

House Bill 865

By: Representatives Scoggins of the 14<sup>th</sup>, Rich of the 97<sup>th</sup>, Fleming of the 121<sup>st</sup>, Silcox of the 52<sup>nd</sup>, and Dreyer of the 59<sup>th</sup>

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 administration of estates, so as to revise and update provisions of the "Revised Probate Code  
3 of 1998"; to update grammar; to provide for and revise definitions; to clarify the application  
4 of the principles of common law and equity governing wills, trusts, and the administration  
5 of estates; to revise provisions concerning the judicial determination of heirs and their  
6 interests; to provide for and revise the jurisdiction of the superior court and probate court in  
7 certain matters; to provide for and revise provisions concerning year's support; to provide for  
8 and revise provisions concerning the determination, execution and attestation, and  
9 construction of wills and trust instruments; to provide for and revise provisions concerning  
10 the probate of wills; to provide for and revise provisions concerning administrators and  
11 personal representatives; to provide for and revise provisions concerning the administration  
12 of estates; to provide for and revise provisions concerning sales and conveyances by  
13 administrators, personal representatives, and the courts; to revise provisions regarding  
14 missing persons and persons believed to be dead; to revise procedures in probate court; to  
15 revise jurisdiction and court procedures concerning trusts; to provide for and revise  
16 provisions concerning the creation and validity of trusts; to provide for and revise provisions  
17 concerning the reformation, modification, division, consolidation, and termination of trusts;  
18 to provide for and revise provisions concerning trustees' duties and powers; to revise  
19 provisions of the "Revised Uniform Fiduciary Access to Digital Assets Act"; to amend  
20 Part 12 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated,  
21 relating to deposits of deceased depositors, so as to revise provisions concerning the payment  
22 of large deposits of deceased intestate depositors; to amend Title 9 of the Official Code of  
23 Georgia Annotated, relating to civil practice, so as to provide for a period of limitation for  
24 certain claims against a decedent's estate; to revise provisions concerning declaratory  
25 judgments involving fiduciaries; to amend Title 10 of the Official Code of Georgia  
26 Annotated, relating to commerce and trade, so as to revise provisions regarding the  
27 fiduciaries conveying property by attorneys in fact; to amend Article 2 of Chapter 5 of  
28 Title 13 of the Official Code of Georgia Annotated, relating to statute of frauds, so as to

29 make conforming changes; to amend Chapter 9 of Title 15 of the Official Code of Georgia  
 30 Annotated, relating to probate courts, so as to revise the qualifications for judge of the  
 31 probate in certain counties; to revise certain court procedures; to revise provisions concerning  
 32 default judgments; to provide for and revise fee provisions; to revise the concurrent  
 33 jurisdiction of probate court with superior court; to amend Title 19 of the Official Code of  
 34 Georgia Annotated, relating to domestic relations, so as to revise the power of superior court  
 35 judges in appointing and removing trustees and protecting trust estates; to revise enforcement  
 36 of antenuptial agreements; to revise provisions concerning permanent alimony; to amend  
 37 Article 3 of Chapter 2 of Title 23 of the Official Code of Georgia Annotated, relating to  
 38 fraud, so as to revise provisions concerning fiduciary relationship; to amend Chapter 27 of  
 39 Title 50 of the Official Code of Georgia Annotated, relating to lottery for education, so as to  
 40 provide for the preference of the Georgia Lottery Corporation for certain proceeds due from  
 41 a person's estate; to provide for related matters; to provide for an effective date; to repeal  
 42 conflicting laws; and for other purposes.

43 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

44 **PART I**  
 45 **SECTION 1-1.**

46 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and  
 47 administration of estates, is amended in Article 1 of Chapter 1, relating to the "Revised  
 48 Probate Code of 1998" in general, by adding a new Code section to read as follows:

49 "53-1-9.  
 50 Except to the extent that the principles of common law and equity governing wills, trusts,  
 51 and the administration of estates are modified by this title or another provision of law,  
 52 those principles remain the law of this state."

53 **SECTION 1-2.**

54 Said title is further amended by revising Code Section 53-2-20, relating to jurisdiction of  
 55 probate or superior court, as follows:

56 "53-2-20.  
 57 The identity or interest of any heir may be resolved judicially upon application to the  
 58 probate court that has jurisdiction by virtue of a pending administration or that would have  
 59 jurisdiction in the event of an administration of the estate of the decedent. Alternatively,  
 60 the petition may be filed in the superior court of the county where the probate court having  
 61 jurisdiction, as defined in this Code section, is located; provided, however, that, if the

62 petition is filed in connection with a contested proceeding to determine a purported heir's  
 63 entitlement to a year's support from the decedent's estate pursuant to Chapter 3 of this title,  
 64 such petition must be filed in the probate court having jurisdiction. The proceedings for  
 65 the determination of such questions shall conform to the requirements set forth in this  
 66 article."

67 **SECTION 1-3.**

68 Said title is further amended by revising Code Section 53-2-27, relating to DNA testing for  
 69 kinship, procedure, and costs, as follows:

70 "53-2-27.

71 (a)(1) When the kinship of any party in interest to a decedent is in controversy in any  
 72 proceeding under this article, a ~~superior~~ court may order the removal and testing of  
 73 deoxyribonucleic acid (DNA) samples from the remains of the decedent and from any  
 74 party in interest whose kinship to the decedent is in controversy for purposes of  
 75 comparison and determination of the statistical likelihood of such kinship. The ~~superior~~  
 76 court may order the disinterment of the decedent's remains if reasonably necessary to  
 77 obtain such samples.

78 (2) Except as otherwise provided in paragraph (3) of this subsection and in paragraph (5)  
 79 of subsection (a) of Code Section 15-9-127, if ~~If~~ the proceedings are pending in the  
 80 probate court, the motion shall be transferred to the superior court for determination.

81 (3) A probate court subject to Article 6 of Chapter 9 of Title 15 shall have jurisdiction  
 82 over motions seeking an order for disinterment and DNA testing under this Code section  
 83 and may enter orders thereon without transferring the motion to the superior court.

84 (b) The order may be made only on motion for good cause shown and upon notice to all  
 85 parties in interest and shall specify the time, place, manner, conditions, and scope of the  
 86 removal and testing of samples, and the person or persons by whom it is to be made. Such  
 87 motion, when made by a party in interest, shall be supported by affidavit setting forth:

88 (1) The factual basis for a reasonable belief that the party in interest whose kinship to the  
 89 decedent is in controversy is or is not so related; and

90 (2) If disinterment of the decedent's remains is sought, the factual basis for a reasonable  
 91 belief that reliable DNA samples from the decedent are not otherwise reasonably  
 92 available from any other source.

93 (c) Upon request, the movant shall deliver to all parties in interest a copy of a detailed  
 94 written report of the tester and of any other expert involved in the determination of such  
 95 statistical likelihood setting out his or her findings, including the results of all tests made  
 96 and conclusions or opinions based thereon.

97 (d) The costs of obtaining and testing of such samples, including the costs of disinterment  
 98 and reinterment of the remains of the decedent, if necessary, as well as the costs of  
 99 providing the report, shall be assessed against and paid by the moving party."

100 **SECTION 1-4.**

101 Said title is further amended by revising Code Section 53-3-1, relating to preference and  
 102 entitlement, as follows:

103 "53-3-1.

104 (a) As used in this chapter, the terms 'child' or 'children' mean any minor child who would  
 105 be entitled to inherit if the child's parent died intestate.

106 (b) Among the necessary expenses of administration and to be preferred before all other  
 107 debts or demands, except as specifically provided otherwise in this chapter and  
 108 notwithstanding any other provision of law to the contrary, is the provision of year's  
 109 support for the family.

110 (c) The surviving spouse and minor children of a testate or intestate decedent are entitled  
 111 to year's support in the form of property for their support and maintenance for the period  
 112 of 12 months from the date of the decedent's death."

113 **SECTION 1-5.**

114 Said title is further amended by revising Code Section 53-3-4, relating to "homestead"  
 115 defined and taxes and liens, as follows:

116 "53-3-4.

117 (a) As used in this Code section, the term 'homestead' shall have the same meaning as set  
 118 forth in Code Section 48-5-40.

119 (b)(1) In solvent and insolvent estates, all taxes and liens for taxes accrued for years prior  
 120 to the year of the decedent's death against the homestead set apart and against any equity  
 121 of redemption applicable to the homestead set apart shall be divested as if the entire title  
 122 were included in the year's support. Additionally, as elected in the petition, property  
 123 taxes accrued in the year of the decedent's death or in the year in which the petition for  
 124 year's support is filed or, if the petition is filed in the year of the decedent's death, in the  
 125 year following the filing of the petition shall be divested if the homestead is set apart for  
 126 year's support; provided, however, that, if the property taxes elected in the petition  
 127 pursuant to this paragraph are paid after the filing of the petition but prior to the entry of  
 128 the order setting apart the homestead for year's support, the property taxes accrued in the  
 129 year following the year elected in the petition shall be divested instead.

130 (2) In solvent and insolvent estates, if the homestead is not claimed, all taxes and liens  
 131 for taxes accrued for years prior to the year of the decedent's death against the real

132 property set apart and against any equity of redemption applicable to the real property set  
 133 apart shall be divested as if the entire title were included in the year's support.  
 134 Additionally, as elected in the petition, property taxes accrued in the year of the  
 135 decedent's death or in the year in which the petition for year's support is filed or, if the  
 136 petition is filed in the year of the decedent's death, in the year following the filing of the  
 137 petition shall be divested if the real property is set apart for year's support; provided,  
 138 however, that, if the property taxes elected in the petition pursuant to this paragraph are  
 139 paid after the filing of the petition but prior to the entry of the order setting apart the real  
 140 property for year's support, the property taxes accrued in the year following the year  
 141 elected in the petition shall be divested instead."

142 **SECTION 1-6.**

143 Said title is further amended by revising Code Section 53-3-5, relating to filing of petition,  
 144 as follows:

145 "53-3-5.

146 (a) Upon the death of any individual leaving an estate solvent or insolvent, the surviving  
 147 spouse or a guardian or other person acting in behalf of the surviving spouse or in behalf  
 148 of a minor child may file a petition for year's support in the probate court having  
 149 jurisdiction over the decedent's estate. If the petition is brought by a guardian acting on  
 150 behalf of a minor child, no additional guardian ad litem shall be appointed for such minor  
 151 child unless ordered by the court.

152 (b) The petition shall set forth, as applicable, the full name of the surviving spouse, the full  
 153 name and birthdate of each surviving minor child, and a schedule of the property, including  
 154 household furniture, ~~which that~~ the petitioner proposes to have set ~~aside~~ apart as year's  
 155 support. The petition shall describe fully and accurately ~~describe~~ any real property the  
 156 petitioner proposes to have set ~~aside~~ apart as year's support with a legal description  
 157 sufficient under the laws of this state to pass title to the real property.

158 (c) A petition for year's support shall be filed within 24 months of the date of death of the  
 159 decedent."

160 **SECTION 1-7.**

161 Said title is further amended by revising Code Section 53-3-6, relating to issuance of citation  
 162 and publication of notice and mailing of petition to tax commissioner, as follows:

163 "53-3-6.

164 (a) As used in this Code section, the term 'interested ~~person~~ persons' means the decedent's  
 165 children, spouse, other heirs, beneficiaries, and creditors; and any others having a property

166 right in or claim against the estate of the decedent ~~which~~ that may be affected by the year's  
167 support proceedings.

168 (b) Upon the filing of the petition, the probate court shall issue a citation and publish a  
169 notice in the official newspaper of the county in which the petition is made once a week  
170 for four weeks, citing all interested persons ~~concerned~~ to show cause by a ~~day~~ date certain  
171 why the petition for year's support should not be granted.

172 (c)(1) If there is a personal representative of the decedent's estate, then, in addition to the  
173 issuance of citation and publication of notice required by subsection (b) of this Code  
174 section, the probate court shall cause a copy of the citation to be ~~sent by mail to~~ served  
175 upon the personal representative of the decedent's estate. ~~The copy of the citation~~  
176 personal representative shall be mailed not less than 21 served not fewer than 30 days  
177 prior to the date and time for objections to be filed shown in the citation.

178 (2) If there is no personal representative of the decedent's estate, then, in addition to the  
179 issuance of citation and publication of notice required by subsection (b) of this Code  
180 section, the petitioner or the attorney for the petitioner shall file with the probate court an  
181 affidavit, upon oath, showing the name, last known address, and age if less than age 18  
182 of each interested person and stating that the petitioner or the attorney for the petitioner  
183 has listed all known interested persons and has made reasonable inquiry to ascertain the  
184 names, last known addresses, and ages of all interested persons. The probate court shall  
185 serve by first-class mail a copy of the citation ~~to~~ on each interested person shown on the  
186 affidavit not ~~less~~ fewer than ~~21~~ 30 days prior to the date and time for objections to be  
187 filed shown in the citation.

188 (3) If the sole personal representative of the decedent's estate and the petitioner or the  
189 guardian of the petitioner are the same person, then paragraph (2) of this subsection shall  
190 govern as if the decedent's estate had no personal representative.

191 (d) The probate court shall serve by first-class or interoffice mail, as applicable, a copy of  
192 the petition within five days of its filing ~~to~~ on the tax commissioner or tax collector of any  
193 county in this state in which real property proposed to be set apart as year's support is  
194 located."

#### 195 SECTION 1-8.

196 Said title is further amended by revising Code Section 53-3-7, relating to hearing and  
197 determination, as follows:

198 "53-3-7.

199 (a) If no objection is made after the publication of the notice, or, if made, is disallowed or  
200 withdrawn, the probate court shall enter an order setting ~~aside~~ apart as year's support the  
201 property applied for in the petition.

202 (b) If objection is made, the probate court shall hear the petition and, upon the evidence  
 203 submitted, shall determine the property to be set ~~aside~~ apart as year's support according to  
 204 the standards set out in subsection (c) of this Code section. If an appeal is taken, pending  
 205 the appeal the petitioners shall be furnished with necessaries by the personal representative  
 206 or temporary administrator of the estate, as allowed by the probate court.

207 (c) If objection is made to the amount or nature of the property proposed to be set ~~aside~~  
 208 apart as year's support, the court shall set apart an amount sufficient to maintain the  
 209 standard of living that the surviving spouse and each minor child had prior to the death of  
 210 the decedent, taking into consideration the following:

211 (1) The support available to the individual for whom the property is to be set apart from  
 212 sources other than year's support, including but not limited to the principal of any  
 213 separate estate and the income and earning capacity of that individual;

214 (2) The solvency of the estate; provided, however, that, if the decedent dies having a  
 215 deposit in a financial institution that is applied to the payment of the funeral expenses and  
 216 expenses of the last illness of the decedent under subsection (c) of Code Section 7-1-239,  
 217 any effect such payment may have on the solvency of the estate shall not operate  
 218 adversely to the surviving spouse or any minor child in the determination of the amount  
 219 to be set apart as year's support; and

220 (3) Such other relevant criteria as the court deems equitable and proper.

221 The petitioner for year's support shall have the burden of proof in showing the amount  
 222 necessary for year's support."

### 223 SECTION 1-9.

224 Said title is further amended by revising Code Section 53-3-8, relating to minor children by  
 225 different spouses, as follows:

226 "53-3-8.

227 (a) If the decedent leaves a minor child or minor children by ~~different spouses~~ an  
 228 individual or individuals other than the surviving spouse, the probate court shall specify the  
 229 portion going to the minor child or minor children of ~~the former spouse or spouses, which~~  
 230 such individual or individuals, and the portion so specified shall vest in that child or those  
 231 children.

232 (b) If the decedent leaves one or more minor children and the surviving spouse is the  
 233 parent of ~~the~~ all such minor children, the probate court may in its discretion specify  
 234 separate portions for the minor children and the surviving spouse if the court deems the  
 235 award of separate portions to be in the best interests of the parties, and the portions so  
 236 specified shall vest separately in the surviving spouse and the minor children.

237 (c) If the decedent leaves one or more minor children for whom the probate court specifies  
 238 separate portions under subsection (a) or (b) of this Code section, personal property in the  
 239 portions so specified shall be delivered and received in compliance with Code  
 240 Section 29-3-1."

241 **SECTION 1-10.**

242 Said title is further amended by revising Code Section 53-3-12, relating to fees, as follows:

243 "53-3-12.

244 (a) The fees of the probate court shall be paid by the petitioner for year's support out of the  
 245 fund set apart for such petitioner or for the surviving spouse or a minor child in whose  
 246 behalf the petitioner acted pursuant to subsection (a) of Code Section 53-3-5.

247 (b) The probate court may issue a writ of fieri facias against the personal representative  
 248 or temporary administrator of the estate for the amount awarded as provided in  
 249 subsection (a) of this Code section.

250 (c) The issuance by the probate court of a writ of fieri facias against the temporary  
 251 administrator of the estate as provided in subsection (b) of this Code section shall be  
 252 deemed a proper order under Code Section 53-7-4 for the payment by the temporary  
 253 administrator of the amount awarded as provided in subsection (a) of this Code section."

254 **SECTION 1-11.**

255 Said title is further amended by revising Code Section 53-3-13, relating to sale or  
 256 conveyance of property by personal representative prior to award, as follows:

257 "53-3-13.

258 The right of a surviving spouse or minor child to year's support from the estate of a  
 259 decedent shall be barred by a sale or conveyance made prior to the award of year's support  
 260 by the personal representative or temporary administrator of the estate under authority of  
 261 a court of competent jurisdiction or under power in a will; provided, however, that the sale  
 262 or conveyance shall bar year's support and rights to year's support only as to the property  
 263 sold or conveyed."

264 **SECTION 1-12.**

265 Said title is further amended by adding a new Code section to read as follows:

266 "53-3-21.

267 If there is no personal representative of the decedent's estate, the probate court may appoint  
 268 a temporary administrator as provided in Code Section 53-6-30 to perform the duties of a  
 269 personal representative under subsection (b) of Code Section 53-3-7 or under  
 270 subsection (b) of Code Section 53-3-12; provided, however, that the appointment of such

271 temporary administrator shall not alter or affect the citation, notice, and mailing  
 272 requirements of Code Section 53-3-6."

273 **SECTION 1-13.**

274 Said title is further amended in Article 1 of Chapter 4, relating to general provisions  
 275 regarding wills, by adding two new Code sections to read as follows:

276 "53-4-4.

277 (a) Any writing in existence when a will is executed may be incorporated into the will by  
 278 reference if the language of the will manifests this intent and describes the writing  
 279 sufficiently to permit its identification.

280 (b) This Code section shall not be construed to imply that the common law does not permit  
 281 the incorporation of an extrinsic document into a will by reference in the manner  
 282 authorized under subsection (a) of this Code section.

283 53-4-5.

284 (a) A written statement or list meeting the requirements of subsection (b) of this Code  
 285 section shall dispose of items of tangible personal property, other than money, not  
 286 otherwise specifically disposed of by the testator's will. If more than one otherwise  
 287 effective writing exists, then, to the extent of any conflict among the writings, the  
 288 provisions of a more recent writing revoke the inconsistent provisions of each prior writing.

289 (b) A written statement or list meets the requirements of this subsection if such writing:

290 (1) Is signed and dated by the testator;

291 (2) Describes the items and the beneficiaries with reasonable certainty; and

292 (3) Is referred to in the testator's will.

293 The writing may be referred to as one to be in existence at the time of the testator's death;  
 294 it may be prepared before or after the execution of the will; it may be altered by the testator  
 295 after its preparation, provided that it is signed and dated on the date of such alteration; and  
 296 it may be a writing that has no significance apart from its effect on the dispositions made  
 297 by the will."

298 **SECTION 1-14.**

299 Said title is further amended by revising Code Section 53-4-20, relating to required writing,  
 300 signing, witnesses, and codicil, as follows:

301 "53-4-20.

302 (a) A will shall be in writing and shall be signed by the testator or by some other individual  
 303 in the testator's presence and at the testator's express direction. A testator may sign by  
 304 mark or by any name that is intended to authenticate the instrument as the testator's will.

305 (b) A will shall be attested and subscribed in the presence of the testator by two or more  
 306 competent witnesses. A witness to a will may attest by mark. Another individual may not  
 307 subscribe the name of a witness, even in that witness's presence and at that witness's  
 308 direction.

309 (c) A codicil shall be executed by the testator and attested and subscribed by witnesses  
 310 with the same formality as a will.

311 (d) For purposes of subsections (a) and (b) of this Code section, the term 'presence' shall  
 312 not include electronic presence."

313 **SECTION 1-15.**

314 Said title is further amended by revising Code Section 53-4-24, relating to self-proved will  
 315 or codicil, as follows:

316 "53-4-24.

317 (a) At the time of its execution or at any subsequent date during the lifetime of the testator  
 318 and the witnesses, a will or codicil may be made self-proved and the testimony of the  
 319 witnesses in the probate regarding such will may be made unnecessary by the affidavits of  
 320 the testator and the attesting witnesses made before a notary public in the notary public's  
 321 presence. The affidavit and certificate provided in subsection (b) of this Code section shall  
 322 be the only prerequisites of a self-proved will or codicil. For purposes of this subsection,  
 323 the term 'presence' shall not include electronic presence.

324 (b) The affidavit shall be evidenced by a certificate, affixed with the official seal of the  
 325 notary public, that is attached or annexed to the will or codicil, in form and content  
 326 substantially as follows:

327 'STATE OF GEORGIA

328 COUNTY of \_\_\_\_\_

329 Before me, the undersigned authority, on this day personally appeared  
 330 \_\_\_\_\_, \_\_\_\_\_, and  
 331 \_\_\_\_\_, known to me to be the testator and the witnesses,  
 332 respectively, whose names are subscribed to the annexed or foregoing instrument in their  
 333 respective capacities, and all of said individuals being by me duly sworn,  
 334 \_\_\_\_\_, testator, declared to me and to the witnesses in my  
 335 presence that said instrument is the last will and testament or a codicil to the last will and  
 336 testament of the testator and that the testator had willingly made and executed it as a free  
 337 act and deed for the purposes expressed therein. The witnesses, each on oath, stated to  
 338 me in the presence and hearing of the testator that the testator had declared to them that  
 339 the instrument is the testator's last will and testament or a codicil to the testator's last will

340 and testament and that the testator executed the instrument as such and wished each of  
 341 them to sign it as a witness; and under oath each witness stated further that the witness  
 342 had signed the same as witness in the presence of the testator and at the testator's request;  
 343 that the testator was 14 years of age or over and of sound mind; and that each of the  
 344 witnesses was then at least 14 years of age.

345 \_\_\_\_\_  
 346 Testator

347 \_\_\_\_\_  
 348 Witness

349 \_\_\_\_\_  
 350 Witness

351 Sworn to and subscribed before me by \_\_\_\_\_, testator, and sworn  
 352 to and subscribed before me by \_\_\_\_\_ and  
 353 \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

354 (SEAL)

355 (Signed) \_\_\_\_\_

356 (Official Capacity of Officer)'

357 (c) A self-proved will or codicil may be admitted to probate without the testimony of any  
 358 subscribing witness, but otherwise it shall be treated no differently from a will or codicil  
 359 that is not self-proved. In particular, without limiting the generality of the foregoing  
 360 sentence, a self-proved will or codicil may be contested, revoked, or amended in exactly  
 361 the same fashion as a will or codicil that is not self-proved."

362 **SECTION 1-16.**

363 Said title is further amended by revising Code Section 53-4-63, relating to payment of debts  
 364 of testator, as follows:

365 "53-4-63.

366 (a) Unless otherwise directed, the debts of the testator and expenses of administration of  
 367 the estate shall be paid out of the residuum. Unless otherwise provided in the will, a  
 368 residuary gift or any part thereof, including a residuary gift to a surviving spouse in lieu of  
 369 year's support, shall be deemed a gift of the net residuum or part thereof remaining after  
 370 all debts of the testator and expenses of administration of the estate, including taxes, have  
 371 been paid.

372 (b) If the residuum proves to be insufficient for the payment of the testator's debts of the  
 373 testator and the expenses of administration of the estate, then general testamentary gifts

374 shall abate pro rata to make up the deficiency. If general testamentary gifts are insufficient,  
 375 then demonstrative testamentary gifts shall abate in the same manner. If both general and  
 376 demonstrative gifts are insufficient, then specific gifts shall abate in the same manner.

377 (c) After the estate assets in the ~~executor's~~ hands of the personal representative are  
 378 exhausted, a creditor may proceed against each beneficiary for that beneficiary's pro rata  
 379 share of the debts to the extent a testamentary gift has been distributed to that beneficiary.

380 (d) Realty and personalty shall be equally liable for the payment of debts.

381 (e) Unless otherwise expressly directed in the will, nothing in this Code section shall be  
 382 deemed to limit any rights to reimbursement for federal estate taxes, generation-skipping  
 383 transfer taxes, or any other taxes that may be available to personal representatives under  
 384 federal law."

### 385 **SECTION 1-17.**

386 Said title is further amended by revising Code Section 53-4-68, relating to conditions that are  
 387 impossible, illegal, or against public policy, and conditions in terrorem, as follows:

388 "53-4-68.

389 (a) Conditions in a will that are impossible, illegal, or against public policy shall be void.

390 (b) A condition in terrorem shall be void unless there is a direction in the will as to the  
 391 disposition of the property if the condition in terrorem is violated, in which event the  
 392 direction in the will shall be carried out, except as otherwise provided in subsection (c) of  
 393 this Code section.

394 (c) A condition in terrorem shall not be enforceable against an interested person for:

395 (1) Bringing an action for interpretation or enforcement of a will;

396 (2) Bringing an action for an accounting, for removal, or for other relief against a  
 397 personal representative; or

398 (3) Entering into a settlement agreement."

### 399 **SECTION 1-18.**

400 Said title is further amended by repealing Code Section 53-4-75, relating to construction of  
 401 wills and trust instruments referring to federal estate and generation-skipping transfer tax  
 402 laws, in its entirety.

### 403 **SECTION 1-19.**

404 Said title is further amended by revising Code Section 53-5-2, relating to right to offer will  
 405 for probate and "interested person" defined, as follows:

406 "53-5-2.

407 (a) As used in this Code section, the term 'interested person' shall include, but shall not  
 408 necessarily be limited to, any heir of the decedent; legatee, devisee, or beneficiary under  
 409 the will; creditor of the decedent; purchaser from an heir of the decedent; administrator or  
 410 temporary administrator appointed for the estate of the decedent prior to the discovery of  
 411 the will; trustee or beneficiary of a testamentary trust established by the will or of a trust  
 412 to which the will makes a devise or bequest; and individual making a claim under, or  
 413 having standing to caveat to the probate of, an earlier will. An agent, conservator,  
 414 guardian, guardian ad litem, or other fiduciary or appropriate representative of such an  
 415 interested person may act on such interested person's behalf.

416 (b) The right to offer a will for probate shall belong to the executor, if one is named. If for  
 417 any reason the executor fails to offer the will for probate with reasonable promptness, or  
 418 if no executor is named, any interested person may offer the will for probate. As used in  
 419 this Code section, the term 'interested person' shall include, but shall not be limited to, any  
 420 legatee, devisee, creditor of the decedent, purchaser from an heir of the decedent, an  
 421 administrator appointed for the decedent prior to the discovery of the will, and any  
 422 individual making a claim under an earlier will."

423 **SECTION 1-20.**

424 Said title is further amended by revising Code Section 53-5-3, relating to time limitation, as  
 425 follows:

426 "53-5-3.

427 (a) As used in this Code section, the term 'will' includes a codicil.

428 (b) A will shall not be offered for probate following the expiration of five years from the  
 429 earlier of:

430 (1) The latest date on which a petition is filed for:

431 (1) ~~The~~ the appointment of a personal representative of the decedent's estate; ~~or,~~

432 (2) ~~An~~ an order that no administration is necessary on the decedent's estate; or the  
 433 probate of a different will; or

434 (2) The date of entry of a final order granting any petition of the sort described in  
 435 paragraph (1) of this subsection that remains in continuing force and effect

436 provided, however, that the will of a testator who died prior to January 1, 1998, may be  
 437 offered for probate at least until December 31, 2002.

438 (c) The offering of a will for probate following the entry of an order of the sort described  
 439 in paragraph (2) of subsection (b) of this Code section shall constitute a claim against a  
 440 decedent's estate that arose before the death of the decedent for purposes of Code  
 441 Section 9-3-36."

442 **SECTION 1-21.**

443 Said title is further amended by revising Code Section 53-5-17, relating to procedure, as  
 444 follows:

445 "53-5-17.

446 (a) A will may be proved in common form upon the testimony of a single subscribing  
 447 witness and without service or notice to anyone. If the will is self-proved, compliance with  
 448 signature requirements for execution is presumed and other requirements for execution are  
 449 presumed without the testimony of any subscribing witness.

450 (b) The petition to probate a will in common form shall set forth the same information  
 451 required in a petition to probate a will in solemn form. The petition shall conclude with a  
 452 prayer for the issuance of letters testamentary."

453 **SECTION 1-22.**

454 Said title is further amended by revising Code Section 53-5-19, relating to when conclusive  
 455 upon parties in interest, as follows:

456 "53-5-19.

457 Probate in common form shall become conclusive upon all parties in interest four years  
 458 from the ~~time of~~ date the order admitting such will to probate in common form is entered  
 459 by the court in such proceeding, except upon minor heirs who require proof in solemn form  
 460 and interpose a caveat within four years after reaching the age of majority. In such case,  
 461 if the will is refused probate in solemn form and no prior will is admitted to probate, an  
 462 intestacy shall be declared only as to the minor or minors and not as to others whose right  
 463 to caveat is barred by the lapse of time."

464 **SECTION 1-23.**

465 Said title is further amended by revising Code Section 53-5-20, relating to conclusiveness,  
 466 as follows:

467 "53-5-20.

468 (a) Probate in solemn form is conclusive upon all ~~parties notified~~ persons served with  
 469 notice, including persons waiving service of notice or served with notice through a  
 470 guardian ad litem or other appropriate representative, and upon all beneficiaries under the  
 471 will who are represented by the ~~executor~~ personal representative.

472 (b) As to heirs and other persons required to be served with notice by Code  
 473 Section 53-5-22 who are not effectively notified served with notice in a manner adequate  
 474 to satisfy subsection (a) of this Code section, a proceeding to probate in solemn form shall  
 475 otherwise be as conclusive as if probate had been in common form.

476 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, a  
 477 proceeding to probate in solemn form is conclusive against all persons, regardless of  
 478 service or notice, six months from the date the order admitting such will to probate in  
 479 solemn form is entered by the court in such proceeding."

480

**SECTION 1-24.**

481 Said title is further amended by revising Code Section 53-5-21, relating to procedure, as  
 482 follows:

483 "53-5-21.

