-23, in making investments and in acquiring and retaining those investments and
24 managing property of the ward, the conservator shall exercise the judgment and care, under
25 the circumstances then prevailing, that a prudent person acting in a like capacity and
26 familiar with such matters would use to attain the purposes of the account. In making such
27 investment decisions, a conservator may consider the general economic conditions, the
28 anticipated tax consequences of the investments, the anticipated duration of the account,
29 and the needs of the ward and those entitled to support from the ward.

30 (b) Within the limitations of the standard provided in subsection (a) of this Code section
31 and with prior approval by the court in accordance with Code Section 29-5-23, a
32 conservator is authorized to acquire and retain every kind of property, including real,
33 personal, or mixed and every kind of investment, specifically including, but not by way of
34 limitation, bonds, debentures and other corporate obligations, and stocks, preferred or
35 common, including the securities of or other interests in any open-end or closed-end
36 management investments company or investment trust registered under the Investment

1 Company Act of 1940, 15 U.S.C. Sections 80a-1, et seq. The propriety of an investment
2 is to be determined by what the conservator knew or should have known at the time of the
3 decision about the inherent nature and expected performance of a particular investment,
4 including probable yield, the attributes of the portfolio, the general economy, and the needs
5 of the ward and those entitled to support from the ward as they existed at the time of the
6 decision. Any determination of liability for investment performance shall consider not only
7 the performance of a particular investment but also the performance of the ward's portfolio
8 as a whole. Within the limitations of such standard, a conservator may retain property
9 properly acquired, without limitation as to time and without regard to its suitability for
10 original purchase.

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

18 29-5-35.

19 (a) A conservator may sell perishable property of the ward, property of the ward that is
20 liable to deteriorate from keeping, or property of the ward that is expensive to keep, as
21 early as practicable and in such manner as the court shall determine is in the best interest
22 of the ward, after such notice and opportunity for hearing, if any, as the court shall deem
23 practicable under the circumstances.

24 (b) A conservator may sell stocks or bonds of the ward that are either listed or admitted
25 to unlisted trading privileges upon any stock exchange or quoted regularly in any
26 newspaper having a general circulation in Georgia at a sales price not less than the stock
27 exchange bid price or the published bid price at the time of sale and pay reasonable
28 brokerage commissions not in excess of those customarily charged by stock exchange
29 members.

30 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, a
31 conservator may petition the court to sell, rent, lease, exchange, or otherwise dispose of
32 property of the ward, whether real or personal or mixed. The petition shall set forth the
33 property involved and the interests therein, the specific purpose of the transaction, the
34 proposed price, the anticipated net proceeds of the sale, all other terms or conditions
35 proposed for the transaction, and that the proposed transaction is in the best interest of the
36 ward.

- 1 (d) Upon the filing of the petition, the court shall appoint a guardian ad litem for the ward.
2 The petition and notice shall be served personally on the ward and the guardian ad litem.
- 3 (e) If no written objection by a person notified pursuant to subsection (d) of this Code
4 section is filed within 30 days following the mailing of notice or service upon the guardian
5 ad litem, the court shall order such sale summarily in the manner and terms petitioned;
6 provided, however, that if real property is to be converted to personal property, the court
7 shall order the conservator to post additional bond to cover the amount of the anticipated
8 net proceeds of the sale prior to the closing of the sale. If an objection is filed, the court
9 shall hear the matter and grant or deny the petition for sale or make such other order as is
10 in the best interest of the ward, which may require the sale to be private or at public
11 auction, including confirmation of the sale by the court or otherwise.
- 12 (f) A conservator shall make a full return to the court within 30 days of every sale,
13 specifying the property sold, the purchasers, and the amounts received, together with the
14 terms of the sale.
- 15 (g) The recital in the conservator's deed of a compliance with legal provisions shall be
16 prima-facie evidence of the facts recited.
- 17 (h) Where a conservator sells real property under the provisions of this Code section, liens
18 thereon may be divested and transferred to the proceeds of the sale as a condition of the
19 sale.
- 20 (i) An emergency or temporary substitute conservator is authorized to petition the court
21 for leave to sell or otherwise deal with the property of the estate only if good cause is
22 shown for not waiting until a different type of conservatorship is created or the
23 conservatorship is terminated.
- 24 29-5-36.
- 25 (a) After notice to interested parties and other persons as the court may direct, and upon
26 a showing that the ward will probably remain in need of a conservator throughout the
27 ward's lifetime and that it is in the best interest of the ward, the court may order the
28 conservator to apply such principal or income of the ward as is not required for the support,
29 care, education, health, and welfare of the ward and such individuals who are entitled to
30 support from the ward toward the establishment or continuation of an estate plan for the
31 ward and make transfers of the ward's personal or real property, outright or in trust,
32 provided that the court finds that a competent, reasonable person in the ward's
33 circumstances would make such transfers and there is no evidence that the ward, if not in
34 need of a conservator, would not adopt such an estate plan.
- 35 (b) Prior to authorizing such transfers, the court shall appoint a guardian ad litem for the
36 ward and shall consider:

1 (1) The composition and value of the entire estate of the ward, other known sources of
2 support available to the ward and individuals who are entitled to be supported by the
3 ward, and the income produced thereby;

4 (2) The probable expenses for the support, care, education, health, or welfare of the ward
5 and such individuals who are entitled to be supported by the ward for the remainder of
6 the ward's lifetime in the standard of living to which the ward and the other individuals
7 have become accustomed;

8 (3) The identity of the proposed transferees and, in particular, whether they are natural
9 objects of the ward's bounty by relationship or prior behavior of the ward;

10 (4) The purpose and estate planning benefit to be derived by the transfer as well as the
11 possible harm to any interested party;

12 (5) Any previous history or predisposition toward making similar transfers by the ward.

