

ate Bill 131

By: Senators Hamrick of the 30th, Cowser of the 46th, Crosby of the 13th and Tarver of the 22nd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, so as to provide a short title; to comprehensively revise provisions relating to trusts, charitable trusts, trustees, and trust investments; to provide for general provisions relating to trusts; to provide for the creation and validity of express trusts; to provide for revocable trusts; to provide for reformation, modification, division, consolidation, and termination of trusts; to provide for creditors' claims and spendthrift and discretionary provisions; to provide for testamentary additions to trusts; to provide for implied trusts; to provide for creation by deed to acquire beneficial interest; to provide for charitable trusts; to provide for trustees, their appointment, and their compensation; to provide for resignation and removal; to provide for interim accounting and final accounting; to provide for trustees' duties and powers, certification or trusts, and registration and deposit of securities; to provide for trustee liability; to provide for foreign entities and non-residents acting as trustees; to provide for trust investments; to enact the Georgia Principal and Income Act; to provide for appointment at the beginning and end of income interest; to provide for allocation of receipts during administration of trust; to provide for related matters; to amend Code Section 7-1-242 of the Official Code of Georgia Annotated, relating to restrictions on corporate fiduciaries, so as to provide that nonprofit corporations and other entities may lawfully act as a fiduciary; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as "The Revised Georgia Trust Code of 2009."

SECTION 2.

Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, is amended by repealing in its entirety Chapter 12, relating to trusts, and inserting in its place the following:

"CHAPTER 12

ARTICLE 1

53-12-1.

Except to the extent it would impair vested rights and except as otherwise provided by law,
the provisions contained in this chapter shall apply to any trust regardless of the date it was
created.

53-12-2.

As used in this chapter the term:

(1) 'Ascertainable standard' means a standard relating to an individual's health, education,
support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
the federal Internal Revenue Code of 1986.

(2) 'Beneficiary' means a person for whose benefit property is held in trust, regardless
of the nature of the interest, and includes any beneficiary, whether vested or contingent,
born or unborn, ascertained or unascertained.

(3) 'Express trust' means a trust as described in Code Section 53-12-20.

(4) 'Grantor' means settlor.

(5) 'Implied trust ' means a resulting trust as described in Code Section 53-12-130 or a
constructive trust as described in Code Section 53-12-132.

(6) 'Person' means an individual, corporation, partnership, association, joint-stock
company, business trust, unincorporated organization, limited liability company, or other
legal entity, including any of the foregoing acting as a fiduciary.

(7) 'Property' means any type of property, whether real or personal, tangible or
intangible, legal or equitable.

(8) 'Qualified beneficiary' means a living individual or other existing person who, on the
date of determination of beneficiary status:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the
interests of the distributees described in subparagraph (A) of this paragraph terminated
on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the
trust terminated on that date.

(9) 'Settlor' means the person who creates the trust, including a testator in the case of a
testamentary trust. The terms 'grantor' and 'trustor' mean the same as 'settlor.'

(10) 'Trust' means an express trust or an implied trust.

(11) 'Trust instrument' means the document or documents, including any testamentary instrument, that contains the trust provisions.

(12) 'Trust property' means property the legal title to which is held by the trustee. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust or other arrangement. The terms 'trust corpus' and 'trust res' mean the same as 'trust property.'

(13) 'Trustee' means the person or persons holding legal title to the property in trust.

(14) 'Trustor' means settlor.

53-12-3.

Except to the extent that the principles of common law and equity governing trusts are modified by this chapter or another provision of law, those principles remain the law of the state.

53-12-4.

(a) As to real property, the validity of a trust is determined by the law of the situs of the real property.

(b) As to all other property, the validity of a trust is determined by:

(1) The law of the jurisdiction designated in the trust instrument unless the effect of the designation is contrary to the public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of an effective designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue.

53-12-5.

The meaning and effect of the trust provisions are determined by:

(a) The law of the jurisdiction designated in the trust instrument unless the effect of the designation is contrary to the public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(b) In the absence of an effective designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue.

53-12-6.

(a) Trusts are peculiarly subjects of equity jurisdiction. Suits by or against a trustee which sound at law may be filed in a court of law.

(b) Actions concerning the construction, administration, or internal affairs of a trust shall be maintained in superior court except as otherwise provided in Code Section 53-9-127.
(c) Any action by or against the trustee or to which the trustee is a party may be maintained in any court having jurisdiction over the parties and the subject matter except as provided in subsection (b) of this Code section.

53-12-7.

(a) The effect of the provisions of this chapter and Chapters 13 through 15 may be varied by the trust instrument except:

(1) As to any requirements in Article 2 of this chapter relating to the creation and validity of express trusts;

(2) As to the effect of the rules as provided in Article 5 of this chapter relating to spendthrift trusts;

(3) As to the power of the beneficiaries to modify a trustee's compensation as provided in Code Section 53-14-6;

(4) As to the duty of a trustee to administer the trust and to exercise discretionary powers in good faith, as provided in Code Sections 53-14-30 and 53-14-38;

(5) As to the effect of a provision relieving a trustee from liability, as provided in Code Section 53-14-53; and

(6) As to the periods of limitation on actions, as provided in Code Sections 53-12-25 and 53-14-57.

(b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions of this chapter or Chapters 13 through 15 or as otherwise provided by law.

ARTICLE 2

53-12-20.

(a) An express trust shall be created or declared in writing and signed by the settlor or an agent for the settlor acting under a power of attorney containing express authorization.

(b) An express trust shall have each of the following elements, ascertainable with reasonable certainty:

(1) An intention by a settlor to create a trust;

(2) Trust property;

(3) Except for charitable trusts, a beneficiary who is reasonably ascertainable at the time of the creation of the trust or reasonably ascertainable within the period of the rule against perpetuities;

(4) A trustee; and

(5) Trustee duties specified in the writing or provided by law.

(c) The requirement that a trust have a reasonably ascertainable beneficiary is satisfied if under the trust instrument the trustee or some other person has the power to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

53-12-21.

(a) No formal words are necessary to create an express trust.

(b) Words otherwise precatory in nature will create a trust only if they are sufficiently imperative to show a settlor's intention to impose enforceable duties on a trustee, and if all other elements of an express trust are present.

53-12-22.

(a) A trust may be created for any lawful purpose.

(b) A condition in terrorem shall be void unless there is a direction in the trust instrument as to the disposition of the property if the condition in terrorem is violated, in which event the direction in the trust instrument shall be carried out.

53-12-23.

A person has capacity to create an inter vivos trust to the extent that person has legal capacity to transfer title to property inter vivos. A person has capacity to create a testamentary trust to the extent that person has legal capacity to devise or bequeath property by will.

53-12-24.

No trust is invalid or terminated and no merger of title to trust property occurs merely because the trustee or trustees are the same person or persons as the beneficiary or beneficiaries of the trust.

53-12-25.

(a) Transfer of property to a trust requires a transfer of legal title to the trustee.

(b) For any interest in real property to become trust property in a trust of which any transferor is a trustee, the instrument of conveyance shall additionally be recorded in the appropriate real property records.

53-12-26.

Property may be added to an existing trust from any source in any manner if the addition is not prohibited by the trust instrument and the property is acceptable to the trustee.

53-12-27.

When the construction of an express trust is at issue, the court may hear parol evidence of the circumstances surrounding the settlor at the time of the execution of the trust and parol evidence to explain all ambiguities, both latent and patent.

53-12-28.

(a) A trust may be created to provide for the care of an animal that is alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this Code section may be enforced by a person appointed in the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Upon termination of a trust authorized by this Code section, the trustee shall transfer any unexpended trust property in the following order:

(1) As directed in the trust instrument;

(2) If the trust was created in a nonresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will; and

(3) If no taker is produced by the application of paragraph (1) or (2) of this subsection, to the settlor, if living, and if not to the settlor's heirs, as determined under Code Section 53-2-1.

ARTICLE 3

53-12-40.

(a) A settlor shall have no power to modify or revoke a trust in the absence of an express reservation of such power.

(b) A power to revoke will be deemed to include a power to modify and an unrestricted power to modify will be deemed to include a power to revoke.

(c) Any revocation or modification of an express trust must be in writing and signed by the settlor.

187 53-12-41.

188 In exercising a power to modify the trust instrument, the settlor may not enlarge the duties
189 or liabilities of the trustee without the trustee's express consent.

190 53-12-42.

191 A trustee is not liable for failing to act in accordance with the terms and conditions of an
192 amendment or revocation of a trust of which the trustee had no notice.

193 53-12-43.

194 (a) A settlor's powers with respect to revocation, amendment, or distribution of trust
195 property may be exercised by an agent under a power of attorney only to the extent
196 expressly authorized by the trust instrument and the power.

197 (b) A settlor's powers with respect to revocation, amendment, or distribution of trust
198 property may be exercised by the settlor's conservator only as provided in Code Section
199 29-5-23.

200 53-12-44.

201 No trust shall be considered to be revocable merely because the life beneficiary has a
202 reversion in or a power of appointment over assets of the trust or because the life
203 beneficiary's heirs or estate have a remainder interest therein.

204 53-12-45.

205 (a) Any judicial proceeding to contest the validity of a trust that was revocable
206 immediately before the settlor's death must be commenced within two years of the settlor's
207 death.

208 (b) Upon the death of the settlor of a trust that was revocable immediately before the
209 settlor's death, the trustee may proceed to distribute the trust property in accordance with
210 the trust provisions. The trustee is not subject to liability for doing so unless:

211 (1) The trustee knows of a pending judicial proceeding contesting the validity of the
212 trust; or

213 (2) A potential contestant has notified the trustee in writing of a possible judicial
214 proceeding to contest the trust and a judicial proceeding is commenced within 60 days
215 after the contestant sent the notification.

216 (c) A beneficiary of a trust that is determined to have been invalid is liable to return any
217 distribution received.

218 ARTICLE 4219 53-12-60.

220 (a) If it is proved by clear and convincing evidence that the trust provisions were affected
221 by a mistake of fact or law, whether in expression or inducement, the court may reform the
222 trust provisions, even if unambiguous, to conform the provisions to the settlor's intention.

223 (b) A petition for reformation may be filed by the trustee or any beneficiary, or, in the case
224 of an unfunded testamentary trust, the personal representative of the settlor's estate.

225 (c) Notice of a petition for reformation of the trust shall be given to the trustee and all
226 beneficiaries.

227 53-12-61.

228 The trust instrument may confer upon a trustee or other person a power to modify the trust.

229 53-12-62.

230 (a) The court may:

231 (1) Modify the administrative or dispositive provisions of a trust if, owing to
232 circumstances not known to or anticipated by the settlor, compliance with the provisions
233 of the trust would defeat or substantially impair the accomplishment of the purposes of
234 the trust;

235 (2) Modify the administrative provisions of a trust if continuation of the trust under its
236 existing provisions would impair the trust's administration; or

237 (3) Modify the trust by the appointment of an additional trustee or special fiduciary if the
238 court considers the appointment necessary for the administration of the trust.

239 (b) A petition for modification may be filed by the trustee or any beneficiary or, in the case
240 of an unfunded testamentary trust, the personal representative of the settlor's estate.

241 (c) Notice of a petition to modify the trust shall be given to the trustee and all
242 beneficiaries.

243 (d) The court may modify the trust regardless of whether it contains spendthrift or other
244 similar protective provisions.

245 (e) An order for modification shall conform as nearly as practicable to the intention of the
246 settlor.

247 53-12-63.

248 (a) The court may order the division of a single trust into two or more trusts or the
249 consolidation of two or more trusts into a single trust if the division or consolidation:

(1) Is consistent with the intent of the settlor with regard to any trust to be consolidated or divided;

(2) Would facilitate administration of the trust or trusts; and

(3) Would be in the best interest of all beneficiaries.

(b) A petition for division or consolidation may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.

(c) Notice of a petition to divide or consolidate a trust or trusts shall be given to the trustee and all beneficiaries of each trust.

(d) Subsection (a) of this Code section may apply to one or more trusts created by the same or different instruments or by the same or different persons.

(e) Subsection (a) of this Code section shall not limit the right of the trustee acting in accordance with the applicable provisions of the governing instrument to divide or consolidate trusts.

53-12-64.

(a) The trust instrument may confer upon a trustee or other person a power to terminate the trust.

(b) The court may terminate a trust and order distribution of the trust property if:

(1) The costs of administration are such that the continuance of the trust, the establishment of the trust if it is to be established, or the distribution from a probate estate would defeat or substantially impair the purposes of the trust;

(2) The purpose of the trust has been fulfilled or become illegal or impossible of fulfillment; or

(3) Owing to circumstances not known to or anticipated by the settlor, the continuance of the trust would defeat or substantially impair the accomplishment of the purposes of the trust.

(c) A petition for termination may be filed by the trustee or any beneficiary or, in the case of an unfunded testamentary trust, the personal representative of the settlor's estate.

(d) Notice of a petition to terminate the trust shall be given to the trustee, all beneficiaries, any holder of a power of appointment over the trust property, and such other persons as the court may direct.

(e) The court may terminate the trust regardless of whether it contains spendthrift or other similar protective provisions.

(f) Distribution of the trust property under the order for termination shall be made to or among the current beneficiaries and the vested remainder beneficiaries, or, if there are no vested remainder beneficiaries, among the current beneficiaries and the contingent

remainder beneficiaries. The order shall specify the appropriate share, if any, of each
current and remainder beneficiary who is to share in the proceeds of the trust, so as to
conform as nearly as practicable to the intention of the settlor or testator. The order may
direct that the interest of a minor beneficiary, or any portion thereof, be converted into
qualifying property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title
44, 'The Georgia Transfers to Minors Act.'

53-12-65.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust
property either having a total value less than \$50,000.00 or for which the trustee's annual
fee for administering the trust is 5 percent or more of the market value of the principal
assets of the trust as of the last day of the preceding trust accounting year may terminate
the trust if the trustee concludes that the value of the trust property is insufficient to justify
the cost of administration.

(b) The court may modify or terminate a trust or remove a trustee and appoint a different
trustee if it determines that the value of the trust property is insufficient to justify the cost
of administration.

(c) Upon termination of a trust under this Code section, the trustee shall distribute the trust
property in a manner consistent with the purposes of the trust.

(d) This Code section shall not apply to an easement for conservation.

ARTICLE 5

53-12-80.

(a) As used in this Code section, the term 'spendthrift provision' means a provision in a
trust instrument that prohibits transfers of a beneficiary's interest in the income or principal
or both.

(b) A spendthrift provision is valid only if it prohibits both voluntary and involuntary
transfers.

(c) A term of a trust providing that the interest of a beneficiary is held subject to a
spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and
involuntary transfer of the beneficiary's interest in the manner set forth in this article.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift
provision and, except as otherwise provided in this Code section, a creditor or assignee of
the beneficiary may not reach the interest or a distribution by the trustee before its receipt
by the beneficiary.

(e) A spendthrift provision is not valid as to the following claims against a beneficiary's right to a current distribution to the extent the distribution would be subject to garnishment under the laws of this state if the distribution were disposable earnings:

(1) Alimony or child support;

(2) Taxes or other governmental claims; or

(3) Judgments for necessities.

The ability of a creditor or assignee to reach a beneficiary's interest under this subsection will not apply to the extent it would disqualify the trust as a special needs trust established pursuant to 42 U.S.C. Sections 1396p(d)(4)(A), 1396p(d)(4)(C).

(f) A provision in a trust instrument that a beneficiary's interest shall terminate or become discretionary upon an attempt by the beneficiary to transfer it, an attempt by the beneficiary's creditors to reach it, or upon the bankruptcy or receivership of the beneficiary shall be valid except to the extent of the proportion of trust property attributable to that beneficiary's contribution.

(g) If a beneficiary is also a contributor to the trust, a spendthrift provision is not valid as to that beneficiary to the extent of the proportion of trust property attributable to that beneficiary's contribution. This subsection shall not apply to a special needs trust established pursuant to 42 U.S.C. Sections 1396p(d)(4)(A) or 1396p(d)(4)(C).

(h) Notwithstanding any other provision in this Code section, a spendthrift provision in a pension or retirement arrangement described in sections 401, 403, 404, 408, 408A, 409, 414, or 457 of the federal Internal Revenue Code of 1986, is valid with reference to the entire interest of the beneficiary in the income, principal or both, even if the beneficiary is also a contributor of trust property, except where a claim is made pursuant to a qualified domestic relations order as defined in 26 U.S.C. Section 414(p).

53-12-81.

A transferee or creditor of a beneficiary may not compel the trustee to pay any amount that is payable only in the trustee's discretion regardless of whether the trustee is also a beneficiary. This Code section does not apply to the extent of the proportion of trust property attributable to the beneficiary's contribution.

53-12-82.

Whether or not the trust instrument contains a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors;

(2) With respect to an irrevocable trust, creditors or assignees of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit during the settlor's life or that could have been distributed to or for the settlor's benefit immediately prior to the settlor's death. If a trust has more than one settlor, the amount the creditors or assignees of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death or had become irrevocable as a result of the settlor's incapacity is subject to claims of the settlor's creditors to the extent the probate estate is inadequate. Payments that would not be subject to the claims of the settlor's creditors if made by way of beneficiary designation to persons other than the settlor's estate shall not be made subject to such claims by virtue of this subsection unless otherwise provided in the trust instrument.

53-12-83.

The holder of a power of withdrawal, during the period that the power may be exercised, is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power. The lapse, release, or waiver of a power of withdrawal shall not cause the holder to be treated as a settlor of the trust.

ARTICLE 6

Part 1

53-12-100.

This part shall be known and may be cited as the 'Georgia Testamentary Additions to Trusts Act.'

53-12-101.

(a) A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, even if the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its provisions are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust and notwithstanding the requirements of paragraph (2)

of subsection (b) of Code Section 53-12-20. The devise or bequest shall not be invalid because the trust is amendable or revocable or both or because the trust was amended after the execution of the will or after the death of the testator.

(b) Unless the testator's will provides otherwise, the property so devised or bequeathed:

(1) Shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is devised or bequeathed; and

(2) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse.

53-12-102.

The trustee or trustees of a trust established by the testator or others as provided in Code Section 53-12-101 shall not be required to inquire into or audit the actions of the executor or executors of the testator's estate or to make any claim against the executor or executors unless specifically directed to do so by the settlor or settlors in the trust instrument. In the event that the trustee or trustees are authorized or directed by the settlor or settlors in the trust instrument to pay or advance any part or all of the trust property to the executor or executors of the testator's estate for the payment of debts, taxes, and expenses of administration of the testator's estate, the trustee or trustees shall not be liable for the application of the trust property so paid or advanced and shall not be liable for any act done or omitted to be done by the executor or executors with regard to the trust property.

53-12-103.

This part shall apply to all devises or bequests made in the will of a testator dying on or after May 31, 1968, whether the will is executed before or after such date. This part shall not invalidate a devise or bequest to a trustee made by a will executed prior to May 31, 1968, by a testator dying prior to such date.

Part 2

53-12-120.