484 (a) A will may be proved in solemn form after ~~due~~ service of notice upon the persons  
 485 required to be served, upon the testimony of all the witnesses in life and within the  
 486 jurisdiction of the court, or by proof of their signatures and that of the testator as provided  
 487 in Code Section 53-5-23. ~~The; provided, however, that the~~ testimony of only one witness  
 488 shall be required to prove the will in solemn form if no caveat is filed. If a will is  
 489 self-proved, compliance with signature requirements and other requirements of execution  
 490 is presumed subject to rebuttal without the necessity of the testimony of any witness upon  
 491 filing the will and affidavit annexed or attached thereto.

492 (b) The petition to probate a will in solemn form shall set forth the full name, the place of  
 493 domicile, and the date of death of the testator; the mailing address of the petitioner; the  
 494 names, ages or majority status, and addresses of ~~the surviving spouse and of all the other~~  
 495 heirs, stating their each such heir's relationship to the testator; and whether, to the  
 496 knowledge of the petitioner, any other proceedings with respect to the probate of another  
 497 purported will of the testator are pending in this state and, if so, the names and addresses  
 498 of the propounders and the names, addresses, and ages or majority status of the  
 499 beneficiaries under the other purported will. If a testamentary guardian is being appointed  
 500 in accordance with subsection (b) of Code Section 29-2-4, the names and mailing addresses  
 501 of any persons required to be served with notice pursuant to such Code section shall be  
 502 provided by the petitioner. In the event full particulars are lacking, the petition shall state  
 503 the reasons for any omission. The petition shall conclude with a prayer for issuance of  
 504 letters testamentary. If all of the heirs acknowledge service of the petition and notice and  
 505 shall in their acknowledgment assent thereto, and if there are no other proceedings pending  
 506 in this state with respect to the probate of another purported will of the decedent, the will  
 507 may be probated and letters testamentary thereupon may issue without further delay;  
 508 provided, however, that letters of guardianship shall only be issued in accordance with  
 509 Code Section 29-2-4."

**SECTION 1-25.**

510  
511 Said title is further amended by revising Code Section 53-5-22, relating to notice, as follows:

512 "53-5-22.

513 (a) Probate in solemn form requires ~~due service of notice to~~ on all the heirs of the testator;  
514 and, if there is any other purported will of the testator for which probate proceedings are  
515 pending in this state, ~~then such notice shall also be given to~~ on all the beneficiaries under  
516 and propounders of such purported will. Service of a notice of a petition for probate in  
517 solemn form shall be by personal service if the party resides in this state and is known and  
518 shall be served at least ~~ten~~ 30 days before probate is to be made, except that, if such service  
519 of notice is waived, the ~~ten-day~~ 30 day provision shall not apply.

520 (b) For purposes of ~~giving~~ servicing notice ~~to~~ on beneficiaries under a purported will for  
521 which probate proceedings are pending in this state, notice shall be ~~given to~~ served on:

522 (1) Each beneficiary:

523 (A) Who has a present interest, including but not limited to a vested remainder interest  
524 but not including trust beneficiaries where there is a trustee; and

525 (B) Whose identity and whereabouts are known or may be determined by reasonable  
526 diligence;

527 (2) The duly acting conservator or guardian of each individual beneficiary with a present  
528 interest or power, other than a mere trust beneficiary, who is not sui juris; and

529 (3) Each trustee.

530 Service of notice ~~Notice~~ shall not be required in the case of a person whose interest, even  
531 though vested, cannot be possessed until the passage of time or the happening of a  
532 contingency. The probate court may, on the motion of any party in interest or on its own  
533 motion, modify the service of notice required in the case of numerous beneficiaries of the  
534 same or similar class where the value of each testamentary gift is, or appears to be,  
535 nominal. Upon the motion of any party in interest or upon its own motion, the court may  
536 determine whether the interest of any beneficiary required to be ~~notified~~ served with notice  
537 under this subsection is adequately represented, including any contingent interest of a  
538 beneficiary, and if such representation is found to be inadequate, the court may appoint a  
539 guardian ad litem to represent each beneficiary or order such other service of notice as may  
540 be appropriate to a beneficiary of a contingent interest. If a trustee named in the will  
541 indicates a refusal to represent the beneficiaries of the testamentary trust, the court may  
542 order that notice be ~~given~~ served directly ~~to~~ on the beneficiaries of the trust. The  
543 provisions of Code Section 53-12-8 shall be applicable to a trust beneficiary required to be  
544 served with notice or represented under this subsection.

545 (c) Service of a notice of petition for probate in solemn form shall be in accordance with  
546 the provisions of Chapter 11 of this title and, if made personally or by mail, shall include

547 a copy of the petition and of the will for which probate is sought. If service is to be made  
 548 by publication, the published notice shall set forth the court, the time the order for service  
 549 by publication was granted, the name of the decedent, the fact that a petition has been filed  
 550 seeking the probate of the will of the decedent in solemn form, and the name of the  
 551 petitioner who seeks letters testamentary or the continuance in force of any letters  
 552 testamentary previously granted. The notice shall command all parties to whom it is  
 553 directed to file objection, if there is any."

554 **SECTION 1-26.**

555 Said title is further amended by revising Code Section 53-5-25, relating to settlement  
 556 agreement, as follows:

557 "53-5-25.

558 (a) As used in this Code section, the term: Upon petition of the interested parties, any  
 559 superior court on appeal or

560 (1) 'Court' means any probate court which that is so authorized by Article 6 of Chapter 9  
 561 of Title 15 or any superior court on appeal or transfer from a probate court that is not so  
 562 authorized.

563 (2) 'Interested persons' means all persons whose interests would be affected by the  
 564 approval of a settlement agreement in the manner provided in this Code section.

565 (b) The court may approve a settlement agreement under which probate is granted or  
 566 denied; or providing for a disposition of the property contrary to the terms of the will, if all  
 567 interested persons consent and any duly qualified personal representative or temporary  
 568 administrator is served with notice of the petition to approve such settlement agreement.

569 (c) A proceeding to approve a settlement agreement under this Code section may be  
 570 commenced by an interested person or by any duly qualified personal representative or  
 571 temporary administrator. Service of notice of a petition to approve a settlement agreement  
 572 under this Code section shall be made in the manner provided by Chapter 11 of this title  
 573 to all the interested persons, any duly qualified personal representative or temporary  
 574 administrator, and such other persons as the court may direct.

575 (d) Approval of any settlement agreement that provides for the probate of the will, the  
 576 sustaining of the caveat, or the disposition of the property contrary to the terms of the will  
 577 shall be after a such additional service of notice and such hearing, notice of which shall be  
 578 given as the court may direct, at which in the exercise of its sound discretion. At any such  
 579 hearing, the court may require or receive such evidence is introduced and at which as the  
 580 court finds as a matter of fact that may deem appropriate and may determine whether there  
 581 is a bona fide contest or controversy.

582 ~~(b)(e) All interested persons All individuals~~ who are sui juris ~~and affected by such a~~  
 583 ~~settlement agreement~~ shall be authorized to enter into ~~such an~~ a settlement agreement,  
 584 which shall be assented to in writing by all ~~the heirs of the testator and by all sui juris~~  
 585 ~~beneficiaries affected by such a settlement~~ interested persons.

586 ~~(e)(f) All interested persons All individuals~~ who are not sui juris; or who are unborn  
 587 ~~beneficiaries, heirs, or persons or~~ unknown shall be represented in such proceedings by an  
 588 independent guardian ad litem. It shall be the duty of the guardian ad litem to investigate  
 589 the proposed settlement and report to the court ~~the~~ such guardian's findings and  
 590 recommendations. The court shall take the recommendations into consideration but shall  
 591 not be bound by such recommendations; provided, however, that, for purposes of  
 592 subsection (b) of this Code section, the guardian ad litem's recommendation that the court  
 593 approve the settlement agreement shall constitute consent to the settlement agreement by  
 594 the guardian ad litem on behalf of all interested persons represented by such guardian.

595 (g) If a trust designated in the will to take an interest in real or personal property would  
 596 have such interest affected by the settlement agreement, the provisions of such agreement  
 597 affecting such interest must satisfy the requirements of Code Section 53-12-9 in order to  
 598 be binding on the trust, the trustee, any trust director, and the trust beneficiaries.

599 ~~(d)(h) A judgment entered in by the court and based upon approving the settlement~~  
 600 ~~agreement shall be binding on all parties including individuals not sui juris, unborn~~  
 601 ~~beneficiaries or heirs, and persons unknown who are represented before the court by the~~  
 602 ~~guardian ad litem appointed for that purpose~~ conclusive in the same manner as probate in  
 603 solemn form, as provided by Code Section 53-5-20.

604 (i) Entering into or petitioning a court regarding a settlement agreement under this Code  
 605 section shall not constitute a violation of a condition in terrorem under Code  
 606 Section 53-4-68."

607 **SECTION 1-27.**

608 Said title is further amended in Article 4 of Chapter 5, relating to witnesses, settlement  
 609 agreement, and expenses, by adding a new Code section to read as follows:

610 "53-5-27.

611 (a)(1) As used in this Code section, the term 'court' means any probate court that is so  
 612 authorized by Article 6 of Chapter 9 of Title 15 or any superior court on appeal or  
 613 transfer from a probate court that is not so authorized.

614 (2) Except as provided in subsection (b) of this Code section, the personal representative  
 615 nominated in the will or duly qualified so to serve and all persons whose interests would  
 616 be affected may enter into a binding nonjudicial settlement agreement with respect to any  
 617 matter involving a will.

618 (b) A nonjudicial settlement agreement shall be valid only to the extent it does not violate  
 619 a material intention of the testator under Article 6 of Chapter 4 of this title and includes  
 620 terms and conditions that properly could be approved by the court under Code Section  
 621 53-5-25 or other applicable law.

622 (c) A nonjudicial settlement agreement entered into in accordance with this Code section  
 623 shall be final and binding on all parties to such agreement, including individuals not sui  
 624 juris, unborn individuals, and persons unknown who are represented by a guardian who  
 625 may represent and bind such parties under Code Section 53-5-25 or 53-11-2, as if ordered  
 626 by a court with competent jurisdiction over the will, the estate of the decedent, and the  
 627 parties.

628 (d) Any person bound by a nonjudicial settlement agreement under subsection (c) of this  
 629 Code section may request that the court approve such agreement, determine whether the  
 630 representation provided under Code Section 53-5-25 or 53-11-2 was adequate, determine  
 631 whether such agreement violates a material intention of the testator under Article 6 of  
 632 Chapter 4 of this title, determine whether such agreement contains terms and conditions the  
 633 court properly could have approved, or make any other similar determination.

634 (e) If a trust designated in the will to take an interest in real or personal property would  
 635 have such interest affected by the nonjudicial settlement agreement, the provisions of such  
 636 agreement affecting such interest must satisfy the requirements of Code Section 53-12-9  
 637 in order to be binding on the trust, the trustee, any trust director, and the trust beneficiaries.

638 (f) Entering into or petitioning a court regarding a nonjudicial settlement agreement under  
 639 this Code section shall not constitute a violation of a condition in terrorem under Code  
 640 Section 53-4-68."

641 **SECTION 1-28.**

642 Said title is further amended by revising Code Section 53-5-50, relating to original  
 643 jurisdiction, as follows:

644 "53-5-50.

645 (a) The probate court shall have original jurisdiction over any action petition to vacate, set  
 646 aside, or amend its order admitting a will to probate ~~which alleges:~~

647 ~~(1) That another will is entitled to be admitted to probate; or~~

648 ~~(2) That a codicil to the probated will is entitled to be admitted to probate.~~

649 (b) A petition under subsection (a) of this Code section may be brought in the probate  
 650 court to vacate, set aside, or amend its order admitting a will to probate based upon:

651 (1) Another will being entitled to be admitted to probate;

652 (2) A codicil to the probated will being entitled to be admitted to probate;

653 (3) Lack of jurisdiction;

654 (4) Fraud, accident, or mistake or the acts of the adverse party unmixed with the  
 655 negligence or fault of the petitioner; or  
 656 (5) A nonamendable defect that appears upon the face of the record or pleadings.  
 657 (c)(1) Any such ~~action~~ petition based upon paragraph (1) of subsection (b) of this Code  
 658 section shall be combined with a petition to probate the other will in solemn form ~~the~~  
 659 ~~other will or codicil.~~  
 660 (2) Any such petition based upon paragraph (2) of subsection (b) of this Code section  
 661 shall be combined with a petition to probate the codicil in solemn form.  
 662 (3) In any such petition based upon paragraph (1) or (2) of subsection (b) of this Code  
 663 section, ~~the~~ The court shall consider the petition to probate in solemn form together with  
 664 the ~~action~~ petition to vacate, set aside, or amend; and the court shall grant relief as is  
 665 appropriate with respect to each matter.  
 666 (d) In any such petition based upon paragraph (5) of subsection (b) of this Code section,  
 667 it is not sufficient that the pleadings fail to state a claim upon which relief can be granted,  
 668 but the pleadings must affirmatively show no claim in fact existed."

669 **SECTION 1-29.**

670 Said title is further amended by revising Code Section 53-5-51, relating to contents of  
 671 petition, service of notice, and issuance of relief, as follows:

672 "53-5-51.

673 (a) ~~The~~ A petition made pursuant to Code Section 53-5-50 shall set forth the allegations  
 674 on which ~~the action~~ such petition is based and the name and address of the then acting  
 675 personal representative, if any, of the estate, or, if none, the beneficiaries of the previously  
 676 probated will required to be served by Code Section 53-5-22. ~~The~~ Such petition shall  
 677 conclude with a prayer for the issuance of an order vacating, setting aside, or amending the  
 678 earlier probate; and, if such petition is based upon paragraph (1) or (2) of subsection (b) of  
 679 Code Section 53-5-50, for the probate of the ~~new~~ newly propounded will or codicil in  
 680 solemn form; and for the issuance of new letters testamentary.

681 (b) The beneficiaries under the previously probated will shall be represented in the action  
 682 by the then acting personal representative, if any; and service of notice upon the personal  
 683 representative in the same manner as provided for by law under Chapter 11 of this title  
 684 shall be the equivalent of service of notice upon the beneficiaries.

685 (c) If there is no then acting personal representative, ~~the~~ such petition and the citation  
 686 issued thereon shall be served upon the beneficiaries who are required to be served by Code  
 687 Section 53-5-22 of the previously probated will, in the same manner as upon the heirs,  
 688 unless all such parties assent to ~~the~~ such petition.

689 (d) If the then acting personal representative acknowledges service of ~~the~~ such petition and  
 690 notice and assents to the relief in the acknowledgment of service of such petition and  
 691 notice, the relief ~~upon the~~ prayed for in such petition may issue without delay. In the event  
 692 there is no then acting personal representative, if all the beneficiaries acknowledge service  
 693 of ~~the~~ such petition and notice and assent in their acknowledgments, ~~the~~ such relief may  
 694 issue without delay."

695 **SECTION 1-30.**

696 Said title is further amended in Article 6 of Chapter 5, relating to jurisdiction, by adding two  
 697 new Code sections to read as follows:

698 "53-5-52.

699 (a) A petition based upon paragraph (1) or (2) of subsection (b) of Code Section 53-5-50  
 700 shall be brought before:

701 (1) The probate of the previously probated will becomes conclusive upon the petitioner  
 702 under Code Section 53-5-19 or 53-5-20; and

703 (2) The expiration of the time within which the newly propounded will must be offered  
 704 for probate under Code Section 53-5-3.

705 (b) A petition based upon paragraph (3) of subsection (b) of Code Section 53-5-50 may  
 706 be brought at any time.

707 (c) In all other instances, a petition made pursuant to this article shall be brought within  
 708 three years from entry of the order admitting a will to probate.

709 (d) The filing of a petition made pursuant to this article shall constitute a claim against a  
 710 decendent's estate that arose before the death of the decedent for purposes of Code  
 711 Section 9-3-36.

712 53-5-53.

713 The provisions of this article shall govern in proceedings in the probate court to vacate, set  
 714 aside, or amend an order admitting a will to probate, and the provisions of Code Section  
 715 9-11-60 shall not be applicable to such proceedings."

716 **SECTION 1-31.**

717 Said title is further amended by revising Code Section 53-6-14, relating to selection by  
 718 beneficiaries, as follows:

719 "53-6-14.

720 (a) For purposes of this Code section, a beneficiary who is capable of expressing a choice  
 721 is one:

- 722 (1) Who has a present interest, including but not limited to a vested remainder interest  
 723 but not including trust beneficiaries where there is a trustee; and
- 724 (2) Whose identity and whereabouts are known or may be determined by reasonable  
 725 diligence.
- 726 (b) An administrator with the will annexed may be unanimously selected by the  
 727 beneficiaries of the will who are capable of expressing a choice unless the sole beneficiary  
 728 is the decedent's surviving spouse and an action for divorce or separate maintenance was  
 729 pending between the decedent and the surviving spouse at the time of death. When no such  
 730 unanimous selection is made, the probate court shall make the appointment that will best  
 731 serve the interests of the estate, considering the following preferences:
- 732 (1) Any beneficiary or the trustee of any trust that is a beneficiary under the will; or  
 733 (2) Those persons listed in paragraphs (3) through (5) of Code Section 53-6-20.
- 734 (c) For purposes of this Code section, a beneficiary's choice is expressed by:
- 735 (1) That beneficiary, if the beneficiary is sui juris;
- 736 (2) That beneficiary's duly acting conservator or guardian or, if ~~none~~ there is no  
 737 conservator or guardian, the person having custody of the beneficiary, if the beneficiary  
 738 is not sui juris;
- 739 (3) The trustee of a trust that is a beneficiary under the will, where there is a trustee; ~~or~~
- 740 (4) The beneficiary of a trust that is a beneficiary under the will, where there is no  
 741 trustee; provided, however, that for purposes of this paragraph, a trust beneficiary may  
 742 be represented as provided in Code Section 53-12-8; or
- 743 (5) The personal representative of a deceased beneficiary receiving a present interest  
 744 under the will."

### 745 SECTION 1-32.

746 Said title is further amended by revising Code Section 53-6-15, relating to petition for letters  
 747 of administration with will annexed, as follows:

748 "53-6-15.

- 749 (a) Every petition for letters of administration with the will annexed shall be made in  
 750 accordance with the procedures set forth in Code Section 53-5-21 if the will has not yet  
 751 been admitted to probate and shall include a prayer for issuance of letters of administration  
 752 with the will annexed. ~~The~~ Such petition shall set forth the names, addresses, and ages or  
 753 majority status of the beneficiaries who are capable of expressing a choice, as defined in  
 754 subsection (a) of Code Section 53-6-14, and the circumstances giving rise to the need for  
 755 an administrator with the will annexed. ~~The~~ Such petition and the citation issued thereon  
 756 shall be served by the court on the beneficiaries of the will who are capable of expressing  
 757 a choice in the manner ~~described in~~ provided by Chapter 11 of this title. If the petition for

758 letters of administration with the will annexed is based upon the expiration of a reasonable  
 759 time for any nominated executor to qualify, any nominated executor who has failed to  
 760 qualify shall also be served with notice by the court in the manner provided by Chapter 11  
 761 of this title.

762 (b) If the will has been admitted to probate, the petition for letters of administration with  
 763 the will annexed shall set forth the names, addresses, and ages or majority status of the  
 764 beneficiaries who are capable of expressing a choice, as described in subsection (a) of Code  
 765 Section 53-6-14, the date on which the will was admitted to probate, and the circumstances  
 766 giving rise to the need for an administrator with the will annexed. ~~The Such~~ petition and  
 767 the citation issued thereon shall be served by the court on the beneficiaries of the will and  
 768 the ~~executor~~ personal representative, if any, of the estate of any deceased executor whose  
 769 death created the vacancy in the manner ~~described in~~ provided by Chapter 11 of this title.

770 (c) In the case of an estate partially administered and unrepresented because of the death  
 771 of the previous executor, the judge shall determine whether the interest of the first estate  
 772 and the persons interested in the first estate will ~~be best~~ be served by the appointment of  
 773 an administrator with the will annexed or of the executor, if any, appointed under the will  
 774 of the deceased previous executor."

775 **SECTION 1-33.**

776 Said title is further amended by revising Code Section 53-6-22, relating to notice, as follows:  
 777 "53-6-22.

778 Notice of the petition for letters of administration shall be ~~mailed~~ served by the court by  
 779 first-class mail ~~to~~ on each heir with a known address at least ~~13~~ 30 days prior to the date  
 780 on or before which any objection is required to be filed. If there is any heir whose current  
 781 address is unknown or any heir who is unknown, notice shall be served on any such heir  
 782 by being published in the official newspaper of the county in which the petition is made  
 783 once each week for four weeks prior to the week ~~which~~ that includes the date on or before  
 784 which any objection must be filed."

785 **SECTION 1-34.**

786 Said title is further amended by revising Code Section 53-6-30, relating to power of court,  
 787 appointment of administrator, and appeal, as follows:

788 "53-6-30.

789 (a) The probate court may at any time and without service or notice to anyone grant  
 790 temporary letters of administration on an unrepresented estate to continue in full force and  
 791 effect until the temporary administrator is discharged or a personal representative is  
 792 appointed.

793 (b) The probate court may appoint such person as temporary administrator as the court  
 794 determines to be in the best interests of the estate. Pending an issue of devisavit vel non  
 795 upon any paper propounded as a will ~~which~~ that has not been admitted to probate in  
 796 common form, the executor nominated in the purported will shall have preference in the  
 797 appointment of a temporary administrator.

798 (c) There shall be no appeal from an order granting temporary letters of administration,  
 799 either to the superior court under subsection (a) of Code Section 5-3-2 or to the Supreme  
 800 Court or the Court of Appeals under subsection (a) of Code Section 15-9-123."

801 **SECTION 1-35.**

802 Said title is further amended by revising Code Section 53-6-31, relating to power of  
 803 administrator, as follows:

804 "53-6-31.

805 (a) A temporary administrator may bring an action for the collection of debts or for  
 806 personal property of the decedent. If a personal representative is appointed pending ~~the~~  
 807 such action, the personal representative may be ~~made a party in lieu of~~ substituted for the  
 808 temporary administrator as a party in the manner provided by Article 4 of Chapter 11 of  
 809 Title 9.

810 (b) A temporary administrator may bring, support, or oppose an action to approve a  
 811 settlement agreement under Code Section 53-5-25. If a personal representative is  
 812 appointed pending such action, the personal representative may be substituted for the  
 813 temporary administrator as a party in the manner provided by Article 4 of Chapter 11 of  
 814 Title 9.

815 (c) A temporary administrator shall have the power to collect and preserve the assets of  
 816 the estate and to expend funds for this purpose if approved by the judge of the probate court  
 817 after such notice as the judge deems necessary; provided, however, that nothing in this  
 818 subsection shall limit or reduce the notice requirements imposed by Code Sections 53-6-64  
 819 and 53-7-4.

820 (d) A temporary administrator appointed pursuant to Code Section 53-3-21 shall have the  
 821 power to perform the duties of a personal representative under subsection (b) of Code  
 822 Section 53-3-7 or under subsection (b) of Code Section 53-3-12, as ordered by the judge  
 823 of the probate court."

824 **SECTION 1-36.**

825 Said title is further amended in Article 4 of Chapter 6, relating to temporary administration,  
 826 by adding a new Code section to read as follows:

827 "53-6-32.

828 (a) Every temporary administrator, upon qualification (which qualification may be done  
829 at any time), shall take and subscribe an oath or affirmation in substantially the following  
830 form:

831 I do solemnly swear (or affirm) that \_\_\_\_\_, deceased, died (testate) (intestate)  
832 and with an estate that is currently unrepresented, so far as I know or believe, and that I  
833 will well and truly administer on all the estate of the Deceased and discharge to the best  
834 of my ability all my duties as Temporary Administrator. So help me God.'

835 (b) The oath or affirmation of a temporary administrator as provided in subsection (a) of  
836 this Code section may be subscribed before the judge or clerk of any probate court of this  
837 state. The probate court appointing the temporary administrator shall have the authority  
838 to grant a commission to a judge or clerk of any court of record of any state to administer  
839 the oath or affirmation."

840 **SECTION 1-37.**

841 Said title is further amended by revising Code Section 53-6-62, relating to extra  
842 compensation, as follows:

843 "53-6-62.

844 (a) A personal representative may petition the probate court for compensation that is  
845 greater than that allowed under Code Section 53-6-60. Service of notice of the petition for  
846 extra compensation shall be made ~~to~~ on all the heirs of an intestate decedent or ~~to~~ on any  
847 affected beneficiaries under the will of a testate decedent. Service of notice shall be made  
848 in the manner ~~described in~~ provided by Chapter 11 of this title and shall direct the parties  
849 served to file any written objections to the extra compensation with the probate court  
850 within ~~ten~~ 30 days.

851 (b) After hearing any objection filed by the heirs or beneficiaries of the estate, the probate  
852 court shall allow such extra compensation as the court deems reasonable; provided,  
853 however, that if no such objection is filed or any such objection is dismissed or withdrawn,  
854 the court, in its discretion, may enter an order allowing such extra compensation as the  
855 court deems reasonable without a hearing. The allowance of extra compensation shall be  
856 conclusive as to all parties in interest.

857 (c) If the amount of compensation that is specified in a testator's will is less than the  
858 amount allowed under Code Section 53-6-60, the personal representative may petition for  
859 greater compensation in the manner ~~described in~~ provided in subsection (a) of this Code  
860 section."

861 **SECTION 1-38.**

862 Said title is further amended by revising Code Section 53-7-1, relating to general powers and  
 863 duties of personal representative and additional powers, as follows:

864 "53-7-1.

865 (a) The duties and powers of the personal representative commence upon qualification.  
 866 Such powers relate back to give acts performed by the personal representative prior to  
 867 qualification that are beneficial to the estate the same effect as those acts performed after  
 868 qualification. The personal representative may ratify and accept on behalf of the estate acts  
 869 that are done by others that would have been proper acts for the personal representative.  
 870 A personal representative is a fiduciary who, in addition to the specific duties imposed by  
 871 law, is under a general duty to settle the estate as expeditiously and with as little sacrifice  
 872 of value as is reasonable under all of the circumstances. The personal representative shall  
 873 use the authority and powers conferred by law, by the terms of any will under which the  
 874 personal representative is acting, by any order of court in proceedings to which the personal  
 875 representative is a party, and by the rules generally applicable to fiduciaries to act in the  
 876 best interests of all persons who are interested in the estate and with due regard for their  
 877 respective rights.

878 (b)(1) As part of the petition for letters testamentary, letters of administration with the  
 879 will annexed, or letters of administration or by separate petition, the beneficiaries of a  
 880 testate estate or the heirs of an intestate estate may, by unanimous consent, authorize but  
 881 not require the probate court to grant to the personal representative any of the powers  
 882 contained in Code Section 53-12-261; provided, however, that the grant by the probate  
 883 court of the powers provided by paragraph (1) of subsection (b) of Code  
 884 Section 53-12-261 shall not authorize the personal representative to bind the estate by any  
 885 warranty in any conveyance or contract in violation of subsection (a) of Code  
 886 Section 53-8-14.

887 (2) With respect to any beneficiary of a testate estate or heir of an intestate estate who  
 888 is not sui juris, the consent required by paragraph (1) of this subsection may be given by  
 889 the such beneficiary's or heir's duly acting conservator or guardian. The personal  
 890 representative of a deceased beneficiary or heir shall be authorized to consent on behalf  
 891 of that such deceased beneficiary or heir.

892 (3) The grant of powers shall only provided for in paragraph (1) of this subsection shall  
 893 be ordered only after publication of a citation in the official newspaper of the county in  
 894 which the petition is made and only after the time for filing objections has elapsed either  
 895 without any objection being timely filed, or if any such objection is timely filed, upon  
 896 each such objection being dismissed or withdrawn. The citation shall be sufficient if it

897 states generally that the petition requests that powers contained in Code Section  
898 53-12-261 be granted."

899 **SECTION 1-39.**

900 Said title is further amended by revising Code Section 53-7-5, relating to powers, duties, and  
901 liabilities if more than one personal representative and safe deposit boxes or receptacles, as  
902 follows:

903 "53-7-5.

904 (a) If more than one personal representative is qualified and unless the will provides  
905 otherwise:

906 (1) The personal representatives must act by their unanimous action; provided, however,  
907 that while a personal representative is unable to act because of inaccessibility, illness, or  
908 other incapacity, or when a vacancy occurs for any other reason, the remaining personal  
909 representatives may act as if they were the only personal representatives if necessary to  
910 administer the estate; and

911 (2) The personal representatives may delegate in writing to one or more of them the  
912 authority to act for all of them; provided, however, that such delegation must satisfy the  
913 requirements of Code Sections 10-6B-5 and 10-6B-40, and that all the personal  
914 representatives remain liable for the actions of the personal representative who is  
915 authorized to act.

916 (b) If more than one personal representative is qualified and unless the will provides  
917 otherwise, a personal representative is liable for a breach committed by another personal  
918 representative:

919 (1) By participating in a breach of fiduciary duty committed by the other personal  
920 representative;

921 (2) By approving, knowingly acquiescing in, or concealing a breach of fiduciary duty  
922 committed by the other personal representative;

923 (3) By negligently enabling the other personal representative to commit a breach of  
924 fiduciary duty; or

925 (4) By neglecting to take reasonable steps to compel the other personal representative to  
926 redress a breach of fiduciary duty in a case where the personal representative knows or  
927 reasonably should have known of the breach of trust.

928 (c) When ~~safe deposit~~ safe-deposit boxes or receptacles are leased or rented to fiduciaries,  
929 including executors, administrators, guardians, trustees, custodians, receivers, and the like,  
930 the fiduciary or fiduciaries, as lessee or renter, may authorize the entering of the box or  
931 receptacle by one or fewer than all of them or by any other person without the presence or  
932 consent of the fiduciary or fiduciaries. Upon receipt of the written authorization, the bank

933 or lessor may without liability authorize access to the box or receptacle in accordance with  
 934 such authorization. Upon cancellation of the authorization, the bank or lessor may require  
 935 the presence of all lessees or renters for access."

936 **SECTION 1-40.**

937 Said title is further amended by revising Code Section 53-7-6, relating to power to borrow  
 938 money, make and fulfill contracts, provide legal counsel, continue decedent's business, and  
 939 perform other acts, as follows:

940 "53-7-6.

