

The House Committee on Judiciary offers the following substitute to SB 131:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and
2 estates, so as to comprehensively revise provisions relating to trusts, charitable trusts,
3 trustees, and trust investments; to provide a short title; to provide for general provisions
4 relating to trusts; to provide for the creation and validity of express trusts; to provide for
5 revocable trusts; to provide for reformation, modification, division, consolidation, and
6 termination of trusts; to provide for creditors' claims and spendthrift and discretionary
7 provisions; to provide for testamentary additions to trusts; to provide for implied trusts; to
8 provide for creation by deed to acquire beneficial interest; to provide for charitable trusts; to
9 provide for trustees, their appointment, and their compensation; to provide for resignation
10 and removal; to provide for interim accounting and final accounting; to provide for trustees'
11 duties and powers, certification of trusts, and registration and deposit of securities; to provide
12 for trustee liability; to provide for foreign entities and nonresidents acting as trustees; to
13 provide for trust investments; to enact the "Georgia Principal and Income Act"; to provide
14 for appointment at the beginning and end of income interest; to provide for allocation of
15 receipts during administration of trust; to amend Code Section 7-1-242 of the Official Code
16 of Georgia Annotated, relating to restrictions on corporate fiduciaries, so as to provide that
17 nonprofit corporations and other entities may lawfully act as a fiduciary; to amend the
18 Official Code of Georgia Annotated so as to conform provisions to the new Chapter 12 of
19 Title 53 and correct cross-references; to provide for related matters; to repeal conflicting
20 laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and estates, is
24 amended by repealing in its entirety Chapter 12, relating to trusts, and enacting a new
25 Chapter 12 to read as follows:

S. B. 131 (SUB)

26 "CHAPTER 12

27 ARTICLE 1

28 53-12-1.

29 (a) This Act shall be known and may be cited as 'The Revised Georgia Trust Code of
30 2010.'

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

34 53-12-2.

35 As used in this chapter, the term:

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

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

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

43 (4) 'Foreign entity' means:

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

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

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

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

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

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

59 (8) 'Private foundation' means a private foundation as defined in Section 509 of the
60 federal Internal Revenue Code.

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

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

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

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

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

71 (11) 'Settlor' means the person who creates the trust, including a testator in the case of
 72 a testamentary trust.

73 (12) 'Spendthrift provision' means a provision in a trust instrument that prohibits
 74 transfers of a beneficiary's interest in the income or principal or both.

75 (13) 'Trust' means an express trust or an implied trust but shall not include trusts created
 76 by statute or the Constitution of Georgia.

77 (14) 'Trust instrument' means the document, including any testamentary instrument, that
 78 contains the trust provisions.

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

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

84 53-12-3.

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

88 53-12-4.

89 (a) As to real property, the validity of a trust shall be determined by the law of the situs of
 90 the real property.

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

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

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

97 53-12-5.

98 The meaning and effect of the trust provisions shall be determined by:

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

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

104 53-12-6.

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

107 (b) Actions concerning the construction, administration, or internal affairs of a trust shall
 108 be maintained in superior court except as otherwise provided in Code Section 15-9-127.

109 (c) Any action by or against the trustee or to which the trustee is a party may be
 110 maintained in any court having jurisdiction over the parties and the subject matter except
 111 as provided in subsection (b) of this Code section.

112 53-12-7.

113 (a) The effect of the provisions of this chapter may be varied by the trust instrument
 114 except:

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

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

119 (3) As to the power of the beneficiaries to modify a trustee's compensation as provided
 120 in Code Section 53-12-210;

121 (4) As to the duty of a trustee to administer the trust and to exercise discretionary powers
 122 in good faith as provided in Code Sections 53-12-240 and 53-12-260;

123 (5) As to the effect of a provision relieving a trustee from liability as provided in Code
 124 Section 53-12-290; and

125 (6) As to the periods of limitation on actions as provided in Code Sections 53-12-45 and
 126 53-12-307.

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

ARTICLE 2

129

130 53-12-20.

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

133 (b) An express trust shall have, ascertainable with reasonable certainty:

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

135 (2) Trust property;

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

139 (4) A trustee; and

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

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

145 53-12-21.

146 (a) No formal words shall be necessary to create an express trust.

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

150 53-12-22.

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

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

155 53-12-23.

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

160 53-12-24.

161 No trust shall be invalid or terminated and no merger of title to trust property shall occur
162 merely because the trustee or trustees are the same person or persons as the beneficiary or
163 beneficiaries of the trust.

164 53-12-25.

165 (a) Transfer of property to a trust shall require a transfer of legal title to the trustee.

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

169 53-12-26.

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

172 53-12-27.

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

176 53-12-28.

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

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

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

187 (1) As directed in the trust instrument;

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

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

192 53-2-1.

193

ARTICLE 3194 53-12-40.195 (a) A settlor shall have no power to modify or revoke a trust in the absence of an express
196 reservation of such power.197 (b) A power to revoke shall be deemed to include a power to modify, and an unrestricted
198 power to modify shall be deemed to include a power to revoke.199 (c) Any revocation or modification of an express trust shall be in writing and signed by the
200 settlor.201 53-12-41.202 In exercising a power to modify the trust instrument, the settlor shall not enlarge the duties
203 or liabilities of the trustee without the trustee's express consent.204 53-12-42.205 A trustee shall not be liable for failing to act in accordance with the terms and conditions
206 of an amendment or revocation of a trust of which the trustee had no notice.207 53-12-43.208 (a) A settlor's powers with respect to revocation, amendment, or distribution of trust
209 property may be exercised by an agent under a power of attorney only to the extent
210 expressly authorized by the trust instrument and the power.211 (b) A settlor's powers with respect to revocation, amendment, or distribution of trust
212 property may be exercised by the settlor's conservator only as provided in Code Section
213 29-5-23.214 53-12-44.215 No trust shall be considered to be revocable merely because the life beneficiary has a
216 reversion in or a power of appointment over assets of the trust or because the life
217 beneficiary's heirs or estate have a remainder interest therein.218 53-12-45.219 (a) Any judicial proceeding to contest the validity of a trust that was revocable
220 immediately before the settlor's death shall be commenced within two years of the settlor's
221 death.

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

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

227 (2) A potential contestant has notified the trustee in writing of a possible judicial
 228 proceeding to contest the trust, and a judicial proceeding is commenced within 60 days
 229 after the contestant sent such notification.

230 (c) A beneficiary of a trust that is determined to have been invalid shall be liable to return
 231 any distribution received.

232 ARTICLE 4

233 53-12-60.

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

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

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

241 53-12-61.

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

243 53-12-62.

244 (a) The court may:

245 (1) Modify the administrative or dispositive provisions of a trust if, owing to
 246 circumstances not known to or anticipated by the settlor, compliance with the provisions
 247 of the trust would defeat or substantially impair the accomplishment of the purposes of
 248 such trust;

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

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

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

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

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

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

261 53-12-63.

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

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

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

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

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

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

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

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

278 53-12-64.

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

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

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

285 (2) The purpose of the trust has been fulfilled or become illegal or impossible to fulfill;
286 or

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

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

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

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

297 (f) Distribution of the trust property under the order for termination shall be made to or
 298 among the current beneficiaries and the vested remainder beneficiaries, or, if there are no
 299 vested remainder beneficiaries, among the current beneficiaries and the contingent
 300 remainder beneficiaries. The order shall specify the appropriate share, if any, of each
 301 current and remainder beneficiary who is to share in the proceeds of the trust so as to
 302 conform as nearly as practicable to the intention of the settlor or testator. The order may
 303 direct that the interest of a minor beneficiary, or any portion thereof, be converted into
 304 qualifying property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title
 305 44, 'The Georgia Transfers to Minors Act.'

306 53-12-65.

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

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

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

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

319 (e) This Code section shall not apply to trusts governed by Chapter 14 of Title 10.

320 ARTICLE 5

321 53-12-80.

322 (a) A spendthrift provision shall only be valid if it prohibits both voluntary and involuntary
 323 transfers.

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

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

331 (d) A spendthrift provision shall not be valid as to the following claims against a
332 beneficiary's right to a current distribution to the extent the distribution would be subject
333 to garnishment under Article 2 of Chapter 4 of Title 18 if the distribution were disposable
334 earnings:

335 (1) Alimony or child support;

336 (2) Taxes or other governmental claims;

337 (3) Tort judgments;

338 (4) Judgments or orders for restitution as a result of a criminal conviction of the
339 beneficiary; or

340 (5) Judgments for necessities.

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

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

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

353 (g) Notwithstanding any other provision in this Code section, a spendthrift provision in a
354 pension or retirement arrangement described in sections 401, 403, 404, 408, 408A, 409,
355 414, or 457 of the federal Internal Revenue Code of 1986 shall be valid with reference to
356 the entire interest of the beneficiary in the income, principal or both, even if the beneficiary
357 is also a contributor of trust property, except where a claim is made pursuant to a qualified
358 domestic relations order as defined in 26 U.S.C. Section 414(p).

359 53-12-81.

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

364 53-12-82.

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

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

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

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

383 53-12-83.

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

388 ARTICLE 6

389 Part 1

390 53-12-100.

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

393 53-12-101.

394 (a) A devise or bequest, the validity of which is determinable by the law of this state, may
395 be made by a will to the trustee of a trust established or to be established by the testator or
396 by the testator and some other person or by some other person, including a funded or
397 unfunded life insurance trust, even if the settlor has reserved any or all rights of ownership
398 of the insurance contracts, if the trust is identified in the testator's will and its provisions
399 are set forth in a written trust instrument, other than a will, executed before or concurrently
400 with the execution of the testator's will or in the valid last will of a person who has
401 predeceased the testator, regardless of the existence, size, or character of the corpus of the
402 trust and notwithstanding the requirements of paragraph (2) of subsection (b) of Code
403 Section 53-12-20. The devise or bequest shall not be invalid because the trust is amendable
404 or revocable or both or because the trust was amended after the execution of the will or
405 after the death of the testator.

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

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

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

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

414 53-12-102.

415 The trustee of a trust established by the testator or others as provided in Code Section
416 53-12-101 shall not be required to inquire into or audit the actions of the executor of the
417 testator's estate or to make any claim against the executor unless specifically directed to do
418 so by the settlor in the trust instrument. In the event that the trustee is authorized or
419 directed by the settlor in the trust instrument to pay or advance any part or all of the trust
420 property to the executor of the testator's estate for the payment of debts, taxes, and
421 expenses of administration of the testator's estate, the trustee shall not be liable for the

422 application of the trust property so paid or advanced and shall not be liable for any act done
 423 or omitted to be done by the executor with regard to the trust property.

424 53-12-103.

425 This part shall apply to all devises or bequests made in the will of a testator dying on or
 426 after May 31, 1968, whether the will is executed before or after such date. This part shall
 427 not invalidate a devise or bequest to a trustee made by a will executed prior to May 31,
 428 1968, by a testator dying prior to such date.

429 Part 2

430 53-12-120.

431 A trust under a testator's will may be designated as the beneficiary of the testator's qualified
 432 retirement plan, individual retirement account, other retirement plan, or life insurance
 433 policies on the life of the testator so long as the testator's will is admitted to probate in
 434 solemn form, whether the designation occurs before or after the execution of the will.
 435 Unless the beneficiary designation provides otherwise, the designation of a trust under a
 436 will as beneficiary shall not be treated as the designation of the testator's estate as
 437 beneficiary nor shall such property, once delivered to the trustee under the testator's will,
 438 be deemed to be part of the testator's estate.

439 ARTICLE 7

440 53-12-130.

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

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

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

447 (3) A purchase money resulting trust as defined in subsection (a) of Code Section
 448 53-12-131 is established.

449 53-12-131.

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

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

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

460 53-12-132.

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

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

466 53-12-133.

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

470 ARTICLE 8

471 53-12-150.

472 As used in this article, the term:

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

479 (2) 'Property' includes improved or unimproved property, real or personal, leaseholds,
 480 mortgages, notes, other obligations secured by property or any interest therein, or other
 481 interests in such property.

482 53-12-151.

483 The owners of property located in this state or persons desiring to acquire beneficial
 484 ownership of such property may create by deed an estate therein and in the improvements

485 made thereon and in the property to be acquired, for the benefit of themselves and such
 486 other persons, whether sui juris or not, who may contribute to the improvement or
 487 development or acquisition of the property and their assigns or transferees, provided that
 488 the deed creating the estate shall provide for the improvement or development of the
 489 property covered thereby or for the acquisition of the property and the trustee therein
 490 named, and his or her successor shall have some active duty to perform in and about the
 491 trust property or the management or control of the same. The deed creating the estate shall
 492 be recorded as provided in Code Section 53-12-152. When such an estate is created, the
 493 legal title to the property and all the property added thereto or substituted therefor shall vest
 494 and remain in the trustee named and his or her successor, in accordance with the terms of
 495 the deed, with all the powers conferred thereby upon the trustee, and shall not during the
 496 continuance of the estate pass to or vest in the beneficiaries. At the end of 25 years from
 497 the date of the deed creating the estate, the title to such of the property as may then belong
 498 to the estate shall vest in the beneficiaries; and, if the deed creating the estate so provides,
 499 a renewal of the estate may be made at the end of the 25 years, upon the terms and
 500 conditions and in the manner therein set forth, for a like period; provided, however, that in
 501 the alternative to the period of 25 years and the renewal thereof, if the deed so provides,
 502 the estate may be created for any period of time specified therein which does not extend
 503 beyond any number of lives in being and 21 years thereafter.

504 53-12-152.

505 (a) The deed creating a trust estate as provided in Code Section 53-12-151 shall, within
 506 30 days of the execution thereof, be filed by the trustee in the office of the clerk of the
 507 superior court of the county in which the principal office of the trust is located. The trustee
 508 shall concurrently pay to the clerk the fee prescribed in Code Section 15-6-77. Upon the
 509 deed being filed with the clerk and the fees being paid, the clerk shall deliver to the trustee
 510 or his or her attorney two certified copies of the deed, the filing of the clerk thereon, and
 511 a receipt for the costs which have been paid to the clerk.

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

516 STATE OF GEORGIA

517 OFFICE OF THE SECRETARY OF STATE

518 This is to certify that a copy of the attached certified copy of a deed, declaration, or
 519 agreement of trust dated _____, by and between

520 _____ as settlor(s) and _____ as

521 trustee(s), which states that the trustee(s) may use the name of
 522 _____ , has been duly filed in the office of the Secretary of State
 523 and the fees paid therefor, as provided by law.

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

525 _____
 526 Secretary of State

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

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

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

539 53-12-153.

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

544 53-12-154.

545 When an estate is created pursuant to Code Section 53-12-151 and from time to time
 546 thereafter, the trustee shall issue such certificates of beneficial interest as may be provided
 547 for by the deed to the persons who are beneficially interested in the estate or who become
 548 so interested therein in accordance with the provisions of the deed. The certificates shall
 549 pass and be transferred as personalty and in the same manner as shares of stock in
 550 corporations and shall be subject to levy and sale under attachment or execution or any
 551 other process in like manner as shares of stock. The trustee or person in charge of the
 552 estate representing the trustee shall be subject to the same demand as that provided by Code
 553 Sections 9-13-58 and 11-8-112 for the levying officer to make upon the officers of a
 554 corporation. Persons having claims against the estate may enforce the same by action

555 against the trustee thereof in like manner as actions against corporations, and service
556 thereof may be perfected by serving the trustee, if a resident of this state, and if not, then
557 by publication. The venue of such actions shall be the same as that of similar actions
558 against private corporations, but neither the trustee nor the beneficiaries of the estate shall
559 be personally or individually liable therefor except in cases where officers and stockholders
560 of private corporations would be liable under the law.

561 53-12-155.

562 The trustee of a trust created under Code Section 53-12-151 shall have sole and exclusive
563 management and control of the property, in accordance with the terms of the deed creating
564 the estate. The exercise by the trustee of any power granted or conferred by the deed,
565 including the power to lease, encumber, and sell, when exercised in accordance with the
566 terms thereof, shall be as valid and effective to all intents and purposes as if the trustee was
567 the sole and exclusive owner of the property in his or her own right. The trustee may
568 resign or be removed and his or her successor may be appointed in the manner of and in
569 accordance with the terms fixed by the deed creating the estate. The same rights, powers,
570 and title over and to the property shall belong to and be vested in the new trustee as are
571 conferred upon the original trustee by the deed creating the estate. The death of a trustee
572 shall not operate to cast title upon his or her heirs, devisees, executors, or administrators,
573 but the same shall vest in his or her successor, when appointed.

574 53-12-156.

575 In addition to investments in any property, the trustee of a trust created under Code Section
576 53-12-151 may invest any funds of the trust estate in investments authorized by trustees
577 under the laws of this state; provided, however, that the deed creating the estate may further
578 limit or expand the powers and authority of the trustee with respect to investments,
579 including the power to invest in property located outside this state. The trustee shall be
580 authorized and empowered, in accordance with the terms of the deed creating the estate,
581 from corpus or from income or from both, to repurchase or redeem any issued and
582 outstanding certificates of beneficial interest.

583 53-12-157.

584 Each trust created pursuant to this article shall make a return to the Secretary of State, upon
585 the creation of the trust and annually thereafter, in the same manner and embracing the
586 same information, insofar as applicable, as returns by corporations which are required to
587 be made under Articles 1 and 16 of Chapter 2 of Title 14, including the provisions with

588 regard to fees, penalty for noncompliance, and recording and certifying of copies of the
589 returns.

590 53-12-158.

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

595 53-12-159.

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

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

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

603 (A) Subsection (b) of Code Section 14-2-1103, as if the trustee of the trust were a
604 board of directors of a domestic corporation;

605 (B) Subsections (c) through (i) of Code Section 14-2-1103 and Code Sections
606 14-2-1301 through 14-2-1332, as if the holders of certificates of beneficial interest in
607 the trust were shareholders of a domestic corporation; and

608 (C) Code Sections 14-2-1105 and 14-2-1105.1; and

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

612 (c) Upon compliance with the requirements of this Code section and the filing of articles
613 of merger providing for a merger of the trust into a domestic corporation in the manner
614 provided in Code Sections 14-2-1105 and 14-2-1105.1, the Secretary of State shall treat the
615 merger as if it were a merger of corporations under Code Sections 14-2-1105 and
616 14-2-1105.1.

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

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

- 624 (2) The separate existence of the trust shall cease;
 625 (3) The domestic corporation shall continue to have all the rights, privileges, immunities,
 626 and powers and shall be subject to all the duties and liabilities of a corporation organized
 627 under Title 14;
 628 (4) The domestic corporation shall possess all the rights, privileges, immunities, and
 629 franchises, of a public as well as of a private nature, of the trust; and all property, real,
 630 personal, and mixed, all debts due on whatever account, including subscriptions to shares,
 631 all other choses in action, and all and every other interest of or belonging to or due to the
 632 trust shall be taken and deemed to be transferred to and vested in the domestic
 633 corporation without further act or deed; and the title to any real property or any interest
 634 therein vested in the trust shall not revert or be in any way impaired by reason of the
 635 merger;
 636 (5) The domestic corporation shall be responsible and liable for all the liabilities and
 637 obligations of the trust. Any claim existing or action or proceeding pending by or against
 638 the trust may be prosecuted as if the merger had not taken place, or the domestic
 639 corporation may be substituted in its place. Neither the rights of creditors nor any liens
 640 upon the property of the trust shall be impaired by the merger; and
 641 (6) The articles of incorporation of the domestic corporation shall be deemed to be
 642 amended to the extent, if any, that changes in its articles of incorporation are stated in the
 643 plan of merger.

644 ARTICLE 9

645 53-12-170.

- 646 (a) A charitable trust is a trust in which the settlor provides that the trust property shall be
 647 used for charitable purposes.
 648 (b) Charitable purposes shall include:
 649 (1) The relief of poverty;
 650 (2) The advancement of education;
 651 (3) The advancement of ethics and religion;
 652 (4) The advancement of health;
 653 (5) The advancement of science and the arts and humanities;
 654 (6) The protection and preservation of the environment;
 655 (7) The improvement, maintenance, or repair of cemeteries, other places of disposition
 656 of human remains, and memorials;
 657 (8) The prevention of cruelty to animals;
 658 (9) Governmental purposes; and

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

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

663 53-12-171.

664 The settlor of a charitable trust may retain the power to select the charitable purposes or
665 charitable beneficiaries, or may grant the trustee or any other person the power to select
666 charitable purposes or charitable beneficiaries or to engage in the charitable purposes,
667 without rendering the trust void for indefiniteness.

668 53-12-172.

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

672 53-12-173.

673 A charitable trust shall be valid even though under the trust provisions it is to continue for
674 an indefinite or unlimited period.