13 ARTICLE 5

14 29-5-40.

15 (a) A conservator appointed by the court shall give bond with good and sufficient security.

16 (b) A financial institution, trust company, national or state bank, savings bank, or savings
17 and loan association described in Code Section 7-1-242 that seeks to qualify as a
18 conservator is not required to give bond for the faithful performance of its duties unless its
19 combined capital, surplus, and undivided profits are less than \$3 million as reflected in its
20 last statements signed by the Comptroller of the Currency of the United States or the
21 commissioner of banking and finance.

22 (c) The clerk of the court shall record bonds in books kept for that purpose and shall retain
23 custody of the bonds.

24 29-5-41.

25 (a) The bond of a conservator shall be:

26 (1) Secured by an individual who is a domiciliary of this state or by a licensed
27 commercial surety authorized to transact business in this state;

28 (2) Payable to the court for the benefit of the ward;

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

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

32 (b) The court may order a conservator who is required to give bond to post bond for a
33 period of time greater than one year, as may be appropriate in the circumstances. A surety
34 on a bond posted pursuant to this subsection shall not be relieved of liability merely

1 because of the expiration of the term of the bond but shall be subject to the provisions of
2 law for the discharge of a surety applicable to other bonds.

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

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

14 29-5-42.

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

18 29-5-43.

19 (a) Whenever it comes to the knowledge of the court, either by annual returns or otherwise
20 that:

21 (1) Additional personal property has accrued to the ward by descent, gift, or otherwise;

22 (2) For any other reason the bond or security of the conservator fails to comply with the
23 minimum statutory bond amount set forth in Code Section 29-5-40; or

24 (3) The bond or security is otherwise insufficient in the judgment of the court,
25 the court shall give notice to the conservator to appear and give additional bond or security.
26 Notice shall be mailed by first-class mail to the conservator and to the surety on the
27 conservator's bond. If the conservator fails to comply with the notice, the court may
28 revoke the letters of conservatorship in accordance with Code Section 29-5-92.

29 (b) When it comes to the knowledge of the court that the surety on the conservator's bond
30 has died, become insolvent, or removed from this state or if from other cause the security
31 becomes insufficient, the court may give notice to the conservator to appear and give other
32 and sufficient security. Notice shall be mailed by first-class mail to the conservator and to
33 the surety on the conservator's bond. If the conservator fails to comply with the notice, the
34 court may revoke the letters of conservatorship in accordance with Code Section 29-5-102.

1 29-5-44.

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

4 (b) When the guardian is required to give bond pursuant to Code Section 29-4-30, the
5 conservator shall pay any bond premium from the estate.

6 29-5-45.

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

10 29-5-46.

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

19 29-5-47.

20 (a) When a judgment has been obtained against the conservator or the surety on the bond
21 of a conservator, or both, a levy may be made upon any property of any defendant in fi. fa.

22 (b) The court shall be authorized to enter a judgment and to issue a writ of execution
23 against the conservator and surety on the bond and shall be authorized to grant judgment
24 and execution in favor of the surety against the conservator upon payment of the judgment
25 by the surety.

26 29-5-48.

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

30 29-5-49.

31 (a) The surety on the bond of any conservator or, if the surety is dead, the surety's personal
32 representative, may at any time petition the court regarding any misconduct of the

1 conservator in the discharge of the conservator's trust or to show the court its desire for any
 2 reason to be relieved as surety. The death of a surety shall be a sufficient ground for the
 3 discharge of the surety from future liability.

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

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

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

17 ARTICLE 6

18 29-5-50.

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

21 (1) Two and one-half percent commission on all sums of money received by the
 22 conservator on account of the estate, except on money loaned by and repaid to the
 23 conservator, and 2 1/2 percent commission on all sums paid out by the conservator;

24 (2) An additional commission equal to one-half of 1 percent computed on the market
 25 value of the estate as of the last day of the reporting period. This commission shall be
 26 proportionately reduced for any reporting period of less than 12 months;

27 (3) Ten percent commission on the amount of interest earned if it is earned during the
 28 course of the conservatorship. The conservator shall receive interest on money loaned
 29 by the conservator in that capacity and shall include the interest on the money loaned on
 30 the return to the court so as to become chargeable with the interest as a part of the corpus
 31 of the estate;

32 (4) Reasonable compensation, as determined in the discretion of the court and after such
 33 notice, if any, as the court shall direct, for the delivery over of property in kind, not
 34 exceeding 3 percent of the appraised value and, in cases where there has been no
 35 appraisal, not over 3 percent of the fair value as found by the court, irrespective of

1 whether delivery over in kind is made pursuant to proceedings for that purpose in the
2 court and irrespective of whether the property, except money, is tangible or intangible or
3 personal or real; and

4 (5) In the discretion of the court, compensation for working land for the benefit of the
5 parties in interest, but not to exceed 10 percent of the annual income of the managed
6 property.