941 (a) Except as otherwise provided in the will or granted by the probate court pursuant to  
 942 paragraph (1) of subsection (b) of Code Section 53-7-1, a personal representative is  
 943 authorized:

944 (1) To borrow money and to bind the estate by the execution of a promissory note for  
 945 money borrowed and to pledge any or all the property of the estate for the payment of  
 946 such a promissory note by mortgage, trust deed, deed to secure debt, or other security  
 947 instrument, for the purpose of paying any gift, estate, inheritance, income, sales, or ad  
 948 valorem taxes due the United States, the state, or any municipality or county of the state  
 949 ~~which~~ that constitute a claim or demand against the estate; provided, however, that a  
 950 personal representative who desires to borrow money shall file a petition with the probate  
 951 court, setting forth the facts and specifying the amount to be borrowed, the purpose for  
 952 which the same shall be used, the rate of interest to be paid, the property to be pledged  
 953 as security and the period of time over which the loan is to be repaid and, upon service  
 954 of notice and hearing of the petition, an order granting leave to borrow the money and  
 955 encumber the estate shall be entered and such order shall be binding, final, and conclusive  
 956 as to all interested parties;

957 (2) To make contracts for labor or service for the benefit of the estate upon such terms  
 958 as the personal representative deems best and all such contracts made in good faith shall  
 959 be a charge upon and bind the estate whenever such contracts are approved by the probate  
 960 court after service of notice;

961 (3) To fulfill, as far as possible, the executory contracts and comply with the executed  
 962 contracts of the decedent, including contracts for the sale of land or bonds to make title  
 963 to land, and shall have a corresponding right to demand the same of parties contracted  
 964 with; provided, however, that if the personal skill of the decedent entered into the  
 965 consideration of the contract and the decedent's death renders execution impossible, the  
 966 contract, though entire, shall be considered divisible and closed at the decedent's death  
 967 and any partial execution by the decedent shall authorize and require a corresponding  
 968 compliance by the other contracting party;

969 (4) To provide competent legal counsel for the estate according to the needs of the estate  
 970 and, in such cases, either the personal representative or the attorney employed may, by  
 971 petition to the probate court ~~duty~~ and citation served on the other, obtain a judgment  
 972 fixing the attorney's fees and expenses;

973 (5) To continue the business of the decedent for the 12 months following qualification  
 974 of the personal representative, after which the personal representative may petition for  
 975 permission to continue the business under such terms and conditions as the probate court  
 976 may specify after service of notice; and

977 (6) To petition the probate court for permission to perform such other acts as may be in  
 978 the best interests of the estate after service of notice.

979 (b) Service of notice of any petition to the probate court under subsection (a) of this Code  
 980 section shall be made in the manner provided by Chapter 11 of this title. The probate court,  
 981 in its discretion, may, but shall not be required to, conduct a hearing on any such petition."

982 **SECTION 1-41.**

983 Said title is further amended by revising Code Section 53-7-8, relating to support and  
 984 education of minor heirs and beneficiaries without guardians, as follows:

985 "53-7-8.

986 Whenever a personal representative has paid all the debts of the decedent and all claims  
 987 against the estate, and property due minor heirs or beneficiaries for whom no one applies  
 988 to be ~~guardian~~ conservator is left in the personal representative's hands, the personal  
 989 representative may, under the direction of the probate court, apply so much of the minor's  
 990 share of the decedent's estate as may be necessary for support and education as ~~guardians~~  
 991 conservators are allowed by law to do."

992 **SECTION 1-42.**

993 Said title is further amended by revising Code Section 53-7-11, relating to allowable defenses  
 994 and action originating in lifetime of decedent, as follows:

995 "53-7-11.

996 When the cause of action originated in the lifetime of the decedent, a personal  
 997 representative may make any defense or pleading ~~which~~ that the decedent could have made  
 998 if alive."

999 **SECTION 1-43.**

1000 Said title is further amended by revising Code Section 53-7-13, relating to service of process,  
 1001 as follows:

1002 "53-7-13.

1003 (a) In any action or proceeding brought pursuant to this article, service of any notice, writ,  
 1004 or process shall be made in the manner provided by Chapter 11 of this title if Chapter 11  
 1005 of this title is applicable under Code Section 53-11-1. If Chapter 11 of this title is not  
 1006 applicable to such action or proceeding under Code Section 53-11-1, such service shall be  
 1007 made in the manner provided by Chapter 11 of Title 9 unless Chapter 11 of said title is not  
 1008 applicable to such action or proceeding under Code Section 9-11-81.

1009 (b) In all cases where there are two or more personal representatives and one or more of  
 1010 them removes beyond the limits of this state, service of any notice, writ, or process upon  
 1011 those remaining in the state shall be as effectual and complete, for all purposes whatever,  
 1012 as though such service had been made upon all of the personal representatives."

1013 **SECTION 1-44.**

1014 Said title is further amended by revising Code Section 53-7-15, relating to applicability of  
 1015 provisions relating to sureties on guardians' bonds, as follows:

1016 "53-7-15.

1017 The provisions of law governing the situation in which the surety on a guardian's or  
 1018 conservator's bond dies, becomes insolvent, removes beyond the limits of this state, from  
 1019 other cause becomes insufficient, or desires to be relieved as surety shall be applicable to  
 1020 sureties on personal representatives' bonds."

1021 **SECTION 1-45.**

1022 Said title is further amended by revising Code Section 53-7-41, relating to notice for  
 1023 creditors to render accounts and failure of creditors to give notice of claims, as follows:

1024 "53-7-41.

1025 (a) The personal representative shall be allowed six months from the date of the  
 1026 qualification of the first personal representative to serve in which to ascertain the condition  
 1027 of the estate.

1028 (b) Every personal representative shall, within 60 days from the date of qualification,  
 1029 publish a notice directed generally to all of the creditors of the estate to notify the personal  
 1030 representative of their claims and render an account of their demands for payment thereon.

1031 The personal representative's notice shall be published once a week for four weeks in the  
 1032 official newspaper of the county in which the personal representative qualified. No  
 1033 particular form shall be required for creditors to notify the personal representative of their  
 1034 claims, and such notification of a creditor's claim shall be sufficient for purposes of this  
 1035 Code section if given in writing, providing an account number or other identifying  
 1036 information or itemization adequate to establish the indebtedness as an obligation of the

1037 estate, and stating the principal balance and any applicable interest or other additional  
 1038 charges lawfully owed. An invoice or account statement satisfying the requirements of the  
 1039 preceding sentence of this subsection and generated by a creditor in the ordinary course of  
 1040 such creditor's business shall constitute sufficient notification to the personal representative  
 1041 of such creditor's claim if the personal representative actually receives such notification of  
 1042 the claim or if such creditor files such notification with the probate court having  
 1043 jurisdiction over the decedent's estate or sends such notification of the claim by electronic  
 1044 transmission, other form of wire or wireless communication, or by first-class mail or  
 1045 private carrier to the address of the decedent, the personal representative, or the attorney  
 1046 representing the personal representative; provided, however, that a notification of a claim  
 1047 sent by a creditor by electronic communication to an account for which the decedent is the  
 1048 user shall constitute sufficient notification to the personal representative of such creditor's  
 1049 claim only if the content of such electronic communication lawfully is disclosed to the  
 1050 personal representative pursuant to Chapter 13 of this title. As used in this subsection, the  
 1051 terms 'account', 'content of an electronic communication', 'electronic communication', and  
 1052 'user' shall have the meaning provided by Code Section 53-13-2.

1053 (c) After receiving sufficient notification of a creditor's claim under subsection (b) of this  
 1054 Code section, the personal representative may require reasonable additional proof or  
 1055 accounting from such creditor prior to paying such creditor's claim, but such requirement  
 1056 by the personal representative shall not affect adversely the timeliness of such creditor's  
 1057 notification to the personal representative of the creditor's claims.

1058 (d) Creditors who fail to ~~give notice of claims~~ notify the personal representative of their  
 1059 claims in the manner provided by subsection (b) of this Code section within three months  
 1060 from the date of publication of the personal representative's last notice shall lose all rights  
 1061 to an equal participation with creditors of equal priority to whom distribution is made  
 1062 before ~~notice~~ sufficient notification of such claims is ~~brought~~ given to the personal  
 1063 representative, and they may not hold the personal representative liable for a  
 1064 misappropriation of the funds. If, however, there are assets in the hands of the personal  
 1065 representative sufficient to pay such debts and if no claims of greater priority are unpaid,  
 1066 the assets shall be thus appropriated notwithstanding failure to ~~give notice~~ of such creditors  
 1067 timely to notify the personal representative of their claims."

1068 **SECTION 1-46.**

1069 Said title is further amended by revising Code Section 53-7-50, relating to petition by  
 1070 personal representative for discharge, citation and publication, hearing, and subsequently  
 1071 discovered estate, as follows:

1072 "53-7-50.

1073 (a) A personal representative who has fully performed all duties or who has been allowed  
1074 to resign may petition the probate court for discharge from the office and from all liability.  
1075 The petition shall state that the personal representative has fully administered the estate of  
1076 the decedent and shall set forth the names and addresses of all known heirs of an intestate  
1077 decedent or beneficiaries of a testate decedent, including any persons who succeeded to the  
1078 interest of any heir or beneficiary who died after the decedent died, and shall name which  
1079 of the heirs or beneficiaries is or should be represented by a guardian. The petition shall  
1080 state that the personal representative has paid all claims against the estate or shall  
1081 enumerate which claims of the estate have not been paid and the reason for such  
1082 nonpayment. The petition shall also state that the personal representative has filed all  
1083 necessary inventory and returns or, alternatively, has been relieved of such filings by the  
1084 testator, the heirs or beneficiaries, or the probate court.

1085 (b)(1) Subject to paragraphs (2) and (3) of this subsection, upon the filing of a petition  
1086 for discharge, citation shall issue to all heirs or beneficiaries, as provided in Chapter 11  
1087 of this title, requiring them to file any objections to the discharge, except that in all cases  
1088 a citation shall be published one time in the newspaper in which sheriff's advertisements  
1089 are published in the county in which the petition is filed at least ten days prior to the date  
1090 on or before which any objection is required to be filed. Any creditors whose claims are  
1091 disputed or who have not been paid in full due to insolvency of the estate shall be served  
1092 in accordance with Chapter 11 of this title.

1093 (2) Notwithstanding paragraph (1) of this subsection, it shall not be necessary to ~~notify~~  
1094 serve with notice any heir or beneficiary who has relieved the personal representative of  
1095 all liability or any heir or beneficiary with respect to whom the personal representative  
1096 has been relieved of all further liability in a binding proceeding such as a settlement of  
1097 accounts pursuant to Code Sections 53-7-60 through 53-7-63 or an intermediate report  
1098 pursuant to Code Sections 53-7-73 through 53-7-76.

1099 (3) For purposes of this Code section, a beneficiary is a person, including a trust, who  
1100 is designated in a will to take an interest in real or personal property and who (A) has a  
1101 present interest, including but not limited to a vested remainder interest but not including  
1102 a trust beneficiary where there is a trustee who is not also the personal representative  
1103 seeking discharge and (B) whose identity and whereabouts are known or may be  
1104 determined by reasonable diligence. For purposes of this Code section, a trust  
1105 beneficiary may be represented as provided in Code Section 53-12-8.

1106 (c) If any party in interest files objection to the discharge, a hearing shall be held. If as a  
1107 result of the hearing, the probate court is satisfied that the personal representative has  
1108 faithfully and honestly discharged the office, an order shall be entered releasing and

1109 discharging the personal representative from all liability. If no objections are filed, the  
 1110 probate court shall enter the order for discharge without further proceedings or delay. Any  
 1111 heir or beneficiary or creditor who is a minor at the time of the discharge and who is not  
 1112 represented by a guardian may, within two years of reaching the age of majority,  
 1113 commence suit against the personal representative and such discharge shall be no bar to the  
 1114 action.

1115 (d) If other property of the estate is discovered after an estate has been settled and the  
 1116 personal representative discharged, the probate court, upon petition of any interested person  
 1117 and upon such service or notice as it directs, may appoint the same personal representative  
 1118 or a successor personal representative to administer the subsequently discovered estate.  
 1119 If a new appointment is made, unless the probate court orders otherwise, the provisions of  
 1120 this title shall apply as appropriate; but no claim previously barred may be asserted in the  
 1121 subsequent administration.

1122 (e) A personal representative may petition the court solely for discharge from office by  
 1123 filing the petition described in subsection (a) of this Code section and by ~~giving~~ servicing  
 1124 notice by publication one time in the official county newspaper and by first-class mail to  
 1125 all creditors of the estate whose claims have not been paid informing them of their right to  
 1126 file an objection and be heard as described in subsection (c) of this Code section."

1127 **SECTION 1-47.**

1128 Said title is further amended by revising Code Section 53-7-54, relating to breach of  
 1129 fiduciary duty, as follows:

1130 "53-7-54.

1131 (a) If a personal representative or temporary administrator commits a breach of fiduciary  
 1132 duty or threatens to commit a breach of fiduciary duty, a beneficiary of a testate estate or  
 1133 heir of an intestate estate shall have a cause of action:

1134 (1) To recover damages;

1135 (2) To compel the performance of the personal representative's or temporary  
 1136 administrator's duties;

1137 (3) To enjoin the commission of a breach of fiduciary duty;

1138 (4) To compel the redress of a breach of fiduciary duty by payment of money or  
 1139 otherwise;

1140 (5) To appoint another personal representative or temporary administrator to take  
 1141 possession of the estate property and administer the estate;

1142 (6) To remove the personal representative or temporary administrator; and

1143 (7) To reduce or deny compensation to the personal representative or temporary  
 1144 administrator.

- 1145 (b) When estate assets are misapplied and can be traced in the hands of persons affected  
 1146 with notice of misapplication, a constructive trust shall attach to the assets.
- 1147 (c) The provision of remedies for breach of fiduciary duty by this Code section does not  
 1148 prevent resort to any other appropriate remedy provided by statute or common law.
- 1149 (d) In any action or proceeding brought pursuant to this Code section, service of notice or  
 1150 process shall be made in the manner provided by Chapter 11 of this title if Chapter 11 of  
 1151 this title is applicable under Code Section 53-11-1. If Chapter 11 of this title is not  
 1152 applicable to such action or proceeding under Code Section 53-11-1, such service shall be  
 1153 made in the manner provided by Chapter 11 of Title 9 unless Chapter 11 of such title is not  
 1154 applicable to such action or proceeding under Code Section 9-11-81."

1155 **SECTION 1-48.**

1156 Said title is further amended by revising Code Section 53-7-55, relating to revocation of  
 1157 letters of personal representative or other sanctions, as follows:

1158 "53-7-55.

1159 (a) Upon the petition of any person having an interest in the estate or whenever it appears  
 1160 to the probate court that good cause may exist to revoke the letters of a personal  
 1161 representative or impose other sanctions, the court shall cite the personal representative to  
 1162 answer to the charge. Upon investigation, the court may, in the court's discretion:

1163 (1) Revoke the personal representative's letters;

1164 (2) Require additional security;

1165 (3) Require the personal representative to appear and submit to a settlement of accounts  
 1166 following the procedure set forth in Article 6 of this chapter, regardless of whether or not  
 1167 the personal representative has first resigned or been removed and regardless of whether  
 1168 or not a successor fiduciary has been appointed; or

1169 (4) Issue such other order as in the court's judgment is appropriate under the  
 1170 circumstances of the case.

1171 (b) In any proceeding brought pursuant to this Code section, service of notice shall be  
 1172 made in the manner provided by Chapter 11 of this title."

1173 **SECTION 1-49.**

1174 Said title is further amended by revising Code Section 53-7-56, relating to resignation, as  
 1175 follows:

1176 "53-7-56.

1177 (a) A personal representative may resign:

1178 (1) In the manner and under the circumstances described in the will;

- 1179 (2) Upon petition to the probate court, showing that the resignation has been requested  
 1180 in writing by all heirs of an intestate estate or all beneficiaries of a testate estate; or  
 1181 (3) Upon petition to the probate court, showing to the satisfaction of the court that:  
 1182 (A) The personal representative is unable to continue serving due to age, illness,  
 1183 infirmity, or other good cause;  
 1184 (B) Greater burdens have developed upon the office of personal representative than  
 1185 those ~~which were~~ that originally were contemplated or should have been contemplated  
 1186 when the personal representative was qualified and the additional burdens would work  
 1187 a hardship upon the personal representative;  
 1188 (C) Disagreement exists between one or more of the beneficiaries or heirs and the  
 1189 personal representative in respect to the personal representative's management of the  
 1190 estate, which disagreement and conflict appear deleterious to the estate;  
 1191 (D) The resignation of the personal representative will result in or permit substantial  
 1192 financial benefit to the estate;  
 1193 (E) The resigning personal representative is one of two or more acting personal  
 1194 representatives and the other personal representatives will continue in office with no  
 1195 adversity to the estate contemplated; or  
 1196 (F) The resignation would not be disadvantageous to the estate.  
 1197 (b) A personal representative's petition to resign shall be made to the probate court and the  
 1198 court shall cause citation to issue and service shall of notice to be made upon all the heirs  
 1199 of an intestate estate or the beneficiaries of a testate estate in the manner provided by  
 1200 Chapter 11 of this title."

1201 **SECTION 1-50.**

1202 Said title is further amended by revising Code Section 53-7-62, relating to appearance before  
 1203 court, failure of personal representative to appear, and right to appeal, as follows:

1204 "53-7-62.

- 1205 (a) Any person interested as an heir or beneficiary of an estate or the probate court may,  
 1206 after the expiration of six months from the granting of letters, cite the personal  
 1207 representative to appear before the probate court for a settlement of accounts.  
 1208 Alternatively, if the personal representative chooses, the personal representative may cite  
 1209 all the heirs or beneficiaries and all persons who claim to be creditors whose claims the  
 1210 personal representative disputes or cannot pay in full to be present at the settlement of the  
 1211 personal representative's accounts by the court. The settlement shall be conclusive upon  
 1212 the personal representative and upon all the heirs or beneficiaries and all remaining persons  
 1213 who claim to be creditors who receive ~~notice of the hearing~~ service of notice of the  
 1214 settlement proceeding in the probate court and the hearing in the manner provided by

1215 subsection (b) of this Code section or by Chapter 11 of this title. The court may, in the  
 1216 court's discretion, give the personal representative additional time to settle the estate.

1217 (b) If the personal representative fails or refuses to appear as cited, the probate court may  
 1218 proceed without the appearance of the personal representative. If the personal  
 1219 representative has been required to give bond, the surety on such bond shall be bound by  
 1220 the settlement if the surety is ~~given~~ served with notice by personal service of the settlement  
 1221 proceeding in the probate court. If one or more unsuccessful attempts at service are made  
 1222 by the sheriff or the sheriff's deputies upon the personal representative at the last address  
 1223 of the personal representative in the court records and it appears to the probate court that  
 1224 further attempts are likely to be futile, then service of notice shall be sufficient upon the  
 1225 personal ~~administrator~~ representative for purposes of this Code section if the citation is  
 1226 mailed by first-class mail to such address.

1227 (c) Any party to the settlement shall have the right to appeal."

1228 **SECTION 1-51.**

1229 Said title is further amended by revising Code Section 53-7-63, relating to making and  
 1230 enforcing final settlement, as follows:

1231 "53-7-63.

1232 Upon proof of issuance of citation and service of notice pursuant to Code Section 53-7-62,  
 1233 the probate court may proceed to make an account, hear evidence upon any contested  
 1234 question, and make a final settlement between the personal representative and the heirs or  
 1235 beneficiaries. The settlement may be enforced by a judgment, writ of fieri facias,  
 1236 execution, or attachment for contempt."

1237 **SECTION 1-52.**

1238 Said title is further amended by revising Code Section 53-7-68, relating to mailing of return  
 1239 to heirs and beneficiaries and relieving personal representative of duty to file return, as  
 1240 follows:

1241 "53-7-68.

1242 (a) Upon filing the annual return with the probate court, the personal representative shall  
 1243 mail by first-class mail a copy of the return, but not the vouchers, to each heir of an  
 1244 intestate estate or each beneficiary of a testate estate. It shall not be necessary to mail a  
 1245 copy of the return to any heir or beneficiary who is not sui juris or for the court to appoint  
 1246 a guardian for such person. The personal representative shall file a verified statement with  
 1247 the probate court stating that all required mailings of the return to heirs or beneficiaries  
 1248 have been made.

1249 (b) Any heir or beneficiary may waive individually the right to receive a copy of the  
 1250 annual return by a written statement that is delivered to the personal representative. Such  
 1251 waiver may be revoked in writing at any time.

1252 (c) By unanimous written consent, the heirs of an intestate estate or the beneficiaries of a  
 1253 testate estate may authorize the probate court to relieve the personal representative from  
 1254 filing annual returns with them or with the court or both, in the same manner as provided  
 1255 in subsection (b) of Code Section 53-7-1. Any such unanimous written consent, regardless  
 1256 of the date of execution, ~~which~~ that relieves the personal representative from filing annual  
 1257 returns with the court shall also relieve the personal representative from sending a copy of  
 1258 the return to the heirs or beneficiaries; provided, however, that a personal representative  
 1259 shall furnish to the heirs or beneficiaries, at least annually, a statement of receipts and  
 1260 disbursements."

#### 1261 SECTION 1-53.

1262 Said title is further amended by revising Code Section 53-7-71, relating to return of  
 1263 nonresident or deceased personal representative, as follows:

1264 "53-7-71.

1265 (a) The return of a nonresident personal representative may be admitted to record upon  
 1266 affidavit of the personal representative's surety.

1267 (b) If a personal representative is dead, the personal representative of the estate of the  
 1268 deceased personal representative or, if at any time there is no such personal representative  
 1269 of the estate of the deceased personal representative, any ~~security~~ surety on the bond of the  
 1270 deceased personal representative may make returns of the accounts of ~~the~~ such deceased  
 1271 personal representative in the same manner and with the same effect as if the deceased  
 1272 personal representative were living."

#### 1273 SECTION 1-54.

1274 Said title is further amended by revising Code Section 53-7-74, relating to filing of  
 1275 objections to intermediate report, continuation of hearing, and appeal, as follows:

1276 "53-7-74.

1277 At or before the time fixed for hearing, any parties at interest may file objections to the  
 1278 personal representative's report, actions, and accounting, in which case the hearing on the  
 1279 accounting shall ~~be~~ automatically be continued until a date certain, when, subject to the  
 1280 probate court's power to grant continuances, the same shall be heard as other cases pending  
 1281 in the probate court with like right of appeal to the superior court; ~~in.~~ In such case, an  
 1282 appeal by consent may be taken to the superior court. ~~Such; provided, however, that such~~  
 1283 appellate procedures shall not apply to cases provided for by Article 6 of Chapter 9 of Title

1284 15. The parties at interest who have been served ~~appropriately~~ with notice as provided in  
 1285 subsection (c) of Code Section 53-7-73 and who have filed no objections to the report and  
 1286 accounting need not be served with notice of an appeal or any other or further proceedings,  
 1287 and their consent shall not be required for an appeal to the superior court."

#### 1288 SECTION 1-55.

1289 Said title is further amended by revising Code Section 53-7-75, relating to construction of  
 1290 will by superior court, as follows:

1291 "53-7-75.

1292 (a) Except as otherwise provided in subsection (b) of this Code section and in  
 1293 paragraph (7) of subsection (a) of Code Section 15-9-127, ~~The probate court, upon its own~~  
 1294 ~~motion or upon the motion of any party in interest,~~ whenever it appears that a question of  
 1295 construction of a will is involved in the accounting, ~~the probate court, upon its own motion~~  
 1296 ~~or upon the motion of any party in interest,~~ shall enter an order transferring the accounting  
 1297 to the superior court for the determination of all such questions, which shall be presented  
 1298 to, heard, and determined by the superior court as appeals from the probate court are  
 1299 presented, heard, and determined.

1300 (b) A probate court subject to Article 6 of Chapter 9 of Title 15 shall have jurisdiction over  
 1301 questions of construction of a will involved in the accounting and may determine all such  
 1302 questions without transferring the accounting to the superior court.

1303 (c) The probate court may suspend further proceedings pending a final ~~decision~~  
 1304 ~~determination~~ of the ~~superior court~~ questions of construction.

1305 (d) After a final determination of the questions of construction, the probate court shall  
 1306 proceed with the accounting."

#### 1307 SECTION 1-56.

1308 Said title is further amended by revising Code Section 53-8-10, relating to authority of  
 1309 personal representative and petition by temporary administrator, as follows:

1310 "53-8-10.

1311 (a) Subject to the provisions of this article, a personal representative may sell, rent, lease,  
 1312 exchange, or otherwise dispose of property, whether personal, real, or mixed, for the  
 1313 purpose of payment of debts, for distribution of the estate, or for any other purpose that  
 1314 is in the best interest of the estate; provided, however, that nothing in this article shall be  
 1315 construed to limit, enlarge, or change any authority, power, restriction, or privilege  
 1316 specifically provided by will or incorporated into a will or otherwise granted to the  
 1317 personal representative in accordance with the provisions of subsection (b) of Code  
 1318 Section 53-7-1.

1319 (b) A temporary administrator is authorized to petition the probate court for leave to sell  
 1320 or otherwise deal with property of the estate following the procedures described in this  
 1321 article; provided, ~~however~~, that good cause is shown."

1322 **SECTION 1-57.**

1323 Said title is further amended by revising Code Section 53-8-11, relating to property that is  
 1324 perishable, liable to deteriorate, or expensive to keep, as follows:

1325 "53-8-11.

1326 Perishable property, property that is liable to deteriorate from keeping, or property that is  
 1327 expensive to keep shall be sold as early as practicable and in such manner as the probate  
 1328 court shall determine to be in the best interest of the estate, after such service of notice and  
 1329 opportunity for hearing, if any, as the probate court shall deem practicable under the  
 1330 circumstances."

1331 **SECTION 1-58.**

1332 Said title is further amended by revising Code Section 53-8-13, relating to general  
 1333 procedures, as follows:

1334 "53-8-13.

1335 (a) A personal representative desiring to sell, rent, lease, exchange, or otherwise dispose  
 1336 of property other than property that is perishable, liable to deteriorate, or expensive to keep  
 1337 or listed stocks and bonds shall file a petition with the probate court stating the property  
 1338 involved and the interests in such property; ~~the~~ specific purpose of the transaction; ~~the~~  
 1339 proposed price, if any; ~~and~~ all other terms or conditions proposed for the transaction and  
 1340 ~~a list of~~ listing the names, addresses, and ages or majority status of all heirs ~~in~~ of  
 1341 intestate estate or of all beneficiaries ~~in~~ of a testate estate. In the event full particulars are  
 1342 lacking, the petition shall state the reasons for any such omission.

1343 (b) Upon the filing of the petition, ~~notice shall be given to~~ by the personal representative,  
 1344 the court shall issue a citation and serve notice on the heirs of an intestate estate or the  
 1345 affected beneficiaries of a testate estate in accordance with the provisions of Chapter 11 of  
 1346 this title.

1347 (c) If no written objection by a person so ~~notified~~ served with notice is filed within the  
 1348 appropriate period of time following the service of such notice, as provided by Chapter 11  
 1349 of this title, the probate court shall order such sale summarily in the manner and terms  
 1350 petitioned. If timely written objection is filed, the court shall hear the matter and grant or  
 1351 deny the petition for sale or make such other order as is in the best interest of the estate,  
 1352 which may require the sale to be private or at public outcry including confirmation of the  
 1353 sale by the court or otherwise. An appeal shall lie to the superior court in the manner,

1354 under the restrictions, and with the effect provided for appeals from the probate court in  
1355 other cases.

1356 (d) A personal representative shall make a full return to the probate court of every sale,  
1357 specifying the property sold, the purchasers, the amounts received, and the terms of the  
1358 sale.

1359 (e) The recital in the personal representative's deed of compliance with ~~legal~~ the provisions  
1360 of this Code section shall be prima-facie evidence of the facts recited.

1361 (f) Where a personal representative sells real property under the provisions of this Code  
1362 section, liens on such real property may be divested and transferred to the proceeds of the  
1363 sale as a condition of the sale."

1364 **SECTION 1-59.**

1365 Said title is further amended by revising Code Section 53-8-14, relating to warranty and  
1366 personal liability of personal representative, as follows:

1367 "53-8-14.

1368 (a) Regardless of whether a personal representative has the powers provided by  
1369 paragraph (1) of subsection (b) of Code Section 53-12-261 or by the corresponding  
1370 provision of any statute incorporated pursuant to subsection (d) of Code Section 53-12-263  
1371 or otherwise has similar such powers, and regardless of whether such powers are granted  
1372 by a probate court or are enumerated in or incorporated by reference into a will by a  
1373 testator, a ~~A~~ personal representative may not bind the estate by any warranty in any  
1374 conveyance or contract, ~~nor shall a personal representative be personally bound by such~~  
1375 ~~covenant, unless the intention to create a personal liability is distinctly expressed.~~

1376 (b) A personal representative shall not be bound personally by any warranty in any  
1377 conveyance or contract, unless the intention to create a personal liability is distinctly  
1378 expressed."

1379 **SECTION 1-60.**

1380 Said title is further amended by revising Code Section 53-8-15, relating to passage of title  
1381 to heirs or beneficiaries and assent of personal representative, as follows:

1382 "53-8-15.

1383 (a) The title to all property of an estate being in the personal representative for the payment  
1384 of debts and other purposes of administration, title to property in the estate does not pass  
1385 to the heirs or beneficiaries until the personal representative assents thereto in evidence of  
1386 the distribution of the property to them, except as otherwise provided in Code  
1387 Section 53-2-7.

1388 (b) Such assent may be express or may be presumed from the conduct of the personal  
 1389 representative. Assent should be evidenced in writing as a deed of conveyance to real  
 1390 property, bill of sale conveying tangible personal property, or an assignment or transfer of  
 1391 interests in intangible personal property.

1392 (c) In the absence of prior assent, the discharge of a personal representative shall be  
 1393 conclusive evidence of the personal representative's assent.

1394 (d) At any time after the lapse of one year from the date of qualification of the personal  
 1395 representative, an heir or beneficiary who is entitled to the distribution of property from an  
 1396 estate may, personally or by a guardian, ~~cite~~ or conservator:

1397 (1) Cite the personal representative in the probate court to show cause why assent should  
 1398 not be given and may compel such assent by an equitable proceeding after service of  
 1399 notice in accordance with Chapter 11 of this title; and

1400 (2) Subject to Code Section 23-1-4, compel such assent by an equitable proceeding."

1401 **SECTION 1-61.**

1402 Said title is further amended by revising Code Section 53-9-2, relating to filing and contents  
 1403 of petition and publication of notice, as follows:

1404 "53-9-2.