675 53-12-174.

676 In all cases in which the rights of beneficiaries under a charitable trust are involved, the
677 Attorney General or the district attorney of the circuit in which the major portion of trust
678 property lies shall represent the interests of the beneficiaries and the interests of this state
679 as parens patriae in all legal matters pertaining to the administration and disposition of such
680 trust. The Attorney General or the district attorney may bring or defend actions, and,
681 insofar as an action of this nature may be deemed an action against the state, the state
682 expressly gives its consent thereto. The venue of such actions may be in any county in this
683 state in which a substantial number of persons who are the beneficiaries of the trust reside.
684 Process shall be directed to the Attorney General or to the district attorney of the circuit in
685 which the major portion of the trust property lies. Service may be perfected by mailing a
686 copy of the petition and process by the clerk of the superior court of the county in which
687 it is filed to the Attorney General or to the district attorney of the circuit in which the major
688 portion of the trust property lies. Any judgment determining rights under any charitable
689 trusts shall be binding on the beneficiaries if the Attorney General or the district attorney
690 of the circuit in which the major portion of the trust property lies is a party and is served
691 as provided in this Code section.

692 53-12-175.

693 The settlor of a charitable trust may maintain a civil action to enforce the trust.

694 ARTICLE 10

695 Part 1

696 53-12-180.

697 Notwithstanding any provision therein to the contrary and except as provided in Code
 698 Section 53-12-181, the articles of incorporation of any corporation which is a private
 699 foundation shall be amended automatically as of the later of the date of incorporation or
 700 January 1, 1972, to provide that the corporation shall:

701 (1) Not engage in any act of self-dealing, as defined in Section 4941(d) of the federal
 702 Internal Revenue Code, which would give rise to any liability for the tax imposed by
 703 Section 4941 of the federal Internal Revenue Code;

704 (2) Not retain any excess business holdings, as defined in Section 4943(c) of the federal
 705 Internal Revenue Code, which would give rise to any liability for the tax imposed by
 706 Section 4943 of the federal Internal Revenue Code;

707 (3) Not make any investments which would jeopardize the carrying out of any of the
 708 exempt purposes of the corporation, within the meaning of Section 4944 of the federal
 709 Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section
 710 4944 of the federal Internal Revenue Code;

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

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

717 53-112-181.

718 Any corporation which is a private foundation may amend its articles of incorporation
 719 expressly to exclude the application of Code Section 53-12-180 or any portion thereof in
 720 the manner provided by Article 10 of Chapter 2 of Title 14 or Article 8 of Chapter 3 of
 721 Title 14, whichever is applicable.

722 53-12-182.

723 Nothing contained in Code Sections 53-12-180 and 53-12-181 shall cause or be construed
 724 to cause a forfeiture or reversion of any of the property of a corporation which is subject
 725 to such Code sections.

726 53-12-183.

727 With respect to property held by a corporation which is a private foundation and which is
 728 subject to conditions which permit distributions to the extent of the net income of the
 729 property each year but do not permit distributions of the property or any part thereof itself,
 730 the directors of the corporation may elect to distribute so much of the property as may be
 731 necessary to enable the corporation to avoid liability for any tax imposed by Section 4942
 732 of the federal Internal Revenue Code in the same manner as if the corporation were a trust
 733 described in Code Section 53-12-193 and the property were the only property held in the
 734 trust and as if the directors were the trustees of the trust.

735 53-12-184.

736 Nothing in Code Sections 53-12-180 through 53-12-183 shall impair the rights and powers
 737 of the courts or the Attorney General of this state with respect to any corporation.

738 Part 2

739 53-12-190.

740 Notwithstanding any provision therein to the contrary and except as provided in Code
 741 Section 53-12-192, the governing trust instrument of any trust which is a private foundation
 742 a charitable trust, as defined in Section 4947(a)(1) of the federal Internal Revenue Code,
 743 or a split-interest trust, as defined in Section 4947(a)(2) of the federal Internal Revenue
 744 Code, shall be amended automatically as of the later of the inception of the trust or January
 745 1, 1972, to include provisions which prohibit the trustees of the trust from:

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

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

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

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

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

762 53-12-191.

763 Notwithstanding any provision therein to the contrary and except as provided in Code
764 Section 53-12-192, the governing trust instrument of any trust which is a private foundation
765 or which is a charitable trust, as defined in Section 4947(a)(1) of the federal Internal
766 Revenue Code, shall be amended automatically as of the later of the inception of the trust
767 or January 1, 1972, to include a provision which requires the trustees to distribute, for the
768 purposes specified in the governing trust instrument, for each taxable year, amounts at least
769 sufficient to avoid any liability for the tax imposed by Section 4942 of the federal Internal
770 Revenue Code.

771 53-12-192.

772 The trustees of any trust which is a private foundation, a charitable trust, as defined in
773 Section 4947(a)(1) of the federal Internal Revenue Code, or a split-interest trust, as defined
774 in Section 4947(a)(2) of the federal Internal Revenue Code, may, without judicial
775 proceedings, amend the governing trust instrument of the trust expressly to exclude the
776 application of Code Section 53-12-190 or 53-12-191, or both, by executing a written
777 amendment to the trust and filing a duplicate original of the amendment with the Attorney
778 General of this state, whereupon the Code section or Code sections, as the case may be,
779 shall not apply to the trust.

780 53-12-193.

781 (a) With respect to any trust which is a private foundation or a charitable trust, as defined
782 in Section 4947(a)(1) of the federal Internal Revenue Code, the governing trust instrument
783 of which permits distributions to the extent of the net income of the trust each year but does
784 not permit distributions from trust principal, the trustees of the trust may elect, without
785 judicial proceedings and notwithstanding any provision to the contrary contained in the
786 governing trust instrument of the trust, to distribute in any year, for the purposes specified
787 in the governing trust instrument, that amount from the principal of the trust which, when
788 added to the income of the trust available for distribution during such year, will enable the
789 trust to avoid any liability for the tax imposed by Section 4942 of the federal Internal

790 Revenue Code by filing a written election, which may be a continuing one, with the
 791 Attorney General of this state to have this Code section and Code Section 53-12-183 apply
 792 to the trust. A distribution from trust principal pursuant to the election shall only be in the
 793 form of cash or securities which are either listed or admitted to unlisted trading privileges
 794 upon any stock exchange or are quoted regularly in any newspaper having a general
 795 circulation in this state.

796 (b) Any election made under subsection (a) of this Code section may be revoked at any
 797 time by filing written notice of revocation with the Attorney General of this state.

798 53-12-194.

799 Nothing contained in Code Sections 53-12-190 through 53-12-193 shall cause or be
 800 construed to cause a forfeiture or reversion of any of the property of a trust which is subject
 801 to such Code sections or to make the purposes of such trust impossible of accomplishment.

802 53-12-195.

803 Nothing in Code Sections 53-12-190 through 53-12-193 shall impair the rights and powers
 804 of the courts or the Attorney General of this state with respect to any trust.

805 ARTICLE 11

806 Part 1

807 53-12-200.

808 A trustee shall have legal capacity under Georgia law to acquire, hold, and transfer title to
 809 property. An individual shall be eligible to serve as a trustee regardless of citizenship or
 810 residency. If the trustee is a corporation, partnership, or other entity, it shall be required
 811 to have the power to act as a trustee in Georgia.

812 53-12-201.

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

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

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

819 (d) If all the qualified beneficiaries are sui juris, or if some of the qualified beneficiaries
 820 are not sui juris but all have a guardian or conservator, the qualified beneficiaries may
 821 appoint a trustee by unanimous consent. For purposes of this paragraph a parent may

822 represent and bind such parent's minor or unborn child if a conservator or guardian for the
 823 child has not been appointed and there is no conflict of interest between the parent and the
 824 child with respect to the appointment of a trustee.

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

828 (f) The petition provided for in subsection (e) of this Code section shall be served upon all
 829 qualified beneficiaries or their guardians or conservators. The court shall appoint a
 830 guardian ad litem for each beneficiary who is not sui juris and who has no guardian or
 831 conservator, and service of notice of the petition shall be made on such guardian ad litem.

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

834 53-12-202.

835 (a) The acceptance of a trust shall be necessary to constitute a person as trustee.
 836 Acceptance may be effected by acts as well as words. After acceptance, the trustee shall
 837 not decline the trusteeship.

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

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

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

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

848 53-12-203.

849 (a) A trustee shall not be required to give a bond to secure performance of the trustee's
 850 duties unless:

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

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

855 (b) Even though a bond has been required pursuant to subsection (a) of this Code section
 856 or the trust instrument requires a bond, the court may excuse the requirement, reduce or

857 increase the amount of a bond, release a surety, or permit the substitution of another bond
858 with the same or different sureties.

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

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

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

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

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

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

867 (e) Notwithstanding any other law to the contrary:

868 (1) A financial institution, trust company, national or state bank, savings bank, or savings
869 and loan association described in Code Section 7-1-242 that seeks to serve as a trustee
870 under any trust created under or governed by the laws of this state shall not be required
871 to give bond for the faithful performance of its duties unless its combined capital, surplus,
872 and undivided profits are less than \$3 million as reflected in its last statement filed with
873 the Comptroller of the Currency of the United States or the commissioner of banking and
874 finance; and

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

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

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

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

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

896 53-12-204.

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

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

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

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

906 Part 2

907 53-12-210.

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

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

917 (2) If one or more of the qualified beneficiaries who are not sui juris have no guardian
 918 or conservator, and all of the other qualified beneficiaries, including the guardians or
 919 conservators of qualified beneficiaries who are not sui juris, and the trustee are in
 920 agreement, any sui juris qualified beneficiary or the guardian or conservator of a
 921 beneficiary who is not sui juris or the trustee shall petition the court to approve a
 922 modification of the trust instrument or agreement relating to the trustee's compensation.
 923 The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and
 924 who does not have a guardian or conservator, and service of notice of the petition for
 925 modification of the trustee's compensation shall be made on each such guardian ad litem.
 926 The court shall hold a hearing and shall either allow or deny the modification that is
 927 requested in the petition.

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

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

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

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

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

951 (2) With respect to an individual trustee:

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

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

	<u>Percentage Fee</u>	<u>Market Value</u>
959		
960	<u>1.75 percent / year on the first</u>	<u>\$ 500,000.00</u>
961	<u>1.25 percent / year on the next</u>	<u>\$ 500,000.00</u>
962	<u>1.00 percent / year on the next</u>	<u>\$ 1,000,000.00</u>
963	<u>0.85 percent / year on the next</u>	<u>\$ 3,000,000.00</u>
964	<u>0.50 percent / year on values over</u>	<u>\$ 5,000,000.00</u>

965 53-12-211.

966 Unless any separate written agreement provides otherwise:

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

971 (2) The annual fee paid pursuant to subparagraph (c)(2)(B) of Code Section 53-12-210
 972 shall be apportioned among trustees and successor trustees according to the proportion
 973 of time each rendered services during the year.

974 53-12-212.

975 (a) A trustee who is receiving compensation as described in subsection (c) of Code Section
 976 53-12-210 may petition the court for compensation that is greater than the compensation
 977 allowed under that subsection. Service of notice of the petition for extra compensation
 978 shall be made on all qualified beneficiaries or their guardians or conservators. The court
 979 shall appoint a guardian ad litem for each qualified beneficiary who is not sui juris and who
 980 does not have a guardian or conservator, and service of notice of the petition for
 981 modification of the trustee's compensation shall be made on each such guardian ad litem.

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

985 53-12-213.

986 A trustee shall be entitled to be reimbursed out of the trust property for reasonable expenses
 987 that were properly incurred in the administration of the trust.

988 53-12-214.

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

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

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

995 (3) The services are performed and the trustee is paid pursuant to a contract executed by
996 the trustee and the corporation or business enterprise, which contract is approved by a
997 majority of those members of the board of directors or other similar governing authority
998 of the corporation or business enterprise who are not officers or employees of the trustee
999 and are not related to the trustee and provided, further, that the contract is approved by
1000 the court.

1001 (b) Any trustee receiving compensation from a corporation or other business enterprise for
1002 services to it as described in subsection (a) of this Code section shall not receive extra
1003 compensation in respect to such services as provided in Code Section 53-12-212; provided,
1004 however, that nothing in this Code section shall prohibit the receipt by the trustee of extra
1005 compensation for services rendered in respect to other assets or matters involving the trust
1006 estate.

1007 (c) Nothing in this Code section shall prohibit the receipt by trustees of normal
1008 commissions and compensation for the usual services performed by trustees pursuant to
1009 law or pursuant to any fee agreement executed by the settlor.

1010 (d) The purpose of this Code section is to enable additional compensation to be paid to
1011 trustees for business management and advisory services to corporations and business
1012 enterprises pursuant to contract, without the necessity of petitioning for extra compensation
1013 pursuant to Code Section 53-12-212.

1014 Part 3

1015 53-12-220.

1016 (a) A trustee may resign:

1017 (1) In the manner and under the circumstances described in the trust instrument;

1018 (2) Upon petition to the court showing that all of the qualified beneficiaries are sui juris
1019 or that all of the qualified beneficiaries who are not sui juris have guardians or
1020 conservators and that all the qualified beneficiaries or their guardians or conservators
1021 have agreed in writing to the resignation; or

1022 (3) If all the sui juris qualified beneficiaries and their guardians or conservators are not
 1023 in agreement, or if one or more of the qualified beneficiaries is not sui juris and has no
 1024 guardian or conservator, upon petition to the court showing to the satisfaction of the court
 1025 that:

1026 (A) The trustee is unable to continue serving as trustee due to age, illness, infirmity,
 1027 or similar reason;

1028 (B) Greater burdens have devolved upon the office of trustee than those which were
 1029 originally contemplated or should have been contemplated when the trust was accepted,
 1030 and the assumption of the additional burdens would work a hardship upon the trustee;

1031 (C) Disagreement exists between one or more of the beneficiaries of the trust and the
 1032 trustee with respect to the trustee's management of the trust, which disagreement and
 1033 conflict appear detrimental to the best interests of the trust;

1034 (D) The resignation of the trustee will result in or permit substantial financial benefit
 1035 to the trust;

1036 (E) The resigning trustee is one of two or more acting trustees, and the cotrustee or
 1037 cotrustees will continue in office with no detriment to the trust contemplated; or

1038 (F) The resignation would not be disadvantageous to the trust.

1039 (b) The petition to the court provided for in paragraph (3) of subsection (a) of this Code
 1040 section shall be served upon all qualified beneficiaries or their guardians or conservators.
 1041 The court shall appoint a guardian ad litem for each beneficiary who is not sui juris and
 1042 who does not have a guardian or conservator, and service of notice of the petition for
 1043 resignation shall be made on each such guardian ad litem.

1044 (c) The resignation of a trustee shall not relieve the trustee from liability for any actions
 1045 prior to the resignation except to the extent the trustee is relieved by the court in the
 1046 appropriate proceeding or to the extent relieved by the trust instrument.

1047 (d) If the resignation would create a vacancy required to be filled, then the trustee's
 1048 resignation shall not be effective until the successor trustee accepts the trust.

1049 53-12-221.

1050 (a) A trustee may be removed:

1051 (1) In accordance with the provisions of the trust instrument; or

1052 (2) Upon petition to the court by any interested person showing good cause.

1053 (b) In the discretion of the court, in order to protect the trust property or the interests of
 1054 any beneficiary, on its own motion or on motion of a cotrustee or other interested person,
 1055 the court may compel the trustee whose removal is being sought to surrender trust property
 1056 to a cotrustee, a receiver, or temporary trustee pending a decision on a petition for removal

1057 of a trustee or pending appellate review of such decision. To the extent the court deems
1058 necessary, the powers of the trustee also may be suspended.

1059 ARTICLE 12

1060 53-12-230.

1061 (a) At any time following 12 months from the date of acceptance of a trust, but not more
1062 frequently than once every 12 months, a trustee may petition the court to approve an
1063 interim accounting relieving the trustee from liability for the period covered by the interim
1064 accounting.

1065 (b) The petition shall set forth:

1066 (1) The name and address of the trustee;

1067 (2) Any provisions of the trust relating to matters that will be covered by the interim
1068 accounting;

1069 (3) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a
1070 guardian ad litem;

1071 (4) The period which the accounting covers;

1072 (5) A statement of receipts and disbursements of the trust that have occurred since the
1073 trustee's acceptance of the trust or since the effective date of the last accounting;

1074 (6) In a separate schedule, the principal on hand at the beginning of the accounting
1075 period and the status at that time of its investment; the investments received from the
1076 settlor and still held; additions to principal during the accounting period, with dates and
1077 sources of acquisition; investments collected, sold, or charged off during the accounting
1078 period, with the consequent loss or gain and whether credited to principal or income;
1079 investments made during the accounting period, with the date, source, and cost of each;
1080 deductions from the principal during the accounting period, with the date and purpose of
1081 each; and principal on hand at the end of the accounting period, how invested, and the
1082 estimated market value of each investment;

1083 (7) In a separate schedule, the income on hand at the beginning of the accounting period
1084 and in what form held; income received during the accounting period, when, and from
1085 what source; income paid out during the accounting period, when, to whom, and for what
1086 purpose; and income on hand at the end of the accounting period and how invested;

1087 (8) A statement of the assets and liabilities of the trust as of the end of the accounting
1088 period; and

1089 (9) Other information reasonably necessary to explain or understand the accounting.

1090 (c) The petition shall be served on the beneficiaries of the trust and the surety on the
1091 trustee's bond, if any.

1092 (d) Upon review of the petition and after considering any objections thereto and any
1093 evidence presented, the court may approve the trustee's interim accounting or enter
1094 judgment granting appropriate relief. If no objection to the petition is filed within the time
1095 allowed by law after service, or if the parties consent, the petition may be approved without
1096 notice, hearing, or further proceedings. The final judgment of the court shall be binding
1097 on all parties.

1098 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed
1099 against the trust, unless otherwise directed by the court.

1100 53-12-231.

1101 (a) If the trustee resigns, is removed, or dies or upon the termination of the trust, a
1102 beneficiary or the successor trustee may petition the court to require the trustee or the
1103 trustee's personal representative to appear before the court for a final accounting.
1104 Alternatively, the trustee or the trustee's personal representative may petition the court to
1105 approve a final accounting relieving the trustee from liability for the period covered by the
1106 final accounting. The settlement period shall begin from the acceptance of the trusteeship
1107 by the trustee or the end of the period covered by the last interim accounting.

1108 (b) The petition shall set forth:

1109 (1) The name and address of the trustee;

1110 (2) The beneficiaries of the trust, specifying any beneficiary believed to be in need of a
1111 guardian ad litem;

1112 (3) The period which the accounting covers; and

1113 (4) If the petition is filed by the trustee or the trustee's personal representative, the
1114 petition shall also include the information required to be filed by trustees in conjunction
1115 with the approval of an interim accounting as set forth in subsection (b) of Code Section
1116 53-12-230.

1117 (c) The petition shall be served on the beneficiaries, the trustee, the trustee's personal
1118 representative, if any, and the surety on the trustee's bond, if any.

1119 (d) Upon review of the trustee's final accounting and after considering any objections
1120 thereto and any evidence presented, the court may approve the final accounting or enter
1121 judgment granting appropriate relief. If no objection to the petition is filed within the time
1122 allowed by law after service, or if the parties consent, the petition may be approved without
1123 notice, hearing, or further proceedings. The final judgment of the court shall be binding
1124 on all parties.

1125 (e) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed
1126 against the trust, unless otherwise directed by the court.

1127 53-12-232.

1128 Nothing in this article shall restrict the right of any party to seek an equitable accounting.

1129 ARTICLE 13

1130 Part 1

1131 53-12-240.

1132 (a) The duties contained in this part are in addition to and not in limitation of the common
1133 law duties of the trustee, except to the extent inconsistent therewith.

1134 (b) Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith,
1135 in accordance with its provisions and purposes.

1136 53-12-241.

1137 In administering a trust, the trustee shall exercise the judgment and care of a prudent person
1138 acting in a like capacity and familiar with such matters, considering the purposes,
1139 provisions, distribution requirements, and other circumstances of the trust.

1140 53-12-242.

1141 (a) Within 60 days after the date of creation of an irrevocable trust or of the date on which
1142 a revocable trust becomes irrevocable, the trustee shall notify the qualified beneficiaries
1143 of the trust of the existence of the trust and the name and mailing address of the trustee.
1144 In full satisfaction of this obligation, the trustee may deliver the notice to the guardian or
1145 conservator of any beneficiary who is not sui juris.

1146 (b) All irrevocable trusts in existence on the effective date of this part shall be deemed to
1147 have waived this provision unless the trust instrument says otherwise.