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

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

21 (d) A conservator shall not be entitled to a commission for any sums paid to any
22 conservator of the estate as commissions or other compensation.

23 (e) Conservators who fail to make annual returns as required by law shall forfeit all
24 commission for transactions during the year within which no return is made unless the
25 court, upon cause shown, shall by special order entered on the record, relieve the
26 conservator from the forfeiture.

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

29 29-5-51.

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

1 29-5-52.

2 (a) A conservator may petition the court for compensation that is greater than the
3 commissions allowed under Code Section 29-5-50. Service of notice of the petition for
4 extra compensation shall be made to the ward and to a guardian ad litem appointed for the
5 ward. Service shall be made in the manner described in Chapter 9 of this title and shall
6 direct the parties served to file any written objections to the petition for extra compensation
7 with the court within ten days from the date of service.

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

11 29-5-53.

12 (a) Any conservator who is a domiciliary of this state may receive compensation for
13 services, as specified in this subsection, from a corporation or other business enterprise
14 where the estate of the ward owns an interest in the corporation or other business
15 enterprise, provided that:

16 (1) The services furnished by the conservator to the corporation or other business
17 enterprise are of a managerial, executive, or business advisory nature;

18 (2) The compensation received for the services is reasonable; and

19 (3) The services are performed and the conservator is paid pursuant to a contract
20 executed by the conservator and the corporation or business enterprise, which contract
21 is approved by a majority of those members of the board of directors or other similar
22 governing authority of the corporation or business enterprise who are not officers or
23 employees of the conservator and who are not related to the conservator and provided the
24 contract is approved by the court of the county which has jurisdiction over the
25 conservatorship.

26 (b) Any conservator receiving compensation from a corporation or other business
27 enterprise for services to it as described in subsection (a) of this Code section shall not
28 receive extra compensation in respect to such services as provided in Code Section
29 29-5-52; provided, however, that nothing in this Code section shall prohibit the receipt by
30 the conservator of extra compensation for services rendered in respect to other assets or
31 matters involving the estate.

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

35 (d) The purpose of this Code section is to enable additional compensation to be paid to a
36 conservator for business management and advisory services to corporations and business

1 enterprises pursuant to a contract without the necessity of petitioning for extra
2 compensation pursuant to Code Section 29-5-52.

3 29-5-54.

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

13 ARTICLE 7

14 29-5-60.

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

24 (b) Upon petition of the conservator or upon the court's own motion, the court may change
25 the reporting period from the year immediately preceding the anniversary date of
26 qualification to the year immediately preceding a date ordered by the court. In lieu of
27 changing the reporting date, the court is authorized to accept a return for filing even if the
28 return does not cover the appropriate reporting period; however, such acceptance shall not
29 change the reporting period established by either the anniversary date of qualification or
30 a subsequent order of the court, unless the court also enters an order changing the reporting
31 date.

32 (c) The court shall carefully examine each return of a conservator and, upon petition of any
33 interested person or upon the court's own motion, may require the conservator to produce
34 the original documents that support the return. Except as otherwise provided in this

1 subsection, if no objection is filed within 30 days of the time the return is filed, the court
2 shall record the return within 60 days of its filing. The return shall be kept on file in the
3 court. The recorded return shall be prima-facie evidence of its correctness. If there is an
4 objection to the return or if the court on its own motion determines that the conservator
5 may have wasted the property of the ward or failed in any manner to comply with
6 applicable law, the court shall hold a hearing or take such other action as the court deems
7 appropriate.

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

14 29-5-61.

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

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

22 (1) The period which the report covers;

23 (2) The name and address of the ward, the name and address of the ward's guardian, if
24 any, and the name of the surety on the conservator's bond, with the amount of the bond;
25 and

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

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

31 29-5-62.

32 Any interested person may file an objection to the conservator's interim settlement of
33 accounts. Upon receipt of objections or upon the court's own motion, the court shall hold
34 a hearing in which it shall consider all objections, hear evidence, and determine whether

1 the conservator shall be discharged from liability for the period covered by the interim
2 settlement of accounts.

3 29-5-63.

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

6 ARTICLE 8

7 29-5-70.

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

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

20 29-5-71.

21 (a) Upon the petition of any interested person, including the ward, or upon the court's own
22 motion, the court may modify the conservatorship by adjusting the duties or powers of the
23 conservator, as defined in Code Sections 29-5-14 and 29-5-15, or the powers of the ward,
24 as defined in Code Section 29-5-13, or by making other appropriate adjustments to reflect
25 the extent of the current capacity of the ward or other circumstances of the conservatorship.
26 Except for good cause shown, the court shall order that notice of the petition be given, in
27 whatever form the court deems appropriate, to the ward, the conservator, the ward's legal
28 counsel, if any, and the ward's guardian, if any. In any proceeding under this Code section
29 that would expand or increase the powers of the conservator or further restrict the rights
30 of the ward, the court shall appoint legal counsel for the ward. In all other cases, the court,
31 in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.

