

The Senate Committee on Judiciary offered the following substitute to HB 865:

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 Article 1 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to  
21 general provisions regarding certiorari and appeals to appellate courts generally, so as to  
22 revise provisions regarding the time for appeal by representatives where a party dies after  
23 trial; to amend Part 12 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia  
24 Annotated, relating to deposits of deceased depositors, so as to revise provisions concerning  
25 the payment of large deposits of deceased intestate depositors; to amend Title 9 of the  
26 Official Code of Georgia Annotated, relating to civil practice, so as to provide for a period  
27 of limitation for certain claims against a decedent's estate; to revise provisions concerning  
28 declaratory judgments involving fiduciaries; to amend Title 10 of the Official Code of

29 Georgia Annotated, relating to commerce and trade, so as to revise provisions regarding the  
30 fiduciaries conveying property by attorneys in fact; to amend Article 2 of Chapter 5 of  
31 Title 13 of the Official Code of Georgia Annotated, relating to statute of frauds, so as to  
32 make conforming changes; to amend Chapter 9 of Title 15 of the Official Code of Georgia  
33 Annotated, relating to probate courts, so as to revise the qualifications for judge of the  
34 probate in certain counties; to revise certain court procedures; to revise provisions concerning  
35 default judgments; to provide for and revise fee provisions; to revise the concurrent  
36 jurisdiction of probate court with superior court; to amend Title 19 of the Official Code of  
37 Georgia Annotated, relating to domestic relations, so as to revise the power of superior court  
38 judges in appointing and removing trustees and protecting trust estates; to revise enforcement  
39 of antenuptial agreements; to revise provisions concerning permanent alimony; to amend  
40 Article 3 of Chapter 2 of Title 23 of the Official Code of Georgia Annotated, relating to  
41 fraud, so as to revise provisions concerning fiduciary relationship; to amend Chapter 27 of  
42 Title 50 of the Official Code of Georgia Annotated, relating to lottery for education, so as to  
43 provide for the preference of the Georgia Lottery Corporation for certain proceeds due from  
44 a person's estate; to provide for related matters; to provide for an effective date; to repeal  
45 conflicting laws; and for other purposes.

46 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

47 **PART I**  
48 **SECTION 1-1.**

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

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

56 **SECTION 1-2.**

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

59 "53-2-20.

60 The identity or interest of any heir may be resolved judicially upon application to the  
61 probate court that has jurisdiction by virtue of a pending administration or that would have

jurisdiction in the event of an administration of the estate of the decedent. Alternatively, the petition may be filed in the superior court of the county where the probate court having jurisdiction, as defined in this Code section, is located; provided, however, that, if the petition is filed in connection with a contested proceeding to determine a purported heir's entitlement to a year's support from the decedent's estate pursuant to Chapter 3 of this title, such petition must be filed in the probate court having jurisdiction. The proceedings for the determination of such questions shall conform to the requirements set forth in this article."

### SECTION 1-3.

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

"53-2-27.

(a) When the kinship of any party in interest to a decedent is in controversy in any proceeding under this article, a probate court or superior court may order the removal and testing of deoxyribonucleic acid (DNA) samples from the remains of the decedent and from any party in interest whose kinship to the decedent is in controversy for purposes of comparison and determination of the statistical likelihood of such kinship. The ~~superior~~ court may order the disinterment of the decedent's remains if reasonably necessary to obtain such samples. ~~If the proceedings are pending in the probate court, the motion shall be transferred to the superior court for determination.~~

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

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

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

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

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

**SECTION 1-4.**

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

"53-3-1.

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

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

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

**SECTION 1-5.**

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

"53-3-4.

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

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

(2) In solvent and insolvent estates, if the homestead is not claimed, all taxes and liens for taxes accrued for years prior to the year of the decedent's death against the real property set apart and against any equity of redemption applicable to the real property set apart shall be divested as if the entire title were included in the year's support. Additionally, as elected in the petition, property taxes accrued in the year of the decedent's death or in the year in which the petition for year's support is filed or, if the

petition is filed in the year of the decedent's death, in the year following the filing of the petition shall be divested if the real property is set apart for year's support; provided, however, that, if the property taxes elected in the petition pursuant to this paragraph are paid after the filing of the petition but prior to the entry of the order setting apart the real property for year's support, the property taxes accrued in the year following the year elected in the petition shall be divested instead."

#### SECTION 1-6.

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

"53-3-5.

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

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

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

#### SECTION 1-7.

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

"53-3-6.

(a) As used in this Code section, the term 'interested ~~person~~ persons' means the decedent's children, spouse, other heirs, beneficiaries, and creditors; and any others having a property right in or claim against the estate of the decedent ~~which that~~ may be affected by the year's support proceedings.

(b) Upon the filing of the petition, the probate court shall issue a citation and publish a notice in the official newspaper of the county in which the petition is made once a week

for four weeks, citing all interested persons ~~concerned~~ to show cause by a ~~day~~ date certain why the petition for year's support should not be granted.

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

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

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

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

#### SECTION 1-8.

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

"53-3-7.

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

(b) If objection is made, the probate court shall hear the petition and, upon the evidence submitted, shall determine the property to be set ~~aside~~ apart as year's support according to the standards set out in subsection (c) of this Code section. If an appeal is taken, pending

the appeal the petitioners shall be furnished with necessities by the personal representative or temporary administrator of the estate, as allowed by the probate court.

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

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

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

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

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

#### SECTION 1-9.

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

"53-3-8.

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

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

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

**SECTION 1-10.**

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

"53-3-12.

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

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

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

**SECTION 1-11.**

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

"53-3-13.

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

**SECTION 1-12.**

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

"53-3-21.

If there is no personal representative of the decedent's estate, the probate court may appoint a temporary administrator as provided in Code Section 53-6-30 to perform the duties of a personal representative under subsection (b) of Code Section 53-3-7 or under subsection (b) of Code Section 53-3-12; provided, however, that the appointment of such temporary administrator shall not alter or affect the citation, notice, and mailing requirements of Code Section 53-3-6."



**SECTION 1-13.**

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

"53-4-4.

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

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

53-4-5.

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

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

(1) Is signed and dated by the testator;

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

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

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

**SECTION 1-14.**

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

"53-4-63.

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

(b) If the residuum proves to be insufficient for the payment of the ~~testator's debts~~ of the testator and the expenses of administration of the estate, then general testamentary gifts shall abate pro rata to make up the deficiency. If general testamentary gifts are insufficient, then demonstrative testamentary gifts shall abate in the same manner. If both general and demonstrative gifts are insufficient, then specific gifts shall abate in the same manner.

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

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

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

#### SECTION 1-15.

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

"53-4-68.

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

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

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

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

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

(3) Entering into a settlement agreement."

#### SECTION 1-16.

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

#### SECTION 1-17.

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

"53-5-2.

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

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

#### SECTION 1-18.

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

"53-5-3.

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

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

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

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

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

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

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

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

**SECTION 1-19.**

376

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

379 "53-5-17.

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

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

**SECTION 1-20.**

387

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

390 "53-5-19.

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

**SECTION 1-21.**

398

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

401 "53-5-20.

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

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

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

414 **SECTION 1-22.**

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

417 "53-5-21.

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

426 (b) The petition to probate a will in solemn form shall set forth the full name, the place of  
427 domicile, and the date of death of the testator; the mailing address of the petitioner; the  
428 names, ages or majority status, and addresses of ~~the surviving spouse and of all the other~~  
429 heirs, stating ~~their~~ each such heir's relationship to the testator; and whether, to the  
430 knowledge of the petitioner, any other proceedings with respect to the probate of another  
431 purported will of the testator are pending in this state and, if so, the names and addresses  
432 of the propounders and the names, addresses, and ages or majority status of the  
433 beneficiaries under the other purported will. If a testamentary guardian is being appointed  
434 in accordance with subsection (b) of Code Section 29-2-4, the names and mailing addresses  
435 of any persons required to be served with notice pursuant to such Code section shall be  
436 provided by the petitioner. In the event full particulars are lacking, the petition shall state  
437 the reasons for any omission. The petition shall conclude with a prayer for issuance of  
438 letters testamentary. If all of the heirs acknowledge service of the petition and notice and  
439 shall in their acknowledgment assent thereto, and if there are no other proceedings pending  
440 in this state with respect to the probate of another purported will of the decedent, the will  
441 may be probated and letters testamentary thereupon may issue without further delay;  
442 provided, however, that letters of guardianship shall only be issued in accordance with  
443 Code Section 29-2-4."

**SECTION 1-23.**

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

"53-5-22.

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

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

(1) Each beneficiary:

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

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

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

(3) Each trustee.

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

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

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

#### SECTION 1-24.

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

"53-5-25.

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

(1) 'Court' means a probate court which is so authorized by Article 6 of Chapter 9 of Title 15 or any superior court on appeal or transfer from a probate court.

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

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

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

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

(b)(e) All interested persons All individuals who are sui juris and affected by such a settlement agreement shall be authorized to enter into such an a settlement agreement,

which shall be assented to in writing by all ~~the heirs of the testator and by all sui juris~~  
~~beneficiaries affected by such a settlement~~ interested persons.

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

(g) If a trust designated in the will to take an interest in real or personal property would  
have such interest affected by the settlement agreement:

(1) The provisions of such agreement affecting such interest shall satisfy the  
requirements of Code Section 53-12-9 in order to be binding on the trust, the trustee, any  
trust director, and the trust beneficiaries; and

(2) A probate court not subject to Article 6 of Chapter 9 of Title 15, upon its own motion  
or upon the motion of any interested person or duly qualified personal representative or  
temporary administrator, shall enter an order transferring the proceeding to approve the  
settlement agreement to the superior court to which an appeal would lie under Code  
Section 5-3-2.

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

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

## SECTION 1-25.

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

"53-5-27.

(a)(1) As used in this Code section, the term 'court' means a probate court or superior  
court on appeal or transfer from a probate court.



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

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

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

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

(e) If a trust designated in the will to take an interest in real or personal property would have such interest affected by the nonjudicial settlement agreement:

(1) The provisions of such agreement affecting such interest shall satisfy the requirements of Code Section 53-12-9 in order to be binding on the trust, the trustee, any trust director, and the trust beneficiaries; and

(2) A probate court not subject to Article 6 of Chapter 9 of Title 15, upon the request of any person bound by a nonjudicial settlement agreement that the court determine whether such agreement contains terms and conditions the court properly could have approved, shall enter an order transferring the proceeding to the superior court to which an appeal would lie under Code Section 5-3-2 for the determination of all questions under subsection (d) of this Code section.

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

**SECTION 1-26.**

586

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

589 "53-5-50.

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

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

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

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

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

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

598 (3) Lack of jurisdiction;

599 (4) Fraud, accident, or mistake or the acts of the adverse party unmixed with the  
600 negligence or fault of the petitioner; or

601 (5) A nonamendable defect that appears upon the face of the record or pleadings.

602 (c)(1) Any such ~~action~~ petition based upon paragraph (1) of subsection (b) of this Code  
603 section shall be combined with a petition to probate the other will in solemn form ~~the~~  
604 ~~other will or codicil.~~

605 (2) Any such petition based upon paragraph (2) of subsection (b) of this Code section  
606 shall be combined with a petition to probate the codicil in solemn form.

607 (3) In any such petition based upon paragraph (1) or (2) of subsection (b) of this Code  
608 section, ~~the~~ The court shall consider the petition to probate in solemn form together with  
609 the ~~action~~ petition to vacate, set aside, or amend; and the court shall grant relief as is  
610 appropriate with respect to each matter.

611 (d) In any such petition based upon paragraph (5) of subsection (b) of this Code section,  
612 it is not sufficient that the pleadings fail to state a claim upon which relief can be granted,  
613 but the pleadings must affirmatively show no claim in fact existed."

**SECTION 1-27.**

614

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

617 "53-5-51.

618 (a) ~~The~~ A petition made pursuant to Code Section 53-5-50 shall set forth the allegations  
619 on which ~~the action~~ such petition is based and the name and address of the then acting  
620 personal representative, if any, of the estate, or, if none, the beneficiaries of the previously  
621 probated will required to be served by Code Section 53-5-22. ~~The~~ Such petition shall

conclude with a prayer for the issuance of an order vacating, setting aside, or amending the earlier probate; and, if such petition is based upon paragraph (1) or (2) of subsection (b) of Code Section 53-5-50, for the probate of the ~~new~~ newly propounded will or codicil in solemn form; and for the issuance of new letters testamentary.

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

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

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

#### SECTION 1-28.

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

"53-5-52.

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

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

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

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

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

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

657 53-5-53.

658 The provisions of this article shall govern in proceedings in the probate court to vacate, set  
659 aside, or amend an order admitting a will to probate, and the provisions of Code Section  
660 9-11-60 shall not be applicable to such proceedings."

661 **SECTION 1-29.**

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

664 "53-6-14.

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

667 (1) Who has a present interest, including but not limited to a vested remainder interest  
668 but not including trust beneficiaries where there is a trustee; and

669 (2) Whose identity and whereabouts are known or may be determined by reasonable  
670 diligence.

671 (b) An administrator with the will annexed may be unanimously selected by the  
672 beneficiaries of the will who are capable of expressing a choice unless the sole beneficiary  
673 is the decedent's surviving spouse and an action for divorce or separate maintenance was  
674 pending between the decedent and the surviving spouse at the time of death. When no such  
675 unanimous selection is made, the probate court shall make the appointment that will best  
676 serve the interests of the estate, considering the following preferences:

677 (1) Any beneficiary or the trustee of any trust that is a beneficiary under the will; or

678 (2) Those persons listed in paragraphs (3) through (5) of Code Section 53-6-20.

679 (c) For purposes of this Code section, a beneficiary's choice is expressed by:

680 (1) That beneficiary, if the beneficiary is sui juris;

681 (2) That beneficiary's duly acting conservator or guardian or, if ~~none~~ there is no  
682 conservator or guardian, the person having custody of the beneficiary, if the beneficiary  
683 is not sui juris;

684 (3) The trustee of a trust that is a beneficiary under the will, where there is a trustee; or

685 (4) The beneficiary of a trust that is a beneficiary under the will, where there is no  
686 trustee; provided, however, that for purposes of this paragraph, a trust beneficiary may  
687 be represented as provided in Code Section 53-12-8; or

688 (5) The personal representative of a deceased beneficiary receiving a present interest  
689 under the will."

**SECTION 1-30.**

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

"53-6-15.

(a) Every petition for letters of administration with the will annexed shall be made in accordance with the procedures set forth in Code Section 53-5-21 if the will has not yet been admitted to probate and shall include a prayer for issuance of letters of administration with the will annexed. ~~The~~ Such petition shall set forth the names, addresses, and ages or majority status of the beneficiaries who are capable of expressing a choice, as defined in subsection (a) of Code Section 53-6-14, and the circumstances giving rise to the need for an administrator with the will annexed. ~~The~~ Such petition and the citation issued thereon shall be served by the court on the beneficiaries of the will who are capable of expressing a choice in the manner ~~described in~~ provided by Chapter 11 of this title. If the petition for letters of administration with the will annexed is based upon the expiration of a reasonable time for any nominated executor to qualify, any nominated executor who has failed to qualify shall also be served with notice by the court in the manner provided by Chapter 11 of this title.

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

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

**SECTION 1-31.**

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

"53-6-22.

Notice of the petition for letters of administration shall be ~~mailed~~ served by the court by first-class mail ~~to~~ on each heir with a known address at least ~~13~~ 30 days prior to the date on or before which any objection is required to be filed. If there is any heir whose current

726 address is unknown or any heir who is unknown, notice shall be served on any such heir  
727 by being published in the official newspaper of the county in which the petition is made  
728 once each week for four weeks prior to the week ~~which~~ that includes the date on or before  
729 which any objection must be filed."

730 **SECTION 1-32.**

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

733 "53-6-30.

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

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

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

746 **SECTION 1-33.**

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

749 "53-6-31.

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

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

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

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

769 **SECTION 1-34.**

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

772 "53-6-32.

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

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

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

785 **SECTION 1-35.**

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

788 "53-6-62.

789 (a) A personal representative may petition the probate court for compensation that is  
 790 greater than that allowed under Code Section 53-6-60. Service of notice of the petition for  
 791 extra compensation shall be made to on all the heirs of an intestate decedent or to on any  
 792 affected beneficiaries under the will of a testate decedent. Service of notice shall be made  
 793 in the manner ~~described in~~ provided by Chapter 11 of this title and shall direct the parties

served to file any written objections to the extra compensation with the probate court within ~~ten~~ 30 days.

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

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

### SECTION 1-36.

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

"53-7-1.

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

(b)(1) As part of the petition for letters testamentary, letters of administration with the will annexed, or letters of administration or by separate petition, the beneficiaries of a testate estate or the heirs of an intestate estate may, by unanimous consent, authorize but not require the probate court to grant to the personal representative any of the powers contained in Code Section 53-12-261; provided, however, that the grant by the probate court of the powers provided by paragraph (1) of subsection (b) of Code Section 53-12-261 shall not authorize the personal representative to bind the estate by any



warranty in any conveyance or contract in violation of subsection (a) of Code Section 53-8-14.

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

(3) The grant of powers ~~shall only~~ provided for in paragraph (1) of this subsection shall be ordered only after publication of a citation in the official newspaper of the county in which the petition is made and only after the time for filing objections has elapsed either without any objection being timely filed, or if any such objection is timely filed, upon each such objection being dismissed or withdrawn. The citation shall be sufficient if it states generally that the petition requests that powers contained in Code Section 53-12-261 be granted."

#### SECTION 1-37.

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

"53-7-5.

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

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

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

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

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

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

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

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

(c) When ~~safe-deposit~~ safe-deposit boxes or receptacles are leased or rented to fiduciaries, including executors, administrators, guardians, trustees, custodians, receivers, and the like, the fiduciary or fiduciaries, as lessee or renter, may authorize the entering of the box or receptacle by one or fewer than all of them or by any other person without the presence or consent of the fiduciary or fiduciaries. Upon receipt of the written authorization, the bank or lessor may without liability authorize access to the box or receptacle in accordance with such authorization. Upon cancellation of the authorization, the bank or lessor may require the presence of all lessees or renters for access."

#### SECTION 1-38.

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

"53-7-6.

(a) Except as otherwise provided in the will or ordered by the probate court, a personal representative is authorized:

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

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

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

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

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

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

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

### SECTION 1-39.

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

"53-7-8.

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

**SECTION 1-40.**

936

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

939 "53-7-11.

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

**SECTION 1-41.**

943

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

946 "53-7-13.

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

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

**SECTION 1-42.**

957

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

960 "53-7-15.

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

**SECTION 1-43.**

965

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

968 "53-7-41.