1405 (a) A petition for administration of the estate, for the probate in common form or solemn  
 1406 form of the will, for year's support, or for an order that no administration is necessary may  
 1407 be filed for the estate of a missing individual whose death may be presumed or established  
 1408 in the probate court as provided in Code Section 53-9-1. The petition may be made by  
 1409 anyone who would be entitled to file such petition on the estate of the missing individual  
 1410 if the missing individual were known to be dead and shall be filed in the county in which  
 1411 the estate of the missing individual would be administered were the missing individual  
 1412 known to be dead.

1413 (b) In addition to complying with all of the requirements for petitions pertaining to the  
 1414 administration of an estate or the probate of a will or year's support or an order that no  
 1415 administration is necessary, as appropriate, the petition regarding the estate of a missing  
 1416 individual who is believed to be dead shall set forth the circumstances under which the  
 1417 individual disappeared, what inquiry has been made as to the individual's whereabouts, and  
 1418 such evidence as shall be offered, if necessary, for the purpose of proving death by a  
 1419 preponderance of the evidence.

1420 (c) If the court finds the petition to be in compliance with the requirements set forth in  
 1421 subsection (b) of this Code section, the court shall issue an order directing that a ~~notice~~  
 1422 citation issue and be published once a week for four weeks in the official newspaper of the  
 1423 county in which the petition is made giving notice that on a ~~day stated~~ date certain, which

1424 shall be at least 90 days after the first publication of ~~the notice~~ such citation, evidence will  
 1425 be heard by the court concerning the alleged absence of the individual presumed to be dead  
 1426 and the circumstances and duration of such absence and requiring the missing individual,  
 1427 if alive, or any other person to produce and present to the court evidence that the missing  
 1428 individual is still in life. The ~~notice~~ publication of citation required by this subsection may  
 1429 be combined with any other service of notice required for the issuance of letters ~~or~~  
 1430 testamentary or letters of administration, an order for year's support, or an order that no  
 1431 administration is necessary. ~~The or~~ directed by the court pursuant to Code Section 53-11-5.  
 1432 Such service of notice shall be ~~served~~ made as provided in Chapter 11 of this title on all  
 1433 individuals who would be heirs if the missing individual were known to be dead. The order  
 1434 may also direct that the petitioner make a search for the missing individual and shall  
 1435 specify the manner in which the search is to be conducted to ensure that, in light of the  
 1436 circumstances of the particular case, a diligent and reasonable effort has been made to  
 1437 locate the missing individual. The order may prescribe any methods of search deemed by  
 1438 the judge to be adequate and appropriate, including but not limited to publishing notices  
 1439 in newspapers in appropriate locations and making inquiry of governmental agencies and  
 1440 of the missing individual's relatives and friends and at the missing individual's last place  
 1441 of abode or other appropriate places."

1442 **SECTION 1-62.**

1443 Said title is further amended by revising Code Section 53-10-5, relating to applicability of  
 1444 chapter, as follows:

1445 "53-10-5.

1446 This chapter shall not apply in the case of wills, trusts, deeds, contracts of insurance, or any  
 1447 other situation where provision is made for distribution of property different from that  
 1448 provided in this chapter or where provision is made for a presumption as to survivorship  
 1449 ~~which~~ that results in a distribution of property different from that provided in this chapter."

1450 **SECTION 1-63.**

1451 Said title is further amended by revising Code Section 53-11-1, relating to applicability of  
 1452 and compliance with provisions, as follows:

1453 "53-11-1.

1454 Except as otherwise specifically provided, the provisions of this chapter shall apply to any  
 1455 proceeding in the probate court that arises under Chapters 1 through 10, 12, and 13 of this  
 1456 title. Compliance with the provisions of this chapter shall be deemed to be sufficient for  
 1457 proceedings in the probate court arising under Chapters 1 through 10, 12, and 13 of this

1458 title except as otherwise provided in those chapters and in Chapter 11 of Title 9 and  
 1459 Chapter 9 of Title 15."

1460 **SECTION 1-64.**

1461 Said title is further amended by revising Code Section 53-11-2, relating to "guardian"  
 1462 defined, persons represented, appointment, successors, and guardian named in petitions, as  
 1463 follows:

1464 "53-11-2.

1465 (a) As used in this Code section, the term 'guardian' means the guardian ad litem appointed  
 1466 by the probate court who may represent a single party or more than one party or a class of  
 1467 parties with common or nonadverse interests, including the estates of one or more deceased  
 1468 heirs that have no personal representative; provided, however, that the court may determine  
 1469 for the purpose of the particular proceeding that the natural guardian, if any, or the  
 1470 testamentary guardian, if any, or the duly constituted conservator of the property, if any,  
 1471 or the duly constituted guardian of the person, if any, has no conflict of interest and thus  
 1472 may represent for the purpose of the proceeding a party who is not sui juris, who is unborn,  
 1473 or who is unknown.

1474 (b) When a party to a proceeding in the probate court is not sui juris, is unborn, or is  
 1475 unknown, such party shall be represented in the proceeding by a guardian. When a party  
 1476 to a proceeding in the probate court is a deceased heir whose estate has no personal  
 1477 representative, such deceased heir's estate may be represented in the proceeding by a  
 1478 guardian. Service upon or notice to a guardian shall constitute service upon or notice to  
 1479 the party represented, and except as provided in subsection (a) of Code Section 15-9-17,  
 1480 no additional service upon or notice to such party shall be required. Waivers,  
 1481 acknowledgments, consents, answers, objections, or other documents executed by the  
 1482 guardian shall, except as otherwise provided in Code Section 15-9-17, be binding upon the  
 1483 party represented.

1484 (c) Whenever a guardian ad litem is appointed, the court may limit the appointment or may  
 1485 at any time for cause appoint a successor. Unless the appointment is limited by the court,  
 1486 the guardian ad litem first appointed with respect to any proceeding involving the  
 1487 administration of the estate shall continue to serve with respect to such proceeding on  
 1488 behalf of the party represented until a successor is appointed, the party represented  
 1489 becomes sui juris, or the court terminates the appointment.

1490 (d)(1) In every petition filed in the probate court, the petitioner shall specify the name  
 1491 of each party who requires a guardian and the name and address of any person who is  
 1492 acting as guardian of the party. A copy of the letters appointing the guardian shall be

1493 attached to the petition or the petition shall allege such facts as shall show the authority  
1494 of such guardian to act.

1495 (2) The authority of a guardian to act may be established under paragraph (1) of this  
1496 subsection by showing:

1497 ~~(i)~~(A) Compliance by a foreign guardian of a minor with the filing requirements of  
1498 subsection (b) of Code Section 29-2-74 or of Code Section 29-2-76;

1499 ~~(ii)~~(B) Compliance by a foreign conservator of the property of a minor with the filing  
1500 requirements of subsection (b) of Code Section 29-3-115 or of Code Section 29-3-117;

1501 ~~(iii)~~(C) Compliance by a foreign guardian of an adult with the filing requirements of  
1502 subsection (b) of Code Section 29-4-95 or of Code Section 29-4-97;

1503 ~~(iv)~~(D) Compliance by a foreign conservator of the property of an adult with the filing  
1504 requirements of subsection (b) of Code Section 29-5-135 or of Code Section 29-5-137;

1505 or

1506 ~~(v)~~(E) The registration and recording of a guardianship order or conservatorship order  
1507 from another state under Article 4 of Chapter 11 of Title 29.

1508 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the  
1509 probate court may take judicial notice of the issuance of the letters appointing such  
1510 conservator or guardian, and of the authority of such conservator or guardian to act, in  
1511 the manner provided by Chapter 2 of Title 24."

1512 **SECTION 1-65.**

1513 Said title is further amended by revising Code Section 53-11-3, relating to personal service  
1514 generally, as follows:

1515 "53-11-3.

1516 (a) Except as otherwise prescribed by law or directed by the probate judge, a party in  
1517 interest who is a resident of this state is entitled to personal service of any petition and  
1518 citation for proceedings that are subject to the provisions of this chapter.

1519 (b) Except as otherwise provided in this Code section, personal service shall be made by  
1520 delivery of a copy of the petition and citation by the sheriff or some other lawful officer at  
1521 least ~~ten~~ 30 days before the hearing except that, if waived in writing, ~~the ten-day or if~~  
1522 shortened by the probate court upon good cause shown, the 30 day provision shall not  
1523 apply. An entry of such service shall be made on the original and the copy for the party  
1524 served.

1525 (c) A party who is in the military service may be served by any commissioned officer who  
1526 shall file with the probate court a certificate stating that copies of the petition and citation  
1527 were served in person.

1528 (d) Individuals who are not sui juris shall be served as provided in this chapter or as  
1529 provided in Code Section 15-9-17.

1530 (e) When personal service is required by this Code section, unless otherwise directed by  
1531 the probate court, service may be made by registered or certified mail or statutory overnight  
1532 delivery if the petitioner so requests in the petition. The court shall cause a copy of the  
1533 petition and the citation to be sent by registered or certified mail or statutory overnight  
1534 delivery with return receipt requested and with delivery restricted to addressee only. If the  
1535 return receipt is not signed by the addressee, dated at least ~~ten~~ 30 days before the date  
1536 specified in the citation, except where shortened by the court upon good cause shown, and  
1537 received by the court before the date specified in the citation for the filing of objections,  
1538 service shall be made as otherwise required by this Code section."

1539

### SECTION 1-66.

1540 Said title is further amended by revising Code Section 53-11-4, relating to service where  
1541 person or residence unknown or resides outside state, as follows:

1542 "53-11-4.

1543 (a) Except as otherwise prescribed by law or directed by the probate judge pursuant to  
1544 Code Section 53-11-5, the provisions of this Code section shall apply in cases when a  
1545 person to be served with notice of a proceeding covered by this chapter has a known  
1546 current residence address outside this state, or whose current residence address is unknown.

1547 (b) Unless all such persons have known current residence addresses, the probate court shall  
1548 order service of notice to be perfected by publication of the citation in the newspaper in  
1549 which sheriff's advertisements are published in the county in which the petition is made.  
1550 The citation shall be published once a week for four weeks prior to the date on which  
1551 objections must be filed. The records of the court shall show the persons ~~notified~~ served  
1552 with notice and the character of ~~the~~ such service of notice given. The published citation  
1553 shall be directed to the person to be served with such notice.

1554 (c) If the current residence address of such a person is known, the court shall cause service  
1555 ~~shall~~ of notice to be made by mailing by certified or registered mail or statutory overnight  
1556 delivery, return receipt requested, a copy of the petition and the citation.

1557 (d) When service of notice by publication is ordered by the court pursuant to this Code  
1558 section, compliance with the provisions of this Code section relating to a person to be  
1559 ~~notified~~ served with notice who is known but whose current residence address is unknown  
1560 shall be equivalent to personal service of a copy of the petition and citation when the fact  
1561 appears in the records of the court showing the persons ~~notified~~ served with notice and the  
1562 character of ~~the~~ such service of notice given. In the case of a known person whose current  
1563 residence address is unknown, that person's name shall appear in the records of the court,

1564 and such records shall ~~show as to that person's~~ confirm compliance with this Code section  
 1565 as to that person. In any case in which service of notice by publication is granted by the  
 1566 court, one order for service of notice by publication shall be sufficient and the published  
 1567 citation shall be directed as provided in subsection (b) of this Code section."

1568 **SECTION 1-67.**

1569 Said title is further amended by revising Code Section 53-11-5, relating to additional service  
 1570 or notice, as follows:

1571 "53-11-5.

1572 On the motion of any party in interest or on its own motion, the ~~The probate judge~~ court  
 1573 may direct any additional service of citation or other notice or extend the time to respond  
 1574 with respect to any proceedings covered by this chapter as the judge may determine to be  
 1575 proper in the interests of due process and reasonable opportunity for any party or interest  
 1576 to be heard."

1577 **SECTION 1-68.**

1578 Said title is further amended by revising Code Section 53-11-6, relating to waiver or  
 1579 acknowledgment of service or notice and consent to granting of relief or entry of order, as  
 1580 follows:

1581 "53-11-6.

1582 (a) Service of citation or other notice may be waived or acknowledged before or after the  
 1583 filing of the petition. The waiver or acknowledgment shall be in a writing signed by the  
 1584 person to be served with notice or some person authorized by the person to be served with  
 1585 such notice, shall be sworn to or affirmed before the probate court or a notary public, and  
 1586 shall be filed with the probate court.

1587 (b) Except as otherwise prescribed by law, the written consent of a party to the granting  
 1588 of any relief or the entry of any order sought in a proceeding covered by this chapter,  
 1589 whether executed before or after the filing of the petition, shall constitute a waiver and  
 1590 acknowledgment of ~~notice and~~ service of notice of the proceedings, waiver of any other or  
 1591 further citation or service of notice, entry of appearance, answer admitting all allegations  
 1592 of fact set forth in the petition as true and correct, and consent to the granting of the relief  
 1593 or the order sought.

1594 (c) A person in military service, regardless of age, shall be permitted to make any waiver,  
 1595 acknowledgment, or consent described in this Code section."

**SECTION 1-69.**

1596

1597 Said title is further amended by revising Code Section 53-11-9, relating to issuance of  
1598 citation upon filing of petition, contents, and meaning, as follows:

1599 "53-11-9.

1600 (a) Upon the filing of a petition, a citation shall be issued by the court and addressed to the  
1601 persons required to be served ~~or entitled to~~ with notice or who otherwise are to be served  
1602 with notice; provided, however, that if all parties such persons have acknowledged service  
1603 of notice and assented to the petition, no such citation need issue. ~~The~~ Such citation shall  
1604 state that any objection must be made in writing and shall designate the date on or before  
1605 which objections must be filed in the probate court. ~~The~~ Such citation also shall state  
1606 whether the hearing will take place on a certain date or be specially scheduled for a later  
1607 date. With respect to all proceedings under this title, ~~the~~ any such citation, ~~if any,~~ may state  
1608 that if no objections are filed the petition may be granted without a hearing.

1609 (b) For purposes of this chapter, the words 'citation' and 'notice' shall have the same  
1610 meaning unless the context otherwise requires.

1611 (c) Wherever appearing in this title with respect to proceedings in the probate court  
1612 covered by this chapter:

1613 (1) The term 'service of notice,' 'given notice,' 'due notice,' 'notified,' and similar words  
1614 and phrases of the same import shall mean service of petition and citation in a manner  
1615 provided by applicable law, and shall include acknowledgment or waiver of such service  
1616 and such service upon a guardian ad litem or other appropriate representative, unless the  
1617 context otherwise requires;

1618 (2) The term 'the official county newspaper,' 'the newspaper in which sheriff's  
1619 advertisements are published,' 'the official newspaper of the county in which the petition  
1620 is made,' 'the official newspaper of the county in which the personal representative  
1621 qualified,' and similar words and phrases of the same import shall mean the journal or  
1622 newspaper qualified or designated as the official legal organ of the county of the probate  
1623 court having jurisdiction in such proceeding pursuant to Code Section 9-13-142;

1624 (3) The term 'published,' 'publication,' 'service by publication,' 'notice shall be published,'  
1625 and similar words and phrases of the same import shall mean publication in the official  
1626 legal organ described in paragraph (2) of this subsection unless the context otherwise  
1627 requires;

1628 (4) The term 'beneficiary' shall include devisee and legatee unless the context otherwise  
1629 requires;

1630 (5) Any hearing called for in any proceeding shall be within the court's sound discretion  
1631 and shall not be required if no caveat or objection is timely filed and thereafter  
1632 maintained unless the context otherwise requires; and

1633 (6) Any requirement that no caveat or objection be filed:  
 1634 (A) Shall be satisfied by the dismissal or withdrawal of all caveats or objections so  
 1635 filed unless the context otherwise requires; and  
 1636 (B) May, in the court's sound discretion, be satisfied by the failure of any party served  
 1637 with notice to file a caveat or objection in a timely manner unless the context otherwise  
 1638 requires."

1639 **SECTION 1-70.**

1640 Said title is further amended by revising Code Section 53-11-10, relating to date by which  
 1641 objections must be filed or on which hearing will be held, as follows:

1642 "53-11-10.

1643 (a) Except as otherwise prescribed by law or as shortened by the judge upon good cause  
 1644 shown or directed by the judge pursuant to Code Section 53-11-5 with respect to any  
 1645 particular proceeding, the date on or before which any objection person is required to be  
 1646 filed file any objection shall be not ~~less~~ fewer than ~~ten~~ 30 days after the date ~~the~~ such  
 1647 person is personally served with notice. For ~~persons~~ a person within the continental United  
 1648 States who ~~are~~ is served with notice by registered or certified mail or statutory overnight  
 1649 delivery, return receipt requested, the date on or before which any objection is required to  
 1650 be filed by such person shall not be ~~less~~ fewer than ~~13~~ 30 days from the date of mailing of  
 1651 such service of notice; provided, however, that if a return receipt from any recipient is  
 1652 received by the court within ~~13~~ 30 days from ~~the~~ such date of mailing of such service of  
 1653 notice, the date on or before which any objection is required to be filed by such recipient  
 1654 shall be ~~ten~~ 30 days from the date of receipt of such service of notice shown on such return  
 1655 receipt. For a person outside the continental United States who is served with notice by  
 1656 registered or certified mail or statutory overnight delivery, return receipt requested, the date  
 1657 on or before which any objection is required to be filed by such person shall not be ~~less~~  
 1658 fewer than 30 days from the date the service of the citation is mailed by the court;  
 1659 provided, however, that if the return receipt from any such recipient is received by the court  
 1660 during such 30 day period the date on or before which any objection is required to be filed  
 1661 by such recipient shall not be earlier than ~~ten~~ 30 days from the date of such recipient's  
 1662 receipt of such service of notice shown on such return receipt. For a person served with  
 1663 notice by publication, the date on or before which any objection is required to be filed shall  
 1664 be no ~~sooner~~ earlier than the first day of the week following such service by publication of  
 1665 citation once each week for four weeks.

1666 (b) Except as otherwise prescribed by law or directed by the judge with respect to any  
 1667 particular proceeding, the date on which any required hearing shall be held shall be the date  
 1668 by which any objection is required to be filed or such later date as the probate court may

1669 specify. When the matter is set for hearing on a date that was not specified in the citation,  
 1670 the probate court shall ~~send~~ serve by first-class mail a notice of the date, time, and place  
 1671 of the hearing to the petitioner and all parties who have ~~served~~ filed responses to the  
 1672 petition at the addresses given by them in their pleadings."

#### 1673 **SECTION 1-71.**

1674 Said title is further amended by revising Code Section 53-12-6, relating to jurisdiction, as  
 1675 follows:

1676 "53-12-6.

1677 (a) Trusts are peculiarly subjects of equity jurisdiction. Suits by or against a trustee ~~which~~  
 1678 that sound at law may be filed in a court of law.

1679 (b) Actions concerning the construction; ~~or administration, or internal affairs~~ of a trust ~~or~~  
 1680 for a court to take any actions authorized by the provisions of this chapter shall be  
 1681 maintained in superior court, except as otherwise provided in Code Section 15-9-127.

1682 (c) Any action by or against the trustee or to which the trustee is a party may be  
 1683 maintained in any court having jurisdiction over the parties and the subject matter, except  
 1684 as otherwise provided in subsection (b) of this Code section or in Code Section 15-9-127."

#### 1685 **SECTION 1-72.**

1686 Said title is further amended by revising Code Section 53-12-7, relating to when trust and  
 1687 chapter conflict, as follows:

1688 "53-12-7.

1689 (a) The effect of the provisions of this chapter may be varied by the trust instrument  
 1690 except:

1691 (1) As to any requirements relating to the creation and validity of express trusts as  
 1692 provided in Article 2 of this chapter;

1693 (2) As to the effect of the rules relating to spendthrift trusts as provided in Article 5 of  
 1694 this chapter;

1695 (3) As to the power of the beneficiaries to modify a trustee's compensation as provided  
 1696 in Code Section 53-12-210;

1697 (4) As to the duty of a trustee to administer the trust and to exercise discretionary powers  
 1698 in good faith as provided in Code Sections 53-12-240 and 53-12-260;

1699 (5) As to the effect of a provision relieving a trustee from liability as provided in Code  
 1700 Section 53-12-303; ~~and~~

1701 (6) As to the periods of limitation on actions as provided in Code Sections 53-12-45 and  
 1702 53-12-307; and

1703 (7) As to the effect of the rules relating to trust directors as provided in Article 18 of this  
 1704 chapter.  
 1705 (b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions  
 1706 authorized by the provisions of this chapter."

1707 **SECTION 1-73.**

1708 Said title is further amended by revising Code Section 53-12-8, relating to notice to person  
 1709 permitted to bind another person, consent on behalf of another person, and representation of  
 1710 others, as follows:

1711 "53-12-8.

1712 (a) Notice to a person who may represent and bind another person under this Code section  
 1713 shall have the same effect as if notice were given directly to such other person.

1714 (b) The consent of a person who may represent and bind another person under this Code  
 1715 section shall be binding on the person represented unless the person represented objects to  
 1716 such representation before such consent would otherwise have become effective. Consent  
 1717 shall include, but shall not be limited to, an action related to the granting of powers to a  
 1718 trustee, modification or termination of a trust, a trustee's duty to report, entry into a binding  
 1719 nonjudicial settlement agreement, a trustee's compensation, the conversion of a trust to a  
 1720 unitrust, the appointment, resignation, or removal of a trustee, and other similar actions.

1721 (c) Except as otherwise provided in Code Section 53-12-61, a person who under this Code  
 1722 section may represent a settlor who lacks capacity may receive notice and give a binding  
 1723 consent on such settlor's behalf.

1724 (d) A settlor may not represent and bind a beneficiary under this Code section with respect  
 1725 to the termination or modification of a trust under Article 4 of this chapter.

1726 (e) To the extent there is no conflict of interest between the holder of a power of  
 1727 appointment and the persons represented with respect to the particular question or dispute,  
 1728 such holder may represent and bind persons whose interests are as permissible appointees,  
 1729 as takers in default, or are otherwise subject to the power.

1730 (f) To the extent there is no conflict of interest between the representative and the person  
 1731 represented or among those being represented with respect to a particular question or  
 1732 dispute:

1733 (1) A conservator may represent and bind the estate that the conservator controls;

1734 (2) A guardian may represent and bind his or her ward if a conservator of such ward's  
 1735 estate has not been appointed;

1736 (3) An agent having authority to act with respect to the particular question or dispute  
 1737 may represent and bind the principal;

1738 (4) A trustee may represent and bind the beneficiaries of the trust;

- 1739 (5) A trust director may represent and bind the beneficiaries of the trust on a question or  
1740 dispute relating to the trust director's powers of direction;
- 1741 (6) A person designated in the trust instrument to receive notice and provide consent on  
1742 behalf of a beneficiary may represent and bind a beneficiary;
- 1743 (7) A personal representative of a decedent's estate may represent and bind persons  
1744 interested in such estate; and
- 1745 ~~(6)~~(8) An ancestor may represent and bind an ancestor's minor or unborn descendant if  
1746 a conservator or guardian for such descendant has not been appointed.
- 1747 (g) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person  
1748 whose identity or location is unknown and not reasonably ascertainable, may be  
1749 represented by and bound by another having a substantially identical interest with respect  
1750 to a particular question or dispute, but only to the extent there is no conflict of interest  
1751 between the representative and the person represented with respect to such particular  
1752 question or dispute.
- 1753 (h) A person who on the date of determination would be eligible to receive distributions  
1754 of income or principal from the trust upon the termination of the interests of all persons  
1755 then currently eligible to receive distributions of income or principal may represent and  
1756 bind contingent successor ~~remainder~~ beneficiaries, ~~including, but not limited to, charitable~~  
1757 ~~entities~~, with respect to matters in which there is no conflict of interest between the  
1758 representative and the persons represented with respect to a particular question or dispute.
- 1759 (i) A charitable entity may represent and bind another person and be represented by a  
1760 person under this Code section in the same manner as an individual.
- 1761 (j) The representative of a person represented under this Code section may represent and  
1762 bind any other person who could be represented under this Code section by the person  
1763 being represented by the representative if the person being represented were living and sui  
1764 juris, but only to the extent there is no conflict of interest between the representative and  
1765 such other person or among those being represented with respect to a particular question  
1766 or dispute.
- 1767 ~~(i)~~(k) Any person whose interests would be affected may request that the court determine  
1768 whether an interest is represented under this Code section or whether the representation is  
1769 adequate. If the court determines that an interest is not represented under this Code section,  
1770 or that the otherwise available representation might be inadequate, the court may appoint  
1771 a representative to receive notice, give consent, and otherwise represent, bind, and act on  
1772 behalf of a minor, incapacitated, or unborn individual, or a person whose identity or  
1773 location is unknown and not reasonably ascertainable. A representative may be appointed  
1774 to represent several persons or interests. A representative may act on behalf of the  
1775 individual represented with respect to any matter arising under this chapter, regardless of

1776 whether a judicial proceeding concerning the trust is pending. In making decisions, a  
 1777 representative may consider the general benefit accruing to the living members of the  
 1778 individual's family.

1779 (l) The interests of unascertainable charitable beneficiaries of a trust that is not a charitable  
 1780 trust shall be represented as provided in Code Section 53-12-174 for the beneficiaries under  
 1781 a charitable trust."

#### 1782 SECTION 1-74.

1783 Said title is further amended by revising Code Section 53-12-9, relating to "interested  
 1784 persons" defined and binding nonjudicial settlement agreement, as follows:

1785 "53-12-9.

1786 (a) ~~As used in this Code section, the term 'interested persons' means the trustee and all~~  
 1787 ~~other persons whose consent would be required in order to achieve a binding settlement~~  
 1788 ~~were the settlement to be approved by the court.~~

1789 (b) Except as provided in subsection (c) (b) of this Code section, the ~~interested persons~~  
 1790 trustee, any trust director, and all other persons whose interests would be affected may  
 1791 enter into a binding nonjudicial settlement agreement with respect to any matter involving  
 1792 a the trust.

1793 ~~(c)~~(b) A nonjudicial settlement agreement:

1794 (1) Shall be valid only to the extent it does not violate a material purpose of the trust and  
 1795 includes terms and conditions that could be properly approved by the court under this  
 1796 Code section or other applicable law; and

1797 (2) Shall not be valid with respect to any modification or termination of a ~~noncharitable~~  
 1798 an irrevocable trust when the settlor's consent would be required in order to achieve a  
 1799 binding settlement, if such settlement were to be approved by a court a proceeding to  
 1800 approve such modification or termination under subsection (b) of Code Section 53-12-61.

1801 ~~(d)~~(c) The trustee, trust director, and any person whose interests would be affected by Any  
 1802 interested person may request the court approve a nonjudicial settlement agreement may  
 1803 request that the court approve such agreement, determine whether the representation as  
 1804 provided in Code Section 53-12-8 was adequate, or determine whether such agreement  
 1805 violates a material purpose of the trust, determine whether such agreement contains terms  
 1806 and conditions the court could have properly approved, or make any other similar  
 1807 determination.

1808 ~~(e)~~(d) A nonjudicial settlement An agreement entered into in accordance with this Code  
 1809 section shall be final and binding on ~~the interested persons~~ all parties to such agreement,  
 1810 including individuals not sui juris, unborn beneficiaries, and persons unknown who are  
 1811 represented by a person who may represent and bind such parties under Code Section

1812 53-12-8, as if ordered by a court with competent jurisdiction over the trust, the trust  
 1813 property, and the ~~interested persons~~ parties.

1814 (e) Entering into or petitioning a court regarding a nonjudicial settlement agreement under  
 1815 this Code section shall not constitute a violation of a condition in terrorem under Code  
 1816 Section 53-12-22."

1817 **SECTION 1-75.**

1818 Said title is further amended by revising Code Section 53-12-22, relating to trust purposes  
 1819 and conditions in terrorem, as follows:

1820 "53-12-22.

1821 (a) A trust may be created for any lawful purpose.

1822 (b) A condition in terrorem shall be void unless there is a direction in the trust instrument  
 1823 as to the disposition of the property if the condition in terrorem is violated, in which event  
 1824 the direction in the trust instrument shall be carried out, except as otherwise provided in  
 1825 subsection (c) of this Code section.

1826 (c) A condition in terrorem shall not be enforceable against an individual for:

1827 (1) Bringing an action for interpretation or enforcement of a trust instrument;

1828 (2) Bringing an action for an accounting, for removal, or for other relief against a trustee;

1829 or

1830 (3) Entering into a settlement agreement."

1831 **SECTION 1-76.**

1832 Said title is further amended by revising Code Section 53-12-60, relating to reformation to  
 1833 correct mistakes, as follows:

1834 "53-12-60.

1835 (a) If it is proved by clear and convincing evidence that the trust provisions were affected  
 1836 by a mistake of fact or law, whether in expression or inducement, the court may reform the  
 1837 trust provisions, even if unambiguous, to conform the provisions to the settlor's intention.

1838 (b) A petition for reformation may be filed by the trustee, any trust director, or any  
 1839 beneficiary or, in the case of an unfunded testamentary trust, the personal representative  
 1840 of the settlor's estate.

1841 (c) Notice of a petition for reformation of the trust shall be given to the trustee, any trust  
 1842 director, and all qualified beneficiaries."

1843 **SECTION 1-77.**

1844 Said title is further amended by revising Code Section 53-12-61, relating to power to direct  
 1845 modification, consolidation, division, or termination; petition to modify or terminate

1846 noncharitable irrevocable trust; proceeding to approve proposed modification or termination;  
 1847 and distribution of trust property under order for termination, as follows:

1848 "53-12-61.

1849 (a) The trust instrument may confer upon a trustee or other person a power to modify;  
 1850 ~~consolidate, divide,~~ or terminate the trust without court approval.

1851 (b) During the settlor's lifetime, the court shall approve a petition to modify or terminate  
 1852 ~~a noncharitable~~ an irrevocable trust, even if the modification or termination is inconsistent  
 1853 with a material purpose of the trust, if the settlor and all ~~the~~ qualified beneficiaries consent  
 1854 to such modification or termination and the trustee has received notice of the proposed  
 1855 modification or termination. A settlor's power to consent to such trust's modification or  
 1856 termination may be exercised by:

1857 (1) An agent under a power of attorney only to the extent expressly authorized by the  
 1858 power of attorney and the ~~terms~~ provisions of the trust;

1859 (2) The settlor's conservator with the approval of the court supervising the  
 1860 conservatorship if an agent is not so authorized; or

1861 (3) The settlor's guardian with the approval of the court supervising the guardianship if  
 1862 an agent is not so authorized and a conservator has not been appointed.

1863 (c) Following the settlor's death the court shall approve a petition to:

1864 (1) Modify ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries consent,  
 1865 the trustee has received notice of the proposed modification, and the court concludes that  
 1866 modification is not inconsistent with any material purpose of such trust; and

1867 (2) Terminate ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries  
 1868 consent, the trustee has received notice of the proposed termination, and the court  
 1869 concludes that continuance of such trust is not necessary to achieve any material purpose  
 1870 of such trust.