32 (b) If the petition for modification alleges a significant change in the capacity of the ward,
33 it must be supported either by the affidavits of two persons who have knowledge of the

1 ward, one of whom may be the petitioner, or of a physician licensed to practice medicine
2 under Chapter 34 of Title 43, psychologist licensed to practice under Chapter 39 of Title
3 43, or a licensed clinical social worker, setting forth the supporting facts and
4 determinations. If, after reviewing the petition and the affidavits, the court determines that
5 there is no probable cause to believe that there has been a significant change in the capacity
6 of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court
7 shall order that an evaluation be conducted, in accordance with the provisions of
8 subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court
9 finds that there is no probable cause to believe that there has been a significant change in
10 the capacity of the ward, the court shall dismiss the petition. If the petition is not
11 dismissed, the court shall schedule a hearing, with such notice as the court deems
12 appropriate.

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

18 (d) In any proceeding under this Code section that would expand or increase the powers
19 of the conservator or further restrict the powers of the ward, the burden is on the petitioner
20 to show by clear and convincing evidence that the modification is in the ward's best
21 interest. In any proceeding under this Code section that would restrict the powers of the
22 conservator or restore powers to the ward, the burden is on the petitioner to show by a
23 preponderance of the evidence that the modification is in the ward's best interest.

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

27 29-5-72.

28 (a) Upon the petition of any interested person, including the ward, or upon the court's own
29 motion, and upon a proper showing that the need for a conservatorship has ended, the court
30 may terminate the conservatorship and restore all personal and property rights to the ward.
31 Except for good cause shown, the court shall order that notice of the petition be given, in
32 whatever form the court deems appropriate, to the ward, the conservator, the ward's legal
33 counsel, and the ward's guardian, if any. The court shall appoint legal counsel for the ward
34 and may, in its discretion, appoint a guardian ad litem.

35 (b) A petition for termination must be supported either by the affidavits of two persons
36 who have knowledge of the ward, one of whom may be the petitioner, or 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 supporting facts and determinations. If, after reviewing the petition and the affidavits, the
4 court determines that there is no probable cause to believe that the conservatorship should
5 be terminated, the court shall dismiss the petition. If the petition is not dismissed the court
6 shall order that an evaluation be conducted in accordance with the provisions of
7 subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court
8 finds that there is no probable cause to believe that the conservatorship should be
9 terminated, the court shall dismiss the petition. If the petition is not dismissed the court
10 shall schedule a hearing with such notice as the court deems appropriate.

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

13 (d) No petition for termination of a conservatorship shall be allowed by the court within
14 two years after the denial or dismissal on the merits of a petition for termination of the
15 conservatorship unless the petitioner shows a significant change in the condition or
16 circumstances of the ward.

17 (e) The death of the ward automatically terminates the conservatorship except for purposes
18 of the final settlement of the petition for letters of discharge, as provided in Code Section
19 29-5-81.

20 (f) Upon termination of the conservatorship, the conservator shall deliver any money or
21 property to the former ward or, if the ward is deceased, to the ward's personal
22 representative.

23 ARTICLE 9

24 29-5-80.

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

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

5 29-5-81.

6 (a) A ward who has been restored to capacity, the personal representative of a deceased
7 ward, a successor conservator, or any interested person may petition the court for an order
8 requiring a conservator or that conservator's personal representative to appear and submit
9 to a final settlement of the conservator's accounts. Alternatively, the court on its own
10 motion may issue such an order. The settlement period shall begin from the
11 commencement of the conservatorship or the end of the period covered by the last interim
12 settlement of accounts. If the conservator fails or refuses to appear as cited, the court may
13 proceed without the appearance of the conservator. If the conservator has been required
14 to give bond, the surety on the bond shall be bound by the settlement if the surety is given
15 notice by first-class mail of the settlement proceeding.

16 (b) A conservator, a former conservator, the conservator of a conservator, or the personal
17 representative of a deceased conservator shall be allowed to cite the ward, the ward's
18 personal representative, or a successor conservator to appear and be present at a final
19 settlement of the conservator's accounts and discharge from liability in the manner
20 provided in this Code section. The settlement period shall begin with the period of time
21 from the commencement of the conservatorship or the end of the period covered by the last
22 interim settlement of accounts. Notice by first-class mail of the settlement proceeding must
23 be given to the surety on the conservator's bond and to the ward's guardian, if any. If the
24 ward has not been restored to capacity or if the conservator is the ward's personal
25 representative, the court shall appoint a guardian ad litem for the ward who shall be served
26 personally.

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

30 (d) The court shall order any property in the hands of the conservator to be delivered to the
31 ward, the ward's personal representative, or to the successor conservator and shall issue a
32 judgment, writ of fieri facias, and execution thereon for any sums found to be due from the
33 conservator. If the court is satisfied that the conservator has faithfully and honestly
34 discharged the office, an order shall be entered releasing and discharging the conservator
35 from all liability.

ARTICLE 10

29-5-90.

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

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

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

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

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

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

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

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

(1) The spouse of the ward; and

(2) All adult children of the ward; or

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

(A) Lineal descendants of the ward;

(B) Parents and siblings of the ward; and

(C) Friends of the ward.

(d) If, after such hearing as the court deems appropriate, the court is satisfied that the petition for the resignation of the conservator and the appointment of the successor conservator should be granted, the court shall enter an order appointing the successor conservator in accordance with the provisions of Code Section 29-5-101 and shall accept the resignation, subject to the resigning conservator turning over to the successor conservator all property held by the conservator.