A trust under a testator's will may be designated as the beneficiary of the testator's qualified retirement plan, individual retirement account, other retirement plan, or life insurance policies on the life of the testator so long as the testator's will is admitted to probate in solemn form, whether the designation occurs before or after the execution of the will.

Unless the beneficiary designation provides otherwise, the designation of a trust under a will as beneficiary shall not be treated as the designation of the testator's estate as beneficiary nor shall such property, once delivered to the trustee under the testator's will, be deemed to be part of the testator's estate.

ARTICLE 7

53-12-130.

A resulting trust is a trust implied for the benefit of the settlor or the settlor's successors in interest when it is determined that the settlor did not intend that the holder of the legal title to the trust property also should have the beneficial interest in the property, under any of the following circumstances:

(1) A trust is created but fails, in whole or in part, for any reason;

(2) A trust is fully performed without exhausting all the trust property; or

(3) A purchase money resulting trust as defined in subsection (a) of Code Section 53-12-132 is established.

53-12-131.

(a) A purchase money resulting trust is a resulting trust implied for the benefit of the person paying consideration for the transfer to another person of legal title to real or personal property.

(b) Except as provided in subsection (c) of this Code section, the payment of consideration as provided in subsection (a) of this Code section shall create a presumption in favor of a resulting trust, but such presumption is rebuttable by a preponderance of the evidence.

(c) If the payor of consideration and transferee of the property as provided in subsection (a) of this Code section are husband and wife, parent and child, or siblings, a gift shall be presumed, but such presumption is rebuttable by clear and convincing evidence.

53-12-132.

(a) A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity.

(b) The person claiming the beneficial interest in the property may be found to have waived the right to a constructive trust by subsequent ratification or long acquiescence.

53-12-133.

In all cases in which a trust is sought to be implied, the court may hear parol evidence of the nature of the transaction, the circumstances, and the conduct of the parties, either to imply or rebut the trust.

ARTICLE 8

53-12-150.

As used in this article, the term:

(1) 'Deed' means and includes any written agreement, declaration of trust, or other instrument which creates a trust estate in the trustee or trustees named therein and sets forth the terms and conditions of the trust and which indicates an intention, either expressly or by implication, that the trust estate created therein should be subject to this article, but the term shall not include a warranty deed, quitclaim deed, bill of sale, or other instrument that conveys title to property to a trustee, merely by virtue of such fact alone.

(2) 'Estate' means any alienable interest in property, legal or equitable, freehold or nonfreehold, possessory or nonpossessory.

(3) 'Property' means and includes improved or unimproved property, real or personal, leaseholds, mortgages, notes, or other obligations secured by property or any interest therein, or other interests in such property.

53-12-151.

The owners of property located in this state or persons desiring to acquire beneficial ownership of such property may create by deed an estate therein and in the improvements made thereon and in the property to be acquired, for the benefit of themselves and such other persons, whether sui juris or not, who may contribute to the improvement or development or acquisition of the property and their assigns or transferees, provided that the deed creating the estate shall provide for the improvement or development of the property covered thereby or for the acquisition of the property and the trustee or trustees therein named and their successors shall have some active duty to perform in and about the trust property or the management or control of the same. The deed creating the estate shall be recorded as provided in Code Section 53-12-152. When such an estate is created, the legal title to the property and all the property added thereto or substituted therefor shall vest and remain in the trustee or trustees named and his or their successors, in accordance with the terms of the deed, with all the powers conferred thereby upon the trustee, and shall not during the continuance of the estate pass to or vest in the beneficiaries. At the end of 25

years from the date of the deed creating the estate, the title to such of the property as may then belong to the estate shall vest in the beneficiaries; and, if the deed creating the estate so provides, a renewal of the estate may be made at the end of the 25 years, upon the terms and conditions and in the manner therein set forth, for a like period; provided, however, that in the alternative to the period of 25 years and the renewal thereof, if the deed so provides, the estate may be created for any period of time specified therein which does not extend beyond any number of lives in being and 21 years thereafter.

53-12-152.

(a) The deed creating a trust estate as provided in Code Section 53-12-151 shall, within 30 days of the execution thereof, be filed by the trustee in the office of the clerk of the superior court of the county in which the principal office of the trust is located. The trustee shall concurrently pay to the clerk the fee prescribed in Code Section 15-6-77. Upon the deed being filed with the clerk and the fees being paid, the clerk shall forthwith deliver to the trustee or his attorney two certified copies of the deed, the filing of the clerk thereon, and a receipt for the costs which have been paid to the clerk.

(b) Upon receiving the two certified copies of the deed, the trustee or his or her attorney shall present the same to the Secretary of State and shall concurrently therewith pay \$5.00 to the Secretary of State for the use of the state. The Secretary of State shall thereupon attach to one of the certified copies of the deed a certificate in substantially the following form:

STATE OF GEORGIA

OFFICE OF THE SECRETARY OF STATE

This is to certify that a copy of the attached certified copy of a deed, declaration, or agreement of trust dated _____, by and between _____ as grantor(s) and _____ as trustee(s), which states that the trustee(s) may use the name of _____, has been duly filed in the office of the Secretary of State and the fees paid therefor, as provided by law.

WITNESS my hand and official seal this _____ day of _____, _____.

Secretary of State

(c) The certified copy of the deed, together with the certificate of the Secretary of State thereon, shall be received as evidence in any court or proceeding as evidence of the existence of the trust and of its nature, terms, and conditions.

(d) The Secretary of State, at any time, upon the request of any person, shall make and certify additional copies of the deed, filing of the clerk, and certificate of the Secretary of State, upon payment to him of a fee of \$1.00, plus 10¢ per 100 words for copying, and the additional certified copies shall be likewise admitted in evidence with like force and effect.

(e) Any amendment of a deed shall be filed with the clerk of the superior court and the Secretary of State in the same manner and under the same conditions required in the filing of the original deed, and the fees payable upon the filing shall be computed as if the filing were of an original deed.

53-12-153.

If the deed creating a trust estate under Code Section 53-12-151 so provides, the trustee or trustees may conduct and transact the affairs of the trust estate under a business or trade name, which name shall be set forth in the deed. The name may include the word 'trust' but may not include the words 'trust company.'

53-12-154.

When an estate is created pursuant to Code Section 53-12-151 and from time to time thereafter, the trustee or trustees shall issue such certificates of beneficial interest as may be provided for by the deed to the persons who are beneficially interested in the estate or who become so interested therein in accordance with the provisions of the deed. The certificates shall pass and be transferred as personalty and in the same manner as shares of stock in corporations and shall be subject to levy and sale under attachment or execution or any other process in like manner as shares of stock. The trustee or person in charge of the estate representing the trustee shall be subject to the same demand as that provided by Code Sections 11-8-112 and 9-13-58 for the levying officer to make upon the officers of a corporation. Persons having claims against the estate may enforce the same by action against the trustee or trustees thereof in like manner as actions against corporations, and service thereof may be perfected by serving the trustee or trustees, if residents of this state, and if not, then by publication. The venue of such actions shall be the same as that of similar actions against private corporations, but neither the trustees nor the beneficiaries of the estate shall be personally or individually liable therefor except in cases where officers and stockholders of private corporations would be liable under the law.

53-12-155.

The trustee or trustees of a trust created under Code Section 53-12-151 shall have sole and exclusive management and control of the property, in accordance with the terms of the deed creating the estate. The exercise by the trustee or trustees of any power granted or

conferred by the deed, including the power to lease, encumber, and sell, when exercised in accordance with the terms thereof, shall be as valid and effective to all intents and purposes as if the trustee or trustees were the sole and exclusive owners of the property in his or their own right. The trustee or trustees may resign or be removed and their successors may be appointed in the manner and in accordance with the terms fixed by the deed creating the estate. The same rights, powers, and title over and to the property shall belong to and be vested in the new trustee or trustees as are conferred upon the original trustee or trustees by the deed creating the estate. The death of a trustee shall not operate to cast title upon his heirs, devisees, executors, or administrators, but the same shall vest in his successor, when appointed.

53-12-156.

In addition to investments in any property, as such word is defined in Code Section 53-12-150, the trustee or trustees of a trust created under Code Section 53-12-151 may invest any funds of the trust estate in investments authorized to be made by trustees under the laws of this state; provided, however, that the deed creating the estate may further limit or expand the powers and authority of the trustee or trustees with respect to investments, including the power to invest in property located outside this state. The trustee or trustees are authorized and empowered, in accordance with the terms of the deed creating the estate, from corpus or from income or from both, to repurchase or redeem any issued and outstanding certificates of beneficial interest.

53-12-157.

Each trust created pursuant to this article shall make a return to the Secretary of State, upon the creation of the trust and annually thereafter, in the same manner and embracing the same information, insofar as applicable, as returns by corporations which are required to be made under Articles 1 and 16 of Chapter 2 of Title 14, including the provisions with regard to fees, penalty for noncompliance, and recording and certifying of copies of the returns.

53-12-158.

Upon the termination of the estate created under Code Section 53-12-151, the legal title to all the property belonging to the estate which is then undisposed of shall pass to and vest in the persons who are, at that time, the beneficiaries of the estate, in shares corresponding with their respective interest as beneficiaries.

53-12-159.

(a) Any trust created pursuant to this article may be merged into a domestic corporation for profit organized under the laws of this state and subject to Title 14 if the deed creating the trust expressly authorizes the merger.

(b) With respect to the required procedure for the merger and the rights of dissenting shareholders:

(1) The trust shall comply with any applicable provisions of the deed creating the trust and with the following Code sections, as if the trust were a domestic corporation:

(A) Subsection (b) of Code Section 14-2-1103, relating to director approval of a plan of merger, as if the trustee or trustees of the trust were a board of directors of a domestic corporation;

(B) Subsections (c) through (i) of Code Section 14-2-1103, relating to shareholder approval, and Code Sections 14-2-1301 through 14-2-1332, relating to rights of dissenting shareholders, as if the holders of certificates of beneficial interest in the trust were shareholders of a domestic corporation; and

(C) Code Sections 14-2-1105 and 14-2-1105.1, relating to execution of articles of merger and filing of the articles, together with other required documents, with the Secretary of State; and

(2) The domestic corporation into which the trust is merged shall comply with the provisions of Title 14 relating to the merger of domestic corporations, in the same manner as if the trust being merged into it were a domestic corporation.

(c) Upon compliance with the requirements of this Code section and the filing of articles of merger providing for a merger of the trust into a domestic corporation in the manner provided in Code Sections 14-2-1105 and 14-2-1105.1, the Secretary of State shall treat the merger as if it were a merger of corporations under Code Sections 14-2-1105 and 14-2-1105.1.

(d) If the Secretary of State issues a certificate of merger, the merger shall become effective as of the time of delivery to the Secretary of State of the articles of merger so certified, as provided in Code Section 14-2-1105, or at such later time and date as the articles specify, not to exceed 60 days from the date of delivery of the articles to the Secretary of State. When the merger has become effective:

(1) The trust and the domestic corporation into which the trust is merged shall be a single domestic corporation;

(2) The separate existence of the trust shall cease;

(3) The domestic corporation shall continue to have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under Title 14;

(4) The domestic corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of the trust; and all property, real, personal, and mixed, all debts due on whatever account, including subscriptions to shares, all other choses in action, and all and every other interest of or belonging to or due to the trust shall be taken and deemed to be transferred to and vested in the domestic corporation without further act or deed; and the title to any real property or any interest therein vested in the trust shall not revert or be in any way impaired by reason of the merger;

(5) The domestic corporation shall thenceforth be responsible and liable for all the liabilities and obligations of the trust. Any claim existing or action or proceeding pending by or against the trust may be prosecuted as if the merger had not taken place, or the domestic corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the trust shall be impaired by the merger; and

(6) The articles of incorporation of the domestic corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger."

SECTION 3.

Said title is further amended by replacing Chapter 13, which has been repealed, with a new Chapter 13 to read as follows:

"CHAPTER 13

ARTICLE 1

53-13-1.

(a) Except to the extent it would impair vested rights and except as otherwise provided by law, the provisions contained in this chapter shall apply to any trust regardless of the date it was created.

(b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions in this chapter or elsewhere in the laws of this state.

(c) Except to the extent that the principles of common law and equity governing trusts are modified by this chapter or any other provision of law, such principles remain the law of the state.

53-13-2.

As used in this chapter, the term:

(1) 'Person' means an individual, corporation, partnership, association, joint-stock company, business trust, unincorporated organization, limited liability company, or other legal entity, including any of the foregoing acting as a fiduciary.

(2) 'Property' means any type of property, whether real or personal, tangible or intangible, legal or equitable.

(3) 'Settlor' means the person who creates the trust, including a testator in the case of a testamentary trust. The terms 'grantor' and 'trustor' mean the same as 'settlor.'

(4) 'Trust' means an express trust or an implied trust.

(5) 'Trust property' means property the legal title to which is held by the trustee. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust or other arrangement. The terms 'trust corpus' and 'trust res' mean the same as 'trust property.'

(6) 'Trust res' means trust property.

(7) 'Trustee' means the person or persons holding legal title to the property in trust.

53-13-3.

(a) A charitable trust is one in which the settlor provides that the trust property shall be used for charitable purposes.

(b) Charitable purposes include the following:

(1) The relief of poverty;

(2) The advancement of education;

(3) The advancement of ethics and religion;

(4) The advancement of health;

(5) The advancement of science and the arts and humanities;

(6) The protection and preservation of the environment;

(7) The improvement, maintenance, or repair of cemeteries, other places of disposition of human remains, and memorials;

(8) The prevention of cruelty to animals;

(9) Governmental purposes; and

(10) Other similar subjects having for their object the relief of human suffering or the promotion of human civilization.

(c) If the settlor provides for both charitable and noncharitable purposes, the provisions relating to the charitable purposes shall be governed by this article.

685 53-13-4.

686 The settlor of a charitable trust may retain the power to select the charitable purposes or
687 charitable beneficiaries, or may grant the trustee or any other person the power to select
688 charitable purposes or charitable beneficiaries or to engage in the charitable purposes,
689 without rendering the trust void for indefiniteness.

690 53-13-5.

691 If a charitable trust or gift cannot be executed in the manner provided by the settlor or
692 donor, the superior court shall exercise equitable powers in such a way as will as nearly as
693 possible effectuate the intention of the settlor or donor.

694 53-13-6.

695 A charitable trust is valid even though under the trust provisions it is to continue for an
696 indefinite or unlimited period.

697 53-13-7.

698 In all cases in which the rights of beneficiaries under a charitable trust are involved, the
699 Attorney General or the district attorney of the circuit in which the major portion of trust
700 res lies shall represent the interests of the beneficiaries and the interests of this state as
701 parens patriae in all legal matters pertaining to the administration and disposition of such
702 trust. The Attorney General or the district attorney may bring or defend actions and,
703 insofar as an action of this nature may be deemed an action against the state, the state
704 expressly gives its consent thereto. The venue of such actions may be in any county in the
705 state in which a substantial number of persons who are the beneficiaries of the trust reside.
706 Process shall be directed to the Attorney General or to the district attorney of the circuit in
707 which the major portion of the trust res lies. Service may be perfected by mailing a copy
708 of the petition and process by the clerk of the superior court of the county in which it is
709 filed to the Attorney General or to the district attorney of the circuit in which the major
710 portion of the trust res lies. Any judgment determining rights under any charitable trusts
711 shall be binding on the beneficiaries if the Attorney General or the district attorney of the
712 circuit in which the major portion of the trust res lies is a party and is served as provided
713 in this Code section.

714 53-13-8.

715 (a) The effect of the provisions of this chapter and Chapters 12, 14, and 15 may be varied
716 by the trust instrument except:

- (1) As to any requirements in Article 2 of Chapter 12 relating to the creation and validity of express trusts;
- (2) As to the effect of the rules as provided in Article 5 of Chapter 12 relating to spendthrift trusts;
- (3) As to the power of the beneficiaries to modify a trustee's compensation as provided in Code Section 53-14-6;
- (4) As to the duty of a trustee to administer the trust and to exercise discretionary powers in good faith, as provided in Code Sections 53-14-30 and 53-14-38;
- (5) As to the effect of a provision relieving a trustee from liability, as provided in Code Section 53-14-53; and
- (6) As to the periods of limitation on actions, as provided in Code Sections 53-12-25 and 53-14-57.
- (b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions of this chapter or Chapters 12, 14, and 15 or as otherwise provided by law.

ARTICLE 2

Part 1

53-13-20.

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-13-21, the articles of incorporation of any corporation which is a private foundation, as defined in Section 509 of the federal Internal Revenue Code, shall be amended automatically as of the later of the date of incorporation or January 1, 1972, to provide that the corporation shall:

- (1) Not engage in any act of self-dealing, as defined in Section 4941(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4941 of the federal Internal Revenue Code;
- (2) Not retain any excess business holdings, as defined in Section 4943(c) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4943 of the federal Internal Revenue Code;
- (3) Not make any investments which would jeopardize the carrying out of any of the exempt purposes of the corporation, within the meaning of Section 4944 of the federal Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944 of the federal Internal Revenue Code;

(4) Not make any taxable expenditures, as defined in Section 4945(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4945 of the federal Internal Revenue Code; and

(5) Distribute for the purpose specified in its articles of incorporation for each taxable year amounts at least sufficient to avoid any liability for the tax imposed by Section 4942 of the federal Internal Revenue Code.

53-13-21.

Any corporation which is a private foundation, as defined in Section 509 of the federal Internal Revenue Code, may amend its articles of incorporation expressly to exclude the application of Code Section 53-13-20 or any portion thereof in the manner provided by Article 10 of Chapter 2 of Title 14 or Article 8 of Chapter 3 of Title 14, whichever is applicable.

53-13-22.

Nothing contained in Code Sections 53-13-20 and 53-13-21 shall cause or be construed to cause a forfeiture or reversion of any of the property of a corporation which is subject to such Code sections.

53-13-23.

With respect to property held by a corporation which is a private foundation, as defined in Section 509 of the federal Internal Revenue Code, and which is subject to conditions which permit distributions to the extent of the net income of the property each year but do not permit distributions of the property or any part thereof itself, the directors of the corporation may elect to distribute so much of the property as may be necessary to enable the corporation to avoid liability for any tax imposed by Section 4942 of the federal Internal Revenue Code in the same manner as if the corporation were a trust described in Code Section 53-13-43 and the property were the only property held in the trust and as if the directors were the trustees of the trust.

53-13-24.

Nothing in Code Sections 53-13-20 through 53-13-23 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any corporation.

779

Part 2780 53-13-40.