1871 (d) The court may, upon petition:

1872 (1) Modify the trust if, owing to circumstances not anticipated by the settlor,  
 1873 modification would further the purposes of such trust;

1874 (2) Modify the administrative provisions of a trust if continuation of such trust under its  
 1875 existing provisions would impair such trust's administration;

1876 (3) Modify the trust by the appointment of an additional trustee or special fiduciary if  
 1877 such appointment is necessary or helpful to the administration of such trust;

1878 (4) Modify the trust to achieve the settlor's tax objectives, with such modification to have  
 1879 either prospective or retroactive effect;

1880 (5) Order the division of a single trust into two or more trusts or the consolidation of two  
 1881 or more trusts, whether created by the same or different trust instruments or by the same

- 1882 or different persons, into a single trust if the division or consolidation would be helpful  
 1883 to the administration of such trust or trusts; or
- 1884 (6) Terminate a trust and order distribution of the trust property if the:
- 1885 (A) Costs of administration are such that the continuance of such trust, the  
 1886 establishment of such trust if it is to be established, or the distribution from a probate  
 1887 estate would defeat or substantially impair the purposes of such trust;
- 1888 (B) Purpose of such trust has been fulfilled or become illegal or impossible to fulfill;  
 1889 or
- 1890 (C) Continuance of such trust would impair the accomplishment of the purposes of  
 1891 such trust.
- 1892 (e) A proceeding to approve a proposed modification or termination under this Code  
 1893 section may be commenced by a trustee, trust director, or beneficiary. A proceeding to  
 1894 approve a proposed modification or termination under subsection (b) of this Code section  
 1895 may be commenced by a trustee, trust director, beneficiary, or settlor. In the case of an  
 1896 unfunded testamentary trust, a petition for modification or termination under this Code  
 1897 section may be filed by the personal representative of the settlor's estate.
- 1898 (f) ~~No later than 30 days after filing the petition for modification or termination, notice~~  
 1899 Notice of a petition to modify or terminate a trust under subsection (d) of this Code section  
 1900 shall be given to the settlor, if living, the trustee, any trust director, all ~~the~~ qualified  
 1901 beneficiaries, any holder of a power of appointment over the trust property, and such other  
 1902 persons as the court may direct.
- 1903 (g) The court may modify or terminate a trust as provided in this Code section regardless  
 1904 of whether it contains spendthrift provisions or other similar protective provisions.
- 1905 (h) An order under subsection (d) of this Code section shall conform as nearly as  
 1906 practicable to the intention of the settlor.
- 1907 (i) Distribution of the trust property under an order for termination shall be made to or  
 1908 among the current beneficiaries and the vested remainder beneficiaries, or, if there are no  
 1909 vested remainder beneficiaries, among the current beneficiaries and the contingent  
 1910 remainder beneficiaries. The order shall specify the appropriate share, if any, of each  
 1911 current and remainder beneficiary who is to share in the proceeds of the trust so as to  
 1912 conform as nearly as practicable to the intention of the settlor. The order may direct that  
 1913 the interest of a minor beneficiary, or any portion thereof, be converted into qualifying  
 1914 property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, 'The  
 1915 Georgia Transfers to Minors Act.'
- 1916 (j) For purposes of this chapter, modification of a trust includes the consolidation or  
 1917 division of a trust.
- 1918 (k) Subsections (b) and (c) of this Code section shall not apply to charitable trusts.

1919 (l) Petitioning for or consenting to a modification or termination under this Code section  
 1920 shall not constitute a violation of a condition in terrorem under Code Section 53-12-22."

1921 **SECTION 1-78.**

1922 Said title is further amended by revising Code Section 53-12-62, relating to power of trustee  
 1923 to invade principal of original trust, as follows:

1924 "53-12-62.

1925 (a) As used in this Code section, the term:

1926 (1) 'Original trust' refers to the trust from which principal is being distributed.

1927 (2) 'Second trust' refers to the trust to which assets are being distributed from the original  
 1928 trust, whether a separate trust or an amended version of the original trust.

1929 (b)(1) As used in this subsection, the term 'current beneficiary' means a person who, on  
 1930 the date of distribution to the second trust, is a distributee or permissible distributee of  
 1931 trust income or principal.

1932 (2) Unless the original trust instrument expressly provides otherwise, a trustee, other than  
 1933 a person who contributed property to the trust, with authority to invade the principal of  
 1934 the original trust to make distributions to or for the benefit of one or more of the  
 1935 beneficiaries may also, independently or with court approval, exercise such authority by  
 1936 distributing all or part of the principal of the original trust to a trustee of a second trust;  
 1937 provided, however, that the second trust shall not include as a:

1938 (A) Current beneficiary any person that is not a current beneficiary of income or  
 1939 principal of the original trust; or

1940 (B) Beneficiary any person that is not a beneficiary of the original trust.

1941 (c) Except as provided in this Code section, a trustee may exercise the power to invade the  
 1942 principal of the original trust under subsection (b) of this Code section without the consent  
 1943 of the settlor or the beneficiaries of the original trust if such trustee provides written notice  
 1944 of such trustee's decision to exercise the power to such settlor, if living, any trust director,  
 1945 and those persons then entitled to annual reports from the trustee of the original trust under  
 1946 subsection (b) of Code Section 53-12-243, taking into account the provisions of the original  
 1947 trust and subsections (c) and (d) of Code Section 53-12-243. Such notice shall:

1948 (1) Describe the manner in which such trustee intends to exercise such power;

1949 (2) Specify the date such trustee proposes to distribute to the second trust; and

1950 (3) Be delivered at least ~~60~~ 30 days before the proposed distribution to the second trust.

1951 (d) The exercise of the power to invade the principal of the original trust under  
 1952 subsection (b) of this Code section shall be by an instrument in writing, signed and  
 1953 acknowledged by the trustee, and filed with the records of the original trust.

1954 (e) The exercise of the power to invade the principal of the original trust under  
1955 subsection (b) of this Code section shall not extend the permissible period of the rule  
1956 against perpetuities that applies to such original trust.

1957 (f) The exercise of the power to invade the principal of the original trust under  
1958 subsection (b) of this Code section by a trustee who is also a beneficiary shall be subject  
1959 to the limitations of Code Section 53-12-270.

1960 (g) This Code section shall not be construed to abridge the right of any trustee who has a  
1961 power of invasion to distribute property in further trust that arises under any other law or  
1962 under common law, and nothing in this Code section shall be construed to imply that the  
1963 common law does not permit the exercise of a power to invade the principal of a trust in  
1964 the manner authorized under subsection (b) of this Code section.

1965 ~~(g)~~(h) A second trust may confer a power of appointment upon a beneficiary of the  
1966 original trust to whom or for the benefit of whom the trustee has the power to distribute the  
1967 principal of such original trust. For purposes of this subsection, the permissible appointees  
1968 of the power of appointment conferred upon a beneficiary may include persons who are not  
1969 beneficiaries of such original trust or second trust.

1970 ~~(h)~~(i) If any contribution to the original trust qualified for the annual exclusion under  
1971 Section 2503(b) of the federal Internal Revenue Code, as it existed on February 1, 2018,  
1972 the marital deduction under Section 2056(a) or 2523(a) of the federal Internal Revenue  
1973 Code, as it existed on February 1, 2018, or the charitable deduction under Section 170(a),  
1974 642(c), 2055(a), or 2522(a) of the federal Internal Revenue Code, as it existed on  
1975 February 1, 2018, is a direct skip qualifying for treatment under Section 2642(c) of the  
1976 federal Internal Revenue Code, as it existed on February 1, 2018, or qualified for any other  
1977 specific tax benefit that would be lost by the existence of the authorized trustee's authority  
1978 under subsection (b) of this Code section for income, gift, estate, or generation-skipping  
1979 transfer tax purposes under the federal Internal Revenue Code, then the authorized trustee  
1980 shall not have the power to distribute the principal of a trust pursuant to subsection (b) of  
1981 this Code section in a manner that would prevent the contribution to the original trust from  
1982 qualifying for such exclusion, deduction, or other tax benefit or would reduce such  
1983 exclusion, deduction, or other tax benefit that was originally claimed with respect to such  
1984 contribution.

1985 ~~(i)~~(j) The exercise of the power to invade the principal of the original trust under  
1986 subsection (b) of this Code section shall be subject to the following limitations:

1987 (1) The second trust need not qualify as a grantor trust for federal income tax purposes,  
1988 even if the original trust does qualify as a grantor trust, except that if such original trust  
1989 qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the  
1990 federal Internal Revenue Code, as it existed on February 1, 2018, such second trust may

1991 not include or omit a term that, if included in or omitted from the original trust  
 1992 instrument, would have prevented such original trust from qualifying under such section;  
 1993 (2) Unless the settlor objects in a writing delivered to the trustee before the date the  
 1994 trustee proposes to distribute from the original trust to the second trust, such The second  
 1995 trust may qualify as a grantor trust for federal income tax purposes, even if ~~the~~ such  
 1996 original trust does not so qualify, except that if such original trust does not so qualify and  
 1997 such second trust will so qualify, in whole or in part, with respect to the settlor, such  
 1998 second trust shall grant such settlor or another person a power that would cause such  
 1999 second trust to cease to be a grantor trust for federal income tax purposes ~~unless such~~  
 2000 ~~settlor objects in a writing delivered to the trustee before the date the trustee proposes to~~  
 2001 ~~distribute from such original trust to such second trust;~~ and  
 2002 (3) When both the original trust and the second trust qualify as grantor trusts for federal  
 2003 income tax purposes and such original trust grants the settlor or another person the power  
 2004 to cause such original trust to cease to be a grantor trust, such second trust shall grant an  
 2005 equivalent power to the settlor or another person unless such settlor objects in a writing  
 2006 delivered to the trustee before the date the trustee proposes to distribute from such  
 2007 original trust to such second trust.

2008 ~~(j)~~(k) During any period when the original trust owns stock in a Subchapter 'S' corporation  
 2009 as defined in Section 1361(a)(1) of the federal Internal Revenue Code, as it existed on  
 2010 February 1, 2018, an authorized trustee shall not exercise a power authorized by  
 2011 subsection (b) of this Code section to distribute part or all of the stock of the Subchapter  
 2012 'S' corporation to a second trust that is not a permitted shareholder under Section 1361(c)(2)  
 2013 of the federal Internal Revenue Code, as it existed on February 1, 2018.

2014 ~~(k)~~(l) A trustee or other person that reasonably relies on the validity of a distribution of  
 2015 property of the original trust to the second trust under subsection (b) of this Code section  
 2016 or any other law or common law shall not be liable for any action or failure to act as a  
 2017 result of such reliance.

2018 ~~(l)~~(m) This Code section shall not create or imply a duty for a trustee or trust director to  
 2019 exercise a power conferred by this Code section.

2020 ~~(m)~~(n) If exercise of the power to invade the principal of the original trust would be  
 2021 effective under subsection (b) of this Code section except that the second trust in part does  
 2022 not comply with this Code section, such exercise of the power shall be effective, a  
 2023 provision in such second trust that is not permitted under this Code section shall be void  
 2024 to the extent necessary to comply with this Code section, and a provision required by this  
 2025 Code section to be in such second trust that is not contained in such second trust shall be  
 2026 deemed to be included in such second trust to the extent necessary to comply with this  
 2027 Code section.

2028 ~~(n)~~(o) The settlor of the original trust shall be deemed to be the settlor of the second trust  
 2029 with respect to the portion of the principal of the original trust subject to the exercise of the  
 2030 power to invade the principal of such original trust under subsection (b) of this Code  
 2031 section.

2032 ~~(o)~~(p) A debt, liability, or other obligation enforceable against property of the original trust  
 2033 shall be enforceable to the same extent against the property when held by the second trust  
 2034 after exercise of the power to invade the principal of such original trust under  
 2035 subsection (b) of this Code section.

2036 (q) This Code section shall apply to any trust the meaning and effect of whose trust  
 2037 provisions are determined by the law of this state.

2038 ~~(p)~~(r) This Code section shall not apply to a ~~trust held solely for charitable purposes~~  
 2039 ~~trusts.~~"

#### 2040 SECTION 1-79.

2041 Said title is further amended by revising Code Section 53-12-81, relating to limitations on  
 2042 creditors' rights to discretionary distributions, as follows:

2043 "53-12-81.

2044 A transferee or creditor of a beneficiary shall not compel the trustee or a trust director to  
 2045 pay any amount that is payable only in the ~~trustee's~~ trustee's discretion of the trustee or trust director  
 2046 regardless of whether the discretion is expressed in the form of a standard of distribution,  
 2047 including, but not limited to, health, education, maintenance, and support, and whether  
 2048 such trustee or trust director is also a beneficiary. This Code section shall not apply to the  
 2049 extent of the proportion of trust property attributable to the beneficiary's contribution."

#### 2050 SECTION 1-80.

2051 Said title is further amended by revising Code Section 53-12-82, relating to rules for trusts  
 2052 and consideration of assets of an inter vivos marital trust following death, as follows:

2053 "53-12-82.

2054 (a)(1) As used in this subsection, the term 'creditor' means:

2055 (A) With respect to subparagraphs (A) and (B) of paragraph (2) of this subsection,  
 2056 those creditors of a settlor whose claims against the property of the trust are governed  
 2057 by this article, including those creditors identified in subsection (d) of Code  
 2058 Section 53-12-80; and

2059 (B) With respect to subparagraph (C) of paragraph (2) of this subsection, those  
 2060 claimants whose claims against the property of the settlor's estate are governed by  
 2061 Article 4 of Chapter 7 of this title, including those claimants identified in Code Section  
 2062 53-7-40.

2063 (2) Regardless of whether ~~Whether or not~~ the trust instrument contains a spendthrift  
 2064 provision, the following rules shall apply:

2065 ~~(1)(A)~~ (A) During the lifetime of the settlor, the property of a revocable trust shall be  
 2066 subject to claims of the settlor's creditors;

2067 ~~(2)(B)~~ (B) With respect to an irrevocable trust:

2068 ~~(A)(i)~~ (A)(i) Creditors or assignees of the settlor may reach the maximum amount that can  
 2069 be distributed to or for the settlor's benefit during the settlor's life or that could have  
 2070 been distributed to or for the settlor's benefit immediately prior to the settlor's death,  
 2071 provided that, if a trust has more than one settlor, the amount the creditors or  
 2072 assignees of a particular settlor may reach shall not exceed the settlor's interest in the  
 2073 portion of the trust attributable to that settlor's contribution; and

2074 ~~(B)(ii)~~ (B)(ii) The portion of a trust that can be distributed to or for the settlor's benefit  
 2075 pursuant to the power of a trustee, whether arising under the trust ~~agreement~~  
 2076 instrument or any other law, to make a distribution to or for the benefit of a settlor for  
 2077 the purpose of reimbursing the settlor in an amount equal to any income taxes payable  
 2078 on any portion of the trust principal and income that is treated as the settlor's  
 2079 individual income under applicable law shall not be considered an amount that can  
 2080 be distributed to or for the settlor's benefit during the settlor's life or that could have  
 2081 been distributed to or for the settlor's benefit immediately prior to the settlor's death;  
 2082 and

2083 ~~(3)(C)~~ (C) After the death of a settlor, and subject to the settlor's right to direct the source  
 2084 from which liabilities shall be paid, ~~the~~:

2085 (i) The property of a trust that was revocable at the settlor's death or had become  
 2086 irrevocable as a result of the settlor's incapacity shall be subject to claims of the  
 2087 ~~settlor's creditors~~ of the settlor's estate to the extent the settlor's probate estate is  
 2088 inadequate; and

2089 (ii) Payments that would not be subject to the claims of the ~~settlor's creditors~~ of the  
 2090 settlor's estate if made by way of beneficiary designation to persons other than the  
 2091 settlor's estate shall not be made subject to such claims by virtue of this Code section  
 2092 unless otherwise provided in the trust instrument.

2093 (b)(1) As used in this subsection, the term:

2094 (A) 'Inter vivos marital trust' means:

2095 (i) A trust described in Section 2523(e) of the Internal Revenue Code of 1986, as it  
 2096 existed on February 1, 2018;

2097 (ii) A trust for which the election described in Section 2523(f) of the Internal  
 2098 Revenue Code of 1986, as it existed on February 1, 2018, has been made; or

2099 (iii) Another trust to the extent such trust's assets are attributable to a trust described  
2100 in division (i) or (ii) of this subparagraph.

2101 (B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an  
2102 inter vivos marital trust, regardless of whether such spouse is married to the settlor at  
2103 the time of such spouse's death.

2104 (2) Subject to Article 4 of Chapter 2 of Title 18, after the death of the settlor's spouse,  
2105 the assets of an inter vivos marital trust shall be deemed to have been contributed by the  
2106 settlor's spouse and not by the settlor."

2107 **SECTION 1-81.**

2108 Said title is further amended by revising Code Section 53-12-170, relating to definition and  
2109 charitable purposes, as follows:

2110 "53-12-170.

2111 (a) A charitable trust is a trust in which the settlor provides that the trust property shall be  
2112 used exclusively for charitable purposes.

2113 (b) Charitable purposes shall include:

2114 (1) The relief of poverty;

2115 (2) The advancement of education;

2116 (3) The advancement of ethics and religion;

2117 (4) The advancement of health;

2118 (5) The advancement of science and the arts and humanities;

2119 (6) The protection and preservation of the environment;

2120 (7) The improvement, maintenance, or repair of cemeteries, other places of disposition  
2121 of human remains, and memorials;

2122 (8) The prevention of cruelty to animals;

2123 (9) Governmental purposes; and

2124 (10) Other similar subjects having for their object the relief of human suffering or the  
2125 promotion of human civilization.

2126 ~~(c) If the settlor provides for both charitable and noncharitable purposes, the provisions~~  
2127 ~~relating to the charitable purposes shall be governed by this article."~~

2128 **SECTION 1-82.**

2129 Said title is further amended by revising Code Section 53-12-210, relating to compensation  
2130 of trustee, as follows:

2131 "53-12-210.

2132 (a) Trustees shall be compensated in accordance with either the trust instrument or any  
2133 separate written agreement between the trustee and the settlor. After the settlor's death or

2134 incapacity or while the trust is irrevocable, the trust instrument or the agreement relating  
2135 to such trustee's compensation may be modified as follows:

2136 (1) The trustee and all ~~AH~~ qualified beneficiaries may by unanimous consent modify the  
2137 trust instrument or agreement relating to the trustee's compensation without receiving the  
2138 approval of any court; ~~and~~ or

2139 (2) By petition pursuant to Code Section 53-12-61.

2140 (b) If there is no provision for trustee compensation in the trust instrument and there is no  
2141 separate written agreement between the trustee and the settlor relating to such trustee's  
2142 compensation, a separate written agreement relating to such trustee's compensation may  
2143 be entered into between such trustee and the qualified beneficiaries as follows:

2144 (1) The trustee and all ~~AH~~ qualified beneficiaries may by unanimous consent enter into  
2145 an agreement relating to such trustee's compensation without receiving the approval of  
2146 any court; or

2147 (2) Any qualified beneficiary may petition the court to approve an agreement relating to  
2148 such trustee's compensation. Such petition shall be served upon all qualified  
2149 beneficiaries.

2150 (c) In cases other than those described in subsections (a) and (b) of this Code section, the  
2151 trustee shall be entitled to compensation as follows:

2152 (1) With respect to a corporate trustee, its published fee schedule, provided that such fees  
2153 are reasonable under the circumstances; and

2154 (2) With respect to an individual trustee:

2155 (A) One percent of cash and the fair market value of any other principal asset received  
2156 upon the initial funding of the trust and at such time as additional principal assets are  
2157 received; and

2158 (B) An annual fee calculated in accordance with the following schedule based upon the  
2159 cash and the market value of the other principal assets valued as of the last day of the  
2160 trust accounting year prorated based on the length of service by such trustee during that  
2161 year:

2162	If the cash and market value of the	
2163	other principal assets are:	Annual fee:
2164	\$500,000.00 or less . . . . .	1.75 percent of the cash and market
2165		value of the other principal assets.
2166	More than \$500,000.00 but less than	\$8,750.00 plus 1.25 percent of the
2167	\$1 million . . . . .	excess over \$500,000.00.
2168	More than \$1 million but less than	\$15,000.00 plus 1.00 percent of the
2169	\$2 million . . . . .	excess over \$1 million.

2170	More than \$2 million but less than	\$25,000.00 plus 0.85 percent of the
2171	\$5 million . . . . .	excess over \$2 million.
2172	More than \$5 million . . . . .	\$50,500.00 plus 0.50 percent of the
2173		excess over \$5 million."

2174 **SECTION 1-83.**

2175 Said title is further amended by revising Code Section 53-12-241, relating to duty of prudent  
2176 administration, as follows:

2177 "53-12-241.

2178 (a) In administering a trust, the trustee shall exercise the judgment and care of a prudent  
2179 person acting in a like capacity and familiar with such matters, considering the purposes,  
2180 provisions, distribution requirements, and other circumstances of the trust.

2181 (b) A trustee who invests and manages trust assets owes a duty to the beneficiaries of the  
2182 trust to comply with the prudent investor rule set forth in Article 16 of this chapter."

2183 **SECTION 1-84.**

2184 Said title is further amended by revising Code Section 53-12-243, relating to duty to provide  
2185 reports and accounts, as follows:

2186 "53-12-243.

2187 (a) On reasonable request by any qualified beneficiary, the trustee shall provide the  
2188 qualified beneficiary with a report of information, to the extent relevant to that beneficiary's  
2189 interest, about the assets, liabilities, receipts, and disbursements of the trust, the acts of the  
2190 trustee, and the particulars relating to the administration of such trust, including the trust  
2191 provisions that describe or affect such beneficiary's interest.

2192 (b)(1) A trustee shall account at least annually, at the termination of the trust, and upon  
2193 a change of trustees to each ~~qualified~~ beneficiary of an irrevocable trust to whom income  
2194 is required or authorized in the trustee's discretion to be distributed currently, and to any  
2195 person who may revoke the trust. At the termination of the trust, the trustee shall also  
2196 account to each remainder beneficiary. Upon a change of trustees, the trustee shall also  
2197 account to the successor trustee. ~~In full satisfaction of this obligation, the trustee may~~  
2198 ~~deliver the accounting to the guardian or conservator of any qualified beneficiary who is~~  
2199 ~~not sui-juris.~~

2200 (2) An accounting furnished to a ~~qualified~~ beneficiary pursuant to paragraph (1) of this  
2201 subsection shall contain a statement of receipts and disbursements of principal and  
2202 income that have occurred during the last complete fiscal year of the trust or since the last  
2203 accounting to that beneficiary and a statement of the assets and liabilities of the trust as  
2204 of the end of the accounting period.

2205 (c) A trustee shall not be required to report information or account to a ~~qualified~~  
 2206 beneficiary who has waived in writing the right to a report or accounting and has not  
 2207 withdrawn that waiver.

2208 (d) Subsections (a) and (b) of this Code section and the common law duty of the trustee  
 2209 to keep the beneficiaries of the trust reasonably informed of the trust and its administration  
 2210 shall not apply to the extent that the ~~terms provisions~~ of the trust provide otherwise or the  
 2211 settlor of the trust directs otherwise in a writing delivered to the trustee.

2212 (e) Nothing in this Code section shall affect the power of a court to require or excuse an  
 2213 accounting."

2214 **SECTION 1-85.**

2215 Said title is further amended by revising Code Section 53-12-261, relating to powers of  
 2216 trustee and limitation based on fiduciary duties, as follows:

2217 "53-12-261.

2218 (a) A trustee of an express trust, without court authorization, shall be authorized to  
 2219 exercise:

2220 (1) Powers conferred by the trust instrument; and

2221 (2) Except as limited by the trust instrument:

2222 (A) All powers over the trust property that an unmarried competent owner has over  
 2223 individually owned property;

2224 (B) Any other powers appropriate to achieve the proper investment, management, and  
 2225 distribution of the trust property; and

2226 (C) Any other powers conferred by this chapter.

2227 (b) Without limiting the authority conferred by subsection (a) of this Code section, a  
 2228 trustee of an express trust, without court authorization, shall be authorized:

2229 (1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property  
 2230 or interest therein which the fiduciary may hold from time to time, at public or private  
 2231 sale or otherwise, with or without warranties or representations, upon such terms and  
 2232 conditions, including credit, and for such consideration as the fiduciary deems advisable  
 2233 and to transfer and convey the property or interest therein which is at the disposal of the  
 2234 fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the  
 2235 fiduciary shall not be under a duty to follow the proceeds or other consideration received;

2236 (2) To invest and reinvest in any property which the fiduciary deems advisable,  
 2237 including, but not limited to, common or preferred stocks, bonds, debentures, notes,  
 2238 mortgages, or other securities, in or outside the United States; insurance contracts on the  
 2239 life of any beneficiary or of any person in whom a beneficiary has an insurable interest  
 2240 or in annuity contracts for any beneficiary; any real or personal property; investment

2241 trusts, including the securities of or other interests in any open-end or closed-end  
 2242 management investment company or investment trust registered under the federal  
 2243 Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations  
 2244 in common trust funds;

2245 (3) To the extent and upon such terms and conditions and for such periods of time as the  
 2246 fiduciary shall deem necessary or advisable, to continue or participate in the operation of  
 2247 any business or other enterprise, whatever its form or organization, including, but not  
 2248 limited to, the power:

2249 (A) To effect incorporation, dissolution, or other change in the form of the organization  
 2250 of the business or enterprise;

2251 (B) To dispose of any interest therein or acquire the interest of others therein;

2252 (C) To contribute or invest additional capital thereto or to lend money thereto in any  
 2253 such case upon such terms and conditions as the fiduciary shall approve from time to  
 2254 time; and

2255 (D) To determine whether the liabilities incurred in the conduct of the business are to  
 2256 be chargeable solely to the part of the property held by the fiduciary set aside for use  
 2257 in the business or to the property held by the fiduciary as a whole.

2258 In all cases in which the fiduciary is required to file accounts in any court or in any other  
 2259 public office, it shall not be necessary to itemize receipts, disbursements, and  
 2260 distributions of property; but it shall be sufficient for the fiduciary to show in the account  
 2261 a single figure or consolidation of figures, and the fiduciary shall be permitted to account  
 2262 for money and property received from the business and any payments made to the  
 2263 business in lump sum without itemization;

2264 (4) To form a corporation or other entity and to transfer, assign, and convey to the  
 2265 corporation or entity all or any part of the property held by the fiduciary in exchange for  
 2266 the stock, securities, or obligations of or other interests in any such corporation or entity  
 2267 and to continue to hold the stock, securities, obligations, and interests;

2268 (5) To continue any farming operation and to do any and all things deemed advisable by  
 2269 the fiduciary in the management and maintenance of the farm and the production and  
 2270 marketing of crops and dairy, poultry, livestock, orchard, and forest products, including,  
 2271 but not limited to, the power:

2272 (A) To operate the farm with hired labor, tenants, or sharecroppers;

2273 (B) To lease or rent the farm for cash or for a share of the crops;

2274 (C) To purchase or otherwise acquire farm machinery, equipment, and livestock;

2275 (D) To construct, repair, and improve farm buildings of all kinds needed, in the  
 2276 fiduciary's judgment, for the operation of the farm;

- 2277 (E) To make or obtain loans or advances at the prevailing rate or rates of interest for  
2278 farm purposes, such as for production, harvesting, or marketing; or for the construction,  
2279 repair, or improvement of farm buildings; or for the purchase of farm machinery,  
2280 equipment, or livestock;
- 2281 (F) To employ approved soil conservation practices, in order to conserve, improve, and  
2282 maintain the fertility and productivity of the soil;
- 2283 (G) To protect, manage, and improve the timber and forest on the farm and to sell the  
2284 timber and forest products when it is to the best interest of the persons to whom the  
2285 fiduciary owes a duty of care;
- 2286 (H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where  
2287 needed;
- 2288 (I) To engage in the production of livestock, poultry, or dairy products and to construct  
2289 such fences and buildings and to plant pastures and crops as may be necessary to carry  
2290 on such operations;
- 2291 (J) To market the products of the farm; and
- 2292 (K) In general, to employ good husbandry in the farming operation;
- 2293 (6) To manage real property:
- 2294 (A) To improve, manage, protect, and subdivide any real property;
- 2295 (B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
- 2296 (C) To terminate any subdivision or part thereof;
- 2297 (D) To borrow money for the purposes authorized by this paragraph for the periods of  
2298 time and upon the terms and conditions as to rates, maturities, and renewals as the  
2299 fiduciary shall deem advisable and to mortgage or otherwise encumber the property or  
2300 part thereof, whether in possession or reversion;
- 2301 (E) To lease the property or part thereof, the lease to commence at the present or in the  
2302 future, upon the terms and conditions, including options to renew or purchase, and for  
2303 the period or periods of time as the fiduciary deems advisable even though the period  
2304 or periods may extend beyond the duration of the estate or trust;
- 2305 (F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,  
2306 conveyances, or grants of every nature and kind which are lawful in the jurisdiction in  
2307 which the property lies;
- 2308 (G) To manage and improve timber and forests on the property, to sell the timber and  
2309 forest products, and to make grants, leases, and contracts with respect thereto;
- 2310 (H) To modify, renew, or extend leases;
- 2311 (I) To employ agents to rent and collect rents;
- 2312 (J) To create easements and to release, convey, or assign any right, title, or interest  
2313 with respect to any easement on the property or part thereof;

- 2314 (K) To erect, repair, or renovate any building or other improvement on the property  
2315 and to remove or demolish any building or other improvement in whole or in part; and  
2316 (L) To deal with the property and every part thereof in all other ways and for such  
2317 other purposes or considerations as it would be lawful for any person owning the same  
2318 to deal with such property either in the same or in different ways from those specified  
2319 elsewhere in this paragraph;
- 2320 (7) To lease personal property held by the fiduciary or part thereof, the lease to  
2321 commence at the present or in the future, upon the terms and conditions, including  
2322 options to renew or purchase, and for the period or periods of time as the fiduciary deems  
2323 advisable even though the period or periods may extend beyond the duration of the estate  
2324 or trust;
- 2325 (8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other  
2326 expenses incurred in the collection, care, administration, and protection of the property  
2327 held by the fiduciary; and
- 2328 (B) To pay from the estate or trust all charges that the fiduciary deems necessary or  
2329 appropriate to comply with laws regulating environmental conditions and to remedy or  
2330 ameliorate any such conditions which the fiduciary determines adversely affect the  
2331 property held by the fiduciary or otherwise are liabilities of the estate or trust and to  
2332 apportion all such charges among the several bequests and trusts and the interests of the  
2333 beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under  
2334 the circumstances;
- 2335 (9) To receive additional property from any source and to administer the additional  
2336 property as a portion of the appropriate estate or trust under the management of the  
2337 fiduciary, provided that the fiduciary shall not be required to receive the property without  
2338 the fiduciary's consent;
- 2339 (10) In dealing with one or more fiduciaries of the estate or any trust created by the  
2340 decedent or the settlor or any spouse or child of the decedent or settlor and irrespective  
2341 of whether the fiduciary is a personal representative or trustee of such other estate or  
2342 trust:
- 2343 (A) To sell real or personal property of the estate or trust to such fiduciary or to  
2344 exchange such property with such fiduciary upon such terms and conditions as to sale  
2345 price, terms of payment, and security as shall seem advisable to the fiduciary; and the  
2346 fiduciary shall be under no duty to follow the proceeds of any such sale; and
- 2347 (B) To borrow money from the estate or trust for such periods of time and upon such  
2348 terms and conditions as to rates, maturities, renewals, and securities as the fiduciary  
2349 shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes,  
2350 the costs of the administration of the estate or trust, and like charges against the estate