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

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

975 The personal representative's notice shall be published once a week for four weeks in the  
976 official newspaper of the county in which the personal representative qualified. No  
977 particular form shall be required for creditors to notify the personal representative of their  
978 claims, and such notification of a creditor's claim shall be sufficient for purposes of this  
979 Code section if given in writing, providing an account number or other identifying  
980 information or itemization adequate to establish the indebtedness as an obligation of the  
981 estate, and stating the principal balance and any applicable interest or other additional  
982 charges lawfully owed. An invoice or account statement satisfying the requirements of the  
983 preceding sentence of this subsection and generated by a creditor in the ordinary course of  
984 such creditor's business shall constitute sufficient notification to the personal representative  
985 of such creditor's claim if the personal representative actually receives such notification of  
986 the claim or if such creditor files such notification with the probate court having  
987 jurisdiction over the decedent's estate or sends such notification of the claim by electronic  
988 transmission, other form of wire or wireless communication, or by first-class mail or  
989 private carrier to the address of the decedent, the personal representative, or the attorney  
990 representing the personal representative; provided, however, that a notification of a claim  
991 sent by a creditor by electronic communication to an account for which the decedent is the  
992 user shall constitute sufficient notification to the personal representative of such creditor's  
993 claim only if the content of such electronic communication lawfully is disclosed to the  
994 personal representative pursuant to Chapter 13 of this title. As used in this subsection, the  
995 terms 'account', 'content of an electronic communication', 'electronic communication', and  
996 'user' shall have the meaning provided by Code Section 53-13-2.

997 (c) After receiving sufficient notification of a creditor's claim under subsection (b) of this  
998 Code section, the personal representative may require reasonable additional proof or  
999 accounting from such creditor prior to paying such creditor's claim, but such requirement  
1000 by the personal representative shall not affect adversely the timeliness of such creditor's  
1001 notification to the personal representative of the creditor's claims.

1002 (d) ~~Creditors who fail to give notice of claims~~ notify the personal representative of their  
1003 claims in the manner provided by subsection (b) of this Code section within three months  
1004 from the date of publication of the personal representative's last notice shall lose all rights

1005 to an equal participation with creditors of equal priority to whom distribution is made  
1006 before ~~notice~~ sufficient notification of such claims is ~~brought~~ given to the personal  
1007 representative, and they may not hold the personal representative liable for a  
1008 misappropriation of the funds. If, however, there are assets in the hands of the personal  
1009 representative sufficient to pay such debts and if no claims of greater priority are unpaid,  
1010 the assets shall be thus appropriated notwithstanding failure ~~to give notice of such creditors~~  
1011 timely to notify the personal representative of their claims."

1012 **SECTION 1-44.**

1013 Said title is further amended by revising Code Section 53-7-50, relating to petition by  
1014 personal representative for discharge, citation and publication, hearing, and subsequently  
1015 discovered estate, as follows:

1016 "53-7-50.

1017 (a) A personal representative who has fully performed all duties or who has been allowed  
1018 to resign may petition the probate court for discharge from the office and from all liability.  
1019 The petition shall state that the personal representative has fully administered the estate of  
1020 the decedent and shall set forth the names and addresses of all known heirs of an intestate  
1021 decedent or beneficiaries of a testate decedent, including any persons who succeeded to the  
1022 interest of any heir or beneficiary who died after the decedent died, and shall name which  
1023 of the heirs or beneficiaries is or should be represented by a guardian. The petition shall  
1024 state that the personal representative has paid all claims against the estate or shall  
1025 enumerate which claims of the estate have not been paid and the reason for such  
1026 nonpayment. The petition shall also state that the personal representative has filed all  
1027 necessary inventory and returns or, alternatively, has been relieved of such filings by the  
1028 testator, the heirs or beneficiaries, or the probate court.

1029 (b)(1) Subject to paragraphs (2) and (3) of this subsection, upon the filing of a petition  
1030 for discharge, citation shall issue to all heirs or beneficiaries, as provided in Chapter 11  
1031 of this title, requiring them to file any objections to the discharge, except that in all cases  
1032 a citation shall be published one time in the newspaper in which sheriff's advertisements  
1033 are published in the county in which the petition is filed at least ten days prior to the date  
1034 on or before which any objection is required to be filed. Any creditors whose claims are  
1035 disputed or who have not been paid in full due to insolvency of the estate shall be served  
1036 in accordance with Chapter 11 of this title.

1037 (2) Notwithstanding paragraph (1) of this subsection, it shall not be necessary to ~~notify~~  
1038 serve with notice any heir or beneficiary who has relieved the personal representative of  
1039 all liability or any heir or beneficiary with respect to whom the personal representative  
1040 has been relieved of all further liability in a binding proceeding such as a settlement of

accounts pursuant to Code Sections 53-7-60 through 53-7-63 or an intermediate report pursuant to Code Sections 53-7-73 through 53-7-76.

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

(c) If any party in interest files objection to the discharge, a hearing shall be held. If as a result of the hearing, the probate court is satisfied that the personal representative has faithfully and honestly discharged the office, an order shall be entered releasing and discharging the personal representative from all liability. If no objections are filed, the probate court shall enter the order for discharge without further proceedings or delay. Any heir or beneficiary or creditor who is a minor at the time of the discharge and who is not represented by a guardian may, within two years of reaching the age of majority, commence suit against the personal representative and such discharge shall be no bar to the action.

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

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

#### **SECTION 1-45.**

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

1074 "53-7-54.

1075 (a) If a personal representative or temporary administrator commits a breach of fiduciary  
1076 duty or threatens to commit a breach of fiduciary duty, a beneficiary of a testate estate or  
1077 heir of an intestate estate shall have a cause of action:

1078 (1) To recover damages;

1079 (2) To compel the performance of the personal representative's or temporary  
1080 administrator's duties;

1081 (3) To enjoin the commission of a breach of fiduciary duty;

1082 (4) To compel the redress of a breach of fiduciary duty by payment of money or  
1083 otherwise;

1084 (5) To appoint another personal representative or temporary administrator to take  
1085 possession of the estate property and administer the estate;

1086 (6) To remove the personal representative or temporary administrator; and

1087 (7) To reduce or deny compensation to the personal representative or temporary  
1088 administrator.

1089 (b) When estate assets are misapplied and can be traced in the hands of persons affected  
1090 with notice of misapplication, a constructive trust shall attach to the assets.

1091 (c) The provision of remedies for breach of fiduciary duty by this Code section does not  
1092 prevent resort to any other appropriate remedy provided by statute or common law.

1093 (d) In any action or proceeding brought pursuant to this Code section, service of notice or  
1094 process shall be made in the manner provided by Chapter 11 of this title if Chapter 11 of  
1095 this title is applicable under Code Section 53-11-1. If Chapter 11 of this title is not  
1096 applicable to such action or proceeding under Code Section 53-11-1, such service shall be  
1097 made in the manner provided by Chapter 11 of Title 9 unless Chapter 11 of such title is not  
1098 applicable to such action or proceeding under Code Section 9-11-81."

1099 **SECTION 1-46.**

1100 Said title is further amended by revising Code Section 53-7-55, relating to revocation of  
1101 letters of personal representative or other sanctions, as follows:

1102 "53-7-55.

1103 (a) Upon the petition of any person having an interest in the estate or whenever it appears  
1104 to the probate court that good cause may exist to revoke the letters of a personal  
1105 representative or impose other sanctions, the court shall cite the personal representative to  
1106 answer to the charge. Upon investigation, the court may, in the court's discretion:

1107 (1) Revoke the personal representative's letters;

1108 (2) Require additional security;



1109 (3) Require the personal representative to appear and submit to a settlement of accounts  
 1110 following the procedure set forth in Article 6 of this chapter, regardless of whether or not  
 1111 the personal representative has first resigned or been removed and regardless of whether  
 1112 ~~or not~~ a successor fiduciary has been appointed; or  
 1113 (4) Issue such other order as in the court's judgment is appropriate under the  
 1114 circumstances of the case.  
 1115 (b) In any proceeding brought pursuant to this Code section, service of notice shall be  
 1116 made in the manner provided by Chapter 11 of this title."

1117 **SECTION 1-47.**

1118 Said title is further amended by revising Code Section 53-7-56, relating to resignation, as  
 1119 follows:

1120 "53-7-56.

1121 (a) A personal representative may resign:

1122 (1) In the manner and under the circumstances described in the will;

1123 (2) Upon petition to the probate court, showing that the resignation has been requested  
 1124 in writing by all heirs of an intestate estate or all beneficiaries of a testate estate; or

1125 (3) Upon petition to the probate court, showing to the satisfaction of the court that:

1126 (A) The personal representative is unable to continue serving due to age, illness,  
 1127 infirmity, or other good cause;

1128 (B) Greater burdens have developed upon the office of personal representative than  
 1129 those ~~which were~~ that originally were contemplated or should have been contemplated  
 1130 when the personal representative was qualified and the additional burdens would work  
 1131 a hardship upon the personal representative;

1132 (C) Disagreement exists between one or more of the beneficiaries or heirs and the  
 1133 personal representative in respect to the personal representative's management of the  
 1134 estate, which disagreement and conflict appear deleterious to the estate;

1135 (D) The resignation of the personal representative will result in or permit substantial  
 1136 financial benefit to the estate;

1137 (E) The resigning personal representative is one of two or more acting personal  
 1138 representatives and the other personal representatives will continue in office with no  
 1139 adversity to the estate contemplated; or

1140 (F) The resignation would not be disadvantageous to the estate.

1141 (b) A personal representative's petition to resign shall be made to the probate court and the  
 1142 court shall cause citation to issue and service shall of notice to be made upon all the heirs  
 1143 of an intestate estate or the beneficiaries of a testate estate in the manner provided by  
 1144 Chapter 11 of this title."

**SECTION 1-48.**

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

"53-7-62.

(a) Any person interested as an heir or beneficiary of an estate or the probate court may, after the expiration of six months from the granting of letters, cite the personal representative to appear before the probate court for a settlement of accounts. Alternatively, if the personal representative chooses, the personal representative may cite all the heirs or beneficiaries and all persons who claim to be creditors whose claims the personal representative disputes or cannot pay in full to be present at the settlement of the personal representative's accounts by the court. The settlement shall be conclusive upon the personal representative and upon all the heirs or beneficiaries and all remaining persons who claim to be creditors who receive ~~notice of the hearing~~ service of notice of the settlement proceeding in the probate court and the hearing in the manner provided by subsection (b) of this Code section or by Chapter 11 of this title. The court may, in the court's discretion, give the personal representative additional time to settle the estate.

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

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

**SECTION 1-49.**

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

"53-7-63.

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

**SECTION 1-50.**

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

"53-7-68.

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

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

(c) By unanimous written consent, the heirs of an intestate estate or the beneficiaries of a testate estate may authorize the probate court to relieve the personal representative from filing annual returns with them or with the court or both, in the same manner as provided in subsection (b) of Code Section 53-7-1 for the granting of powers to a personal representative. Any such unanimous written consent, regardless of the date of execution, ~~which that~~ relieves the personal representative from filing annual returns with the court shall also relieve the personal representative from sending a copy of the return to the heirs or beneficiaries."

**SECTION 1-51.**

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

"53-7-69.1.

(a) Except as provided in subsection (b) of this Code section, a personal representative shall furnish to the heirs of an intestate estate or the beneficiaries of a testate estate, at least annually, a statement of receipts and disbursements.

(b) Any heir or beneficiary may waive individually the right to receive a statement of receipts and disbursements in the same manner as provided in subsection (b) of Code Section 53-7-68 for waiving the right to receive a copy of an annual return. The heirs or beneficiaries may authorize the probate court to relieve the personal representative from furnishing statements of receipts and disbursements in the same manner as provided in subsection (c) of Code Section 53-7-68 for relieving the personal representative from filing annual returns. A testator may, by will, dispense with the necessity of the personal

1217 representative's furnishing a statement of receipts and disbursements in the same manner  
1218 as provided in Code Section 53-7-69 for dispensing with the necessity of the personal  
1219 representative's filing an annual return."

1220 **SECTION 1-52.**

1221 Said title is further amended by revising Code Section 53-7-71, relating to return of  
1222 nonresident or deceased personal representative, as follows:

1223 "53-7-71.

1224 (a) The return of a nonresident personal representative may be admitted to record upon  
1225 affidavit of the personal representative's surety.

1226 (b) If a personal representative is dead, the personal representative of the estate of the  
1227 deceased personal representative or, if at any time there is no such personal representative  
1228 of the estate of the deceased personal representative, any ~~security~~ surety on the bond of the  
1229 deceased personal representative may make returns of the accounts of ~~the~~ such deceased  
1230 personal representative in the same manner and with the same effect as if the deceased  
1231 personal representative were living."

1232 **SECTION 1-53.**

1233 Said title is further amended by revising Code Section 53-7-74, relating to filing of  
1234 objections to intermediate report, continuation of hearing, and appeal, as follows:

1235 "53-7-74.

1236 At or before the time fixed for hearing, any parties at interest may file objections to the  
1237 personal representative's report, actions, and accounting, in which case the hearing on the  
1238 accounting shall ~~be~~ automatically be continued until a date certain, when, subject to the  
1239 probate court's power to grant continuances, the same shall be heard as other cases pending  
1240 in the probate court with like right of appeal to the superior court; ~~in.~~ In such case, an  
1241 appeal by consent may be taken to the superior court. ~~Such; provided, however, that such~~  
1242 appellate procedures shall not apply to cases provided for by Article 6 of Chapter 9 of Title  
1243 15. The parties at interest who have been served appropriately with notice as provided in  
1244 subsection (c) of Code Section 53-7-73 and who have filed no objections to the report and  
1245 accounting need not be served with notice of an appeal or any other or further proceedings,  
1246 and their consent shall not be required for an appeal to the superior court."

1247 **SECTION 1-54.**

1248 Said title is further amended by revising Code Section 53-7-75, relating to construction of  
1249 will by superior court, as follows:

1250 "53-7-75.

1251 (a) Except as otherwise provided in subsection (b) of this Code section and in  
1252 paragraph (7) of subsection (a) of Code Section 15-9-127, The probate court, upon its own  
1253 motion or upon the motion of any party in interest, whenever it appears that a question of  
1254 construction of a will is involved in the accounting, the probate court, upon its own motion  
1255 or upon the motion of any party in interest, shall enter an order transferring the accounting  
1256 to the superior court for the determination of all such questions, which shall be presented  
1257 to, heard, and determined by the superior court as appeals from the probate court are  
1258 presented, heard, and determined.

1259 (b) A probate court subject to Article 6 of Chapter 9 of Title 15 shall have jurisdiction over  
1260 questions of construction of a will involved in the accounting and may determine all such  
1261 questions without transferring the accounting to the superior court.

1262 (c) The probate court may suspend further proceedings pending a final decision  
1263 determination of the superior court questions of construction.

1264 (d) After a final determination of the questions of construction, the probate court shall  
1265 proceed with the accounting."

1266 **SECTION 1-55.**

1267 Said title is further amended by revising Code Section 53-8-10, relating to authority of  
1268 personal representative and petition by temporary administrator, as follows:

1269 "53-8-10.

1270 (a) Subject to the provisions of this article, a personal representative may sell, rent, lease,  
1271 exchange, or otherwise dispose of property, whether personal, real, or mixed, for the  
1272 purpose of payment of debts, for distribution of the estate; or for any other purpose that  
1273 is in the best interest of the estate; provided, however, that nothing in this article shall be  
1274 construed to limit, enlarge, or change any authority, power, restriction, or privilege  
1275 specifically provided by will or incorporated into a will or otherwise granted to the  
1276 personal representative in accordance with the provisions of subsection (b) of Code  
1277 Section 53-7-1.

1278 (b) A temporary administrator is authorized to petition the probate court for leave to sell  
1279 or otherwise deal with property of the estate following the procedures described in this  
1280 article; provided, however, that good cause is shown."

1281 **SECTION 1-56.**

1282 Said title is further amended by revising Code Section 53-8-11, relating to property that is  
1283 perishable, liable to deteriorate, or expensive to keep, as follows:

1284 "53-8-11.

1285 Perishable property, property that is liable to deteriorate from keeping, or property that is  
1286 expensive to keep shall be sold as early as practicable and in such manner as the probate  
1287 court shall determine to be in the best interest of the estate, after such service of notice and  
1288 opportunity for hearing, if any, as the probate court shall deem practicable under the  
1289 circumstances."

1290 **SECTION 1-57.**

1291 Said title is further amended by revising Code Section 53-8-13, relating to general  
1292 procedures, as follows:

1293 "53-8-13.

1294 (a) A personal representative desiring to sell, rent, lease, exchange, or otherwise dispose  
1295 of property other than property that is perishable, liable to deteriorate, or expensive to keep  
1296 or listed stocks and bonds shall file a petition with the probate court stating the property  
1297 involved and the interests in such property; the specific purpose of the transaction; the  
1298 proposed price, if any; and all other terms or conditions proposed for the transaction and  
1299 ~~a list of~~ listing the names, addresses, and ages or majority status of all heirs ~~in~~ of an  
1300 intestate estate or of all beneficiaries ~~in~~ of a testate estate. In the event full particulars are  
1301 lacking, the petition shall state the reasons for any such omission.

1302 (b) Upon the filing of the petition, ~~notice shall be given to by the personal representative,~~  
1303 the court shall issue a citation and serve notice on the heirs of an intestate estate or the  
1304 affected beneficiaries of a testate estate in accordance with the provisions of Chapter 11 of  
1305 this title.

1306 (c) If no written objection by a person so ~~notified~~ served with notice is filed within the  
1307 appropriate period of time following the service of such notice, as provided by Chapter 11  
1308 of this title, the probate court shall order such sale summarily in the manner and terms  
1309 petitioned. If timely written objection is filed, the court shall hear the matter and grant or  
1310 deny the petition for sale or make such other order as is in the best interest of the estate,  
1311 which may require the sale to be private or at public outcry including confirmation of the  
1312 sale by the court or otherwise. An appeal shall lie to the superior court in the manner,  
1313 under the restrictions, and with the effect provided for appeals from the probate court in  
1314 other cases.

1315 (d) A personal representative shall make a full return to the probate court of every sale,  
1316 specifying the property sold, the purchasers, the amounts received, and the terms of the  
1317 sale.

1318 (e) The recital in the personal representative's deed of compliance with ~~legal~~ the provisions  
1319 of this Code section shall be prima-facie evidence of the facts recited.

1320 (f) Where a personal representative sells real property under the provisions of this Code  
1321 section, liens on such real property may be divested and transferred to the proceeds of the  
1322 sale as a condition of the sale."

1323 **SECTION 1-58.**

1324 Said title is further amended by revising Code Section 53-8-14, relating to warranty and  
1325 personal liability of personal representative, as follows:

1326 "53-8-14.

1327 (a) Regardless of whether a personal representative has the powers provided by  
1328 paragraph (1) of subsection (b) of Code Section 53-12-261 or by the corresponding  
1329 provision of any statute incorporated pursuant to subsection (d) of Code Section 53-12-263  
1330 or otherwise has similar such powers, and regardless of whether such powers are granted  
1331 by a probate court or are enumerated in or incorporated by reference into a will by a  
1332 testator, a ~~A~~ personal representative may not bind the estate by any warranty in any  
1333 conveyance or contract, ~~nor shall a personal representative be personally bound by such~~  
1334 ~~covenant, unless the intention to create a personal liability is distinctly expressed.~~

1335 (b) A personal representative shall not be bound personally by any warranty in any  
1336 conveyance or contract, unless the intention to create a personal liability is distinctly  
1337 expressed."