1148 53-12-243.

1149 (a) On reasonable request by any qualified beneficiary or the guardian or conservator of
1150 a qualified beneficiary who is not sui juris, the trustee shall provide the qualified
1151 beneficiary with a report of information, to the extent relevant to that beneficiary's interest,
1152 about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee,
1153 and the particulars relating to the administration of the trust, including the trust provisions
1154 that describe or affect such beneficiary's interest.

1155 (b)(1) A trustee shall account at least annually, at the termination of the trust, and upon
1156 a change of trustees to each qualified beneficiary of an irrevocable trust to whom income
1157 is required or authorized in the trustee's discretion to be distributed currently, and to any
1158 person who may revoke the trust. At the termination of the trust, the trustee shall also

1159 account to each remainder beneficiary. Upon a change of trustees, the trustee shall also
 1160 account to the successor trustee. In full satisfaction of this obligation, the trustee may
 1161 deliver the accounting to the guardian or conservator of any qualified beneficiary who is
 1162 not sui juris.

1163 (2) An accounting furnished to a qualified beneficiary pursuant to paragraph (1) of this
 1164 subsection shall contain a statement of receipts and disbursements of principal and
 1165 income that have occurred during the last complete fiscal year of the trust or since the last
 1166 accounting to that beneficiary and a statement of the assets and liabilities of the trust as
 1167 of the end of the accounting period.

1168 (c) A trustee shall not be required to report information or account to a qualified
 1169 beneficiary who has waived in writing the right to a report or accounting and has not
 1170 withdrawn that waiver.

1171 (d) Subsections (a) and (b) of this Code section shall not apply to the extent that the terms
 1172 of the trust provide otherwise or the settlor of the trust directs otherwise in a writing
 1173 delivered to the trustee.

1174 (e) Nothing in this Code section shall affect the power of a court to require or excuse an
 1175 accounting.

1176 53-12-244.

1177 A trustee shall distribute all net income derived from the trust at least annually.

1178 53-12-245.

1179 A trustee shall not be under any duty to investigate the resources of any beneficiary when
 1180 determining whether to distribute trust property to such beneficiary.

1181 53-12-246.

1182 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

1183 (b) This Code section shall not preclude the following transactions, if fair to the
 1184 beneficiaries:

1185 (1) An agreement between a trustee and a beneficiary relating to the appointment or
 1186 compensation of the trustee;

1187 (2) Payment of reasonable compensation to the trustee; or

1188 (3) Performing and receiving reasonable compensation for performing services of a
 1189 managerial, executive, or business advisory nature for a corporation or other business
 1190 enterprise, where the trust estate owns an interest in the corporation or other business
 1191 enterprise.

1192 53-12-247.

1193 Except to the extent that the governing trust instrument clearly manifests an intention that
 1194 the trustee shall or may favor one or more of the beneficiaries, a trustee shall administer
 1195 a trust impartially based on what is fair and reasonable to all of the beneficiaries and with
 1196 due regard to the respective interests of income beneficiaries and remainder beneficiaries.

1197 Part 2

1198 53-12-260.

1199 Notwithstanding the breadth of discretion granted to a trustee in the trust instrument,
 1200 including the use of such terms as 'absolute,' 'sole,' or 'uncontrolled,' the trustee shall
 1201 exercise a discretionary power in good faith.

1202 53-12-261.

1203 (a) As used in this Code section, the term 'fiduciary' means the one or more personal
 1204 representatives of the estate of a decedent or the one or more trustees of a testamentary or
 1205 inter vivos trust, whichever in a particular case is appropriate.

1206 (b) A trustee of an express trust, without court authorization, shall be authorized:

1207 (1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property
 1208 or interest therein which the fiduciary may hold from time to time, at public or private
 1209 sale or otherwise, with or without warranties or representations, upon such terms and
 1210 conditions, including credit, and for such consideration as the fiduciary deems advisable
 1211 and to transfer and convey the property or interest therein which is at the disposal of the
 1212 fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the
 1213 fiduciary shall not be under a duty to follow the proceeds or other consideration received;

1214 (2) To invest and reinvest in any property which the fiduciary deems advisable,
 1215 including, but not limited to, common or preferred stocks, bonds, debentures, notes,
 1216 mortgages, or other securities, in or outside the United States; insurance contracts on the
 1217 life of any beneficiary or of any person in whom a beneficiary has an insurable interest
 1218 or in annuity contracts for any beneficiary; any real or personal property; investment
 1219 trusts, including the securities of or other interests in any open-end or closed-end
 1220 management investment company or investment trust registered under the federal
 1221 Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations
 1222 in common trust funds;

1223 (3) To the extent and upon such terms and conditions and for such periods of time as the
 1224 fiduciary shall deem necessary or advisable, to continue or participate in the operation of

1225 any business or other enterprise, whatever its form or organization, including, but not
 1226 limited to, the power:

1227 (A) To effect incorporation, dissolution, or other change in the form of the organization
 1228 of the business or enterprise;

1229 (B) To dispose of any interest therein or acquire the interest of others therein;

1230 (C) To contribute or invest additional capital thereto or to lend money thereto in any
 1231 such case upon such terms and conditions as the fiduciary shall approve from time to
 1232 time; and

1233 (D) To determine whether the liabilities incurred in the conduct of the business are to
 1234 be chargeable solely to the part of the trust set aside for use in the business or to the
 1235 trust as a whole.

1236 In all cases in which the fiduciary is required to file accounts in any court or in any other
 1237 public office, it shall not be necessary to itemize receipts, disbursements, and
 1238 distributions of property; but it shall be sufficient for the fiduciary to show in the account
 1239 a single figure or consolidation of figures, and the fiduciary shall be permitted to account
 1240 for money and property received from the business and any payments made to the
 1241 business in lump sum without itemization;

1242 (4) To form a corporation or other entity and to transfer, assign, and convey to the
 1243 corporation or entity all or any part of the trust property in exchange for the stock,
 1244 securities, or obligations of or other interests in any such corporation or entity and to
 1245 continue to hold the stock, securities, obligations, and interests;

1246 (5) To continue any farming operation and to do any and all things deemed advisable by
 1247 the fiduciary in the management and maintenance of the farm and the production and
 1248 marketing of crops and dairy, poultry, livestock, orchard, and forest products, including,
 1249 but not limited to, the power:

1250 (A) To operate the farm with hired labor, tenants, or sharecroppers;

1251 (B) To lease or rent the farm for cash or for a share of the crops;

1252 (C) To purchase or otherwise acquire farm machinery, equipment, and livestock;

1253 (D) To construct, repair, and improve farm buildings of all kinds needed, in the
 1254 fiduciary's judgment, for the operation of the farm;

1255 (E) To make or obtain loans or advances at the prevailing rate or rates of interest for
 1256 farm purposes, such as for production, harvesting, or marketing; or for the construction,
 1257 repair, or improvement of farm buildings; or for the purchase of farm machinery,
 1258 equipment, or livestock;

1259 (F) To employ approved soil conservation practices, in order to conserve, improve, and
 1260 maintain the fertility and productivity of the soil;

- 1261 (G) To protect, manage, and improve the timber and forest on the farm and to sell the
1262 timber and forest products when it is to the best interest of the trust;
1263 (H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where
1264 needed;
1265 (I) To engage in the production of livestock, poultry, or dairy products and to construct
1266 such fences and buildings and to plant pastures and crops as may be necessary to carry
1267 on such operations;
1268 (J) To market the products of the farm; and
1269 (K) In general, to employ good husbandry in the farming operation;
1270 (6) To manage real property:
1271 (A) To improve, manage, protect, and subdivide any real property;
1272 (B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
1273 (C) To terminate any subdivision or part thereof;
1274 (D) To borrow money for the purposes authorized by this paragraph for the periods of
1275 time and upon the terms and conditions as to rates, maturities, and renewals as the
1276 fiduciary shall deem advisable and to mortgage or otherwise encumber the property or
1277 part thereof, whether in possession or reversion;
1278 (E) To lease the property or part thereof, the lease to commence at the present or in the
1279 future, upon the terms and conditions, including options to renew or purchase, and for
1280 the period or periods of time as the fiduciary deems advisable even though the period
1281 or periods may extend beyond the duration of the trust;
1282 (F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,
1283 conveyances, or grants of every nature and kind which are lawful in the jurisdiction in
1284 which the property lies;
1285 (G) To manage and improve timber and forests on the property, to sell the timber and
1286 forest products, and to make grants, leases, and contracts with respect thereto;
1287 (H) To modify, renew, or extend leases;
1288 (I) To employ agents to rent and collect rents;
1289 (J) To create easements and to release, convey, or assign any right, title, or interest
1290 with respect to any easement on the property or part thereof;
1291 (K) To erect, repair, or renovate any building or other improvement on the property
1292 and to remove or demolish any building or other improvement in whole or in part; and
1293 (L) To deal with the property and every part thereof in all other ways and for such
1294 other purposes or considerations as it would be lawful for any person owning the same
1295 to deal with the property either in the same or in different ways from those specified
1296 elsewhere in this paragraph;

1297 (7) To lease personal property of the trust or part thereof, the lease to commence at the
1298 present or in the future, upon the terms and conditions, including options to renew or
1299 purchase, and for the period or periods of time as the fiduciary deems advisable even
1300 though the period or periods may extend beyond the duration of the trust;

1301 (8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other
1302 expenses incurred in the collection, care, administration, and protection of the trust; and

1303 (B) To pay from the trust all charges that the fiduciary deems necessary or appropriate
1304 to comply with laws regulating environmental conditions and to remedy or ameliorate
1305 any such conditions which the fiduciary determines adversely affect the trust or
1306 otherwise are liabilities of the trust and to apportion all such charges among the several
1307 bequests and trusts and the interests of the beneficiaries in such manner as the fiduciary
1308 deems fair, prudent, and equitable under the circumstances;

1309 (9) To receive additional property from any source and to administer the additional
1310 property as a portion of the appropriate trust under the management of the fiduciary,
1311 provided that the fiduciary shall not be required to receive the property without the
1312 fiduciary's consent;

1313 (10) In dealing with one or more fiduciaries of the estate or any trust created by the
1314 decedent or the settlor or any spouse or child of the decedent or settlor and irrespective
1315 of whether the fiduciary is a personal representative or trustee of such other estate or
1316 trust;

1317 (A) To sell real or personal property of the estate or trust to such fiduciary or to
1318 exchange such property with such fiduciary upon such terms and conditions as to sale
1319 price, terms of payment, and security as shall seem advisable to the fiduciary; and the
1320 fiduciary shall be under no duty to follow the proceeds of any such sale; and

1321 (B) To borrow money from the estate or trust for such periods of time and upon such
1322 terms and conditions as to rates, maturities, renewals, and securities as the fiduciary
1323 shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes,
1324 the costs of the administration of the estate or trust, and like charges against the estate
1325 or trust or any part thereof or of discharging any other liabilities of the estate or trust
1326 and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as
1327 may be required to secure the loan and to renew existing loans;

1328 (11) To borrow money for such periods of time and upon such terms and conditions as
1329 to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the
1330 purpose of paying debts, taxes, or other charges against the trust or any part thereof and
1331 to mortgage, pledge, or otherwise encumber such portion of the trust as may be required
1332 to secure the loan and to renew existing loans either as maker or endorser;

1333 (12) To make loans or advances for the benefit or the protection of the trust;

- 1334 (13) To vote shares of stock or other ownership interests owned by the trust, in person
1335 or by proxy, with or without power of substitution;
- 1336 (14) To hold a security in the name of a nominee or in other form without disclosure of
1337 the fiduciary relationship, so that title to the security may pass by delivery; but the
1338 fiduciary shall be liable for any act of the nominee in connection with the security so
1339 held;
- 1340 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,
1341 notes, mortgages, or other property into other stocks, bonds, debentures, notes,
1342 mortgages, or other property; to subscribe for other or additional stocks, bonds,
1343 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,
1344 debentures, notes, mortgages, or other property so acquired as investments of the trust so
1345 long as the fiduciary shall deem advisable;
- 1346 (16) To unite with other owners of property similar to any which may be held at any time
1347 in the trust, in carrying out any plan for the consolidation or merger, dissolution or
1348 liquidation, foreclosure, lease, or sale of the property or the incorporation or
1349 reincorporation, reorganization, or readjustment of the capital or financial structure of any
1350 corporation, company, or association the securities of which may form any portion of an
1351 estate or trust; to become and serve as a member of a shareholders' or bondholders'
1352 protective committee; to deposit securities in accordance with any plan agreed upon; to
1353 pay any assessments, expenses, or sums of money that may be required for the protection
1354 or furtherance of the interest of the beneficiaries of any trust with reference to any such
1355 plan; and to receive as investments of the trust any securities issued as a result of the
1356 execution of such plan;
- 1357 (17) To adjust the interest rate from time to time on any obligation, whether secured or
1358 unsecured, constituting a part of the trust;
- 1359 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,
1360 with or without renewal or extension, upon such terms as the fiduciary shall deem
1361 advisable, without regard to the value of the security, if any, at the time of the
1362 continuance;
- 1363 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,
1364 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,
1365 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the
1366 property by deed from the mortgagor or obligor without foreclosure; and to retain the
1367 property so bid in or taken over without foreclosure;
- 1368 (20) To carry such insurance coverage as the fiduciary shall deem advisable;
- 1369 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the
1370 trust;

1371 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle
1372 claims involving the trust or the trustee;
1373 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or
1374 otherwise deal with and settle claims in favor of or against the trust as the fiduciary
1375 shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary
1376 and the beneficiaries of the trust and the person against or for whom the claim is
1377 asserted, in the absence of fraud by such persons and, in the absence of fraud, bad faith,
1378 or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the
1379 beneficiaries of the trust; and
1380 (C) To compromise all debts, the collection of which are doubtful, belonging to the
1381 trust when such settlements will advance the interests of those represented;
1382 (23) To employ and compensate, out of income or principal or both and in such
1383 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful
1384 to advise or assist in the administration of any trust, including, but not limited to, agents,
1385 accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents,
1386 realtors, appraisers, and tax specialists; and to do so without liability for any neglect,
1387 omission, misconduct, or default of the agent or representative, provided such person was
1388 selected and retained with due care on the part of the fiduciary;
1389 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created
1390 by a single trust instrument until division shall become necessary in order to make
1391 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts
1392 of shares by appropriate entries in the fiduciary's books of account and to allocate to each
1393 share or part of share its proportionate part of all receipts and expenses; provided,
1394 however, that this paragraph shall not defer the vesting in possession of any share or part
1395 of share of the trust;
1396 (25) To set up proper and reasonable reserves for taxes, assessments, insurance
1397 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber
1398 properties, repairs, improvements, and general maintenance of buildings or other property
1399 out of rents, profits, or other income received;
1400 (26) To value assets of the trust and to distribute them in cash or in kind, or partly in cash
1401 and partly in kind, in divided or undivided interests, as the fiduciary finds to be most
1402 practical and in the best interest of the distributees, the fiduciary being able to distribute
1403 types of assets differently among the distributees;
1404 (27) To transfer money or other property distributable to a beneficiary who is under age
1405 21, an adult for whom a guardian or conservator has been appointed, or an adult who the
1406 fiduciary reasonably believes is incapacitated by distributing such money or property
1407 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

1408 (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have
 1409 a conservator, the beneficiary's guardian;

1410 (B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to
 1411 Minors Act' or similar state law and, for that purpose, creating a custodianship and
 1412 designating a custodian;

1413 (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial
 1414 Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or

1415 (D) Distributing it to any other person, whether or not appointed guardian or
 1416 conservator by any court, who shall, in fact, have the care and custody of the person of
 1417 the beneficiary;

1418 The fiduciary shall not be under any duty to see to the application of the distributions so
 1419 made if the fiduciary exercised due care in the selection of the person, including the
 1420 beneficiary, to whom the payments were made; and the receipt of the person shall be full
 1421 acquittance to the fiduciary;

1422 (28) To make, modify, and execute contracts and other instruments, under seal or
 1423 otherwise, as the fiduciary deems advisable; and

1424 (29) To serve without making and filing inventory and appraisal, without filing any
 1425 annual or other returns or reports to any court, and without giving bond; but, in addition
 1426 to any rights the beneficiaries may have under subsection (b) of Code Section 53-12-243,
 1427 the fiduciary shall furnish to the income beneficiaries, at least annually, a statement of
 1428 receipts and disbursements.

1429 53-12-262.

1430 A corporate fiduciary, without authorization by the court, may exercise the power:

1431 (1) To retain stock or other securities of its own issue received on the creation of the trust
 1432 or later contributed to the trust, including the securities into which the securities
 1433 originally received or contributed may be converted or which may be derived therefrom
 1434 as a result of merger, consolidation, stock dividends, splits, liquidations, and similar
 1435 procedures. The corporate fiduciary may exercise by purchase or otherwise any rights,
 1436 warrants, or conversion features attaching to any such securities. The authority described
 1437 in this paragraph shall:

1438 (A) Apply to the exchange or conversion of stock or securities of the corporate
 1439 fiduciary's own issue, whether or not any new stock or securities received in exchange
 1440 therefor are substantially equivalent to those originally held;

1441 (B) Apply to the continued retention of all new stock and securities resulting from
 1442 merger, consolidation, stock dividends, splits, liquidations, and similar procedures and
 1443 received by virtue of such conversion or exchange of stock or securities of the corporate

1444 fiduciary's own issue, whether or not the new stock or securities are substantially
 1445 equivalent to those originally received by the fiduciary;
 1446 (C) Have reference, inter alia, to the exchange of such stock or securities for stock or
 1447 securities of any holding company which owns stock or other interests in one or more
 1448 other corporations, including the corporate fiduciary, whether the holding company is
 1449 newly formed or already existing and whether or not any of the corporations own assets
 1450 identical or similar to the assets of or carry on a business identical or similar to the
 1451 corporation whose stock or securities were previously received by the fiduciary and the
 1452 continued retention of stock or securities, or both, of the holding company; and
 1453 (D) Apply regardless of whether any of the corporations have officers, directors,
 1454 employees, agents, or trustees in common with the corporation whose stock or
 1455 securities were previously received by the fiduciary; and
 1456 (2) To borrow money from its own banking department for such periods of time and
 1457 upon such terms and conditions as to rates, maturities, renewals, and security as the
 1458 fiduciary shall deem advisable for the purpose of paying debts, taxes, or other charges
 1459 against the estate or any trust or any part thereof, and to mortgage, pledge, or otherwise
 1460 encumber such portion of the estate or any trust as may be required to secure the loan or
 1461 loans; and to renew existing loans either as maker or endorser.

1462 53-12-263.

1463 (a) By an expressed intention of the testator or settlor contained in a will or in a trust
 1464 instrument in writing whereby an express trust is created, any or all of the powers or any
 1465 portion thereof enumerated in this part, as they exist at the time of the signing of the will
 1466 by the testator or at the time of the signing by the first settlor who signs the trust
 1467 instrument, may be, by appropriate reference made thereto, incorporated in the will or other
 1468 written instrument with the same effect as though such language were set forth verbatim
 1469 in the trust instrument.

1470 (b) At any time after the execution of a revocable trust, the settlor or anyone who is
 1471 authorized by the trust instrument to modify the trust may incorporate any or all of the
 1472 powers or any portion thereof enumerated in this article, as they exist at the time of the
 1473 incorporation.

1474 (c) Incorporation of one or more of the powers contained in this article, by reference to the
 1475 appropriate portion of Code Section 53-12-261, shall be in addition to and not in limitation
 1476 of the common-law or statutory powers of the fiduciary.

1477 (d)(1) A provision in any will or trust instrument which incorporates powers by citation
 1478 to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); or former
 1479 Code Section 53-12-40 or 53-12-232 which were in effect at the time the trust was

1480 created and which was valid under the law in existence at the time the will was signed by
 1481 the testator or at the time of the signing by the first settlor who signs the trust instrument
 1482 shall be effective notwithstanding the subsequent repeal of such statute.

1483 (2) A provision in any will or trust instrument which was signed by the testator or by the
 1484 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates
 1485 powers by citation to former Code Section 53-12-40 in effect on the date of such signing
 1486 shall be deemed to mean and refer to the corresponding powers contained in former Code
 1487 Section 53-12-232.

1488 (e) If any or all of the powers contained in this article are incorporated by reference into
 1489 a will by a testator:

1490 (1) The term 'trust' includes the estate held by the personal representative;

1491 (2) The term 'trustee' or 'fiduciary' includes the personal representative; and

1492 (3) The term 'beneficiaries of the trust' includes distributees of the estate.

1493 53-12-264.

1494 The qualified beneficiaries of a trust that omits any of the powers in Code Section
 1495 53-12-261 may by unanimous consent authorize but not require the court to grant to the
 1496 trustee those powers. With respect to any qualified beneficiary who is not sui juris, such
 1497 consent may be given by the duly appointed conservator, if any, or if none, by the duly
 1498 appointed guardian, if any, or if none, by either parent in the case of a minor, or if none,
 1499 by a guardian ad litem appointed to represent the qualified beneficiary who is not sui juris.

1500 Part 3

1501 53-12-270.

1502 (a) Subject to subsection (c) of this Code section, and unless the trust provisions expressly
 1503 indicate that a rule in this subsection shall not apply:

1504 (1) A person other than a settlor who is a beneficiary and trustee of a trust that confers
 1505 on such trustee a power to make discretionary distributions to or for such trustee's
 1506 personal benefit may exercise such power only in accordance with an ascertainable
 1507 standard; and

1508 (2) A trustee shall not exercise a power to make discretionary distributions to satisfy a
 1509 legal obligation of support that such trustee personally owes another person.

1510 (b) A power whose exercise is limited or prohibited by subsection (a) of this Code section
 1511 may be exercised by a majority of the remaining trustees whose exercise of such power is
 1512 not so limited or prohibited. If the power of all trustees is so limited or prohibited, the
 1513 court may appoint a special fiduciary with authority to exercise the power.

- 1514 (c) Subsection (a) of this Code section shall not apply to:
 1515 (1) A power held by the settlor's spouse who is the trustee of a trust for which a marital
 1516 deduction, as defined in Section 2056(b)(5) or 2523(e) of the federal Internal Revenue
 1517 Code of 1986, was previously allowed;
 1518 (2) Any trust during any period that the trust may be revoked or amended by its settlor;
 1519 or
 1520 (3) A trust if contributions to such trust qualify for the annual exclusion under Section
 1521 2503(c) of the federal Internal Revenue Code of 1986.

1522 Part 4

1523 53-12-280.

1524 (a) The trustee may present a certification of trust to any person other than a beneficiary
 1525 in lieu of providing a copy of the trust instrument to establish the existence of the trust
 1526 provisions.

1527 (b) The certification of trust as provided for in subsection (a) of this Code section shall
 1528 contain some or all of the following information:

1529 (1) That the trust exists and the date of the trust and any amendments;

1530 (2) The identity of each settlor;

1531 (3) The identity and address of each current trustee and, if more than one, the number
 1532 and identity of those required to exercise the powers of the trustee;

1533 (4) The relevant powers of the trustee and any restrictions or limitations on those powers;

1534 (5) The revocability or irrevocability of the trust;

1535 (6) How trust property should be titled;

1536 (7) Except as specifically disclosed in the certification, that the transaction at issue
 1537 requires no consent or action by any person other than the certifying trustee; and

1538 (8) Such other information as the trustee deems appropriate.

1539 (c) A certification of trust:

1540 (1) Shall be signed by each trustee;

1541 (2) Shall state that the trust has not been revoked, modified, or amended in any manner
 1542 that would cause the representations contained in the certification to be incorrect; and

1543 (3) Need not contain the dispositive provisions of the trust.

1544 (d) The recipient of a certification of trust may require the trustee to furnish copies of those
 1545 excerpts from the original trust instrument and any amendments that designate the trustee
 1546 and confer upon the trustee the power to act in the pending transaction.

1547 (e) A person who acts in reliance upon the certification of trust without knowledge that
 1548 any information therein is incorrect shall not be liable to any person for so acting and may
 1549 assume without inquiry that the information is correct.

1550 (f) A person who in good faith enters into a transaction in reliance upon the certification
 1551 of trust may enforce the transaction as if the information in the certification were correct.

1552 (g) A person making a demand for the trust instrument in addition to a certification of trust
 1553 or excerpts shall be liable for damages, including court costs and attorney's fees, if the court
 1554 determines that such demand was not made in good faith.

1555 (h) This Code section shall not limit the right of a person to obtain a copy of the trust
 1556 instrument in a judicial proceeding concerning the trust.

1557 (i) A certification of trust in recordable form may be recorded in the office of the clerk of
 1558 superior court.

1559 Part 5

1560 53-12-290.

1561 Whenever a bank or trust company is duly authorized to act and is acting as a fiduciary,
 1562 which term shall include an executor, administrator, trustee, guardian, or conservator, and
 1563 has a nominee in whose name securities, including, without limitation, bonds, stocks, notes,
 1564 and other evidences of title to intangible personal property, held as a fiduciary, may be
 1565 registered, it shall be lawful to register securities in the name of the nominee without
 1566 mention of the fiduciary relationship in the trust instrument evidencing the securities or on
 1567 the books of the issuer of the same, provided that:

1568 (1) The records of the corporate fiduciary shall at all times clearly show that the
 1569 securities are held by the corporate fiduciary in its capacity as fiduciary, together with the
 1570 beneficial owner or owners thereof and all facts relating to its ownership, possession, and
 1571 holding thereof; and

1572 (2) The corporate fiduciary shall not be relieved of liability for the safe custody, control,
 1573 and proper distribution of the securities by reason of the registration of same in the name
 1574 of any nominee.

1575 53-12-291.

1576 If two or more fiduciaries are acting jointly in reference to any securities, it shall be lawful
 1577 to register the property in the name of any nominee or any joint corporate fiduciary. In the
 1578 event that more than one corporate fiduciary is acting, it shall be lawful to register
 1579 securities in the name of any nominee of any one of the corporate fiduciaries.

1580 53-12-292.

1581 (a) Any fiduciary holding securities in its fiduciary capacity, any bank or trust company
1582 holding securities as a custodian or managing agent, and any bank or trust company
1583 holding securities as custodian for a fiduciary shall be authorized to deposit or arrange for
1584 the deposit of the securities in a clearing corporation, as defined in Article 8 of Title 11.
1585 When the securities are deposited, certificates representing securities of the same class of
1586 the same issuer may be merged and held in bulk, in the name of the nominee of the clearing
1587 corporation, with any other such securities deposited in the clearing corporation by any
1588 person, regardless of the ownership of the securities, and certificates of small
1589 denominations may be merged into one or more certificates of larger denomination. The
1590 records of the fiduciary and the records of the bank or trust company acting as custodian,
1591 as managing agent, or as custodian for a fiduciary shall at all times show the name of the
1592 party for whose account the securities are deposited. Title to the securities may be
1593 transferred by bookkeeping entry on the books of the clearing corporation without physical
1594 delivery of certificates representing the securities.

1595 (b) A bank or trust company depositing securities pursuant to this Code section shall be
1596 subject to such rules and regulations as, in the case of state chartered institutions, the
1597 commissioner of banking and finance and, in the case of national banking associations, the
1598 comptroller of the currency may from time to time issue.

1599 (c) A bank or trust company acting as custodian for a fiduciary, on demand by the
1600 fiduciary, shall certify in writing to the fiduciary the securities deposited by the bank or
1601 trust company in the clearing corporation for the account of the fiduciary. A fiduciary, on
1602 demand by any party to a judicial proceeding for the settlement of the fiduciary's account
1603 or on demand by the attorney for the party, shall certify in writing to the party the securities
1604 deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

1605 (d) This Code section shall apply to any fiduciary holding securities in its fiduciary
1606 capacity and to any bank or trust company holding securities as a custodian, managing
1607 agent, or custodian for a fiduciary acting on April 13, 1973, or acting thereafter, regardless
1608 of the date of the agreement, instrument, or court order by which it is appointed and
1609 regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a
1610 fiduciary owns capital stock of the clearing corporation.

1611 ARTICLE 14

1612 53-12-300.

1613 The trustee shall be accountable to the beneficiary for the trust property. A violation by
1614 the trustee of any duty that the trustee owes the beneficiary shall be a breach of trust.

1615 53-12-301.

1616 (a) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a
 1617 beneficiary shall have a cause of action to seek:

1618 (1) To recover damages;

1619 (2) To compel the trustee to perform the trustee's duties;

1620 (3) To require an accounting;

1621 (4) To enjoin the trustee from committing a breach of trust;

1622 (5) To compel the trustee to redress a breach of trust by payment of money or otherwise;

1623 (6) To appoint a temporary trustee to take possession of the trust property and administer
 1624 the trust or to suspend a trustee with or without the appointment of a temporary trustee;

1625 (7) To remove the trustee; and

1626 (8) To reduce or deny compensation of the trustee.

1627 (b) When trust assets are misapplied and can be traced in the hands of persons affected
 1628 with notice of the misapplication, the trust shall attach to such assets. A creditor of a trust
 1629 may follow assets in the hands of beneficiaries even if they were received without notice.

1630 (c) The remedy set forth in subsection (c) of Code Section 53-12-363 shall be the
 1631 exclusive remedy for an abuse of discretion as provided in Code Sections 53-12-361 and

1632 53-12-362.

1633 (d) The provision of remedies for breach of trust shall not prevent resort to any other
 1634 appropriate remedy provided by statute or common law.

1635 53-12-302.

1636 (a) A trustee who commits a breach of trust shall be personally chargeable with any
 1637 damages resulting from such breach of trust, including, but not limited to:

1638 (1) Any loss or depreciation in value of the trust property as a result of such breach of
 1639 trust, with interest;

1640 (2) Any profit made by the trustee through such breach of trust, with interest;

1641 (3) Any amount that would reasonably have accrued to the trust or beneficiary if there
 1642 had been no breach of trust, with interest; and

1643 (4) In the discretion of the court, expenses of litigation, including reasonable attorney's
 1644 fees incurred in bringing an action on such breach or threat to commit such breach.

1645 (b) If the trustee is liable for interest, then the amount of the liability for interest shall be
 1646 the greater of:

1647 (1) The amount of interest that accrues at the legal rate on judgments; or

1648 (2) The amount of interest actually received.

1649 53-12-303.

1650 (a) No provision in a trust instrument shall be effective to relieve the trustee of liability for
1651 a breach of trust committed in bad faith or with reckless indifference to the interests of the
1652 beneficiaries.

1653 (b) A trustee of a revocable trust shall not be liable to a beneficiary for any act performed
1654 or omitted pursuant to written direction from a person holding the power to revoke,
1655 including a person to whom the power to direct the trustee is delegated. If the trust is
1656 revocable in part, then this subsection shall apply with respect to the interest of the
1657 beneficiary in that part of the trust property.

1658 (c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee
1659 or in any other person, including a cotrustee, to the exclusion of one or more trustees, the
1660 authority to direct the making or retention of any investment, the excluded trustee shall be
1661 liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the
1662 making or retention or any investment pursuant to the authorized direction.

1663 53-12-304.

1664 (a) A successor trustee shall be liable to the beneficiary for breach of trust involving acts
1665 or omissions of a predecessor trustee only if the successor trustee:

1666 (1) Knows or reasonably should have known of a situation constituting a breach of trust
1667 committed by the predecessor trustee, and the successor trustee improperly permits it to
1668 continue;

1669 (2) Neglects to take reasonable steps to compel the predecessor to deliver the trust
1670 property to the successor trustee; or

1671 (3) Neglects to take reasonable steps to redress a breach of trust committed by the
1672 predecessor trustee in a case where the successor trustee knows or reasonably should
1673 have known of the predecessor trustee's breach.

1674 (b) A trustee succeeding a trustee who was also the settlor shall not be liable to the
1675 beneficiary for any action taken or omitted to be taken by the prior trustee nor shall such
1676 successor trustee have a duty to institute any action against such prior trustee or to file any
1677 claim against such prior trustee's estate for any of the prior trustee's acts or omissions as
1678 trustee. This subsection shall apply only with respect to a trust or any portion of a trust that
1679 was revocable by the settlor during the time that the settlor served as trustee and committed
1680 the act or omission.

1681 53-12-305.

1682 (a) A trustee shall be liable to the beneficiary for a breach committed by a cotrustee if such
1683 trustee:

- 1684 (1) Participates in a breach of trust committed by the cotrustee;
1685 (2) Improperly delegates the administration of the trust to the cotrustee;
1686 (3) Approves, knowingly acquiesces in, or conceals a breach of trust committed by the
1687 cotrustee;
1688 (4) Negligently enables the cotrustee to commit a breach of trust; or
1689 (5) Neglects to take reasonable steps to compel the cotrustee to redress a breach of trust
1690 in a case where such trustee knows or reasonably should have known of the breach of
1691 trust.

1692 (b) If two or more cotrustees are jointly liable to the beneficiary, each cotrustee shall be
1693 entitled to contribution from the other, as determined by the degree of each cotrustee's
1694 fault.

1695 53-12-306.

1696 (a) A trustee may maintain an action against a cotrustee to:

- 1697 (1) Compel the cotrustee to perform duties required under the trust;
1698 (2) Enjoin the cotrustee from committing a breach of trust; or
1699 (3) Compel the cotrustee to redress a breach of trust committed by such cotrustee.

1700 (b) The provision of remedies for a breach of trust shall not prevent resort to any other
1701 appropriate remedy provided by statute or common law.

1702 53-12-307.

1703 (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise,
1704 if a beneficiary has received a written report that adequately discloses the existence of a
1705 claim against the trustee for a breach of trust, the claim shall be barred as to that
1706 beneficiary unless a proceeding to assert the claim is commenced within two years after
1707 receipt of the report. A report adequately discloses existence of a claim if it provides
1708 sufficient information so that the beneficiary knows of such claim or reasonably should
1709 have inquired into the existence of such claim. If the beneficiary has not received a report
1710 which adequately discloses the existence of a claim against the trustee for a breach of trust,
1711 such claim shall be barred as to that beneficiary unless a proceeding to assert such claim
1712 is commenced within six years after the beneficiary discovered, or reasonably should have
1713 discovered, the subject of such claim.

1714 (b) A successor trustee's claim against a predecessor trustee shall be barred unless a
1715 proceeding to assert such claim is commenced within two years after such successor trustee
1716 takes office.

1717 (c) A trustee's claim against a cotrustee shall be barred unless a proceeding to assert such
1718 claim is commenced within two years after the date the cause of action against the cotrustee
1719 arises.

1720 53-12-308.

1721 (a) A trustee shall not be personally liable on any warranty made in any conveyance unless
1722 the intention to create a personal liability is distinctly expressed.

1723 (b) Unless otherwise provided in the contract, a trustee shall not be personally liable on
1724 contracts properly entered into in the trustee's fiduciary capacity unless the trustee fails to
1725 reveal the trustee's representative capacity in the contract.

1726 (c) A judgment rendered in an action brought against the trust shall impose no personal
1727 liability on the trustee or the beneficiary.

1728 ARTICLE 15

1729 53-12-320.

1730 (a) Any nonresident who is eligible to serve as a trustee under Code Section 53-12-201
1731 may act as a trustee in this state pursuant to the terms of this Code section.

1732 (b) Any nonresident trustee who acts as a trustee in this state shall be deemed to have
1733 consented to service upon the Secretary of State of any summons, notice, or process in
1734 connection with any action or proceeding in the courts of this state growing out of or based
1735 upon any act or failure to act on the part of the trustee unless the trustee shall designate as
1736 the agent for such service some person who may be found and served with notice,
1737 summons, or process in this state by a designation to be filed, from time to time, in the
1738 office of the Secretary of State, giving the name of the agent and the place in this state
1739 where the agent may be found and served.

1740 (c) If a nonresident trustee fails to designate a person who may be found and served with
1741 summons, notice, or process in this state, service of summons, notice, or process shall be
1742 made upon such trustee by serving a copy of the petition or other pleading, with process
1743 attached thereto on the Secretary of State. The service shall be sufficient service upon such
1744 nonresident trustee, provided that notice of the service and a copy of the petition and
1745 process is forthwith sent by registered or certified mail or statutory overnight delivery by
1746 the plaintiff or the plaintiff's agent to such trustee, in the state where such trustee resides,
1747 and the return receipt is appended to the summons or other process and filed with the
1748 summons, petition, and other papers in the court where the action is pending. The
1749 Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for
1750 service of process on him or her under this Code section.

1751 53-12-321.

1752 (a) Any foreign entity may act in this state as trustee, executor, administrator, guardian,
 1753 or any other like or similar fiduciary capacity, whether the appointment is by law, will,
 1754 deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise
 1755 without the necessity of complying with any law of this state relating to the qualification
 1756 of foreign entities to do business in this state or the licensing of foreign entities to do
 1757 business in this state, except as provided in this article, and notwithstanding any
 1758 prohibition, limitation, or restriction contained in any other law of this state, provided only
 1759 that:

1760 (1) The foreign entity is eligible to act as a fiduciary in this state under Code
 1761 Section 7-1-242; and

1762 (2) The foreign entity is authorized to act in the fiduciary capacity in the state in which
 1763 it is incorporated or organized or, if the foreign entity is a national banking association,
 1764 in the state in which it has its principal place of business.

1765 (b) Any foreign entity seeking to exercise fiduciary powers in this state, upon qualifying
 1766 in this state to act in any of such fiduciary capacities, shall not be required by law to give
 1767 bond, if bond is relieved by the instrument, law, or court order in which such entity has
 1768 been designated to act in such fiduciary capacity.

1769 (c) Nothing in this article shall be construed to prohibit or make unlawful any activity in
 1770 this state by a bank or other entity which is not incorporated or organized under the laws
 1771 of this state or by a national bank which does not have its principal place of business in this
 1772 state, which activity would be lawful in the absence of this article.

1773 53-12-322.

1774 A foreign entity, insofar as it acts in a fiduciary capacity in this state pursuant to this article,
 1775 shall not be required to obtain a certificate of authority to transact business in this state as
 1776 required by Article 15 of Chapter 2 of Title 14; provided, however, that such foreign entity
 1777 shall not establish or maintain in this state a place of business, branch office, or agency for
 1778 the conduct in this state of business as a fiduciary.

1779 53-12-323.

1780 (a) Prior to the time when any foreign entity acts pursuant to the authority of this article
 1781 in any fiduciary capacity in this state, the foreign entity shall file with the Secretary of State
 1782 a verified statement which shall state:

1783 (1) The correct name of the foreign entity;

1784 (2) The name of the state under the laws of which it is incorporated or organized or, if
 1785 the foreign entity is a national banking association, a statement of that fact;

1786 (3) The address of its principal business office;
1787 (4) In what fiduciary capacity it desires to act in this state;
1788 (5) That it is authorized to act in a similar fiduciary capacity in the state in which it is
1789 incorporated or organized or, if it is a national banking association, in which it has its
1790 principal place of business and the basis on which it is eligible to act as a fiduciary in
1791 Georgia under Code Section 7-1-242; and
1792 (6) The name and address of a person who may be found and served with notice,
1793 summons, or process in this state and who is designated by the foreign entity as its agent
1794 for such service.

1795 (b) The statement provided for in subsection (a) of this Code section shall be verified by
1796 an officer of the foreign entity, and there shall be filed with it such certificates of public
1797 officials and copies of documents certified by public officials as may be necessary to show
1798 that the foreign entity is authorized to act in a fiduciary capacity similar to those in which
1799 it desires to act in this state, in the state in which it is incorporated or organized, or, if it is
1800 a national banking association, in which it has its principal place of business.

1801 (c) Any foreign entity that acts as a trustee in this state shall be deemed to have consented
1802 to service upon the Secretary of State of any summons, notice, or process in connection
1803 with any action or proceeding in the courts of this state growing out of or based upon any
1804 act or failure to act on the part of the trustee unless the trustee shall designate as the agent
1805 for such service some person who may be found and served with notice, summons, or
1806 process in this state by a designation to be filed, from time to time, in the office of the
1807 Secretary of State, giving the name of the agent and the place in this state where the agent
1808 may be found and served.

1809 (d) If a foreign entity fails to designate a person who may be found and served with
1810 summons, notice, or process in this state, service of summons, notice, or process shall be
1811 made upon such foreign entity by serving a copy of the petition or other pleading, with
1812 process attached thereto on the Secretary of State. The service shall be sufficient service
1813 upon such foreign entity, provided that notice of the service and a copy of the petition and
1814 process is forthwith sent by registered or certified mail or statutory overnight delivery by
1815 the plaintiff or the plaintiff's agent to such foreign entity at the address that is on file with
1816 the Secretary of State, and the return receipt is appended to the summons or other process
1817 and filed with the summons, petition, and other papers in the court where the action is
1818 pending. The Secretary of State shall charge and collect a fee as set out in Code Section
1819 45-13-26 for service of process on him or her under this Code section.

1820 ARTICLE 16

1821 Part 1

1822 53-12-340.

1823 (a) In investing and managing trust property, a trustee shall exercise the judgment and care
1824 under the circumstances then prevailing of a prudent person acting in a like capacity and
1825 familiar with such matters, considering the purposes, provisions, and distribution
1826 requirements of the trust.

1827 (b) Among the factors that a trustee shall consider in investing and managing trust assets
1828 are such of the following as are relevant to the trust or its beneficiaries:

1829 (1) General economic conditions;

1830 (2) The possible effect of inflation or deflation;

1831 (3) Anticipated tax consequences;

1832 (4) The attributes of the portfolio,

1833 (5) The expected return from income and appreciation;

1834 (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

1835 (7) An asset's special relationship or special value, if any, to the purposes of the trust or
1836 to one or more of the beneficiaries or to the settlor;

1837 (8) The anticipated duration of the trust; and

1838 (9) Any special circumstances.

1839 (c) Any determination of liability for investment performance shall consider not only the
1840 performance of a particular investment but also the performance of the portfolio as a whole
1841 and as a part of an overall investment strategy having risk and return objectives reasonably
1842 suited to the trust.

1843 (d) A trustee who has special investment skills or expertise shall have a duty to use those
1844 special skills or expertise. A trustee who is named trustee in reliance upon such trustee's
1845 representation that such trustee has special investment skills or expertise shall be held liable
1846 for failure to make use of such degree of skill or expertise.

1847 (e) A trustee may invest in any kind of property or type of investment consistent with the
1848 standards of this article.

1849 (f) A trustee that is a bank or trust company shall not be precluded from acquiring and
1850 retaining the securities of or other interests in an investment company or investment trust
1851 because the bank or trust company or an affiliate provides services to the investment
1852 company or investment trust as investment adviser, custodian, transfer agent, registrar,
1853 sponsor, distributor, manager, or otherwise and receives compensation for such services.

1854 53-12-341.

1855 A trustee shall reasonably manage the risk of concentrated holdings of assets in a trust by
1856 diversifying or by using other appropriate mechanisms, except as otherwise provided in this
1857 Code section, as follows:

1858 (1) The duty imposed by this Code section shall not apply if the trustee reasonably
1859 determines that, because of special circumstances, the purposes of the trust are better
1860 served without complying with the duty;

1861 (2) The trustee shall not be liable for failing to comply with the duty imposed by this
1862 Code section to the extent that the terms of the trust instrument limit or waive the duty;
1863 and

1864 (3) Except as provided in this paragraph, the duty imposed by this Code section shall
1865 apply on or after January 1, 2011. With respect to any trust that is or becomes
1866 irrevocable before January 1, 2011, the duty imposed by this Code section shall not
1867 apply:

1868 (A) To the trust to the extent such trust instrument directs or permits the trustee to
1869 retain, invest, exchange, or reinvest assets without regard to any duty to diversify,
1870 without the need to diversify or create a diversity of investments, or without liability
1871 for either depreciation or failing to diversify, or contains other similar language
1872 expressing a settlor's intent to provide similar discretion to the trustee; or

1873 (B) Absent gross neglect, with respect to an asset that was transferred to the trustee of
1874 such trust by any settlor or gratuitous transferor.

1875 53-12-342.

1876 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee
1877 shall review the trust assets and make and implement decisions concerning the retention
1878 and disposition of assets in order to bring the trust portfolio into compliance with the
1879 purposes, provisions, distributions requirements, and other circumstances of the trust and
1880 with the requirements of this article.

1881 53-12-343.

1882 Compliance with the investment rules of this part shall be determined in light of the facts
1883 and circumstances existing at the time of a trustee's decision or action and not by hindsight.

1884 53-12-344.

1885 The following terminology or comparable language in the provisions of a trust, unless
1886 otherwise limited or modified, shall authorize any investment or strategy permitted under
1887 Article 16 and 17 of this chapter: 'investments permissible by law for investment of trust

1888 funds,' 'legal investments,' 'authorized investments,' 'using the judgment and care under the
 1889 circumstances then prevailing that persons of prudence, discretion, and intelligence
 1890 exercise in the management of their own affairs, not in regard to speculation but in regard
 1891 to the permanent disposition of their funds, considering the probable income as well as the
 1892 probable safety of their capital,' 'prudent man rule,' 'prudent trustee rule,' 'prudent person
 1893 rule,' and 'prudent investor rule.'

1894 53-12-345.

1895 (a) A trustee may delegate investment and management functions that a prudent trustee of
 1896 comparable skills could properly delegate under the circumstances. The trustee shall
 1897 exercise reasonable care, skill, and caution in:

1898 (1) Selecting an agent;

1899 (2) Establishing the scope and terms of the delegation consistent with the purposes and
 1900 provisions of the trust; and

1901 (3) Reviewing periodically the agent's actions in order to monitor the agent's
 1902 performance and compliance with the terms of the delegation.

1903 (b) In performing a delegation function, an agent shall owe a duty to the trust to exercise
 1904 reasonable care to comply with the terms of the delegation.

1905 (c) A trustee who complies with the requirements of subsection (a) of this Code section,
 1906 and who takes reasonable steps to compel an agent to whom the function was delegated to
 1907 redress a breach of duty to the trust, shall not be liable to the beneficiaries of the trust or
 1908 to the trust for the decisions or actions of the agent to whom the function was delegated.

1909 (d) By accepting the delegation of a trust function from the trustee of a trust that is subject
 1910 to the laws of this state, an agent shall waive the defense of lack of personal jurisdiction
 1911 and shall submit to the jurisdiction of this state.

1912 Part 2

1913 53-12-360.

1914 In allocating receipts and disbursements to or between principal and income and with
 1915 respect to any matter within the scope of Article 17 of this chapter:

1916 (1) A trustee shall administer a trust in accordance with the governing trust instrument,
 1917 even if there is a different provision in Article 17 of this chapter;

1918 (2) A trustee may administer a trust by the exercise of a discretionary power of
 1919 administration regarding a matter within the scope of Article 17 of this chapter given to
 1920 the trustee by the governing trust instrument, even if the exercise of the power produces
 1921 a result different from a result required or permitted by Article 17 of this chapter. No

1922 inference that the trustee has improperly exercised the discretionary power shall arise
 1923 from the fact that the trustee has made an allocation contrary to a provision of Article 17
 1924 of this chapter;

1925 (3) A trustee shall administer a trust in accordance with Article 17 of this chapter if the
 1926 governing trust instrument does not contain a different provision or does not give the
 1927 trustee a discretionary power of administration regarding a matter within the scope of
 1928 Article 17 of this chapter; and

1929 (4) A trustee shall add a receipt or charge a disbursement to principal to the extent that
 1930 the governing trust instrument and Article 17 of this chapter do not provide a rule for
 1931 allocating the receipt or disbursement to or between principal and income.

1932 53-12-361.

1933 (a) Subject to subsections (c) and (f) of this Code section, a trustee may adjust between
 1934 principal and income by allocating an amount of income to principal or an amount of
 1935 principal to income to the extent the trustee considers appropriate if:

1936 (1) The governing trust instrument describes what may or shall be distributed to a
 1937 beneficiary by referring to the trust's income; and

1938 (2) The trustee determines, after applying the rules in Code Section 53-12-360, that the
 1939 trustee is unable to comply with Code Section 53-12-247.

1940 (b) In deciding whether and to what extent to exercise the power conferred by
 1941 subsection (a) of this Code section, a trustee may consider, among other things:

1942 (1) The size of the trust;

1943 (2) The nature and estimated duration of the trust;

1944 (3) The liquidity and distribution requirements of the trust;

1945 (4) The needs for regular distributions and preservation and appreciation of capital;

1946 (5) The expected tax consequences of an adjustment;

1947 (6) The net amount allocated to income under this chapter and the increase or decrease
 1948 in the value of the principal assets, which the trustee may estimate as to assets for which
 1949 market values are not readily available;

1950 (7) The assets held in the trust; the extent to which they consist of financial assets,
 1951 interests in closely held enterprises, and tangible and intangible personal property or real
 1952 property; the extent to which an asset is used by a beneficiary; and whether an asset was
 1953 purchased by the trustee or received from the settlor or testator;

1954 (8) To the extent reasonably known to the trustee, the needs of the beneficiaries for
 1955 present and future distributions authorized or required by the governing trust instrument;

1956 (9) Whether and to what extent the governing trust instrument gives the trustee the power
 1957 to invade principal or accumulate income or prohibits the trustee from invading principal

- 1958 or accumulating income, and the extent to which the trustee has exercised a power from
 1959 time to time to invade principal or accumulate income;
 1960 (10) The intent of the settlor or testator; and
 1961 (11) The actual and anticipated effect of economic conditions on principal and income
 1962 and effects of inflation and deflation on the trust.
- 1963 (c) A trustee shall not make an adjustment under this Code section if:
- 1964 (1) The adjustment would change the amount payable to a beneficiary as a fixed annuity
 1965 or a fixed fraction of the value of the trust assets;
- 1966 (2) The adjustment is from trust funds which are permanently set aside for charitable
 1967 purposes under the governing trust instrument and for which a federal charitable, estate,
 1968 or gift tax deduction has been taken, unless both income and principal are so set aside;
- 1969 (3) If:
- 1970 (A) Possessing or exercising the power to make an adjustment would cause an
 1971 individual to be treated as the owner of all or part of the trust for federal income tax
 1972 purposes; and
- 1973 (B) The individual would not be treated as the owner if the trustee did not possess the
 1974 power to make an adjustment;
- 1975 (4) If:
- 1976 (A) Possessing or exercising the power to make an adjustment would cause all or part
 1977 of the trust assets to be subject to federal estate, gift, or generation-skipping transfer tax
 1978 with respect to an individual; and
- 1979 (B) The assets would not be subject to federal estate, gift, or generation-skipping tax
 1980 with respect to the individual if the trustee did not possess the power to make an
 1981 adjustment;
- 1982 (5) If the trustee is a beneficiary of the trust; or
- 1983 (6) If the trust has been converted under Code Section 53-12-362.
- 1984 (d) If paragraph (3), (4), or (5) of subsection (c) of this Code section applies to a trustee
 1985 and there is more than one trustee, a cotrustee to whom the provision does not apply may
 1986 make the adjustment unless the exercise of the power by the remaining trustee is prohibited
 1987 by the governing trust instrument.
- 1988 (e)(1) If paragraph (2) of this subsection applies, a trustee may release:
- 1989 (A) The entire power conferred by subsection (a) of this Code section;
 1990 (B) The power to adjust from income to principal; or
 1991 (C) The power to adjust from principal to income.
- 1992 (2) A release under paragraph (1) of this subsection shall be permissible if:

1993 (A) The trustee is uncertain about whether possessing or exercising the power will
 1994 cause a result described in paragraphs (1) through (6) of subsection (c) of this Code
 1995 section; or

1996 (B) The trustee determines that possessing or exercising the power will or may deprive
 1997 the trust of a tax benefit or impose a tax burden not described in subsection (c) of this
 1998 Code section.

1999 (3) The release may be permanent or for a specified period, including a period measured
 2000 by the life of an individual.

2001 (f) A governing trust instrument which limits the power of a trustee to make an adjustment
 2002 between principal and income shall not affect the application of this Code section unless
 2003 it is clear from the governing trust instrument that it is intended to deny the trustee the
 2004 power of adjustment conferred by subsection (a) of this Code section.

2005 53-12-362.

2006 (a) Unless expressly prohibited by the trust instrument, a trustee may release the power to
 2007 adjust under Code Section 53-12-361 and convert a trust into a unitrust as described in this
 2008 Code section if:

2009 (1) The trustee determines that the conversion will enable the trustee to better carry out
 2010 the intent of the settlor or testator and the purposes of the trust;

2011 (2) The trustee gives written notice of the trustee's intention to release the power to adjust
 2012 and to convert the trust into a unitrust and of how the unitrust will operate, including what
 2013 initial decisions the trustee will make under this Code section, to:

2014 (A) The settlor, if living;

2015 (B) All living persons who are currently receiving or eligible to receive distributions
 2016 of income of the trust; and

2017 (C) Without regard to the exercise of any power of appointment, all living persons who
 2018 would receive principal of the trust if the trust were to terminate at the time of the
 2019 giving of such notice and all living persons who would receive or be eligible to receive
 2020 distributions of income or principal of the trust if the interests of all of the beneficiaries
 2021 currently eligible to receive income under subparagraph (B) of this paragraph were to
 2022 terminate at the time of the giving of such notice.

2023 If a beneficiary is not sui juris, such notice shall be given to the beneficiary's conservator,
 2024 if any, and if the beneficiary has no conservator, to the beneficiary's guardian, including,
 2025 in the case of a minor beneficiary, the beneficiary's natural guardian;

2026 (3) At least one person receiving notice under each of subparagraphs (B) and (C) of
 2027 paragraph (2) of this subsection is legally competent; and

- 2028 (4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the
 2029 trustee within 60 days of the mailing of the notice under paragraph (2) of this subsection.
- 2030 (b)(1) The trustee may petition the superior court to order the conversion to a unitrust.
 2031 (2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not
 2032 convert, the beneficiary may petition the superior court to order the conversion.
- 2033 (3) The court shall order conversion if the court concludes that the conversion will
 2034 enable the trustee to better carry out the intent of the settlor or testator and the purposes
 2035 of the trust.
- 2036 (c) In deciding whether to exercise the power to convert to a unitrust as provided by
 2037 subsection (a) of this Code section, a trustee may consider, among other things:
- 2038 (1) The size of the trust;
 2039 (2) The nature and estimated duration of the trust;
 2040 (3) The liquidity and distribution requirements of the trust;
 2041 (4) The needs for regular distributions and preservation and appreciation of capital;
 2042 (5) The expected tax consequences of the conversion;
 2043 (6) The assets held in the trust; the extent to which they consist of financial assets,
 2044 interests in closely held enterprises, and tangible and intangible personal property or real
 2045 property; and the extent to which an asset is used by a beneficiary;
 2046 (7) To the extent reasonably known to the trustee, the needs of the beneficiaries for
 2047 present and future distributions authorized or required by the governing trust instrument;
 2048 (8) Whether and to what extent the governing trust instrument gives the trustee the power
 2049 to invade principal or accumulate income or prohibits the trustee from invading principal
 2050 or accumulating income and the extent to which the trustee has exercised a power from
 2051 time to time to invade principal or accumulate income; and
 2052 (9) The actual and anticipated effect of economic conditions on principal and income and
 2053 effects of inflation and deflation on the trust.
- 2054 (d) After a trust is converted to a unitrust:
- 2055 (1) The trustee shall follow an investment policy seeking a total return for the
 2056 investments held by the trust, whether the return is to be derived from:
- 2057 (A) Appreciation of capital;
 2058 (B) Earnings and distributions from capital; or
 2059 (C) Both appreciation of capital and earnings and distributions from capital;
- 2060 (2) The trustee shall make regular distributions in accordance with the governing trust
 2061 instrument construed in accordance with the provisions of this Code section;
- 2062 (3) The term 'income' in the governing trust instrument shall mean an annual unitrust
 2063 distribution equal to 4 percent of the net fair market value of the trust's assets or the
 2064 payout percentage ordered under paragraph (1) of subsection (g) of this Code section.

- 2065 whether such assets would be considered income or principal under other provisions of
 2066 Article 16 and 17 of this chapter, averaged over the lesser of:
- 2067 (A) The three preceding years; or
 2068 (B) The period during which the trust has been in existence;
- 2069 (4) The trustee can determine the fair market value of the property in the trust by
 2070 appraisal or other reasonable method or estimate; and
- 2071 (5) The fair market value of the trust property shall not include the value of any
 2072 residential property or any tangible personal property that, as of the first business day of
 2073 the current valuation year, one or more of the current beneficiaries of the trust have or
 2074 had the right to occupy or have had the right to possess or control, other than in his or her
 2075 capacity as trustee of the trust, and instead the right of occupancy or the right to
 2076 possession or control shall be deemed to be the unitrust amount with respect to such
 2077 residential property.
- 2078 (e) The trustee may in the trustee's discretion from time to time determine:
- 2079 (1) The effective date of a conversion to a unitrust;
 2080 (2) The provisions for prorating a unitrust distribution for a short year in which a
 2081 beneficiary's right to payments commences or ceases;
 2082 (3) The frequency of unitrust distributions during the year;
 2083 (4) The effect of other payments from or contributions to the trust on the trust's
 2084 valuation;
 2085 (5) Whether to value the trust's assets annually or more frequently;
 2086 (6) What valuation dates to use;
 2087 (7) How frequently to value nonliquid assets and whether to estimate their value; and
 2088 (8) Any other matters necessary for the proper functioning of the unitrust.
- 2089 (f)(1) Expenses which would be deducted from income if the trust were not a unitrust
 2090 shall not be deducted from the unitrust distribution.
- 2091 (2) The unitrust distribution shall be paid from net income, as such term would be
 2092 determined if the trust were not a unitrust. To the extent net income is insufficient, the
 2093 unitrust distribution shall be paid from net realized short-term capital gains. To the extent
 2094 income and net realized short-term capital gains are insufficient, the unitrust distribution
 2095 shall be paid from net realized long-term capital gains. To the extent income and net
 2096 realized short-term and long-term capital gains are insufficient, the unitrust distribution
 2097 shall be paid from the principal of the trust.
- 2098 (g) The trustee or, if the trustee declines to do so, a beneficiary may petition the superior
 2099 court to:
- 2100 (1) Select a payout percentage different from 4 percent but not lower than 3 percent or
 2101 higher than 5 percent;

- 2102 (2) Provide for a distribution of net income, as would be determined if the trust were not
2103 a unitrust, in excess of the unitrust distribution if such distribution is necessary to
2104 preserve a tax benefit;
- 2105 (3) Average the valuation of the trust's net assets over a period other than three years; or
- 2106 (4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under Code
2107 Section 53-12-361 shall be revived.
- 2108 (h) A conversion to a unitrust shall not affect a provision in the governing trust instrument
2109 directing or authorizing the trustee to distribute principal or authorizing a beneficiary to
2110 withdraw a portion or all of the principal.
- 2111 (i) A trustee shall not convert a trust into a unitrust:
- 2112 (1) If payment of the unitrust distribution would change the amount payable to a
2113 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- 2114 (2) If the unitrust distribution would be made from trust funds which are permanently set
2115 aside for charitable purposes under the governing trust instrument and for which a federal
2116 charitable, estate, or gift tax deduction has been taken, unless both income and principal
2117 are so set aside;
- 2118 (3) If:
- 2119 (A) Possessing or exercising the power to convert would cause an individual to be
2120 treated as the owner of all or part of the trust for federal income tax purposes; and
- 2121 (B) The individual would not be treated as the owner if the trustee did not possess the
2122 power to convert; or
- 2123 (4) If:
- 2124 (A) Possessing or exercising the power to convert would cause all or part of the trust
2125 assets to be subject to federal estate, gift, or generation-skipping transfer tax with
2126 respect to an individual; and
- 2127 (B) The assets would not be subject to federal estate, gift, or generation-skipping
2128 transfer tax with respect to the individual if the trustee did not possess the power to
2129 convert.
- 2130 (j)(1) If paragraph (3) or (4) of subsection (i) of this Code section applies to a trustee and
2131 there is more than one trustee, a cotrustee to whom such provision does not apply may
2132 convert the trust unless the exercise of the power by the remaining trustee is prohibited
2133 by the governing trust instrument; and
- 2134 (2) If paragraph (3) or (4) of subsection (i) of this Code section applies to all the trustees,
2135 the trustees may petition the superior court to direct a conversion.
- 2136 (k)(1) A trustee may release the power conferred by subsection (a) of this Code section
2137 to convert to a unitrust if:

2138 (A) The trustee is uncertain about whether possessing or exercising the power to
2139 convert will cause a result described in paragraph (3) or (4) of subsection (i) of this
2140 Code section; or

2141 (B) The trustee determines that possessing or exercising the power to convert will or
2142 may deprive the trust of a tax benefit or impose a tax burden not described in subsection
2143 (i) of this Code section.

2144 (2) The release of the power to convert may be permanent or for a specified period,
2145 including a period measured by the life of an individual.

2146 53-12-363.

2147 (a) A court shall not change a trustee's decision to exercise or not to exercise a
2148 discretionary power conferred by Code Section 53-12-361 or 53-12-362 unless it
2149 determines that the decision was an abuse of the trustee's discretion.

2150 (b) The decisions to which subsection (a) of this Code section apply include:

2151 (1) A determination of whether and to what extent an amount should be transferred from
2152 principal to income or from income to principal; and

2153 (2) A determination of the factors that are relevant to the trust and its beneficiaries, the
2154 extent to which they are relevant, and the weight, if any, to be given to the relevant
2155 factors in deciding whether and to what extent to exercise the power conferred by Code
2156 Section 53-12-361 or 53-12-362.

2157 (c) If a court determines that a trustee has abused its discretion regarding a discretionary
2158 power conferred by Code Section 53-12-361 or 53-12-362, the remedy shall be to restore
2159 the income and remainder beneficiaries to the positions they would have occupied if the
2160 trustee had not abused its discretion according to the following rules:

2161 (1) To the extent that the abuse of discretion has resulted in no distribution to a
2162 beneficiary or a distribution which is too small, the court shall require the trustee to
2163 distribute from the trust to the beneficiary an amount that the court determines will
2164 restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

2165 (2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary
2166 which is too large, the court shall restore the beneficiaries, the trust, or both, in whole or
2167 in part, to their appropriate positions by requiring the trustee to withhold an amount from
2168 one or more future distributions to the beneficiary who received the distribution that was
2169 too large or requiring that beneficiary or that beneficiary's estate to return some or all of
2170 the distribution to the trust, notwithstanding a spendthrift provision or similar provision;

2171 (3) If the abuse of discretion concerns the power to convert a trust into a unitrust, the
2172 court shall require the trustee either to convert into a unitrust or to reconvert from a
2173 unitrust; and

2174 (4) To the extent that the court is unable, after applying paragraphs (1), (2), and (3) of
2175 this subsection, to restore the beneficiaries, the trust, or both to the positions they would
2176 have occupied if the trustee had not abused its discretion, the court may require the
2177 trustee to pay an appropriate amount from its own funds to one or more of the
2178 beneficiaries, the trust, or both.

2179 (d) No provision of this Code section or Code Section 53-12-361 or 53-12-362 is intended
2180 to require a trustee to make an adjustment under Code Section 53-12-361 or a conversion
2181 under Code Section 53-12-362.

2182 53-12-364.

2183 (a) The following provisions shall apply to a trust which by its governing trust instrument
2184 requires the distribution at least annually of a unitrust amount equal to a fixed percentage
2185 of not less than 3 percent nor more than 5 percent per year of the net fair market value of
2186 the trust's assets, valued at least annually, such trust to be referred to as an 'express total
2187 return unitrust':

2188 (1) The unitrust amount may be determined by reference to the net fair market value of
2189 the trust's assets in one year or more than one year;

2190 (2) Distribution of such a fixed percentage unitrust amount shall be considered a
2191 distribution of all of the income of the total return unitrust and shall not be considered a
2192 fundamental departure from applicable state law, regardless of whether the total return
2193 unitrust is created and governed by Code Section 53-12-362 or by the provisions of the
2194 governing trust instrument;

2195 (3) Such a distribution of the fixed percentage of not less than 3 percent nor more than
2196 5 percent shall be considered a reasonable apportionment of the total return of a total
2197 return unitrust;

2198 (4) The governing trust instrument may grant discretion to the trustee to adopt a
2199 consistent practice of treating capital gains as part of the unitrust distribution, to the
2200 extent that the unitrust distribution exceeds the net accounting income, or it may specify
2201 the ordering of such classes of income;

2202 (5) Unless the trust provisions specifically provide otherwise, or grant discretion to the
2203 trustee as set forth in paragraph (4) of this subsection, a distribution of the unitrust
2204 amount shall be considered to have been made from the following sources in order of
2205 priority:

2206 (A) From net accounting income determined as if the trust were not a unitrust;

2207 (B) From ordinary income not allocable to net accounting income;

2208 (C) From net realized short-term capital gains;

2209 (D) From net realized long-term capital gains; and

2210 (E) From the principal of the trust estate; and
 2211 (6) The trust document may provide that assets used by the trust beneficiary, such as a
 2212 residence property or tangible personal property, may be excluded from the net fair
 2213 market value for computing the unitrust amount. Such use may be considered equivalent
 2214 to the income or unitrust amount.

2215 (b) A trust which provides for a fixed percentage payout in excess of 5 percent per year
 2216 shall be considered to have paid out all of the income of the total return unitrust and to have
 2217 paid out principal of such trust to the extent that the fixed percentage payout exceeds 5
 2218 percent per year.

2219 (c) This Code section shall be effective for trusts established and wills executed on or after
 2220 July 1, 2010.

2221 ARTICLE 17

2222 Part 1

2223 53-12-380.

2224 This article shall be known and may be cited as the 'Georgia Principal and Income Act.'

2225 53-12-381.

2226 As used in this article, the term:

2227 (1) 'Accounting period' means a calendar year unless another 12 month period is selected
 2228 by a fiduciary. Such term includes a portion of a calendar year or other 12 month period
 2229 that begins when an income interest begins or ends when an income interest ends.

2230 (2) 'Beneficiary' includes, in the case of a decedent's estate, an heir and devisee and, in
 2231 the case of a trust, an income beneficiary and a remainder beneficiary.

2232 (3) 'Fiduciary' means a personal representative or a trustee. Such term includes an
 2233 executor, administrator, successor personal representative, special administrator, and a
 2234 person performing substantially the same function.

2235 (4) 'Income' means money or property that a fiduciary receives as current return from a
 2236 principal asset. Such term includes a portion of receipts from a sale, exchange, or
 2237 liquidation of a principal asset, to the extent provided in Part 4 of this article.

2238 (5) 'Income beneficiary' means a person to whom net income of a trust is or may be
 2239 payable.

2240 (6) 'Income interest' means the right of an income beneficiary to receive all or part of net
 2241 income, whether the trust provisions require it to be distributed or authorize it to be
 2242 distributed in the trustee's discretion.

2243 (7) 'Mandatory income interest' means the right of an income beneficiary to receive net
 2244 income that the trust provisions require the fiduciary to distribute.

2245 (8) 'Net income' means the total receipts allocated to income during an accounting period
 2246 minus the disbursements made from income during the period, plus or minus transfers
 2247 under this article to or from income during the period.

2248 (9) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
 2249 limited liability company, association, joint venture, or government; a governmental
 2250 subdivision, agency, or instrumentality; a public corporation; or any other legal or
 2251 commercial entity.

2252 (10) 'Principal' means property held in trust for distribution to a remainder beneficiary
 2253 when the trust terminates.

2254 (11) 'Terms of the trust' means the manifestation of the intent of a settlor or decedent
 2255 with respect to the trust, expressed in a manner that admits of its proof in a judicial
 2256 proceeding.

2257 (12) 'Trustee' includes an original, additional, or successor trustee, whether or not
 2258 appointed or confirmed by a court.

2259 Part 2

2260 53-12-390.

2261 (a) If a beneficiary is to receive a pecuniary amount outright from a trust after an income
 2262 interest ends, and no interest is provided for by the terms of the trust, the pecuniary amount
 2263 usually bears interest at the legal rate after the expiration of 12 months from the date the
 2264 income interest terminates.

2265 (b) The general rule in subsection (a) of this Code section shall be subservient to the equity
 2266 and necessity of a particular case.

2267 53-12-391.

2268 Expenses incurred in connection with the settlement of a decedent's estate or the winding
 2269 up of a terminating income interest, including interest and penalties concerning taxes, fees
 2270 of attorneys and personal representatives and trustees, and court costs, may be charged
 2271 against the principal or income in the discretion of the personal representative or trustee.

Part 3

2272

2273 53-12-400.

2274 (a) An income beneficiary shall be entitled to net income from the date on which the
2275 income interest begins. An income interest shall begin on the date specified in the terms
2276 of the trust or, if no date is specified, on the date an asset becomes subject to a trust or
2277 successive income interest.

2278 (b) An asset shall become subject to a trust:

2279 (1) On the date it is transferred to the trust in the case of an asset that is transferred to a
2280 trust during the transferor's life;

2281 (2) On the date of a testator's death in the case of an asset that becomes subject to a trust
2282 by reason of a will, even if there is an intervening period of administration of the
2283 testator's estate; or

2284 (3) On the date of an individual's death in the case of an asset that is transferred to a
2285 fiduciary by a third party because of such individual's death.

2286 (c) An asset shall become subject to a successive income interest on the day after the
2287 preceding income interest ends, as determined under subsection (d) of this Code section,
2288 even if there is an intervening period of administration to wind up the preceding income
2289 interest.

2290 (d) An income interest shall end on the day before an income beneficiary dies or another
2291 terminating event occurs, or on the last day of a period during which there is no beneficiary
2292 to whom a trustee may distribute income.

2293 53-12-401.

2294 (a) A trustee shall allocate an income receipt or disbursement to principal if its due date
2295 occurs before a decedent dies in the case of an estate or before an income interest begins
2296 in the case of a trust or successive income interest.

2297 (b) A trustee shall allocate an income receipt or disbursement to income if its due date
2298 occurs on or after the date on which a decedent dies or an income interest begins and it is
2299 a periodic due date. An income receipt or disbursement shall be treated as accruing from
2300 day to day if its due date is not periodic or it has no due date. The portion of the receipt or
2301 disbursement accruing before the date on which a decedent dies or an income interest
2302 begins shall be allocated to principal, and the balance shall be allocated to income.

2303 (c) An item of income or an obligation shall be due on the date the payer is required to
2304 make a payment. If a payment date is not stated, there shall be no due date for the purposes
2305 of this Code section. Distributions to shareholders or other owners from an entity to which
2306 Code Section 53-12-410 applies shall be deemed to be due on the date fixed by the entity

2307 for determining who is entitled to receive the distribution or, if no date is fixed, on the
 2308 declaration date for the distribution. A due date shall be periodic for receipts or
 2309 disbursements that have to be paid at regular intervals under a lease or an obligation to pay
 2310 interest or if an entity customarily makes distributions at regular intervals.

2311 53-12-402.

2312 (a) As used in this Code section, the term 'undistributed income' means net income
 2313 received before the date on which an income interest ends. Such term shall not include an
 2314 item of income or expense that is due or accrued or net income that has been added or is
 2315 required to be added to principal under the terms of the trust.

2316 (b) When a mandatory income interest ends, the trustee shall pay to a mandatory income
 2317 beneficiary who survives that date, or the estate of a deceased mandatory income
 2318 beneficiary whose death causes the interest to end, the beneficiary's share of the
 2319 undistributed income that is not disposed of under the terms of the trust unless the
 2320 beneficiary has an unqualified power to revoke more than 5 percent of the trust
 2321 immediately before the income interest ends. In the latter case, the undistributed income
 2322 from the portion of the trust that may be revoked shall be added to principal.

2323 (c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the
 2324 trust's assets ends, the trustee shall prorate the final payment if and to the extent required
 2325 by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift,
 2326 estate, or other tax requirements.

2327 Part 4

2328 Subpart 1

2329 53-12-410.

2330 (a) As used in this Code section, the term 'entity' means a corporation, partnership, limited
 2331 liability company, regulated investment company, real estate investment trust, common
 2332 trust fund, or any other organization in which a trustee has an interest other than a trust or
 2333 estate to which Code Section 53-12-411 applies, a business or activity to which Code
 2334 Section 53-12-412 applies, or an asset-backed security to which Code Section 53-12-431
 2335 applies.

2336 (b) Except as otherwise provided in this Code section, a trustee shall allocate to income
 2337 money received from an entity.

2338 (c) A trustee shall allocate the following receipts from an entity to principal:

2339 (1) Property other than money;

2340 (2) Money received in one distribution or a series of related distributions in exchange for
 2341 part or all of a trust's interest in the entity;

2342 (3) Money received in total or partial liquidation of the entity; and

2343 (4) Money received from an entity that is a regulated investment company or a real estate
 2344 investment trust if the money distributed is a capital gain dividend for federal income tax
 2345 purposes.

2346 (d) Money shall be received in partial liquidation:

2347 (1) To the extent that the entity, at or near the time of a distribution, indicates that it is
 2348 a distribution in partial liquidation; or

2349 (2) If the total amount of money and property received in a distribution or series of
 2350 related distributions is greater than 20 percent of the entity's gross assets, as shown by the
 2351 entity's year-end financial statements immediately preceding the initial receipt.

2352 (e) Money shall not be received in partial liquidation, nor shall it be taken into account
 2353 under paragraph (2) of subsection (d) of this Code section, to the extent that it does not
 2354 exceed the amount of income tax that a trustee or beneficiary must pay on taxable income
 2355 of the entity that distributes the money.

2356 (f) A trustee may rely upon a statement made by an entity about the source or character
 2357 of a distribution if the statement is made at or near the time of distribution by the entity's
 2358 board of directors or other person or group of persons authorized to exercise powers to pay
 2359 money or transfer property comparable to those of a corporation's board of directors.

2360 53-12-401.

2361 A trustee shall allocate to income an amount received as a distribution of income from a
 2362 trust or an estate in which the trust has an interest other than a purchased interest and shall
 2363 allocate to principal an amount received as a distribution of principal from such trust or
 2364 estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent
 2365 or donor transfers an interest in such trust to a trustee, Code Section 53-12-410 or
 2366 53-12-431 shall apply to a receipt from the trust.

2367 53-12-402.

2368 (a) If a trustee who conducts a business or other activity determines that it is in the best
 2369 interest of all the beneficiaries to account separately for the business or activity instead of
 2370 accounting for it as part of the trust's general accounting records, the trustee may maintain
 2371 separate accounting records for its transactions, whether or not its assets are segregated
 2372 from other trust assets.

2373 (b) A trustee who accounts separately for a business or other activity may determine the
 2374 extent to which its net cash receipts shall be retained for working capital, the acquisition
 2375 or replacement of fixed assets, and other reasonably foreseeable needs of the business or

2376 activity, and the extent to which the remaining net cash receipts are accounted for as
 2377 principal or income in the trust's general accounting records. If a trustee sells assets of the
 2378 business or other activity, other than in the ordinary course of the business or activity, the
 2379 trustee shall account for the net amount received as principal in the trust's general
 2380 accounting records to the extent the trustee determines that the amount received is no
 2381 longer required in the conduct of the business.

2382 (c) Activities for which a trustee may maintain separate accounting records shall include:

2383 (1) Retail, manufacturing, service, and other traditional business activities;

2384 (2) Farming;

2385 (3) Raising and selling livestock and other animals;

2386 (4) Management of rental properties;

2387 (5) Extraction of minerals and other natural resources;

2388 (6) Timber operations; and

2389 (7) Activities to which Code Section 53-12-430 applies.

2390 Subpart 2

2391 53-12-420.

2392 A trustee shall allocate to principal:

2393 (1) To the extent not allocated to income under this article, assets received from a
 2394 transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating
 2395 income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

2396 (2) Money or other property received from the sale, exchange, liquidation, or change in
 2397 form of a principal asset, including realized profit, subject to the provisions of this article;

2398 (3) Amounts recovered from third parties to reimburse the trust because of disbursements
 2399 described in paragraph (7) of subsection (a) of Code Section 53-12-451 or for other
 2400 reasons to the extent not based on the loss of income;

2401 (4) Proceeds of property taken by eminent domain, but a separate award made for the
 2402 loss of income with respect to an accounting period during which a current income
 2403 beneficiary had a mandatory income interest shall be income;

2404 (5) Net income received in an accounting period during which there is no beneficiary to
 2405 whom a trustee may or must distribute income; and

2406 (6) Other receipts as provided in this article.

2407 53-12-421.

2408 To the extent that a trustee accounts for receipts from rental property pursuant to this Code
 2409 section, the trustee shall allocate to income an amount received as rent of real or personal

2410 property, including an amount received for cancellation or renewal of a lease. An amount
2411 received as a refundable deposit, including a security deposit or a deposit that is to be
2412 applied as rent for future periods, shall be added to principal and held subject to the terms
2413 of the lease and shall not be available for distribution to a beneficiary until the trustee's
2414 contractual obligations have been satisfied with respect to such amount.

2415 53-12-422.

2416 (a) An amount received as interest, whether determined at a fixed, variable, or floating
2417 rate, on an obligation to pay money to the trustee, including an amount received as
2418 consideration for prepaying principal, shall be allocated to income without any provision
2419 for amortization of premium.

2420 (b) A trustee shall allocate to principal an amount received from the sale, redemption, or
2421 other disposition of an obligation to pay money to the trustee more than one year after it
2422 is purchased or acquired by the trustee, including an obligation whose purchase price or
2423 value when it is acquired is less than its value at maturity. If the obligation matures within
2424 one year after it is purchased or acquired by the trustee, an amount received in excess of
2425 its purchase price or its value when acquired by the trust shall be allocated to income.

2426 (c) This Code section shall not apply to an obligation to which Code Section 53-12-425
2427 through 53-12-428, 53-12-430, or 53-12-431 applies.

2428 53-12-423.

2429 (a) Except as otherwise provided in subsection (b) of this Code section, a trustee shall
2430 allocate to principal the proceeds of a life insurance policy or other contract in which the
2431 trust or its trustee is named as beneficiary, including a contract that insures the trust or its
2432 trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee
2433 shall allocate dividends on an insurance policy to income if the premiums on the policy are
2434 paid from income and to principal if the premiums are paid from principal.

2435 (b) A trustee shall allocate to income proceeds of a contract that insures the trustee against
2436 loss of occupancy or other use by an income beneficiary, loss of income, or, subject to
2437 Code Section 53-12-412, loss of profits from a business.

2438 (c) This Code section shall not apply to a contract to which Code Section 53-12-425
2439 applies.

2440 53-12-424.

2441 If a trustee determines that an allocation between principal and income required by Code
2442 Sections 53-12-425 through 53-12-428 or Code Section 53-12-431 is insubstantial, the
2443 trustee may allocate the entire amount to principal unless one of the circumstances

2444 described in Code Section 53-12-361 applies to the allocation. Such power may be
2445 exercised by a cotrustee in the circumstances described in Code Section 53-12-361 and
2446 may be released for the reasons and in the manner described in such Code section. An
2447 allocation shall be presumed to be insubstantial if:

2448 (1) The amount of the allocation would increase or decrease net income in an accounting
2449 period, as determined before the allocation, by less than 10 percent; or

2450 (2) The value of the asset producing the receipt for which the allocation would be made
2451 is less than 10 percent of the total value of the trust's assets at the beginning of the
2452 accounting period.

2453 53-12-425.

2454 (a) As used in this Code section, the term:

2455 (1) 'Payment' means a payment that a trustee may receive over a fixed number of years
2456 or during the life of one or more individuals because of services rendered or property
2457 transferred to the payer in exchange for future payments. Such term includes a payment
2458 made in money or property from the payer's general assets or from a separate fund
2459 created by the payer. Such term also includes any payment from a separate fund,
2460 regardless of the reason for the payment.

2461 (2) 'Separate fund' includes a private or commercial annuity, an individual retirement
2462 account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

2463 (b) To the extent that a payment is characterized as interest or a dividend or a payment
2464 made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall
2465 allocate to principal the balance of the payment and any other payment received in the
2466 same accounting period that is not characterized as interest, a dividend, or an equivalent
2467 payment.

2468 (c) If no part of a payment is characterized as interest, a dividend, or an equivalent
2469 payment, and all or part of the payment is required to be made, a trustee shall allocate to
2470 income 10 percent of the part that is required to be made during the accounting period and
2471 the balance to principal. If no part of a payment is required to be made or the payment
2472 received is the entire amount to which the trustee is entitled, the trustee shall allocate the
2473 entire payment to principal. For purposes of this subsection, a payment shall not be
2474 required to be made to the extent that it is made because the trustee exercises a right of
2475 withdrawal.

2476 (d) Except as otherwise provided in subsection (e) of this Code section, subsections (f)
2477 and (g) of this Code section shall apply, and subsections (b) and (c) of this Code section
2478 shall not apply, in determining the allocation of a payment made from a separate fund to:

2479 (1) A trust to which an election to qualify for a marital deduction under Section
2480 2056(b)(7) of the federal Internal Revenue Code of 1986 has been made; or
2481 (2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the federal
2482 Internal Revenue Code of 1986.

2483 (e) Subsections (d), (f), and (g) of this Code section shall not apply if and to the extent that
2484 the series of payments would, without the application of subsection (d) of this Code
2485 section, qualify for the marital deduction under Section 2056(b)(7)(C) of the federal
2486 Internal Revenue Code of 1986.

2487 (f) A trustee shall determine the internal income of each separate fund for the accounting
2488 period as if the separate fund were a trust subject to this article. Upon request of the
2489 surviving spouse, the trustee shall demand of the person administering the separate fund
2490 that this internal income be distributed to the trust. The trustee shall allocate a payment
2491 from the separate fund to income to the extent of the internal income of the separate fund
2492 and distribute that amount to the surviving spouse. The trustee shall allocate the balance
2493 to principal. Upon request of the surviving spouse, the trustee shall allocate principal to
2494 income to the extent the internal income of the separate fund exceeds payments made from
2495 the separate fund to the trust during the accounting period.

2496 (g) If a trustee cannot determine the internal income of a separate fund but can determine
2497 the value of such separate fund, the internal income of such separate fund shall be deemed
2498 to be equal to 4 percent of the fund's value, according to the most recent statement of value
2499 preceding the beginning of the accounting period. If the trustee can determine neither the
2500 internal income of the separate fund nor the fund's value, the internal income of the fund
2501 shall be deemed to equal the product of the interest rate and the present value of the
2502 expected future payments, as determined under Section 7520 of the federal Internal
2503 Revenue Code of 1986 for the month preceding the accounting period for which the
2504 computation is made.

2505 (h) This Code section shall not apply to payments to which Code Section 53-12-426
2506 applies.

2507 53-12-426.

2508 (a) As used in this Code section, the term 'liquidating asset' means an asset whose value
2509 will diminish or terminate because such asset is expected to produce receipts for a period
2510 of limited duration. Such term includes a leasehold, patent, copyright, royalty right, and
2511 right to receive payments during a period of more than one year under an arrangement that
2512 does not provide for the payment of interest on the unpaid balance. Such term shall not
2513 include a payment subject to Code Section 53-12-425, resources subject to Code Section
2514 53-12-427, timber subject to Code Section 53-12-428, an activity subject to Code Section

2515 53-12-430, an asset subject to Code Section 53-12-431, or any asset for which the trustee
2516 establishes a reserve for depreciation under Code Section 53-12-452.

2517 (b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and
2518 the balance to principal.

2519 53-12-427.

2520 (a) To the extent that a trustee accounts for receipts from an interest in minerals or other
2521 natural resources pursuant to this Code section, the trustee shall allocate them as follows:

2522 (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall
2523 be allocated to income;

2524 (2) If received from a production payment, a receipt shall be allocated to income if and
2525 to the extent that the agreement creating the production payment provides a factor for
2526 interest or its equivalent. The balance shall be allocated to principal;

2527 (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
2528 bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and
2529 the balance to income; and

2530 (4) If an amount is received from a working interest or any other interest not provided
2531 for in paragraph (1), (2), or (3) of this subsection, 90 percent of the net amount received
2532 shall be allocated to principal and the balance to income.

2533 (b) An amount received on account of an interest in water that is renewable shall be
2534 allocated to income. If the water is not renewable, 90 percent of the amount shall be
2535 allocated to principal and the balance to income.

2536 (c) This Code section shall apply whether or not a decedent or donor was extracting
2537 minerals, water, or other natural resources before the interest became subject to the trust.

2538 (d) If a trust owns an interest in minerals, water, or other natural resources on July 1, 2010,
2539 the trustee may allocate receipts from the interest as provided in this Code section or in the
2540 manner used by the trustee before July 1, 2010. If the trust acquires an interest in minerals,
2541 water, or other natural resources after July 1, 2010, the trustee shall allocate receipts from
2542 the interest as provided in this Code section.

2543 53-12-428.

2544 (a) To the extent that a trustee accounts for receipts from the sale of timber and related
2545 products pursuant to this Code section, the trustee shall allocate the net receipts:

2546 (1) To income to the extent that the amount of timber removed from the land does not
2547 exceed the rate of growth of the timber during the accounting periods in which a
2548 beneficiary has a mandatory income interest;

2549 (2) To principal to the extent that the amount of timber removed from the land exceeds
 2550 the rate of growth of the timber or the net receipts are from the sale of standing timber;
 2551 (3) To or between income and principal if the net receipts are from the lease of
 2552 timberland or from a contract to cut timber from land owned by a trust by determining
 2553 the amount of timber removed from the land under the lease or contract and applying the
 2554 rules in paragraphs (1) and (2) of this subsection; or
 2555 (4) To principal to the extent that advance payments, bonuses, and other payments are
 2556 not allocated pursuant to paragraph (1), (2), or (3) of this subsection.
 2557 (b) In determining net receipts to be allocated pursuant to subsection (a) of this Code
 2558 section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.
 2559 (c) This Code section shall apply whether or not a decedent or transferor was harvesting
 2560 timber from the property before it became subject to the trust.
 2561 (d) If a trust owns an interest in timberland on July 1, 2010, the trustee may allocate net
 2562 receipts from the sale of timber and related products as provided in this Code section or in
 2563 the manner used by the trustee before July 1, 2010. If the trust acquires an interest in
 2564 timberland after July 1, 2010, the trustee shall allocate net receipts from the sale of timber
 2565 and related products as provided in this Code section.

2566 53-12-429.

2567 (a) If a marital deduction is allowed for all or part of a trust whose assets consist
 2568 substantially of property that does not provide the spouse with sufficient income from or
 2569 use of the trust assets, and if the amounts that the trustee transfers from principal to income
 2570 under Code Section 53-12-361 and distributes to the spouse from principal pursuant to the
 2571 terms of the trust are insufficient to provide the spouse with the beneficial enjoyment
 2572 required to obtain the marital deduction, the spouse may require the trustee to make
 2573 property productive of income, convert property within a reasonable time, or exercise the
 2574 power conferred by Code Section 53-12-361. The trustee may decide which action or
 2575 combination of actions to take.

2576 (b) In cases not governed by subsection (a) of this Code section, proceeds from the sale
 2577 or other disposition of an asset shall be principal without regard to the amount of income
 2578 the asset produces during any accounting period.

2579 53-12-430.

2580 (a) As used in this Code section, the term 'derivative' means a contract or financial
 2581 instrument or a combination of contracts and financial instruments which gives a trust the
 2582 right or obligation to participate in some or all changes in the price of a tangible or

2583 intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other
 2584 market indicator for an asset or a group of assets.

2585 (b) To the extent that a trustee does not account under Code Section 53-12-412 for
 2586 transactions in derivatives, the trustee shall allocate to principal receipts from and
 2587 disbursements made in connection with those transactions.

2588 (c) If a trustee grants an option to buy property from the trust, whether or not the trust
 2589 owns the property when the option is granted, grants an option that permits another person
 2590 to sell property to the trust, or acquires an option to buy property for the trust or an option
 2591 to sell an asset owned by the trust, and the trustee or other owner of the asset is required
 2592 to deliver the asset if the option is exercised, an amount received for granting the option
 2593 shall be allocated to principal. An amount paid to acquire the option shall be paid from
 2594 principal. A gain or loss realized upon the exercise of an option, including an option
 2595 granted to a settlor of the trust for services rendered, shall be allocated to principal.

2596 53-12-431.

2597 (a) As used in this Code section, the term 'asset-backed security' means an asset whose
 2598 value is based upon the right it gives the owner to receive distributions from the proceeds
 2599 of financial assets that provide collateral for the security. Such term includes an asset that
 2600 gives the owner the right to receive from the collateral financial assets only the interest or
 2601 other current return or only the proceeds other than interest or current return. Such term
 2602 shall not include an asset to which Code Section 53-12-410 or 53-12-425 applies.

2603 (b) If a trust receives a payment from interest or other current return and from other
 2604 proceeds of the collateral financial assets, the trustee shall allocate to income the portion
 2605 of the payment which the payer identifies as being from interest or other current return and
 2606 shall allocate the balance of the payment to principal.

2607 (c) If a trust receives one or more payments in exchange for the trust's entire interest in an
 2608 asset-backed security in one accounting period, the trustee shall allocate the payments to
 2609 principal. If a payment is one of a series of payments that will result in the liquidation of
 2610 the trust's interest in the asset-backed security over more than one accounting period, the
 2611 trustee shall allocate 10 percent of the payment to income and the balance to principal.

2612 ARTICLE 18

2613 53-12-450.

2614 (a) A trustee shall make the following disbursements from income:

2615 (1) One-half of the regular compensation of the trustee and of any person providing
 2616 investment advisory or custodial services to the trustee;

2617 (2) One-half of all court costs, attorney's fees, and other fees and expenses for
 2618 accountings, judicial proceedings, or other matters that involve both the income and
 2619 remainder interests;

2620 (3) All of the other ordinary expenses incurred in connection with the administration,
 2621 management, or preservation of trust property and the distribution of income, including
 2622 interest, ordinary repairs, regularly recurring taxes assessed against principal, and court
 2623 costs, attorney's fees, and other fees and expenses of a proceeding or other matter that
 2624 concerns primarily the income interest; and

2625 (4) Recurring premiums on insurance covering the loss of a principal asset or the loss of
 2626 income from or use of the asset.

2627 (b) Any of the above disbursements made in connection with judicial proceedings may be
 2628 varied by the order of the court.

2629 (c) All other disbursements shall be made from principal.

2630 53-12-451.

2631 (a) A trustee shall make the following disbursements from principal:

2632 (1) The remaining one-half of the disbursements described in paragraphs (1) and (2) of
 2633 subsection (a) of Code Section 53-12-450;

2634 (2) All of the trustee's compensation calculated on principal as a fee for acceptance,
 2635 distribution, or termination and disbursements made to prepare property for sale;

2636 (3) Payments on the principal of a trust debt;

2637 (4) Court costs, attorney's fees, and other fees and expenses of a proceeding that
 2638 concerns primarily principal, including a proceeding to construe the trust or to protect the
 2639 trust or its property;

2640 (5) Premiums paid on a policy of insurance not described in Section 501(4) of the federal
 2641 Internal Revenue Code of 1986, of which the trust is the owner and beneficiary;

2642 (6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the
 2643 trust; and

2644 (7) Disbursements related to environmental matters, including reclamation, assessing
 2645 environmental conditions, remedying and removing environmental contamination,
 2646 monitoring remedial activities and the release of substances, preventing future releases
 2647 of substances, collecting amounts from persons liable or potentially liable for the costs
 2648 of those activities, penalties imposed under environmental laws or regulations and other
 2649 payments made to comply with those laws or regulations, statutory or common law
 2650 claims by third parties, and defending claims based on environmental matters.

2651 (b) Any of the disbursements provided for in subsection (a) of this Code section made in
 2652 connection with judicial proceedings may be varied by the order of the court.

2653 (c) If a principal asset is encumbered with an obligation that requires income from that
 2654 asset to be paid directly to the creditor, the trustee shall transfer from principal to income
 2655 an amount equal to the income paid to the creditor in reduction of the principal balance of
 2656 such obligation.

2657 53-12-452.

2658 (a) As used in this Code section, the term 'depreciation' means a reduction in value due to
 2659 wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life
 2660 of more than one year.

2661 (b) A trustee may transfer to principal a reasonable amount of the net cash receipts from
 2662 a principal asset that is subject to depreciation but shall not transfer any amount for
 2663 depreciation:

2664 (1) Of that portion of real property used or available for use by a beneficiary as a
 2665 residence or of tangible personal property held or made available for the personal use or
 2666 enjoyment of a beneficiary;

2667 (2) During the administration of a decedent's estate; or

2668 (3) Under this Code section if the trustee is accounting under Section 403 of the federal
 2669 Internal Revenue Code of 1986 for the business or activity in which the asset is used.

2670 (c) An amount transferred to principal need not be held as a separate fund.

2671 53-12-453.

2672 Wherever a charge that is properly allocable to income has been made or is expected to be
 2673 made from principal because of the unusually large nature of the charge or otherwise, the
 2674 trustee may transfer an appropriate amount from income to principal in one or more
 2675 accounting periods to reimburse principal or to provide a reserve for future principal
 2676 disbursements.

2677 53-12-454.

2678 (a) A tax required to be paid by a trustee based on receipts allocated to income shall be
 2679 paid from income.

2680 (b) A tax required to be paid by a trustee based on receipts allocated to principal shall be
 2681 paid from principal, even if the tax is called an income tax by the taxing authority.

2682 (c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income
 2683 shall be paid:

2684 (1) From income to the extent that receipts from the entity are allocated only to income;

2685 (2) From principal to the extent that receipts from the entity are allocated only to
 2686 principal;

2687 (3) Proportionately from principal and income to the extent that receipts from the entity
 2688 are allocated to both income and principal; and

2689 (4) From principal to the extent that the tax exceeds the total receipts from the entity.

2690 (d) After applying subsections (a) through (c) of this Code section, the trustee shall adjust
 2691 income or principal receipts to the extent that its taxes are reduced because it receives a
 2692 deduction for payments made to a beneficiary.

2693 53-12-455.

2694 (a) A fiduciary may make adjustments between principal and income to offset the shifting
 2695 of economic interests or tax benefits between income beneficiaries and remainder
 2696 beneficiaries which arise from:

2697 (1) Elections and decisions, other than those described in subsection (b) of this Code
 2698 section, that the fiduciary makes from time to time regarding tax matters;

2699 (2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary
 2700 as a result of a transaction involving or a distribution from the estate or trust; or

2701 (3) The ownership by an estate or trust of an interest in an entity whose taxable income,
 2702 whether or not distributed, is includable in the taxable income of the estate, trust, or a
 2703 beneficiary.

2704 (b) If the amount of an estate tax marital deduction or charitable contribution deduction
 2705 is reduced because a fiduciary deducts an amount paid from principal for income tax
 2706 purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid
 2707 from principal are increased and income taxes paid by an estate, trust, or beneficiary are
 2708 decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax
 2709 shall reimburse the principal from which the increase in estate tax is paid. The total
 2710 reimbursement shall equal the increase in the estate tax to the extent that the principal used
 2711 to pay the increase would have qualified for a marital deduction or charitable contribution
 2712 deduction but for the payment. The proportionate share of the reimbursement for each
 2713 estate, trust, or beneficiary whose income taxes are reduced shall be the same as its
 2714 proportionate share of the total decrease in income tax. An estate or trust shall reimburse
 2715 principal from income."

2716 **SECTION 2.**

2717 Code Section 7-1-242 of the Official Code of Georgia Annotated, relating to restrictions on
 2718 corporate fiduciaries, is amended by revising subsections (a) and (c) as follows:

2719 "(a) No corporation, partnership, or other ~~business association~~ entity may lawfully act as
 2720 a fiduciary in this state except:

- 2721 (1) A financial institution authorized to act in such capacity pursuant to the provisions
 2722 of Georgia law;
- 2723 (2) A trust company;
- 2724 (3) A national bank or a state bank lawfully doing a banking business in this state and
 2725 authorized to act as a fiduciary under the laws of the United States or another state;
- 2726 (4) A savings bank or savings and loan association lawfully doing a banking business in
 2727 this state and authorized to act as a fiduciary under the laws of the United States or
 2728 another state;
- 2729 (5) Attorneys at law licensed to practice in this state, whether ~~incorporated~~ organized as
 2730 a professional corporation or otherwise;
- 2731 (6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section
 2732 80b-3 or Chapter 5 of Title 10, provided that this exception shall not authorize an
 2733 investment adviser to act in any fiduciary capacity subject to the provisions of Title 53,
 2734 relating to wills, trusts, and the administration of estates, or Title 29, relating to
 2735 guardianships and conservatorships; or
- 2736 (7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C.
 2737 Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and
 2738 as a consequence of its broker or dealer activities; or
- 2739 (8) A nonprofit corporation."
- 2740 "(c) Nothing in this chapter shall be construed to repeal or to change ~~Part 2 of Article 16~~
 2741 ~~of Chapter 12 of Title 53, dealing with foreign trustees, or Part 3 of Article 16 of Chapter~~
 2742 ~~12 of Title 53, dealing with certain foreign corporations acting as fiduciaries, Article 15 of~~
 2743 Chapter 12 of Title 53 or any other statutes or rules of law on such ~~subjects~~ subject."

2744 **SECTION 3.**

2745 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 2746 amended by revising Code Section 10-6-142, relating to the statutory form for financial
 2747 power of attorney, as follows:

2748 "10-6-142.

2749 The Georgia Statutory Form for Financial Power of Attorney shall be substantially as
 2750 follows:

2751 FINANCIAL POWER OF ATTORNEY

2752 County of _____

2753 State of Georgia

2754 I, _____, (hereinafter 'Principal'), a resident of _____ County,
 2755 Georgia, do hereby constitute and appoint _____ my true and
 2756 lawful attorney-in-fact (hereinafter 'Agent') for me and give such person the power(s)
 2757 specified below to act in my name, place, and stead in any way which I, myself, could do
 2758 if I were personally present with respect to the following matters:

2759 (Directions: To give the Agent the powers described in paragraphs 1 through 13, place
 2760 your initials on the blank line at the end of each paragraph. If you DO NOT want to
 2761 give a power to the Agent, strike through the paragraph or a line within the paragraph
 2762 and place your initials beside the stricken paragraph or stricken line. The powers
 2763 described in any paragraph not initialed or which has been struck through will not be
 2764 conveyed to the Agent. Both the Principal and the Agent must sign their full names at
 2765 the end of the last paragraph.)

2766 1. Bank and Credit Union Transactions: To make, receive, sign, endorse, execute,
 2767 acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit,
 2768 notes, stock certificates, withdrawal receipts and deposit instruments relating to
 2769 accounts or deposits in, or certificates of deposit of banks, savings and loans, credit
 2770 unions, or other institutions or associations. _____

2771 2. Payment Transactions: To pay all sums of money, at any time or times, that may
 2772 hereafter be owing by me upon any account, bill or exchange, check, draft, purchase,
 2773 contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered
 2774 by me or for me in my name, by my Agent. _____

2775 Note: If you initial paragraph 3 or paragraph 4 which follow, a notarized signature will
 2776 be required on behalf of the Principal.

2777 3. Real Property Transactions: To lease, sell, mortgage, purchase, exchange, and
 2778 acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and
 2779 acquisition of, and to accept, take, receive, and possess any interest in real property
 2780 whatsoever, on such terms and conditions, and under such covenants, as my Agent shall
 2781 deem proper; and to maintain, repair, tear down, alter, rebuild, improve, manage,
 2782 insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds,
 2783 and in any way or manner deal with all or any part of any interest in real property
 2784 whatsoever, including specifically, but without limitation, real property lying and being
 2785 situate in the State of Georgia, under such terms and conditions, and under such

2786 covenants, as my Agent shall deem proper and may for all deferred payments accept
 2787 purchase money notes payable to me and secured by mortgages or deeds to secure debt,
 2788 and may from time to time collect and cancel any of said notes, mortgages, security
 2789 interests, or deeds to secure debt. _____

2790 4. Personal Property Transactions: To lease, sell, mortgage, purchase, exchange, and
 2791 acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and
 2792 acquisition of, and to accept, take, receive, and possess any personal property
 2793 whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and
 2794 under such covenants, as my Agent shall deem proper; and to maintain, repair, improve,
 2795 manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any
 2796 other security interests in said property which are recognized under the Uniform
 2797 Commercial Code as adopted at that time under the laws of Georgia or any applicable
 2798 state, or otherwise hypothecate, and in any way or manner deal with all or any part of
 2799 any real or personal property whatsoever, tangible or intangible, or any interest therein,
 2800 that I own at the time of execution or may thereafter acquire, under such terms and
 2801 conditions, and under such covenants, as my Agent shall deem proper. _____

2802 5. Stock and Bond Transactions: To purchase, sell, exchange, surrender, assign,
 2803 redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds,
 2804 or other securities in any business, association, corporation, partnership, or other legal
 2805 entity, whether private or public, now or hereafter belonging to me. _____

2806 6. Safe Deposits: To have free access at any time or times to any safe-deposit box or
 2807 vault to which I might have access. _____

2808 7. Borrowing: To borrow from time to time such sums of money as my Agent may
 2809 deem proper and execute promissory notes, security deeds or agreements, financing
 2810 statements, or other security instruments in such form as the lender may request and
 2811 renew said notes and security instruments from time to time in whole or in part.
 2812 _____

2813 8. Business Operating Transactions: To conduct, engage in, and otherwise transact the
 2814 affairs of any and all lawful business ventures of whatever nature or kind that I may
 2815 now or hereafter be involved in. _____

2816 9. Insurance Transactions: To exercise or perform any act, power, duty, right, or
 2817 obligation, in regard to any contract of life, accident, health, disability, liability, or other
 2818 type of insurance or any combination of insurance; and to procure new or additional
 2819 contracts of insurance for me and to designate the beneficiary of same; provided,
 2820 however, that my Agent cannot designate himself or herself as beneficiary of any such
 2821 insurance contracts. _____

2822 10. Disputes and Proceedings: To commence, prosecute, discontinue, or defend all
 2823 actions or other legal proceedings touching my property, real or personal, or any part
 2824 thereof, or touching any matter in which I or my property, real or personal, may be in
 2825 any way concerned. To defend, settle, adjust, make allowances, compound, submit to
 2826 arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever
 2827 that now are, or hereafter shall be, pending between me and any person, firm,
 2828 corporation, or other legal entity, in such manner and in all respects as my Agent shall
 2829 deem proper. _____

2830 11. Hiring Representatives: To hire accountants, attorneys at law, consultants, clerks,
 2831 physicians, nurses, agents, servants, workmen, and others and to remove them, and to
 2832 appoint others in their place, and to pay and allow the persons so employed such
 2833 salaries, wages, or other remunerations, as my Agent shall deem proper. _____

2834 12. Tax, Social Security, and Unemployment: To prepare, to make elections, to
 2835 execute and to file all tax, social security, unemployment insurance, and informational
 2836 returns required by the laws of the United States, or of any state or subdivision thereof,
 2837 or of any foreign government; to prepare, to execute, and to file all other papers and
 2838 instruments which the Agent shall think to be desirable or necessary for safeguarding
 2839 of me against excess or illegal taxation or against penalties imposed for claimed
 2840 violation of any law or other governmental regulation; and to pay, to compromise, or
 2841 to contest or to apply for refunds in connection with any taxes or assessments for which
 2842 I am or may be liable. _____

2843 13. Broad Powers: Without, in any way, limiting the foregoing, generally to do,
 2844 execute, and perform any other act, deed, matter, or thing whatsoever; that should be
 2845 done, executed, or performed, including, but not limited to, powers conferred by Code
 2846 Section ~~53-12-232~~ 53-12-261 of the Official Code of Georgia Annotated, or that in the
 2847 opinion of my Agent; should be done, executed, or performed, for my benefit or the
 2848 benefit of my property, real or personal, and in my name of every nature and kind
 2849 whatsoever, as fully and effectually as I could do if personally present. _____

2850 14. Effective Date: This document will become effective upon the date of the
 2851 Principal's signature unless the Principal indicates that it should become effective at a
 2852 later date by completing the following, which is optional.

2853 The powers conveyed in this document shall not become effective until the following
 2854 time or upon the occurrence of the following event or contingency:

2855 _____
 2856 _____

2857 Note: The Principal may choose to designate one or more persons to determine
 2858 conclusively that the above-specified event or contingency has occurred. Such person

2859 or persons must make a written declaration under penalty of false swearing that such
 2860 event or contingency has occurred in order to make this document effective.
 2861 Completion of this provision is optional.

2862 The following person or persons are designated to determine conclusively that the
 2863 above-specified event or contingency has occurred:

2864 _____
 2865 _____

2866 Signed: _____

2867 Principal

2868 _____

2869 Agent

2870 It is my desire and intention that this power of attorney shall not be affected by my
 2871 subsequent disability, incapacity, or mental incompetence. However, I understand that
 2872 it shall be revoked and the Agent's power canceled in the event a guardian is appointed
 2873 for my property. As long as no such guardian is appointed, any and all acts done by the
 2874 Agent pursuant to the powers conveyed herein during any period of my disability,
 2875 incapacity, or mental incompetence shall have the same force and effect as if I were not
 2876 disabled, incapacitated, or mentally incompetent.

2877 I may, at any time, revoke this power of attorney, and it shall be canceled by my death.
 2878 Otherwise, unless a guardian is appointed for my property, this power of attorney shall
 2879 be deemed to be in full force and effect as to all persons, institutions, and organizations
 2880 which shall act in reliance thereon prior to the receipt of written revocation thereof signed
 2881 by me and prior to my death.

2882 I do hereby ratify and confirm all acts whatsoever which my Agent shall do, or cause to
 2883 be done, in or about the premises, by virtue of this power of attorney.

2884 All parties dealing in good faith with my Agent may fully rely upon the power of and
 2885 authority of my Agent to act for me on my behalf and in my name, and may accept and
 2886 rely on agreements and other instruments entered into or executed by the agent pursuant
 2887 to this power of attorney.

2888 This instrument shall not be effective as a grant of powers to my Agent until my Agent
 2889 has executed the Acceptance of Appointment appearing at the end of this instrument.

2890 This instrument shall remain effective until revocation by me or my death, whichever
 2891 occurs first.

2892 Compensation of Agent. (Directions: Initial the line following your choice.)

2893 1. My Agent shall receive no compensation for services rendered. _____

2894 2. My Agent shall receive reasonable compensation for services rendered. _____

2895 3. My Agent shall receive \$_____ for services rendered. _____

2896 IN WITNESS WHEREOF, I have hereunto set my hand and seal on this _____ day of
2897 _____, _____.

2898 _____

2899 Principal

2900 WITNESSES

2901 _____

2902 _____

2903 Signature and Address

2904 _____

2905 _____

2906 Signature and Address

2907 Note: A notarized signature is not required unless you have initialed paragraph 3 or 4
2908 regarding property transactions.

2909 I, _____, a Notary Public, do hereby certify that
2910 _____ personally appeared before me this date and acknowledged
2911 the due execution of the foregoing Power of Attorney.

2912 _____

2913 Notary Public

2914 State of Georgia

2915 County of _____

2916 ACCEPTANCE OF APPOINTMENT

2917 I, _____ (print name), have read the foregoing Power of Attorney
2918 and am the person identified therein as Agent for _____ (name of
2919 grantor of power of attorney), the Principal named therein. I hereby acknowledge the
2920 following:

2921 I owe a duty of loyalty and good faith to the Principal, and must use the powers granted
2922 to me only for the benefit of the Principal.

2923 I must keep the Principal's funds and other assets separate and apart from my funds and
2924 other assets and titled in the name of the Principal. I must not transfer title to any of the
2925 Principal's funds or other assets into my name alone. My name must not be added to
2926 the title of any funds or other assets of the Principal, unless I am specifically designated
2927 as Agent for the Principal in the title.

2928 I must protect, conserve, and exercise prudence and caution in my dealings with the
2929 Principal's funds and other assets.

2930 I must keep a full and accurate record of my acts, receipts, and disbursements on behalf
2931 of the Principal, and be ready to account to the Principal for such acts, receipts, and
2932 disbursements at all times. I must provide an annual accounting to the Principal of my
2933 acts, receipts, and disbursements, and must furnish an accounting of such acts, receipts,
2934 and disbursements to the personal representative of the Principal's estate within 90 days
2935 after the date of death of the Principal.

2936 I have read the Compensation of Agent paragraph in the Power of Attorney and agree
2937 to abide by it.

2938 I acknowledge my authority to act on behalf of the Principal ceases at the death of the
2939 Principal.

2940 I hereby accept the foregoing appointment as Agent for the Principal with full knowledge
2941 of the responsibilities imposed on me, and I will faithfully carry out my duties to the best
2942 of my ability.

2943 Dated: _____, ____.

2944 (Signature)_____

2945 (Address)_____

2946 Note: A notarized signature is not required unless the Principal initialed paragraph 3 or
2947 paragraph 4 regarding property transactions.

2948 I, _____, a Notary Public, do hereby certify that
2949 _____ personally appeared before me this date and acknowledge
2950 the due execution of the foregoing Acceptance of Appointment.

2951 _____
2952 Notary Public"

2953 **SECTION 4.**

2954 Said title is further amended by revising paragraph (1) of subsection (f) of Code Section
2955 10-14-6, relating to irrevocable trust funds, as follows:

2956 "(f)(1) The assets of a trust fund shall be invested and reinvested subject to all the terms,
2957 conditions, limitations, and restrictions imposed by the laws of the State of Georgia upon
2958 executors and trustees regarding the making and depositing of investments with trust
2959 moneys pursuant to Code Sections 53-8-1 through 53-8-4 of the 'Pre-1998 Probate Code,'
2960 if applicable, ~~or Code Section 53-8-1 and Code Section 53-12-287~~ of the 'Revised Probate

2961 Code of 1998-' or Code Section 53-12-340 of 'The Revised Georgia Trust Code of 2010.'
 2962 Subject to said terms, conditions, limitations, and restrictions, the trustee of the perpetual
 2963 care trust fund shall have full power to hold, purchase, sell, assign, transfer, reinvest, and
 2964 dispose of any of the securities and investments in which any of the assets of said fund
 2965 are invested, including proceeds of investments."

2966 **SECTION 5.**

2967 Title 11 of the Official Code of Georgia Annotated, relating to the Commercial Code, is
 2968 amended by repealing and designating as reserved Code Section 11-8-602, relating to
 2969 repeals, as follows:

2970 "11-8-602.

2971 ~~This Act repeals Article 15 of Chapter 12 of Title 53, known as the 'Uniform Act for~~
 2972 ~~Simplification of Fiduciary Security Transfers,' including Code Section 53-12-320, relating~~
 2973 ~~to the short title; Code Section 53-12-321, relating to definitions; Code Section 53-12-322,~~
 2974 ~~relating to registration in the fiduciary's name, inquiry, and assumption of continued~~
 2975 ~~fiduciary capacity; Code Section 53-12-323, relating to transfer pursuant to assignment by~~
 2976 ~~the fiduciary and authorized assumptions; Code Section 53-12-324, relating to evidence of~~
 2977 ~~appointment or incumbency when the fiduciary is not the registered owner; Code Section~~
 2978 ~~53-12-325, relating to claims adverse to transfer, written notice of claims, notice of~~
 2979 ~~presentation of security for transfer, time for transfer, and liability of corporation or transfer~~
 2980 ~~agency; Code Section 53-12-326, relating to nonliability of corporation and transfer agent;~~
 2981 ~~Code Section 53-12-327, relating to liability of participants in acquisition, disposition,~~
 2982 ~~assignment, or transfer of security; Code Section 53-12-328, relating to the effect of the~~
 2983 ~~article on tax obligations; Code Section 53-12-329, relating to applicability of the law of~~
 2984 ~~the jurisdiction where a corporation was organized and applicability of article; and Code~~
 2985 ~~Section 53-12-330, relating to uniformity of interpretation, and inserts in lieu thereof the~~
 2986 ~~following:~~

2987 **ARTICLE 15**

2988 Reserved."

2989 **SECTION 6.**

2990 Said title is further amended by revising subsection (d) of Code Section 11-9-406, relating
 2991 to discharge of account debtor, as follows:

2992 "(d) *Term restricting assignment generally ineffective.* Except as otherwise provided in
 2993 subsection (e) of this Code section and Code Sections 11-2A-303, 11-9-407, and ~~53-12-28~~
 2994 53-12-80 through 53-12-83 and subject to subsection (h) of this Code section, a term in an

2995 agreement between an account debtor and an assignor or in a promissory note ~~is~~ shall be
 2996 ineffective to the extent that it:

2997 (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated
 2998 on the promissory note to the assignment or transfer of, or the creation, attachment,
 2999 perfection, or enforcement of a security interest in, the account, chattel paper, payment
 3000 intangible, or promissory note; or

3001 (2) Provides that the assignment, transfer, creation, attachment, perfection, or
 3002 enforcement of the security interest may give rise to a default, breach, right of
 3003 recoupment, claim, defense, termination, right of termination, or remedy under the
 3004 account, chattel paper, payment intangible, or promissory note."

3005 SECTION 7.

3006 Said title is further amended by revising subsections (a) and (c) of Code Section 11-9-408,
 3007 relating to restrictions on assignment of promissory notes, health care insurance receivables,
 3008 and certain intangibles ineffective, as follows:

3009 "(a) *Term restricting assignment generally ineffective.* Except as otherwise provided in
 3010 subsection (b) of this Code section or in Code Section ~~53-12-28~~ 53-12-80, a term in a
 3011 promissory note or in an agreement between an account debtor and a debtor which relates
 3012 to a health care insurance receivable or a general intangible, including a contract, permit,
 3013 license, or franchise, and which term prohibits, restricts, or requires the consent of the
 3014 person obligated on the promissory note or the account debtor to the assignment or transfer
 3015 of, or creation, attachment, or perfection of a security interest in, the promissory note,
 3016 health care insurance receivable, or general intangible, ~~is~~ shall be ineffective to the extent
 3017 that the term:

3018 (1) Would impair the creation, attachment, or perfection of a security interest; or

3019 (2) Provides that the assignment, transfer, creation, attachment, or perfection of the
 3020 security interest may give rise to a default, breach, right of recoupment, claim, defense,
 3021 termination, right of termination, or remedy under the promissory note, health care
 3022 insurance receivable, or general intangible."

3023 "(c) *Legal restrictions on assignment generally ineffective.* Except as otherwise provided
 3024 in Code Section ~~53-12-28~~ 53-12-80, a rule of law, statute, or regulation that prohibits,
 3025 restricts, or requires the consent of a government, governmental body or official, person
 3026 obligated on a promissory note, or account debtor to the assignment or transfer of, or
 3027 creation of a security interest in, a promissory note, health care insurance receivable, or
 3028 general intangible, including a contract, permit, license, or franchise between an account
 3029 debtor and a debtor, ~~is~~ shall be ineffective to the extent that the rule of law, statute, or
 3030 regulation:

- 3031 (1) Would impair the creation, attachment, or perfection of a security interest; or
 3032 (2) Provides that the assignment, transfer, creation, attachment, or perfection of the
 3033 security interest may give rise to a default, breach, right of recoupment, claim, defense,
 3034 termination, right of termination, or remedy under the promissory note, health care
 3035 insurance receivable, or general intangible."

3036 **SECTION 8.**

3037 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
 3038 and associations, is amended by revising paragraph (3) of subsection (a) of Code Section
 3039 14-2-1109, relating to business corporations merger with other entities, as follows:

3040 "(3) 'Joint-stock association' includes any association of the kind commonly known as
 3041 a joint-stock association or joint-stock company and any unincorporated association,
 3042 trust, or enterprise having members or having outstanding shares of stock or other
 3043 evidences of financial and beneficial interest therein, whether formed by agreement or
 3044 under statutory authority or otherwise, but ~~does~~ shall not include a corporation,
 3045 partnership, limited liability partnership, limited liability company, or nonprofit
 3046 organization. A joint-stock association as defined in this paragraph may be one formed
 3047 under the laws of this state, including a trust created pursuant to ~~Article 3~~ Article 2 of
 3048 Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or
 3049 jurisdiction."

3050 **SECTION 9.**

3051 Said title is further amended by revising paragraph (8) of Code Section 14-2-1110, relating
 3052 to definitions for business corporations, as follows:

3053 "(8) 'Corporation,' in addition to the definition contained in Code Section 14-2-140, shall
 3054 include any trust merging with a domestic corporation pursuant to Code Section ~~53-12-59~~
 3055 53-12-159."

3056 **SECTION 10.**

3057 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
 3058 14-3-1108, relating to nonprofit corporations definitions and merger with foreign
 3059 corporations, as follows:

3060 "(3) 'Joint-stock association' includes any association of the kind commonly known as
 3061 a joint-stock association or joint-stock company and any unincorporated association,
 3062 trust, or enterprise having members or having outstanding shares of stock or other
 3063 evidences of financial and beneficial interest therein, whether formed by agreement or
 3064 under statutory authority or otherwise, but ~~does~~ shall not include a corporation,

3065 partnership, limited liability partnership, limited liability company, or nonprofit
 3066 organization. A joint-stock association as defined in this paragraph may be one formed
 3067 under the laws of this state, including a trust created pursuant to ~~Article 3~~ Article 2 of
 3068 Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or
 3069 jurisdiction."

3070 **SECTION 11.**

3071 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 3072 paragraph (1) of subsection (c) of Code Section 15-6-77.3, relating to additional fees in
 3073 counties with populations in unincorporated areas of 350,000 or more, as follows:

3074 "(1) Recording and returning to sender all instruments pertaining to real estate
 3075 and deeds of trust or amendments thereto, in accordance with Code Section
 3076 ~~53-12-52~~ 53-12-152, each page \$ 5.00"

3077 **SECTION 12.**

3078 Said title is further amended by revising paragraphs (4), (5), (6), and (8) of Code Section
 3079 15-9-127, relating to additional concurrent jurisdiction with superior courts, as follows:

3080 "(4) Appointment of new trustee to replace trustee pursuant to Code Section ~~53-12-170~~
 3081 53-12-201;

3082 (5) Acceptance of the resignation of a trustee upon written request of the beneficiaries
 3083 pursuant to Code Section ~~53-12-175~~ 53-12-220;

3084 (6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code
 3085 Section ~~53-12-175~~ 53-12-220;"

3086 "(8) Conversion to a unitrust and related matters pursuant to Code Section ~~53-12-221~~
 3087 53-12-362; and"

3088 **SECTION 13.**

3089 Code Section 20-2-64 of the Official Code of Georgia Annotated, relating to establishment
 3090 and maintenance of trusts or funds, is amended by revising subsection (a), as follows:

3091 "(a) Each local board of education is authorized to establish and maintain one or more
 3092 funds or trusts for the purposes specified in this Code section and to designate one or more
 3093 fund managers or trustees thereof. Each local board of education shall be deemed to be a
 3094 person for the purposes of Chapter 12 of Title 53, known as ~~the 'Georgia Trust Act,'~~ 'The
 3095 Revised Georgia Trust Code of 2010,' and may take any action which a natural person
 3096 would be authorized to take and shall be subject to any duty imposed upon a natural person
 3097 by the provisions of such chapter, except as provided in this Code section."

3098

SECTION 14.

3099 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
 3100 amended by revising paragraphs (13) and (14) of Code Section 29-3-32, relating to
 3101 investment of funds, as follows:

3102 "(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
 3103 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
 3104 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
 3105 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., ~~as~~
 3106 ~~authorized by Code Section 53-12-286;~~

3107 (14) Real property loans, ~~as authorized by Code Section 53-12-284:~~

3108 (A) Which are not in default;

3109 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
 3110 title to improve real property;

3111 (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,
 3112 et seq.; and

3113 (D) With respect to which loans, on or after default, pursuant to such insurance,
 3114 debentures in at least the full amount of unpaid principal are issuable, which debentures
 3115 are fully and unconditionally guaranteed both as to principal and interest by the United
 3116 States; and"

3117

SECTION 15.

3118 Said title is further amended by revising paragraphs (13) and (14) of Code Section 29-5-32,
 3119 relating to investment of estate funds by conservator, as follows:

3120 "(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the
 3121 Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds,
 3122 debentures, or other similar obligations, consolidated or otherwise, issued by farm credit
 3123 institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq., ~~as~~
 3124 ~~authorized by Code Section 53-12-286;~~

3125 (14) Real property loans, ~~as authorized by Code Section 53-12-284:~~

3126 (A) Which are not in default;

3127 (B) Which are secured by mortgages or deeds to secure debt conveying a first security
 3128 title to improve real property;

3129 (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701,
 3130 et seq.; and

3131 (D) With respect to which loans, on or after default, pursuant to such insurance,
 3132 debentures in at least the full amount of unpaid principal are issuable, which debentures

3133 are fully and unconditionally guaranteed both as to principal and interest by the United
3134 States; and"

3135 **SECTION 16.**

3136 Code Section 37-9-8 of the Official Code of Georgia Annotated, relating to the use of assets
3137 other than income for determination of assessments, is amended by revising subsection (d)
3138 as follows:

3139 "(d) Nothing in this Code section shall be construed to supersede the provisions of Chapter
3140 12 of Title 53, the '~~Georgia Trust Act.~~' The Revised Georgia Trust Code of 2010."

3141 **SECTION 17.**

3142 Code Section 48-13-55 of the Official Code of Georgia Annotated, relating to facility
3143 operated by charitable trust or functionally related businesses, is amended by revising
3144 subsection (d) as follows:

3145 "(d) For purposes of this Code section, the term 'charitable trust' means any trust or other
3146 entity covered by ~~Article 6~~ Article 9 or 10 of Chapter 12 of Title 53. For purposes of this
3147 Code section, the term 'functionally related business' means a business entity, whether or
3148 not incorporated, which is owned by such a charitable trust and which constitutes a
3149 functionally related business within the meaning of Section 4942(j)(4) of the federal
3150 Internal Revenue Code."

3151 **SECTION 18.**

3152 Code Section 53-7-1 of the Official Code of Georgia Annotated, relating to general powers
3153 and duties of personal representative, is amended by revising subsection (b) as follows:

3154 "(b) As part of the petition for letters testamentary or letters of administration or by
3155 separate petition, the beneficiaries of a testate estate or the heirs of an intestate estate may,
3156 by unanimous consent, authorize but not require the probate court to grant to the personal
3157 representative any of the powers contained in Code Section ~~53-12-232~~ 53-12-261. With
3158 respect to any beneficiary or heir who is not sui juris, the consent may be given by the
3159 guardian. The personal representative of a deceased beneficiary or heir ~~is~~ shall be
3160 authorized to consent on behalf of that beneficiary or heir. The grant of powers ~~may~~ shall
3161 only be ordered after publication of a citation and without any objection being filed. The
3162 citation shall be sufficient if it states generally that the petition requests that powers
3163 contained in Code Section ~~53-12-232~~ 53-12-261 be granted."

3164 **SECTION 19.**

3165 All laws and parts of laws in conflict with this Act are repealed.