2351 or trust or any part thereof or of discharging any other liabilities of the estate or trust  
2352 and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as  
2353 may be required to secure the loan and to renew existing loans;

2354 (11) To borrow money for such periods of time and upon such terms and conditions as  
2355 to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the  
2356 purpose of paying debts, taxes, or other charges against the estate or trust or any part  
2357 thereof and to mortgage, pledge, or otherwise encumber such portion of the property held  
2358 by the fiduciary as may be required to secure the loan and to renew existing loans either  
2359 as maker or endorser;

2360 (12) To make loans out of the property held by the fiduciary, including loans to a  
2361 beneficiary on terms and conditions the fiduciary considers to be fair and reasonable  
2362 under the circumstances, and the fiduciary has a lien on future distributions for repayment  
2363 of those loans;

2364 (13) To vote shares of stock or other ownership interests held by the fiduciary, in person  
2365 or by proxy, with or without power of substitution;

2366 (14) To hold a security in the name of a nominee or in other form without disclosure of  
2367 the fiduciary relationship, so that title to the security may pass by delivery; but the  
2368 fiduciary shall be liable for any act of the nominee in connection with the security so  
2369 held;

2370 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,  
2371 notes, mortgages, or other property into other stocks, bonds, debentures, notes,  
2372 mortgages, or other property; to subscribe for other or additional stocks, bonds,  
2373 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,  
2374 debentures, notes, mortgages, or other property so acquired as investments of the estate  
2375 or trust so long as the fiduciary shall deem advisable;

2376 (16) To unite with other owners of property similar to any which may be held at any time  
2377 by the fiduciary, in carrying out any plan for the consolidation or merger, dissolution or  
2378 liquidation, foreclosure, lease, or sale of the property or the incorporation or  
2379 reincorporation, reorganization, or readjustment of the capital or financial structure of any  
2380 corporation, company, or association the securities of which may form any portion of an  
2381 estate or trust; to become and serve as a member of a shareholders' or bondholders'  
2382 protective committee; to deposit securities in accordance with any plan agreed upon; to  
2383 pay any assessments, expenses, or sums of money that may be required for the protection  
2384 or furtherance of the interest of the beneficiaries to whom the fiduciary owes a duty of  
2385 care with reference to any such plan; and to receive as investments of the estate or trust  
2386 any securities issued as a result of the execution of such plan;

- 2387 (17) To adjust the interest rate from time to time on any obligation, whether secured or  
 2388 unsecured, constituting a part of the estate or trust;
- 2389 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,  
 2390 with or without renewal or extension, upon such terms as the fiduciary shall deem  
 2391 advisable, without regard to the value of the security, if any, at the time of the  
 2392 continuance;
- 2393 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,  
 2394 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,  
 2395 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the  
 2396 property by deed from the mortgagor or obligor without foreclosure; and to retain the  
 2397 property so bid in or taken over without foreclosure;
- 2398 (20) To carry such insurance coverage as the fiduciary shall deem advisable;
- 2399 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the  
 2400 estate or trust;
- 2401 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle  
 2402 claims involving the fiduciary or the property held by the fiduciary;
- 2403 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or  
 2404 otherwise deal with and settle claims in favor of or against the estate or trust as the  
 2405 fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the  
 2406 fiduciary and the beneficiaries to whom the fiduciary owes a duty of care and the  
 2407 person against or for whom the claim is asserted, in the absence of fraud by such  
 2408 persons and, in the absence of fraud, bad faith, or gross negligence of the fiduciary,  
 2409 shall be conclusive between the fiduciary and the beneficiaries to whom the fiduciary  
 2410 owes a duty of care; and
- 2411 (C) To compromise all debts, the collection of which are doubtful, belonging to the  
 2412 estate or trust when such settlements will advance the interests of those represented;
- 2413 (23) To employ and compensate, out of income or principal or both and in such  
 2414 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful  
 2415 to advise or assist in the administration of the estate or trust, including, but not limited to,  
 2416 agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental  
 2417 agents, realtors, appraisers, and tax specialists; and to do so without liability for any  
 2418 neglect, omission, misconduct, or default of ~~the~~ any such agent or representative;  
 2419 ~~provided such person was~~ selected and retained with due care on the part of the fiduciary;  
 2420 provided, however, that, if an attorney in fact is appointed by a power of attorney to  
 2421 which Chapter 6B of Title 10 is applicable under Code Section 10-6B-81, the exercise  
 2422 of the fiduciary powers of the trustee by the attorney in fact shall be subject to Code  
 2423 Section 10-6B-40;

2424 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created  
2425 by a single trust instrument until division shall become necessary in order to make  
2426 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts  
2427 of shares by appropriate entries in the fiduciary's books of account and to allocate to each  
2428 share or part of share its proportionate part of all receipts and expenses; provided,  
2429 however, that this paragraph shall not defer the vesting in possession of any share or part  
2430 of share of the trust;

2431 (25) To set up proper and reasonable reserves for taxes, assessments, insurance  
2432 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber  
2433 properties, repairs, improvements, and general maintenance of buildings or other property  
2434 out of rents, profits, or other income received;

2435 (26) To value property held by the fiduciary and to distribute such property in cash or  
2436 in kind, or partly in cash and partly in kind, in divided or undivided interests, as the  
2437 fiduciary finds to be most practical and in the best interest of the distributees, the  
2438 fiduciary being able to distribute types of assets differently among the distributees;

2439 (27) To transfer money or other property distributable to a beneficiary who is under  
2440 age 21, an adult for whom a guardian or conservator has been appointed, or an adult who  
2441 the fiduciary reasonably believes is incapacitated by distributing such money or property  
2442 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

2443 (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have  
2444 a conservator, the beneficiary's guardian;

2445 (B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to  
2446 Minors Act' or similar state law and, for that purpose, creating a custodianship and  
2447 designating a custodian;

2448 (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial  
2449 Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or

2450 (D) Distributing it to any other person, whether or not appointed guardian or  
2451 conservator by any court, who shall, in fact, have the care and custody of the person of  
2452 the beneficiary.

2453 The fiduciary shall not be under any duty to see to the application of the distributions so  
2454 made if the fiduciary exercised due care in the selection of the person, including the  
2455 beneficiary, to whom the payments were made; and the receipt of the person shall be full  
2456 acquittance to the fiduciary;

2457 (28) To determine:

2458 (A) What is principal and what is income of any estate or trust and to allocate or  
2459 apportion receipts and expenses, as between principal and income, in the exercise of the  
2460 fiduciary's discretion and, by way of illustration and not limitation of the fiduciary's

2461 discretion, to charge premiums on securities purchased at a premium against principal  
 2462 or income or partly against each;

2463 (B) Whether to apply stock dividends and other noncash dividends to income or  
 2464 principal or to apportion them as the fiduciary shall deem advisable; and

2465 (C) What expenses, costs, and taxes, other than estate, inheritance, and succession  
 2466 taxes and other governmental charges, shall be charged against principal or income or  
 2467 apportioned between principal and income and in what proportions; and

2468 (29) To make, modify, and execute contracts and other instruments, under seal or  
 2469 otherwise, as the fiduciary deems advisable; ~~and~~

2470 ~~(30) To serve without making and filing inventory and appraisement, without filing any~~  
 2471 ~~annual or other returns or reports to any court, and without giving bond; but a personal~~  
 2472 ~~representative shall furnish to the income beneficiaries, at least annually, a statement of~~  
 2473 ~~receipts and disbursements.~~

2474 (c) The exercise of a power shall be subject to the fiduciary duties prescribed by this  
 2475 ~~chapter title.~~

2476 (d) If a testator incorporates by reference into a will or a probate court grants to a personal  
 2477 representative any or all of the powers contained in this Code section, then as:

2478 (1) As used in this Code section, the term:

2479 ~~(1)(A)~~ (A) 'Beneficiary' includes a distributee of the estate;

2480 ~~(2)(B)~~ (B) 'Trust' includes the estate held by the personal representative; and

2481 ~~(3)(C)~~ (C) 'Trustee' or 'fiduciary' includes the personal representative; and

2482 (2) A conferral upon a personal representative of the powers provided by paragraph (1)  
 2483 of subsection (b) of this Code section shall not authorize such personal representative to  
 2484 bind the estate by any warranty in any conveyance or contract in violation of  
 2485 subsection (a) of Code Section 53-8-14."

#### 2486 SECTION 1-86.

2487 Said title is further amended by revising Code Section 53-12-263, relating to incorporation  
 2488 of powers by reference, as follows:

2489 "53-12-263.

2490 (a) By an expressed intention of the testator or settlor contained in a will or in a trust  
 2491 instrument in writing whereby an express trust is created, any or all of the powers or any  
 2492 portion thereof enumerated in this part, as they exist at the time of the signing of the will  
 2493 by the testator or at the time of the signing by the first settlor who signs the trust  
 2494 instrument, may be, by appropriate reference made thereto, incorporated in the will or other  
 2495 written instrument with the same effect as though such language were set forth verbatim  
 2496 in the trust instrument.

2497 (b) At any time after the execution of a revocable trust, the settlor or anyone who is  
 2498 authorized by the trust instrument to modify the trust may incorporate any or all of the  
 2499 powers or any portion thereof enumerated in this part, as they exist at the time of the  
 2500 incorporation.

2501 (c) Incorporation of one or more of the powers contained in this part, by reference to the  
 2502 appropriate portion of Code Section 53-12-261, shall be in addition to and not in limitation  
 2503 of the common-law or statutory powers of the fiduciary.

2504 (d)(1) A provision in any will or trust instrument which incorporates powers by citation  
 2505 to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); former Code  
 2506 Section 53-12-232 or 53-15-3; or Code Section ~~15-12-261~~ 53-12-261, which were in  
 2507 effect at the time the trust was created and which was valid under the law in existence at  
 2508 the time the will was signed by the testator or at the time of the signing by the first settlor  
 2509 who signed the trust instrument shall be effective notwithstanding the subsequent repeal  
 2510 or amendment of such statute.

2511 (2) A provision in any will or trust instrument which was signed by the testator or by the  
 2512 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates  
 2513 powers by citation to former Code Section 53-15-3 in effect on the date of such signing  
 2514 shall be deemed to mean and refer to the corresponding powers contained in former Code  
 2515 Section 53-12-232.

2516 (e) If any or all of the powers contained in this part are incorporated by reference into a  
 2517 will by a testator, ~~then as used in this part the term~~ or granted to a personal representative  
 2518 by a probate court, then:

2519 (1) As used in this part, the term:

2520 (A) 'Beneficiary' includes a distributee of the estate.

2521 ~~(B)~~ 'Trust' includes the estate held by the personal representative; and

2522 ~~(C)~~ 'Trustee' or 'fiduciary' includes the personal representative; and

2523 (2) A conferral upon a personal representative of the powers provided by paragraph (1)  
 2524 of subsection (b) of Code Section 53-12-261 or by the corresponding provision of any  
 2525 statute incorporated pursuant to subsection (d) of this Code section shall not authorize  
 2526 such personal representative to bind the estate by any warranty in any conveyance or  
 2527 contract in violation of subsection (a) of Code Section 53-8-14."

2528 **SECTION 1-87.**

2529 Said title is further amended by revising Code Section 53-12-340, relating to investment  
 2530 standard, as follows:

2531 "53-12-340.

2532 (a) A trustee shall invest and manage trust assets as a prudent investor would by ~~In~~  
 2533 ~~investing and managing trust property, a trustee shall exercise the judgment and care under~~  
 2534 ~~the circumstances then prevailing of a prudent person acting in a like capacity and familiar~~  
 2535 ~~with such matters,~~ considering the purposes, provisions, and distribution requirements, and  
 2536 other circumstances of the trust. In satisfying this standard, the trustee shall exercise  
 2537 reasonable care, skill, and caution.

2538 (b) A trustee's investment and management decisions respecting individual assets shall be  
 2539 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part  
 2540 of an overall investment strategy having risk and return objectives reasonably suited to the  
 2541 trust.

2542 ~~(b)~~(c) Among the factors that a trustee shall consider in investing and managing trust  
 2543 assets are such of the following as are relevant to the trust or its beneficiaries:

- 2544 (1) General economic conditions;  
 2545 (2) The possible effect of inflation or deflation;  
 2546 (3) Anticipated tax consequences;  
 2547 (4) The attributes of the portfolio;,  
 2548 (5) The expected return from income and appreciation;  
 2549 (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital;  
 2550 (7) An asset's special relationship or special value, if any, to the purposes of the trust or  
 2551 to one or more of the beneficiaries or to the settlor;  
 2552 (8) The anticipated duration of the trust; and  
 2553 (9) Any special circumstances.

2554 (d) In investing and managing trust assets, the trustee may consider the personal values of  
 2555 the beneficiaries, including but not limited to a desire to engage in investing strategies that  
 2556 align with social, political, religious, philosophical, environmental, governance, or other  
 2557 values or beliefs of the beneficiaries.

2558 ~~(c)~~(e) Any determination of liability for investment performance shall consider not only  
 2559 the performance of a particular investment but also the performance of the portfolio as a  
 2560 whole and as a part of an overall investment strategy having risk and return objectives  
 2561 reasonably suited to the trust.

2562 ~~(d)~~(f) A trustee shall make a reasonable effort to verify facts relevant to the investment and  
 2563 management of trust assets.

2564 (g) A trustee may invest in any kind of property or type of investment consistent with the  
 2565 standards of this article.

2566 (h) A trustee who has special investment skills or expertise shall have a duty to use those  
 2567 special skills or expertise. A trustee who is named trustee in reliance upon such trustee's

2568 representation that such trustee has special investment skills or expertise shall be held liable  
 2569 for failure to make use of such degree of skill or expertise.

2570 ~~(e) A trustee may invest in any kind of property or type of investment consistent with the~~  
 2571 ~~standards of this article.~~

2572 (f)(i) In investing and managing trust assets, a trustee may only incur costs that are  
 2573 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills  
 2574 of the trustee.

2575 (j) A trustee that is a bank or trust company shall not be precluded from acquiring and  
 2576 retaining the securities of or other interests in an investment company or investment trust  
 2577 because the bank or trust company or an affiliate provides services to the investment  
 2578 company or investment trust as investment adviser, custodian, transfer agent, registrar,  
 2579 sponsor, distributor, manager, or otherwise and receives compensation for such services,  
 2580 if the costs are otherwise appropriate and reasonable in relation to the assets."

2581 **SECTION 1-88.**

2582 Said title is further amended by revising Code Section 53-12-500, relating to definitions, as  
 2583 follows:

2584 "53-12-500.

2585 As used in this article, the term:

2586 (1) 'Directed trustee' means a trustee that is subject to a trust director's power of  
 2587 direction.

2588 (2) 'Power of appointment' means a power that enables a person, acting in a nonfiduciary  
 2589 capacity, to ~~designate~~:

2590 (A) Designate a recipient of either an ownership interest in or another power of  
 2591 appointment over trust property;

2592 (B) Rescind or terminate either an ownership interest in or another power of  
 2593 appointment over trust property; and

2594 (C) Determine when a beneficiary shall have the rights granted under Code Sections  
 2595 53-12-242 and 53-12-243 or similar rights granted under the governing instrument.

2596 (3) 'Power of direction' means a power over a trust granted to a person by the trust  
 2597 instrument to the extent the power is exercisable ~~while the person is not serving in a~~  
 2598 capacity other than as a trustee. Such term includes a power over the administration of  
 2599 the trust or the investment, management, or distribution of the trust property; a power to  
 2600 consent to a trustee's actions, whether through exercise of an affirmative power to consent  
 2601 or through nonexercise of a veto power over a trustee's actions, ~~when~~ where a trustee may  
 2602 not act without such consent; ~~a power to represent a beneficiary, other than a power under~~  
 2603 ~~Code Section 53-12-8; and, except as otherwise provided in the trust instrument, any and~~

2604 all further powers appropriate to the exercise or nonexercise of such powers held by the  
 2605 trust director pursuant to subsection (a) of Code Section 53-12-502. Such term shall  
 2606 exclude the powers described in subsection (b) of Code Section 53-12-501.

2607 (4) 'Trust director' means a person that is granted a power of direction by a trust to the  
 2608 extent the power is exercisable ~~while the person is not serving in a capacity other than~~ as  
 2609 a trustee, regardless of how whether the trust instrument refers to such person as a trust  
 2610 director and regardless of whether the person is a beneficiary or settlor of the trust."

2611 **SECTION 1-89.**

2612 Said title is further amended by revising Code Section 53-12-501, relating to application of  
 2613 article and construction of trust instrument, as follows:

2614 "53-12-501.

2615 (a) This article shall apply when the trust instrument evidences the settlor's intent to  
 2616 provide for the office and function of a trust director, regardless of the terms used to  
 2617 describe such office and functions.

2618 (b) This article shall not apply to:

2619 (1) A power of appointment;

2620 (2) A power to appoint or remove a trustee or trust director;

2621 (3) A power of a settlor to revoke the trust or amend the trust instrument;

2622 (4) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the  
 2623 power affects the beneficial interest of the beneficiary or a person represented by the  
 2624 beneficiary under Code Section 53-12-8 with respect to the exercise or nonexercise of the  
 2625 power; or

2626 (5) A power over a trust if both:

2627 (A) ~~The terms of the trust provide~~ instrument provides such power is held in a  
 2628 nonfiduciary capacity; and

2629 (B) Such power must be held in a nonfiduciary capacity to achieve the settlor's tax  
 2630 objectives.

2631 (c) Except as otherwise provided in the trust instrument, for purposes of this Code section  
 2632 a power ~~that is both a power of appointment and a power of direction shall be deemed~~  
 2633 granted to a person to designate a recipient of an ownership interest in or power over trust  
 2634 property that is exercisable in a capacity other than as a trustee is a power of appointment  
 2635 and not a power of direction."

2636 **SECTION 1-90.**

2637 Said title is further amended by revising Code Section 53-12-502, relating to authority,  
 2638 procedures, and powers of trust directors, as follows:

2639 "53-12-502.

2640 (a) Except as otherwise provided in ~~Subject to~~ this Code section, a trust instrument may  
2641 grant powers of direction to a trust director.

2642 (b) Except as otherwise provided in the trust instrument, when a trust instrument grants  
2643 powers of direction to a trust director, the trust director shall have any further powers  
2644 appropriate to the exercise or nonexercise of the powers of direction. A trust director shall  
2645 ~~be subject to the same rules as a trustee in a like position and under similar circumstances~~  
2646 ~~in the exercise or nonexercise of a power of direction regarding:~~

2647 (1) ~~A payback provision in the trust necessary to comply with the reimbursement~~  
2648 ~~requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.~~  
2649 ~~Section 1396p(d)(4)(A), as it existed on February 1, 2018, and regulations issued~~  
2650 ~~thereunder; and~~

2651 (2) ~~A charitable interest in the trust.~~

2652 (c) A trust director shall have the power to employ and compensate, out of income or  
2653 principal or both and in such proportions as the trust director or the trustee shall deem  
2654 advisable, persons deemed by the trust director needful to advise or assist in the  
2655 administration of the trust, including, but not limited to, agents, accountants, brokers,  
2656 attorneys at law, attorneys in fact, investment brokers, rental agents, realtors, appraisers,  
2657 and tax specialists, and to do so without liability for any neglect, omission, misconduct, or  
2658 default of the agent or representative, provided that such person was selected and retained  
2659 with due care on the part of the trust director; provided, however, that, if an attorney in fact  
2660 is appointed by a power of attorney to which Chapter 6B of Title 10 is applicable under  
2661 Code Section 10-6B-81, the exercise of the fiduciary powers of the trust director by the  
2662 attorney in fact shall be subject to Code Section 10-6B-40.

2663 ~~(c)(d)~~ The powers of direction of a trust director who is also a beneficiary shall be subject  
2664 to the limitations of Code Section 53-12-270.

2665 ~~(d)(e)~~ In the case of a power to modify the trust:

2666 (1) The duties or liabilities of a trustee may not be enlarged without the trustee's express  
2667 consent; and

2668 (2) A trustee shall not be liable for failing to act in accordance with a modification or  
2669 termination of a trust of which the trustee had no notice."

2670 **SECTION 1-91.**

2671 Said title is further amended by revising Code Section 53-12-503, relating to role of directors  
2672 and petitioning court for instructions, as follows:

2673 "53-12-503.

2674 (a) Except as otherwise provided in this ~~Code section~~ article, with respect to a power of  
2675 direction:

2676 (1) ~~A~~ a trust director shall have the same fiduciary duty and liability in the exercise or  
2677 nonexercise of the power of direction as a trustee in a like position and under similar  
2678 circumstances; ~~and~~

2679 (2) ~~The trust instrument may vary the trust director's duty or liability to the same extent~~  
2680 ~~the trust instrument could vary the duty or liability of a trustee in a like position and~~  
2681 ~~under similar circumstances.~~

2682 (b) Where a trust director individually holds a power of direction, the trust director shall  
2683 not have the liability of a cotrustee, whether under Code Section 53-12-305 or otherwise,  
2684 with respect to a trustee or other trust director. Where a trust director holds a power of  
2685 direction jointly with a trustee or other trust director, the trust director shall have the  
2686 liability of a cotrustee, whether under Code Section 53-12-305 or otherwise, with respect  
2687 to a trustee or other trust director regarding the actions of that trustee or other trust director  
2688 that are within the scope of the jointly held power.

2689 (c) Except as otherwise provided in the trust instrument, a trust director shall not have the  
2690 duties imposed by Code Section 53-12-242 and subsection (b) of Code Section 53-12-243.

2691 (d) Without limiting the scope of subsection (a) of this Code section:

2692 (1) The trust instrument may vary a trust director's duty or liability to the same extent the  
2693 trust instrument could vary the duty or liability of a trustee in a like position and under  
2694 similar circumstances;

2695 (2) An action against a trust director for breach of trust must be commenced within the  
2696 same limitation period as under Code Section 53-12-307 for an action for breach of trust  
2697 against a trustee in a like position and under similar circumstances; and

2698 (3) A report or accounting shall have the same effect on the limitation period for an  
2699 action against a trust director for breach of trust that the report or accounting would have  
2700 under Code Section 53-12-307 in an action for breach of trust against a trustee in a like  
2701 position and under similar circumstances.

2702 (b)(e) A trust instrument may make the existence of a trust director's power of direction  
2703 contingent upon the occurrence of certain events, including, but not limited to, a request  
2704 to the trust director from a beneficiary or other similar party. A trust instrument may also  
2705 provide that a trust director's power of direction terminates or is rescinded upon the  
2706 occurrence of certain events, including but not limited to the passage of a specified period  
2707 of time after a request. For purposes of Code Section 53-12-501, when a power of  
2708 direction is contingent upon a request to a trust director from a person identified in the trust  
2709 instrument, such person shall be deemed to hold a power of appointment.

2710 ~~(e)~~(f) A trust instrument may empower a trust director to delegate a power of direction to  
 2711 a trustee and provide that, upon written acceptance of such delegation by the trustee, the  
 2712 trustee shall assume the fiduciary duties and liabilities conferred by the power of direction  
 2713 until such time as the trust director or trustee terminates the delegation by written notice.  
 2714 Except as otherwise provided in the trust instrument, during the time a power of direction  
 2715 is delegated in accordance with this subsection, the trust director making such delegation  
 2716 shall not be subject to a fiduciary obligation to monitor the trustee's exercise or nonexercise  
 2717 of the delegated power.

2718 ~~(d)~~(g) Subject to subsection ~~(g)~~ (j) of this Code section, a trust director shall:

2719 (1) Keep trustees and other trust directors reasonably informed of the exercise or  
 2720 nonexercise of the trust director's power of direction to the extent such exercise or  
 2721 nonexercise is relevant to the party's powers and duties regarding the trust; and

2722 (2) Respond to reasonable requests from trustees and other trust directors for information  
 2723 to the extent such information is relevant to the party's powers and duties regarding the  
 2724 trust.

2725 ~~(e)~~(h) A trust director acting in reliance on information provided by a trustee or another  
 2726 trust director shall not be liable for a breach of trust to the extent the breach resulted from  
 2727 such reliance, unless ~~by so acting the trust director engages in willful misconduct~~ acts in  
 2728 bad faith.

2729 ~~(f)~~(i) Except as otherwise provided in the trust instrument, if a trust director is licensed,  
 2730 certified, or otherwise authorized or permitted by law other than this article to provide  
 2731 health care in the ordinary course of the trust director's business or practice of a profession,  
 2732 to the extent the trust director acts in such capacity, the trust director shall have no duty or  
 2733 liability under this article.

2734 ~~(g)~~(j)(1) Except as otherwise provided in the trust instrument, a trust director shall not  
 2735 have a duty to:

2736 (A) Monitor a trustee or another trust director regarding matters outside the scope of  
 2737 the trust director's powers of direction; or

2738 (B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director  
 2739 concerning an instance in which the director might have acted differently ~~than~~ from a  
 2740 trustee or another trust director.

2741 (2) By taking one of the actions described in paragraph (1) of this subsection, a trust  
 2742 director ~~shall~~ does not assume any of the duties excluded by this subsection.

2743 ~~(h)~~(k) A trust instrument may impose a duty or liability on a trust director in addition to  
 2744 the duties and liabilities under this Code section.

2745 ~~(i)~~(l) A trust director that has reasonable doubt about a duty imposed by this Code section  
 2746 may petition the court for instructions.

2747 (m) A trust director shall be subject to the same rules as a trustee in a like position and  
 2748 under similar circumstances in the exercise or nonexercise of a power of direction  
 2749 regarding:

2750 (1) A payback provision in the trust necessary to comply with the reimbursement  
 2751 requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.  
 2752 Section 1396p(d)(4)(A), as amended, and regulations issued thereunder; and

2753 (2) A charitable interest in the trust."

#### 2754 **SECTION 1-92.**

2755 Said title is further amended by revising Code Section 53-12-504, relating to directed  
 2756 trustees, role, trustee's duty as to directed trustee, and petitioning court for instructions, as  
 2757 follows:

2758 "53-12-504.

2759 (a) Unless compliance by the directed trustee would clearly constitute ~~willful misconduct~~  
 2760 an act committed in bad faith on the part of the directed trustee, a directed trustee shall take  
 2761 reasonable action to comply with a trust director's exercise or nonexercise of a power of  
 2762 direction and shall not be liable for such action. A directed trustee must not comply with  
 2763 a trust director's exercise or nonexercise of a power of direction to the extent that  
 2764 compliance by the directed trustee would clearly constitute an act committed in bad faith.

2765 (b) For purposes of subsection (a) Subject to subsection (e) of this Code section, a  
 2766 direction from a trust director shall be within the scope of the trust director's powers of  
 2767 direction if the directed trustee shall: believes in good faith that the direction is within the  
 2768 trust director's powers of direction.

2769 ~~(1) Account at least annually to a trust director as if the trust director were a qualified~~  
 2770 ~~beneficiary of an irrevocable trust to whom income is required or authorized in the~~  
 2771 ~~trustee's discretion to be distributed; and~~

2772 ~~(2) Respond to reasonable requests from a trust director for information to the extent~~  
 2773 ~~such information is relevant to the party's interest in or trust director's powers and duties~~  
 2774 ~~regarding the trust.~~

2775 (c) Subject to subsection (f) of this Code section, a directed trustee shall:

2776 (1) Except as provided otherwise in the trust instrument, provide information to a trust  
 2777 director as if the trust director were a beneficiary of an irrevocable trust to whom income  
 2778 is required or authorized in the trustee's discretion to be distributed; and

2779 (2) Respond to reasonable requests from a trust director for information to the extent  
 2780 such information is relevant to the trust director's powers and duties regarding the trust.

2781 (d) A directed trustee acting in reliance on information provided by a trust director shall  
 2782 not be liable for a breach of trust to the extent the breach resulted from such reliance,  
 2783 unless by so acting the directed trustee ~~engages in willful misconduct~~ acts in bad faith.

2784 ~~(d)~~(e) A trustee shall not be liable for a failure to sufficiently report or provide information  
 2785 to a beneficiary or other party when such failure is related to the failure of a trust director  
 2786 to provide information to the trustee.

2787 ~~(e)~~(f)(1) Except as otherwise provided in the trust instrument, a trustee shall not have a  
 2788 duty to:

2789 (A) Monitor, investigate, review, or evaluate a trust director, including a trust director's  
 2790 actions or inactions;

2791 (B) Provide any accountings, reports, or other information to a trust director beyond  
 2792 that required by subsection ~~(b)~~ (c) of this Code ~~Section~~ section;

2793 (C) Advise a trust director regarding the scope, nature, execution, standard of care,  
 2794 potential liability, or other aspects of their status as trust director;

2795 (D) If compliance with a direction from the trust director would constitute an act  
 2796 committed in bad faith, take ~~Take~~ any action in response to ~~willful misconduct by the~~  
 2797 ~~trust director~~ such direction other than the refusal to comply with such direction;

2798 (E) Attempt to compel a trust director to act or not act;

2799 (F) Petition the court regarding a trust director's action, inaction, capacity, or any  
 2800 similar matter; or

2801 (G) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning  
 2802 an instance in which the trustee might have acted differently ~~than~~ from the trust  
 2803 director.

2804 (2) By taking one of the actions described in paragraph (1) of this ~~Code section~~  
 2805 subsection, a directed trustee does not assume any of the duties excluded by this  
 2806 subsection.

2807 ~~(f)~~(g) An exercise of a power of direction under which a trust director may release a trustee  
 2808 from liability for breach of trust shall not be effective if the release was induced ~~by willful~~  
 2809 ~~misconduct in bad faith~~ or by the provision of false or incomplete information by the  
 2810 trustee.