1338 **SECTION 1-59.**

1339 Said title is further amended by revising Code Section 53-8-15, relating to passage of title  
1340 to heirs or beneficiaries and assent of personal representative, as follows:

1341 "53-8-15.

1342 (a) The title to all property of an estate being in the personal representative for the payment  
1343 of debts and other purposes of administration, title to property in the estate does not pass  
1344 to the heirs or beneficiaries until the personal representative assents thereto in evidence of  
1345 the distribution of the property to them, except as otherwise provided in Code  
1346 Section 53-2-7.

1347 (b) Such assent may be express or may be presumed from the conduct of the personal  
1348 representative. Assent should be evidenced in writing as a deed of conveyance to real  
1349 property, bill of sale conveying tangible personal property, or an assignment or transfer of  
1350 interests in intangible personal property.

1351 (c) In the absence of prior assent, the discharge of a personal representative shall be  
1352 conclusive evidence of the personal representative's assent.

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

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

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

#### SECTION 1-60.

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

"53-9-2.

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

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

(c) If the court finds the petition to be in compliance with the requirements set forth in subsection (b) of this Code section, the court shall issue an order directing that a ~~notice~~ citation issue and be published once a week for four weeks in the official newspaper of the county in which the petition is made giving notice that on a ~~day stated~~ date certain, which shall be at least 90 days after the first publication of ~~the notice~~ such citation, evidence will be heard by the court concerning the alleged absence of the individual presumed to be dead and the circumstances and duration of such absence and requiring the missing individual, if alive, or any other person to produce and present to the court evidence that the missing individual is still in life. The ~~notice~~ publication of citation required by this subsection may be combined with any other service of notice required for the issuance of letters ~~or~~



1389 testamentary or letters of administration, an order for year's support, or an order that no  
1390 administration is necessary. ~~The or directed by the court pursuant to Code Section 53-11-5.~~  
1391 Such service of notice shall be ~~served~~ made as provided in Chapter 11 of this title on all  
1392 individuals who would be heirs if the missing individual were known to be dead. The order  
1393 may also direct that the petitioner make a search for the missing individual and shall  
1394 specify the manner in which the search is to be conducted to ensure that, in light of the  
1395 circumstances of the particular case, a diligent and reasonable effort has been made to  
1396 locate the missing individual. The order may prescribe any methods of search deemed by  
1397 the judge to be adequate and appropriate, including but not limited to publishing notices  
1398 in newspapers in appropriate locations and making inquiry of governmental agencies and  
1399 of the missing individual's relatives and friends and at the missing individual's last place  
1400 of abode or other appropriate places."

1401 **SECTION 1-61.**

1402 Said title is further amended by revising Code Section 53-10-5, relating to applicability of  
1403 chapter, as follows:  
1404 "53-10-5.

1405 This chapter shall not apply in the case of wills, trusts, deeds, contracts of insurance, or any  
1406 other situation where provision is made for distribution of property different from that  
1407 provided in this chapter or where provision is made for a presumption as to survivorship  
1408 ~~which~~ that results in a distribution of property different from that provided in this chapter."

1409 **SECTION 1-62.**

1410 Said title is further amended by revising Code Section 53-11-1, relating to applicability of  
1411 and compliance with provisions, as follows:  
1412 "53-11-1.

1413 Except as otherwise specifically provided, the provisions of this chapter shall apply to any  
1414 proceeding in the probate court that arises under Chapters 1 through 10, 12, and 13 of this  
1415 title. Compliance with the provisions of this chapter shall be deemed to be sufficient for  
1416 proceedings in the probate court arising under Chapters 1 through 10, 12, and 13 of this  
1417 title except as otherwise provided in those chapters and in Chapter 11 of Title 9 and  
1418 Chapter 9 of Title 15."

1419 **SECTION 1-63.**

1420 Said title is further amended by revising Code Section 53-11-2, relating to "guardian"  
1421 defined, persons represented, appointment, successors, and guardian named in petitions, as  
1422 follows:

1423 "53-11-2.

1424 (a) As used in this Code section, the term 'guardian' means the guardian ad litem appointed  
1425 by the probate court who may represent a single party or more than one party or a class of  
1426 parties with common or nonadverse interests, including the estates of one or more deceased  
1427 heirs that have no personal representative; provided, however, that the court may determine  
1428 for the purpose of the particular proceeding that the natural guardian, if any, or the  
1429 testamentary guardian, if any, or the duly constituted conservator of the property, if any,  
1430 or the duly constituted guardian of the person, if any, has no conflict of interest and thus  
1431 may represent for the purpose of the proceeding a party who is not sui juris, who is unborn,  
1432 or who is unknown.

1433 (b) When a party to a proceeding in the probate court is not sui juris, is unborn, or is  
1434 unknown, such party shall be represented in the proceeding by a guardian. When a party  
1435 to a proceeding in the probate court is a deceased heir whose estate has no personal  
1436 representative, such deceased heir's estate may be represented in the proceeding by a  
1437 guardian. Service upon or notice to a guardian shall constitute service upon or notice to  
1438 the party represented, and except as provided in subsection (a) of Code Section 15-9-17,  
1439 no additional service upon or notice to such party shall be required. Waivers,  
1440 acknowledgments, consents, answers, objections, or other documents executed by the  
1441 guardian shall, except as otherwise provided in Code Section 15-9-17, be binding upon the  
1442 party represented.

1443 (c) Whenever a guardian ad litem is appointed, the court may limit the appointment or may  
1444 at any time for cause appoint a successor. Unless the appointment is limited by the court,  
1445 the guardian ad litem first appointed with respect to any proceeding involving the  
1446 administration of the estate shall continue to serve with respect to such proceeding on  
1447 behalf of the party represented until a successor is appointed, the party represented  
1448 becomes sui juris, or the court terminates the appointment.

1449 (d)(1) In every petition filed in the probate court, the petitioner shall specify the name  
1450 of each party who requires a guardian and the name and address of any person who is  
1451 acting as guardian of the party. A copy of the letters appointing the guardian shall be  
1452 attached to the petition or the petition shall allege such facts as shall show the authority  
1453 of such guardian to act.

1454 (2) The authority of a guardian to act may be established under paragraph (1) of this  
1455 subsection by showing:

1456 (i)(A) Compliance by a foreign guardian of a minor with the filing requirements of  
1457 subsection (b) of Code Section 29-2-74 or of Code Section 29-2-76;

1458 (ii)(B) Compliance by a foreign conservator of the property of a minor with the filing  
1459 requirements of subsection (b) of Code Section 29-3-115 or of Code Section 29-3-117;

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

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

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

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

#### SECTION 1-64.

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

"53-11-3.

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

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

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

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

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

1496 received by the court before the date specified in the citation for the filing of objections,  
1497 service shall be made as otherwise required by this Code section."

1498 **SECTION 1-65.**

1499 Said title is further amended by revising Code Section 53-11-4, relating to service where  
1500 person or residence unknown or resides outside state, as follows:

1501 "53-11-4.

1502 (a) Except as otherwise prescribed by law or directed by the probate judge pursuant to  
1503 Code Section 53-11-5, the provisions of this Code section shall apply in cases when a  
1504 person to be served with notice of a proceeding covered by this chapter has a known  
1505 current residence address outside this state, or whose current residence address is unknown.

1506 (b) Unless all such persons have known current residence addresses, the probate court shall  
1507 order service of notice to be perfected by publication of the citation in the newspaper in  
1508 which sheriff's advertisements are published in the county in which the petition is made.  
1509 The citation shall be published once a week for four weeks prior to the date on which  
1510 objections must be filed. The records of the court shall show the persons ~~notified~~ served  
1511 with notice and the character of ~~the~~ such service of notice ~~given~~. The published citation  
1512 shall be directed to the person to be served with such notice.

1513 (c) If the current residence address of such a person is known, the court shall cause service  
1514 ~~shall of notice to~~ be made by mailing by certified or registered mail or statutory overnight  
1515 delivery, return receipt requested, a copy of the petition and the citation.

1516 (d) When service of notice by publication is ordered by the court pursuant to this Code  
1517 section, compliance with the provisions of this Code section relating to a person to be  
1518 ~~notified~~ served with notice who is known but whose current residence address is unknown  
1519 shall be equivalent to personal service of a copy of the petition and citation when the fact  
1520 appears in the records of the court showing the persons ~~notified~~ served with notice and the  
1521 character of ~~the~~ such service of notice ~~given~~. In the case of a known person whose current  
1522 residence address is unknown, that person's name shall appear in the records of the court,  
1523 and such records shall ~~show as to that person's~~ confirm compliance with this Code section  
1524 as to that person. In any case in which service of notice by publication is granted by the  
1525 court, one order for service of notice by publication shall be sufficient and the published  
1526 citation shall be directed as provided in subsection (b) of this Code section."

1527 **SECTION 1-66.**

1528 Said title is further amended by revising Code Section 53-11-5, relating to additional service  
1529 or notice, as follows:

1530 "53-11-5.

1531 On the motion of any party in interest or on its own motion, the ~~The probate judge court~~  
1532 may direct any additional service of citation or other notice or extend the time to respond  
1533 with respect to any proceedings covered by this chapter as the judge may determine to be  
1534 proper in the interests of due process and reasonable opportunity for any party or interest  
1535 to be heard."

1536 **SECTION 1-67.**

1537 Said title is further amended by revising Code Section 53-11-6, relating to waiver or  
1538 acknowledgment of service or notice and consent to granting of relief or entry of order, as  
1539 follows:

1540 "53-11-6.

1541 (a) Service of citation or other notice may be waived or acknowledged before or after the  
1542 filing of the petition. The waiver or acknowledgment shall be in a writing signed by the  
1543 person to be served with notice or some person authorized by the person to be served with  
1544 such notice, shall be sworn to or affirmed before the probate court or a notary public, and  
1545 shall be filed with the probate court.

1546 (b) Except as otherwise prescribed by law, the written consent of a party to the granting  
1547 of any relief or the entry of any order sought in a proceeding covered by this chapter,  
1548 whether executed before or after the filing of the petition, shall constitute a waiver and  
1549 acknowledgment of ~~notice and~~ service of notice of the proceedings, waiver of any other or  
1550 further citation or service of notice, entry of appearance, answer admitting all allegations  
1551 of fact set forth in the petition as true and correct, and consent to the granting of the relief  
1552 or the order sought.

1553 (c) A person in military service, regardless of age, shall be permitted to make any waiver,  
1554 acknowledgment, or consent described in this Code section."

1555 **SECTION 1-68.**

1556 Said title is further amended by revising Code Section 53-11-9, relating to issuance of  
1557 citation upon filing of petition, contents, and meaning, as follows:

1558 "53-11-9.

1559 (a) Upon the filing of a petition, a citation shall be issued by the court and addressed to the  
1560 persons required to be served ~~or entitled to~~ with notice or who otherwise are to be served  
1561 with notice; provided, however, that if all parties such persons have acknowledged service  
1562 of notice and assented to the petition, no such citation need issue. ~~The~~ Such citation shall  
1563 state that any objection must be made in writing and shall designate the date on or before  
1564 which objections must be filed in the probate court. ~~The~~ Such citation also shall state

whether the hearing will take place on a certain date or be specially scheduled for a later date. With respect to all proceedings under this title, ~~the any such~~ citation, ~~if any~~, may state that if no objections are filed the petition may be granted without a hearing.

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

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

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

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

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

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

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

(6) Any requirement that no caveat or objection be filed:

(A) Shall be satisfied by the dismissal or withdrawal of all caveats or objections so filed unless the context otherwise requires; and

(B) May, in the court's sound discretion, be satisfied by the failure of any party served with notice to file a caveat or objection in a timely manner unless the context otherwise requires."

## **SECTION 1-69.**

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

1601 "53-11-10.

1602 (a) Except as otherwise prescribed by law or as shortened by the judge upon good cause  
 1603 shown or directed by the judge pursuant to Code Section 53-11-5 with respect to any  
 1604 particular proceeding, the date on or before which any ~~objection person~~ is required to ~~be~~  
 1605 ~~filed~~ file any objection shall be not ~~less~~ fewer than ~~ten~~ 30 days after the date ~~the~~ such  
 1606 person is personally served with notice. For ~~persons~~ a person within the continental United  
 1607 States who ~~are~~ is served with notice by registered or certified mail or statutory overnight  
 1608 delivery, return receipt requested, the date on or before which any objection is required to  
 1609 be filed by such person shall not be ~~less~~ fewer than ~~13~~ 30 days from the date of mailing of  
 1610 such service of notice; provided, however, that if a return receipt from any recipient is  
 1611 received by the court within ~~13~~ 30 days from ~~the~~ such date of mailing of such service of  
 1612 notice, the date on or before which any objection is required to be filed by such recipient  
 1613 shall be ~~ten~~ 30 days from the date of receipt of such service of notice shown on such return  
 1614 receipt. For a person outside the continental United States who is served with notice by  
 1615 registered or certified mail or statutory overnight delivery, return receipt requested, the date  
 1616 on or before which any objection is required to be filed by such person shall not be ~~less~~  
 1617 fewer than 30 days from the date the service of the citation is mailed by the court;  
 1618 provided, however, that if the return receipt from any such recipient is received by the court  
 1619 during such 30 day period the date on or before which any objection is required to be filed  
 1620 by such recipient shall not be earlier than ~~ten~~ 30 days from the date of such recipient's  
 1621 receipt of such service of notice shown on such return receipt. For a person served with  
 1622 notice by publication, the date on or before which any objection is required to be filed shall  
 1623 be no ~~sooner~~ earlier than the first day of the week following such service by publication of  
 1624 citation once each week for four weeks.

1625 (b) Except as otherwise prescribed by law or directed by the judge with respect to any  
 1626 particular proceeding, the date on which any required hearing shall be held shall be the date  
 1627 by which any objection is required to be filed or such later date as the probate court may  
 1628 specify. When the matter is set for hearing on a date that was not specified in the citation,  
 1629 the probate court shall ~~send~~ serve by first-class mail a notice of the date, time, and place  
 1630 of the hearing to the petitioner and all parties who have ~~served~~ filed responses to the  
 1631 petition at the addresses given by them in their pleadings."

1632 **SECTION 1-70.**

1633 Said title is further amended by revising Code Section 53-12-6, relating to jurisdiction, as  
 1634 follows:

1635 "53-12-6.

1636 (a) Trusts are peculiarly subjects of equity jurisdiction. Suits by or against a trustee ~~which~~  
1637 that sound at law may be filed in a court of law.

1638 (b) Actions concerning the construction, ~~or administration, or internal affairs~~ of a trust ~~or~~  
1639 for a court to take any actions authorized by the provisions of this chapter shall be  
1640 maintained in superior court, except as otherwise provided in Code Section 15-9-127.

1641 (c) Any action by or against the trustee or to which the trustee is a party may be  
1642 maintained in any court having jurisdiction over the parties and the subject matter, except  
1643 as otherwise provided in subsection (b) of this Code section or in Code Section 15-9-127."

1644 **SECTION 1-71.**

1645 Said title is further amended by revising Code Section 53-12-7, relating to when trust and  
1646 chapter conflict, as follows:

1647 "53-12-7.

1648 (a) The effect of the provisions of this chapter may be varied by the trust instrument  
1649 except:

1650 (1) As to any requirements relating to the creation and validity of express trusts as  
1651 provided in Article 2 of this chapter;

1652 (2) As to the effect of the rules relating to spendthrift trusts as provided in Article 5 of  
1653 this chapter;

1654 (3) As to the power of the beneficiaries to modify a trustee's compensation as provided  
1655 in Code Section 53-12-210;

1656 (4) As to the duty of a trustee to administer the trust and to exercise discretionary powers  
1657 in good faith as provided in Code Sections 53-12-240 and 53-12-260;

1658 (5) As to the effect of a provision relieving a trustee from liability as provided in Code  
1659 Section 53-12-303; ~~and~~

1660 (6) As to the periods of limitation on actions as provided in Code Sections 53-12-45 and  
1661 53-12-307; and

1662 (7) As to the effect of the rules relating to trust directors as provided in Article 18 of this  
1663 chapter.

1664 (b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions  
1665 authorized by the provisions of this chapter."

1666 **SECTION 1-72.**

1667 Said title is further amended by revising Code Section 53-12-8, relating to notice to person  
1668 permitted to bind another person, consent on behalf of another person, and representation of  
1669 others, as follows:



1670 "53-12-8.

1671 (a) Notice to a person who may represent and bind another person under this Code section  
1672 shall have the same effect as if notice were given directly to such other person.

1673 (b) The consent of a person who may represent and bind another person under this Code  
1674 section shall be binding on the person represented unless the person represented objects to  
1675 such representation before such consent would otherwise have become effective. Consent  
1676 shall include, but shall not be limited to, an action related to the granting of powers to a  
1677 trustee, modification or termination of a trust, a trustee's duty to report, entry into a binding  
1678 nonjudicial settlement agreement, a trustee's compensation, the conversion of a trust to a  
1679 unitrust, the appointment, resignation, or removal of a trustee, and other similar actions.

1680 (c) Except as otherwise provided in Code Section 53-12-61, a person who under this Code  
1681 section may represent a settlor who lacks capacity may receive notice and give a binding  
1682 consent on such settlor's behalf.

1683 (d) A settlor may not represent and bind a beneficiary under this Code section with respect  
1684 to the termination or modification of a trust under Article 4 of this chapter.

1685 (e) To the extent there is no conflict of interest between the holder of a power of  
1686 appointment and the persons represented with respect to the particular question or dispute,  
1687 such holder may represent and bind persons whose interests are as permissible appointees,  
1688 as takers in default, or are otherwise subject to the power.

1689 (f) To the extent there is no conflict of interest between the representative and the person  
1690 represented or among those being represented with respect to a particular question or  
1691 dispute:

1692 (1) A conservator may represent and bind the estate that the conservator controls;

1693 (2) A guardian may represent and bind his or her ward if a conservator of such ward's  
1694 estate has not been appointed;

1695 (3) An agent having authority to act with respect to the particular question or dispute  
1696 may represent and bind the principal;

1697 (4) A trustee may represent and bind the beneficiaries of the trust;

1698 (5) A trust director may represent and bind the beneficiaries of the trust on a question or  
1699 dispute relating to the trust director's powers of direction;

1700 (6) A person designated in the trust instrument to receive notice and provide consent on  
1701 behalf of a beneficiary may represent and bind a beneficiary;

1702 (7) A personal representative of a decedent's estate may represent and bind persons  
1703 interested in such estate; and

1704 ~~(6)~~(8) An ancestor may represent and bind an ancestor's minor or unborn descendant if  
1705 a conservator or guardian for such descendant has not been appointed.

(g) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to a particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to such particular question or dispute.

(h) A person who on the date of determination would be eligible to receive distributions of income or principal from the trust upon the termination of the interests of all persons then currently eligible to receive distributions of income or principal may represent and bind contingent successor ~~remainder~~ beneficiaries, ~~including, but not limited to, charitable entities,~~ with respect to matters in which there is no conflict of interest between the representative and the persons represented with respect to a particular question or dispute.

(i) A charitable entity may represent and bind another person and be represented by a person under this Code section in the same manner as an individual.