1 29-5-91.

2 (a) In the event of the death of a conservator and upon the petition of an interested person
3 or upon the court's own motion, the court shall appoint a successor conservator. The court
4 shall appoint legal counsel for the ward and personal service of the petition shall be made
5 upon the ward and the ward's legal counsel. Notice shall be given by first-class mail to the
6 guardian of the ward, if any, the surety on the conservator's bond, the personal
7 representative of the deceased conservator, if any, and to the following persons whose
8 whereabouts are known and who must be persons other than the proposed successor
9 conservator:

10 (1) The spouse of the ward; and

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

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

13 (A) Lineal descendants of the ward;

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

15 (C) Friends of the ward.

16 (b) After such hearing as the court deems appropriate, the court shall enter an order
17 appointing a successor conservator in accordance with the provisions of Code Section
18 29-5-101 and requiring the personal representative of the deceased conservator to turn over
19 to the successor conservator all property of the ward held by the conservator.

20 29-5-92.

21 (a) Upon the petition of any interested person or whenever it appears to the court that good
22 cause may exist to revoke or suspend the letters of conservatorship or to impose sanctions,
23 the court shall cite the conservator to answer the charge. The court shall investigate the
24 allegations and may require such accounting as the court deems appropriate. The court
25 may appoint a temporary substitute conservator to take possession of and administer the
26 ward's property during the investigation.

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

28 (1) Revoke or suspend the letters of conservatorship;

29 (2) Require additional security;

30 (3) Require the conservator to appear and submit to a settlement of accounts following
31 the procedure set forth in Code Section 29-5-81, whether or not the conservator has first
32 resigned or been removed and whether or not a successor conservator has been appointed;

33 (4) Reduce or deny compensation to the conservator or impose any other sanction or
34 sanctions as the court deems appropriate; and

35 (5) Issue such other orders as in the court's judgment are appropriate under the
36 circumstances of the case.

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

4 29-5-93.

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

8 (1) To recover damages;

9 (2) To compel performance of the conservator's duties;

10 (3) To enjoin the commission of a breach of fiduciary duty; or

11 (4) To compel the redress of a breach of fiduciary duty by payment of money or
12 otherwise.

13 (b) When the ward's assets are misapplied and can be traced into the hands of persons who
14 have notice of the misapplication, a trust shall attach to the assets.

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

17 29-5-94.

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

21 ARTICLE 11

22 29-5-100.

23 (a) Upon its own motion or upon the petition of any interested party, including the ward,
24 the court may appoint a temporary substitute conservator for a ward if it appears to the
25 court that the best interest of the ward requires immediate action.

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

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

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

1 (e) Notice of the appointment of a temporary substitute conservator shall be served
 2 personally on the ward. Notice of the appointment shall be served personally on the
 3 previously appointed conservator at the last address provided by that conservator to the
 4 court. Notice of the appointment shall be mailed by first-class mail to the surety of the
 5 previously appointed conservator and to the ward's guardian, if any.

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

10 29-5-101.

11 (a) The court shall appoint a successor conservator upon the resignation, death, or
 12 revocation of the letters of the conservator if the appointment of a successor conservator
 13 is in the best interest of the ward. The court shall select the successor conservator in the
 14 manner provided in Code Section 29-5-3.

15 (b) The court shall appoint legal counsel for the ward. In the event of the resignation or
 16 death of the conservator, notice of the proceeding for appointment of a successor
 17 conservator shall be given as provided in Code Sections 29-5-90 and 29-5-91. In all other
 18 cases, notice of the proceeding for appointment of a successor conservator shall be served
 19 personally on the ward and the ward's legal counsel. Notice shall be made by first-class
 20 mail to the guardian of the ward, if any, and to the following persons whose whereabouts
 21 are known and who must be persons other than the proposed successor conservator:

22 (1) The spouse of the ward; and

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

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

25 (A) Lineal descendants of the ward;

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

27 (C) Friends of the ward.

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

31 29-5-102.

32 Upon the appointment of a successor conservator, the predecessor conservator or the
 33 personal representative of a deceased predecessor conservator shall deliver to the successor
 34 conservator all property of the ward held by the conservator and shall submit a final return
 35 covering the period since the conservator's last annual return. The surety of the

1 predecessor conservator shall be liable for all acts of the conservator in relation to the
2 ward's property up to the time of the receipt of all of the ward's property by the successor
3 conservator.

4 ARTICLE 12

5 29-5-110.

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

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

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

19 (d) Pending any appeal, the superior court or a probate court that is described in
20 paragraph (2) of Code Section 15-9-120 may appoint an emergency conservator with
21 powers and duties as are described in Code Section 29-5-16; provided, however, that such
22 emergency conservator may be appointed only upon the filing of an affidavit of a physician
23 licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to
24 practice under Chapter 39 of Title 43, or a licensed clinical social worker setting forth the
25 existence of the emergency circumstances described in subsection (d) of Code Section
26 29-5-14 and after a hearing at which other evidence may be presented. The appointment
27 of an emergency conservator is not appealable.

28 ARTICLE 13

29 Part 1

30 29-5-120.

31 (a) A conservator may petition to remove the conservatorship to the jurisdiction of the
32 court of the county in this state in which the ward resides.