2811 ~~(g)~~(h) A trust instrument may impose a duty or liability on a directed trustee in addition  
 2812 to the duties and liabilities under this Code section.

2813 (i) A directed trustee that has reasonable doubt about a duty imposed by this Code section  
 2814 may petition the court for instructions."

**SECTION 1-93.**

2815  
 2816 Said title is further amended by revising Code Section 53-12-506, relating to statutory  
 2817 provisions applicable to trust directors, defenses available to trust directors, and jurisdiction,  
 2818 as follows:

2819 "53-12-506.

2820 (a) An individual shall be eligible to serve as a trust director regardless of citizenship and  
 2821 residency. If the trust director is a corporation, partnership, or other entity, it shall be  
 2822 required to have the power to act as a trustee in Georgia.

2823 ~~(a)(b) The~~ Except as otherwise provided in the trust instrument, the rules applicable to a  
 2824 trustee shall apply to a trust director regarding:

2825 (1) ~~Jurisdiction~~ Appointment and vacancies under Code Section ~~53-12-201~~ 53-12-6;

2826 (2) Appointment and acceptance, compensation, and resignation and removal of trustees  
 2827 under Article 11 of this chapter ~~Acceptance under Code Section 53-12-202~~;

2828 (3) Accounting under Article 12 of this chapter; and ~~Giving of a bond under Code~~  
 2829 ~~Section 53-12-203~~;

2830 (4) Nonresidents and foreign entities acting as trustees under Article 15 of this chapter.  
 2831 ~~Co-trustees under Code Section 53-12-204~~;

2832 ~~(5) Compensation and reimbursement of expenses under Code Sections 53-12-210~~  
 2833 ~~through 53-12-214~~;

2834 ~~(6) Resignation under Code Section 53-12-220~~;

2835 ~~(7) Removal under Code Section 53-12-221~~; and

2836 ~~(8) Service under Code Section 53-12-320.~~

2837 ~~(b)(c)~~ In an action against a trust director for breach of trust, the trust director may assert  
 2838 the same defenses a trustee in a like position and under similar circumstances could assert  
 2839 in an action for breach of trust against the trustee.

2840 ~~(e)(d)~~ By accepting appointment as a trust director of a trust subject to this article, a trust  
 2841 director submits to personal jurisdiction of the courts of this state regarding any matter  
 2842 related to a power or duty of a trust director. This subsection shall not preclude use of  
 2843 another method to obtain jurisdiction over a trust director."

**SECTION 1-94.**

2844  
 2845 Said title is further amended by revising Code Section 53-13-2, relating to definitions, as  
 2846 follows:

2847 "53-13-2.

2848 As used in this chapter, the term:

2849 (1) 'Account' means an arrangement under a terms-of-service agreement in which a  
 2850 custodian provides goods or services to the user.

2851 (2)(A) 'Agent' means an attorney in fact granted authority under a durable or  
 2852 nondurable power of attorney, including a person granted authority to act in the place  
 2853 of an individual under Chapter 6B of Title 10 and a person serving under a financial  
 2854 power of attorney created pursuant to Article 7 of Chapter 6 of Title 10 as it existed on  
 2855 June 30, 2017.

2856 (B) Such term shall not include a ~~health~~:

2857 (i) Health care agent, as defined in paragraph (6) of Code Section 31-32-2, ~~nor a~~  
 2858 ~~person~~;

2859 (ii) Person serving under a conditional power of attorney, as defined in subsection (a)  
 2860 of Code Section 10-6-6, unless the conditional power of attorney has become  
 2861 effective at a specified time or on the occurrence of a specified event or contingency;  
 2862 or

2863 (iii) Person to whom power and authority regarding the care and custody of a child,  
 2864 including temporary written permission to seek emergency medical treatment or other  
 2865 services for a child, has been delegated under Article 4 of Chapter 9 of Title 19.

2866 (3) 'Catalogue of electronic communications' means information that identifies each  
 2867 person with which a user has had an electronic communication, the time and date of the  
 2868 communication, and the electronic address of the person.

2869 (4)(A) 'Conservator' means a person appointed:

2870 (i) Pursuant to Code Section 7-1-640 or 7-1-643;

2871 (ii) By a court to manage the estate of a living individual; or

2872 (iii) By a court pursuant to Article 2 of Chapter 9 of this title to manage the estate of  
 2873 an individual who is missing or believed to be dead.

2874 (B) Such term shall include a guardian of the property appointed prior to July 1, 2005,  
 2875 but shall not include a conservator appointed pursuant to paragraph (1) of Code  
 2876 Section 9-16-14 unless the order appointing such conservator expressly so states and  
 2877 the proceeding pursuant to Chapter 16 of Title 9 in which such conservator is appointed  
 2878 concerns specific property consisting of or including digital assets.

2879 (5) 'Content of an electronic communication' means information concerning the  
 2880 substance or meaning of the communication which:

2881 (A) Has been sent or received by a user;

2882 (B) Is in electronic storage by a custodian providing an electronic communication  
 2883 service to the public or is carried or maintained by a custodian providing a remote  
 2884 computing service to the public; and

2885 (C) Is not readily accessible to the public.

2886 (6) 'Court' means the probate court.

- 2887 (7) 'Custodian' means a person that engages in the transmission of, maintains, processes,  
2888 receives, or stores a digital asset or electronic communication of another person.
- 2889 (8) 'Designated recipient' means a person chosen by a user using an online tool to  
2890 administer digital assets of the user.
- 2891 (9) 'Digital asset' means an electronic record in which an individual has a right or  
2892 interest. Such term shall not include an underlying asset or liability unless the asset or  
2893 liability is itself an electronic record.
- 2894 (10) 'Electronic' means relating to technology having electrical, digital, magnetic,  
2895 wireless, optical, electromagnetic, or similar capabilities.
- 2896 (11) 'Electronic communication' has the meaning set forth in 18 U.S.C. Section 2510(12),  
2897 effective January 1, 2018.
- 2898 (12) 'Electronic communication service' means a custodian that provides to a user the  
2899 ability to send or receive an electronic communication.
- 2900 (13) 'Fiduciary' means an original, additional, or successor personal representative,  
2901 conservator, agent, or trustee.
- 2902 (14) 'Information' includes data, text, images, videos, sounds, codes, computer programs,  
2903 software, and data bases.
- 2904 (15) 'Online tool' means an electronic service provided by a custodian that allows the  
2905 user, in an agreement distinct from the terms-of-service agreement between the custodian  
2906 and user, to provide directions for disclosure or nondisclosure of digital assets to a third  
2907 person.
- 2908 (16) 'Person' means an individual, estate, business or nonprofit entity, corporation,  
2909 business trust, trust, partnership, limited liability company, association, unincorporated  
2910 organization, joint venture, commercial entity, joint-stock company, public corporation,  
2911 government or governmental subdivision, agency, instrumentality, or other legal or  
2912 commercial entity.
- 2913 (17) 'Personal representative' means an original, additional, or successor executor,  
2914 administrator, county administrator, or administrator with the will annexed, or special  
2915 administrator a person legally authorized to perform substantially the same functions.
- 2916 (18) 'Power of attorney' means a writing or other record that grants a person authority to  
2917 act in the place of an individual, including a conditional power of attorney, as defined in  
2918 subsection (a) of Code Section 10-6-6, a power of attorney created pursuant to Chapter  
2919 6B of Title 10, and a financial power of attorney created pursuant to Article 7 of Chapter  
2920 6 of Title 10 as it existed on June 30, 2017.
- 2921 (19) 'Principal' means an individual who grants authority to a person to act in the place  
2922 of such individual in a power of attorney.

2923 (20) 'Protected person' means an individual for whom a conservator has been appointed,  
 2924 including a minor, as defined in Code Section 29-1-1, and a ward, as defined in Code  
 2925 Section 29-1-1. Such term shall include an individual for whom a petition for the  
 2926 appointment of a conservator is pending, including both a proposed ward, as defined in  
 2927 Code Section 29-1-1, and a respondent, as defined in Code Section 29-11-2.

2928 (21) 'Record' means information that is inscribed on a tangible medium or that is stored  
 2929 in an electronic or other medium and is retrievable in perceivable form.

2930 (22) 'Remote computing service' means a custodian that provides to a user  
 2931 computer-processing services or the storage of digital assets by means of an electronic  
 2932 communications system, as defined in 18 U.S.C. Section 2510(14), in effect on January  
 2933 1, 2018.

2934 (23) 'Terms-of-service agreement' means an agreement that controls the relationship  
 2935 between a user and a custodian.

2936 (24) 'Trustee' means a person with legal title to property under a trust instrument, as  
 2937 defined in Code Section 53-12-2, that creates a beneficial interest in another. Such term  
 2938 shall include a an original, additional, or successor trustee.

2939 (25) 'User' means a person whose digital asset or electronic communication is carried,  
 2940 maintained, processed, received, or stored by a custodian or to which a custodian  
 2941 provides services.

2942 (26) 'Will' means the legal declaration of an individual's testamentary intention regarding  
 2943 such individual's property or other matters. Such term shall include all codicils to such  
 2944 legal declaration, a testamentary instrument that only appoints an executor, and an  
 2945 instrument that revokes or revises a testamentary instrument."

2946 **SECTION 1-95.**

2947 Said title is further amended in Article 1 of Chapter 13, relating to general provisions, by  
 2948 adding a new Code section to read as follows:

2949 "53-13-4.

2950 In any proceeding brought pursuant to this chapter, service of notice shall be made in the  
 2951 manner provided by Chapter 11 of this title."

2952 **PART II**

2953 **SECTION 2-1.**

2954 Part 12 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated,  
 2955 relating to deposits of deceased depositors, is amended by revising Code Section 7-1-239,

2956 relating to definitions, payment of large deposits of deceased intestate depositors, affidavit  
2957 for disbursement, and form for affidavit, as follows:

2958 "7-1-239.

2959 (a) As used in this Code section, the term:

2960 (1) 'Affidavit of the provider' means the form provided for in subsection (e) of this Code  
2961 section.

2962 (2) 'Financial institution' means any federally chartered financial institution or state  
2963 chartered financial institution, including, but not limited to, those chartered by states  
2964 other than the State of Georgia whose deposits are federally insured.

2965 (b) Except as provided in subsection (c) of this Code section and in Article 8 of this  
2966 chapter, whenever any person dies intestate having a deposit of not more than \$15,000.00  
2967 in a financial institution, such financial institution, upon receipt of an affidavit, shall be  
2968 authorized to pay the proceeds of such deposit directly to the following individuals:

2969 (1) To the surviving spouse;

2970 (2) If no surviving spouse, to the children pro rata;

2971 (3) If no children or surviving spouse, to the father and mother pro rata; or

2972 (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

2973 Such affidavit shall state that such individuals qualify as the proper relation to the decedent  
2974 as specified in this subsection, there is no known will of the decedent, and that there are no  
2975 other known corresponding claimant or claimants to such deposit.

2976 (c) Except as provided in Article 8 of this chapter and in paragraph (2) of subsection (d)  
2977 of this Code section, if no application for the deposit is made by any person named in  
2978 subsection (b) of this Code section within 45 days from the death of the intestate depositor,  
2979 the financial institution shall be authorized to apply not more than \$15,000.00 of the  
2980 deposit of such deceased depositor in payment of the funeral expenses and expenses of the  
2981 last illness of such deceased depositor upon the receipt of itemized statements of such  
2982 expenses and the affidavit of the providers of such services that the itemized statements are  
2983 true and correct and have not been paid. Except as otherwise provided in paragraph (2) of  
2984 subsection (d) of this Code section, the ~~The~~ financial institution shall pay such expenses  
2985 in the order ~~received after~~ of priority provided by Code Section 53-7-40 following the  
2986 expiration of six months from the death of the depositor.

2987 (d)(1) Except as otherwise provided in paragraph (2) of this subsection, payments made  
2988 in compliance with ~~Payments pursuant to~~ this Code section shall operate as a complete  
2989 acquittal and discharge to the financial institution of liability from any suit, claim, or  
2990 demand of whatever nature by any heir, distributee, or creditor of the decedent, or any  
2991 other person. Except as otherwise provided in paragraph (2) of this subsection, the ~~The~~

2992 financial institution may rely on a properly executed affidavit in disbursing the funds in  
2993 accordance with this Code section.

2994 (2) The protection provided by paragraph (1) of this subsection does not extend to  
2995 payments made after a financial institution has received written notification from any  
2996 party able to request present payment or from the legal representative of any such party  
2997 to the effect that payments in accordance with the provisions of this Code section should  
2998 not be permitted. The service of notice upon the financial institution of a proceeding in  
2999 the probate court in the estate of the deceased intestate depositor in accordance with  
3000 Chapter 11 of Title 53 shall constitute written notice satisfying the requirements of the  
3001 preceding sentence of this paragraph; provided, however, that such service of notice shall  
3002 not be the exclusive manner by which such written notification may be given.

3003 (3) The financial institution may rely on a written notification satisfying the requirements  
3004 of paragraph (2) of this subsection in refusing to disburse the funds as requested in an  
3005 affidavit of the provider. Payments thereafter made pursuant to an order entered by the  
3006 probate court having jurisdiction over the estate of the deceased intestate depositor shall  
3007 operate as a complete acquittal and discharge to the financial institution of liability from  
3008 any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the  
3009 decendent, or any other person.

3010 (4) Nothing in this subsection shall relieve the liability of or limit the availability of any  
3011 remedies against any provider of services giving an affidavit in the form provided for in  
3012 subsection (e) of this Code section for any violation of Code Section 16-10-71, Code  
3013 Section 53-6-2, or other applicable law.

3014 (e) A document substantially in the following form shall be used as the affidavit of the  
3015 providers of services of funeral expenses and expenses of last illnesses of deceased  
3016 depositors:

3017 'State of Georgia County of \_\_\_\_\_

3018 STATUTORY AFFIDAVIT FORM

3019 \_\_\_\_\_ from \_\_\_\_\_ attests that  
3020 (Claimant) (Facility)  
3021 \_\_\_\_\_ died on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
3022 (Deceased)

3023 On information and belief, the Deceased has funds on deposit with \_\_\_\_\_.  
3024 (Financial Institution)

3025 Under O.C.G.A. § 7-1-239, such Financial Institution is authorized to pay the proceeds  
3026 of the Deceased's deposits, but in no event more than \$15,000.00, directly to the  
3027 following persons identified, collectively, as potential recipient(s):

- 3028 1. To the surviving spouse;
- 3029 2. If no surviving spouse, to the children pro rata;
- 3030 3. If no children or surviving spouse, to the father and mother pro rata; or
- 3031 4. If none of the above, then to the brothers and sisters of the decedent pro rata.

3032 Except as provided for by Article 8 in Title 7 of the O.C.G.A., if no request for the  
3033 Deceased's deposit is made by a potential recipient(s) within 45 days from the  
3034 Deceased's death, the Financial Institution is authorized to release up to \$15,000.00 for  
3035 funeral expenses and expenses of the last illness of the Deceased upon the receipt of  
3036 itemized statements of such expenses and this executed attestation.

3037 The Claimant attests that there is no known will of the Deceased and there is no known  
3038 potential recipient of the Deceased's deposits. The Claimant also attests that funeral  
3039 expenses or expenses of the last illness in the amount of \$ \_\_\_\_\_ were incurred  
3040 related to the Deceased and that true and correct copies of the itemized receipts fully  
3041 supporting such amount are attached to this affidavit. Finally, the Claimant further  
3042 attests that such expenses have not been paid as of the date of execution of this  
3043 affidavit.

3044 Pursuant to O.C.G.A. § 7-1-239, the Claimant submits this form in order to receive  
3045 payment in the amount of \$ \_\_\_\_\_ (shall not exceed \$15,000.00) for outstanding  
3046 funeral expenses or expenses of the last illness of the Deceased.

3047 \_\_\_\_\_  
3048 Signature of Claimant

3049 Sworn and subscribed  
3050 before me this \_\_\_\_\_ day  
3051 of \_\_\_\_\_, 20\_\_.

3052 \_\_\_\_\_  
3053 Notary public (SEAL)  
3054 My commission expires: \_\_\_\_\_."

3055 **SECTION 2-2.**

3056 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in  
3057 Article 2 of Chapter 3, relating to specific periods of limitation, by adding a new Code  
3058 section to read as follows:

3059 "9-3-36.

3060 (a) In no event may claims against a decedent's estate that arose before the death of the  
3061 decedent be brought more than six years after the date of the decedent's death.

3062 (b) Subsection (a) of this Code section is intended to create a six-year statute of ultimate  
3063 repose and abrogation.

3064 (c) Nothing in this Code section shall be construed as placing a limitation on the time for  
3065 commencing a proceeding to enforce any mortgage, pledge, or other lien upon property  
3066 owned by a decedent immediately prior to the decedent's death."

3067 **SECTION 2-3.**

3068 Said title is further amended by revising Code Section 9-4-4, relating to declaratory  
3069 judgments involving fiduciaries, as follows:

3070 "9-4-4.

3071 (a) Without limiting the generality of Code Sections 9-4-2, 9-4-3, 9-4-5 through 9-4-7, and  
3072 9-4-9, any person interested as or through an executor, administrator, personal  
3073 representative, trustee, guardian, conservator, or other fiduciary, creditor, devisee,  
3074 distributee, legatee, heir, ~~ward~~, next of kin, or beneficiary in the administration of a trust  
3075 or of the estate of a decedent, a minor, ward, an incapacitated person, a protected person,  
3076 a person who is otherwise legally incompetent because of mental illness or intellectual  
3077 disability, or an insolvent may have a declaration of rights or legal relations in respect  
3078 thereto and a declaratory judgment:

3079 (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, beneficiaries,  
3080 or others;

3081 (2) To direct the executor, administrator, ~~or trustee~~, or other fiduciary to do or abstain  
3082 from doing any particular act in his or her fiduciary capacity; ~~or~~

3083 (3) To determine title to property in which the trust or estate has or is purported to have  
3084 an ownership or other interest; or

3085 (4) To determine any question arising in the administration of the estate or trust,  
3086 including questions of construction of wills, trust instruments, and other writings.

3087 (b) The enumeration in subsection (a) of this Code section does not limit or restrict the  
3088 exercise of general powers conferred in Code Section 9-4-2 in any proceeding covered  
3089 thereby where declaratory relief is sought in which a judgment or decree will terminate the  
3090 controversy or remove the uncertainty."

3091 **SECTION 2-4.**

3092 Said title is further amended by revising Code Section 9-4-5, relating to filing and service,  
3093 time of trial, and drawing of jury, as follows:

3094 "9-4-5.

3095 A proceeding instituted under this chapter shall be filed and served as are other cases in the  
3096 superior courts of this state or in the Georgia State-wide Business Court ~~and~~; provided,  
3097 however, that a proceeding instituted in the probate court pursuant to paragraph (1) of  
3098 subsection (a) of Code Section 15-9-127 shall be filed and served in the manner provided  
3099 for proceedings in the probate courts of this state in Chapter 11 of Title 53. A proceeding  
3100 instituted under this chapter may be tried at any time designated by the court not earlier  
3101 than 20 days after the service thereof, unless the parties consent in writing to an earlier  
3102 trial. If there is an issue of fact ~~which~~ that requires a submission to a jury, the jury may be  
3103 drawn, summoned, and sworn either in regular term or specially for the pending case."

3104 **SECTION 2-5.**

3105 Said title is further amended by adding a new Code section to read as follows:

3106 "9-4-11.

3107 A declaratory judgment proceeding brought in the probate court as provided in paragraph  
3108 (1) of subsection (a) of Code Section 15-9-127 may be combined with or made a part of  
3109 any proceeding properly before the probate court to the greatest extent that does not  
3110 infringe the exclusive jurisdiction of the superior courts pursuant to Article VI, Section IV,  
3111 Paragraph I of the Constitution of this state."

3112 **SECTION 2-6.**

3113 Said title is further amended by revising Code Section 9-11-17, relating to real party in  
3114 interest and capacity, as follows:

3115 "9-11-17.

3116 (a) **Real party in interest.** Every action shall be prosecuted in the name of the real party  
3117 in interest. A personal representative, a temporary ~~An executor, an~~ administrator, a  
3118 guardian, a conservator, a bailee, a trustee of an express trust, a party with whom or in  
3119 whose name a contract has been made for the benefit of another, or a party authorized by  
3120 statute may bring an action in his or her own name without joining with him or her the  
3121 party for whose benefit the action is brought; and, when a statute so provides, an action for  
3122 the use or benefit of another shall be brought in the name of the state. No action shall be  
3123 dismissed on the ground that it is not prosecuted in the name of the real party in interest  
3124 until a reasonable time has been allowed after objection for ratification of commencement  
3125 of the action by, or joinder or substitution of, the real party in interest; and such ratification,

3126 joinder, or substitution shall have the same effect as if the action had been commenced in  
3127 the name of the real party in interest.

3128 (b) **Capacity to bring or defend an action.** The capacity of an individual, including one  
3129 acting in a representative capacity, to bring or defend an action shall be determined by the  
3130 law of this state. The capacity of a corporation to bring or defend an action shall be  
3131 determined by the law under which it was organized, unless a statute of this state provides  
3132 to the contrary.

3133 (c) **Infants or incompetent persons.** Whenever an infant or incompetent person has a  
3134 representative, such as a general guardian, committee, conservator, or other like fiduciary,  
3135 the representative may bring or defend an action on behalf of the infant or incompetent  
3136 person. If an infant or incompetent person does not have a duly appointed representative,  
3137 he or she may bring an action by his or her next friend or by a guardian ad litem. The court  
3138 shall appoint a guardian ad litem for an infant or incompetent person not otherwise  
3139 represented in an action or shall make such other order as it deems proper for the protection  
3140 of the infant or incompetent person. No next friend shall be permitted to receive the  
3141 proceeds of any personal action, in the name and on behalf of an infant, or incompetent  
3142 person, until such next friend shall have entered into a sufficient bond to the Governor, for  
3143 the use of the infant and the infant's representatives, conditioned well and fully to account  
3144 for and concerning such trust, which bond may be sued on by order of the court in the name  
3145 of the Governor and for the use of the infant. Such bond shall be approved by the court in  
3146 which the action is commenced and such approval shall be filed in such clerk's office."

#### 3147 SECTION 2-7.

3148 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
3149 amended by revising Code Section 10-6-4, relating to fiduciaries may convey by attorneys  
3150 in fact, as follows:

3151 "10-6-4.

3152 (a) Personal representatives ~~Executors, administrators,~~ guardians, conservators, and  
3153 trustees are authorized to sell and convey property by attorneys in fact in all cases where  
3154 they may lawfully sell and convey in person.

3155 (b) When a personal representative, guardian, conservator, or trustee exercising the  
3156 authority conferred by subsection (a) of this Code section appoints an attorney in fact by  
3157 a power of attorney to which Chapter 6B of this title is applicable under Code Section  
3158 10-6B-81, the exercise of fiduciary powers by such attorney in fact under such power of  
3159 attorney shall be subject to Code Section 10-6B-40."

**SECTION 2-8.**

3160  
3161 Said title is further amended by revising Code Section 10-6-86, relating to liability of person  
3162 signing instrument as agent or fiduciary, as follows:

3163 "10-6-86.

3164 An instrument signed by one as agent, trustee, conservator, guardian, administrator,  
3165 executor, or the like, without more, shall be the individual undertaking of the maker, except  
3166 as otherwise provided ~~with regard to negotiable instruments~~ by Code Section Sections  
3167 11-3-402, 13-5-30, 29-2-21, 29-3-21, 29-4-22, 29-5-22, 53-8-14, and 53-12-308, such  
3168 words being generally words of description."

**SECTION 2-9.**

3169  
3170 Said title is further amended by revising Code Section 10-6B-3, relating to applicability, as  
3171 follows:

3172 "10-6B-3.

3173 This chapter shall apply to all powers of attorney except:

3174 (1) A power to the extent it is coupled with an interest in the subject of the power,  
3175 including a power given to or for the benefit of a creditor in connection with a credit  
3176 transaction;

3177 (2) A power to make health care decisions;

3178 (3) Any delegation of voting, management, or similar rights related to the governance  
3179 or administration of an entity or business, including, but not limited to, delegation of  
3180 voting or management rights;

3181 (4) A power created on a form prescribed by a government or governmental subdivision,  
3182 agency, or instrumentality for a governmental purpose;

3183 (5) A power that grants Powers of attorney that only grant authority with respect to a  
3184 single transaction or series of related transactions involving ~~real estate~~ the transfer or  
3185 disposition of identified real or personal property;

3186 (6) Powers of attorney provided for under Titles 19 and 33; and

3187 (7) As set forth in Code Section 10-6B-81."

**SECTION 2-10.**

3188  
3189 Said title is further amended by revising subparagraph (a)(1)(A) of Code Section 10-6B-40,  
3190 relating to agent authority that requires specific grant and granting of general authority, as  
3191 follows:

3192 "(A) Create, fund, amend, revoke, or terminate an inter vivos trust, other than a trust  
3193 created pursuant to 42 U.S.C. Section 1396p(d)(4)(B) as provided under subsection (d)  
3194 of Code Section 53-12-20;"

**SECTION 2-11.**

3195

3196 Said title is further amended by revising subparagraph (a)(1)(D) of Code Section 10-6B-52,  
3197 relating to personal and family maintenance, as follows:

3198 "(D) The principal's minor ~~dependents~~ descendants who are not also the principal's  
3199 children, if the principal had established a pattern of such payments or indicated a clear  
3200 intent to make such payments;"

**SECTION 2-12.**

3201

3202 Said title is further amended by revising Code Section 10-12-3, relating to applicability to  
3203 electronic records and signatures relating to a transaction, as follows:

3204 "10-12-3.

3205 (a) Except as otherwise provided in subsection (b) of this Code section, this chapter shall  
3206 apply to electronic records and electronic signatures relating to a transaction.

3207 (b) This chapter shall not apply to a transaction to the extent it is governed by:

3208 (1) A law governing the creation and execution of wills, codicils, ~~or~~ testamentary trusts,  
3209 or express trusts governed by Chapter 12 of Title 53;

3210 (2) Title 11 other than Code Section 11-1-306, Article 2, and Article 2A; or

3211 (3) The Uniform Computer Information Transactions Act.

3212 (c) This chapter shall apply to an electronic record or electronic signature otherwise  
3213 excluded from the application of this chapter under subsection (b) of this Code section to  
3214 the extent it is governed by a law other than those specified in subsection (b) of this Code  
3215 section.

3216 (d) A transaction subject to this chapter shall also be subject to other applicable substantive  
3217 law.

3218 (e) A governmental agency which is a party to a transaction subject to this chapter shall  
3219 also be further subject to the records retention requirements for state and local government  
3220 records established by state law."

**SECTION 2-13.**

3221

3222 Article 2 of Chapter 5 of Title 13 of the Official Code of Georgia Annotated, relating to  
3223 statute of frauds, is amended by revising Code Section 13-5-30, relating to agreements  
3224 required to be in writing, as follows:

3225 "13-5-30.

3226 (a) To make the following obligations binding on the promisor, the promise must be in  
3227 writing and signed by the party to be charged therewith or some person lawfully authorized  
3228 by him or her:

- 3229 (1) A promise by ~~an executor, administrator~~ a conservator, guardian, personal  
 3230 representative, or trustee to answer damages out of his or her own estate;  
 3231 (2) A promise to answer for the debt, default, or miscarriage of another;  
 3232 (3) Any agreement made upon consideration of marriage;  
 3233 (4) Any contract for sale of lands, or any interest in, or concerning lands;  
 3234 (5) Any agreement that is not to be performed within one year from the making thereof;  
 3235 (6) Any promise to revive a debt barred by a statute of limitation; and  
 3236 (7) Any commitment to lend money.
- 3237 (b) Any agreement to modify, alter, cancel, repeal, revoke, release, or rescind a promise,  
 3238 agreement, contract, or commitment provided for in subsection (a) of this Code section  
 3239 must be in writing and signed by all parties to such agreement; provided, however, that if  
 3240 the party against whom enforcement of such agreement under this subsection is sought  
 3241 admits in a pleading, in testimony, or otherwise in court; that the agreement was made, then  
 3242 such agreement is enforceable if valid in all other respects."

#### 3243 SECTION 2-14.

3244 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,  
 3245 is amended by revising Code Section 15-9-4, relating to additional judicial eligibility  
 3246 requirements in certain counties, as follows:

3247 "15-9-4.

3248 (a) No individual elected judge of the probate court in any county provided for in this  
 3249 Code section shall engage in the private practice of law.

3250 (b) Except as otherwise provided by subsection (c) of this Code section, in any county of  
 3251 this state having a population of more than 90,000 persons according to the United States  
 3252 decennial census of 2010 or any future such census and in which the probate court of such  
 3253 county meets the definition of a probate court as provided by Article 6 of this chapter, no  
 3254 ~~person~~ individual shall be judge of the probate court unless at the time of election, in  
 3255 addition to the qualifications required by law, he or she has attained the age of 30 years,  
 3256 ~~and~~ has been admitted to practice law for seven years preceding election, is a member in  
 3257 good standing with the State Bar of Georgia, and has been duly reinstated to the practice  
 3258 of law in the event of his or her disbarment therefrom.

3259 (c) A judge of the probate court holding such office on or after June 30, 2000, shall  
 3260 continue to hold such office and shall be allowed to seek reelection for such office.  
 3261 Notwithstanding the requirement that in certain counties the judge of the probate court be  
 3262 admitted to practice law for seven years preceding election, no decision, judgment, ruling  
 3263 or other official action of any judge of the probate court shall be overturned, denied, or

3264 overruled based solely on this requirement for qualification, election, and holding the office  
3265 of judge of the probate court."

3266 **SECTION 2-15.**

3267 Said chapter is further amended by revising Code Section 15-9-17, relating to serving a  
3268 minor or incapacitated adult, as follows:

3269 "15-9-17.

3270 (a) Notwithstanding the provisions of Code Section 15-9-122 or any other provision of law  
3271 to the contrary, in any action before the probate court in which the service of notice on a  
3272 minor or an incapacitated adult is required by law or ordered by the probate court, such  
3273 service of notice may be made by:

3274 (1) Mailing by the probate court of a copy of the document to be served to the minor or  
3275 incapacitated adult by certified mail or statutory overnight delivery, return receipt  
3276 requested; and

3277 (2) Serving the ~~legal guardian or guardian ad litem~~ of such minor or incapacitated adult  
3278 if such ~~legal guardian or guardian ad litem~~:

3279 (A) Acknowledges receipt of such service; and

3280 (B) Certifies that he or she has delivered a copy of the document so served to the minor  
3281 or incapacitated adult.

3282 (b) The acknowledgment of service and certification of ~~the legal such~~ guardian ~~or guardian~~  
3283 ~~ad litem~~ and the certificate of the service by mailing to the on such minor or incapacitated  
3284 adult shall be filed with the probate court as proof of such service of notice.

3285 (c) As used in this Code section, the term 'guardian' shall have the same meaning provided  
3286 in Code Section 53-1-2."

3287 **SECTION 2-16.**

3288 Said chapter is further amended by revising Code Section 15-9-47, relating to default  
3289 judgments, as follows:

3290 "15-9-47.

3291 (a) If Notwithstanding any provisions of Chapter 11 of Title 9, if in any case pending  
3292 before the probate court an answer, caveat, or other responsive pleading has not been filed  
3293 within the time required by law or by lawful order of the court, the case shall automatically  
3294 become in default unless the time for filing the answer, caveat, or other responsive pleading  
3295 has been extended as provided by law. The petitioner at any time thereafter shall be  
3296 entitled to verdict and judgment by default, in open court or in chambers, as if every item  
3297 and paragraph of the petition or other pleadings filed in the matter were supported by  
3298 proper evidence. At any time before final judgment, the court, in its discretion, upon

3299 payment of costs, may allow the default to open for providential cause preventing the filing  
 3300 of required pleadings or for excusable neglect or where the judge, from all the facts, shall  
 3301 determine that a proper case has been made for the default to open, on terms to be fixed by  
 3302 the court. In order for the default to be thus opened, the showing shall be made under oath,  
 3303 shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready  
 3304 to proceed with the hearing in the matter.

3305 (b) The provisions of this Code section shall govern in proceedings pertaining to defaults  
 3306 in the probate court, and the provisions of Code Section 9-11-55 shall not be applicable to  
 3307 such proceedings."

3308 **SECTION 2-17.**

3309 Said chapter is further amended by revising Code Section 15-9-60, relating to fees, as  
 3310 follows:

3311 "15-9-60.

3312 (a) The judges or clerks of the probate courts of this state shall be entitled to charge and  
 3313 collect the sums enumerated in this Code section.

3314 (b) All sums that the probate courts may be required to collect pursuant to Code Sections  
 3315 15-23-7, 15-9-60.1, and 36-15-9 and all other sums as may be required by law shall be in  
 3316 addition to the sums provided in this Code section. The sums provided for in this Code  
 3317 section are exclusive of costs for service of process, fees for publication of citation or  
 3318 notice, or any additional sums as may be provided by law.

3319 (c) The fees provided for in this Code section shall be paid into the county treasury less  
 3320 and except only such sums as are otherwise directed to be paid by law, which sums shall  
 3321 be remitted as provided by law by either the probate court or the county.

3322 (d) Subject to the provisions of Code Section 15-9-61, and except for the filing of a  
 3323 proceeding in which the filing party also files with the court a sworn affidavit that the party  
 3324 is unable because of indigence to pay the cost of court, all sums specified in this Code  
 3325 section shall be paid to the court at the time of filing or as thereafter incurred for services  
 3326 rendered. In accordance with Code Section 15-9-61, the judges of the probate courts are  
 3327 entitled to an advance cost of \$30.00 for deposit to be made before filing any proceeding.

3328 (e) Cost in decedent's estates:

3329 (1) Except as otherwise provided, the cost in an initial proceeding regarding the estate  
 3330 of a decedent or of a missing individual believed to be dead shall be \$130.00 for all  
 3331 services rendered by the judge or clerk of the probate court through the entry of the final  
 3332 order on such initial proceedings, exclusive of recording charges;

3333 (2) As used in this subsection, the term 'initial proceeding' shall mean the first  
 3334 proceeding filed in the probate court in connection with or regarding the estate of a

3335 decedent or of a missing individual believed to be dead, including, but not necessarily  
3336 limited to, the following proceedings: petition for temporary letters of administration;  
3337 petition for letters of administration; petition to probate will in common form; petition  
3338 to probate will in solemn form; petition to probate will in solemn form and for letters of  
3339 administration with will annexed; petition for order declaring no administration  
3340 necessary; petition for year's support; petition for presumption of death of missing  
3341 individual believed to be dead; any proceeding for ancillary administration by a foreign  
3342 personal representative; or any other proceeding by which the jurisdiction of the probate  
3343 court is first invoked with regard to the estate of a decedent or of a missing individual  
3344 believed to be dead;

3345 (3) As used in this subsection, the term 'initial proceeding' shall not include a petition to  
3346 establish custodial account for missing heir, a petition to enter a safe-deposit box, or any  
3347 other petition or proceeding for which a specific cost is otherwise set forth in this Code  
3348 section;

3349 (4) Except as otherwise provided, the cost shall be \$75.00 for all services rendered by  
3350 the judge or clerk of the probate court through the entry of the final order, exclusive of  
3351 recording charges, in any of the proceedings listed in paragraph (2) of this subsection  
3352 filed subsequent to the filing of an initial proceeding regarding the estate of the same  
3353 decedent or missing individual believed to be dead;

3354 (5) Except as otherwise provided, the cost shall be \$50.00 for all services rendered by  
3355 the judge or clerk of the probate court through the entry of the final order, exclusive of  
3356 recording charges, for the filing of the following proceedings or pleadings regarding the  
3357 estate of a decedent or of a missing individual believed to be dead: petition for letters of  
3358 administration with will annexed (will previously probated); petition of personal  
3359 representative for leave to sell property; petition for leave to sell perishable property;  
3360 petition for leave to sell or encumber property previously set aside as year's support;  
3361 petition by administrator for waiver of bond, grant of certain powers, or both; petition for  
3362 discharge; petition by personal representative for approval of a division in kind; petition  
3363 to determine heirs; petition by personal representative for direction under will; petition  
3364 by personal representative to compromise a disputed claim or debt; petition by or against  
3365 personal representative for an accounting or final settlement; petition to resign as personal  
3366 representative and for the appointment of a successor; petition to remove a personal  
3367 representative and for the appointment of a successor; citation against a personal  
3368 representative for failure to make returns or for alleged mismanagement of estate; a  
3369 caveat, objection, or other responsive pleading by which the proceeding becomes  
3370 contested filed by any person to whom notice or citation has been issued; petition or  
3371 motion to intervene as an interested party; and any other petition application, motion, or

3372 other pleading for which no specific cost is set forth in this Code section filed regarding  
 3373 the estate of a decedent or of a missing individual believed to be dead;

3374 (6) Except as otherwise provided, the cost shall be \$25.00 for all services rendered by  
 3375 the judge or clerk of the probate court through the entry of the final order, exclusive of  
 3376 recording charges, for the filing of the following proceedings, pleadings, or documents  
 3377 regarding the estate of a decedent or of a missing individual believed to be dead: petition  
 3378 to change accounting period; petition to enter a safe-deposit box; petition or motion for  
 3379 attorneys' fees; petition or motion of personal representative for extra compensation; or  
 3380 inventory, appraisalment, or annual, intermediate, or final returns of personal  
 3381 representatives; and

3382 (7) Except as otherwise provided, the cost shall be \$10.00 for all services rendered by  
 3383 the judge or clerk of the probate court, exclusive of recording charges, for the filing of  
 3384 the following proceedings, pleadings, or documents regarding the estate of a decedent or  
 3385 of a missing person believed to be dead: notice of claim or claim of a creditor, if such  
 3386 notice or claim is filed with and accepted by the court; declination to serve of nominated  
 3387 personal representative; or renunciation of right of succession.

3388 (f) Costs in minor guardianship and conservatorship matters:

3389 (1) Except as otherwise provided, the cost in a proceeding regarding the person,  
 3390 property, or person and property of a minor shall be \$75.00 for all services rendered by  
 3391 the judge or clerk of the probate court through the entry of the final order on such  
 3392 proceeding, exclusive of recording charges, including, but not necessarily limited to, the  
 3393 following proceedings: petition for temporary letters of guardianship of ~~the person of~~ a  
 3394 minor; petition for letters of guardianship of ~~person, property, conservatorship, or person~~  
 3395 guardianship and property conservatorship of a minor by person other than natural  
 3396 guardian; petition for letters of ~~guardianship of property conservatorship~~ of a minor, by  
 3397 natural guardian, with bond — personal property over \$5,000.00; petition for order that  
 3398 natural guardian not be required to become legally qualified ~~guardian of the property~~  
 3399 conservator; application of guardian, conservator, or guardian and conservator for letters  
 3400 of dismissal; or any other proceeding by which the jurisdiction of the probate court is  
 3401 first invoked with regard to the person, property, or person and property of a minor; and

3402 (2) Except as otherwise provided, the costs for all services rendered by the judge or clerk  
 3403 of the probate court shall be as set forth below for the following proceedings, pleadings,  
 3404 or documents regarding the person, property, or person and property of a minor, exclusive  
 3405 of recording charges:

3406	(A) Petition of <del>guardian</del> <u>conservator</u> for leave to sell . . . . .	\$ 70.00
3407	(B) Petition to compromise doubtful claim of minor . . . . .	70.00

3408	(C) Petition for leave to encroach on corpus . . . . .	30.00
3409	(D) Petition to change accounting period . . . . .	25.00
3410	(E) Inventory or annual, intermediate, or final return (each) . . . . .	30.00
3411	(F) Petition or motion for attorneys' fees . . . . .	70.00
3412	(G) Petition to terminate temporary guardianship of minor . . . . .	30.00
3413	(H) Any other petition, application, motion, or other pleading for which	
3414	no specific cost is set forth in this Code section filed regarding an	
3415	existing <u>guardianship or conservatorship</u> of a minor . . . . .	30.00
3416	(g) Costs in adult guardianship <u>and conservatorship</u> matters:	
3417	(1) Except as otherwise provided, the cost in a proceeding regarding the person,	
3418	property, or person and property of an adult alleged to be incapacitated shall be \$150.00	
3419	for all services rendered by the judge or clerk of the probate court through the entry of	
3420	the final order on such proceeding, exclusive of recording charges, including, but not	
3421	necessarily limited to, the following proceedings: petition for the appointment of an	
3422	emergency guardian, <u>conservator, or guardian and conservator</u> for an alleged gravely	
3423	incapacitated adult; petition for the appointment of an emergency and permanent	
3424	<u>guardian, conservator, or guardian and conservator</u> for an alleged gravely incapacitated	
3425	adult; petition for the appointment of a <u>guardian, conservator, or guardian and</u>	
3426	<u>conservator</u> for an alleged incapacitated adult; or any other proceeding by which the	
3427	jurisdiction of the probate court is first invoked with regard to an adult alleged to be	
3428	incapacitated; and	
3429	(2) Except as otherwise provided, the cost for all services rendered by the judge or clerk	
3430	of the probate court shall be as set forth below for the following proceedings, pleadings,	
3431	or documents regarding the person, property, or person and property of an incapacitated	
3432	adult, exclusive of recording charges:	
3433	(A) Petition of <del>guardian</del> <u>conservator</u> for leave to sell . . . . .	\$ 70.00
3434	(B) Petition to compromise doubtful claim . . . . .	70.00
3435	(C) Petition for leave to encroach on corpus . . . . .	30.00
3436	(D) Petition to change accounting period . . . . .	25.00
3437	(E) Inventory or annual, intermediate, or final return (each) . . . . .	30.00
3438	(F) Petition or motion for attorneys' fees . . . . .	70.00
3439	(G) Petition to terminate or modify guardianship <u>or conservatorship</u> of	
3440	incapacitated adult . . . . .	70.00
3441	(H) Application of guardian <u>or conservator</u> for letters of dismissal . . . . .	75.00

3442 (I) Any other petition, application, motion, or other pleading for which  
 3443 no specific cost is set forth in this Code section filed regarding an  
 3444 existing guardianship or conservatorship of an adult . . . . . 70.00

3445 (h) Costs in matters involving sterilization, involuntary treatment, habilitation, or  
 3446 temporary placement:

3447 (1) Except as otherwise provided, the cost in a proceeding filed under Chapter 20 of  
 3448 Title 31, Chapter 36A of Title 31, or Chapter 3, 4, or 7 of Title 37 shall be \$130.00 for  
 3449 all services rendered by the judge or clerk of the probate court through the entry of the  
 3450 final order on such proceeding, exclusive of recording charges;

3451 (2) There shall be no cost assessed for the receipt and consideration of affidavits in  
 3452 support of an order to apprehend under Part 1 of Article 3 of Chapter 3 of Title 37 or  
 3453 Part 1 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend;  
 3454 and

3455 (3) There shall be no cost assessed for the receipt and consideration of a petition in  
 3456 support of an order to apprehend under Part 3 of Article 3 of Chapter 3 of Title 37 or  
 3457 Part 3 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend  
 3458 a patient alleged to be in noncompliance with an involuntary outpatient treatment order.

3459 (i) Costs for hearings in contested matters:

3460 (1) For conducting trials of contested matters or for formal hearing on the denial of an  
 3461 application for a weapons carry license before the probate court, the cost shall be \$30.00  
 3462 per one-half day or portion thereof;

3463 (2) There shall be no additional cost for the initial hearing in adult guardianship or  
 3464 conservatorship matters or in matters involving sterilization, involuntary treatment,  
 3465 habilitation, or involuntary placement; and

3466 (3) There shall be no cost for any hearing in an uncontested matter.

3467 (j) Custodial accounts. For each account accepted by the judge of the probate court as  
 3468 custodian for a minor, incapacitated adult, or missing or unknown heir or beneficiary, there  
 3469 shall be a one-time fee of 8 percent of the fund deducted from the fund when first accepted.

3470 (k) Miscellaneous costs. Except as otherwise provided, the judge or clerk of the probate  
 3471 court shall be entitled to the following costs for the proceedings, pleading, documents, or  
 3472 services itemized:

- 3473 (1) Application for writ of habeas corpus . . . . . \$ 75.00
- 3474 (2) Petition to establish lost papers, exclusive of recording charges . . . . . 50.00
- 3475 (3) Petition for or declaration of exemptions . . . . . 25.00
- 3476 (4) Petition to change birth certificate . . . . . 75.00

3477	(5) For all services rendered by the judge or clerk of the probate court	
3478	through the entry of the final order, exclusive of recording charges, for any	
3479	application or petition by which the jurisdiction of the probate court is first	
3480	invoked for which no cost is set forth in this Code section or other applicable	
3481	law . . . . .	70.00
3482	(6) Issuance of any order, including a rule nisi, in any matter for which the	
3483	costs set forth in this Code section do not include all services to be rendered	
3484	by the judge or clerk of the probate court, exclusive of recording charges	30.00
3485	(7) Motions, amendments, or other pleadings filed in any matter for which	
3486	the cost set forth in this Code section does not include all services to be	
3487	rendered by the judge or clerk of the probate court, exclusive of recording	
3488	charges, and no other cost is set forth in this Code section . . . . .	15.00
3489	(8) For processing appeals to superior court, exclusive of recording	
3490	charges . . . . .	30.00
3491	(9) For issuance of writ of fieri facias (fi.fa.) . . . . .	10.00
3492	(10) <u>For all services rendered by the judge or clerk of the probate court in</u>	
3493	<u>the exercise of concurrent jurisdiction pursuant to Code Section 15-9-127 for</u>	
3494	<u>which no cost is set forth in this Code section. The sums charged shall be</u>	
3495	<u>the same as those charged for such services in the superior court pursuant to</u>	
3496	<u>Code Section 15-6-77 or other applicable law</u> <del>Reserved.</del>	
3497	(11) For issuance of permit to discharge fireworks . . . . .	30.00
3498	(12) Application for weapons carry license (exclusive of fees charged by	
3499	other agencies for the examination of criminal records and mental	
3500	health records) . . . . .	30.00
3501	(13) For issuance of a replacement weapons carry license . . . . .	6.00
3502	(13.1) For issuance of personal identification cards to judges or Justices.	
3503	The fee shall be determined by The Council of Probate Court Judges of	
3504	Georgia pursuant to Code Section 15-25-3.	
3505	(14) Application for marriage license if the applicants have completed	
3506	premarital education pursuant to Code Section 19-3-30.1 . . . . .	No fee
3507	(14.1) Application for a marriage license if the applicants have not	
3508	completed premarital education pursuant to Code Section 19-3-30.1 . . . . .	40.00
3509	(15) For the safekeeping of a will . . . . .	15.00
3510	(16) For issuance of a veteran's license . . . . .	No fee
3511	(17) <del>Reserved. For issuance of a peddler's license</del> . . . . .	<del>15.00</del>
3512	(18) For issuance of a certificate of residency . . . . .	10.00

3513	(19) Registration of junk dealer . . . . .	10.00
3514	(20) Certification of publication of application for insurance company	
3515	charter . . . . .	10.00
3516	(21) Recording of marks and brands, each . . . . .	15.00
3517	(22) Exemplification . . . . .	15.00
3518	(23) Certification under seal of copies (plus copy cost) . . . . .	10.00
3519	(24) Certified copies of letters of personal representative, temporary	
3520	administrator, <u>conservator</u> , or guardian, each, including copy cost . . . . .	10.00
3521	(25) For issuance of a subpoena, each . . . . .	10.00
3522	(26) For filing and recording of oath or bond of any official, officer, or	
3523	employee of any municipality or authority within the county, each . . . . .	10.00
3524	(27) For filing and recording of oath or bond of county official or officer	No fee
3525	(28) For examination of records or files by employee of the probate court to	
3526	provide abstract of information contained therein or to provide copies	
3527	therefrom, per estate or name . . . . .	10.00
3528	(29) Recording, per page . . . . .	2.00
3529	(30) Copies, per page . . . . .	1.00"

**SECTION 2-18.**

3531 Said chapter is further amended by revising Code Section 15-9-86, relating to verified  
 3532 petitions and notice and service thereof, as follows:

3533 "15-9-86.

3534 Every application made to the judge of the probate court for the granting of any order shall  
 3535 be by verified petition in writing, stating the ground of such application and the order  
 3536 sought. Unless otherwise provided by law, if service of notice of ~~the application such~~  
 3537 petition, other than by citation published ~~citation~~ in the official newspaper of the county  
 3538 in which the petition is made, is necessary under the law or in the judgment of the judge  
 3539 of the probate court on the motion of any party in interest or on the court's own motion, the  
 3540 judge shall cause a copy of the ~~application~~ petition, together with a citation to show cause,  
 3541 if any, why the petition should not be granted and notice of the date, time, of and place for  
 3542 filing any objections or for holding a final hearing, to be served by the sheriff or some  
 3543 lawful officer upon each party who resides in this state and to be ~~mailed~~ served by the  
 3544 probate court mailing by registered or certified mail or statutory overnight delivery, return  
 3545 receipt requested, to each party who resides outside this state at a known address, at least  
 3546 ~~ten days, plus three days if mailed, before the hearing~~ 30 days before any objection is  
 3547 required to be filed by such party or before a final hearing is held. An entry of such service

3548 of notice shall be made on the original. In extraordinary cases, where it is necessary to act  
 3549 before such service of notice can be given, the judge of the probate court shall so direct the  
 3550 proceedings as to make no final order until service of notice has been given."

3551 **SECTION 2-19.**

3552 Said chapter is further amended by revising Code Section 15-9-122, relating to applicability  
 3553 of laws and rules, as follows:

3554 "15-9-122.

3555 Unless provided to the contrary by Code Section 9-11-81 or by Titles 29 and 53, the  
 3556 general laws and rules of practice, pleading, procedure, and evidence ~~which~~ that are  
 3557 applicable to the superior courts of this state shall be applicable to and govern in civil cases  
 3558 in the probate courts."

3559 **SECTION 2-20.**

3560 Said chapter is further amended by revising Code Section 15-9-123, relating to appeal, as  
 3561 follows:

3562 "15-9-123.

3563 (a) Either party to a civil case in the probate court shall have the right of appeal to the  
 3564 Supreme Court or the Court of Appeals from any decision made by the probate court,  
 3565 except an order appointing a temporary administrator, as provided by Chapter 6 of Title 5.

3566 (b) The general laws and rules of appellate practice and procedure ~~which~~ that are  
 3567 applicable to cases appealed from the superior courts of this state shall be applicable to and  
 3568 govern appeals of civil cases from the probate courts."

3569 **SECTION 2-21.**

3570 Said chapter is further amended by revising Code Section 15-9-126, relating to fees, as  
 3571 follows:

3572 "15-9-126.

3573 For services rendered in jury trials, in the probate court's exercise of concurrent jurisdiction  
 3574 pursuant to Code Section 15-9-127, and in appeals to the Supreme Court or Court of  
 3575 Appeals, if a fee is not prescribed by Code Section 15-9-60, the judge or clerk of the  
 3576 probate court shall be entitled to charge and collect the same fee sums as ~~that~~ those of the  
 3577 clerk of the superior court provided in Code Section 15-6-77 or other applicable law for  
 3578 similar services in superior court."

**SECTION 2-22.**

3579  
3580 Said chapter is further amended by revising Code Section 15-9-127, relating to concurrent  
3581 jurisdiction with superior courts, as follows:

3582 "15-9-127.

3583 (a) Probate courts subject to this article shall have concurrent jurisdiction with superior  
3584 courts with regard to the proceedings for:

3585 (1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5,  
3586 ~~and 9-4-6, 9-4-8, 9-4-9, and 9-4-11;~~

3587 (2) Tax motivated estate planning dispositions of wards' property pursuant to Code  
3588 Sections 29-3-36 and 29-5-36;

3589 (3) Approval of settlement agreements pursuant to former Code Section 53-3-22 as such  
3590 existed on December 31, 1997, if applicable, or Code Section 53-5-25, 53-5-27, or  
3591 53-12-9;

3592 (4) Adjudication of actions concerning trusts and trustees authorized by the provisions  
3593 of Chapter 12 of Title 53 Appointment of new trustee to replace trustee pursuant to Code  
3594 Section 53-12-201;

3595 ~~(5) Acceptance of the resignation of a trustee upon written request of the beneficiaries~~  
3596 ~~pursuant to Code Section 53-12-220;~~

3597 ~~(6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code~~  
3598 ~~Section 53-12-220;~~

3599 ~~(7)~~(5) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA)  
3600 testing as provided in Code Section 53-2-27;

3601 ~~(8) Conversion to a unitrust and related matters pursuant to Code Section 53-12-362; and~~

3602 ~~(9)~~(6) Adjudication of petitions under Code Section 10-6B-16 to construe a power of  
3603 attorney, review an agent's conduct, and grant appropriate relief; and

3604 (7) Adjudication of petitions for direction or construction of a will or trust instrument  
3605 pursuant to Code Section 23-2-92, 53-4-55, 53-4-56, 53-7-75, or 53-12-27, or other  
3606 applicable law.

3607 (b) In civil cases, probate courts subject to this article may:

3608 (1) Apply equitable principles;

3609 (2) Hear evidence on and decide any contested question; and

3610 (3) Issue such orders as are appropriate under the circumstances.

3611 (c) Probate courts subject to this article shall have and may exercise the jurisdiction and  
3612 authority conferred by subsections (a) and (b) of this Code section to the greatest extent  
3613 that does not infringe the exclusive jurisdiction of the superior courts pursuant to  
3614 Article VI, Section IV, Paragraph I of the Constitution of this state."

**SECTION 2-23.**

3615  
 3616 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
 3617 amended by revising Code Section 19-3-65, relating to powers of superior court judge in  
 3618 appointing and removing trustees and protecting trust estate, as follows:

3619 "19-3-65.

3620 Subject to Code Sections 15-9-127, 23-1-4, and 53-12-6, the ~~The~~ judge of the superior  
 3621 court of the county of a spouse's domicile may at any time, upon petition, exercise  
 3622 equitable powers in appointing, removing, or substituting trustees or in granting any order  
 3623 for the protection of the trust estate, exercising a wise discretion as to the terms on which  
 3624 the appointment shall be made or on which the order shall be granted."

**SECTION 2-24.**

3625  
 3626 Said title is further amended by revising Code Section 19-3-66, relating to enforcement of  
 3627 marriage contracts, postnuptial settlements, and antenuptial agreements, as follows:

3628 "19-3-66.

3629 (a) Marriage contracts and postnuptial settlements shall be enforced at the instance of all  
 3630 persons in whose favor there are limitations of the estate.

3631 (b) Antenuptial agreements may be enforced by a court of equity at the instance of:

3632 (1) The parties to the marriage; or

3633 (2) The offspring of the marriage and their heirs at any time after the death of a spouse,  
 3634 subject to Code Sections 15-9-30, 23-1-4, and 53-7-40; provided, however, that when  
 3635 enforced at the instance of such offspring and their heirs, the court may enforce in favor  
 3636 of other persons."

**SECTION 2-25.**

3637  
 3638 Said title is further amended by revising Code Section 19-6-7, relating to interest in deceased  
 3639 party's estate after grant of permanent alimony, as follows:

3640 "19-6-7.

3641 After permanent alimony is granted, upon the death of the party liable for the alimony the  
 3642 other party shall not be entitled to any further interest in the estate of the deceased party by  
 3643 virtue of the marriage contract between the parties; provided, however, that such permanent  
 3644 provision shall ~~be continued to the other party or a portion of the deceased party's estate~~  
 3645 ~~equivalent to the permanent provision shall be set apart to the other party~~ constitute a  
 3646 judgment created during the lifetime of the deceased party under paragraph (6) of Code  
 3647 Section 53-7-40 and the claim of the other party to such permanent provision shall be paid  
 3648 accordingly by the personal representative of the deceased party's estate as provided in  
 3649 Article 4 of Chapter 7 of Title 53. The personal representative may address such claim by

3650 continuing payments to the other party pursuant to such permanent provision, by setting  
 3651 apart a portion of the deceased party's estate equivalent to such permanent provision to the  
 3652 other party, or in any other manner provided by Code Section 53-7-44 or 53-7-45."

3653 **SECTION 2-26.**

3654 Article 3 of Chapter 2 of Title 23 of the Official Code of Georgia Annotated, relating to  
 3655 fraud, is amended by revising Code Section 23-2-58, relating to confidential relations  
 3656 defined, as follows:

3657 "23-2-58.

3658 Any relationship shall be deemed confidential, whether arising from nature, created by law,  
 3659 or resulting from contracts, where one party is so situated as to exercise a controlling  
 3660 influence over the will, conduct, and interest of another or where, from a similar  
 3661 relationship of mutual confidence, the law requires the utmost good faith, such as the  
 3662 relationship between partners; principal and agent; ~~etc;~~ guardian or conservator and minor  
 3663 or ward; personal representative or temporary administrator and heir, legatee, devisee, or  
 3664 beneficiary; trustee and beneficiary; and similar fiduciary relationships."

3665 **SECTION 2-27.**

3666 Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to lottery for  
 3667 education, is amended by revising Code Section 50-27-21, relating to preservation of lottery  
 3668 proceeds by retailers, accounting procedures, and preference accorded proceeds of insolvent  
 3669 retailers, as follows:

3670 "50-27-21.

3671 (a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund  
 3672 until paid to the corporation either directly or through the corporation's authorized  
 3673 collection representative. A lottery retailer and officers of a lottery retailer's business shall  
 3674 have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall  
 3675 be personally liable for all proceeds. Proceeds shall include unsold instant tickets received  
 3676 by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable  
 3677 sales commissions and credit for lottery prizes sold to or paid to winners by lottery  
 3678 retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or  
 3679 its authorized collection representative upon demand.

3680 (b) The corporation shall require retailers to place all lottery proceeds due the corporation  
 3681 in accounts in institutions insured by the Federal Deposit Insurance Corporation not later  
 3682 than the close of the next banking day after the date of their collection by the retailer until  
 3683 the date they are paid over to the corporation. At the time of such deposit, lottery proceeds  
 3684 shall be deemed to be the property of the corporation. The corporation may require a

3685 retailer to establish a single separate electronic funds transfer account where available for  
 3686 the purpose of receiving moneys from ticket or share sales, making payments to the  
 3687 corporation, and receiving payments for the corporation. Unless otherwise authorized in  
 3688 writing by the corporation, each lottery retailer shall establish a separate bank account for  
 3689 lottery proceeds which shall be kept separate and apart from all other funds and assets and  
 3690 shall not be commingled with any other funds or assets.

3691 (c) Whenever any person who receives proceeds from the sale of lottery tickets or shares  
 3692 in the capacity of a lottery retailer becomes insolvent ~~or dies insolvent~~, the proceeds due  
 3693 the corporation from such person ~~or his estate~~ shall have preference over all debts or  
 3694 demands.

3695 (d) Whenever any person who receives proceeds from the sale of lottery tickets or shares  
 3696 in the capacity of a lottery retailer dies insolvent, the proceeds due the corporation from  
 3697 such person's estate shall have preference over all debts or demands except the provision  
 3698 of year's support for such person's family."

#### 3699 SECTION 2-28.

3700 Said chapter is further amended by revising subsection (c) of Code Section 50-27-102,  
 3701 relating to role of corporation, implementation and certification, separation of funds and  
 3702 accounting, and disputes, as follows:

3703 "(c) The corporation shall require location owners and location operators to place all bona  
 3704 fide coin operated amusement machine proceeds due the corporation in a segregated  
 3705 account in institutions insured by the Federal Deposit Insurance Corporation not later than  
 3706 the close of the next banking day after the date of their collection by the retailer until the  
 3707 date they are paid over to the corporation. At the time of such deposit, bona fide coin  
 3708 operated amusement machine proceeds shall be deemed to be the property of the  
 3709 corporation. The corporation may require a location owner or location operator to establish  
 3710 a single separate electronic funds transfer account where available for the purpose of  
 3711 receiving proceeds from Class B machines, making payments to the corporation, and  
 3712 receiving payments for the corporation. Unless otherwise authorized in writing by the  
 3713 corporation, each bona fide coin operated amusement machine location owner or location  
 3714 operator shall establish a separate bank account for bona fide coin operated amusement  
 3715 machine proceeds which shall be kept separate and apart from all other funds and assets  
 3716 and shall not be commingled with any other funds or assets. Whenever any person who  
 3717 receives proceeds from bona fide coin operated amusement machines becomes insolvent  
 3718 ~~or~~, the proceeds due the corporation from such person shall have preference over all debts  
 3719 or demands. Whenever any person who receives proceeds from bona fide coin operated  
 3720 amusement machines dies insolvent, the proceeds due the corporation from such person or

3721 ~~his or her~~ person's estate shall have preference over all debts or demands except the  
3722 provision of year's support for such person's family. If any financial obligation to the  
3723 corporation has not been timely received, the officers, directors, members, partners, or  
3724 shareholders of the location owner or location operator shall be personally liable for the  
3725 moneys owed to the corporation."

3726

**PART III**

3727

**SECTION 3-1.**

3728 This Act shall become effective on January 1, 2021.

3729

**SECTION 3-2.**

3730 All laws and parts of laws in conflict with this Act are repealed.