(j) The representative of a person represented under this Code section may represent and bind any other person who could be represented under this Code section by the person being represented by the representative if the person being represented were living and sui juris, but only to the extent there is no conflict of interest between the representative and such other person or among those being represented with respect to a particular question or dispute.

~~(i)~~(k) Any person whose interests would be affected may request that the court determine whether an interest is represented under this Code section or whether the representation is adequate. If the court determines that an interest is not represented under this Code section, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable. A representative may be appointed to represent several persons or interests. A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, regardless of whether a judicial proceeding concerning the trust is pending. In making decisions, a representative may consider the general benefit accruing to the living members of the individual's family.

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

**SECTION 1-73.**

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

"53-12-9.

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

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

(b) A nonjudicial settlement agreement:

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

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

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

(d) A nonjudicial settlement ~~An~~ agreement entered into in accordance with this Code section shall be final and binding on ~~the interested persons~~ all parties to such agreement, including individuals not sui juris, unborn beneficiaries, and persons unknown who are represented by a person who may represent and bind such parties under Code Section 53-12-8, as if ordered by a court with competent jurisdiction over the trust, the trust property, and the ~~interested persons~~ parties.

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

1776 **SECTION 1-74.**

1777 Said title is further amended by revising Code Section 53-12-22, relating to trust purposes  
1778 and conditions in terrorem, as follows:

1779 "53-12-22.

1780 (a) A trust may be created for any lawful purpose.

1781 (b) A condition in terrorem shall be void unless there is a direction in the trust instrument  
1782 as to the disposition of the property if the condition in terrorem is violated, in which event  
1783 the direction in the trust instrument shall be carried out, except as otherwise provided in  
1784 subsection (c) of this Code section.

1785 (c) A condition in terrorem shall not be enforceable against an individual for:

1786 (1) Bringing an action for interpretation or enforcement of a trust instrument;

1787 (2) Bringing an action for an accounting, for removal, or for other relief against a trustee;

1788 or

1789 (3) Entering into a settlement agreement."

1790 **SECTION 1-75.**

1791 Said title is further amended by revising Code Section 53-12-60, relating to reformation to  
1792 correct mistakes, as follows:

1793 "53-12-60.

1794 (a) If it is proved by clear and convincing evidence that the trust provisions were affected  
1795 by a mistake of fact or law, whether in expression or inducement, the court may reform the  
1796 trust provisions, even if unambiguous, to conform the provisions to the settlor's intention.

1797 (b) A petition for reformation may be filed by the trustee, any trust director, or any  
1798 beneficiary or, in the case of an unfunded testamentary trust, the personal representative  
1799 of the settlor's estate.

1800 (c) Notice of a petition for reformation of the trust shall be given to the trustee, any trust  
1801 director, and all qualified beneficiaries."

1802 **SECTION 1-76.**

1803 Said title is further amended by revising Code Section 53-12-61, relating to power to direct  
1804 modification, consolidation, division, or termination; petition to modify or terminate  
1805 noncharitable irrevocable trust; proceeding to approve proposed modification or termination;  
1806 and distribution of trust property under order for termination, as follows:

1807 "53-12-61.

1808 (a) The trust instrument may confer upon a trustee or other person a power to modify;  
1809 ~~consolidate, divide,~~ or terminate the trust without court approval.

1810 (b) During the settlor's lifetime, the court shall approve a petition to modify or terminate  
1811 ~~a noncharitable~~ an irrevocable trust, even if the modification or termination is inconsistent  
1812 with a material purpose of the trust, if the settlor and all ~~the~~ qualified beneficiaries consent  
1813 to such modification or termination and the trustee has received notice of the proposed  
1814 modification or termination. A settlor's power to consent to such trust's modification or  
1815 termination may be exercised by:

1816 (1) An agent under a power of attorney only to the extent expressly authorized by the  
1817 power of attorney and the ~~terms~~ provisions of the trust;

1818 (2) The settlor's conservator with the approval of the court supervising the  
1819 conservatorship if an agent is not so authorized; or

1820 (3) The settlor's guardian with the approval of the court supervising the guardianship if  
1821 an agent is not so authorized and a conservator has not been appointed.

1822 (c) Following the settlor's death the court shall approve a petition to:

1823 (1) Modify ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries consent,  
1824 the trustee has received notice of the proposed modification, and the court concludes that  
1825 modification is not inconsistent with any material purpose of such trust; and

1826 (2) Terminate ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries  
1827 consent, the trustee has received notice of the proposed termination, and the court  
1828 concludes that continuance of such trust is not necessary to achieve any material purpose  
1829 of such trust.

1830 (d) The court may, upon petition:

1831 (1) Modify the trust if, owing to circumstances not anticipated by the settlor,  
1832 modification would further the purposes of such trust;

1833 (2) Modify the administrative provisions of a trust if continuation of such trust under its  
1834 existing provisions would impair such trust's administration;

1835 (3) Modify the trust by the appointment of an additional trustee or special fiduciary if  
1836 such appointment is necessary or helpful to the administration of such trust;

1837 (4) Modify the trust to achieve the settlor's tax objectives, with such modification to have  
1838 either prospective or retroactive effect;

1839 (5) Order the division of a single trust into two or more trusts or the consolidation of two  
1840 or more trusts, whether created by the same or different trust instruments or by the same  
1841 or different persons, into a single trust if the division or consolidation would be helpful  
1842 to the administration of such trust or trusts; or

1843 (6) Terminate a trust and order distribution of the trust property if the:

1844 (A) Costs of administration are such that the continuance of such trust, the  
1845 establishment of such trust if it is to be established, or the distribution from a probate  
1846 estate would defeat or substantially impair the purposes of such trust;

1847 (B) Purpose of such trust has been fulfilled or become illegal or impossible to fulfill;  
1848 or  
1849 (C) Continuance of such trust would impair the accomplishment of the purposes of  
1850 such trust.

1851 (e) A proceeding to approve a proposed modification or termination under this Code  
1852 section may be commenced by a trustee, trust director, or beneficiary. A proceeding to  
1853 approve a proposed modification or termination under subsection (b) of this Code section  
1854 may be commenced by a trustee, trust director, beneficiary, or settlor. In the case of an  
1855 unfunded testamentary trust, a petition for modification or termination under this Code  
1856 section may be filed by the personal representative of the settlor's estate.

1857 (f) ~~No later than 30 days after filing the petition for modification or termination, notice~~  
1858 Notice of a petition to modify or terminate a trust under subsection (d) of this Code section  
1859 shall be given to the settlor, if living, the trustee, any trust director, all the qualified  
1860 beneficiaries, any holder of a power of appointment over the trust property, and such other  
1861 persons as the court may direct.

1862 (g) The court may modify or terminate a trust as provided in this Code section regardless  
1863 of whether it contains spendthrift provisions or other similar protective provisions.

1864 (h) An order under subsection (d) of this Code section shall conform as nearly as  
1865 practicable to the intention of the settlor.

1866 (i) Distribution of the trust property under an order for termination shall be made to or  
1867 among the current beneficiaries and the vested remainder beneficiaries, or, if there are no  
1868 vested remainder beneficiaries, among the current beneficiaries and the contingent  
1869 remainder beneficiaries. The order shall specify the appropriate share, if any, of each  
1870 current and remainder beneficiary who is to share in the proceeds of the trust so as to  
1871 conform as nearly as practicable to the intention of the settlor. The order may direct that  
1872 the interest of a minor beneficiary, or any portion thereof, be converted into qualifying  
1873 property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, 'The  
1874 Georgia Transfers to Minors Act.'

1875 (j) For purposes of this chapter, modification of a trust includes the consolidation or  
1876 division of a trust.

1877 (k) Subsections (b) and (c) of this Code section shall not apply to charitable trusts.

1878 (l) Petitioning for or consenting to a modification or termination under this Code section  
1879 shall not constitute a violation of a condition in terrorem under Code Section 53-12-22.

1880 (m)(1)(A) Unless the trustee:

1881 (i) Expressly waives notice in a writing signed by the trustee, notice to the trustee  
1882 under subsection (b) or (c) of this Code section shall be given by delivery of a copy  
1883 of the petition by certified or registered mail or statutory overnight delivery with

return receipt requested and with delivery restricted to addressee only at least 31 days before the entry of an order granting the petition; and

(ii) Expressly waives notice and assents to the petition in a writing signed by the trustee, the trustee shall have standing to intervene as a matter of right pursuant to paragraph (1) of subsection (a) and subsection (c) of Code Section 9-11-24 and to file a caveat or objection to the petition showing that one or more of the applicable requirements of subsection (b) or (c) of this Code section has or have not been satisfied, provided that the trustee must file any such pleadings provided by this division not more than 30 days following the express written waiver of notice by the trustee or delivery of notice to the trustee as provided in division (i) of this subparagraph or by such later date as the court may direct pursuant to subparagraph (B) of paragraph (2) of this subsection.

(B) Unless a person to be given notice under subsection (f) of this Code section:

(i) Expressly waives notice in a writing signed by such person, such notice shall be given by delivery of a copy of the petition by certified or registered mail or statutory overnight delivery with return receipt requested at least 31 days before the entry of an order granting the petition;

(ii) Expressly waives notice and assents to the petition in a writing signed by such person, such person shall have standing to intervene as a matter of right pursuant to paragraph (1) of subsection (a) and subsection (c) of Code Section 9-11-24 and to file a caveat or objection to the petition showing that one or more of the applicable requirements of subsection (d) of this Code section has or have not been satisfied, provided that such person must file any such pleadings provided by this division not more than 30 days following the express written waiver of notice by such person or delivery of notice to such person as provided in division (i) of this subparagraph or by such later date as the court may direct pursuant to subparagraph (B) of paragraph (2) of this subsection, and further provided that such person is the settlor, the trustee, a trust director, a qualified beneficiary, or the holder of a power of appointment over the trust property; and

(iii) Expressly waives notice and assents to the petition in a writing signed by such person, such person may file a motion for permissive intervention pursuant to paragraph (1) of subsection (b) and subsection (c) of Code Section 9-11-24 and a caveat or objection to the petition showing that one or more of the applicable requirements of subsection (d) of this Code section has or have not been satisfied, provided that such person must file any such pleadings provided by this division not more than 30 days following the express written waiver of notice by such person or delivery of notice to such person as provided in division (i) of this subparagraph or

by such later date as the court may direct pursuant to subparagraph (B) of paragraph (2) of this subsection, and further provided that the court shall deny such motion for permissive intervention and dismiss such caveat or objection unless such person satisfactorily demonstrates to the court that he or she is a person whose interests would be affected directly and adversely by the grant of the petition.

(2)(A) The petitioner shall certify to the court that notice has been waived or given in compliance with paragraph (1) of this subsection in a writing signed by the petitioner or by counsel for the petitioner and filed with the clerk to which all applicable executed waivers and return receipts are attached as exhibits.

(B) The court may direct any additional notice or extend the time to respond to a petition under this Code section as the judge may determine to be proper in the interests of due process and reasonable opportunity for any affected person or interest to be heard.

(n) The court may, in its sound discretion, conduct a hearing on a petition under this Code section, but such hearing shall not be required if no caveat or objection is timely filed by a person having standing under division (m)(1)(A)(ii) or (m)(1)(B)(ii) of this Code section or by a person granted permission to intervene by the court pursuant to division (m)(1)(B)(iii) of this Code section."

#### **SECTION 1-77.**

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

"53-12-62.

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

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

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

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

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



1956 (A) Current beneficiary any person that is not a current beneficiary of income or  
 1957 principal of the original trust; or

1958 (B) Beneficiary any person that is not a beneficiary of the original trust.

1959 (c) Except as provided in this Code section, a trustee may exercise the power to invade the  
 1960 principal of the original trust under subsection (b) of this Code section without the consent  
 1961 of the settlor or the beneficiaries of the original trust if such trustee provides written notice  
 1962 of such trustee's decision to exercise the power to such settlor, if living, any trust director,  
 1963 and those persons then entitled to annual reports from the trustee of the original trust under  
 1964 subsection (b) of Code Section 53-12-243, taking into account the provisions of the original  
 1965 trust and subsections (c) and (d) of Code Section 53-12-243. Such notice shall:

1966 (1) Describe the manner in which such trustee intends to exercise such power;

1967 (2) Specify the date such trustee proposes to distribute to the second trust; and

1968 (3) Be delivered at least ~~60~~ 30 days before the proposed distribution to the second trust.

1969 (d) The exercise of the power to invade the principal of the original trust under  
 1970 subsection (b) of this Code section shall be by an instrument in writing, signed and  
 1971 acknowledged by the trustee, and filed with the records of the original trust.

1972 (e) The exercise of the power to invade the principal of the original trust under  
 1973 subsection (b) of this Code section shall not extend the permissible period of the rule  
 1974 against perpetuities that applies to such original trust.

1975 (f) The exercise of the power to invade the principal of the original trust under  
 1976 subsection (b) of this Code section by a trustee who is also a beneficiary shall be subject  
 1977 to the limitations of Code Section 53-12-270.

1978 (g) This Code section shall not be construed to abridge the right of any trustee who has a  
 1979 power of invasion to distribute property in further trust that arises under any other law or  
 1980 under common law, and nothing in this Code section shall be construed to imply that the  
 1981 common law does not permit the exercise of a power to invade the principal of a trust in  
 1982 the manner authorized under subsection (b) of this Code section.

1983 ~~(g)~~(h) A second trust may confer a power of appointment upon a beneficiary of the  
 1984 original trust to whom or for the benefit of whom the trustee has the power to distribute the  
 1985 principal of such original trust. For purposes of this subsection, the permissible appointees  
 1986 of the power of appointment conferred upon a beneficiary may include persons who are not  
 1987 beneficiaries of such original trust or second trust.

1988 ~~(h)~~(i) If any contribution to the original trust qualified for the annual exclusion under  
 1989 Section 2503(b) of the federal Internal Revenue Code, as it existed on February 1, 2018,  
 1990 the marital deduction under Section 2056(a) or 2523(a) of the federal Internal Revenue  
 1991 Code, as it existed on February 1, 2018, or the charitable deduction under Section 170(a),  
 1992 642(c), 2055(a), or 2522(a) of the federal Internal Revenue Code, as it existed on

February 1, 2018, is a direct skip qualifying for treatment under Section 2642(c) of the federal Internal Revenue Code, as it existed on February 1, 2018, or qualified for any other specific tax benefit that would be lost by the existence of the authorized trustee's authority under subsection (b) of this Code section for income, gift, estate, or generation-skipping transfer tax purposes under the federal Internal Revenue Code, then the authorized trustee shall not have the power to distribute the principal of a trust pursuant to subsection (b) of this Code section in a manner that would prevent the contribution to the original trust from qualifying for such exclusion, deduction, or other tax benefit or would reduce such exclusion, deduction, or other tax benefit that was originally claimed with respect to such contribution.

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

(1) The second trust need not qualify as a grantor trust for federal income tax purposes, even if the original trust does qualify as a grantor trust, except that if such original trust qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the federal Internal Revenue Code, as it existed on February 1, 2018, such second trust may not include or omit a term that, if included in or omitted from the original trust instrument, would have prevented such original trust from qualifying under such section;

(2) Unless the settlor objects in a writing delivered to the trustee before the date the trustee proposes to distribute from the original trust to the second trust, such ~~The second~~ trust may qualify as a grantor trust for federal income tax purposes, even if ~~the~~ such original trust does not so qualify, except that if such original trust does not so qualify and such second trust will so qualify, in whole or in part, with respect to the settlor, such second trust shall grant such settlor or another person a power that would cause such second trust to cease to be a grantor trust for federal income tax purposes ~~unless such settlor objects in a writing delivered to the trustee before the date the trustee proposes to distribute from such original trust to such second trust;~~ and

(3) When both the original trust and the second trust qualify as grantor trusts for federal income tax purposes and such original trust grants the settlor or another person the power to cause such original trust to cease to be a grantor trust, such second trust shall grant an equivalent power to the settlor or another person unless such settlor objects in a writing delivered to the trustee before the date the trustee proposes to distribute from such original trust to such second trust.

~~(j)~~(k) During any period when the original trust owns stock in a Subchapter 'S' corporation as defined in Section 1361(a)(1) of the federal Internal Revenue Code, as it existed on February 1, 2018, an authorized trustee shall not exercise a power authorized by subsection (b) of this Code section to distribute part or all of the stock of the Subchapter

2030 'S' corporation to a second trust that is not a permitted shareholder under Section 1361(c)(2)  
 2031 of the federal Internal Revenue Code, as it existed on February 1, 2018.

2032 ~~(k)~~(l) A trustee or other person that reasonably relies on the validity of a distribution of  
 2033 property of the original trust to the second trust under subsection (b) of this Code section  
 2034 or any other law or common law shall not be liable for any action or failure to act as a  
 2035 result of such reliance.

2036 ~~(h)~~(m) This Code section shall not create or imply a duty for a trustee or trust director to  
 2037 exercise a power conferred by this Code section.

2038 ~~(m)~~(n) If exercise of the power to invade the principal of the original trust would be  
 2039 effective under subsection (b) of this Code section except that the second trust in part does  
 2040 not comply with this Code section, such exercise of the power shall be effective, a  
 2041 provision in such second trust that is not permitted under this Code section shall be void  
 2042 to the extent necessary to comply with this Code section, and a provision required by this  
 2043 Code section to be in such second trust that is not contained in such second trust shall be  
 2044 deemed to be included in such second trust to the extent necessary to comply with this  
 2045 Code section.

2046 ~~(n)~~(o) The settlor of the original trust shall be deemed to be the settlor of the second trust  
 2047 with respect to the portion of the principal of the original trust subject to the exercise of the  
 2048 power to invade the principal of such original trust under subsection (b) of this Code  
 2049 section.

2050 ~~(o)~~(p) A debt, liability, or other obligation enforceable against property of the original trust  
 2051 shall be enforceable to the same extent against the property when held by the second trust  
 2052 after exercise of the power to invade the principal of such original trust under  
 2053 subsection (b) of this Code section.

2054 (q) This Code section shall apply to any trust the meaning and effect of whose trust  
 2055 provisions are determined by the law of this state.

2056 ~~(p)~~(r) This Code section shall not apply to ~~a trust held solely for charitable purposes~~  
 2057 trusts."

2058 **SECTION 1-78.**

2059 Said title is further amended by revising Code Section 53-12-81, relating to limitations on  
 2060 creditors' rights to discretionary distributions, as follows:

2061 "53-12-81.

2062 A transferee or creditor of a beneficiary shall not compel the trustee or a trust director to  
 2063 pay any amount that is payable only in the ~~trustee's~~ discretion of the trustee or trust director  
 2064 regardless of whether the discretion is expressed in the form of a standard of distribution,  
 2065 including, but not limited to, health, education, maintenance, and support, and whether

2066 such trustee or trust director is also a beneficiary. This Code section shall not apply to the  
 2067 extent of the proportion of trust property attributable to the beneficiary's contribution."

2068 **SECTION 1-79.**

2069 Said title is further amended by revising Code Section 53-12-82, relating to rules for trusts  
 2070 and consideration of assets of an inter vivos marital trust following death, as follows:

2071 "53-12-82.