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

5 (c) Before the removal of the conservatorship to another county in this state, the
6 conservator must give bond and good security to the court of such county as if the
7 conservator had been first appointed by that court and a certificate to this effect shall be
8 filed in the court in which the conservator was appointed. The conservator shall file with
9 the court of the county to which the conservatorship is to be removed certified copies of
10 all the records pertaining to the conservatorship.

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

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

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

22 Part 2

23 29-5-125.

24 (a) For purposes of this part and Part 3 of this article, the term 'conservatorship' refers to
25 a legal relationship in which a person is given responsibility by a court of competent
26 jurisdiction for the care of the property of an incapacitated adult who shall be referred to
27 with the term ward, and the individual thereby becomes a conservator.

28 (b) A conservator who has been appointed by a foreign court of competent jurisdiction
29 may petition to have the conservatorship transferred to and accepted in this state by filing
30 a petition for receipt and acceptance of the foreign conservatorship in the court of the
31 county in this state where the ward resides or may reside.

32 (c) The petition shall include the following:

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

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

- 1 (B) All amendments or modifications to the foreign conservatorship order entered
 2 subsequent to the original order, including any order to transfer the conservatorship;
 3 (2) The address of the foreign court which issued the conservatorship order;
 4 (3) A listing of any other conservatorship petitions that are pending in any jurisdiction
 5 and the names and addresses of the courts where the petitions have been filed;
 6 (4) The petitioner's name, address, and county of domicile;
 7 (5) The name, age, and address of the ward;
 8 (6) The names and addresses of the following, if living:
 9 (A) The spouse of the ward; and
 10 (B) All children of the ward; or
 11 (C) If there are no adult children, then at least two adults in the following order of
 12 priority:
 13 (i) Lineal descendants of the ward;
 14 (ii) Parents and siblings of the ward; and
 15 (iii) Friends of the ward;
 16 (7) The name and address of the person responsible for the care and custody of the ward,
 17 if other than the petitioner, and of any other conservator currently serving;
 18 (8) The name and address of any currently acting legal representative, other than the
 19 petitioner, including any legal counsel, guardian ad litem, or court visitor appointed by
 20 the foreign court for the ward;
 21 (9) The name and address of the ward's guardian, if any;
 22 (10) The name and address of the surety on the conservator's bond;
 23 (11) The reason the transfer is in the ward's best interest; and
 24 (12) To the extent known to the petitioner, a statement of the location and estimated
 25 value of the ward's property and the source and amount of any anticipated income or
 26 receipts.
 27 (c) The petition may be combined with other petitions related to the conservatorship,
 28 including a petition to modify the terms of the conservatorship.

29 29-5-126.

- 30 (a) Notice and a copy of the petition for receipt and acceptance of a foreign
 31 conservatorship shall be served personally on the ward. The notice shall:
 32 (1) State that the ward has a right to a hearing on the petition;
 33 (2) Inform the ward of the procedure to exercise the ward's right to a hearing; and
 34 (3) State that the ward has the right to independent legal counsel and that the court shall
 35 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 conservatorship.

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

6 (1) Certify whether:

7 (A) The foreign court has any record that the conservator has engaged in malfeasance,
8 misfeasance, or nonfeasance during the conservator'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 conservatorship have
11 been performed; and

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

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

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 conservatorship;

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 the ward's assets; and

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

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

27 (d) The ward shall have 30 days from the date of service of the petition for receipt and
28 acceptance of a foreign conservatorship to request a hearing on the petition. All other
29 persons to whom notice is given under this Code section shall have 30 days from the date
30 of the mailing of 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 conservator has filed a petition in the foreign court for transfer and release of the
34 conservatorship 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 conservatorship;

1 (3) The petitioner provides the court with an authenticated copy of the petition for
2 transfer and release of the conservatorship filed with the foreign court and proof that
3 service was made on the ward not more than 90 days from the date the petition for receipt
4 and acceptance of the conservatorship 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 29-5-127.

8 (a) Upon 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 conservator.

11 (b) If any interested person challenges the validity of the foreign conservator or the
12 authority of the foreign court to appoint the conservator, 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 29-5-128.

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

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

19 (2) The transfer of the conservatorship 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 conservatorship order concerning the determination of the ward's incapacity.

23 (c) The court may require the conservator to file an inventory of the ward's property at the
24 time of the transfer from the foreign jurisdiction.

25 (d) Subject to subsection (e) of this Code section, at all times following the entry of the
26 order accepting the guardianship, the laws of the state of Georgia shall apply to the
27 conservatorship.

28 (e) In order to coordinate efforts with the foreign court to facilitate the orderly transfer of
29 the conservatorship, the court is authorized to:

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

31 (2) Make the receipt and acceptance contingent upon the release of the conservatorship
32 or the termination of the conservatorship and the discharge of the conservator in the
33 foreign jurisdiction;

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

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

6 (f) The denial of a petition for receipt and acceptance of the conservatorship does not
 7 affect the right of a conservator appointed by a foreign court of competent jurisdiction to
 8 petition for conservatorship under Code Section 29-5-10.

9 Part 3

10 29-5-130.

11 (a) A conservator may petition the Georgia court which has jurisdiction over the
 12 conservatorship to transfer the conservatorship to a foreign court of competent jurisdiction
 13 if the ward has moved permanently to the foreign jurisdiction.