781 Notwithstanding any provision therein to the contrary and except as provided in Code
782 Section 53-13-42, the governing instrument of any trust which is a private foundation, as
783 defined in Section 509 of the federal Internal Revenue Code, a charitable trust, as defined
784 in Section 4947(a)(1) of the federal Internal Revenue Code, or a split-interest trust, as
785 defined in Section 4947(a)(2) of the federal Internal Revenue Code, shall be amended
786 automatically as of the later of the inception of the trust or January 1, 1972, to include
787 provisions which prohibit the trustees of the trust from:

788 (1) Engaging in any act of self-dealing, as defined in Section 4941(d) of the federal
789 Internal Revenue Code, which would give rise to any liability for the tax imposed by
790 Section 4941 of the federal Internal Revenue Code;

791 (2) Retaining any excess business holdings, as defined in Section 4943(c) of the federal
792 Internal Revenue Code, which would give rise to any liability for the tax imposed by
793 Section 4943 of the federal Internal Revenue Code;

794 (3) Making any investments which would jeopardize the carrying out of any of the
795 exempt purposes of the trust, within the meaning of Section 4944 of the federal Internal
796 Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944 of
797 the federal Internal Revenue Code; and

798 (4) Making any taxable expenditures, as defined in Section 4945(d) of the federal
799 Internal Revenue Code, which would give rise to any liability for the tax imposed by
800 Section 4945 of the federal Internal Revenue Code;

801 provided, however, that in the case of a split-interest trust, as defined in Section 4947(a)(2)
802 of the federal Internal Revenue Code, paragraphs (1) through (4) of this Code section shall
803 apply only to the extent required by Section 4947 of the federal Internal Revenue Code.

804 53-13-41.

805 Notwithstanding any provision therein to the contrary and except as provided in Code
806 Section 53-13-42, the governing instrument of any trust which is a private foundation, as
807 defined in Section 509 of the federal Internal Revenue Code, or which is a charitable trust,
808 as defined in Section 4947(a)(1) of the federal Internal Revenue Code, shall be amended
809 automatically as of the later of the inception of the trust or January 1, 1972, to include a
810 provision which requires the trustees to distribute, for the purposes specified in the
811 governing instrument, for each taxable year, amounts at least sufficient to avoid any
812 liability for the tax imposed by Section 4942 of the federal Internal Revenue Code.

813 53-13-42.

814 The trustees of any trust which is a private foundation, as defined in Section 509 of the
815 federal Internal Revenue Code, a charitable trust, as defined in Section 4947(a)(1) of the
816 federal Internal Revenue Code, or a split-interest trust, as defined in Section 4947(a)(2) of
817 the federal Internal Revenue Code, may, without judicial proceedings, amend the
818 governing instrument of the trust expressly to exclude the application of Code Section
819 53-13-40 or 53-13-41, or both, by executing a written amendment to the trust and filing a
820 duplicate original of the amendment with the Attorney General of this state, whereupon the
821 Code section or Code sections, as the case may be, shall not apply to the trust.

822 53-13-43.

823 (a) With respect to any trust which is a private foundation, as defined in Section 509 of the
824 federal Internal Revenue Code, or a charitable trust, as defined in Section 4947(a)(1) of the
825 federal Internal Revenue Code, the governing instrument of which permits distributions to
826 the extent of the net income of the trust each year but does not permit distributions from
827 trust principal, the trustees of the trust may elect, without judicial proceedings and
828 notwithstanding any provision to the contrary contained in the governing instrument of the
829 trust, to distribute in any year, for the purposes specified in the governing instrument, that
830 amount from the principal of the trust which, when added to the income of the trust
831 available for distribution during such year, will enable the trust to avoid any liability for
832 the tax imposed by Section 4942 of the federal Internal Revenue Code, by filing a written
833 election, which may be a continuing one, with the Attorney General of this state to have
834 this Code section and Code Section 53-13-23 apply to the trust. A distribution from trust
835 principal pursuant to the election shall only be in the form of cash or securities which are
836 either listed or admitted to unlisted trading privileges upon any stock exchange or are
837 quoted regularly in any newspaper or newspapers having a general circulation in this state.
838 (b) Any election made under subsection (a) of this Code section may be revoked at any
839 time by filing written notice of revocation with the Attorney General of this state.

840 53-13-44.

841 Nothing contained in Code Sections 53-13-40 through 53-13-43 shall cause or be construed
842 to cause a forfeiture or reversion of any of the property of a trust which is subject to such
843 Code sections or to make the purposes of the trust impossible of accomplishment.

844 53-13-45.

845 Nothing in Code Sections 53-13-40 through 53-13-43 shall impair the rights and powers
846 of the courts or the Attorney General of this state with respect to any trust."

SECTION 4.

Said title is further amended by replacing Chapter 14, which has been repealed with a new Chapter 14 to read as follows:

"CHAPTER 14ARTICLE 1Part 153-14-1.

As used in this chapter, the term:

(1) 'Ascertainable standard' means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the federal Internal Revenue Code of 1986.

(2) 'Beneficiary' means a person for whose benefit property is held in trust, regardless of the nature of the interest, and includes any beneficiary, whether vested or contingent, born or unborn, ascertained or unascertained.

(3) 'Express trust' means a trust as described in Code Section 53-12-10.

(4) 'Person' means an individual, corporation, partnership, association, joint-stock company, business trust, unincorporated organization, limited liability company, or other legal entity, including any of the foregoing acting as a fiduciary.

(5) 'Property' means any type of property, whether real or personal, tangible or intangible, legal or equitable.

(6) 'Qualified beneficiary' means a living individual or other existing person who, on the date of determination of beneficiary status:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this paragraph terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(7) 'Settlor' means the person who creates the trust, including a testator in the case of a testamentary trust. The terms 'grantor' and 'trustor' mean the same as 'settlor.'

(8) 'Trust' means an express trust or an implied trust.

(9) 'Trust instrument' means the document or documents, including any testamentary instrument, that contains the trust provisions.

(10) 'Trust property' means property the legal title to which is held by the trustee. The term also includes choses in action, claims, and contract rights, including a contractual

882 right to receive death benefits as designated beneficiary under a policy of insurance,
883 contract, employees' trust or other arrangement. The terms 'trust corpus' and 'trust res'
884 mean the same as 'trust property.'

885 (11) 'Trust res' means trust property.

886 (12) 'Trustee' means the person or persons holding legal title to the property in trust.

887 53-14-2

888 A trustee must have legal capacity under Georgia law to acquire, hold, and transfer title to
889 property. An individual is eligible to serve as a trustee regardless of citizenship or
890 residency. If the trustee is a corporation, partnership or other entity, it must have the power
891 to act as a trustee in Georgia.

892 53-14-3

893 (a) A settlor may appoint trustees or grant that power to others, including trust
894 beneficiaries.

895 (b) A trust shall never fail for want of a trustee.

896 (c) If the trust instrument names a person to fill a vacancy or provides a method of
897 appointing a trustee, any vacancy shall be filled or appointment made as provided in the
898 trust instrument.

899 (d) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries
900 are not sui juris but all have a guardian or conservator, the qualified beneficiaries may
901 appoint a trustee by unanimous consent. For purposes of this paragraph a parent may
902 represent and bind the parent's minor or unborn child if a conservator or guardian for the
903 child has not been appointed and there is no conflict of interest between the parent and the
904 child with respect to the appointment of a trustee.

905 (e) In all other cases, the court, on petition of an interested person, may appoint any
906 number of trustees consistent with the intention of the settlor and the interests of the
907 beneficiaries.

908 (f) The petition provided for in subsection (e) of this Code section shall be served upon all
909 qualified beneficiaries or their guardians or conservators. The court shall appoint a
910 guardian ad litem for each non-sui juris beneficiary who has no guardian or conservator
911 and service of notice of the petition shall be made on such guardian ad litem.

912 (g) A trustee appointed as a successor trustee shall have all the authority of the original
913 trustee.

914 53-14-4.

915 (a) The acceptance of a trust is necessary to constitute a person as trustee. Acceptance may
916 be effected by acts as well as words. After acceptance, the trustee may not decline the
917 trusteeship.

918 (b) Except as otherwise provided in subsection (c) of this Code section, a person
919 designated as trustee accepts the trusteeship:

920 (1) By substantially complying with a method of acceptance provided in the trust
921 instrument; or

922 (2) If the trust instrument does not provide a method or the method provided in the trust
923 instrument is not expressly made exclusive, by accepting delivery of the trust property,
924 exercising powers or performing duties as trustee, or otherwise indicating acceptance of
925 the trusteeship.

926 (c) A person designated as trustee, without accepting the trusteeship, may act to preserve
927 the trust property if, as soon as practicable, the person rejects or declines the trusteeship.

928 53-14-5.

929 (a) A trustee is not required to give a bond to secure performance of the trustee's duties
930 unless:

931 (1) The trust instrument requires a bond; or

932 (2) A bond is found by the court to be necessary to protect the interests of beneficiaries
933 or creditors of the trust, even though the trust instrument waives the requirement of a
934 bond.

935 (b) Even though a bond has been required pursuant to subsection (a) of this Code section
936 or the trust instrument requires a bond, the court may excuse the requirement, reduce or
937 increase the amount of a bond, release a surety, or permit the substitution of another bond
938 with the same or different sureties.

939 (c) The cost of any bond shall be charged against the trust.

940 (d) If a bond is required, the bond shall be:

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

943 (2) Payable to the court for the benefit of interested persons as their interests may appear;

944 (3) Conditioned upon the faithful discharge of the trustee's duties; and

945 (4) If imposed by the court, in an amount and with sureties and liabilities as required by
946 the court.

947 (e) Any other law to the contrary:

948 (1) A financial institution, trust company, national or state bank, savings bank, or savings
949 and loan association described in Code Section 7-1-242 that seeks to serve as a trustee

under any trust created under or governed by the laws of this state is not required to give bond for the faithful performance of its duties unless its combined capital, surplus, and undivided profits are less than \$3 million as reflected in its last statement filed with the Comptroller of the Currency of the United States or the commissioner of banking and finance;

(2) In every case in which the trustee of any trust is required to give bond for the faithful performance of the trustee's duties in such fiduciary capacity, the bond shall be in a value equal to double the value of the trust estate; provided, however, that the trustee may give bond in an amount equal to the value of the trust estate if the bond is secured by a licensed commercial surety authorized to transact business in this state. For purposes of this paragraph, the term 'trust estate' shall exclude real property and improvements thereon held by the trustee in a fiduciary capacity; provided, however, that upon the conversion of any such real property into personalty, the trustee shall give a new bond including the value of the personalty into which the real property has been converted.

(f) The trustee and any surety shall be held and deemed joint and several obligors and may be subjected jointly and severally to liability in the same action. No prior judgment establishing the liability of the trustee shall be necessary before an action is brought against the sureties on the bond.

(g) When a judgment has been obtained against the principal and surety or sureties on the bond of a trustee, a levy may be made upon any property of any defendant in fi. fa.

(h) A court of competent jurisdiction shall be authorized to enter a judgment and to issue a writ of execution against the principal and surety or sureties on the bond of a trustee and shall be further authorized to grant judgment and execution in favor of the surety or sureties against the principal upon payment of the judgment by the surety or sureties.

(i) Failure to comply with this Code section shall not make void or voidable or otherwise affect an act or transaction of a trustee with any third party.

53-14-6.

The authority of cotrustees to act on behalf of the trust shall be as follows:

(1) A power vested in two or more trustees may only be exercised by their unanimous action, provided, however, that a cotrustee may delegate to one or more other cotrustees the performance of ministerial acts;

(2) If a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act unless or until the vacancy is filled; and

(3) While a cotrustee is unable to act because of inaccessibility, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act as if they were the only trustees when necessary to accomplish the purposes of the trust.

53-14-7.

(a) The effect of the provisions of this chapter and Chapters 12, 13, and 15 may be varied by the trust instrument except:

(1) As to any requirements in Article 2 of Chapter 12 relating to the creation and validity of express trusts;

(2) As to the effect of the rules as provided in Article 5 of Chapter 12 relating to spendthrift trusts;

(3) As to the power of the beneficiaries to modify a trustee's compensation as provided in Code Section 53-14-6;

(4) As to the duty of a trustee to administer the trust and to exercise discretionary powers in good faith, as provided in Code Sections 53-14-30 and 53-14-38;

(5) As to the effect of a provision relieving a trustee from liability, as provided in Code Section 53-14-53; and

(6) As to the periods of limitation on actions, as provided in Code Sections 53-12-25 and 53-14-57.

(b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions of this chapter or Chapters 12, 13, and 15 or as otherwise provided by law.

Part 2

53-14-20.

(a) Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement between the trustee and the settlor. After the settlor's death or incapacity or while the trust is irrevocable, the trust instrument or the agreement relating to the trustee's compensation may be modified as follows:

(1) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries are not sui juris but all of them have a guardian or conservator, the trustee and the sui juris qualified beneficiaries and the guardians or conservators of non-sui juris qualified beneficiaries may by unanimous consent modify the trust instrument or agreement relating to the trustee's compensation without receiving the approval of any court; and

(2) If one or more of the non-sui juris qualified beneficiaries has no guardian or conservator, and all of the other qualified beneficiaries, including the guardians or conservators of non-sui juris qualified beneficiaries, and the trustee are in agreement, any sui juris qualified beneficiary or the guardian or conservator of a non-sui juris beneficiary or the trustee shall petition the court to approve a modification of the trust instrument or agreement relating to the trustee's compensation. The court shall appoint a guardian ad

litem for each non-sui juris beneficiary who does not have a guardian or conservator and service of notice of the petition for modification of the trustee's compensation shall be made on each such guardian ad litem. The court shall hold a hearing and shall either allow or deny the modification that is requested in the petition.

(b) If there is no provision for trustee compensation in the trust instrument and there is no separate written agreement between the trustee and the settlor relating to the trustee's compensation, a separate written agreement relating to the trustee's compensation may be entered into between the trustee and the qualified beneficiaries as follows:

(1) If all the qualified beneficiaries are sui juris or if some of the qualified beneficiaries are not sui juris but the all of them have a guardian or conservator, the trustee and the sui juris qualified beneficiaries and the guardians or conservators of non-sui juris beneficiaries may by unanimous consent enter into an agreement relating to the trustee's compensation without receiving the approval of any court;

(2) If one or more of the non-sui juris qualified beneficiaries has no guardian or conservator, and all of the other qualified beneficiaries including the guardians or conservators of non-sui juris qualified beneficiaries, and the trustee are in agreement, any sui juris qualified beneficiary or the guardian or conservator of a non-sui juris beneficiary or the trustee shall petition the court to approve an agreement relating to the trustee's compensation. The court shall appoint a guardian ad litem for each non-sui juris beneficiary who does not have a guardian or conservator and service of notice of the petition for approval of the agreement shall be made on each such guardian ad litem. The court shall hold a hearing and shall either allow or deny the agreement that is requested in the petition.

(c) In cases other than those described in subsections (a) and (b) of this Code section, the trustee shall be entitled to compensation as follows:

(1) With respect to a corporate trustee, its published fee schedule provided such fees are reasonable under the circumstances; and

(2) With respect to an individual Trustee:

(A) One percent of cash and the fair market value of any other principal asset received upon the initial funding of the trust and at such time as additional principal assets are received; and

(B) An annual fee calculated in accordance with the following schedule based upon the cash and the market value of the other principal assets valued as of the last day of the trust accounting year prorated based on the length of service by the trustee during that year.

	<u>Percentage Fee</u>	<u>Market Value</u>
1056		
1057	<u>1.75 percent / year on the first</u>	<u>\$ 500,000.00</u>
1058	<u>1.25 percent / year on the next</u>	<u>\$ 500,000.00</u>
1059	<u>1.00 percent / year on the next</u>	<u>\$ 1,000,000.00</u>
1060	<u>0.85 percent / year on the next</u>	<u>\$ 3,000,000.00</u>
1061	<u>0.50 percent / year on values over</u>	<u>\$ 5,000,000.00</u>

1062 53-14-21.

1063 Unless any separate written agreement provides otherwise:

1064 (1) Each cotrustee shall be compensated as specified by the terms of the trust, as each
 1065 trustee may have agreed or in accordance with a published fee schedule and such
 1066 compensation among cotrustees shall not be apportioned unless they shall agree
 1067 otherwise; and

1068 (2) The annual fee paid pursuant to subparagraph (c)(2)(B) of Code Section 53-14-20
 1069 shall be apportioned among trustees and successor trustees according to the proportion
 1070 of time each rendered services during the year.

1071 53-14-22.

1072 (a) A trustee who is receiving compensation as described in subsection (c) of Code Section
 1073 53-14-20 may petition the court for compensation that is greater than the compensation
 1074 allowed under that subsection. Service of notice of the petition for extra compensation shall
 1075 be made on all qualified beneficiaries or their guardians or conservators. The court shall
 1076 appoint a guardian ad litem for each non-sui juris qualified beneficiary who does not have
 1077 a guardian or conservator and service of notice of the petition for modification of the
 1078 trustee's compensation shall be made on each such guardian ad litem.

1079 (b) After hearing any objection, the court shall allow such extra compensation as the court
 1080 deems reasonable. The allowance of extra compensation shall be conclusive as to all parties
 1081 in interest.

1082 53-14-23.

1083 A trustee is entitled to be reimbursed out of the trust property for reasonable expenses that
 1084 were properly incurred in the administration of the trust.

53-14-24.

(a) Any trustee may receive compensation for services, as specified in this subsection, from a corporation or other business enterprise, where the trust estate owns an interest in the corporation or other business enterprise, provided that:

(1) The services provided by the trustee to the corporation or other business enterprise are of a managerial, executive, or business advisory nature;

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

(3) The services are performed and the trustee is paid pursuant to a contract executed by the trustee and the corporation or business enterprise, which contract is approved by a majority of those members of the board of directors or other similar governing authority of the corporation or business enterprise who are not officers or employees of the trustee and are not related to the trustee and provided, further, the contract is approved by the court.

(b) Any trustee receiving compensation from a corporation or other business enterprise for services to it as described in subsection (a) of this Code section shall not receive extra compensation in respect to such services as provided in Code Section 53-14-22; provided, however, that nothing in this Code section shall prohibit the receipt by the trustee of extra compensation for services rendered in respect to other assets or matters involving the trust estate.

(c) Nothing in this Code section shall prohibit the receipt by trustees of normal commissions and compensation for the usual services performed by trustees pursuant to law or pursuant to any fee agreement executed by the settlor.

(d) The purpose of this Code section is to enable additional compensation to be paid to trustees for business management and advisory services to corporations and business enterprises pursuant to contract, without the necessity of petitioning for extra compensation pursuant to Code Section 53-14-22.

Part 3

53-14-40.

(a) A trustee may resign:

(1) In the manner and under the circumstances described in the trust instrument;

(2) Upon petition to the court showing that all of the qualified beneficiaries are sui juris or that of the non-sui juris qualified beneficiaries have guardians or conservators and that all the qualified beneficiaries or their guardians or conservators have agreed in writing to the resignation; or

(3) If all the sui juris qualified beneficiaries and their guardians or conservators are not in agreement, or if one or more of the qualified beneficiaries is not sui juris and has no guardian or conservator, upon petition to the court showing to the satisfaction of the court that:

(A) The trustee is unable to continue serving as trustee due to age, illness, infirmity, or similar reason;

(B) Greater burdens have devolved upon the office of trustee than those which were originally contemplated or should have been contemplated when the trust was accepted and the assumption of the additional burdens would work a hardship upon the trustee;

(C) Disagreement exists between one or more of the beneficiaries of the trust and the trustee in respect to the trustee's management of the trust, which disagreement and conflict appear detrimental to the best interests of the trust;

(D) The resignation of the trustee will result in or permit substantial financial benefit to the trust;

(E) The resigning trustee is one of two or more acting trustees and the cotrustee or cotrustees will continue in office with no detriment to the trust contemplated; or

(F) The resignation would not be disadvantageous to the trust.