2072 (a)(1) As used in this subsection, the term 'creditor' means:

2073 (A) With respect to subparagraphs (A) and (B) of paragraph (2) of this subsection,  
 2074 those creditors of a settlor whose claims against the property of the trust are governed  
 2075 by this article, including those creditors identified in subsection (d) of Code  
 2076 Section 53-12-80; and

2077 (B) With respect to subparagraph (C) of paragraph (2) of this subsection, those  
 2078 claimants whose claims against the property of the settlor's estate are governed by  
 2079 Article 4 of Chapter 7 of this title, including those claimants identified in Code Section  
 2080 53-7-40.

2081 (2) Regardless of whether ~~Whether or not~~ the trust instrument contains a spendthrift  
 2082 provision, the following rules shall apply:

2083 ~~(1)~~(A) During the lifetime of the settlor, the property of a revocable trust shall be  
 2084 subject to claims of the settlor's creditors;

2085 ~~(2)~~(B) With respect to an irrevocable trust:

2086 ~~(A)~~(i) Creditors or assignees of the settlor may reach the maximum amount that can  
 2087 be distributed to or for the settlor's benefit during the settlor's life or that could have  
 2088 been distributed to or for the settlor's benefit immediately prior to the settlor's death,  
 2089 provided that, if a trust has more than one settlor, the amount the creditors or  
 2090 assignees of a particular settlor may reach shall not exceed the settlor's interest in the  
 2091 portion of the trust attributable to that settlor's contribution; and

2092 ~~(B)~~(ii) The portion of a trust that can be distributed to or for the settlor's benefit  
 2093 pursuant to the power of a trustee, whether arising under the trust ~~agreement~~  
 2094 instrument or any other law, to make a distribution to or for the benefit of a settlor for  
 2095 the purpose of reimbursing the settlor in an amount equal to any income taxes payable  
 2096 on any portion of the trust principal and income that is treated as the settlor's  
 2097 individual income under applicable law shall not be considered an amount that can  
 2098 be distributed to or for the settlor's benefit during the settlor's life or that could have  
 2099 been distributed to or for the settlor's benefit immediately prior to the settlor's death;  
 2100 and

2101 ~~(3)(C)~~ After the death of a settlor, and subject to the settlor's right to direct the source  
 2102 from which liabilities shall be paid, ~~the~~  
 2103 (i) The property of a trust that was revocable at the settlor's death or had become  
 2104 irrevocable as a result of the settlor's incapacity shall be subject to claims of the  
 2105 ~~settlor's~~ creditors of the settlor's estate to the extent the settlor's probate estate is  
 2106 inadequate; and  
 2107 (ii) Payments that would not be subject to the claims of the ~~settlor's~~ creditors of the  
 2108 settlor's estate if made by way of beneficiary designation to persons other than the  
 2109 settlor's estate shall not be made subject to such claims by virtue of this Code section  
 2110 unless otherwise provided in the trust instrument.

2111 (b)(1) As used in this subsection, the term:

2112 (A) 'Inter vivos marital trust' means:

2113 (i) A trust described in Section 2523(e) of the Internal Revenue Code of 1986, as it  
 2114 existed on February 1, 2018;

2115 (ii) A trust for which the election described in Section 2523(f) of the Internal  
 2116 Revenue Code of 1986, as it existed on February 1, 2018, has been made; or

2117 (iii) Another trust to the extent such trust's assets are attributable to a trust described  
 2118 in division (i) or (ii) of this subparagraph.

2119 (B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an  
 2120 inter vivos marital trust, regardless of whether such spouse is married to the settlor at  
 2121 the time of such spouse's death.

2122 (2) Subject to Article 4 of Chapter 2 of Title 18, after the death of the settlor's spouse,  
 2123 the assets of an inter vivos marital trust shall be deemed to have been contributed by the  
 2124 settlor's spouse and not by the settlor."

2125 **SECTION 1-80.**

2126 Said title is further amended by revising Code Section 53-12-170, relating to definition and  
 2127 charitable purposes, as follows:

2128 "53-12-170.

2129 (a) A charitable trust is a trust in which the settlor provides that the trust property shall be  
 2130 used exclusively for charitable purposes.

2131 (b) Charitable purposes shall include:

2132 (1) The relief of poverty;

2133 (2) The advancement of education;

2134 (3) The advancement of ethics and religion;

2135 (4) The advancement of health;

2136 (5) The advancement of science and the arts and humanities;

- 2137 (6) The protection and preservation of the environment;
- 2138 (7) The improvement, maintenance, or repair of cemeteries, other places of disposition
- 2139 of human remains, and memorials;
- 2140 (8) The prevention of cruelty to animals;
- 2141 (9) Governmental purposes; and
- 2142 (10) Other similar subjects having for their object the relief of human suffering or the
- 2143 promotion of human civilization.
- 2144 ~~(c) If the settlor provides for both charitable and noncharitable purposes, the provisions~~
- 2145 ~~relating to the charitable purposes shall be governed by this article."~~

2146 **SECTION 1-81.**

2147 Said title is further amended by revising Code Section 53-12-210, relating to compensation

2148 of trustee, as follows:

2149 "53-12-210.

2150 (a) Trustees shall be compensated in accordance with either the trust instrument or any

2151 separate written agreement between the trustee and the settlor. After the settlor's death or

2152 incapacity or while the trust is irrevocable, the trust instrument or the agreement relating

2153 to such trustee's compensation may be modified as follows:

2154 (1) The trustee and all ~~All~~ qualified beneficiaries may by unanimous consent modify the

2155 trust instrument or agreement relating to the trustee's compensation without receiving the

2156 approval of any court; ~~and or~~ or

2157 (2) By petition pursuant to Code Section 53-12-61.

2158 (b) If there is no provision for trustee compensation in the trust instrument and there is no

2159 separate written agreement between the trustee and the settlor relating to such trustee's

2160 compensation, a separate written agreement relating to such trustee's compensation may

2161 be entered into between such trustee and the qualified beneficiaries as follows:

2162 (1) The trustee and all ~~All~~ qualified beneficiaries may by unanimous consent enter into

2163 an agreement relating to such trustee's compensation without receiving the approval of

2164 any court; or

2165 (2) Any qualified beneficiary may petition the court to approve an agreement relating to

2166 such trustee's compensation. Such petition shall be served upon all qualified

2167 beneficiaries.

2168 (c) In cases other than those described in subsections (a) and (b) of this Code section, the

2169 trustee shall be entitled to compensation as follows:

2170 (1) With respect to a corporate trustee, its published fee schedule, provided that such fees

2171 are reasonable under the circumstances; and

2172 (2) With respect to an individual trustee:

2173 (A) One percent of cash and the fair market value of any other principal asset received  
 2174 upon the initial funding of the trust and at such time as additional principal assets are  
 2175 received; and

2176 (B) An annual fee calculated in accordance with the following schedule based upon the  
 2177 cash and the market value of the other principal assets valued as of the last day of the  
 2178 trust accounting year prorated based on the length of service by such trustee during that  
 2179 year:

2180	If the cash and market value of the	
2181	other principal assets are:	Annual fee:
2182	\$500,000.00 or less . . . . .	1.75 percent of the cash and market
2183		value of the other principal assets.
2184	More than \$500,000.00 but <del>less</del> <u>not</u>	\$8,750.00 plus 1.25 percent of the
2185	<u>more</u> than \$1 million . . . . .	excess over \$500,000.00.
2186	More than \$1 million but <del>less</del> <u>not</u>	\$15,000.00 plus 1.00 percent of the
2187	<u>more</u> than \$2 million . . . . .	excess over \$1 million.
2188	More than \$2 million but <del>less</del> <u>not</u>	\$25,000.00 plus 0.85 percent of the
2189	<u>more</u> than \$5 million . . . . .	excess over \$2 million.
2190	More than \$5 million . . . . .	\$50,500.00 plus 0.50 percent of the
2191		excess over \$5 million."

2192 **SECTION 1-82.**

2193 Said title is further amended by revising Code Section 53-12-241, relating to duty of prudent  
 2194 administration, as follows:

2195 "53-12-241.

2196 (a) In administering a trust, the trustee shall exercise the judgment and care of a prudent  
 2197 person acting in a like capacity and familiar with such matters, considering the purposes,  
 2198 provisions, distribution requirements, and other circumstances of the trust.

2199 (b) A trustee who invests and manages trust assets owes a duty to the beneficiaries of the  
 2200 trust to comply with the prudent investor rule set forth in Article 16 of this chapter."

2201 **SECTION 1-83.**

2202 Said title is further amended by revising Code Section 53-12-243, relating to duty to provide  
 2203 reports and accounts, as follows:

2204 "53-12-243.

2205 (a) On reasonable request by any qualified beneficiary, the trustee shall provide the  
 2206 qualified beneficiary with a report of information, to the extent relevant to that beneficiary's

interest, about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of such trust, including the trust provisions that describe or affect such beneficiary's interest.

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

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

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

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

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

#### SECTION 1-84.

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

"53-12-261.

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

(1) Powers conferred by the trust instrument; and

(2) Except as limited by the trust instrument:

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



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

(C) Any other powers conferred by this chapter.

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

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

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

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

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

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

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

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

In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts, disbursements, and distributions of property; but it shall be sufficient for the fiduciary to show in the account

a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization;

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

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

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

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

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

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

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

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

(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the persons to whom the fiduciary owes a duty of care;

(H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where needed;

(I) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant pastures and crops as may be necessary to carry on such operations;

(J) To market the products of the farm; and

(K) In general, to employ good husbandry in the farming operation;

(6) To manage real property:

(A) To improve, manage, protect, and subdivide any real property;

(B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;

(C) To terminate any subdivision or part thereof;

(D) To borrow money for the purposes authorized by this paragraph for the periods of time and upon the terms and conditions as to rates, maturities, and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber the property or part thereof, whether in possession or reversion;

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

(F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses, conveyances, or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(G) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(H) To modify, renew, or extend leases;

(I) To employ agents to rent and collect rents;

(J) To create easements and to release, convey, or assign any right, title, or interest with respect to any easement on the property or part thereof;

(K) To erect, repair, or renovate any building or other improvement on the property and to remove or demolish any building or other improvement in whole or in part; and

(L) To deal with the property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified elsewhere in this paragraph;

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

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

(B) To pay from the estate or trust all charges that the fiduciary deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which the fiduciary determines adversely affect the property held by the fiduciary or otherwise are liabilities of the estate or trust and to apportion all such charges among the several bequests and trusts and the interests of the

beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under the circumstances;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle claims involving the fiduciary or the property held by the fiduciary;

(B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries to whom the fiduciary owes a duty of care and the

person against or for whom the claim is asserted, in the absence of fraud by such persons and, in the absence of fraud, bad faith, or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries to whom the fiduciary owes a duty of care; and

(C) To compromise all debts, the collection of which are doubtful, belonging to the estate or trust when such settlements will advance the interests of those represented;

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

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

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

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

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

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

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

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

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

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

(28) To determine:

(A) What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses, as between principal and income, in the exercise of the fiduciary's discretion and, by way of illustration and not limitation of the fiduciary's discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

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

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

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

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

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

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

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

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





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

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

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

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

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

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

## SECTION 1-86.

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

"53-12-340.

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

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

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

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) Anticipated tax consequences;

(4) The attributes of the portfolio;

(5) The expected return from income and appreciation;

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

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

2570 (8) The anticipated duration of the trust; and

2571 (9) Any special circumstances.

2572 (d) In investing and managing trust assets, the trustee may consider the personal values of  
 2573 the beneficiaries, including but not limited to a desire to engage in investing strategies that  
 2574 align with social, political, religious, philosophical, environmental, governance, or other  
 2575 values or beliefs of the beneficiaries.

2576 ~~(c)~~(e) Any determination of liability for investment performance shall consider not only  
 2577 the performance of a particular investment but also the performance of the portfolio as a  
 2578 whole and as a part of an overall investment strategy having risk and return objectives  
 2579 reasonably suited to the trust.

2580 ~~(d)~~(f) A trustee shall make a reasonable effort to verify facts relevant to the investment and  
 2581 management of trust assets.

2582 (g) A trustee may invest in any kind of property or type of investment consistent with the  
 2583 standards of this article.

2584 (h) A trustee who has special investment skills or expertise shall have a duty to use those  
 2585 special skills or expertise. A trustee who is named trustee in reliance upon such trustee's  
 2586 representation that such trustee has special investment skills or expertise shall be held liable  
 2587 for failure to make use of such degree of skill or expertise.

2588 ~~(e) A trustee may invest in any kind of property or type of investment consistent with the~~  
 2589 ~~standards of this article.~~

2590 ~~(f)~~(i) In investing and managing trust assets, a trustee may only incur costs that are  
 2591 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills  
 2592 of the trustee.

2593 (j) A trustee that is a bank or trust company shall not be precluded from acquiring and  
 2594 retaining the securities of or other interests in an investment company or investment trust  
 2595 because the bank or trust company or an affiliate provides services to the investment  
 2596 company or investment trust as investment adviser, custodian, transfer agent, registrar,  
 2597 sponsor, distributor, manager, or otherwise and receives compensation for such services,  
 2598 if the costs are otherwise appropriate and reasonable in relation to the assets."

## 2599 **SECTION 1-87.**

2600 Said title is further amended by revising Code Section 53-12-500, relating to definitions, as  
 2601 follows:

2602 "53-12-500.

2603 As used in this article, the term:

2604 (1) 'Directed trustee' means a trustee that is subject to a trust director's power of  
 2605 direction.

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

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

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

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

(3) 'Power of direction' means a power over a trust granted to a person by the trust instrument to the extent the power is exercisable ~~while the person is not serving in a capacity other than~~ as a trustee. Such term includes a power over the administration of the trust or the investment, management, or distribution of the trust property; a power to consent to a trustee's actions, whether through exercise of an affirmative power to consent or through nonexercise of a veto power over a trustee's actions, ~~when~~ where a trustee may not act without such consent; ~~a power to represent a beneficiary, other than a power under Code Section 53-12-8; and, except as otherwise provided in the trust instrument, any and all further powers appropriate to the exercise or nonexercise of such powers held by the trust director pursuant to subsection (a) of Code Section 53-12-502.~~ Such term shall exclude the powers described in subsection (b) of Code Section 53-12-501.

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

## SECTION 1-88.

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

"53-12-501.

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

(b) This article shall not apply to:

(1) A power of appointment;

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

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

(4) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or a person represented by the

beneficiary under Code Section 53-12-8 with respect to the exercise or nonexercise of the power; or

(5) A power over a trust if both:

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

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

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

#### SECTION 1-89.

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

"53-12-502.

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

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

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

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

(c) A trust director shall have the same power to employ and compensate persons, subject to the same limitations, that a trustee has under paragraph (23) of subsection (b) of Code Section 53-12-261.

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

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

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

2678 (2) A trustee shall not be liable for failing to act in accordance with a modification or  
 2679 termination of a trust of which the trustee had no notice."

2680 **SECTION 1-90.**

2681 Said title is further amended by revising Code Section 53-12-503, relating to role of directors  
 2682 and petitioning court for instructions, as follows:

2683 "53-12-503.

2684 (a) Except as otherwise provided in this ~~Code section~~ article, with respect to a power of  
 2685 direction:

2686 ~~(1) A~~ a trust director shall have the same fiduciary duty and liability in the exercise or  
 2687 nonexercise of the power of direction as a trustee in a like position and under similar  
 2688 circumstances; ~~and~~

2689 ~~(2) The trust instrument may vary the trust director's duty or liability to the same extent~~  
 2690 ~~the trust instrument could vary the duty or liability of a trustee in a like position and~~  
 2691 ~~under similar circumstances.~~

2692 (b) Where a trust director individually holds a power of direction, the trust director shall  
 2693 not have the liability of a cotrustee, whether under Code Section 53-12-305 or otherwise,  
 2694 with respect to a trustee or other trust director. Where a trust director holds a power of  
 2695 direction jointly with a trustee or other trust director, the trust director shall have the  
 2696 liability of a cotrustee, whether under Code Section 53-12-305 or otherwise, with respect  
 2697 to a trustee or other trust director regarding the actions of that trustee or other trust director  
 2698 that are within the scope of the jointly held power.

2699 (c) Except as otherwise provided in the trust instrument, a trust director shall not have the  
 2700 duties imposed by Code Section 53-12-242 and subsection (b) of Code Section 53-12-243.

2701 (d) Without limiting the scope of subsection (a) of this Code section:

2702 (1) The trust instrument may vary a trust director's duty or liability to the same extent the  
 2703 trust instrument could vary the duty or liability of a trustee in a like position and under  
 2704 similar circumstances;

2705 (2) An action against a trust director for breach of trust must be commenced within the  
 2706 same limitation period as under Code Section 53-12-307 for an action for breach of trust  
 2707 against a trustee in a like position and under similar circumstances; and

2708 (3) A report or accounting shall have the same effect on the limitation period for an  
 2709 action against a trust director for breach of trust that the report or accounting would have  
 2710 under Code Section 53-12-307 in an action for breach of trust against a trustee in a like  
 2711 position and under similar circumstances.

2712 ~~(b)(e)~~ (e) A trust instrument may make the existence of a trust director's power of direction  
 2713 contingent upon the occurrence of certain events, including, ~~but not limited to,~~ a request

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

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

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

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

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

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

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

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

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

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

2751 (2) By taking one of the actions described in paragraph (1) of this subsection, a trust  
 2752 director ~~shall~~ does not assume any of the duties excluded by this subsection.

2753 ~~(h)(k)~~ A trust instrument may impose a duty or liability on a trust director in addition to  
 2754 the duties and liabilities under this Code section.

2755 ~~(i)(l)~~ A trust director that has reasonable doubt about a duty imposed by this Code section  
 2756 may petition the court for instructions.

2757 (m) A trust director shall be subject to the same rules as a trustee in a like position and  
 2758 under similar circumstances in the exercise or nonexercise of a power of direction  
 2759 regarding:

2760 (1) A payback provision in the trust necessary to comply with the reimbursement  
 2761 requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.  
 2762 Section 1396p(d)(4)(A), as amended, and regulations issued thereunder; and  
 2763 (2) A charitable interest in the trust."

## 2764 SECTION 1-91.

2765 Said title is further amended by revising Code Section 53-12-504, relating to directed  
 2766 trustees, role, trustee's duty as to directed trustee, and petitioning court for instructions, as  
 2767 follows:

2768 "53-12-504.

2769 (a) Unless compliance by the directed trustee would clearly constitute ~~willful misconduct~~  
 2770 an act committed in bad faith on the part of the directed trustee, a directed trustee shall take  
 2771 reasonable action to comply with a trust director's exercise or nonexercise of a power of  
 2772 direction and shall not be liable for such action. A directed trustee must not comply with  
 2773 a trust director's exercise or nonexercise of a power of direction to the extent that  
 2774 compliance by the directed trustee would clearly constitute an act committed in bad faith.

2775 (b) For purposes of subsection (a) Subject to subsection (e) of this Code section, a  
 2776 direction from a trust director shall be within the scope of the trust director's powers of  
 2777 direction if the directed trustee shall: believes in good faith that the direction is within the  
 2778 trust director's powers of direction.