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

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

16 (2) The conservator notifies the court that the ward will move or has moved permanently
 17 to the foreign jurisdiction; or

18 (3) A foreign court of competent jurisdiction notifies the court of the filing of a petition
 19 for conservatorship for the ward in the foreign jurisdiction.

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

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

25 29-5-131.

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

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

31 (2) 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 (3) The petitioner's name, address, and county of domicile;

- 1 (4) The name, age, and current address of the ward and the new or proposed address of
- 2 the ward;
- 3 (5) The names and addresses of the following, if living:
 - 4 (A) The spouse of the ward; and
 - 5 (B) All children of the ward; or
 - 6 (C) If there are no adult children, then at least two adults in the following order of
 - 7 priority:
 - 8 (i) Lineal descendants of the ward;
 - 9 (ii) Parents and siblings of the ward; and
 - 10 (iii) Friends of the ward;
- 11 (6) The name and address of the person responsible for the care and custody of the ward,
- 12 if other than the petitioner, and of any other conservator currently serving;
- 13 (7) The name and address of the ward's guardian, if any;
- 14 (8) The name and address of the surety on the conservator's bond;
- 15 (9) The name and address of any legal representative, other than the petitioner, including
- 16 any legal counsel, guardian ad litem, or court visitor appointed by the foreign court for
- 17 the ward;
- 18 (10) The reason for moving the ward; and
- 19 (11) The reason the transfer of the conservatorship is in the ward's best interest.

20 29-5-132.

- 21 (a) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction
- 22 shall be served personally on the ward not less than ten days prior to the date set for the
- 23 hearing. The notice shall state:
 - 24 (1) The date that the hearing shall be held; and
 - 25 (2) That the ward has the right to independent legal counsel and that the court shall
 - 26 appoint legal counsel for the ward unless the ward has retained counsel or legal counsel
 - 27 has been appointed by the foreign court to represent the ward in the receipt and
 - 28 acceptance of the guardianship.
- 29 (b) Notice and a copy of the petition to transfer the conservatorship shall be provided to
- 30 the foreign court to which the conservatorship is to be transferred.
- 31 (c) Notice and a copy of the petition to transfer a conservatorship to a foreign jurisdiction
- 32 shall be mailed by first-class mail to all other persons named in the petition. The notice
- 33 shall inform these persons of the date of the hearing and of their right to file objections to
- 34 the transfer of the conservatorship by this state.

1 29-5-133.

2 Upon the timely filed motion by the court, the ward, or any interested person, the court
3 shall hold a hearing to consider the petition to transfer the conservatorship.

4 29-5-134.

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

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

8 (2) The transfer of the conservatorship to the foreign jurisdiction is in the best interest
9 of the ward.

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

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

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

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

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

23 (C) Reports of physical or mental health practitioners describing the capacity of the
24 ward to care for himself or herself or to manage the ward's affairs; and

25 (D) Periodic status reports on the condition of the ward and the ward's assets; and

26 (3) Require the conservator to file an inventory of the ward's property at the time of the
27 transfer to the foreign jurisdiction.

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

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

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

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

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

3 Part 4

4 29-5-135.

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

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

18 29-5-136.

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

22 29-5-137.

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

27 29-5-138.

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

30 (1) Receiving payment of money or taking delivery of personal property in this state
31 belonging to the ward; or

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

3 29-5-139.

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

8 29-5-140.

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

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

17 CHAPTER 6

18 29-6-1.

19 The judges of the probate courts are, in their discretion, made the legal custodians and
20 distributors of all moneys up to \$2,500.00 due and owing to any minor or incapacitated
21 adult who is in need of a conservator but who has no legal and qualified conservator; and
22 the judges are authorized to receive and collect all such moneys arising from insurance
23 policies, benefit societies, legacies, inheritances, or any other source. Without any
24 appointment or qualifying order, the judge is authorized to take charge of the moneys or
25 funds of the minor or adult by virtue of the judge's office as judge of the probate court in
26 the county of residence of the minor or adult; provided, however, that notice shall be given
27 to the living parents of a minor, if any, or the guardian of an adult, if any. The certificate
28 of the judge that no legally qualified conservator has been appointed shall be conclusive
29 and shall be sufficient authority to justify any debtor in making payment on claims made
30 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 is granted under this
21 title shall be kept sealed, except for a record of the names and addresses of the ward and
22 guardian or conservator and their legal counsel of record and the date of filing, granting,
23 and terminating the guardianship or conservatorship. The sealed records may be examined
24 by the ward and the ward's legal counsel and by the guardian or conservator and the
25 guardian or conservator's legal counsel at any time. A request by other interested parties
26 to examine the sealed records shall be by petition to the court and the ward and guardian
27 or conservator shall have at least 30 days' prior written notice of a hearing on the petition.
28 The matter shall come before the court in chambers. The order allowing access shall be
29 granted upon a finding that the public interest in granting access to the sealed records
30 clearly outweighs the harm otherwise resulting to the privacy of the person in interest."

1 chapter shall prohibit the department from petitioning for the appointment of a guardian
 2 for a disabled adult or elder person pursuant to ~~Chapter 5~~ Chapters 4 and 5 of Title 29."