(b) The petition to the court provided for in paragraph (3) of subsection (a) of this Code section shall be served upon all qualified beneficiaries or their guardians or conservators. The court shall appoint a guardian ad litem for each non-juris beneficiary who does not have a guardian or conservator and service of notice of the petition for resignation shall be made on each such guardian ad litem.

(c) The resignation of a trustee shall not relieve the trustee from liability for any actions prior to the resignation except to the extent the trustee is relieved by the court in the appropriate proceeding, or to the extent relieved by the trust instrument.

(d) If the resignation would create a vacancy required to be filled, then the resignation shall not be effective until the successor accepts the trust.

53-14-41.

(a) A trustee may be removed:

(1) In accordance with the provisions of the trust instrument; or

(2) Upon petition to the court by any interested person showing good cause.

(b) In the discretion of the court, in order to protect the trust property or the interests of any beneficiary, on its own motion or on motion of a cotrustee or other interested person, the court may compel the trustee whose removal is being sought to surrender trust property to a cotrustee or to a receiver or temporary trustee pending a decision on a petition for

1154 removal of a trustee or pending appellate review of such decision. To the extent the court
1155 deems necessary, the powers of the trustee also may be suspended.

1156 ARTICLE 2

1157 53-14-60.

1158 (a) At any time following 12 months from the date of acceptance of a trust, but not more
1159 frequently than once every 12 months, a trustee may petition the court to approve an
1160 interim accounting, relieving the trustee from liability for the period covered by the interim
1161 accounting.

1162 (b) The petition shall set forth:

1163 (1) The name and address of the trustee;

1164 (2) Any provisions of the trust relating to matters that will be covered by the interim
1165 accounting;

1166 (3) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a
1167 guardian ad litem;

1168 (4) The period which the accounting covers;

1169 (5) A statement of receipts and disbursements of the trust that have occurred since the
1170 trustee's acceptance of the trust or since the effective date of the last accounting;

1171 (6) In a separate schedule, the principal on hand at the beginning of the accounting
1172 period and the status at that time of its investment; the investments received from the
1173 settlor and still held; additions to principal during the accounting period, with dates and
1174 sources of acquisition; investments collected, sold, or charged off during the accounting
1175 period, with the consequent loss or gain and whether credited to principal or income;
1176 investments made during the accounting period, with the date, source, and cost of each;
1177 deductions from the principal during the accounting period, with the date and purpose of
1178 each; and principal on hand at the end of the accounting period, how invested, and the
1179 estimated market value of each investment;

1180 (7) In a separate schedule, the income on hand at the beginning of the accounting period
1181 and in what form held; income received during the accounting period, when, and from
1182 what source; income paid out during the accounting period, when, to whom, and for what
1183 purpose; and income on hand at the end of the accounting period and how invested;

1184 (8) A statement of the assets and liabilities of the trust as of the end of the accounting
1185 period; and

1186 (9) Other information reasonably necessary to explain or understand the accounting.

1187 (c) The petition shall be served as provided by law on the beneficiaries of the trust and the
1188 surety on the trustee's bond, if any.

1189 (d) Upon review of the petition and after considering any objections thereto and any
1190 evidence presented, the court may approve the trustee's interim accounting or enter
1191 judgment granting appropriate relief. If no objection to the petition is filed within the time
1192 allowed by law after service, or if the parties consent, the petition may be approved without
1193 notice, hearing, or further proceedings. The final judgment of the court shall be binding
1194 on all parties.

1195 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed
1196 against the trust, unless otherwise directed by the court.

1197 53-14-61.

1198 (a) If the trustee resigns, is removed, or dies, or upon the termination of the trust, a
1199 beneficiary or the successor trustee may petition the court to require the trustee or the
1200 trustee's personal representative to appear before the court for a final accounting.
1201 Alternatively, the trustee or the trustee's personal representative may petition the court to
1202 approve a final accounting relieving the trustee from liability for the period covered by the
1203 final accounting. The settlement period shall begin from the acceptance of the trusteeship
1204 by the trustee or the end of the period covered by the last interim accounting.

1205 (b) The petition shall set forth:

1206 (1) The name and address of the trustee;

1207 (2) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a
1208 guardian ad litem;

1209 (3) The period which the accounting covers; and

1210 (4) If the petition is filed by the trustee or the trustee's personal representative, the
1211 petition shall also include the information required to be filed by trustees in conjunction
1212 with the approval of an interim accounting as set forth in subsection (b) of Code Section
1213 53-14-60.

1214 (c) The petition shall be served as provided by law on the beneficiaries, the trustee, the
1215 trustee's personal representative, if any, and the surety on the trustee's bond, if any.

1216 (d) Upon review of the trustee's final accounting and after considering any objections
1217 thereto and any evidence presented, the court may approve the final accounting or enter
1218 judgment granting appropriate relief. If no objection to the petition is filed within the time
1219 allowed by law after service, or if the parties consent, the petition may be approved without
1220 notice, hearing, or further proceedings. The final judgment of the court shall be binding
1221 on all parties.

1222 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed
1223 against the trust, unless otherwise directed by the court.

1224 53-14-62.

1225 Nothing in this article shall restrict the right of any party to seek an equitable accounting.

1226 ARTICLE 3

1227 Part 1

1228 53-14-80.

1229 (a) The duties contained in this part are in addition to and not in limitation of the common
1230 law duties of the trustee, except to the extent inconsistent therewith.

1231 (b) Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith,
1232 in accordance with its provisions and purposes.

1233 53-14-81.

1234 In administering a trust, the trustee shall exercise the judgment and care of a prudent person
1235 acting in a like capacity and familiar with such matters, considering the purposes,
1236 provisions, distribution requirements, and other circumstances of the trust.

1237 53-14-82.

1238 (a) Within 60 days after the date of creation of an irrevocable trust or of the date on which
1239 a revocable trust becomes irrevocable, the trustee shall notify the qualified beneficiaries
1240 of the trust of the existence of the trust and the name and mailing address of the trustee.
1241 In full satisfaction of this obligation, the trustee may deliver the notice to the guardian or
1242 conservator of any non sui-juris beneficiary.

1243 (b) All irrevocable trusts in existence on the effective date of this part will be deemed to
1244 have waived this provision unless the trust instrument says otherwise.

1245 53-14-83.

1246 (a) On reasonable request by any qualified beneficiary or the guardian or conservator of
1247 a non-sui juris qualified beneficiary, the trustee shall provide the qualified beneficiary with
1248 a report of information, to the extent relevant to that beneficiary's interest, about the assets,
1249 liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars
1250 relating to the administration of the trust, including the trust provisions that describe or
1251 affect that beneficiary's interest.

1252 (b)(1) A trustee shall account at least annually, at the termination of the trust, and upon
1253 a change of trustees, to each qualified beneficiary of an irrevocable trust to whom income
1254 is required or authorized in the trustee's discretion to be distributed currently, and to any
1255 person who may revoke the trust. At the termination of the trust, the trustee shall also

1256 account to each remainder beneficiary. Upon a change of trustees, the trustee shall also
1257 account to the successor trustee. In full satisfaction of this obligation, the trustee may
1258 deliver the accounting to the guardian or conservator of any qualified beneficiary who is
1259 non-sui juris.

1260 (2) An accounting furnished to a qualified beneficiary pursuant to paragraph (1) of this
1261 subsection shall contain a statement of receipts and disbursements of principal and
1262 income that have occurred during the last complete fiscal year of the trust or since the last
1263 accounting to that beneficiary and a statement of the assets and liabilities of the trust as
1264 of the end of the accounting period;

1265 (c) A trustee is not required to report information or account to a qualified beneficiary who
1266 has waived in writing the right to a report or accounting and has not withdrawn that waiver;

1267 (d) Subsections (a) and (b) of this Code section shall not apply to the extent that the terms
1268 of the trust provide otherwise or the settlor of the trust directs otherwise in a writing
1269 delivered to the trustee.

1270 (e) Nothing in this Code section shall affect the power of a court to require or excuse an
1271 accounting.

1272 53-14-84.

1273 A trustee shall distribute all net income derived from the trust at least annually.

1274 53-14-85.

1275 A trustee is under no duty to investigate the resources of any beneficiary when determining
1276 whether to distribute trust property to that beneficiary.

1277 53-14-86.

1278 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

1279 (b) This Code section does not preclude the following transactions, if fair to the
1280 beneficiaries:

1281 (1) An agreement between a trustee and a beneficiary relating to the appointment or
1282 compensation of the trustee;

1283 (2) Payment of reasonable compensation to the trustee; or

1284 (3) Performing and receiving reasonable compensation for performing services of a
1285 managerial, executive, or business advisory nature for a corporation or other business
1286 enterprise, where the trust estate owns an interest in the corporation or other business
1287 enterprise.

53-14-87.

Except to the extent that the governing instrument clearly manifests an intention that the trustee shall or may favor one or more of the beneficiaries, a trustee shall administer a trust impartially based on what is fair and reasonable to all of the beneficiaries and with due regard to the respective interests of income beneficiaries and remainder beneficiaries.

Part 2

53-14-100.

Notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as 'absolute', 'sole', or 'uncontrolled', the trustee shall exercise a discretionary power in good faith.

53-14-101.

(a) As used in this Code section, the term 'fiduciary' means the one or more personal representatives of the estate of a decedent or the one or more trustees of a testamentary or inter vivos trust, whichever in a particular case is appropriate.

(b) A trustee of an express trust, without court authorization, is authorized:

(1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, at public or private sale or otherwise, with or without warranties or representations, upon such terms and conditions, including credit, and for such consideration as the fiduciary deems advisable and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received;

(2) To invest and reinvest in any property which the fiduciary deems advisable, including, but not limited to, common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; any real or personal property; investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations in common trust funds;

(3) To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of

any business or other enterprise, whatever its form or organization, including, but not limited to, the power:

(A) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(B) To dispose of any interest therein or acquire the interest of others therein;

(C) To contribute or invest additional capital thereto or to lend money thereto in any such case upon such terms and conditions as the fiduciary shall approve from time to time; and

(D) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the trust set aside for use in the business or to the trust as a whole.

In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;

(4) To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the trust property in exchange for the stock, securities, obligations of or other interests in any such corporation or entity, and to continue to hold the stock, securities, obligations, and interests;

(5) To continue any farming operation and to do any and all things deemed advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard, and forest products, including, but not limited to, the following powers:

(A) To operate the farm with hired labor, tenants, or sharecroppers;

(B) To lease or rent the farm for cash or for a share of the crops;

(C) To purchase or otherwise acquire farm machinery, equipment, and livestock;

(D) To construct, repair, and improve farm buildings of all kinds needed, in the fiduciary's judgment, for the operation of the farm;

(E) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes, such as for production, harvesting, or marketing; or for the construction, repair, or improvement of farm buildings; or for the purchase of farm machinery, equipment, or livestock;

(F) To employ approved soil conservation practices, in order to conserve, improve, and maintain the fertility and productivity of the soil;

1357 (G) To protect, manage, and improve the timber and forest on the farm and to sell the
1358 timber and forest products when it is to the best interest of the trust;
1359 (H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where
1360 needed;
1361 (I) To engage in the production of livestock, poultry, or dairy products and to construct
1362 such fences and buildings and to plant pastures and crops as may be necessary to carry
1363 on such operations;
1364 (J) To market the products of the farm; and
1365 (K) In general, to employ good husbandry in the farming operation;
1366 (6) To manage real property:
1367 (A) To improve, manage, protect, and subdivide any real property;
1368 (B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
1369 (C) To terminate any subdivision or part thereof;
1370 (D) To borrow money for the purposes authorized by this paragraph for the periods of
1371 time and upon the terms and conditions as to rates, maturities, and renewals as the
1372 fiduciary shall deem advisable and to mortgage or otherwise encumber the property or
1373 part thereof, whether in possession or reversion;
1374 (E) To lease the property or part thereof, the lease to commence at the present or in the
1375 future, upon the terms and conditions, including options to renew or purchase, and for
1376 the period or periods of time as the fiduciary deems advisable even though the period
1377 or periods may extend beyond the duration of the trust;
1378 (F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,
1379 conveyances, or grants of every nature and kind which are lawful in the jurisdiction in
1380 which the property lies;
1381 (G) To manage and improve timber and forests on the property, to sell the timber and
1382 forest products, and to make grants, leases, and contracts with respect thereto;
1383 (H) To modify, renew, or extend leases;
1384 (I) To employ agents to rent and collect rents;
1385 (J) To create easements and to release, convey, or assign any right, title, or interest
1386 with respect to any easement on the property or part thereof;
1387 (K) To erect, repair, or renovate any building or other improvement on the property
1388 and to remove or demolish any building or other improvement in whole or in part; and
1389 (L) To deal with the property and every part thereof in all other ways and for such
1390 other purposes or considerations as it would be lawful for any person owning the same
1391 to deal with the property either in the same or in different ways from those specified
1392 elsewhere in this paragraph;

(7) To lease personal property of the trust or part thereof, the lease to commence at the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust;

(8)(A) To pay debts, taxes, assessments, compensation of the fiduciary and other expenses incurred in the collection, care, administration, and protection of the trust; and

(B) To pay from the trust all charges that the fiduciary deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which the fiduciary determines adversely affect the trust or otherwise are liabilities of the trust and to apportion all such charges among the several bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances.

(9) To receive additional property from any source and to administer the additional property as a portion of the appropriate trust under the management of the fiduciary, provided that the fiduciary shall not be required to receive the property without the fiduciary's consent;

(10) In dealing with one or more fiduciaries of the estate or any trust created by the decedent or the settlor or any spouse or child of the decedent or settlor and irrespective of whether the fiduciary is a personal representative or trustee of such other estate or trust;

(A) To sell real or personal property of the estate or trust to such fiduciary or to exchange such property with such fiduciary upon such terms and conditions as to sale price, terms of payment, and security as shall seem advisable to the fiduciary; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and

(B) To borrow money from the estate or trust for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and securities as the fiduciary shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes, the costs of the administration of the estate or trust, and like charges against the estate or trust or any part thereof or of discharging any other liabilities of the estate or trust and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as may be required to secure the loan or loans and to renew the loans;

(11) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the trust or any part thereof, and to mortgage, pledge, or otherwise encumber such portion of the trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser;

(12) To make loans or advances for the benefit or the protection of the trust;

1430 (13) To vote shares of stock or other ownership interests owned by the trust, in person
1431 or by proxy, with or without power of substitution;

1432 (14) To hold a security in the name of a nominee or in other form without disclosure of
1433 the fiduciary relationship, so that title to the security may pass by delivery; but the
1434 fiduciary shall be liable for any act of the nominee in connection with the security so
1435 held;

1436 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,
1437 notes, mortgages, or other property into other stocks, bonds, debentures, notes,
1438 mortgages, or other property; to subscribe for other or additional stocks, bonds,
1439 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,
1440 debentures, notes, mortgages, or other property so acquired as investments of the trust so
1441 long as the fiduciary shall deem advisable;

1442 (16) To unite with other owners of property similar to any which may be held at any time
1443 in the trust, in carrying out any plan for the consolidation or merger, dissolution or
1444 liquidation, foreclosure, lease, or sale of the property or the incorporation or
1445 reincorporation, reorganization or readjustment of the capital or financial structure of any
1446 corporation, company, or association the securities of which may form any portion of an
1447 estate or trust; to become and serve as a member of a shareholders' or bondholders'
1448 protective committee; to deposit securities in accordance with any plan agreed upon; to
1449 pay any assessments, expenses, or sums of money that may be required for the protection
1450 or furtherance of the interest of the beneficiaries of any trust with reference to any such
1451 plan; and to receive as investments of the trust any securities issued as a result of the
1452 execution of such plan;

1453 (17) To adjust the interest rate from time to time on any obligation, whether secured or
1454 unsecured, constituting a part of the trust;

1455 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,
1456 with or without renewal or extension, upon such terms as the fiduciary shall deem
1457 advisable, without regard to the value of the security, if any, at the time of the
1458 continuance;

1459 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,
1460 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,
1461 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the
1462 property by deed from the mortgagor or obligor without foreclosure; and to retain the
1463 property so bid in or taken over without foreclosure;

1464 (20) To carry such insurance coverage as the fiduciary shall deem advisable;

1465 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the
1466 trust;

1467 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle
1468 claims involving the trust or the trustee; and
1469 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or
1470 otherwise deal with and settle claims in favor of or against the trust as the fiduciary
1471 shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary
1472 and the beneficiaries of the trust and the person against or for whom the claim is
1473 asserted, in the absence of fraud by such persons, and, in the absence of fraud, bad faith,
1474 or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the
1475 beneficiaries of the trust; and
1476 (C) To compromise all debts, the collection of which are doubtful, belonging to the
1477 trust when such settlements will advance the interests of those represented;
1478 (23) To employ and compensate, out of income or principal or both and in such
1479 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful
1480 to advise or assist in the administration of any trust, including, but not limited to, agents,
1481 accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents,
1482 realtors, appraisers, and tax specialists; and to do so without liability for any neglect,
1483 omission, misconduct, or default of the agent or representative, provided such person was
1484 selected and retained with due care on the part of the fiduciary;
1485 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created
1486 by a single instrument until division shall become necessary in order to make
1487 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts
1488 of shares by appropriate entries in the fiduciary's books of account and to allocate to each
1489 share or part of share its proportionate part of all receipts and expenses; provided,
1490 however, that this paragraph shall not defer the vesting in possession of any share or part
1491 of share of the trust;
1492 (25) To set up proper and reasonable reserves for taxes, assessments, insurance
1493 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber
1494 properties, repairs, improvements, and general maintenance of buildings or other property
1495 out of rents, profits, or other income received;
1496 (26) To value assets of the trust and to distribute them in cash or in kind, or partly in cash
1497 and partly in kind, in divided or undivided interests, as the fiduciary finds to be most
1498 practical and in the best interest of the distributees, the fiduciary being able to distribute
1499 types of assets differently among the distributees;
1500 (27) To transfer money or other property distributable to a beneficiary who is under age
1501 21, an adult for whom a guardian or conservator has been appointed, or an adult who the
1502 fiduciary reasonably believes is incapacitated by distributing such money or property
1503 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) Distributing it to the beneficiary's custodian under the Georgia Transfers to Minors Act or similar state law and for that purpose creating a custodianship and designating a custodian;

(C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial Trust Act, and, for that purpose, creating a custodial trust; or

(D) Distributing it to any other person, whether or not appointed guardian or conservator by any court, who shall, in fact, have the care and custody of the person of the beneficiary;

The fiduciary shall not be under any duty to see to the application of the distributions so made if the fiduciary exercised due care in the selection of the person, including the beneficiary, to whom the payments were made; and the receipt of the person shall be full acquittance to the fiduciary;

(28) To make, modify, and execute contracts and other instruments, under seal or otherwise, as the fiduciary deems advisable; and

(29) To serve without making and filing inventory and appraisal, without filing any annual or other returns or reports to any court, and without giving bond; but, in addition to any rights the beneficiaries may have under subsection (b) of 53-14-83, the fiduciary shall furnish to the income beneficiaries, at least annually, a statement of receipts and disbursements.

53-14-102.

A corporate fiduciary, without authorization by the court, may exercise the following powers:

(1) To retain stock or other securities of its own issue received on the creation of the trust or later contributed to the trust, including the securities into which the securities originally received or contributed may be converted or which may be derived therefrom as a result of merger, consolidation, stock dividends, splits, liquidations, and similar procedures. The corporate fiduciary may exercise by purchase or otherwise any rights, warrants, or conversion features attaching to any such securities. The authority described in this paragraph shall:

(A) Apply to the exchange or conversion of stock or securities of the corporate fiduciary's own issue, whether or not any new stock or securities received in exchange therefor are substantially equivalent to those originally held;

(B) Apply to the continued retention of all new stock and securities resulting from merger, consolidation, stock dividends, splits, liquidations, and similar procedures and

received by virtue of such conversion or exchange of stock or securities of the corporate fiduciary's own issue, whether or not the new stock or securities are substantially equivalent to those originally received by the fiduciary;

(C) Have reference, inter alia, to the exchange of such stock or securities for stock or securities of any holding company which owns stock or other interests in one or more other corporations including the corporate fiduciary, whether the holding company is newly formed or already existing and whether or not any of the corporations own assets identical or similar to the assets of or carry on a business identical or similar to the corporation whose stock or securities were previously received by the fiduciary and the continued retention of stock or securities, or both, of the holding company; and

(D) Apply regardless of whether any of the corporations have officers, directors, employees, agents, or trustees in common with the corporation whose stock or securities were previously received by the fiduciary.

(2) To borrow money from its own banking department for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges against the estate or any trust or any part thereof, and to mortgage, pledge, or otherwise encumber such portion of the estate or any trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser.

53-14-103.

(a) By an expressed intention of the testator or settlor contained in a will or in an instrument in writing whereby an express trust is created, any or all of the powers or any portion thereof enumerated in this part, as they exist at the time of the signing of the will by the testator or at the time of the signing by the first settlor who signs the trust instrument, may be, by appropriate reference made thereto, incorporated in the will or other written instrument with the same effect as though such language were set forth verbatim in the instrument.

(b) At any time after the execution of a revocable trust, the settlor or anyone who is authorized by the trust instrument to modify the trust may incorporate any or all of the powers or any portion thereof enumerated in this article, as they exist at the time of the incorporation.

(c) Incorporation of one or more of the powers contained in this article, by reference to the appropriate portion of Code Section 53-14-101, shall be in addition to and not in limitation of the common-law or statutory powers of the fiduciary.

(d)(1) A provision in any will or trust instrument which incorporates powers by citation to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); or former

1576 Code Section 53-15-3 or 53-12-232 which were in effect at the time the trust was created
1577 and which was valid under the law in existence at the time the will was signed by the
1578 testator or at the time of the signing by the first settlor who signs the trust instrument shall
1579 be effective notwithstanding the subsequent repeal of such statute.

1580 (2) A provision in any will or trust instrument which was signed by the testator or by the
1581 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates
1582 powers by citation to former Code Section 53-15-3 in effect on the date of such signing
1583 shall be deemed to mean and refer to the corresponding powers contained in former Code
1584 Section 53-12-232.

1585 (e) If any or all of the powers contained in this article are incorporated by reference into
1586 a will by a testator:

1587 (1) The term 'trust' includes the estate held by the personal representative;

1588 (2) The terms 'trustee' or 'fiduciary' include the personal representative; and

1589 (3) The term 'beneficiaries of the trust' includes distributees of the estate.

1590 53-14-104.

1591 The qualified beneficiaries of a trust that omits any of the powers in Code Section
1592 53-14-101 may by unanimous consent authorize but not require the court to grant to the
1593 trustee those powers. With respect to any qualified beneficiary who is non-sui juris, such
1594 consent may be given by the duly appointed conservator, if any, or if none, by the duly
1595 appointed guardian, if any, or if none, by either parent in the case of a minor, or, if none,
1596 by a guardian ad litem appointed to represent the non-sui juris qualified beneficiary.

1597 Part 3

1598 53-14-120.

1599 (a) Subject to subsection (c) of this Code section, and unless the trust provisions expressly
1600 indicate that a rule in this subsection does not apply:

1601 (1) A person other than a settlor who is a beneficiary and trustee of a trust that confers
1602 on the trustee a power to make discretionary distributions to or for the trustee's personal
1603 benefit may exercise the power only in accordance with an ascertainable standard; and

1604 (2) A trustee may not exercise a power to make discretionary distributions to satisfy a
1605 legal obligation of support that the trustee personally owes another person.

1606 (b) A power whose exercise is limited or prohibited by subsection (a) of this Code section
1607 may be exercised by a majority of the remaining trustees whose exercise of the power is
1608 not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court
1609 may appoint a special fiduciary with authority to exercise the power.

- 1610 (c) Subsection (a) of this Code section does not apply to:
- 1611 (1) A power held by the settlor's spouse who is the trustee of a trust for which a marital
- 1612 deduction, as defined in Section 2056(b)(5) or 2523(e) of the federal Internal Revenue
- 1613 Code of 1986, was previously allowed;
- 1614 (2) Any trust during any period that the trust may be revoked or amended by its settlor;
- 1615 or
- 1616 (3) A trust if contributions to the trust qualify for the annual exclusion under Section
- 1617 2503(c) of the federal Internal Revenue Code of 1986.

1618 Part 4

1619 53-14-130.

- 1620 (a) The trustee may present a certification of trust to any person other than a beneficiary
- 1621 in lieu of providing a copy of the trust instrument to establish the existence or the trust
- 1622 provisions.
- 1623 (b) The certification of trust as provided for in subsection (a) of this Code section shall
- 1624 contain some or all the following information:
- 1625 (1) That the trust exists and the date of the trust and any amendments;
- 1626 (2) The identity of each settlor;
- 1627 (3) The identity and address of each current trustee and, if more than one, the number
- 1628 and identity of those required to exercise the powers of the trustee;
- 1629 (4) The relevant powers of the trustee and any restrictions or limitations on those powers;
- 1630 (5) The revocability or irrevocability of the trust;
- 1631 (6) How trust property should be titled;
- 1632 (7) Except as specifically disclosed in the certification, that the transaction at issue
- 1633 requires no consent or action by any person other than the certifying trustee; and
- 1634 (8) Such other information as the trustee deems appropriate.
- 1635 (c) A certification of trust:
- 1636 (1) Must be signed by each trustee;
- 1637 (2) Must state that the trust has not been revoked, modified, or amended in any manner
- 1638 that would cause the representations contained in the certification to be incorrect; and
- 1639 (3) Need not contain the dispositive provisions of the trust.
- 1640 (d) The recipient of a certification of trust may require the trustee to furnish copies of those
- 1641 excerpts from the original trust instrument and any amendments that designate the trustee
- 1642 and confer upon the trustee the power to act in the pending transaction.

(e) A person who acts in reliance upon the certification of trust without knowledge that any information therein is incorrect is not liable to any person for so acting and may assume without inquiry that the information is correct.

(f) A person who in good faith enters into a transaction in reliance upon the certification of trust may enforce the transaction as if the information in the certification were correct.

(g) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including court costs and attorney's fees, if the court determines that the demand was not made in good faith.

(h) This Code section shall not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(i) A certification of trust in recordable form may be recorded in the office of the clerk of superior court.

Part 5

53-14-140.

Whenever a bank or trust company is duly authorized to act and is acting as a fiduciary, which term shall include an executor, administrator, trustee, guardian, or conservator and has a nominee or nominees in whose name securities, including, without limitation, bonds, stocks, notes, and other evidences of title to intangible personal property, held as a fiduciary, may be registered, it shall be lawful to register securities in the name of the nominee or nominees without mention of the fiduciary relationship in the instrument evidencing the securities or on the books of the issuer of the same, provided that:

(1) The records of the corporate fiduciary shall at all times clearly show that the securities are held by the corporate fiduciary in its capacity as fiduciary, together with the beneficial owner or owners thereof and all facts relating to its ownership, possession, and holding thereof; and

(2) The corporate fiduciary shall not be relieved of liability for the safe custody, control, and proper distribution of the securities by reason of the registration of same in the name of any nominee.

53-14-141.

If two or more fiduciaries are acting jointly in reference to any securities, it shall be lawful to register the property in the name of any nominee or any joint corporate fiduciary. In the event that more than one corporate fiduciary is acting, it shall be lawful to register securities in the name of any nominee of any one of the corporate fiduciaries.

53-14-142.

(a) Any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary, is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in Article 8 of Title 11. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk, in the name of the nominee of the clearing corporation, with any other such securities deposited in the clearing corporation by any person, regardless of the ownership of the securities, and certificates of small denominations may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

(b) A bank or trust company depositing securities pursuant to this Code section shall be subject to such rules and regulations as, in the case of state chartered institutions, the commissioner of banking and finance and, in the case of national banking associations, the comptroller of the currency may from time to time issue.

(c) A bank or trust company acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, shall certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(d) This Code section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on April 13, 1973, or acting thereafter, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation.

ARTICLE 4

53-14-143.

The trustee is accountable to the beneficiary for the trust property. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

1711 53-14-144.

1712 (a) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a
1713 beneficiary shall have a cause of action to seek:

1714 (1) To recover damages;

1715 (2) To compel the trustee to perform the trustee's duties;

1716 (3) To require an accounting;

1717 (4) To enjoin the trustee from committing a breach of trust;

1718 (5) To compel the trustee to redress a breach of trust by payment of money or otherwise;

1719 (6) To appoint a temporary trustee to take possession of the trust property and administer
1720 the trust or to suspend a trustee with or without the appointment of a temporary trustee;

1721 (7) To remove the trustee; and

1722 (8) To reduce or deny compensation of the trustee.

1723 (b) When trust assets are misapplied and can be traced in the hands of persons affected
1724 with notice of the misapplication, the trust shall attach to the assets. A creditor of a trust
1725 may follow assets in the hands of beneficiaries even if they were received without notice.

1726 (c) The remedy set forth in subsection (c) of Code Section 53-15-23 is the exclusive
1727 remedy for an abuse of discretion as provided in Code Sections 53-15-21 and 53-15-22.

1728 (d) The provision of remedies for breach of trust does not prevent resort to any other
1729 appropriate remedy provided by statute or common law.

1730 53-14-145.

1731 (a) A trustee who commits a breach of trust is personally chargeable with any damages
1732 resulting from the breach of trust, including but not limited to:

1733 (1) Any loss or depreciation in value of the trust property as a result of the breach of
1734 trust, with interest;

1735 (2) Any profit made by the trustee through the breach of trust, with interest;

1736 (3) Any amount that would reasonably have accrued to the trust or beneficiary if there
1737 had been no breach of trust, with interest; and

1738 (4) In the discretion of the court, expenses of litigation, including reasonable attorney's
1739 fees incurred in bringing an action on the breach or threat to commit a breach.

1740 (b) If the trustee is liable for interest, then the amount of the liability for interest shall be
1741 the greater of the following amounts:

1742 (1) The amount of interest that accrues at the legal rate on judgments; or

1743 (2) The amount of interest actually received.

1744 53-14-146.

1745 (a) No provision in a trust instrument is effective to relieve the trustee of liability for
1746 breach of trust committed in bad faith or with reckless indifference to the interests of the
1747 beneficiaries.

1748 (b) A trustee of a revocable trust is not liable to a beneficiary for any act performed or
1749 omitted pursuant to written direction from a person holding the power to revoke, including
1750 a person to whom the power to direct the trustee is delegated. If the trust is revocable in
1751 part, then this subsection applies with respect to the interest of the beneficiary in that part
1752 of the trust property.

1753 (c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee
1754 or in any other person, including a cotrustee, to the exclusion of one or more trustees,
1755 authority to direct the making or retention of any investment, the excluded trustee shall be
1756 liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the
1757 making or retention or any investment pursuant to the authorized direction.

1758 53-14-147.

1759 (a) A successor trustee is liable to the beneficiary for breach of trust involving acts or
1760 omissions of a predecessor trustee only if the successor trustee:

1761 (1) Knows or reasonably should have known of a situation constituting a breach of trust
1762 committed by the predecessor trustee and the successor trustee improperly permits it to
1763 continue;

1764 (2) Neglects to take reasonable steps to compel the predecessor to deliver the trust
1765 property to the successor trustee; or

1766 (3) Neglects to take reasonable steps to redress a breach of trust committed by the
1767 predecessor trustee in a case where the successor trustee knows or reasonably should
1768 have known of the predecessor trustee's breach.

1769 (b) A trustee succeeding a trustee who was also the settlor is not liable to the beneficiary
1770 for any action taken or omitted to be taken by the prior trustee nor does such successor
1771 trustee have a duty to institute any action against such prior trustee or to file any claim
1772 against such prior trustee's estate for any of the prior trustee's acts or omissions as trustee.
1773 This subsection applies only with respect to a trust or any portion of a trust that was
1774 revocable by the settlor during the time that the settlor served as trustee and committed the
1775 act or omission.

1776 53-14-148.

1777 (a) A trustee is liable to the beneficiary for a breach committed by a cotrustee if the
1778 trustee:

- 1779 (1) Participates in a breach of trust committed by the cotrustee;
1780 (2) Improperly delegates the administration of the trust to the cotrustee;
1781 (3) Approves, knowingly acquiesces in, or conceals a breach of trust committed by the
1782 cotrustee;
1783 (4) Negligently enables the cotrustee to commit a breach of trust; or
1784 (5) Neglects to take reasonable steps to compel the cotrustees to redress a breach of trust
1785 in a case where the trustee knows or reasonably should have known of the breach of trust.
1786 (b) If two or more cotrustees are jointly liable to the beneficiary, each cotrustee is entitled
1787 to contribution from the other, as determined by the degree of each co-trustee's fault.

1788 53-14-149.

- 1789 (a) A trustee may maintain an action against a cotrustee to:
1790 (1) Compel the cotrustee to perform duties required under the trust;
1791 (2) Enjoin the cotrustee from committing a breach of trust; or
1792 (3) Compel the cotrustee to redress a breach of trust committed by the cotrustee.
1793 (b) The provision of remedies for breach of trust does not prevent resort to any other
1794 appropriate remedy provided by statute or common law.

1795 53-14-150.

- 1796 (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise,
1797 if a beneficiary has received a written report that adequately discloses the existence of a
1798 claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless
1799 a proceeding to assert the claim is commenced within two years after receipt of the report.
1800 A report adequately discloses existence of a claim if it provides sufficient information so
1801 that the beneficiary knows of the claim or reasonably should have inquired into the
1802 existence of the claim. If the beneficiary has not received a report which adequately
1803 discloses the existence of a claim against the trustee for breach of trust, the claim is barred
1804 as to that beneficiary unless a proceeding to assert the claim is commenced within six years
1805 after the beneficiary discovered, or reasonably should have discovered, the subject of the
1806 claim.
1807 (b) A successor trustee's claim against a predecessor trustee is barred unless a proceeding
1808 to assert the claim is commenced within two years after the successor trustee takes office.
1809 (c) A trustee's claim against a cotrustee is barred unless a proceeding to assert the claim
1810 is commenced within two years after the date the cause of action against the cotrustee
1811 arises.

53-14-151.

(a) A trustee shall not be personally liable on any warranty made in any conveyance unless the intention to create a personal liability is distinctly expressed.

(b) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in the trustee's fiduciary capacity unless the trustee fails to reveal the trustee's representative capacity in the contract.

(c) A judgment rendered in an action brought against the trust shall impose no personal liability on the trustee or the beneficiary.

ARTICLE 5

53-14-170.

As used in this article, the term:

(1) 'Foreign entity' means:

(A) Any financial institution whose deposits are federally insured which is organized or existing under the laws of any state of the United States, other than Georgia, or any subsidiary of such financial institution;

(B) Any other corporation organized or existing under the laws of any state of the United States which borders upon this state, specifically, Florida, Alabama, Tennessee, North Carolina, or South Carolina; and

(C) Any federally chartered financial institution whose deposits are federally insured having its principal place of business in any state of the United States, other than Georgia, or any subsidiary of such financial institution.

(2) 'Nonresident' means an individual who does not reside in Georgia.

53-14-171.

(a) Any nonresident who is eligible to serve as a trustee under Code Section 53-14-3 may act as a trustee in this state pursuant to the terms of this Code section.

(b) Any nonresident trustee who acts as a trustee in this state shall be deemed to have consented to service upon the Secretary of State of any summons, notice, or process in connection with any action or proceeding in the courts of this state growing out of or based upon any act or failure to act on the part of the trustee unless the trustee shall designate as the agent for such service some person who may be found and served with notice, summons, or process in this state by a designation to be filed, from time to time, in the office of the Secretary of State, giving the name of the agent and the place in this state where the agent may be found and served.

(c) If a nonresident trustee fails to designate a person who may be found and served with summons, notice, or process in this state, service of summons, notice, or process shall be made upon the trustee by serving a copy of the petition or other pleading, with process attached thereto on the Secretary of State. The service shall be sufficient service upon the nonresident trustee, provided that notice of the service and a copy of the petition and process is forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff or the plaintiff's agent to the trustee, in the state where the trustee resides, and the return receipt is appended to the summons or other process and filed with the summons, petition, and other papers in the court where the action is pending. The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for service of process on him under this Code section.

53-14-172.

(a) Any foreign entity may act in this state as trustee, executor, administrator, guardian, or any other like or similar fiduciary capacity, whether the appointment is by law, will, deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise without the necessity of complying with any law of this state relating to the qualification of foreign entities to do business in this state or the licensing of foreign entities to do business in this state, except as provided in this article, and notwithstanding any prohibition, limitation, or restriction contained in any other law of this state, provided only that:

(1) The foreign entity is eligible to act as a fiduciary in this state under Code Section 7-1-242; and

(2) The foreign entity is authorized to act in the fiduciary capacity in the state in which it is incorporated or organized, or, if the foreign entity is a national banking association, in the state in which it has its principal place of business.

(b) Any foreign entity seeking to exercise fiduciary powers in this state, upon qualifying in this state to act in any of such fiduciary capacities, shall not be required by law to give bond, if bond is relieved by the instrument, law, or court order in which such entity has been designated to act in such fiduciary capacity.

(c) Nothing in this article shall be construed to prohibit or make unlawful any activity in this state by a bank or other entity which is not incorporated or organized under the laws of this state or by a national bank which does not have its principal place of business in this state, which activity would be lawful in the absence of this article.

1878 53-14-173.

1879 A foreign entity, insofar as it acts in a fiduciary capacity in this state pursuant to this article,
1880 shall not be required to obtain a certificate of authority to transact business in this state as
1881 required by Article 15 of Chapter 2 of Title 14, but no such foreign entity shall establish
1882 or maintain in this state a place of business, branch office, or agency for the conduct in this
1883 state of business as a fiduciary.

1884 53-14-174.

1885 (a) Prior to the time when any foreign entity acts pursuant to the authority of this article
1886 in any fiduciary capacity in this state, the foreign entity shall file with the Secretary of State
1887 a verified statement which shall state:

1888 (1) The correct name of the foreign entity;

1889 (2) The name of the state under the laws of which it is incorporated or organized, or, if
1890 the foreign entity is a national banking association, a statement of that fact;

1891 (3) The address of its principal business office;

1892 (4) In what fiduciary capacity it desires to act in this state;

1893 (5) That it is authorized to act in a similar fiduciary capacity in the state in which it is
1894 incorporated or organized, or, if it is a national banking association, in which it has its
1895 principal place of business, and the basis on which it is eligible to act as a fiduciary in
1896 Georgia under Code Section 7-1-242; and

1897 (6) The name and address of a person who may be found and served with notice,
1898 summons, or process in this state and who is designated by the foreign entity as its agent
1899 for such service.

1900 (b) The statement provided for in subsection (a) of this Code section shall be verified by
1901 an officer of the foreign entity, and there shall be filed with it such certificates of public
1902 officials and copies of documents certified by public officials as may be necessary to show
1903 that the foreign entity is authorized to act in a fiduciary capacity similar to those in which
1904 it desires to act in this state, in the state in which it is incorporated or organized, or, if it is
1905 a national banking association, in which it has its principal place of business.

1906 (c) Any foreign entity that acts as a trustee in this state shall be deemed to have consented
1907 to service upon the Secretary of State of any summons, notice, or process in connection
1908 with any action or proceeding in the courts of this state growing out of or based upon any
1909 act or failure to act on the part of the trustee unless the trustee shall designate as the agent
1910 for such service some person who may be found and served with notice, summons, or
1911 process in this state by a designation to be filed, from time to time, in the office of the
1912 Secretary of State, giving the name of the agent and the place in this state where the agent
1913 may be found and served.

1914 (d) If a foreign entity fails to designate a person who may be found and served with
1915 summons, notice, or process in this state, service of summons, notice, or process shall be
1916 made upon the foreign entity by serving a copy of the petition or other pleading, with
1917 process attached thereto on the Secretary of State. The service shall be sufficient service
1918 upon the foreign entity, provided that notice of the service and a copy of the petition and
1919 process is forthwith sent by registered or certified mail or statutory overnight delivery by
1920 the plaintiff or the plaintiff's agent to the foreign entity at the address that is on file with the
1921 Secretary of State and the return receipt is appended to the summons or other process and
1922 filed with the summons, petition, and other papers in the court where the action is pending.
1923 The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26
1924 for service of process on him under this Code section."

1925 **SECTION 5.**

1926 Said title is further amended by replacing Chapter 15, which has been repealed, with a new
1927 Chapter 15 to read as follows:

1928 "CHAPTER 15

1929 ARTICLE 1

1930 Part 1

1931 53-15-1.

1932 (a) Except to the extent it would impair vested rights and except as otherwise provided by
1933 law, the provisions contained in this chapter shall apply to any trust regardless of the date
1934 it was created.

1935 (b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions
1936 authorized by the provisions in this chapter or elsewhere in the laws of this state.

1937 (c) Except to the extent that the principles of common law and equity governing trusts are
1938 modified by this chapter or any other provision of law, such principles remain the law of
1939 the state.

1940 53-12-2.

1941 As used in this chapter, the term:

1942 (1) 'Beneficiary' means a person for whose benefit property is held in trust, regardless
1943 of the nature of the interest, and includes any beneficiary, whether vested or contingent,
1944 born or unborn, ascertained or unascertained.

1945 (2) 'Express trust' means a trust as described in Code Section 53-12-10.

- 1946 (3) 'Person' means an individual, corporation, partnership, association, joint-stock
 1947 company, business trust, unincorporated organization, limited liability company, or other
 1948 legal entity, including any of the foregoing acting as a fiduciary.
- 1949 (4) 'Property' means any type of property, whether real or personal, tangible or
 1950 intangible, legal or equitable.
- 1951 (5) 'Settlor' means the person who creates the trust, including a testator in the case of a
 1952 testamentary trust. The terms 'grantor' and 'trustor' mean the same as 'settlor.'
- 1953 (6) 'Trust' means an express trust or an implied trust.
- 1954 (7) 'Trust instrument' means the document or documents, including any testamentary
 1955 instrument, that contains the trust provisions.
- 1956 (8) 'Trust property' means property the legal title to which is held by the trustee. The
 1957 term also includes choses in action, claims, and contract rights, including a contractual
 1958 right to receive death benefits as designated beneficiary under a policy of insurance,
 1959 contract, employees' trust or other arrangement. The terms 'trust corpus' and 'trust res'
 1960 mean the same as 'trust property.'
- 1961 (9) 'Trustee' means the person or persons holding legal title to the property in trust.
- 1962 53-15-3.
- 1963 (a) In investing and managing trust property, a trustee shall exercise the judgment and care
 1964 under the circumstances then prevailing of a prudent person acting in a like capacity and
 1965 familiar with such matters, considering the purposes, provisions, and distribution
 1966 requirements of the trust.
- 1967 (b) Among the factors that a trustee shall consider in investing and managing trust assets
 1968 are such of the following as are relevant to the trust or its beneficiaries:
- 1969 (1) General economic conditions;
- 1970 (2) The possible effect of inflation or deflation;
- 1971 (3) Anticipated tax consequences;
- 1972 (4) The attributes of the portfolio,
- 1973 (5) The expected return from income and appreciation;
- 1974 (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 1975 (7) An asset's special relationship or special value, if any, to the purposes of the trust or
 1976 to one or more of the beneficiaries or to the settlor;
- 1977 (8) The anticipated duration of the trust; and
- 1978 (9) Any special circumstances.
- 1979 (c) Any determination of liability for investment performance shall consider not only the
 1980 performance of a particular investment but also the performance of the portfolio as a whole

and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(d) A trustee who has special investment skills or expertise has a duty to use those special skills or expertise. A trustee who is named trustee in reliance upon the trustee's representation that the trustee has special investment skills or expertise will be held liable for failure to make use of that degree of skill or expertise.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee that is a bank or trust company shall not be precluded from acquiring and retaining the securities of or other interests in an investment company or investment trust because the bank or trust company or an affiliate provides services to the investment company or investment trust as investment adviser, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise and receives compensation for such services.

53-15-4.

A trustee shall reasonably manage the risk of concentrated holdings of assets in a trust by diversifying or by using other appropriate mechanisms, except as otherwise provided in this Code section, as follows:

(1) The duty imposed by this Code section shall not apply if the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without complying with the duty;

(2) The trustee shall not be liable for failing to comply with the duty imposed by this Code section to the extent that the terms of the trust instrument limit or waive the duty; and

(3) Except as provided in this paragraph, the duty imposed by this Code section shall apply on or after January 1, 2011. With respect to any trust that is or becomes irrevocable before January 1, 2011, the duty imposed by this Code section shall not apply:

(A) To the trust to the extent such trust instrument directs or permits the trustee to retain, invest, exchange or reinvest assets without regard to any duty to diversify, without the need to diversify or create a diversity of investments, or without liability for either depreciation or failing to diversify, or contains other similar language expressing a settlor's intent to provide similar discretion to the trustee; or

(B) Absent gross neglect, with respect to an asset that was transferred to the trustee of such trust by any settlor or gratuitous transferor.

2015 53-15-5.

2016 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee
2017 shall review the trust assets and make and implement decisions concerning the retention
2018 and disposition of assets, in order to bring the trust portfolio into compliance with the
2019 purposes, provisions, distributions requirements, and other circumstances of the trust and
2020 with the requirements of this article.

2021 53-15-6.

2022 Compliance with the investment rules of this part is determined in light of the facts and
2023 circumstances existing at the time of a trustee's decision or action and not by hindsight.

2024 53-15-7.

2025 The following terminology or comparable language in the provisions of a trust, unless
2026 otherwise limited or modified, authorizes any investment or strategy permitted under this
2027 chapter: 'investments permissible by law for investment of trust funds,' 'legal investments,'
2028 'authorized investments,' 'using the judgment and care under the circumstances then
2029 prevailing that persons of prudence, discretion, and intelligence exercise in the
2030 management of their own affairs, not in regard to speculation but in regard to the
2031 permanent disposition of their funds, considering the probable income as well as the
2032 probable safety of their capital,' 'prudent man rule,' 'prudent trustee rule,' 'prudent person
2033 rule,' and 'prudent investor rule.'

2034 53-15-8.

2035 This article shall apply to trusts existing on and created after its effective date. As applied
2036 to trusts existing on its effective date, this article governs only decisions or actions
2037 occurring after that date.

2038 53-15-9.

2039 (a) A trustee may delegate investment and management functions that a prudent trustee of
2040 comparable skills could properly delegate under the circumstances. The trustee shall
2041 exercise reasonable care, skill, and caution in:

2042 (1) Selecting an agent;

2043 (2) Establishing the scope and terms of the delegation consistent with the purposes and
2044 provisions of the trust; and

2045 (3) Reviewing periodically the agent's actions in order to monitor the agent's
2046 performance and compliance with the terms of the delegation.

(b) In performing a delegation function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this Code section, and who takes reasonable steps to compel an agent to whom the function was delegated to redress a breach of duty to the trust, is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent waives the defense of lack of personal jurisdiction and submits to the jurisdiction of this state.

53-15-10.

(a) The effect of the provisions of this chapter and Chapters 12, 13, and 14 may be varied by the trust instrument except:

(1) As to any requirements in Article 2 of Chapter 12 relating to the creation and validity of express trusts;

(2) As to the effect of the rules as provided in Article 5 of Chapter 12 relating to spendthrift trusts;

(3) As to the power of the beneficiaries to modify a trustee's compensation as provided in Code Section 53-14-6;

(4) As to the duty of a trustee to administer the trust and to exercise discretionary powers in good faith, as provided in Code Sections 53-14-30 and 53-14-38;

(5) As to the effect of a provision relieving a trustee from liability, as provided in Code Section 53-14-53; and

(6) As to the periods of limitation on actions, as provided in Code Sections 53-12-25 and 53-14-57.

(b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions authorized by the provisions of this chapter or Chapters 12, 13, and 14 or as otherwise provided by law.

Part 2

53-15-20.

In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of Article 2 of this chapter, the following shall apply:

(1) A trustee shall administer a trust in accordance with the governing instrument, even if there is a different provision in Article 2 of this chapter;

2080 (2) A trustee may administer a trust by the exercise of a discretionary power of
2081 administration regarding a matter within the scope of Article 2 of this chapter given to
2082 the trustee by the governing instrument, even if the exercise of the power produces a
2083 result different from a result required or permitted by Article 2 of this chapter. No
2084 inference that the trustee has improperly exercised the discretionary power shall arise
2085 from the fact that the trustee has made an allocation contrary to a provision of Article 2
2086 of this chapter;

2087 (3) A trustee shall administer a trust in accordance with Article 2 of this chapter if the
2088 governing instrument does not contain a different provision or does not give the trustee
2089 a discretionary power of administration regarding a matter within the scope of Article 2
2090 of this chapter; and

2091 (4) A trustee shall add a receipt or charge a disbursement to principal to the extent that
2092 the governing instrument and Article 2 of this chapter do not provide a rule for allocating
2093 the receipt or disbursement to or between principal and income.

2094 53-15-21.

2095 (a) Subject to subsections (c) and (f) of this Code section, a trustee may adjust between
2096 principal and income by allocating an amount of income to principal or an amount of
2097 principal to income to the extent the trustee considers appropriate if:

2098 (1) The governing instrument describes what may or must be distributed to a beneficiary
2099 by referring to the trust's income; and

2100 (2) The trustee determines, after applying the rules in Code Section 53-15-20, that the
2101 trustee is unable to comply with Code Section 53-14-87.

2102 (b) In deciding whether and to what extent to exercise the power conferred by subsection
2103 (a) of this Code section, a trustee may consider, among other things, all of the following:

2104 (1) The size of the trust;

2105 (2) The nature and estimated duration of the trust;

2106 (3) The liquidity and distribution requirements of the trust;

2107 (4) The needs for regular distributions and preservation and appreciation of capital;

2108 (5) The expected tax consequences of an adjustment;

2109 (6) The net amount allocated to income under this chapter and the increase or decrease
2110 in the value of the principal assets, which the trustee may estimate as to assets for which
2111 market values are not readily available;

2112 (7) The assets held in the trust; the extent to which they consist of financial assets,
2113 interests in closely held enterprises, and tangible and intangible personal property or real
2114 property; the extent to which an asset is used by a beneficiary; and whether an asset was
2115 purchased by the trustee or received from the settlor or testator;

(8) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument;

(9) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(10) The intent of the settlor or testator; and

(11) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation on the trust.

(c) A trustee may not make an adjustment under this Code section if any of the following apply:

(1) The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(2) The adjustment is from trust funds which are permanently set aside for charitable purposes under the governing instrument and for which a federal charitable, estate or gift tax deduction has been taken, unless both income and principal are so set aside;

(3) If:

(A) Possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) The individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(4) If:

(A) Possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be subject to federal estate, gift, or generation-skipping transfer tax with respect to an individual; and

(B) The assets would not be subject to federal estate, gift, or generation-skipping tax with respect to the individual if the trustee did not possess the power to make an adjustment;

(5) If the trustee is a beneficiary of the trust; or

(6) If the trust has been converted under Code Section 53-15-22.

(d) If paragraph (5), (6), or (7) of subsection (c) of this Code section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(e)(1) If paragraph (2) of this subsection applies, a trustee may release any of the following:

- 2153 (A) The entire power conferred by subsection (a) of this Code section;
2154 (B) The power to adjust from income to principal; or
2155 (C) The power to adjust from principal to income.
- 2156 (2) A release under paragraph (1) of this subsection is permissible if either of the
2157 following apply:
- 2158 (A) The trustee is uncertain about whether possessing or exercising the power will
2159 cause a result described in paragraphs (1) through (6) of subsection (c) of this Code
2160 section; or
- 2161 (B) The trustee determines that possessing or exercising the power will or may deprive
2162 the trust of a tax benefit or impose a tax burden not described in subsection (c) of this
2163 Code section.
- 2164 (3) The release may be permanent or for a specified period, including a period measured
2165 by the life of an individual.
- 2166 (f) A governing instrument which limits the power of a trustee to make an adjustment
2167 between principal and income does not affect the application of this Code section unless
2168 it is clear from the governing instrument that it is intended to deny the trustee the power
2169 of adjustment conferred by subsection (a) of this Code section.
- 2170 53-15-22.
- 2171 (a) Unless expressly prohibited by the trust instrument, a trustee may release the power to
2172 adjust under Code Section 53-15-21 and convert a trust into a unitrust as described in this
2173 Code section if all of the following apply:
- 2174 (1) The trustee determines that the conversion will enable the trustee to better carry out
2175 the intent of the settlor or testator and the purposes of the trust;
- 2176 (2) The trustee gives written notice of the trustee's intention to release the power to adjust
2177 and to convert the trust into a unitrust and of how the unitrust will operate, including what
2178 initial decisions the trustee will make under this Code section, to:
- 2179 (A) The settlor, if living;
- 2180 (B) All living persons who are currently receiving or eligible to receive distributions
2181 of income of the trust; and
- 2182 (C) Without regard to the exercise of any power of appointment, all living persons who
2183 would receive principal of the trust if the trust were to terminate at the time of the
2184 giving of such notice and all living persons who would receive or be eligible to receive
2185 distributions of income or principal of the trust if the interests of all of the beneficiaries
2186 currently eligible to receive income under subparagraph (B) of this paragraph were to
2187 terminate at the time of the giving of such notice.

2188 If a beneficiary is not sui juris, such notice shall be given to the beneficiary's conservator,
2189 if any, and if the beneficiary has no conservator, to the beneficiary's guardian, including,
2190 in the case of a minor beneficiary, the beneficiary's natural guardian;
2191 (3) At least one person receiving notice under each of subparagraphs (B) and (C) of
2192 paragraph (2) of this subsection is legally competent; and
2193 (4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the
2194 trustee within 60 days of the mailing of the notice under paragraph (2) of this subsection.
2195 (b)(1) The trustee may petition the superior court to order the conversion to a unitrust.
2196 (2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not
2197 convert, the beneficiary may petition the superior court to order the conversion.
2198 (3) The court shall order conversion if the court concludes that the conversion will
2199 enable the trustee to better carry out the intent of the settlor or testator and the purposes
2200 of the trust.
2201 (c) In deciding whether to exercise the power to convert to a unitrust as provided by
2202 subsection (a) of this Code section, a trustee may consider, among other things, all of the
2203 following:
2204 (1) The size of the trust;
2205 (2) The nature and estimated duration of the trust;
2206 (3) The liquidity and distribution requirements of the trust;
2207 (4) The needs for regular distributions and preservation and appreciation of capital;
2208 (5) The expected tax consequences of the conversion;
2209 (6) The assets held in the trust; the extent to which they consist of financial assets,
2210 interests in closely held enterprises, and tangible and intangible personal property or real
2211 property; and the extent to which an asset is used by a beneficiary;
2212 (7) To the extent reasonably known to the trustee, the needs of the beneficiaries for
2213 present and future distributions authorized or required by the governing instrument;
2214 (8) Whether and to what extent the governing instrument gives the trustee the power to
2215 invade principal or accumulate income or prohibits the trustee from invading principal
2216 or accumulating income and the extent to which the trustee has exercised a power from
2217 time to time to invade principal or accumulate income; and
2218 (9) The actual and anticipated effect of economic conditions on principal and income and
2219 effects of inflation and deflation on the trust.
2220 (d) After a trust is converted to a unitrust, all of the following apply:
2221 (1) The trustee shall follow an investment policy seeking a total return for the
2222 investments held by the trust, whether the return is to be derived from:
2223 (A) Appreciation of capital;
2224 (B) Earnings and distributions from capital; or

2225 (C) Both appreciation of capital and earnings and distributions from capital;
2226 (2) The trustee shall make regular distributions in accordance with the governing
2227 instrument construed in accordance with the provisions of this Code section;
2228 (3) The term 'income' in the governing instrument shall mean an annual unitrust
2229 distribution equal to 4 percent of the net fair market value of the trust's assets or the
2230 payout percentage ordered under paragraph (1) of subsection (g) of this Code section,
2231 whether such assets would be considered income or principal under other provisions of
2232 this chapter, averaged over the lesser of:
2233 (A) The three preceding years; or
2234 (B) The period during which the trust has been in existence;
2235 (4) The trustee can determine the fair market value of the property in the trust by
2236 appraisal or other reasonable method or estimate; and
2237 (5) The fair market value of the trust property shall not include the value of any
2238 residential property or any tangible personal property that, as of the first business day of
2239 the current valuation year, one or more of the current beneficiaries of the trust have or
2240 had the right to occupy or have had the right to possess or control, other than in his or her
2241 capacity as trustee of the trust, and instead the right of occupancy or the right to
2242 possession or control shall be deemed to be the unitrust amount with respect to such
2243 residential property.
2244 (e) The trustee may in the trustee's discretion from time to time determine all of the
2245 following:
2246 (1) The effective date of a conversion to a unitrust;
2247 (2) The provisions for prorating a unitrust distribution for a short year in which a
2248 beneficiary's right to payments commences or ceases;
2249 (3) The frequency of unitrust distributions during the year;
2250 (4) The effect of other payments from or contributions to the trust on the trust's
2251 valuation;
2252 (5) Whether to value the trust's assets annually or more frequently;
2253 (6) What valuation dates to use;
2254 (7) How frequently to value nonliquid assets and whether to estimate their value; and
2255 (8) Any other matters necessary for the proper functioning of the unitrust.
2256 (f)(1) Expenses which would be deducted from income if the trust were not a unitrust
2257 may not be deducted from the unitrust distribution.
2258 (2) The unitrust distribution shall be paid from net income, as such term would be
2259 determined if the trust were not a unitrust. To the extent net income is insufficient, the
2260 unitrust distribution shall be paid from net realized short-term capital gains. To the extent
2261 income and net realized short-term capital gains are insufficient, the unitrust distribution

2262 shall be paid from net realized long-term capital gains. To the extent income and net
2263 realized short-term and long-term capital gains are insufficient, the unitrust distribution
2264 shall be paid from the principal of the trust.

2265 (g) The trustee or, if the trustee declines to do so, a beneficiary may petition the superior
2266 court to:

2267 (1) Select a payout percentage different from 4 percent but not lower than 3 percent or
2268 higher than 5 percent;

2269 (2) Provide for a distribution of net income, as would be determined if the trust were not
2270 a unitrust, in excess of the unitrust distribution if such distribution is necessary to
2271 preserve a tax benefit;

2272 (3) Average the valuation of the trust's net assets over a period other than three years; or

2273 (4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under Code
2274 Section 53-15-21 shall be revived.

2275 (h) A conversion to a unitrust does not affect a provision in the governing instrument
2276 directing or authorizing the trustee to distribute principal or authorizing a beneficiary to
2277 withdraw a portion or all of the principal.

2278 (i) A trustee may not convert a trust into a unitrust in any of the following circumstances:

2279 (1) If payment of the unitrust distribution would change the amount payable to a
2280 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

2281 (2) If the unitrust distribution would be made from trust funds which are permanently set
2282 aside for charitable purposes under the governing instrument and for which a federal
2283 charitable, estate or gift tax deduction has been taken, unless both income and principal
2284 are so set aside;

2285 (3) If:

2286 (A) Possessing or exercising the power to convert would cause an individual to be
2287 treated as the owner of all or part of the trust for federal income tax purposes; and

2288 (B) The individual would not be treated as the owner if the trustee did not possess the
2289 power to convert; or

2290 (5) If:

2291 (A) Possessing or exercising the power to convert would cause all or part of the trust
2292 assets to be subject to federal estate, gift, or generation-skipping transfer tax with
2293 respect to an individual; and

2294 (B) The assets would not be subject to federal estate, gift, or generation-skipping
2295 transfer tax with respect to the individual if the trustee did not possess the power to
2296 convert.

2297 (j)(1) If paragraph (4) or (5) of subsection (i) of this Code section applies to a trustee and
2298 there is more than one trustee, a cotrustee to whom the provision does not apply may

2299 convert the trust unless the exercise of the power by the remaining trustee or trustees is
2300 prohibited by the governing instrument; and
2301 (2) If paragraph (4) or (5) of subsection (i) of this Code section applies to all the trustees,
2302 the trustees may petition the superior court to direct a conversion.
2303 (k)(1) A trustee may release the power conferred by subsection (a) of this Code section
2304 to convert to a unitrust if either of the following apply:
2305 (A) The trustee is uncertain about whether possessing or exercising the power to
2306 convert will cause a result described in paragraph (4) or (5) of subsection (i) of this
2307 Code section; or
2308 (B) The trustee determines that possessing or exercising the power to convert will or
2309 may deprive the trust of a tax benefit or impose a tax burden not described in subsection
2310 (i) of this Code section.
2311 (2) The release of the power to convert may be permanent or for a specified period,
2312 including a period measured by the life of an individual.

2313 53-15-23.
2314 (a) A court shall not change a trustee's decision to exercise or not to exercise a
2315 discretionary power conferred by this chapter unless it determines that the decision was an
2316 abuse of the trustee's discretion.
2317 (b) The decisions to which subsection (a) of this Code section apply include:
2318 (1) A determination of whether and to what extent an amount should be transferred from
2319 principal to income or from income to principal; and
2320 (2) A determination of the factors that are relevant to the trust and its beneficiaries, the
2321 extent to which they are relevant, and the weight, if any, to be given to the relevant
2322 factors in deciding whether and to what extent to exercise the power conferred by this
2323 chapter.
2324 (c) If a court determines that a trustee has abused its discretion regarding a discretionary
2325 power conferred by Code Section 53-15-21 or 53-15-22, the remedy is to restore the
2326 income and remainder beneficiaries to the positions they would have occupied if the trustee
2327 had not abused its discretion, according to the following rules:
2328 (1) To the extent that the abuse of discretion has resulted in no distribution to a
2329 beneficiary or a distribution which is too small, the court shall require the trustee to
2330 distribute from the trust to the beneficiary an amount that the court determines will
2331 restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;
2332 (2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary
2333 which is too large, the court shall restore the beneficiaries, the trust, or both, in whole or
2334 in part, to their appropriate positions by requiring the trustee to withhold an amount from

2335 one or more future distributions to the beneficiary who received the distribution that was
2336 too large or requiring that beneficiary or that beneficiary's estate to return some or all of
2337 the distribution to the trust, notwithstanding a spendthrift or similar provision;
2338 (3) If the abuse of discretion concerns the power to convert a trust into a unitrust, the
2339 court shall require the trustee either to convert into a unitrust or to reconvert from a
2340 unitrust; and
2341 (4) To the extent that the court is unable, after applying paragraphs (1), (2), and (3) of
2342 this subsection, to restore the beneficiaries, the trust, or both to the positions they would
2343 have occupied if the trustee had not abused its discretion, the court may require the
2344 trustee to pay an appropriate amount from its own funds to one or more of the
2345 beneficiaries, the trust, or both.
2346 (d) No provision of this Code section or Code Section 53-15-21 or 53-15-22 is intended
2347 to require a trustee to make an adjustment under Code Section 53-15-21 or a conversion
2348 under Code Section 53-15-22.

2349 53-15-24.
2350 (a) The following provisions shall apply to a trust which by its governing instrument
2351 requires the distribution at least annually of a unitrust amount equal to a fixed percentage
2352 of not less than three nor more than five percent per year of the net fair market value of the
2353 trust's assets, valued at least annually, such trust to be referred to as an 'express total return
2354 unitrust':
2355 (1) The unitrust amount may be determined by reference to the net fair market value of
2356 the trust's assets in one year or more than one year;
2357 (2) Distribution of such a fixed percentage unitrust amount is considered a distribution
2358 of all of the income of the total return unitrust and shall not be considered a fundamental
2359 departure from applicable state law, regardless of whether the total return unitrust is
2360 created and governed by Section 53-15-22 above or by the provisions of the governing
2361 instrument;
2362 (3) Such a distribution of the fixed percentage of not less than three percent nor more
2363 than five percent is considered to be a reasonable apportionment of the total return of a
2364 total return unitrust;
2365 (4) The governing instrument may or may not grant discretion to the trustee to adopt a
2366 consistent practice of treating capital gains as part of the unitrust distribution, to the
2367 extent that the unitrust distribution exceeds the net accounting income, or it may specify
2368 the ordering of such classes of income;

2369 (5) Unless the trust provisions specifically provide otherwise, or grant discretion to the
2370 trustee as set forth above, a distribution of the unitrust amount shall be considered to have
2371 been made from the following sources in order of priority:
2372 (A) From net accounting income determined as if the trust were not a unitrust;
2373 (B) From ordinary income not allocable to net accounting income;
2374 (C) From net realized short-term capital gains;
2375 (D) From net realized long-term capital gains; and
2376 (E) From the principal of the trust estate; and
2377 (6) The trust document may provide that assets used by the trust beneficiary, such as a
2378 residence property or tangible personal property, may be excluded from the net fair
2379 market value for computing the unitrust amount. Such use may be considered equivalent
2380 to the 'income' or unitrust amount.
2381 (b) A trust which provides for a fixed percentage payout in excess of five percent per year
2382 shall be considered to have paid out all of the income of the total return unitrust, and to
2383 have paid out principal of the said trust to the extent that the fixed percentage payout
2384 exceeds five percent per year.
2385 (c) This Code section shall be effective for trusts established and wills executed on or after
2386 July 1, 2009.

2387 ARTICLE 2

2388 Part 1

2389 53-15-40.

2390 This article shall be known and may be cited as the 'Georgia Principal and Income Act.'

2391 53-15-41.

2392 As used in this article, the term:

2393 (1) 'Accounting period' means a calendar year unless another 12-month period is selected
2394 by a fiduciary. Such term includes a portion of a calendar year or other 12-month period
2395 that begins when an income interest begins or ends when an income interest ends.

2396 (2) 'Beneficiary' includes, in the case of a decedent's estate, an heir and devisee and, in
2397 the case of a trust, an income beneficiary and a remainder beneficiary.

2398 (3) 'Fiduciary' means a personal representative or a trustee. Such term includes an
2399 executor, administrator, successor personal representative, special administrator, and a
2400 person performing substantially the same function.

2401 (4) 'Income' means money or property that a fiduciary receives as current return from a
2402 principal asset. Such term includes a portion of receipts from a sale, exchange, or
2403 liquidation of a principal asset, to the extent provided in Part 4 of this article.

2404 (5) 'Income beneficiary' means a person to whom net income of a trust is or may be
2405 payable.

2406 (6) 'Income interest' means the right of an income beneficiary to receive all or part of net
2407 income, whether the trust provisions require it to be distributed or authorize it to be
2408 distributed in the trustee's discretion.

2409 (7) 'Mandatory income interest' means the right of an income beneficiary to receive net
2410 income that the trust provisions require the fiduciary to distribute.

2411 (8) 'Net income' means the total receipts allocated to income during an accounting period
2412 minus the disbursements made from income during the period, plus or minus transfers
2413 under this article to or from income during the period.

2414 (9) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
2415 limited liability company, association, joint venture, government; governmental
2416 subdivision, agency, or instrumentality; public corporation, or any other legal or
2417 commercial entity.

2418 (10) 'Principal' means property held in trust for distribution to a remainder beneficiary
2419 when the trust terminates.

2420 (11) 'Terms of the trust' means the manifestation of the intent of a settlor or decedent
2421 with respect to the trust, expressed in a manner that admits of its proof in a judicial
2422 proceeding.

2423 (12) 'Trustee' includes an original, additional, or successor trustee, whether or not
2424 appointed or confirmed by a court.

2425 Part 2

2426 53-15-60.

2427 (a) If a beneficiary is to receive a pecuniary amount outright from a trust after an income
2428 interest ends, and no interest is provided for by the terms of the trust, the pecuniary amount
2429 usually bears interest at the legal rate after the expiration of 12 months from the date the
2430 income interest terminates.

2431 (b) The general rule in subsection (a) of this Code section shall be subservient to the equity
2432 and necessity of a particular case.

2433 53-15-61.

2434 Expenses incurred in connection with the settlement of a decedent's estate or the winding
2435 up of a terminating income interest, including interest and penalties concerning taxes, fees
2436 of attorneys and personal representatives and trustees and court costs, may be charged
2437 against the principal or income in the discretion of the personal representative or trustee.

2438 Part 3

2439 53-15-80.

2440 (a) An income beneficiary is entitled to net income from the date on which the income
2441 interest begins. An income interest begins on the date specified in the terms of the trust or,
2442 if no date is specified, on the date an asset becomes subject to a trust or successive income
2443 interest.

2444 (b) An asset becomes subject to a trust:

2445 (1) On the date it is transferred to the trust in the case of an asset that is transferred to a
2446 trust during the transferor's life;

2447 (2) On the date of a testator's death in the case of an asset that becomes subject to a trust
2448 by reason of a will, even if there is an intervening period of administration of the
2449 testator's estate; or

2450 (3) On the date of an individual's death in the case of an asset that is transferred to a
2451 fiduciary by a third party because of the individual's death.

2452 (c) An asset becomes subject to a successive income interest on the day after the preceding
2453 income interest ends, as determined under subsection (d) of this Code section, even if there
2454 is an intervening period of administration to wind up the preceding income interest.

2455 (d) An income interest ends on the day before an income beneficiary dies or another
2456 terminating event occurs, or on the last day of a period during which there is no beneficiary
2457 to whom a trustee may distribute income.

2458 53-15-81.

2459 (a) A trustee shall allocate an income receipt or disbursement to principal if its due date
2460 occurs before a decedent dies in the case of an estate or before an income interest begins
2461 in the case of a trust or successive income interest.

2462 (b) A trustee shall allocate an income receipt or disbursement to income if its due date
2463 occurs on or after the date on which a decedent dies or an income interest begins and it is
2464 a periodic due date. An income receipt or disbursement must be treated as accruing from
2465 day to day if its due date is not periodic or it has no due date. The portion of the receipt or

2466 disbursement accruing before the date on which a decedent dies or an income interest
2467 begins must be allocated to principal and the balance must be allocated to income.
2468 (c) An item of income or an obligation is due on the date the payer is required to make a
2469 payment. If a payment date is not stated, there is no due date for the purposes of this Code
2470 section. Distributions to shareholders or other owners from an entity to which Code
2471 Section 53-13-100 applies are deemed to be due on the date fixed by the entity for
2472 determining who is entitled to receive the distribution or, if no date is fixed, on the
2473 declaration date for the distribution. A due date is periodic for receipts or disbursements
2474 that must be paid at regular intervals under a lease or an obligation to pay interest or if an
2475 entity customarily makes distributions at regular intervals.

2476 53-15-82.

2477 (a) As used in this Code section, the term 'undistributed income' means net income
2478 received before the date on which an income interest ends. Such term does not include an
2479 item of income or expense that is due or accrued or net income that has been added or is
2480 required to be added to principal under the terms of the trust.

2481 (b) When a mandatory income interest ends, the trustee shall pay to a mandatory income
2482 beneficiary who survives that date, or the estate of a deceased mandatory income
2483 beneficiary whose death causes the interest to end, the beneficiary's share of the
2484 undistributed income that is not disposed of under the terms of the trust unless the
2485 beneficiary has an unqualified power to revoke more than five percent of the trust
2486 immediately before the income interest ends. In the latter case, the undistributed income
2487 from the portion of the trust that may be revoked must be added to principal.

2488 (c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the
2489 trust's assets ends, the trustee shall prorate the final payment if and to the extent required
2490 by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift,
2491 estate, or other tax requirements.

2492 Part 4

2493 Subpart 1

2494 53-15-100.

2495 (a) As used in this Code section, the term 'entity' means a corporation, partnership, limited
2496 liability company, regulated investment company, real estate investment trust, common
2497 trust fund, or any other organization in which a trustee has an interest other than a trust or
2498 estate to which Code Section 53-13-101 applies, a business or activity to which Code

2499 Section 53-13-102 applies, or an asset-backed security to which Code Section 53-13-131
2500 applies.

2501 (b) Except as otherwise provided in this Code section, a trustee shall allocate to income
2502 money received from an entity.

2503 (c) A trustee shall allocate the following receipts from an entity to principal:

2504 (1) Property other than money;

2505 (2) Money received in one distribution or a series of related distributions in exchange for
2506 part or all of a trust's interest in the entity;

2507 (3) Money received in total or partial liquidation of the entity; and

2508 (4) Money received from an entity that is a regulated investment company or a real estate
2509 investment trust if the money distributed is a capital gain dividend for federal income tax
2510 purposes.

2511 (d) Money is received in partial liquidation:

2512 (1) To the extent that the entity, at or near the time of a distribution, indicates that it is
2513 a distribution in partial liquidation; or

2514 (2) If the total amount of money and property received in a distribution or series of
2515 related distributions is greater than 20 percent of the entity's gross assets, as shown by the
2516 entity's year-end financial statements immediately preceding the initial receipt.

2517 (e) Money is not received in partial liquidation, nor may it be taken into account under
2518 paragraph (2) of subsection (d) of this Code section, to the extent that it does not exceed
2519 the amount of income tax that a trustee or beneficiary must pay on taxable income of the
2520 entity that distributes the money.

2521 (f) A trustee may rely upon a statement made by an entity about the source or character
2522 of a distribution if the statement is made at or near the time of distribution by the entity's
2523 board of directors or other person or group of persons authorized to exercise powers to pay
2524 money or transfer property comparable to those of a corporation's board of directors.

2525 53-15-101.

2526 A trustee shall allocate to income an amount received as a distribution of income from a
2527 trust or an estate in which the trust has an interest other than a purchased interest and shall
2528 allocate to principal an amount received as a distribution of principal from such a trust or
2529 estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent
2530 or donor transfers an interest in such a trust to a trustee, Code Section 53-15-100 or
2531 53-15-131 apply to a receipt from the trust.

2532 53-15-102.

2533 (a) If a trustee who conducts a business or other activity determines that it is in the best
 2534 interest of all the beneficiaries to account separately for the business or activity instead of
 2535 accounting for it as part of the trust's general accounting records, the trustee may maintain
 2536 separate accounting records for its transactions, whether or not its assets are segregated
 2537 from other trust assets.

2538 (b) A trustee who accounts separately for a business or other activity may determine the
 2539 extent to which its net cash receipts must be retained for working capital, the acquisition
 2540 or replacement of fixed assets, and other reasonably foreseeable needs of the business or
 2541 activity, and the extent to which the remaining net cash receipts are accounted for as
 2542 principal or income in the trust's general accounting records. If a trustee sells assets of the
 2543 business or other activity, other than in the ordinary course of the business or activity, the
 2544 trustee shall account for the net amount received as principal in the trust's general
 2545 accounting records to the extent the trustee determines that the amount received is no
 2546 longer required in the conduct of the business.

2547 (c) Activities for which a trustee may maintain separate accounting records shall include:

2548 (1) Retail, manufacturing, service, and other traditional business activities;

2549 (2) Farming;

2550 (3) Raising and selling livestock and other animals;

2551 (4) Management of rental properties;

2552 (5) Extraction of minerals and other natural resources;

2553 (6) Timber operations; and

2554 (7) Activities to which Code Section 53-13-130 applies.

2555 Subpart 2

2556 53-15-120.

2557 A trustee shall allocate to principal:

2558 (1) To the extent not allocated to income under this article, assets received from a
 2559 transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating
 2560 income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

2561 (2) Money or other property received from the sale, exchange, liquidation, or change in
 2562 form of a principal asset, including realized profit, subject to the provisions of this article;

2563 (3) Amounts recovered from third parties to reimburse the trust because of disbursements
 2564 described in paragraph (7) of subsection (a) of Code Section 53-15-151 or for other
 2565 reasons to the extent not based on the loss of income;

2566 (4) Proceeds of property taken by eminent domain, but a separate award made for the
2567 loss of income with respect to an accounting period during which a current income
2568 beneficiary had a mandatory income interest is income;

2569 (5) Net income received in an accounting period during which there is no beneficiary to
2570 whom a trustee may or must distribute income; and

2571 (6) Other receipts as provided in this article.

2572 53-15-121.

2573 To the extent that a trustee accounts for receipts from rental property pursuant to this Code
2574 section, the trustee shall allocate to income an amount received as rent of real or personal
2575 property, including an amount received for cancellation or renewal of a lease. An amount
2576 received as a refundable deposit, including a security deposit or a deposit that is to be
2577 applied as rent for future periods, must be added to principal and held subject to the terms
2578 of the lease and is not available for distribution to a beneficiary until the trustee's
2579 contractual obligations have been satisfied with respect to that amount.

2580 53-15-122.

2581 (a) An amount received as interest, whether determined at a fixed, variable, or floating
2582 rate, on an obligation to pay money to the trustee, including an amount received as
2583 consideration for prepaying principal, must be allocated to income without any provision
2584 for amortization of premium.

2585 (b) A trustee shall allocate to principal an amount received from the sale, redemption, or
2586 other disposition of an obligation to pay money to the trustee more than one year after it
2587 is purchased or acquired by the trustee, including an obligation whose purchase price or
2588 value when it is acquired is less than its value at maturity. If the obligation matures within
2589 one year after it is purchased or acquired by the trustee, an amount received in excess of
2590 its purchase price or its value when acquired by the trust must be allocated to income.

2591 (c) This Code section shall not apply to an obligation to which Code Section 53-15-125,
2592 53-15-126, 53-15-127, 53-15-128, 53-15-130, or 53-15-131 applies.

2593 53-15-123.

2594 (a) Except as otherwise provided in subsection (b) of this Code section, a trustee shall
2595 allocate to principal the proceeds of a life insurance policy or other contract in which the
2596 trust or its trustee is named as beneficiary, including a contract that insures the trust or its
2597 trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee
2598 shall allocate dividends on an insurance policy to income if the premiums on the policy are
2599 paid from income, and to principal if the premiums are paid from principal.

2600 (b) A trustee shall allocate to income proceeds of a contract that insures the trustee against
2601 loss of occupancy or other use by an income beneficiary, loss of income, or, subject to
2602 Section 53-15-102, loss of profits from a business.

2603 (c) This section does not apply to a contract to which Code Section 53-15-125 applies.

2604 53-15-124.

2605 If a trustee determines that an allocation between principal and income required by Code
2606 Section 53-15-125, 53-15-126, 53-15-127, 53-15-128, or 53-15-131 is insubstantial, the
2607 trustee may allocate the entire amount to principal unless one of the circumstances
2608 described in Code Section 53-15-21 applies to the allocation. Such power may be
2609 exercised by a cotrustee in the circumstances described in Code Section 53-15-21 and may
2610 be released for the reasons and in the manner described in such Code section. An
2611 allocation is presumed to be insubstantial if:

2612 (1) The amount of the allocation would increase or decrease net income in an accounting
2613 period, as determined before the allocation, by less than 10 percent; or

2614 (2) The value of the asset producing the receipt for which the allocation would be made
2615 is less than 10 percent of the total value of the trust's assets at the beginning of the
2616 accounting period.

2617 53-15-125.

2618 (a) As used in this Code section, the term:

2619 (1) 'Payment' means a payment that a trustee may receive over a fixed number of years
2620 or during the life of one or more individuals because of services rendered or property
2621 transferred to the payer in exchange for future payments. Such term includes a payment
2622 made in money or property from the payer's general assets or from a separate fund
2623 created by the payer. Such term also includes any payment from a separate fund,
2624 regardless of the reason for the payment.

2625 (2) 'Separate fund' includes a private or commercial annuity, an individual retirement
2626 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

2627 (b) To the extent that a payment is characterized as interest or a dividend or a payment
2628 made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall
2629 allocate to principal the balance of the payment and any other payment received in the
2630 same accounting period that is not characterized as interest, a dividend, or an equivalent
2631 payment.

2632 (c) If no part of a payment is characterized as interest, a dividend, or an equivalent
2633 payment, and all or part of the payment is required to be made, a trustee shall allocate to
2634 income 10 percent of the part that is required to be made during the accounting period and

2635 the balance to principal. If no part of a payment is required to be made or the payment
2636 received is the entire amount to which the trustee is entitled, the trustee shall allocate the
2637 entire payment to principal. For purposes of this subsection, a payment is not required to
2638 be made to the extent that it is made because the trustee exercises a right of withdrawal.
2639 (d) Except as otherwise provided in subsection (e) of this Code section, subsections (f)
2640 and (g) of this Code section apply, and subsections (b) and (c) of this Code section do not
2641 apply, in determining the allocation of a payment made from a separate fund to:
2642 (1) A trust to which an election to qualify for a marital deduction under Section
2643 2056(b)(7) of the federal Internal Revenue Code of 1986 has been made; or
2644 (2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the federal
2645 Internal Revenue Code of 1986.
2646 (e) Subsections (d), (f), and (g) of this Code section do not apply if and to the extent that
2647 the series of payments would, without the application of subsection (d) of this Code
2648 section, qualify for the marital deduction under Section 2056(b)(7)(C) of the federal
2649 Internal Revenue Code of 1986.
2650 (f) A trustee shall determine the internal income of each separate fund for the accounting
2651 period as if the separate fund were a trust subject to this act. Upon request of the surviving
2652 spouse, the trustee shall demand of the person administering the separate fund that this
2653 internal income be distributed to the trust. The trustee shall allocate a payment from the
2654 separate fund to income to the extent of the internal income of the separate fund and
2655 distribute that amount to the surviving spouse. The trustee shall allocate the balance to
2656 principal. Upon request of the surviving spouse, the trustee shall allocate principal to
2657 income to the extent the internal income of the separate fund exceeds payments made from
2658 the separate fund to the trust during the accounting period.
2659 (g) If a trustee cannot determine the internal income of a separate fund but can determine
2660 the value of the separate fund, the internal income of the separate fund is deemed to equal
2661 to 4 percent of the fund's value, according to the most recent statement of value preceding
2662 the beginning of the accounting period. If the trustee can determine neither the internal
2663 income of the separate fund nor the fund's value, the internal income of the fund is deemed
2664 to equal the product of the interest rate and the present value of the expected future
2665 payments, as determined under Section 7520 of the federal Internal Revenue Code of 1986
2666 for the month preceding the accounting period for which the computation is made.
2667 (h) This Code section shall not apply to payments to which Code Section 53-15-126
2668 applies.

2669 53-15-126.

2670 (a) As used in this Code section, the term 'liquidating asset' means an asset whose value
2671 will diminish or terminate because the asset is expected to produce receipts for a period of
2672 limited duration. Such term includes a leasehold, patent, copyright, royalty right, and right
2673 to receive payments during a period of more than one year under an arrangement that does
2674 not provide for the payment of interest on the unpaid balance. Such term does not include
2675 a payment subject to Code Section 53-15-125, resources subject to Code Section
2676 53-15-127, timber subject to Code Section 53-15-128, an activity subject to Code Section
2677 53-15-130, an asset subject to Code Section 53-15-131, or any asset for which the trustee
2678 establishes a reserve for depreciation under Section 53-15-152.

2679 (b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and
2680 the balance to principal.

2681 53-15-127.

2682 (a) To the extent that a trustee accounts for receipts from an interest in minerals or other
2683 natural resources pursuant to this Code section, the trustee shall allocate them as follows:

2684 (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must
2685 be allocated to income;

2686 (2) If received from a production payment, a receipt must be allocated to income if and
2687 to the extent that the agreement creating the production payment provides a factor for
2688 interest or its equivalent. The balance must be allocated to principal;

2689 (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
2690 bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and
2691 the balance to income; and

2692 (4) If an amount is received from a working interest or any other interest not provided
2693 for in paragraph (1), (2), or (3) of this Code section, 90 percent of the net amount
2694 received must be allocated to principal and the balance to income.

2695 (b) An amount received on account of an interest in water that is renewable must be
2696 allocated to income. If the water is not renewable, 90 percent of the amount must be
2697 allocated to principal and the balance to income.

2698 (c) This Code section applies whether or not a decedent or donor was extracting minerals,
2699 water, or other natural resources before the interest became subject to the trust.

2700 (d) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2009,
2701 the trustee may allocate receipts from the interest as provided in this Code section or in the
2702 manner used by the trustee before July 1, 2009. If the trust acquires an interest in minerals,
2703 water, or other natural resources after July 1, 2009, the trustee shall allocate receipts from
2704 the interest as provided in this Code section.

2705 53-15-128.

2706 (a) To the extent that a trustee accounts for receipts from the sale of timber and related
2707 products pursuant to this Code section, the trustee shall allocate the net receipts:

2708 (1) To income to the extent that the amount of timber removed from the land does not
2709 exceed the rate of growth of the timber during the accounting periods in which a
2710 beneficiary has a mandatory income interest;

2711 (2) To principal to the extent that the amount of timber removed from the land exceeds
2712 the rate of growth of the timber or the net receipts are from the sale of standing timber;

2713 (3) To or between income and principal if the net receipts are from the lease of
2714 timberland or from a contract to cut timber from land owned by a trust, by determining
2715 the amount of timber removed from the land under the lease or contract and applying the
2716 rules in paragraphs (1) and (2) of this subsection; or

2717 (4) To principal to the extent that advance payments, bonuses, and other payments are
2718 not allocated pursuant to paragraph (1), (2), or (3) of this subsection.

2719 (b) In determining net receipts to be allocated pursuant to subsection (a) of this Code
2720 section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

2721 (c) This Code section shall apply whether or not a decedent or transferor was harvesting
2722 timber from the property before it became subject to the trust.

2723 (d) If a trust owns an interest in timberland on July 1, 2009, the trustee may allocate net
2724 receipts from the sale of timber and related products as provided in this Code section or in
2725 the manner used by the trustee before July 1, 2009. If the trust acquires an interest in
2726 timberland after July 1, 2009, the trustee shall allocate net receipts from the sale of timber
2727 and related products as provided in this Code section.

2728 53-15-129.

2729 (a) If a marital deduction is allowed for all or part of a trust whose assets consist
2730 substantially of property that does not provide the spouse with sufficient income from or
2731 use of the trust assets, and if the amounts that the trustee transfers from principal to income
2732 under Code Section 53-15-21 and distributes to the spouse from principal pursuant to the
2733 terms of the trust are insufficient to provide the spouse with the beneficial enjoyment
2734 required to obtain the marital deduction, the spouse may require the trustee to make
2735 property productive of income, convert property within a reasonable time, or exercise the
2736 power conferred by Code Section 53-15-21. The trustee may decide which action or
2737 combination of actions to take.

2738 (b) In cases not governed by subsection (a) of this Code section, proceeds from the sale
2739 or other disposition of an asset are principal without regard to the amount of income the
2740 asset produces during any accounting period.

2741 53-15-130.

2742 (a) As used in this Code section, the term 'derivative' means a contract or financial
2743 instrument or a combination of contracts and financial instruments which gives a trust the
2744 right or obligation to participate in some or all changes in the price of a tangible or
2745 intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other
2746 market indicator for an asset or a group of assets.

2747 (b) To the extent that a trustee does not account under Code Section 53-13-102 for
2748 transactions in derivatives, the trustee shall allocate to principal receipts from and
2749 disbursements made in connection with those transactions.

2750 (c) If a trustee grants an option to buy property from the trust, whether or not the trust
2751 owns the property when the option is granted, grants an option that permits another person
2752 to sell property to the trust, or acquires an option to buy property for the trust or an option
2753 to sell an asset owned by the trust, and the trustee or other owner of the asset is required
2754 to deliver the asset if the option is exercised, an amount received for granting the option
2755 must be allocated to principal. An amount paid to acquire the option must be paid from
2756 principal. A gain or loss realized upon the exercise of an option, including an option
2757 granted to a settlor of the trust for services rendered, must be allocated to principal.

2758 53-15-131.

2759 (a) As used in this Code section, the term 'asset-backed security' means an asset whose
2760 value is based upon the right it gives the owner to receive distributions from the proceeds
2761 of financial assets that provide collateral for the security. Such term includes an asset that
2762 gives the owner the right to receive from the collateral financial assets only the interest or
2763 other current return or only the proceeds other than interest or current return. Such term
2764 does not include an asset to which Code Section 53-15-100 or 53-15-125 applies.

2765 (b) If a trust receives a payment from interest or other current return and from other
2766 proceeds of the collateral financial assets, the trustee shall allocate to income the portion
2767 of the payment which the payer identifies as being from interest or other current return and
2768 shall allocate the balance of the payment to principal.

2769 (c) If a trust receives one or more payments in exchange for the trust's entire interest in an
2770 asset-backed security in one accounting period, the trustee shall allocate the payments to
2771 principal. If a payment is one of a series of payments that will result in the liquidation of
2772 the trust's interest in the security over more than one accounting period, the trustee shall
2773 allocate 10 percent of the payment to income and the balance to principal.

ARTICLE 553-15-150.(a) A trustee shall make the following disbursements from income:(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;(2) One-half of all court costs, attorney's fees, and other fees and expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and court costs, attorney's fees, and other fees and expenses of a proceeding or other matter that concerns primarily the income interest; and(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.(b) Any of the above disbursements made in connection with judicial proceedings may be varied by the order of the court.(c) All other disbursements shall be made from principal.53-15-151.(a) A trustee shall make the following disbursements from principal:(1) The remaining one-half of the disbursements described in paragraphs (1) and (2) of subsection (a) of Code Section 53-15-156;(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;(3) Payments on the principal of a trust debt;(4) Court costs, attorney's fees, and other fees and expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;(5) Premiums paid on a policy of insurance not described in Section 501(4) of the federal Internal Revenue Code of 1986, of which the trust is the owner and beneficiary;(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases

2809 of substances, collecting amounts from persons liable or potentially liable for the costs
2810 of those activities, penalties imposed under environmental laws or regulations and other
2811 payments made to comply with those laws or regulations, statutory or common law
2812 claims by third parties, and defending claims based on environmental matters.

2813 (b) Any of the above disbursements provided for in subsection (a) of this Code section
2814 made in connection with judicial proceedings may be varied by the order of the court.

2815 (c) If a principal asset is encumbered with an obligation that requires income from that
2816 asset to be paid directly to the creditor, the trustee shall transfer from principal to income
2817 an amount equal to the income paid to the creditor in reduction of the principal balance of
2818 the obligation.

2819 53-15-152.

2820 (a) As used in this Code section, the term 'depreciation' means a reduction in value due to
2821 wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life
2822 of more than one year.

2823 (b) A trustee may transfer to principal a reasonable amount of the net cash receipts from
2824 a principal asset that is subject to depreciation but may not transfer any amount for
2825 depreciation:

2826 (1) Of that portion of real property used or available for use by a beneficiary as a
2827 residence or of tangible personal property held or made available for the personal use or
2828 enjoyment of a beneficiary;

2829 (2) During the administration of a decedent's estate; or

2830 (3) Under this Code section if the trustee is accounting under Section 403 of the federal
2831 Internal Revenue Code of 1986 for the business or activity in which the asset is used.

2832 (c) An amount transferred to principal need not be held as a separate fund.

2833 53-15-153.

2834 Wherever a charge that is properly allocable to income has been made or is expected to be
2835 made from principal because of the unusually large nature of the charge or otherwise, the
2836 trustee may transfer an appropriate amount from income to principal in one or more
2837 accounting periods to reimburse principal or to provide a reserve for future principal
2838 disbursements.

2839 53-15-154.

2840 (a) A tax required to be paid by a trustee based on receipts allocated to income shall be
2841 paid from income.

2842 (b) A tax required to be paid by a trustee based on receipts allocated to principal shall be
2843 paid from principal, even if the tax is called an income tax by the taxing authority.
2844 (c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income
2845 shall be paid:
2846 (1) From income to the extent that receipts from the entity are allocated only to income;
2847 (2) From principal to the extent that receipts from the entity are allocated only to
2848 principal;
2849 (3) Proportionately from principal and income to the extent that receipts from the entity
2850 are allocated to both income and principal; and
2851 (4) From principal to the extent that the tax exceeds the total receipts from the entity.
2852 (d) After applying subsections (a) through (c) of this Code section, the trustee must adjust
2853 income or principal receipts to the extent that its taxes are reduced because it receives a
2854 deduction for payments made to a beneficiary.

2855 53-15-155.
2856 (a) A fiduciary may make adjustments between principal and income to offset the shifting
2857 of economic interests or tax benefits between income beneficiaries and remainder
2858 beneficiaries which arise from:
2859 (1) Elections and decisions, other than those described in subsection (b) of this Code
2860 section, that the fiduciary makes from time to time regarding tax matters;
2861 (2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary
2862 as a result of a transaction involving or a distribution from the estate or trust; or
2863 (3) The ownership by an estate or trust of an interest in an entity whose taxable income,
2864 whether or not distributed, is includable in the taxable income of the estate, trust, or a
2865 beneficiary.
2866 (b) If the amount of an estate tax marital deduction or charitable contribution deduction
2867 is reduced because a fiduciary deducts an amount paid from principal for income tax
2868 purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid
2869 from principal are increased and income taxes paid by an estate, trust, or beneficiary are
2870 decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax
2871 shall reimburse the principal from which the increase in estate tax is paid. The total
2872 reimbursement must equal the increase in the estate tax to the extent that the principal used
2873 to pay the increase would have qualified for a marital deduction or charitable contribution
2874 deduction but for the payment. The proportionate share of the reimbursement for each
2875 estate, trust, or beneficiary whose income taxes are reduced must be the same as its
2876 proportionate share of the total decrease in income tax. An estate or trust shall reimburse
2877 principal from income."

SECTION 6.

Code Section 7-1-242 of the Official Code of Georgia Annotated, relating to restrictions on corporate fiduciaries, is amended by revising subsection (a) as follows:

"(a) No corporation, partnership, or other ~~business association~~ entity may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether ~~incorporated~~ organized as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates, or Title 29, relating to guardianships and conservatorships; ~~or~~

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities; or

(8) A nonprofit corporation."

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.