2779 ~~(1) Account at least annually to a trust director as if the trust director were a qualified~~  
 2780 ~~beneficiary of an irrevocable trust to whom income is required or authorized in the~~  
 2781 ~~trustee's discretion to be distributed; and~~

2782 ~~(2) Respond to reasonable requests from a trust director for information to the extent~~  
 2783 ~~such information is relevant to the party's interest in or trust director's powers and duties~~  
 2784 ~~regarding the trust.~~

2785 (c) Subject to subsection (f) of this Code section, a directed trustee shall:

2786 (1) Except as provided otherwise in the trust instrument, provide information to a trust  
 2787 director as if the trust director were a beneficiary of an irrevocable trust to whom income  
 2788 is required or authorized in the trustee's discretion to be distributed; and  
 2789 (2) Respond to reasonable requests from a trust director for information to the extent  
 2790 such information is relevant to the trust director's powers and duties regarding the trust.  
 2791 (d) A directed trustee acting in reliance on information provided by a trust director shall  
 2792 not be liable for a breach of trust to the extent the breach resulted from such reliance,  
 2793 unless by so acting the directed trustee ~~engages in willful misconduct~~ acts in bad faith.  
 2794 ~~(d)(e)~~ A trustee shall not be liable for a failure to sufficiently report or provide information  
 2795 to a beneficiary or other party when such failure is related to the failure of a trust director  
 2796 to provide information to the trustee.  
 2797 ~~(e)(f)~~ (1) Except as otherwise provided in the trust instrument, a trustee shall not have a  
 2798 duty to:  
 2799 (A) Monitor, investigate, review, or evaluate a trust director, including a trust director's  
 2800 actions or inactions;  
 2801 (B) Provide any accountings, reports, or other information to a trust director beyond  
 2802 that required by subsection ~~(b)~~ (c) of this Code ~~Section~~ section;  
 2803 (C) Advise a trust director regarding the scope, nature, execution, standard of care,  
 2804 potential liability, or other aspects of their status as trust director;  
 2805 (D) If compliance with a direction from the trust director would constitute an act  
 2806 committed in bad faith, take ~~Take~~ any action in response to ~~willful misconduct by the~~  
 2807 ~~trust director~~ such direction other than the refusal to comply with such direction;  
 2808 (E) Attempt to compel a trust director to act or not act;  
 2809 (F) Petition the court regarding a trust director's action, inaction, capacity, or any  
 2810 similar matter; or  
 2811 (G) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning  
 2812 an instance in which the trustee might have acted differently ~~than~~ from the trust  
 2813 director.  
 2814 (2) By taking one of the actions described in paragraph (1) of this ~~Code section~~  
 2815 subsection, a directed trustee does not assume any of the duties excluded by this  
 2816 subsection.  
 2817 ~~(f)(g)~~ An exercise of a power of direction under which a trust director may release a trustee  
 2818 from liability for breach of trust shall not be effective if the release was induced by ~~willful~~  
 2819 ~~misconduct~~ in bad faith or by the provision of false or incomplete information by the  
 2820 trustee.  
 2821 ~~(g)(h)~~ A trust instrument may impose a duty or liability on a directed trustee in addition  
 2822 to the duties and liabilities under this Code section.



2823 (i) A directed trustee that has reasonable doubt about a duty imposed by this Code section  
 2824 may petition the court for instructions."

2825 **SECTION 1-92.**

2826 Said title is further amended by revising Code Section 53-12-506, relating to statutory  
 2827 provisions applicable to trust directors, defenses available to trust directors, and jurisdiction,  
 2828 as follows:

2829 "53-12-506.

2830 (a) An individual shall be eligible to serve as a trust director regardless of citizenship and  
 2831 residency. If the trust director is a corporation, partnership, or other entity, it shall be  
 2832 required to have the power to act as a trustee in Georgia.

2833 ~~(a)(b) The Except as otherwise provided in the trust instrument, the rules applicable to a~~  
 2834 ~~trustee shall apply to a trust director regarding:~~

2835 (1) Jurisdiction Appointment and vacancies under Code Section 53-12-201 53-12-6;

2836 (2) Appointment and acceptance, compensation, and resignation and removal of trustees  
 2837 under Article 11 of this chapter Acceptance under Code Section 53-12-202;

2838 (3) Accounting under Article 12 of this chapter; and Giving of a bond under Code  
 2839 Section 53-12-203;

2840 (4) Nonresidents and foreign entities acting as trustees under Article 15 of this chapter.  
 2841 Co-trustees under Code Section 53-12-204;

2842 ~~(5) Compensation and reimbursement of expenses under Code Sections 53-12-210~~  
 2843 ~~through 53-12-214;~~

2844 ~~(6) Resignation under Code Section 53-12-220;~~

2845 ~~(7) Removal under Code Section 53-12-221; and~~

2846 ~~(8) Service under Code Section 53-12-320.~~

2847 ~~(b)(c)~~ In an action against a trust director for breach of trust, the trust director may assert  
 2848 the same defenses a trustee in a like position and under similar circumstances could assert  
 2849 in an action for breach of trust against the trustee.

2850 ~~(c)(d)~~ By accepting appointment as a trust director of a trust subject to this article, a trust  
 2851 director submits to personal jurisdiction of the courts of this state regarding any matter  
 2852 related to a power or duty of a trust director. This subsection shall not preclude use of  
 2853 another method to obtain jurisdiction over a trust director.

2854 (e) As used in this Code, where the context requires or permits, the term 'trustee' includes  
 2855 a trust director."

**SECTION 1-93.**

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

"53-13-2.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2893 (A) Has been sent or received by a user;
- 2894 (B) Is in electronic storage by a custodian providing an electronic communication  
2895 service to the public or is carried or maintained by a custodian providing a remote  
2896 computing service to the public; and
- 2897 (C) Is not readily accessible to the public.
- 2898 (6) 'Court' means the probate court.
- 2899 (7) 'Custodian' means a person that engages in the transmission of, maintains, processes,  
2900 receives, or stores a digital asset or electronic communication of another person.
- 2901 (8) 'Designated recipient' means a person chosen by a user using an online tool to  
2902 administer digital assets of the user.
- 2903 (9) 'Digital asset' means an electronic record in which an individual has a right or  
2904 interest. Such term shall not include an underlying asset or liability unless the asset or  
2905 liability is itself an electronic record.
- 2906 (10) 'Electronic' means relating to technology having electrical, digital, magnetic,  
2907 wireless, optical, electromagnetic, or similar capabilities.
- 2908 (11) 'Electronic communication' has the meaning set forth in 18 U.S.C. Section 2510(12),  
2909 effective January 1, 2018.
- 2910 (12) 'Electronic communication service' means a custodian that provides to a user the  
2911 ability to send or receive an electronic communication.
- 2912 (13) 'Fiduciary' means an original, additional, or successor personal representative,  
2913 conservator, agent, or trustee.
- 2914 (14) 'Information' includes data, text, images, videos, sounds, codes, computer programs,  
2915 software, and data bases.
- 2916 (15) 'Online tool' means an electronic service provided by a custodian that allows the  
2917 user, in an agreement distinct from the terms-of-service agreement between the custodian  
2918 and user, to provide directions for disclosure or nondisclosure of digital assets to a third  
2919 person.
- 2920 (16) 'Person' means an individual, estate, business or nonprofit entity, corporation,  
2921 business trust, trust, partnership, limited liability company, association, unincorporated  
2922 organization, joint venture, commercial entity, joint-stock company, public corporation,  
2923 government or governmental subdivision, agency, instrumentality, or other legal or  
2924 commercial entity.
- 2925 (17) 'Personal representative' means an original, additional, or successor executor,  
2926 administrator, county administrator, or administrator with the will annexed, or ~~special~~  
2927 ~~administrator~~ a person legally authorized to perform substantially the same functions.
- 2928 (18) 'Power of attorney' means a writing or other record that grants a person authority to  
2929 act in the place of an individual, including a conditional power of attorney, as defined in

subsection (a) of Code Section 10-6-6, a power of attorney created pursuant to Chapter 6B of Title 10, and a financial power of attorney created pursuant to Article 7 of Chapter 6 of Title 10 as it existed on June 30, 2017.

(19) 'Principal' means an individual who grants authority to a person to act in the place of such individual in a power of attorney.

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

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

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

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

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

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

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

#### **SECTION 1-94.**

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

"53-13-4.

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

**PART II**

**SECTION 2-1.**

Article 1 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to general provisions regarding certiorari and appeals to appellate courts generally, is amended by revising Code Section 5-6-16, relating to time for appeal by representative where party dies after trial, effect of entry of appeal and of failure to enter appeal, and when appeal heard, as follows:

"5-6-16.

(a)(1) When either the plaintiff or the defendant dies after a case has been tried and before the expiration of the time within which the party, if living, might have entered an appeal, and no appeal has been entered, the ~~legal~~ personal representative of the estate of the deceased party may enter an appeal within 30 days from the time ~~he~~ such personal representative qualifies.

(2) If an appeal is not entered within the time prescribed in this Code section, judgment may be entered and execution issued as though the deceased party were alive, without making the personal representative a party.

(3) For purposes of this subsection, the term 'personal representative' includes temporary administrators, subject to the provisions of Code Sections 53-6-31 and 53-7-4.

(b)(1) When an appeal is entered as provided in paragraph (1) of subsection (a) of this Code section, it shall not be necessary to revive the action, but it shall be revived by the appealing party giving notice to the adverse party within 30 days from the time of entering the appeal.

(2) When a defendant appeals as provided in paragraph (1) of subsection (a) of this Code section, the case shall stand for trial on the appeal docket at the first term of the court after the expiration of six months from the qualification of the ~~executor or administrator~~ personal representative.

(c) Nothing in paragraph (2) of subsection (a) or paragraph (2) of subsection (b) of this Code section shall impair the operation or limit the applicability of Article 4 of Chapter 7 of Title 53. ~~In case of the death or removal from office of any executor or administrator pending such proceedings as are prescribed in subsections (a) and (b) of this Code section, an administrator de bonis non may be made a party in like manner."~~

**SECTION 2-2.**

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

2998 relating to definitions, payment of large deposits of deceased intestate depositors, affidavit  
2999 for disbursement, and form for affidavit, as follows:

3000 "7-1-239.

3001 (a) As used in this Code section, the term:

3002 (1) 'Affidavit of the provider' means the form provided for in subsection (e) of this Code  
3003 section.

3004 (2) 'Financial institution' means any federally chartered financial institution or state  
3005 chartered financial institution, including, but not limited to, those chartered by states  
3006 other than the State of Georgia whose deposits are federally insured.

3007 (b) Except as provided in subsection (c) of this Code section and in Article 8 of this  
3008 chapter, whenever any person dies intestate having a deposit of not more than \$15,000.00  
3009 in a financial institution, such financial institution, upon receipt of an affidavit, shall be  
3010 authorized to pay the proceeds of such deposit directly to the following individuals:

3011 (1) To the surviving spouse;

3012 (2) If no surviving spouse, to the children pro rata;

3013 (3) If no children or surviving spouse, to the father and mother pro rata; or

3014 (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

3015 Such affidavit shall state that such individuals qualify as the proper relation to the decedent  
3016 as specified in this subsection, there is no known will of the decedent, and that there are no  
3017 other known corresponding ~~claimant or~~ claimants to such deposit.

3018 (c) Except as provided in Article 8 of this chapter and in paragraph (2) of subsection (d)  
3019 of this Code section, if no application for the deposit is made by any person named in  
3020 subsection (b) of this Code section within 45 days from the death of the intestate depositor,  
3021 the financial institution shall be authorized to apply not more than \$15,000.00 of the  
3022 deposit of such deceased depositor in payment of the funeral expenses and expenses of the  
3023 last illness of such deceased depositor upon the receipt of itemized statements of such  
3024 expenses and the affidavit of the providers of such services that the itemized statements are  
3025 true and correct and have not been paid. Except as otherwise provided in paragraph (2) of  
3026 subsection (d) of this Code section, the ~~The~~ financial institution applying such deposit as  
3027 authorized in this subsection shall pay such expenses in the order received after the death  
3028 of the depositor.

3029 (d)(1) Except as otherwise provided in paragraph (2) of this subsection, payments made  
3030 in compliance with ~~Payments pursuant to~~ this Code section shall operate as a complete  
3031 acquittal and discharge to the financial institution of liability from any suit, claim, or  
3032 demand of whatever nature by any heir, distributee, or creditor of the decedent, or any  
3033 other person. Except as otherwise provided in paragraph (2) of this subsection, the ~~The~~

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

(2) The protection provided by paragraph (1) of this subsection does not extend to payments made after a financial institution has received:

(A) Written notification sent by any party able to request present payment or the legal representative of any such party to the registered agent of the financial institution by registered or certified mail, return receipt requested, or statutory overnight delivery, expressly stating that payments in accordance with the provisions of this Code section should not be permitted; or

(B) Service of notice upon the registered agent of the financial institution of a proceeding in the probate court in the estate of the deceased depositor in accordance with Chapter 11 of Title 53;

provided, however, that, if any payment is made pursuant to subsection (c) of this Code section by an employee of the financial institution who is without actual knowledge of such written notification or service of notice within three business days following the receipt of such written notification or service of notice by the registered agent of the financial institution, the protection provided by paragraph (1) of this subsection shall extend to any such payment.

(3) A financial institution that is asked to apply funds from the deposit of a deceased depositor as requested in an affidavit of the provider may, without risk of incurring any penalty or liability to any person:

(A) Rely on the written notification or service of notice provided by paragraph (2) of this subsection in refusing to disburse the funds as requested in the affidavit of the provider;

(B) Delay disbursement of the funds as requested in the affidavit of the provider for up to 180 days following the receipt by the financial institution of such affidavit of the provider; and

(C) Decline to disburse funds from the deposit of the deceased depositor except as authorized or directed in an order entered by the probate court having jurisdiction over the estate of the deceased depositor.

(4) Notwithstanding subsection (c) of this Code section or any other provision of this subsection, payments made pursuant to an order entered by the probate court having jurisdiction over the estate of a deceased depositor shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the decedent, or any other person.

(5) Nothing in this subsection shall relieve the liability of or limit the availability of any remedies against any provider of services giving an affidavit in the form provided for in

3071 subsection (e) of this Code section for any violation of Code Section 16-10-71, Code  
 3072 Section 53-6-2, or other applicable law.

3073 (e) A document substantially in the following form shall be used as the affidavit of the  
 3074 providers of services of funeral expenses and expenses of last illnesses of deceased  
 3075 depositors:

3076 'State of Georgia County of \_\_\_\_\_

3077 STATUTORY AFFIDAVIT FORM

3078 \_\_\_\_\_ from \_\_\_\_\_ attests that  
 3079 (Claimant) (Facility)  
 3080 \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 3081 (Deceased)

3082 On information and belief, the Deceased has funds on deposit with \_\_\_\_\_.  
 3083 (Financial Institution)

3084 Under O.C.G.A. § 7-1-239, such Financial Institution is authorized to pay the proceeds  
 3085 of the Deceased's deposits, but in no event more than \$15,000.00, directly to the  
 3086 following persons identified, collectively, as potential recipient(s):

- 3087 1. To the surviving spouse;
- 3088 2. If no surviving spouse, to the children pro rata;
- 3089 3. If no children or surviving spouse, to the father and mother pro rata; or
- 3090 4. If none of the above, then to the brothers and sisters of the decedent pro rata.

3091 Except as provided for by Article 8 in Title 7 of the O.C.G.A., if no request for the  
 3092 Deceased's deposit is made by a potential recipient(s) within 45 days from the  
 3093 Deceased's death, the Financial Institution is authorized to release up to \$15,000.00 for  
 3094 funeral expenses and expenses of the last illness of the Deceased upon the receipt of  
 3095 itemized statements of such expenses and this executed attestation.

3096 The Claimant attests that there is no known will of the Deceased and there is no known  
 3097 potential recipient of the Deceased's deposits. The Claimant also attests that funeral  
 3098 expenses or expenses of the last illness in the amount of \$ \_\_\_\_\_ were incurred  
 3099 related to the Deceased and that true and correct copies of the itemized receipts fully  
 3100 supporting such amount are attached to this affidavit. Finally, the Claimant further  
 3101 attests that such expenses have not been paid as of the date of execution of this  
 3102 affidavit.

3103 Pursuant to O.C.G.A. § 7-1-239, the Claimant submits this form in order to receive  
 3104 payment in the amount of \$ \_\_\_\_\_ (shall not exceed \$15,000.00) for outstanding  
 3105 funeral expenses or expenses of the last illness of the Deceased.



3106

3107

Signature of Claimant

3108 Sworn and subscribed

3109 before me this \_\_\_\_\_ day

3110 of \_\_\_\_\_, 20\_\_.

3111 \_\_\_\_\_

3112 Notary public (SEAL)

3113 My commission expires: \_\_\_\_\_."

3114 **SECTION 2-3.**

3115 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in  
 3116 Article 2 of Chapter 3, relating to specific periods of limitation, by adding a new Code  
 3117 section to read as follows:

3118 "9-3-36.

3119 (a) In no event may claims against a decedent's estate that arose before the death of the  
 3120 decedent be brought more than six years after the date of the decedent's death.

3121 (b) Subsection (a) of this Code section is intended to create a six-year statute of ultimate  
 3122 repose and abrogation.

3123 (c) Nothing in this Code section shall be construed as placing a limitation on the time for  
 3124 commencing a proceeding to enforce any mortgage, pledge, or other lien upon property  
 3125 owned by a decedent immediately prior to the decedent's death."

3126 **SECTION 2-4.**

3127 Said title is further amended by revising Code Section 9-4-4, relating to declaratory  
 3128 judgments involving fiduciaries, as follows:

3129 "9-4-4.

3130 (a) Without limiting the generality of Code Sections 9-4-2, 9-4-3, 9-4-5 through 9-4-7, and  
 3131 9-4-9, any person interested as or through an executor, administrator, personal  
 3132 representative, trustee, guardian, conservator, or other fiduciary, creditor, devisee,  
 3133 distributee, legatee, heir, ~~ward~~, next of kin, or beneficiary in the administration of a trust  
 3134 or of the estate of a decedent, a minor, a ward, an incapacitated person, a protected person,  
 3135 a person who is otherwise legally incompetent because of mental illness or intellectual  
 3136 disability, or an insolvent may have a declaration of rights or legal relations in respect  
 3137 thereto and a declaratory judgment:

3138 (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, beneficiaries,  
 3139 or others;  
 3140 (2) To direct the executor, administrator, ~~or~~ trustee, or other fiduciary to do or abstain  
 3141 from doing any particular act in his or her fiduciary capacity; ~~or~~  
 3142 (3) To determine title to property in which the trust or estate has or is purported to have  
 3143 an ownership or other interest; or  
 3144 (4) To determine any question arising in the administration of the estate or trust,  
 3145 including questions of construction of wills, trust instruments, and other writings.  
 3146 (b) The enumeration in subsection (a) of this Code section does not limit or restrict the  
 3147 exercise of general powers conferred in Code Section 9-4-2 in any proceeding covered  
 3148 thereby where declaratory relief is sought in which a judgment or decree will terminate the  
 3149 controversy or remove the uncertainty."

#### 3150 **SECTION 2-5.**

3151 Said title is further amended by revising Code Section 9-4-5, relating to filing and service,  
 3152 time of trial, and drawing of jury, as follows:  
 3153 "9-4-5.

3154 A proceeding instituted under this chapter shall be filed and served as are other cases in the  
 3155 superior courts of this state or in the Georgia State-wide Business Court ~~and;~~ provided,  
 3156 however, that a proceeding instituted in the probate court pursuant to paragraph (1) of  
 3157 subsection (a) of Code Section 15-9-127 shall be filed and served in the manner provided  
 3158 for proceedings in the probate courts of this state in Chapter 11 of Title 53. A proceeding  
 3159 instituted under this chapter may be tried at any time designated by the court not earlier  
 3160 than 20 days after the service thereof, unless the parties consent in writing to an earlier  
 3161 trial. If there is an issue of fact ~~which~~ that requires a submission to a jury, the jury may be  
 3162 drawn, summoned, and sworn either in regular term or specially for the pending case."

#### 3163 **SECTION 2-6.**

3164 Said title is further amended by adding a new Code section to read as follows:

3165 "9-4-11.

3166 A declaratory judgment proceeding brought in the probate court as provided in paragraph  
 3167 (1) of subsection (a) of Code Section 15-9-127 may be combined with or made a part of  
 3168 any proceeding properly before the probate court to the greatest extent that does not  
 3169 infringe the exclusive jurisdiction of the superior courts pursuant to Article VI, Section IV,  
 3170 Paragraph I of the Constitution of this state."

**SECTION 2-7.**

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

"9-11-17.

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

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

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

**SECTION 2-8.**

3206

3207 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
3208 amended by revising Code Section 10-6-4, relating to fiduciaries may convey by attorneys  
3209 in fact, as follows:

3210 "10-6-4.

3211 (a) Personal representatives ~~Executors, administrators,~~ guardians, conservators, and  
3212 trustees are authorized to sell and convey property by attorneys in fact in all cases where  
3213 they may lawfully sell and convey in person.

3214 (b) When a personal representative, guardian, conservator, or trustee exercising the  
3215 authority conferred by subsection (a) of this Code section appoints an attorney in fact by  
3216 a power of attorney to which Chapter 6B of this title is applicable under Code Section  
3217 10-6B-81, the exercise of fiduciary powers by such attorney in fact under such power of  
3218 attorney shall be subject to Code Section 10-6B-40."

**SECTION 2-9.**

3219

3220 Said title is further amended by revising Code Section 10-6-86, relating to liability of person  
3221 signing instrument as agent or fiduciary, as follows:

3222 "10-6-86.

3223 An instrument signed by one as agent, trustee, conservator, guardian, administrator,  
3224 executor, or the like, without more, shall be the individual undertaking of the maker, except  
3225 as otherwise provided ~~with regard to negotiable instruments~~ by Code Section Sections  
3226 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  
3227 words being generally words of description."

**SECTION 2-10.**

3228

3229 Said title is further amended by revising Code Section 10-6B-3, relating to applicability, as  
3230 follows:

3231 "10-6B-3.

3232 This chapter shall apply to all powers of attorney except:

3233 (1) A power to the extent it is coupled with an interest in the subject of the power,  
3234 including a power given to or for the benefit of a creditor in connection with a credit  
3235 transaction;

3236 (2) A power to make health care decisions;

3237 (3) Any delegation of voting, management, or similar rights related to the governance  
3238 or administration of an entity or business, including, but not limited to, delegation of  
3239 voting or management rights;

3240 (4) A power created on a form prescribed by a government or governmental subdivision,  
 3241 agency, or instrumentality for a governmental purpose;  
 3242 (5) A power created by a person other than an individual;  
 3243 ~~(5)(6) A power that grants Powers of attorney that only grant~~ authority with respect to  
 3244 a single transaction or series of related transactions involving real estate;  
 3245 (7) A power given to a transfer agent to facilitate a specific transfer or disposition of one  
 3246 or more identified stocks, bonds, or other financial instruments;  
 3247 (8) A power authorizing a financial institution or broker-dealer, or an employee of the  
 3248 financial institution or broker-dealer, to act as agent for the account owner in executing  
 3249 trades or transfers of cash, securities, commodities, or other financial assets in the regular  
 3250 course of business;  
 3251 ~~(6)(9)~~ Powers of attorney provided for under Titles 19 and 33; and  
 3252 ~~(7)(10)~~ As set forth in Code Section 10-6B-81."

### 3253 **SECTION 2-11.**

3254 Said title is further amended by revising subparagraph (a)(1)(A) of, and adding a new  
 3255 subsection to, Code Section 10-6B-40, relating to agent authority that requires specific grant  
 3256 and granting of general authority, as follows:

3257 "(A) Create, fund, amend, revoke, or terminate an inter vivos trust, other than a trust  
 3258 created pursuant to 42 U.S.C. Section 1396p(d)(4)(B) as provided under subsection (d)  
 3259 of Code Section 53-12-20;"  
 3260 "(i) An agent under a power of attorney that does not expressly grant the agent the  
 3261 authority to do an act described in paragraph (1) of subsection (a) of this Code section or  
 3262 Code Sections 10-6B-43 through 10-6B-55 may petition the court for authority to do such  
 3263 act that is reasonable under the circumstances."

### 3264 **SECTION 2-12.**

3265 Said title is further amended by revising subparagraph (a)(1)(D) of Code Section 10-6B-52,  
 3266 relating to personal and family maintenance, as follows:

3267 "(D) The principal's minor ~~dependents~~ descendants who are not also the principal's  
 3268 children, if the principal had established a pattern of such payments or indicated a clear  
 3269 intent to make such payments;"

### 3270 **SECTION 2-13.**

3271 Article 2 of Chapter 5 of Title 13 of the Official Code of Georgia Annotated, relating to  
 3272 statute of frauds, is amended by revising Code Section 13-5-30, relating to agreements  
 3273 required to be in writing, as follows:

3274 "13-5-30.

3275 (a) To make the following obligations binding on the promisor, the promise must be in  
3276 writing and signed by the party to be charged therewith or some person lawfully authorized  
3277 by him or her:

3278 (1) A promise by ~~an executor, administrator~~ a conservator, guardian, personal  
3279 representative, or trustee to answer damages out of his or her own estate;

3280 (2) A promise to answer for the debt, default, or miscarriage of another;

3281 (3) Any agreement made upon consideration of marriage;

3282 (4) Any contract for sale of lands, or any interest in, or concerning lands;

3283 (5) Any agreement that is not to be performed within one year from the making thereof;

3284 (6) Any promise to revive a debt barred by a statute of limitation; and

3285 (7) Any commitment to lend money.

3286 (b) Any agreement to modify, alter, cancel, repeal, revoke, release, or rescind a promise,  
3287 agreement, contract, or commitment provided for in subsection (a) of this Code section  
3288 must be in writing and signed by all parties to such agreement; provided, however, that if  
3289 the party against whom enforcement of such agreement under this subsection is sought  
3290 admits in a pleading, in testimony, or otherwise in court, that the agreement was made, then  
3291 such agreement is enforceable if valid in all other respects."

## 3292 **SECTION 2-14.**

3293 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,  
3294 is amended by revising Code Section 15-9-4, relating to additional judicial eligibility  
3295 requirements in certain counties, as follows:

3296 "15-9-4.

3297 (a) No individual elected judge of the probate court in any county provided for in this  
3298 Code section shall engage in the private practice of law.

3299 (b) Except as otherwise provided by subsection (c) of this Code section, in any county of  
3300 this state having a population of more than 90,000 persons according to the United States  
3301 decennial census of 2010 or any future such census and in which the probate court of such  
3302 county meets the definition of a probate court as provided by Article 6 of this chapter, no  
3303 ~~person~~ individual shall be judge of the probate court unless at the time of election, in  
3304 addition to the qualifications required by law, he or she has attained the age of 30 years,  
3305 ~~and~~ has been admitted to practice law for seven years preceding election, is a member in  
3306 good standing with the State Bar of Georgia, and has been duly reinstated to the practice  
3307 of law in the event of his or her disbarment therefrom.

3308 (c) A judge of the probate court holding such office on or after June 30, 2000, shall  
3309 continue to hold such office and shall be allowed to seek reelection for such office.

3310 Notwithstanding the requirement that in certain counties the judge of the probate court be  
 3311 admitted to practice law for seven years preceding election, no decision, judgment, ruling  
 3312 or other official action of any judge of the probate court shall be overturned, denied, or  
 3313 overruled based solely on this requirement for qualification, election, and holding the office  
 3314 of judge of the probate court."

3315 **SECTION 2-15.**

3316 Said chapter is further amended by revising Code Section 15-9-17, relating to serving a  
 3317 minor or incapacitated adult, as follows:

3318 "15-9-17.

3319 (a) Notwithstanding the provisions of Code Section 15-9-122 or any other provision of law  
 3320 to the contrary, in any action before the probate court in which the service of notice on a  
 3321 minor or an incapacitated adult is required by law or ordered by the probate court, such  
 3322 service of notice may be made by:

3323 (1) Mailing by the probate court of a copy of the document to be served to the minor or  
 3324 incapacitated adult by certified mail or statutory overnight delivery, return receipt  
 3325 requested; and

3326 (2) Serving the ~~legal guardian or guardian ad litem~~ of such minor or incapacitated adult  
 3327 if such ~~legal guardian or guardian ad litem~~:

3328 (A) Acknowledges receipt of such service; and

3329 (B) Certifies that he or she has delivered a copy of the document so served to the minor  
 3330 or incapacitated adult.

3331 (b) The acknowledgment of service and certification of ~~the legal~~ such guardian ~~or guardian~~  
 3332 ~~ad litem~~ and the certificate of the service by mailing to the on such minor or incapacitated  
 3333 adult shall be filed with the probate court as proof of such service of notice.

3334 (c) As used in this Code section, the term 'guardian' shall have the same meaning provided  
 3335 in Code Section 53-1-2."

3336 **SECTION 2-16.**

3337 Said chapter is further amended by revising Code Section 15-9-47, relating to default  
 3338 judgments, as follows:

3339 "15-9-47.

3340 (a) ~~If Notwithstanding any provisions of Chapter 11 of Title 9, if~~ in any case pending  
 3341 before the probate court an answer, caveat, or other responsive pleading has not been filed  
 3342 within the time required by law or by lawful order of the court, the case shall automatically  
 3343 become in default unless the time for filing the answer, caveat, or other responsive pleading  
 3344 has been extended as provided by law. The petitioner at any time thereafter shall be

3345 entitled to verdict and judgment by default, in open court or in chambers, as if every item  
3346 and paragraph of the petition or other pleadings filed in the matter were supported by  
3347 proper evidence. At any time before final judgment, the court, in its discretion, upon  
3348 payment of costs, may allow the default to open for providential cause preventing the filing  
3349 of required pleadings or for excusable neglect or where the judge, from all the facts, shall  
3350 determine that a proper case has been made for the default to open, on terms to be fixed by  
3351 the court. In order for the default to be thus opened, the showing shall be made under oath,  
3352 shall set up a meritorious defense, shall offer to plead instantly, and shall announce ready  
3353 to proceed with the hearing in the matter.

3354 (b) The provisions of this Code section shall govern in proceedings pertaining to defaults  
3355 in the probate court, and the provisions of Code Section 9-11-55 shall not be applicable to  
3356 such proceedings."

3357 **SECTION 2-17.**

3358 Said chapter is further amended by revising Code Section 15-9-60, relating to fees, as  
3359 follows:

3360 "15-9-60.

3361 (a) The judges or clerks of the probate courts of this state shall be entitled to charge and  
3362 collect the sums enumerated in this Code section.

3363 (b) All sums that the probate courts may be required to collect pursuant to Code Sections  
3364 15-23-7, 15-9-60.1, and 36-15-9 and all other sums as may be required by law shall be in  
3365 addition to the sums provided in this Code section. The sums provided for in this Code  
3366 section are exclusive of costs for service of process, fees for publication of citation or  
3367 notice, or any additional sums as may be provided by law.

3368 (c) The fees provided for in this Code section shall be paid into the county treasury less  
3369 and except only such sums as are otherwise directed to be paid by law, which sums shall  
3370 be remitted as provided by law by either the probate court or the county.

3371 (d) Subject to the provisions of Code Section 15-9-61, and except for the filing of a  
3372 proceeding in which the filing party also files with the court a sworn affidavit that the party  
3373 is unable because of indigence to pay the cost of court, all sums specified in this Code  
3374 section shall be paid to the court at the time of filing or as thereafter incurred for services  
3375 rendered. In accordance with Code Section 15-9-61, the judges of the probate courts are  
3376 entitled to an advance cost of \$30.00 for deposit to be made before filing any proceeding.

3377 (e) Cost in decedent's estates:

3378 (1) Except as otherwise provided, the cost in an initial proceeding regarding the estate  
3379 of a decedent or of a missing individual believed to be dead shall be \$130.00 for all



services rendered by the judge or clerk of the probate court through the entry of the final order on such initial proceedings, exclusive of recording charges;

(2) As used in this subsection, the term 'initial proceeding' shall mean the first proceeding filed in the probate court in connection with or regarding the estate of a decedent or of a missing individual believed to be dead, including, but not necessarily limited to, the following proceedings: petition for temporary letters of administration; petition for letters of administration; petition to probate will in common form; petition to probate will in solemn form; petition to probate will in solemn form and for letters of administration with will annexed; petition for order declaring no administration necessary; petition for year's support; petition for presumption of death of missing individual believed to be dead; any proceeding for ancillary administration by a foreign personal representative; or any other proceeding by which the jurisdiction of the probate court is first invoked with regard to the estate of a decedent or of a missing individual believed to be dead;

(3) As used in this subsection, the term 'initial proceeding' shall not include a petition to establish custodial account for missing heir, a petition to enter a safe-deposit box, or any other petition or proceeding for which a specific cost is otherwise set forth in this Code section;

(4) Except as otherwise provided, the cost shall be \$75.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, in any of the proceedings listed in paragraph (2) of this subsection filed subsequent to the filing of an initial proceeding regarding the estate of the same decedent or missing individual believed to be dead;

(5) Except as otherwise provided, the cost shall be \$50.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, for the filing of the following proceedings or pleadings regarding the estate of a decedent or of a missing individual believed to be dead: petition for letters of administration with will annexed (will previously probated); petition of personal representative for leave to sell property; petition for leave to sell perishable property; petition for leave to sell or encumber property previously set aside as year's support; petition by administrator for waiver of bond, grant of certain powers, or both; petition for discharge; petition by personal representative for approval of a division in kind; petition to determine heirs; petition by personal representative for direction under will; petition by personal representative to compromise a disputed claim or debt; petition by or against personal representative for an accounting or final settlement; petition to resign as personal representative and for the appointment of a successor; petition to remove a personal representative and for the appointment of a successor; citation against a personal

representative for failure to make returns or for alleged mismanagement of estate; a caveat, objection, or other responsive pleading by which the proceeding becomes contested filed by any person to whom notice or citation has been issued; petition or motion to intervene as an interested party; and any other petition application, motion, or other pleading for which no specific cost is set forth in this Code section filed regarding the estate of a decedent or of a missing individual believed to be dead;

(6) Except as otherwise provided, the cost shall be \$25.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, for the filing of the following proceedings, pleadings, or documents regarding the estate of a decedent or of a missing individual believed to be dead: petition to change accounting period; petition to enter a safe-deposit box; petition or motion for attorneys' fees; petition or motion of personal representative for extra compensation; or inventory, appraisement, or annual, intermediate, or final returns of personal representatives; and

(7) Except as otherwise provided, the cost shall be \$10.00 for all services rendered by the judge or clerk of the probate court, exclusive of recording charges, for the filing of the following proceedings, pleadings, or documents regarding the estate of a decedent or of a missing person believed to be dead: notice of claim or claim of a creditor, if such notice or claim is filed with and accepted by the court; declination to serve of nominated personal representative; or renunciation of right of succession.

(f) Costs in minor guardianship and conservatorship matters:

(1) Except as otherwise provided, the cost in a proceeding regarding the person, property, or person and property of a minor shall be \$75.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such proceeding, exclusive of recording charges, including, but not necessarily limited to, the following proceedings: petition for temporary letters of guardianship of ~~the person of a~~ minor; petition for letters of guardianship of ~~person, property, conservatorship, or person~~ guardianship and property conservatorship of a minor by person other than natural guardian; petition for letters of ~~guardianship of property conservatorship~~ of a minor, by natural guardian, with bond — personal property over \$5,000.00; petition for order that natural guardian not be required to become legally qualified ~~guardian of the property conservator~~; application of ~~guardian, conservator, or guardian and conservator~~ for letters of dismissal; or any other proceeding by which the jurisdiction of the probate court is first invoked with regard to the person, property, or person and property of a minor; and

(2) Except as otherwise provided, the costs for all services rendered by the judge or clerk of the probate court shall be as set forth below for the following proceedings, pleadings,

3453 or documents regarding the person, property, or person and property of a minor, exclusive  
 3454 of recording charges:

3455	(A) Petition of <del>guardian</del> <u>conservator</u> for leave to sell . . . . .	\$ 70.00
3456	(B) Petition to compromise doubtful claim of minor . . . . .	70
3457	(C) Petition for leave to encroach on corpus . . . . .	30
3458	(D) Petition to change accounting period . . . . .	25
3459	(E) Inventory or annual, intermediate, or final return (each) . . . . .	30
3460	(F) Petition or motion for attorneys' fees . . . . .	70
3461	(G) Petition to terminate temporary guardianship of minor . . . . .	30
3462	(H) Any other petition, application, motion, or other pleading for which	
3463	no specific cost is set forth in this Code section filed regarding an	
3464	existing guardianship <u>or conservatorship</u> of a minor . . . . .	30

3465 (g) Costs in adult guardianship and conservatorship matters:

3466 (1) Except as otherwise provided, the cost in a proceeding regarding the person,  
 3467 property, or person and property of an adult alleged to be incapacitated shall be \$150.00  
 3468 for all services rendered by the judge or clerk of the probate court through the entry of  
 3469 the final order on such proceeding, exclusive of recording charges, including, but not  
 3470 necessarily limited to, the following proceedings: petition for the appointment of an  
 3471 emergency guardian, conservator, or guardian and conservator for an alleged gravely  
 3472 incapacitated adult; petition for the appointment of an emergency and permanent  
 3473 guardian, conservator, or guardian and conservator for an alleged gravely incapacitated  
 3474 adult; petition for the appointment of a guardian, conservator, or guardian and  
 3475 conservator for an alleged incapacitated adult; or any other proceeding by which the  
 3476 jurisdiction of the probate court is first invoked with regard to an adult alleged to be  
 3477 incapacitated; and

3478 (2) Except as otherwise provided, the cost for all services rendered by the judge or clerk  
 3479 of the probate court shall be as set forth below for the following proceedings, pleadings,  
 3480 or documents regarding the person, property, or person and property of an incapacitated  
 3481 adult, exclusive of recording charges:

3482	(A) Petition of <del>guardian</del> <u>conservator</u> for leave to sell . . . . .	\$ 70.00
3483	(B) Petition to compromise doubtful claim . . . . .	70
3484	(C) Petition for leave to encroach on corpus . . . . .	30
3485	(D) Petition to change accounting period . . . . .	25
3486	(E) Inventory or annual, intermediate, or final return (each) . . . . .	30
3487	(F) Petition or motion for attorneys' fees . . . . .	70

3488	(G) Petition to terminate or modify guardianship <u>or conservatorship</u> of	
3489	incapacitated adult . . . . .	70
3490	(H) Application of guardian <u>or conservator</u> for letters of dismissal .	75
3491	(I) Any other petition, application, motion, or other pleading for which	
3492	no specific cost is set forth in this Code section filed regarding an	
3493	existing guardianship <u>or conservatorship</u> of an adult . . . . .	70
3494	(h) Costs in matters involving sterilization, involuntary treatment, habilitation, or	
3495	temporary placement:	
3496	(1) Except as otherwise provided, the cost in a proceeding filed under Chapter 20 of	
3497	Title 31, Chapter 36A of Title 31, or Chapter 3, 4, or 7 of Title 37 shall be \$130.00 for	
3498	all services rendered by the judge or clerk of the probate court through the entry of the	
3499	final order on such proceeding, exclusive of recording charges;	
3500	(2) There shall be no cost assessed for the receipt and consideration of affidavits in	
3501	support of an order to apprehend under Part 1 of Article 3 of Chapter 3 of Title 37 or	
3502	Part 1 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend;	
3503	and	
3504	(3) There shall be no cost assessed for the receipt and consideration of a petition in	
3505	support of an order to apprehend under Part 3 of Article 3 of Chapter 3 of Title 37 or	
3506	Part 3 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend	
3507	a patient alleged to be in noncompliance with an involuntary outpatient treatment order.	
3508	(i) Costs for hearings in contested matters:	
3509	(1) For conducting trials of contested matters or for formal hearing on the denial of an	
3510	application for a weapons carry license before the probate court, the cost shall be \$30.00	
3511	per one-half day or portion thereof;	
3512	(2) There shall be no additional cost for the initial hearing in adult guardianship <u>or</u>	
3513	<u>conservatorship</u> matters or in matters involving sterilization, involuntary treatment,	
3514	habilitation, or involuntary placement; and	
3515	(3) There shall be no cost for any hearing in an uncontested matter.	
3516	(j) Custodial accounts. For each account accepted by the judge of the probate court as	
3517	custodian for a minor, incapacitated adult, or missing or unknown heir or beneficiary, there	
3518	shall be a one-time fee of 8 percent of the fund deducted from the fund when first accepted.	
3519	(k) Miscellaneous costs. Except as otherwise provided, the judge or clerk of the probate	
3520	court shall be entitled to the following costs for the proceedings, pleading, documents, or	
3521	services itemized:	
3522	(1) Application for writ of habeas corpus . . . . .	\$ 75.00
3523	(2) Petition to establish lost papers, exclusive of recording charges . . . . .	50

3524	(3) Petition for or declaration of exemptions . . . . .	25
3525	(4) Petition to change birth certificate . . . . .	75
3526	(5) For all services rendered by the judge or clerk of the probate court	
3527	through the entry of the final order, exclusive of recording charges, for any	
3528	application or petition by which the jurisdiction of the probate court is first	
3529	invoked for which no cost is set forth in this Code section or other applicable	
3530	law . . . . .	70
3531	(6) Issuance of any order, including a rule nisi, in any matter for which the	
3532	costs set forth in this Code section do not include all services to be rendered	
3533	by the judge or clerk of the probate court, exclusive of recording charges	30
3534	(7) Motions, amendments, or other pleadings filed in any matter for which	
3535	the cost set forth in this Code section does not include all services to be	
3536	rendered by the judge or clerk of the probate court, exclusive of recording	
3537	charges, and no other cost is set forth in this Code section . . . . .	15
3538	(8) For processing appeals to superior court, exclusive of recording	
3539	charges . . . . .	30
3540	(9) For issuance of writ of fieri facias (fi.fa.) . . . . .	10
3541	(10) <u>For all services rendered by the judge or clerk of the probate court in</u>	
3542	<u>the exercise of concurrent jurisdiction pursuant to Code Section 15-9-127 for</u>	
3543	<u>which no cost is set forth in this Code section. The sums charged shall be</u>	
3544	<u>the same as those charged for such services in the superior court pursuant to</u>	
3545	<u>Code Section 15-6-77 or other applicable law</u> <del>Reserved.</del>	
3546	(11) For issuance of permit to discharge fireworks . . . . .	30
3547	(12) Application for weapons carry license (exclusive of fees charged by	
3548	other agencies for the examination of criminal records and mental	
3549	health records) . . . . .	30
3550	(13) For issuance of a replacement weapons carry license . . . . .	6
3551	(13.1) For issuance of personal identification cards to judges or Justices.	
3552	The fee shall be determined by The Council of Probate Court Judges of	
3553	Georgia pursuant to Code Section 15-25-3.	
3554	(14) Application for marriage license if the applicants have completed	
3555	premarital education pursuant to Code Section 19-3-30.1 . . . . .	No fee
3556	(14.1) Application for a marriage license if the applicants have not	
3557	completed premarital education pursuant to Code Section 19-3-30.1 . . . . .	40
3558	(15) For the safekeeping of a will . . . . .	15
3559	(16) For issuance of a veteran's license . . . . .	No fee

3560	(17) <u>Reserved.</u> <del>For issuance of a peddler's license</del> . . . . .	15
3561	(18) For issuance of a certificate of residency . . . . .	10
3562	(19) Registration of junk dealer . . . . .	10
3563	(20) Certification of publication of application for insurance company	
3564	charter . . . . .	10
3565	(21) Recording of marks and brands, each . . . . .	15
3566	(22) Exemplification . . . . .	15
3567	(23) Certification under seal of copies (plus copy cost) . . . . .	10
3568	(24) Certified copies of letters of personal representative, temporary	
3569	administrator, <u>conservator</u> , or guardian, each, including copy cost . . . . .	10
3570	(25) For issuance of a subpoena, each . . . . .	10
3571	(26) For filing and recording of oath or bond of any official, officer, or	
3572	employee of any municipality or authority within the county, each . . . . .	10
3573	(27) For filing and recording of oath or bond of county official or officer	No fee
3574	(28) For examination of records or files by employee of the probate court to	
3575	provide abstract of information contained therein or to provide copies	
3576	therefrom, per estate or name . . . . .	10
3577	(29) Recording, per page . . . . .	2
3578	(30) Copies, per page . . . . .	1.00"

3579 **SECTION 2-18.**

3580 Said chapter is further amended by revising Code Section 15-9-86, relating to verified  
 3581 petitions and notice and service thereof, as follows:

3582 "15-9-86.

3583 Every application made to the judge of the probate court for the granting of any order shall  
 3584 be by verified petition in writing, stating the ground of such application and the order  
 3585 sought. Unless otherwise provided by law, if service of notice of the application such  
 3586 petition, other than by citation published citation in the official newspaper of the county  
 3587 in which the petition is made, is necessary under the law or in the judgment of the judge  
 3588 of the probate court on the motion of any party in interest or on the court's own motion, the  
 3589 judge shall cause a copy of the application petition, together with a citation to show cause,  
 3590 if any, why the petition should not be granted and notice of the date, time, of and place for  
 3591 filing any objections or for holding a final hearing, to be served by the sheriff or some  
 3592 lawful officer upon each party who resides in this state and to be ~~mailed~~ served by the  
 3593 probate court mailing by registered or certified mail or statutory overnight delivery, return  
 3594 receipt requested, to each party who resides outside this state at a known address, at least

3595 ~~ten days, plus three days if mailed, before the hearing~~ 30 days before any objection is  
3596 required to be filed by such party or before a final hearing is held. An entry of such service  
3597 of notice shall be made on the original. In extraordinary cases, where it is necessary to act  
3598 before such service of notice can be given, the judge of the probate court shall so direct the  
3599 proceedings as to make no final order until service of notice has been given."

3600 **SECTION 2-19.**

3601 Said chapter is further amended by revising Code Section 15-9-122, relating to applicability  
3602 of laws and rules, as follows:

3603 "15-9-122.

3604 Unless provided to the contrary by Code Section 9-11-81 or by Titles 29 and 53, the  
3605 general laws and rules of practice, pleading, procedure, and evidence ~~which~~ that are  
3606 applicable to the superior courts of this state shall be applicable to and govern in civil cases  
3607 in the probate courts."

3608 **SECTION 2-20.**

3609 Said chapter is further amended by revising Code Section 15-9-123, relating to appeal, as  
3610 follows:

3611 "15-9-123.

3612 (a) Either party to a civil case in the probate court shall have the right of appeal to the  
3613 Supreme Court or the Court of Appeals from any decision made by the probate court,  
3614 except an order appointing a temporary administrator or an order appointing an emergency  
3615 guardian or emergency conservator, as provided by Chapter 6 of Title 5.

3616 (b) The general laws and rules of appellate practice and procedure ~~which~~ that are  
3617 applicable to cases appealed from the superior courts of this state shall be applicable to and  
3618 govern appeals of civil cases from the probate courts."

3619 **SECTION 2-21.**

3620 Said chapter is further amended by revising Code Section 15-9-126, relating to fees, as  
3621 follows:

3622 "15-9-126.

3623 For services rendered in jury trials, in the probate court's exercise of concurrent jurisdiction  
3624 pursuant to Code Section 15-9-127, and in appeals to the Supreme Court or Court of  
3625 Appeals, if a fee is not prescribed by Code Section 15-9-60, the judge or clerk of the  
3626 probate court shall be entitled to charge and collect the same fee sums as ~~that~~ those of the  
3627 clerk of the superior court provided in Code Section 15-6-77 or other applicable law for  
3628 similar services in superior court."

**SECTION 2-22.**

Said chapter is further amended by revising Code Section 15-9-127, relating to concurrent jurisdiction with superior courts, as follows:

"15-9-127.

(a) Probate courts subject to this article shall have concurrent jurisdiction with superior courts with regard to the proceedings for:

(1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5, and 9-4-6, 9-4-8, 9-4-9, and 9-4-11;

(2) Tax motivated estate planning dispositions of wards' property pursuant to Code Sections 29-3-36 and 29-5-36;

(3) Approval of settlement agreements pursuant to former Code Section 53-3-22 as such existed on December 31, 1997, if applicable; ~~or; Code Section 53-5-25 or 53-5-27 for which the settlement agreement would affect an interest in real or personal property to be taken by a trust designated in the will; or Code Section 53-12-9;~~

(4) Adjudication of actions concerning trusts, trustees, and trust directors authorized by the provisions of Chapter 12 of Title 53 ~~Appointment of new trustee to replace trustee pursuant to Code Section 53-12-201;~~

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

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

~~(7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing as provided in Code Section 53-2-27;~~

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

~~(9)(5) Adjudication of petitions under Code Section 10-6B-16 to construe a power of attorney, review an agent's conduct, and grant appropriate relief;~~

(6) Adjudication of petitions under subsection (i) of Code Section 10-6B-40 to grant an agent authority under a power of attorney; and

(7) Adjudication of petitions for direction or construction of a will or trust instrument pursuant to Code Section 23-2-92, 53-4-55, 53-4-56, 53-7-75, or 53-12-27, or other applicable law.

(b) In civil cases, probate courts subject to this article may:

(1) Apply equitable principles;

(2) Hear evidence on and decide any contested question; and

(3) Issue such orders as are appropriate under the circumstances.

(c) Probate courts subject to this article shall have and may exercise the jurisdiction and authority conferred by subsections (a) and (b) of this Code section to the greatest extent



3666 that does not infringe the exclusive jurisdiction of the superior courts pursuant to  
3667 Article VI, Section IV, Paragraph I of the Constitution of this state."

3668 **SECTION 2-23.**

3669 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
3670 amended by revising Code Section 19-3-65, relating to powers of superior court judge in  
3671 appointing and removing trustees and protecting trust estate, as follows:

3672 "19-3-65.

3673 Subject to Code Sections 15-9-127, 23-1-4, and 53-12-6, the ~~The~~ judge of the superior  
3674 court of the county of a spouse's domicile may at any time, upon petition, exercise  
3675 equitable powers in appointing, removing, or substituting trustees or in granting any order  
3676 for the protection of the trust estate, exercising a wise discretion as to the terms on which  
3677 the appointment shall be made or on which the order shall be granted."

3678 **SECTION 2-24.**

3679 Said title is further amended by revising Code Section 19-3-66, relating to enforcement of  
3680 marriage contracts, postnuptial settlements, and antenuptial agreements, as follows:

3681 "19-3-66.

3682 (a) Marriage contracts and postnuptial settlements shall be enforced at the instance of all  
3683 persons in whose favor there are limitations of the estate.

3684 (b) Antenuptial agreements may be enforced by a court of equity at the instance of:

3685 (1) The parties to the marriage; or

3686 (2) The offspring of the marriage and their heirs at any time after the death of a spouse,  
3687 subject to Code Sections 15-9-30, 23-1-4, and 53-7-40; provided, however, that when  
3688 enforced at the instance of such offspring and their heirs, the court may enforce in favor  
3689 of other persons."

3690 **SECTION 2-25.**

3691 Said title is further amended by adding a new Code section to Article 1 of Chapter 6, relating  
3692 to general provisions regarding alimony and child support, to read as follows:

3693 "19-6-36.

3694 (a) A judgment or lien that survives the death of a party and is enforceable against the  
3695 estate of the deceased party under subsection (d) of Code Section 19-6-1, Code Section  
3696 19-6-7, or any other provision of this article shall operate as a judgment or other lien  
3697 created during the lifetime of the deceased party under paragraph (6) of Code  
3698 Section 53-7-40 and such claim against the estate of the deceased party shall be paid  
3699 accordingly by the personal representative of the estate as provided in Article 4 of

3700 Chapter 7 of Title 53. The personal representative may address such claim in any manner  
3701 provided by this article or by Code Section 53-7-44 or 53-7-45.  
3702 (b) Nothing in subsection (a) of this Code section shall alter or impair the rights of any  
3703 person under this article as such rights existed immediately prior to the effective date of  
3704 this Code section."

3705 **SECTION 2-26.**

3706 Article 3 of Chapter 2 of Title 23 of the Official Code of Georgia Annotated, relating to  
3707 fraud, is amended by revising Code Section 23-2-58, relating to confidential relations  
3708 defined, as follows:

3709 "23-2-58.

3710 Any relationship shall be deemed confidential, whether arising from nature, created by law,  
3711 or resulting from contracts, where one party is so situated as to exercise a controlling  
3712 influence over the will, conduct, and interest of another or where, from a similar  
3713 relationship of mutual confidence, the law requires the utmost good faith, such as the  
3714 relationship between partners; principal and agent, ~~etc;~~ guardian or conservator and minor  
3715 or ward; personal representative or temporary administrator and heir, legatee, devisee, or  
3716 beneficiary; trustee and beneficiary; and similar fiduciary relationships."

3717 **SECTION 2-27.**

3718 Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to lottery for  
3719 education, is amended by revising Code Section 50-27-21, relating to preservation of lottery  
3720 proceeds by retailers, accounting procedures, and preference accorded proceeds of insolvent  
3721 retailers, as follows:

3722 "50-27-21.

3723 (a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund  
3724 until paid to the corporation either directly or through the corporation's authorized  
3725 collection representative. A lottery retailer and officers of a lottery retailer's business shall  
3726 have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall  
3727 be personally liable for all proceeds. Proceeds shall include unsold instant tickets received  
3728 by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable  
3729 sales commissions and credit for lottery prizes sold to or paid to winners by lottery  
3730 retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or  
3731 its authorized collection representative upon demand.

3732 (b) The corporation shall require retailers to place all lottery proceeds due the corporation  
3733 in accounts in institutions insured by the Federal Deposit Insurance Corporation not later  
3734 than the close of the next banking day after the date of their collection by the retailer until

3735 the date they are paid over to the corporation. At the time of such deposit, lottery proceeds  
3736 shall be deemed to be the property of the corporation. The corporation may require a  
3737 retailer to establish a single separate electronic funds transfer account where available for  
3738 the purpose of receiving moneys from ticket or share sales, making payments to the  
3739 corporation, and receiving payments for the corporation. Unless otherwise authorized in  
3740 writing by the corporation, each lottery retailer shall establish a separate bank account for  
3741 lottery proceeds which shall be kept separate and apart from all other funds and assets and  
3742 shall not be commingled with any other funds or assets.

3743 (c) Whenever any person who receives proceeds from the sale of lottery tickets or shares  
3744 in the capacity of a lottery retailer becomes insolvent ~~or dies insolvent~~, the proceeds due  
3745 the corporation from such person ~~or his estate~~ shall have preference over all debts or  
3746 demands.

3747 (d) Whenever any person who receives proceeds from the sale of lottery tickets or shares  
3748 in the capacity of a lottery retailer dies insolvent, the proceeds due the corporation from  
3749 such person's estate shall have preference over all debts or demands except the provision  
3750 of year's support for such person's family."

3751 **SECTION 2-28.**

3752 Said chapter is further amended by revising subsection (c) of Code Section 50-27-102,  
3753 relating to role of corporation, implementation and certification, separation of funds and  
3754 accounting, and disputes, as follows:

3755 "(c) The corporation shall require location owners and location operators to place all bona  
3756 fide coin operated amusement machine proceeds due the corporation in a segregated  
3757 account in institutions insured by the Federal Deposit Insurance Corporation not later than  
3758 the close of the next banking day after the date of their collection by the retailer until the  
3759 date they are paid over to the corporation. At the time of such deposit, bona fide coin  
3760 operated amusement machine proceeds shall be deemed to be the property of the  
3761 corporation. The corporation may require a location owner or location operator to establish  
3762 a single separate electronic funds transfer account where available for the purpose of  
3763 receiving proceeds from Class B machines, making payments to the corporation, and  
3764 receiving payments for the corporation. Unless otherwise authorized in writing by the  
3765 corporation, each bona fide coin operated amusement machine location owner or location  
3766 operator shall establish a separate bank account for bona fide coin operated amusement  
3767 machine proceeds which shall be kept separate and apart from all other funds and assets  
3768 and shall not be commingled with any other funds or assets. Whenever any person who  
3769 receives proceeds from bona fide coin operated amusement machines becomes insolvent  
3770 or, the proceeds due the corporation from such person shall have preference over all debts

3771 or demands. Whenever any person who receives proceeds from bona fide coin operated  
3772 amusement machines dies insolvent, the proceeds due the corporation from such ~~person or~~  
3773 ~~his or her~~ person's estate shall have preference over all debts or demands except the  
3774 provision of year's support for such person's family. If any financial obligation to the  
3775 corporation has not been timely received, the officers, directors, members, partners, or  
3776 shareholders of the location owner or location operator shall be personally liable for the  
3777 moneys owed to the corporation."

3778 **PART III**  
3779 **SECTION 3-1.**

3780 This Act shall become effective on January 1, 2021.

3781 **SECTION 3-2.**  
3782 All laws and parts of laws in conflict with this Act are repealed.