3 **SECTION 7.**

4 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
 5 Section 31-39-2, relating to definitions concerning cardiopulmonary resuscitation, by striking
 6 subparagraph (C) of paragraph (3) and inserting in lieu thereof the following:

7 "(C) A guardian over the person appointed pursuant to the provisions of Code Section
 8 ~~29-5-1~~ 29-4-1;"

9 **SECTION 8.**

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

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

18 **SECTION 9.**

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

22 "53-6-42.

23 The probate court may, for good cause shown, as provided in Code Sections ~~29-4-14,~~
 24 ~~29-4-15~~ 29-3-82, 29-5-92, and 53-7-14, revoke the letters of administration of the county
 25 administrator or letters of guardianship of the county administrator, require additional
 26 security on the county administrator's bond, or pass such other order as is expedient and
 27 necessary for the good of any particular estate in the hands of any county administrator."

28 **SECTION 10.**

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

32 "(b) In all counties of this state the judge of the probate court is authorized to appoint, in
 33 the same manner as the county administrator is appointed, one or more assistant county

1 administrators who shall have the same powers, duties, and authority and be subject to the
 2 same laws, including Chapter 3 8 of Title 29, relating to county guardians, as the county
 3 administrators."

4 **SECTION 11.**

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

9 "53-8-29.

10 In all respects other than as provided in Code Sections 53-8-27 and 53-8-28, all sales
 11 pursuant to Code Section 53-8-27 shall be made as provided in Code Sections ~~29-2-3 and~~
 12 ~~29-2-4~~ 29-3-35 and 29-5-35, relating to sales for reinvestment by guardians. All such sales
 13 shall be approved and confirmed by the judge of the superior court by appropriate order,
 14 and the entire proceedings shall be recorded on the minutes of the superior court and
 15 properly indexed."

16 **SECTION 12.**

17 Said title is further amended by striking subsection (a) of Code Section 53-8-34 of the
 18 Pre-1998 Probate Code, relating to the private sale of estate property, and inserting in lieu
 19 thereof the following:

20 "(a) The administrator or executor of an estate may petition the judge of the probate court
 21 for leave to sell property of the estate, both real and personal, at private sale, to pay debts
 22 as well as for distribution. Except as otherwise provided, the method of private sale shall
 23 be in the same manner as that prescribed for the sale of property by guardians under Code
 24 Sections ~~29-2-3 and 29-2-4~~ 29-3-35 and 29-5-35; provided, however, that the judge shall
 25 consider the petition and shall hear evidence thereon and, if the judge shall determine from
 26 a consideration of the evidence that the proposed transaction is fair and in the best interests
 27 of the estate, the judge shall, by appropriate order, permit the sale and direct the disposition
 28 of the proceeds of the sale."

29 **SECTION 13.**

30 Said title is further amended by striking Code Section 53-9-14 of the Revised Probate Code
 31 of 1998, relating to the report of a conservator, and inserting in lieu thereof the following:

32 "53-9-14.

33 The conservator shall within 60 days after appointment make a written report to the probate
 34 court setting forth the condition of the estate of the missing individual, together with a

1 schedule of any debts that may be owed by the missing person, an estimate of the income
 2 from the estate and the expenses necessary to its preservation, a statement showing the
 3 names, ages, and condition of any individuals who may have been dependent on the
 4 missing person for support, and a recommendation as to how the estate should be
 5 distributed. The court, after considering the report and making any further investigation
 6 the court may deem necessary, shall make such order as will most effectively tend to
 7 provide for the support of any individuals who may have been dependent upon the missing
 8 individual for support and for the handling of the property, including any business or
 9 business interest, owned by the missing person. The order may provide for the payment of
 10 those debts of the missing person as the court deems just and proper. An order of an
 11 appropriate court may allow the conservator to engage in such estate planning dispositions
 12 of the missing person's property as are authorized by Code ~~Section 29-5-5.1~~ Sections
 13 29-3-36 and 29-5-36. The order may be modified in the discretion of the court at any time
 14 upon petition by the conservator, any individual dependent upon the missing individual for
 15 support, the guardian of any such individual, or any person having an interest in the
 16 property or in any business of the missing individual."

17 **SECTION 14.**

18 Said title is further amended by striking subsections (b) and (d) of Code Section 53-12-173.1,
 19 relating to compensation from a business enterprise, and inserting in their respective places
 20 the following:

21 "(b) Any trustee receiving compensation from a corporation or other business enterprise
 22 for services to it as described in subsection (a) of this Code section shall not receive extra
 23 compensation in respect to such services as provided in Code ~~Section 29-2-42.1~~ Sections
 24 29-3-52 and 29-5-52; provided, however, that nothing in this Code section shall prohibit
 25 the receipt by the trustee of extra compensation for services rendered in respect to other
 26 assets or matters involving the trust estate."

27 "(d) The purpose of this Code section is to enable additional compensation to be paid to
 28 trustees for business management and advisory services to corporations and business
 29 enterprises pursuant to contract, without the necessity of petitioning for extra compensation
 30 pursuant to Code ~~Section 29-2-42.1~~ Sections 29-3-52 and 29-5-52."

31 **SECTION 15.**

32 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
 33 disclosure shall not be required under Article 4 of Chapter 18 of Title 50, is amended by
 34 striking the "or" at the end of paragraph (13.1) of subsection (a) and inserting a new
 35 paragraph to read as follows:

