

House Bill 865 (COMMITTEE SUBSTITUTE)

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

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

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

70 SECTION 1-3.

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

73 "53-2-27.

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

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

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

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

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

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

98 **SECTION 1-4.**

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

101 "53-3-1.

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

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

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

111 **SECTION 1-5.**

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

114 "53-3-4.

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

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

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

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

140 **SECTION 1-6.**

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

143 "53-3-5.

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

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

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

158 **SECTION 1-7.**

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

161 "53-3-6.

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

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

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

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

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

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

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

193 **SECTION 1-8.**

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

196 "53-3-7.

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

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

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

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

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

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

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

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

221 **SECTION 1-9.**

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

224 "53-3-8.

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

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

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

239 **SECTION 1-10.**

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

241 "53-3-12.

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

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

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

252 **SECTION 1-11.**

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

255 "53-3-13.

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

262 **SECTION 1-12.**

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

264 "53-3-21.

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

271 **SECTION 1-13.**

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

274 "53-4-4.

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

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

281 53-4-5.

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

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

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

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

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

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

296 **SECTION 1-14.**

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

299 "53-4-20.

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

303 (b) A will shall be attested and subscribed in the presence of the testator by two or more
304 competent witnesses. A witness to a will may attest by mark. Another individual may not

305 subscribe the name of a witness, even in that witness's presence and at that witness's
306 direction.

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

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

311 **SECTION 1-15.**

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

314 "53-4-24.

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

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

325 'STATE OF GEORGIA

326 COUNTY of _____

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

340 had signed the same as witness in the presence of the testator and at the testator's request;
341 that the testator was 14 years of age or over and of sound mind; and that each of the
342 witnesses was then at least 14 years of age.

343 _____
344 Testator

345 _____
346 Witness

347 _____
348 Witness

349 Sworn to and subscribed before me by _____, testator, and sworn
350 to and subscribed before me by _____ and
351 _____, witnesses, this _____ day of _____, _____.

352 (SEAL)

353 (Signed) _____

354 (Official Capacity of Officer)'

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

360 **SECTION 1-16.**

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

363 "53-4-63.

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

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

373 then demonstrative testamentary gifts shall abate in the same manner. If both general and
 374 demonstrative gifts are insufficient, then specific gifts shall abate in the same manner.

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

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

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

383 **SECTION 1-17.**

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

386 "53-4-68.

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

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

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

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

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

396 (3) Entering into a settlement agreement."

397 **SECTION 1-18.**

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

401 **SECTION 1-19.**

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

404 "53-5-2.

405 (a) As used in this Code section, the term 'interested person' shall include, but shall not
 406 necessarily be limited to, any heir of the decedent; legatee, devisee, or beneficiary under

407 the will; creditor of the decedent; purchaser from an heir of the decedent; administrator or
 408 temporary administrator appointed for the estate of the decedent prior to the discovery of
 409 the will; trustee or beneficiary of a testamentary trust established by the will or of a trust
 410 to which the will makes a devise or bequest; and individual making a claim under, or
 411 having standing to caveat to the probate of, an earlier will. An agent, conservator,
 412 guardian, guardian ad litem, or other fiduciary or appropriate representative of such an
 413 interested person may act on such interested person's behalf.

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

421 **SECTION 1-20.**

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

424 "53-5-3.

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

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

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

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

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

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

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

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

440 **SECTION 1-21.**

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

443 "53-5-17.

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

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

451 **SECTION 1-22.**

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

454 "53-5-19.

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

462 **SECTION 1-23.**

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

465 "53-5-20.

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

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

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

478 **SECTION 1-24.**

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

481 "53-5-21.

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

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

SECTION 1-25.

508
509 Said title is further amended by revising Code Section 53-5-22, relating to notice, as follows:

510 "53-5-22.

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

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

520 (1) Each beneficiary:

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

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

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

527 (3) Each trustee.

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

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

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

552 **SECTION 1-26.**

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

555 "53-5-25.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

610 **SECTION 1-27.**

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

613 "53-5-27.

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

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

620 (b) A nonjudicial settlement agreement shall be valid only to the extent it does not violate
621 a material intention of the testator under Article 6 of Chapter 4 of this title and includes
622 terms and conditions that properly could be approved by the court under Code Section
623 53-5-25 or other applicable law.

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

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

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

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

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

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

650 **SECTION 1-28.**

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

653 "53-5-50.

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

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

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

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

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

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

662 (3) Lack of jurisdiction;

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

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

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

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

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

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

678 **SECTION 1-29.**

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

681 "53-5-51.

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

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

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

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

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

704 **SECTION 1-30.**

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

707 "53-5-52.

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

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

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

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

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

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

721 53-5-53.
 722 The provisions of this article shall govern in proceedings in the probate court to vacate, set
 723 aside, or amend an order admitting a will to probate, and the provisions of Code Section
 724 9-11-60 shall not be applicable to such proceedings."

725 **SECTION 1-31.**

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

728 "53-6-14.

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

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

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

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

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

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

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

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

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

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

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

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

754 **SECTION 1-32.**

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

757 "53-6-15.

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

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

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

784 **SECTION 1-33.**

785 Said title is further amended by revising Code Section 53-6-22, relating to notice, as follows:
786 "53-6-22.

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

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

794 **SECTION 1-34.**

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

797 "53-6-30.

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

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

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

810 **SECTION 1-35.**

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

813 "53-6-31.

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

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

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

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

833 **SECTION 1-36.**

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

836 "53-6-32.

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

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

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

849 **SECTION 1-37.**

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

852 "53-6-62.

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

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

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

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

870 **SECTION 1-38.**

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

873 "53-7-1.

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

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

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

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

901 (3) The grant of powers ~~shall only~~ provided for in paragraph (1) of this subsection shall
 902 be ordered only after publication of a citation in the official newspaper of the county in
 903 which the petition is made and only after the time for filing objections has elapsed either
 904 without any objection being timely filed, or if any such objection is timely filed, upon
 905 each such objection being dismissed or withdrawn. The citation shall be sufficient if it
 906 states generally that the petition requests that powers contained in Code Section
 907 53-12-261 be granted."

908 **SECTION 1-39.**

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

912 "53-7-5.

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

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

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

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

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

- 930 (2) By approving, knowingly acquiescing in, or concealing a breach of fiduciary duty
 931 committed by the other personal representative;
- 932 (3) By negligently enabling the other personal representative to commit a breach of
 933 fiduciary duty; or
- 934 (4) By neglecting to take reasonable steps to compel the other personal representative to
 935 redress a breach of fiduciary duty in a case where the personal representative knows or
 936 reasonably should have known of the breach of trust.
- 937 (c) When ~~safe deposit~~ safe-deposit boxes or receptacles are leased or rented to fiduciaries,
 938 including executors, administrators, guardians, trustees, custodians, receivers, and the like,
 939 the fiduciary or fiduciaries, as lessee or renter, may authorize the entering of the box or
 940 receptacle by one or fewer than all of them or by any other person without the presence or
 941 consent of the fiduciary or fiduciaries. Upon receipt of the written authorization, the bank
 942 or lessor may without liability authorize access to the box or receptacle in accordance with
 943 such authorization. Upon cancellation of the authorization, the bank or lessor may require
 944 the presence of all lessees or renters for access."

945 **SECTION 1-40.**

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

949 "53-7-6.

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

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

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

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

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

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

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

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

990 **SECTION 1-41.**

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

993 "53-7-8.

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

SECTION 1-42.

1000
 1001 Said title is further amended by revising Code Section 53-7-11, relating to allowable defenses
 1002 and action originating in lifetime of decedent, as follows:

1003 "53-7-11.

1004 When the cause of action originated in the lifetime of the decedent, a personal
 1005 representative may make any defense or pleading ~~which~~ that the decedent could have made
 1006 if alive."

SECTION 1-43.

1007
 1008 Said title is further amended by revising Code Section 53-7-13, relating to service of process,
 1009 as follows:

1010 "53-7-13.

1011 (a) In any action or proceeding brought pursuant to this article, service of any notice, writ,
 1012 or process shall be made in the manner provided by Chapter 11 of this title if Chapter 11
 1013 of this title is applicable under Code Section 53-11-1. If Chapter 11 of this title is not
 1014 applicable to such action or proceeding under Code Section 53-11-1, such service shall be
 1015 made in the manner provided by Chapter 11 of Title 9 unless Chapter 11 of said title is not
 1016 applicable to such action or proceeding under Code Section 9-11-81.

1017 (b) In all cases where there are two or more personal representatives and one or more of
 1018 them removes beyond the limits of this state, service of any notice, writ, or process upon
 1019 those remaining in the state shall be as effectual and complete, for all purposes whatever,
 1020 as though such service had been made upon all of the personal representatives."

SECTION 1-44.

1021
 1022 Said title is further amended by revising Code Section 53-7-15, relating to applicability of
 1023 provisions relating to sureties on guardians' bonds, as follows:

1024 "53-7-15.

1025 The provisions of law governing the situation in which the surety on a guardian's or
 1026 conservator's bond dies, becomes insolvent, removes beyond the limits of this state, from
 1027 other cause becomes insufficient, or desires to be relieved as surety shall be applicable to
 1028 sureties on personal representatives' bonds."

SECTION 1-45.

1029
 1030 Said title is further amended by revising Code Section 53-7-41, relating to notice for
 1031 creditors to render accounts and failure of creditors to give notice of claims, as follows:

1032 "53-7-41.

1033 (a) The personal representative shall be allowed six months from the date of the
1034 qualification of the first personal representative to serve in which to ascertain the condition
1035 of the estate.

1036 (b) Every personal representative shall, within 60 days from the date of qualification,
1037 publish a notice directed generally to all of the creditors of the estate to notify the personal
1038 representative of their claims and render an account of their demands for payment thereon.

1039 The personal representative's notice shall be published once a week for four weeks in the
1040 official newspaper of the county in which the personal representative qualified. No
1041 particular form shall be required for creditors to notify the personal representative of their
1042 claims, and such notification of a creditor's claim shall be sufficient for purposes of this
1043 Code section if given in writing, providing an account number or other identifying
1044 information or itemization adequate to establish the indebtedness as an obligation of the
1045 estate, and stating the principal balance and any applicable interest or other additional
1046 charges lawfully owed. An invoice or account statement satisfying the requirements of the
1047 preceding sentence of this subsection and generated by a creditor in the ordinary course of
1048 such creditor's business shall constitute sufficient notification to the personal representative
1049 of such creditor's claim if the personal representative actually receives such notification of
1050 the claim or if such creditor files such notification with the probate court having
1051 jurisdiction over the decedent's estate or sends such notification of the claim by electronic
1052 transmission, other form of wire or wireless communication, or by first-class mail or
1053 private carrier to the address of the decedent, the personal representative, or the attorney
1054 representing the personal representative; provided, however, that a notification of a claim
1055 sent by a creditor by electronic communication to an account for which the decedent is the
1056 user shall constitute sufficient notification to the personal representative of such creditor's
1057 claim only if the content of such electronic communication lawfully is disclosed to the
1058 personal representative pursuant to Chapter 13 of this title. As used in this subsection, the
1059 terms 'account', 'content of an electronic communication', 'electronic communication', and
1060 'user' shall have the meaning provided by Code Section 53-13-2.

1061 (c) After receiving sufficient notification of a creditor's claim under subsection (b) of this
1062 Code section, the personal representative may require reasonable additional proof or
1063 accounting from such creditor prior to paying such creditor's claim, but such requirement
1064 by the personal representative shall not affect adversely the timeliness of such creditor's
1065 notification to the personal representative of the creditor's claims.

1066 (d) Creditors who fail to give notice of claims notify the personal representative of their
1067 claims in the manner provided by subsection (b) of this Code section within three months
1068 from the date of publication of the personal representative's last notice shall lose all rights

1069 to an equal participation with creditors of equal priority to whom distribution is made
 1070 before ~~notice~~ sufficient notification of such claims is ~~brought~~ given to the personal
 1071 representative, and they may not hold the personal representative liable for a
 1072 misappropriation of the funds. If, however, there are assets in the hands of the personal
 1073 representative sufficient to pay such debts and if no claims of greater priority are unpaid,
 1074 the assets shall be thus appropriated notwithstanding failure ~~to give notice of such creditors~~
 1075 timely to notify the personal representative of their claims."

1076 SECTION 1-46.

1077 Said title is further amended by revising Code Section 53-7-50, relating to petition by
 1078 personal representative for discharge, citation and publication, hearing, and subsequently
 1079 discovered estate, as follows:

1080 "53-7-50.

1081 (a) A personal representative who has fully performed all duties or who has been allowed
 1082 to resign may petition the probate court for discharge from the office and from all liability.
 1083 The petition shall state that the personal representative has fully administered the estate of
 1084 the decedent and shall set forth the names and addresses of all known heirs of an intestate
 1085 decedent or beneficiaries of a testate decedent, including any persons who succeeded to the
 1086 interest of any heir or beneficiary who died after the decedent died, and shall name which
 1087 of the heirs or beneficiaries is or should be represented by a guardian. The petition shall
 1088 state that the personal representative has paid all claims against the estate or shall
 1089 enumerate which claims of the estate have not been paid and the reason for such
 1090 nonpayment. The petition shall also state that the personal representative has filed all
 1091 necessary inventory and returns or, alternatively, has been relieved of such filings by the
 1092 testator, the heirs or beneficiaries, or the probate court.

1093 (b)(1) Subject to paragraphs (2) and (3) of this subsection, upon the filing of a petition
 1094 for discharge, citation shall issue to all heirs or beneficiaries, as provided in Chapter 11
 1095 of this title, requiring them to file any objections to the discharge, except that in all cases
 1096 a citation shall be published one time in the newspaper in which sheriff's advertisements
 1097 are published in the county in which the petition is filed at least ten days prior to the date
 1098 on or before which any objection is required to be filed. Any creditors whose claims are
 1099 disputed or who have not been paid in full due to insolvency of the estate shall be served
 1100 in accordance with Chapter 11 of this title.

1101 (2) Notwithstanding paragraph (1) of this subsection, it shall not be necessary to ~~notify~~
 1102 serve with notice any heir or beneficiary who has relieved the personal representative of
 1103 all liability or any heir or beneficiary with respect to whom the personal representative
 1104 has been relieved of all further liability in a binding proceeding such as a settlement of

1105 accounts pursuant to Code Sections 53-7-60 through 53-7-63 or an intermediate report
 1106 pursuant to Code Sections 53-7-73 through 53-7-76.

1107 (3) For purposes of this Code section, a beneficiary is a person, including a trust, who
 1108 is designated in a will to take an interest in real or personal property and who (A) has a
 1109 present interest, including but not limited to a vested remainder interest but not including
 1110 a trust beneficiary where there is a trustee who is not also the personal representative
 1111 seeking discharge and (B) whose identity and whereabouts are known or may be
 1112 determined by reasonable diligence. For purposes of this Code section, a trust
 1113 beneficiary may be represented as provided in Code Section 53-12-8.

1114 (c) If any party in interest files objection to the discharge, a hearing shall be held. If as a
 1115 result of the hearing, the probate court is satisfied that the personal representative has
 1116 faithfully and honestly discharged the office, an order shall be entered releasing and
 1117 discharging the personal representative from all liability. If no objections are filed, the
 1118 probate court shall enter the order for discharge without further proceedings or delay. Any
 1119 heir or beneficiary or creditor who is a minor at the time of the discharge and who is not
 1120 represented by a guardian may, within two years of reaching the age of majority,
 1121 commence suit against the personal representative and such discharge shall be no bar to the
 1122 action.

1123 (d) If other property of the estate is discovered after an estate has been settled and the
 1124 personal representative discharged, the probate court, upon petition of any interested person
 1125 and upon such service or notice as it directs, may appoint the same personal representative
 1126 or a successor personal representative to administer the subsequently discovered estate.
 1127 If a new appointment is made, unless the probate court orders otherwise, the provisions of
 1128 this title shall apply as appropriate; but no claim previously barred may be asserted in the
 1129 subsequent administration.

1130 (e) A personal representative may petition the court solely for discharge from office by
 1131 filing the petition described in subsection (a) of this Code section and by ~~giving~~ giving
 1132 notice by publication one time in the official county newspaper and by first-class mail to
 1133 all creditors of the estate whose claims have not been paid informing them of their right to
 1134 file an objection and be heard as described in subsection (c) of this Code section."

1135 **SECTION 1-47.**

1136 Said title is further amended by revising Code Section 53-7-54, relating to breach of
 1137 fiduciary duty, as follows:

1138 "53-7-54.

1139 (a) If a personal representative or temporary administrator commits a breach of fiduciary
1140 duty or threatens to commit a breach of fiduciary duty, a beneficiary of a testate estate or
1141 heir of an intestate estate shall have a cause of action:

1142 (1) To recover damages;

1143 (2) To compel the performance of the personal representative's or temporary
1144 administrator's duties;

1145 (3) To enjoin the commission of a breach of fiduciary duty;

1146 (4) To compel the redress of a breach of fiduciary duty by payment of money or
1147 otherwise;

1148 (5) To appoint another personal representative or temporary administrator to take
1149 possession of the estate property and administer the estate;

1150 (6) To remove the personal representative or temporary administrator; and

1151 (7) To reduce or deny compensation to the personal representative or temporary
1152 administrator.

1153 (b) When estate assets are misapplied and can be traced in the hands of persons affected
1154 with notice of misapplication, a constructive trust shall attach to the assets.

1155 (c) The provision of remedies for breach of fiduciary duty by this Code section does not
1156 prevent resort to any other appropriate remedy provided by statute or common law.

1157 (d) In any action or proceeding brought pursuant to this Code section, service of notice or
1158 process shall be made in the manner provided by Chapter 11 of this title if Chapter 11 of
1159 this title is applicable under Code Section 53-11-1. If Chapter 11 of this title is not
1160 applicable to such action or proceeding under Code Section 53-11-1, such service shall be
1161 made in the manner provided by Chapter 11 of Title 9 unless Chapter 11 of such title is not
1162 applicable to such action or proceeding under Code Section 9-11-81."

1163 **SECTION 1-48.**

1164 Said title is further amended by revising Code Section 53-7-55, relating to revocation of
1165 letters of personal representative or other sanctions, as follows:

1166 "53-7-55.

1167 (a) Upon the petition of any person having an interest in the estate or whenever it appears
1168 to the probate court that good cause may exist to revoke the letters of a personal
1169 representative or impose other sanctions, the court shall cite the personal representative to
1170 answer to the charge. Upon investigation, the court may, in the court's discretion:

1171 (1) Revoke the personal representative's letters;

1172 (2) Require additional security;

- 1173 (3) Require the personal representative to appear and submit to a settlement of accounts
 1174 following the procedure set forth in Article 6 of this chapter, regardless of whether or not
 1175 the personal representative has first resigned or been removed and regardless of whether
 1176 or not a successor fiduciary has been appointed; or
- 1177 (4) Issue such other order as in the court's judgment is appropriate under the
 1178 circumstances of the case.
- 1179 (b) In any proceeding brought pursuant to this Code section, service of notice shall be
 1180 made in the manner provided by Chapter 11 of this title."

1181 **SECTION 1-49.**

1182 Said title is further amended by revising Code Section 53-7-56, relating to resignation, as
 1183 follows:

1184 "53-7-56.

1185 (a) A personal representative may resign:

- 1186 (1) In the manner and under the circumstances described in the will;
- 1187 (2) Upon petition to the probate court, showing that the resignation has been requested
 1188 in writing by all heirs of an intestate estate or all beneficiaries of a testate estate; or
- 1189 (3) Upon petition to the probate court, showing to the satisfaction of the court that:
- 1190 (A) The personal representative is unable to continue serving due to age, illness,
 1191 infirmity, or other good cause;
- 1192 (B) Greater burdens have developed upon the office of personal representative than
 1193 those ~~which were~~ that originally were contemplated or should have been contemplated
 1194 when the personal representative was qualified and the additional burdens would work
 1195 a hardship upon the personal representative;
- 1196 (C) Disagreement exists between one or more of the beneficiaries or heirs and the
 1197 personal representative in respect to the personal representative's management of the
 1198 estate, which disagreement and conflict appear deleterious to the estate;
- 1199 (D) The resignation of the personal representative will result in or permit substantial
 1200 financial benefit to the estate;
- 1201 (E) The resigning personal representative is one of two or more acting personal
 1202 representatives and the other personal representatives will continue in office with no
 1203 adversity to the estate contemplated; or
- 1204 (F) The resignation would not be disadvantageous to the estate.

1205 (b) A personal representative's petition to resign shall be made to the probate court and the
 1206 court shall cause citation to issue and service shall of notice to be made upon all the heirs
 1207 of an intestate estate or the beneficiaries of a testate estate in the manner provided by
 1208 Chapter 11 of this title."

SECTION 1-50.

1209
 1210 Said title is further amended by revising Code Section 53-7-62, relating to appearance before
 1211 court, failure of personal representative to appear, and right to appeal, as follows:

1212 "53-7-62.

1213 (a) Any person interested as an heir or beneficiary of an estate or the probate court may,
 1214 after the expiration of six months from the granting of letters, cite the personal
 1215 representative to appear before the probate court for a settlement of accounts.
 1216 Alternatively, if the personal representative chooses, the personal representative may cite
 1217 all the heirs or beneficiaries and all persons who claim to be creditors whose claims the
 1218 personal representative disputes or cannot pay in full to be present at the settlement of the
 1219 personal representative's accounts by the court. The settlement shall be conclusive upon
 1220 the personal representative and upon all the heirs or beneficiaries and all remaining persons
 1221 who claim to be creditors who receive ~~notice of the hearing~~ service of notice of the
 1222 settlement proceeding in the probate court and the hearing in the manner provided by
 1223 subsection (b) of this Code section or by Chapter 11 of this title. The court may, in the
 1224 court's discretion, give the personal representative additional time to settle the estate.

1225 (b) If the personal representative fails or refuses to appear as cited, the probate court may
 1226 proceed without the appearance of the personal representative. If the personal
 1227 representative has been required to give bond, the surety on such bond shall be bound by
 1228 the settlement if the surety is ~~given~~ served with notice by personal service of the settlement
 1229 proceeding in the probate court. If one or more unsuccessful attempts at service are made
 1230 by the sheriff or the sheriff's deputies upon the personal representative at the last address
 1231 of the personal representative in the court records and it appears to the probate court that
 1232 further attempts are likely to be futile, then service of notice shall be sufficient upon the
 1233 personal ~~administrator~~ representative for purposes of this Code section if the citation is
 1234 mailed by first-class mail to such address.

1235 (c) Any party to the settlement shall have the right to appeal."

SECTION 1-51.

1236
 1237 Said title is further amended by revising Code Section 53-7-63, relating to making and
 1238 enforcing final settlement, as follows:

1239 "53-7-63.

1240 Upon proof of issuance of citation and service of notice pursuant to Code Section 53-7-62,
 1241 the probate court may proceed to make an account, hear evidence upon any contested
 1242 question, and make a final settlement between the personal representative and the heirs or
 1243 beneficiaries. The settlement may be enforced by a judgment, writ of fieri facias,
 1244 execution, or attachment for contempt."

SECTION 1-52.

1245

1246 Said title is further amended by revising Code Section 53-7-68, relating to mailing of return
 1247 to heirs and beneficiaries and relieving personal representative of duty to file return, as
 1248 follows:

1249 "53-7-68.

1250 (a) Upon filing the annual return with the probate court, the personal representative shall
 1251 mail by first-class mail a copy of the return, but not the vouchers, to each heir of an
 1252 intestate estate or each beneficiary of a testate estate. It shall not be necessary to mail a
 1253 copy of the return to any heir or beneficiary who is not sui juris or for the court to appoint
 1254 a guardian for such person. The personal representative shall file a verified statement with
 1255 the probate court stating that all required mailings of the return to heirs or beneficiaries
 1256 have been made.

1257 (b) Any heir or beneficiary may waive individually the right to receive a copy of the
 1258 annual return by a written statement that is delivered to the personal representative. Such
 1259 waiver may be revoked in writing at any time.

1260 (c) By unanimous written consent, the heirs of an intestate estate or the beneficiaries of a
 1261 testate estate may authorize the probate court to relieve the personal representative from
 1262 filing annual returns with them or with the court or both, in the same manner as provided
 1263 in subsection (b) of Code Section 53-7-1 for the granting of powers to a personal
 1264 representative. Any such unanimous written consent, regardless of the date of execution,
 1265 ~~which that~~ relieves the personal representative from filing annual returns with the court
 1266 shall also relieve the personal representative from sending a copy of the return to the heirs
 1267 or beneficiaries."

SECTION 1-52A.

1268

1269 Said title is further amended by adding a new Code section to read as follows:

1270 "53-7-69.1.

1271 (a) Except as provided in subsection (b) of this Code section, a personal representative
 1272 shall furnish to the heirs of an intestate estate or the beneficiaries of a testate estate, at least
 1273 annually, a statement of receipts and disbursements.

1274 (b) Any heir or beneficiary may waive individually the right to receive a statement of
 1275 receipts and disbursements in the same manner as provided in subsection (b) of Code
 1276 Section 53-7-68 for waiving the right to receive a copy of an annual return. The heirs or
 1277 beneficiaries may authorize the probate court to relieve the personal representative from
 1278 furnishing statements of receipts and disbursements in the same manner as provided in
 1279 subsection (c) of Code Section 53-7-68 for relieving the personal representative from filing
 1280 annual returns. A testator may, by will, dispense with the necessity of the personal

1281 representative's furnishing a statement of receipts and disbursements in the same manner
 1282 as provided in Code Section 53-7-69 for dispensing with the necessity of the personal
 1283 representative's filing an annual return."

1284 **SECTION 1-53.**

1285 Said title is further amended by revising Code Section 53-7-71, relating to return of
 1286 nonresident or deceased personal representative, as follows:

1287 "53-7-71.

1288 (a) The return of a nonresident personal representative may be admitted to record upon
 1289 affidavit of the personal representative's surety.

1290 (b) If a personal representative is dead, the personal representative of the estate of the
 1291 deceased personal representative or, if at any time there is no such personal representative
 1292 of the estate of the deceased personal representative, any security surety on the bond of the
 1293 deceased personal representative may make returns of the accounts of ~~the~~ such deceased
 1294 personal representative in the same manner and with the same effect as if the deceased
 1295 personal representative were living."

1296 **SECTION 1-54.**

1297 Said title is further amended by revising Code Section 53-7-74, relating to filing of
 1298 objections to intermediate report, continuation of hearing, and appeal, as follows:

1299 "53-7-74.

1300 At or before the time fixed for hearing, any parties at interest may file objections to the
 1301 personal representative's report, actions, and accounting, in which case the hearing on the
 1302 accounting shall ~~be~~ automatically be continued until a date certain, when, subject to the
 1303 probate court's power to grant continuances, the same shall be heard as other cases pending
 1304 in the probate court with like right of appeal to the superior court; ~~in.~~ In such case, an
 1305 appeal by consent may be taken to the superior court. ~~Such; provided, however, that such~~
 1306 appellate procedures shall not apply to cases provided for by Article 6 of Chapter 9 of Title
 1307 15. The parties at interest who have been served appropriately with notice as provided in
 1308 subsection (c) of Code Section 53-7-73 and who have filed no objections to the report and
 1309 accounting need not be served with notice of an appeal or any other or further proceedings,
 1310 and their consent shall not be required for an appeal to the superior court."

1311 **SECTION 1-55.**

1312 Said title is further amended by revising Code Section 53-7-75, relating to construction of
 1313 will by superior court, as follows:

1314 "53-7-75.

1315 (a) Except as otherwise provided in subsection (b) of this Code section and in
 1316 paragraph (7) of subsection (a) of Code Section 15-9-127, The probate court, upon its own
 1317 motion or upon the motion of any party in interest, whenever it appears that a question of
 1318 construction of a will is involved in the accounting, the probate court, upon its own motion
 1319 or upon the motion of any party in interest, shall enter an order transferring the accounting
 1320 to the superior court for the determination of all such questions, which shall be presented
 1321 to, heard, and determined by the superior court as appeals from the probate court are
 1322 presented, heard, and determined.

1323 (b) A probate court subject to Article 6 of Chapter 9 of Title 15 shall have jurisdiction over
 1324 questions of construction of a will involved in the accounting and may determine all such
 1325 questions without transferring the accounting to the superior court.

1326 (c) The probate court may suspend further proceedings pending a final decision
 1327 determination of the superior court questions of construction.

1328 (d) After a final determination of the questions of construction, the probate court shall
 1329 proceed with the accounting."

1330 **SECTION 1-56.**

1331 Said title is further amended by revising Code Section 53-8-10, relating to authority of
 1332 personal representative and petition by temporary administrator, as follows:

1333 "53-8-10.

1334 (a) Subject to the provisions of this article, a personal representative may sell, rent, lease,
 1335 exchange, or otherwise dispose of property, whether personal, real, or mixed, for the
 1336 purpose of payment of debts, for distribution of the estate, or for any other purpose that
 1337 is in the best interest of the estate; provided, however, that nothing in this article shall be
 1338 construed to limit, enlarge, or change any authority, power, restriction, or privilege
 1339 specifically provided by will or incorporated into a will or otherwise granted to the
 1340 personal representative in accordance with the provisions of subsection (b) of Code
 1341 Section 53-7-1.

1342 (b) A temporary administrator is authorized to petition the probate court for leave to sell
 1343 or otherwise deal with property of the estate following the procedures described in this
 1344 article; provided, ~~however,~~ that good cause is shown."

1345 **SECTION 1-57.**

1346 Said title is further amended by revising Code Section 53-8-11, relating to property that is
 1347 perishable, liable to deteriorate, or expensive to keep, as follows:

1348 "53-8-11.
 1349 Perishable property, property that is liable to deteriorate from keeping, or property that is
 1350 expensive to keep shall be sold as early as practicable and in such manner as the probate
 1351 court shall determine to be in the best interest of the estate, after such service of notice and
 1352 opportunity for hearing, if any, as the probate court shall deem practicable under the
 1353 circumstances."

1354 **SECTION 1-58.**

1355 Said title is further amended by revising Code Section 53-8-13, relating to general
 1356 procedures, as follows:

1357 "53-8-13.

1358 (a) A personal representative desiring to sell, rent, lease, exchange, or otherwise dispose
 1359 of property other than property that is perishable, liable to deteriorate, or expensive to keep
 1360 or listed stocks and bonds shall file a petition with the probate court stating the property
 1361 involved and the interests in such property; ~~the specific purpose of the transaction;~~ the
 1362 proposed price, if any; ~~and all other terms or conditions proposed for the transaction and~~
 1363 ~~a list of~~ listing the names, addresses, and ages or majority status of all heirs ~~in~~ of
 1364 an intestate estate or of all beneficiaries ~~in~~ of a testate estate. In the event full particulars are
 1365 lacking, the petition shall state the reasons for any such omission.

1366 (b) Upon the filing of the petition, ~~notice shall be given to by the personal representative,~~
 1367 the court shall issue a citation and serve notice on the heirs of an intestate estate or the
 1368 affected beneficiaries of a testate estate in accordance with the provisions of Chapter 11 of
 1369 this title.

1370 (c) If no written objection by a person so ~~notified~~ served with notice is filed within the
 1371 appropriate period of time following the service of such notice, as provided by Chapter 11
 1372 of this title, the probate court shall order such sale summarily in the manner and terms
 1373 petitioned. If timely written objection is filed, the court shall hear the matter and grant or
 1374 deny the petition for sale or make such other order as is in the best interest of the estate,
 1375 which may require the sale to be private or at public outcry including confirmation of the
 1376 sale by the court or otherwise. An appeal shall lie to the superior court in the manner,
 1377 under the restrictions, and with the effect provided for appeals from the probate court in
 1378 other cases.

1379 (d) A personal representative shall make a full return to the probate court of every sale,
 1380 specifying the property sold, the purchasers, the amounts received, and the terms of the
 1381 sale.

1382 (e) The recital in the personal representative's deed of compliance with ~~legal~~ the provisions
 1383 of this Code section shall be prima-facie evidence of the facts recited.

1384 (f) Where a personal representative sells real property under the provisions of this Code
 1385 section, liens on such real property may be divested and transferred to the proceeds of the
 1386 sale as a condition of the sale."

1387 **SECTION 1-59.**

1388 Said title is further amended by revising Code Section 53-8-14, relating to warranty and
 1389 personal liability of personal representative, as follows:

1390 "53-8-14.

1391 (a) Regardless of whether a personal representative has the powers provided by
 1392 paragraph (1) of subsection (b) of Code Section 53-12-261 or by the corresponding
 1393 provision of any statute incorporated pursuant to subsection (d) of Code Section 53-12-263
 1394 or otherwise has similar such powers, and regardless of whether such powers are granted
 1395 by a probate court or are enumerated in or incorporated by reference into a will by a
 1396 testator, a ~~A~~ personal representative may not bind the estate by any warranty in any
 1397 conveyance or contract, ~~nor shall a personal representative be personally bound by such~~
 1398 ~~covenant, unless the intention to create a personal liability is distinctly expressed.~~

1399 (b) A personal representative shall not be bound personally by any warranty in any
 1400 conveyance or contract, unless the intention to create a personal liability is distinctly
 1401 expressed."

1402 **SECTION 1-60.**

1403 Said title is further amended by revising Code Section 53-8-15, relating to passage of title
 1404 to heirs or beneficiaries and assent of personal representative, as follows:

1405 "53-8-15.

1406 (a) The title to all property of an estate being in the personal representative for the payment
 1407 of debts and other purposes of administration, title to property in the estate does not pass
 1408 to the heirs or beneficiaries until the personal representative assents thereto in evidence of
 1409 the distribution of the property to them, except as otherwise provided in Code
 1410 Section 53-2-7.

1411 (b) Such assent may be express or may be presumed from the conduct of the personal
 1412 representative. Assent should be evidenced in writing as a deed of conveyance to real
 1413 property, bill of sale conveying tangible personal property, or an assignment or transfer of
 1414 interests in intangible personal property.

1415 (c) In the absence of prior assent, the discharge of a personal representative shall be
 1416 conclusive evidence of the personal representative's assent.

1417 (d) At any time after the lapse of one year from the date of qualification of the personal
 1418 representative, an heir or beneficiary who is entitled to the distribution of property from an
 1419 estate may, personally or by a guardian, ~~cite~~ or conservator:

1420 (1) Cite the personal representative in the probate court to show cause why assent should
 1421 not be given and may compel such assent by an equitable proceeding after service of
 1422 notice in accordance with Chapter 11 of this title; and

1423 (2) Subject to Code Section 23-1-4, compel such assent by an equitable proceeding."

1424 **SECTION 1-61.**

1425 Said title is further amended by revising Code Section 53-9-2, relating to filing and contents
 1426 of petition and publication of notice, as follows:

1427 "53-9-2.

1428 (a) A petition for administration of the estate, for the probate in common form or solemn
 1429 form of the will, for year's support, or for an order that no administration is necessary may
 1430 be filed for the estate of a missing individual whose death may be presumed or established
 1431 in the probate court as provided in Code Section 53-9-1. The petition may be made by
 1432 anyone who would be entitled to file such petition on the estate of the missing individual
 1433 if the missing individual were known to be dead and shall be filed in the county in which
 1434 the estate of the missing individual would be administered were the missing individual
 1435 known to be dead.

1436 (b) In addition to complying with all of the requirements for petitions pertaining to the
 1437 administration of an estate or the probate of a will or year's support or an order that no
 1438 administration is necessary, as appropriate, the petition regarding the estate of a missing
 1439 individual who is believed to be dead shall set forth the circumstances under which the
 1440 individual disappeared, what inquiry has been made as to the individual's whereabouts, and
 1441 such evidence as shall be offered, if necessary, for the purpose of proving death by a
 1442 preponderance of the evidence.

1443 (c) If the court finds the petition to be in compliance with the requirements set forth in
 1444 subsection (b) of this Code section, the court shall issue an order directing that a ~~notice~~
 1445 citation issue and be published once a week for four weeks in the official newspaper of the
 1446 county in which the petition is made giving notice that on a ~~day stated~~ date certain, which
 1447 shall be at least 90 days after the first publication of ~~the notice~~ such citation, evidence will
 1448 be heard by the court concerning the alleged absence of the individual presumed to be dead
 1449 and the circumstances and duration of such absence and requiring the missing individual,
 1450 if alive, or any other person to produce and present to the court evidence that the missing
 1451 individual is still in life. The ~~notice~~ publication of citation required by this subsection may
 1452 be combined with any other service of notice required for the issuance of letters ~~or~~

1453 testamentary or letters of administration, an order for year's support, or an order that no
 1454 administration is necessary. ~~The~~ or directed by the court pursuant to Code Section 53-11-5.
 1455 Such service of notice shall be served made as provided in Chapter 11 of this title on all
 1456 individuals who would be heirs if the missing individual were known to be dead. The order
 1457 may also direct that the petitioner make a search for the missing individual and shall
 1458 specify the manner in which the search is to be conducted to ensure that, in light of the
 1459 circumstances of the particular case, a diligent and reasonable effort has been made to
 1460 locate the missing individual. The order may prescribe any methods of search deemed by
 1461 the judge to be adequate and appropriate, including but not limited to publishing notices
 1462 in newspapers in appropriate locations and making inquiry of governmental agencies and
 1463 of the missing individual's relatives and friends and at the missing individual's last place
 1464 of abode or other appropriate places."

1465 **SECTION 1-62.**

1466 Said title is further amended by revising Code Section 53-10-5, relating to applicability of
 1467 chapter, as follows:

1468 "53-10-5.

1469 This chapter shall not apply in the case of wills, trusts, deeds, contracts of insurance, or any
 1470 other situation where provision is made for distribution of property different from that
 1471 provided in this chapter or where provision is made for a presumption as to survivorship
 1472 ~~which~~ that results in a distribution of property different from that provided in this chapter."

1473 **SECTION 1-63.**

1474 Said title is further amended by revising Code Section 53-11-1, relating to applicability of
 1475 and compliance with provisions, as follows:

1476 "53-11-1.

1477 Except as otherwise specifically provided, the provisions of this chapter shall apply to any
 1478 proceeding in the probate court that arises under Chapters 1 through 10, 12, and 13 of this
 1479 title. Compliance with the provisions of this chapter shall be deemed to be sufficient for
 1480 proceedings in the probate court arising under Chapters 1 through 10, 12, and 13 of this
 1481 title except as otherwise provided in those chapters and in Chapter 11 of Title 9 and
 1482 Chapter 9 of Title 15."

1483 **SECTION 1-64.**

1484 Said title is further amended by revising Code Section 53-11-2, relating to "guardian"
 1485 defined, persons represented, appointment, successors, and guardian named in petitions, as
 1486 follows:

1487 "53-11-2.

1488 (a) As used in this Code section, the term 'guardian' means the guardian ad litem appointed
 1489 by the probate court who may represent a single party or more than one party or a class of
 1490 parties with common or nonadverse interests, including the estates of one or more deceased
 1491 heirs that have no personal representative; provided, however, that the court may determine
 1492 for the purpose of the particular proceeding that the natural guardian, if any, or the
 1493 testamentary guardian, if any, or the duly constituted conservator of the property, if any,
 1494 or the duly constituted guardian of the person, if any, has no conflict of interest and thus
 1495 may represent for the purpose of the proceeding a party who is not sui juris, who is unborn,
 1496 or who is unknown.

1497 (b) When a party to a proceeding in the probate court is not sui juris, is unborn, or is
 1498 unknown, such party shall be represented in the proceeding by a guardian. When a party
 1499 to a proceeding in the probate court is a deceased heir whose estate has no personal
 1500 representative, such deceased heir's estate may be represented in the proceeding by a
 1501 guardian. Service upon or notice to a guardian shall constitute service upon or notice to
 1502 the party represented, and except as provided in subsection (a) of Code Section 15-9-17,
 1503 no additional service upon or notice to such party shall be required. Waivers,
 1504 acknowledgments, consents, answers, objections, or other documents executed by the
 1505 guardian shall, except as otherwise provided in Code Section 15-9-17, be binding upon the
 1506 party represented.

1507 (c) Whenever a guardian ad litem is appointed, the court may limit the appointment or may
 1508 at any time for cause appoint a successor. Unless the appointment is limited by the court,
 1509 the guardian ad litem first appointed with respect to any proceeding involving the
 1510 administration of the estate shall continue to serve with respect to such proceeding on
 1511 behalf of the party represented until a successor is appointed, the party represented
 1512 becomes sui juris, or the court terminates the appointment.

1513 (d)(1) In every petition filed in the probate court, the petitioner shall specify the name
 1514 of each party who requires a guardian and the name and address of any person who is
 1515 acting as guardian of the party. A copy of the letters appointing the guardian shall be
 1516 attached to the petition or the petition shall allege such facts as shall show the authority
 1517 of such guardian to act.

1518 (2) The authority of a guardian to act may be established under paragraph (1) of this
 1519 subsection by showing:

1520 (i)(A) Compliance by a foreign guardian of a minor with the filing requirements of
 1521 subsection (b) of Code Section 29-2-74 or of Code Section 29-2-76;

1522 (ii)(B) Compliance by a foreign conservator of the property of a minor with the filing
 1523 requirements of subsection (b) of Code Section 29-3-115 or of Code Section 29-3-117;

1524 ~~(iii)~~(C) Compliance by a foreign guardian of an adult with the filing requirements of
 1525 subsection (b) of Code Section 29-4-95 or of Code Section 29-4-97;

1526 ~~(iv)~~(D) Compliance by a foreign conservator of the property of an adult with the filing
 1527 requirements of subsection (b) of Code Section 29-5-135 or of Code Section 29-5-137;
 1528 or

1529 ~~(v)~~(E) The registration and recording of a guardianship order or conservatorship order
 1530 from another state under Article 4 of Chapter 11 of Title 29.

1531 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the
 1532 probate court may take judicial notice of the issuance of the letters appointing such
 1533 conservator or guardian, and of the authority of such conservator or guardian to act, in
 1534 the manner provided by Chapter 2 of Title 24."

1535 **SECTION 1-65.**

1536 Said title is further amended by revising Code Section 53-11-3, relating to personal service
 1537 generally, as follows:

1538 "53-11-3.

1539 (a) Except as otherwise prescribed by law or directed by the probate judge, a party in
 1540 interest who is a resident of this state is entitled to personal service of any petition and
 1541 citation for proceedings that are subject to the provisions of this chapter.

1542 (b) Except as otherwise provided in this Code section, personal service shall be made by
 1543 delivery of a copy of the petition and citation by the sheriff or some other lawful officer at
 1544 least ~~ten~~ 30 days before the hearing except that, if waived in writing, ~~the ten-day or if~~
 1545 shortened by the probate court upon good cause shown, the 30 day provision shall not
 1546 apply. An entry of such service shall be made on the original and the copy for the party
 1547 served.

1548 (c) A party who is in the military service may be served by any commissioned officer who
 1549 shall file with the probate court a certificate stating that copies of the petition and citation
 1550 were served in person.

1551 (d) Individuals who are not sui juris shall be served as provided in this chapter or as
 1552 provided in Code Section 15-9-17.

1553 (e) When personal service is required by this Code section, unless otherwise directed by
 1554 the probate court, service may be made by registered or certified mail or statutory overnight
 1555 delivery if the petitioner so requests in the petition. The court shall cause a copy of the
 1556 petition and the citation to be sent by registered or certified mail or statutory overnight
 1557 delivery with return receipt requested and with delivery restricted to addressee only. If the
 1558 return receipt is not signed by the addressee, dated at least ~~ten~~ 30 days before the date
 1559 specified in the citation, except where shortened by the court upon good cause shown, and

1560 received by the court before the date specified in the citation for the filing of objections,
 1561 service shall be made as otherwise required by this Code section."

1562 **SECTION 1-66.**

1563 Said title is further amended by revising Code Section 53-11-4, relating to service where
 1564 person or residence unknown or resides outside state, as follows:

1565 "53-11-4.

1566 (a) Except as otherwise prescribed by law or directed by the probate judge pursuant to
 1567 Code Section 53-11-5, the provisions of this Code section shall apply in cases when a
 1568 person to be served with notice of a proceeding covered by this chapter has a known
 1569 current residence address outside this state, or whose current residence address is unknown.

1570 (b) Unless all such persons have known current residence addresses, the probate court shall
 1571 order service of notice to be perfected by publication of the citation in the newspaper in
 1572 which sheriff's advertisements are published in the county in which the petition is made.
 1573 The citation shall be published once a week for four weeks prior to the date on which
 1574 objections must be filed. The records of the court shall show the persons ~~notified~~ served
 1575 with notice and the character of ~~the~~ such service of notice ~~given~~. The published citation
 1576 shall be directed to the person to be served with such notice.

1577 (c) If the current residence address of such a person is known, the court shall cause service
 1578 ~~shall of notice to~~ be made by mailing by certified or registered mail or statutory overnight
 1579 delivery, return receipt requested, a copy of the petition and the citation.

1580 (d) When service of notice by publication is ordered by the court pursuant to this Code
 1581 section, compliance with the provisions of this Code section relating to a person to be
 1582 ~~notified~~ served with notice who is known but whose current residence address is unknown
 1583 shall be equivalent to personal service of a copy of the petition and citation when the fact
 1584 appears in the records of the court showing the persons ~~notified~~ served with notice and the
 1585 character of ~~the~~ such service of notice ~~given~~. In the case of a known person whose current
 1586 residence address is unknown, that person's name shall appear in the records of the court,
 1587 and such records shall ~~show as to that person's~~ confirm compliance with this Code section
 1588 as to that person. In any case in which service of notice by publication is granted by the
 1589 court, one order for service of notice by publication shall be sufficient and the published
 1590 citation shall be directed as provided in subsection (b) of this Code section."

1591 **SECTION 1-67.**

1592 Said title is further amended by revising Code Section 53-11-5, relating to additional service
 1593 or notice, as follows:

1594 "53-11-5.
 1595 On the motion of any party in interest or on its own motion, the ~~The~~ probate judge court
 1596 may direct any additional service of citation or other notice or extend the time to respond
 1597 with respect to any proceedings covered by this chapter as the judge may determine to be
 1598 proper in the interests of due process and reasonable opportunity for any party or interest
 1599 to be heard."

1600 SECTION 1-68.

1601 Said title is further amended by revising Code Section 53-11-6, relating to waiver or
 1602 acknowledgment of service or notice and consent to granting of relief or entry of order, as
 1603 follows:

1604 "53-11-6.

1605 (a) Service of citation or other notice may be waived or acknowledged before or after the
 1606 filing of the petition. The waiver or acknowledgment shall be in a writing signed by the
 1607 person to be served with notice or some person authorized by the person to be served with
 1608 such notice, shall be sworn to or affirmed before the probate court or a notary public, and
 1609 shall be filed with the probate court.

1610 (b) Except as otherwise prescribed by law, the written consent of a party to the granting
 1611 of any relief or the entry of any order sought in a proceeding covered by this chapter,
 1612 whether executed before or after the filing of the petition, shall constitute a waiver and
 1613 acknowledgment of ~~notice and~~ service of notice of the proceedings, waiver of any other or
 1614 further citation or service of notice, entry of appearance, answer admitting all allegations
 1615 of fact set forth in the petition as true and correct, and consent to the granting of the relief
 1616 or the order sought.

1617 (c) A person in military service, regardless of age, shall be permitted to make any waiver,
 1618 acknowledgment, or consent described in this Code section."

1619 SECTION 1-69.

1620 Said title is further amended by revising Code Section 53-11-9, relating to issuance of
 1621 citation upon filing of petition, contents, and meaning, as follows:

1622 "53-11-9.

1623 (a) Upon the filing of a petition, a citation shall be issued by the court and addressed to the
 1624 persons required to be served ~~or entitled to~~ with notice or who otherwise are to be served
 1625 with notice; provided, however, that if all parties such persons have acknowledged service
 1626 of notice and assented to the petition, no such citation need issue. ~~The~~ Such citation shall
 1627 state that any objection must be made in writing and shall designate the date on or before
 1628 which objections must be filed in the probate court. ~~The~~ Such citation also shall state

1629 whether the hearing will take place on a certain date or be specially scheduled for a later
 1630 date. With respect to all proceedings under this title, ~~the~~ any such citation, ~~if any~~, may state
 1631 that if no objections are filed the petition may be granted without a hearing.

1632 (b) For purposes of this chapter, the words 'citation' and 'notice' shall have the same
 1633 meaning unless the context otherwise requires.

1634 (c) Wherever appearing in this title with respect to proceedings in the probate court
 1635 covered by this chapter:

1636 (1) The term 'service of notice,' 'given notice,' 'due notice,' 'notified,' and similar words
 1637 and phrases of the same import shall mean service of petition and citation in a manner
 1638 provided by applicable law, and shall include acknowledgment or waiver of such service
 1639 and such service upon a guardian ad litem or other appropriate representative, unless the
 1640 context otherwise requires;

1641 (2) The term 'the official county newspaper,' 'the newspaper in which sheriff's
 1642 advertisements are published,' 'the official newspaper of the county in which the petition
 1643 is made,' 'the official newspaper of the county in which the personal representative
 1644 qualified,' and similar words and phrases of the same import shall mean the journal or
 1645 newspaper qualified or designated as the official legal organ of the county of the probate
 1646 court having jurisdiction in such proceeding pursuant to Code Section 9-13-142;

1647 (3) The term 'published,' 'publication,' 'service by publication,' 'notice shall be published,'
 1648 and similar words and phrases of the same import shall mean publication in the official
 1649 legal organ described in paragraph (2) of this subsection unless the context otherwise
 1650 requires;

1651 (4) The term 'beneficiary' shall include devisee and legatee unless the context otherwise
 1652 requires;

1653 (5) Any hearing called for in any proceeding shall be within the court's sound discretion
 1654 and shall not be required if no caveat or objection is timely filed and thereafter
 1655 maintained unless the context otherwise requires; and

1656 (6) Any requirement that no caveat or objection be filed:

1657 (A) Shall be satisfied by the dismissal or withdrawal of all caveats or objections so
 1658 filed unless the context otherwise requires; and

1659 (B) May, in the court's sound discretion, be satisfied by the failure of any party served
 1660 with notice to file a caveat or objection in a timely manner unless the context otherwise
 1661 requires."

1662 **SECTION 1-70.**

1663 Said title is further amended by revising Code Section 53-11-10, relating to date by which
 1664 objections must be filed or on which hearing will be held, as follows:

1665 "53-11-10.

1666 (a) Except as otherwise prescribed by law or as shortened by the judge upon good cause

1667 shown or directed by the judge pursuant to Code Section 53-11-5 with respect to any

1668 particular proceeding, the date on or before which any objection person is required to be

1669 filed file any objection shall be not ~~less~~ fewer than ~~ten~~ 30 days after the date ~~the~~ such

1670 person is personally served with notice. For ~~persons~~ a person within the continental United

1671 States who ~~are~~ is served with notice by registered or certified mail or statutory overnight

1672 delivery, return receipt requested, the date on or before which any objection is required to

1673 be filed by such person shall not be ~~less~~ fewer than ~~13~~ 30 days from the date of mailing of of

1674 such service of notice; provided, however, that if a return receipt from any recipient is

1675 received by the court within ~~13~~ 30 days from ~~the~~ such date of mailing of such service of

1676 notice, the date on or before which any objection is required to be filed by such recipient

1677 shall be ~~ten~~ 30 days from the date of receipt of such service of notice shown on such return

1678 receipt. For a person outside the continental United States who is served with notice by

1679 registered or certified mail or statutory overnight delivery, return receipt requested, the date

1680 on or before which any objection is required to be filed by such person shall not be ~~less~~

1681 fewer than 30 days from the date the service of the citation is mailed by the court;

1682 provided, however, that if the return receipt from any such recipient is received by the court

1683 during such 30 day period the date on or before which any objection is required to be filed

1684 by such recipient shall not be earlier than ~~ten~~ 30 days from the date of such recipient's

1685 receipt of such service of notice shown on such return receipt. For a person served with

1686 notice by publication, the date on or before which any objection is required to be filed shall

1687 be no ~~sooner~~ earlier than the first day of the week following such service by publication of of

1688 citation once each week for four weeks.

1689 (b) Except as otherwise prescribed by law or directed by the judge with respect to any

1690 particular proceeding, the date on which any required hearing shall be held shall be the date

1691 by which any objection is required to be filed or such later date as the probate court may

1692 specify. When the matter is set for hearing on a date that was not specified in the citation,

1693 the probate court shall ~~send~~ serve by first-class mail a notice of the date, time, and place

1694 of the hearing to the petitioner and all parties who have ~~served~~ filed responses to the

1695 petition at the addresses given by them in their pleadings."

1696 SECTION 1-71.

1697 Said title is further amended by revising Code Section 53-12-6, relating to jurisdiction, as

1698 follows:

1699 "53-12-6.

1700 (a) Trusts are peculiarly subjects of equity jurisdiction. Suits by or against a trustee ~~which~~
1701 that sound at law may be filed in a court of law.

1702 (b) Actions concerning the construction; ~~or administration, or internal affairs~~ of a trust ~~or~~
1703 for a court to take any actions authorized by the provisions of this chapter shall be
1704 maintained in superior court, except as otherwise provided in Code Section 15-9-127.

1705 (c) Any action by or against the trustee or to which the trustee is a party may be
1706 maintained in any court having jurisdiction over the parties and the subject matter, except
1707 as otherwise provided in subsection (b) of this Code section or in Code Section 15-9-127."

1708 **SECTION 1-72.**

1709 Said title is further amended by revising Code Section 53-12-7, relating to when trust and
1710 chapter conflict, as follows:

1711 "53-12-7.

1712 (a) The effect of the provisions of this chapter may be varied by the trust instrument
1713 except:

1714 (1) As to any requirements relating to the creation and validity of express trusts as
1715 provided in Article 2 of this chapter;

1716 (2) As to the effect of the rules relating to spendthrift trusts as provided in Article 5 of
1717 this chapter;

1718 (3) As to the power of the beneficiaries to modify a trustee's compensation as provided
1719 in Code Section 53-12-210;

1720 (4) As to the duty of a trustee to administer the trust and to exercise discretionary powers
1721 in good faith as provided in Code Sections 53-12-240 and 53-12-260;

1722 (5) As to the effect of a provision relieving a trustee from liability as provided in Code
1723 Section 53-12-303; ~~and~~

1724 (6) As to the periods of limitation on actions as provided in Code Sections 53-12-45 and
1725 53-12-307; and

1726 (7) As to the effect of the rules relating to trust directors as provided in Article 18 of this
1727 chapter.

1728 (b) Nothing in a trust instrument shall prohibit or limit a court from taking any actions
1729 authorized by the provisions of this chapter."

1730 **SECTION 1-73.**

1731 Said title is further amended by revising Code Section 53-12-8, relating to notice to person
1732 permitted to bind another person, consent on behalf of another person, and representation of
1733 others, as follows:

1734 "53-12-8.

1735 (a) Notice to a person who may represent and bind another person under this Code section
1736 shall have the same effect as if notice were given directly to such other person.

1737 (b) The consent of a person who may represent and bind another person under this Code
1738 section shall be binding on the person represented unless the person represented objects to
1739 such representation before such consent would otherwise have become effective. Consent
1740 shall include, but shall not be limited to, an action related to the granting of powers to a
1741 trustee, modification or termination of a trust, a trustee's duty to report, entry into a binding
1742 nonjudicial settlement agreement, a trustee's compensation, the conversion of a trust to a
1743 unitrust, the appointment, resignation, or removal of a trustee, and other similar actions.

1744 (c) Except as otherwise provided in Code Section 53-12-61, a person who under this Code
1745 section may represent a settlor who lacks capacity may receive notice and give a binding
1746 consent on such settlor's behalf.

1747 (d) A settlor may not represent and bind a beneficiary under this Code section with respect
1748 to the termination or modification of a trust under Article 4 of this chapter.

1749 (e) To the extent there is no conflict of interest between the holder of a power of
1750 appointment and the persons represented with respect to the particular question or dispute,
1751 such holder may represent and bind persons whose interests are as permissible appointees,
1752 as takers in default, or are otherwise subject to the power.

1753 (f) To the extent there is no conflict of interest between the representative and the person
1754 represented or among those being represented with respect to a particular question or
1755 dispute:

1756 (1) A conservator may represent and bind the estate that the conservator controls;

1757 (2) A guardian may represent and bind his or her ward if a conservator of such ward's
1758 estate has not been appointed;

1759 (3) An agent having authority to act with respect to the particular question or dispute
1760 may represent and bind the principal;

1761 (4) A trustee may represent and bind the beneficiaries of the trust;

1762 (5) A trust director may represent and bind the beneficiaries of the trust on a question or
1763 dispute relating to the trust director's powers of direction;

1764 (6) A person designated in the trust instrument to receive notice and provide consent on
1765 behalf of a beneficiary may represent and bind a beneficiary;

1766 (7) A personal representative of a decedent's estate may represent and bind persons
1767 interested in such estate; and

1768 ~~(6)~~(8) An ancestor may represent and bind an ancestor's minor or unborn descendant if
1769 a conservator or guardian for such descendant has not been appointed.

1770 (g) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person
1771 whose identity or location is unknown and not reasonably ascertainable, may be
1772 represented by and bound by another having a substantially identical interest with respect
1773 to a particular question or dispute, but only to the extent there is no conflict of interest
1774 between the representative and the person represented with respect to such particular
1775 question or dispute.

1776 (h) A person who on the date of determination would be eligible to receive distributions
1777 of income or principal from the trust upon the termination of the interests of all persons
1778 then currently eligible to receive distributions of income or principal may represent and
1779 bind contingent successor ~~remainder~~ beneficiaries, ~~including, but not limited to, charitable~~
1780 ~~entities~~, with respect to matters in which there is no conflict of interest between the
1781 representative and the persons represented with respect to a particular question or dispute.

1782 (i) A charitable entity may represent and bind another person and be represented by a
1783 person under this Code section in the same manner as an individual.

1784 (j) The representative of a person represented under this Code section may represent and
1785 bind any other person who could be represented under this Code section by the person
1786 being represented by the representative if the person being represented were living and sui
1787 juris, but only to the extent there is no conflict of interest between the representative and
1788 such other person or among those being represented with respect to a particular question
1789 or dispute.

1790 ~~(i)~~(k) Any person whose interests would be affected may request that the court determine
1791 whether an interest is represented under this Code section or whether the representation is
1792 adequate. If the court determines that an interest is not represented under this Code section,
1793 or that the otherwise available representation might be inadequate, the court may appoint
1794 a representative to receive notice, give consent, and otherwise represent, bind, and act on
1795 behalf of a minor, incapacitated, or unborn individual, or a person whose identity or
1796 location is unknown and not reasonably ascertainable. A representative may be appointed
1797 to represent several persons or interests. A representative may act on behalf of the
1798 individual represented with respect to any matter arising under this chapter, regardless of
1799 whether a judicial proceeding concerning the trust is pending. In making decisions, a
1800 representative may consider the general benefit accruing to the living members of the
1801 individual's family.

1802 (l) The interests of unascertainable charitable beneficiaries of a trust that is not a charitable
1803 trust shall be represented as provided in Code Section 53-12-174 for the beneficiaries under
1804 a charitable trust."

SECTION 1-74.

1805
1806 Said title is further amended by revising Code Section 53-12-9, relating to "interested
1807 persons" defined and binding nonjudicial settlement agreement, as follows:

1808 "53-12-9.

1809 (a) ~~As used in this Code section, the term 'interested persons' means the trustee and all~~
1810 ~~other persons whose consent would be required in order to achieve a binding settlement~~
1811 ~~were the settlement to be approved by the court.~~

1812 ~~(b)~~ Except as provided in subsection ~~(c)~~ (b) of this Code section, the ~~interested persons~~
1813 trustee, any trust director, and all other persons whose interests would be affected may
1814 enter into a binding nonjudicial settlement agreement with respect to any matter involving
1815 a the trust.

1816 ~~(c)~~(b) A nonjudicial settlement agreement:

1817 (1) Shall be valid only to the extent it does not violate a material purpose of the trust and
1818 includes terms and conditions that could be properly approved by the court under this
1819 Code section or other applicable law; and

1820 (2) Shall not be valid with respect to any modification or termination of a ~~noncharitable~~
1821 an irrevocable trust when the settlor's consent would be required in ~~order to achieve a~~
1822 ~~binding settlement, if such settlement were to be approved by a court~~ a proceeding to
1823 approve such modification or termination under subsection (b) of Code Section 53-12-61.

1824 ~~(d)~~(c) The trustee, trust director, and any person whose interests would be affected by ~~Any~~
1825 ~~interested person may request the court approve a nonjudicial settlement agreement~~ may
1826 request that the court approve such agreement, determine whether the representation as
1827 provided in Code Section 53-12-8 was adequate, ~~or~~ determine whether such agreement
1828 violates a material purpose of the trust, determine whether such agreement contains terms
1829 and conditions the court could have properly approved, or make any other similar
1830 determination.

1831 ~~(e)~~(d) A nonjudicial settlement ~~An~~ agreement entered into in accordance with this Code
1832 section shall be final and binding on ~~the interested persons~~ all parties to such agreement,
1833 including individuals not sui juris, unborn beneficiaries, and persons unknown who are
1834 represented by a person who may represent and bind such parties under Code Section
1835 53-12-8, as if ordered by a court with competent jurisdiction over the trust, the trust
1836 property, and the ~~interested persons~~ parties.

1837 (e) Entering into or petitioning a court regarding a nonjudicial settlement agreement under
1838 this Code section shall not constitute a violation of a condition in terrorem under Code
1839 Section 53-12-22."

1840 **SECTION 1-75.**

1841 Said title is further amended by revising Code Section 53-12-22, relating to trust purposes
1842 and conditions in terrorem, as follows:

1843 "53-12-22.

1844 (a) A trust may be created for any lawful purpose.

1845 (b) A condition in terrorem shall be void unless there is a direction in the trust instrument
1846 as to the disposition of the property if the condition in terrorem is violated, in which event
1847 the direction in the trust instrument shall be carried out, except as otherwise provided in
1848 subsection (c) of this Code section.

1849 (c) A condition in terrorem shall not be enforceable against an individual for:

1850 (1) Bringing an action for interpretation or enforcement of a trust instrument;

1851 (2) Bringing an action for an accounting, for removal, or for other relief against a trustee;

1852 or

1853 (3) Entering into a settlement agreement."

1854 **SECTION 1-76.**

1855 Said title is further amended by revising Code Section 53-12-60, relating to reformation to
1856 correct mistakes, as follows:

1857 "53-12-60.

1858 (a) If it is proved by clear and convincing evidence that the trust provisions were affected
1859 by a mistake of fact or law, whether in expression or inducement, the court may reform the
1860 trust provisions, even if unambiguous, to conform the provisions to the settlor's intention.

1861 (b) A petition for reformation may be filed by the trustee, any trust director, or any
1862 beneficiary or, in the case of an unfunded testamentary trust, the personal representative
1863 of the settlor's estate.

1864 (c) Notice of a petition for reformation of the trust shall be given to the trustee, any trust
1865 director, and all qualified beneficiaries."

1866 **SECTION 1-77.**

1867 Said title is further amended by revising Code Section 53-12-61, relating to power to direct
1868 modification, consolidation, division, or termination; petition to modify or terminate
1869 noncharitable irrevocable trust; proceeding to approve proposed modification or termination;
1870 and distribution of trust property under order for termination, as follows:

1871 "53-12-61.

1872 (a) The trust instrument may confer upon a trustee or other person a power to modify;
1873 ~~consolidate, divide~~, or terminate the trust without court approval.

1874 (b) During the settlor's lifetime, the court shall approve a petition to modify or terminate
 1875 ~~a noncharitable~~ an irrevocable trust, even if the modification or termination is inconsistent
 1876 with a material purpose of the trust, if the settlor and all ~~the~~ qualified beneficiaries consent
 1877 to such modification or termination and the trustee has received notice of the proposed
 1878 modification or termination. A settlor's power to consent to such trust's modification or
 1879 termination may be exercised by:

1880 (1) An agent under a power of attorney only to the extent expressly authorized by the
 1881 power of attorney and the ~~terms~~ provisions of the trust;

1882 (2) The settlor's conservator with the approval of the court supervising the
 1883 conservatorship if an agent is not so authorized; or

1884 (3) The settlor's guardian with the approval of the court supervising the guardianship if
 1885 an agent is not so authorized and a conservator has not been appointed.

1886 (c)(1) As used in this subsection, the term 'irrevocable trust' means a trust, no more than
 1887 5 percent of the value of which is owned by charitable organizations.

1888 (2) Except as provided for under paragraph (3) of this subsection, following ~~Following~~
 1889 the settlor's death the court shall approve a petition to:

1890 ~~(1)~~(A) Modify ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries
 1891 consent, the trustee has received notice of the proposed modification, and the court
 1892 concludes that modification is not inconsistent with any material purpose of such trust;
 1893 and

1894 ~~(2)~~(B) Terminate ~~a noncharitable~~ an irrevocable trust if all ~~the~~ qualified beneficiaries
 1895 consent, the trustee has received notice of the proposed termination, and the court
 1896 concludes that continuance of such trust is not necessary to achieve any material
 1897 purpose of such trust.

1898 (3)(A) No modification described under paragraph (2) of this subsection may increase
 1899 the duties or liabilities, decrease the compensation, or otherwise affect the rights and
 1900 obligations of the trustee under the trust instrument without the trustee's consent thereto,
 1901 or upon a hearing with good cause shown.

1902 (B) Nothing in this subsection may be deemed to waive or abrogate the other
 1903 provisions of this chapter, including, but not limited to, any requirement of any other
 1904 provision of this chapter that a petition be granted only for good cause shown.

1905 (d) The court may, upon petition:

1906 (1) Modify the trust if, owing to circumstances not anticipated by the settlor,
 1907 modification would further the purposes of such trust;

1908 (2) Modify the administrative provisions of a trust if continuation of such trust under its
 1909 existing provisions would impair such trust's administration;

- 1910 (3) Modify the trust by the appointment of an additional trustee or special fiduciary if
 1911 such appointment is necessary or helpful to the administration of such trust;
- 1912 (4) Modify the trust to achieve the settlor's tax objectives, with such modification to have
 1913 either prospective or retroactive effect;
- 1914 (5) Order the division of a single trust into two or more trusts or the consolidation of two
 1915 or more trusts, whether created by the same or different trust instruments or by the same
 1916 or different persons, into a single trust if the division or consolidation would be helpful
 1917 to the administration of such trust or trusts; or
- 1918 (6) Terminate a trust and order distribution of the trust property if the:
- 1919 (A) Costs of administration are such that the continuance of such trust, the
 1920 establishment of such trust if it is to be established, or the distribution from a probate
 1921 estate would defeat or substantially impair the purposes of such trust;
- 1922 (B) Purpose of such trust has been fulfilled or become illegal or impossible to fulfill;
 1923 or
- 1924 (C) Continuance of such trust would impair the accomplishment of the purposes of
 1925 such trust.
- 1926 (e) A proceeding to approve a proposed modification or termination under this Code
 1927 section may be commenced by a trustee, trust director, or beneficiary. A proceeding to
 1928 approve a proposed modification or termination under subsection (b) of this Code section
 1929 may be commenced by a trustee, trust director, beneficiary, or settlor. In the case of an
 1930 unfunded testamentary trust, a petition for modification or termination under this Code
 1931 section may be filed by the personal representative of the settlor's estate.
- 1932 (f) ~~No later than 30 days after filing the petition for modification or termination, notice~~
 1933 Notice of a petition to modify or terminate a trust under subsection (d) of this Code section
 1934 shall be given to the settlor, if living, the trustee, any trust director, all ~~the~~ qualified
 1935 beneficiaries, any holder of a power of appointment over the trust property, and such other
 1936 persons as the court may direct.
- 1937 (g) The court may modify or terminate a trust as provided in this Code section regardless
 1938 of whether it contains spendthrift provisions or other similar protective provisions.
- 1939 (h) An order under subsection (d) of this Code section shall conform as nearly as
 1940 practicable to the intention of the settlor.
- 1941 (i) Distribution of the trust property under an order for termination shall be made to or
 1942 among the current beneficiaries and the vested remainder beneficiaries, or, if there are no
 1943 vested remainder beneficiaries, among the current beneficiaries and the contingent
 1944 remainder beneficiaries. The order shall specify the appropriate share, if any, of each
 1945 current and remainder beneficiary who is to share in the proceeds of the trust so as to
 1946 conform as nearly as practicable to the intention of the settlor. The order may direct that

1947 the interest of a minor beneficiary, or any portion thereof, be converted into qualifying
 1948 property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, 'The
 1949 Georgia Transfers to Minors Act.'

1950 (j) For purposes of this chapter, modification of a trust includes the consolidation or
 1951 division of a trust.

1952 (k) Subsections (b) and (c) of this Code section shall not apply to charitable trusts.

1953 (l) Petitioning for or consenting to a modification or termination under this Code section
 1954 shall not constitute a violation of a condition in terrorem under Code Section 53-12-22."

1955 **SECTION 1-78.**

1956 Said title is further amended by revising Code Section 53-12-62, relating to power of trustee
 1957 to invade principal of original trust, as follows:

1958 "53-12-62.

1959 (a) As used in this Code section, the term:

1960 (1) 'Original trust' refers to the trust from which principal is being distributed.

1961 (2) 'Second trust' refers to the trust to which assets are being distributed from the original
 1962 trust, whether a separate trust or an amended version of the original trust.

1963 (b)(1) As used in this subsection, the term 'current beneficiary' means a person who, on
 1964 the date of distribution to the second trust, is a distributee or permissible distributee of
 1965 trust income or principal.

1966 (2) Unless the original trust instrument expressly provides otherwise, a trustee, other than
 1967 a person who contributed property to the trust, with authority to invade the principal of
 1968 the original trust to make distributions to or for the benefit of one or more of the
 1969 beneficiaries may also, independently or with court approval, exercise such authority by
 1970 distributing all or part of the principal of the original trust to a trustee of a second trust;
 1971 provided, however, that the second trust shall not include as a:

1972 (A) Current beneficiary any person that is not a current beneficiary of income or
 1973 principal of the original trust; or

1974 (B) Beneficiary any person that is not a beneficiary of the original trust.

1975 (c) Except as provided in this Code section, a trustee may exercise the power to invade the
 1976 principal of the original trust under subsection (b) of this Code section without the consent
 1977 of the settlor or the beneficiaries of the original trust if such trustee provides written notice
 1978 of such trustee's decision to exercise the power to such settlor, if living, any trust director,
 1979 and those persons then entitled to annual reports from the trustee of the original trust under
 1980 subsection (b) of Code Section 53-12-243, taking into account the provisions of the original
 1981 trust and subsections (c) and (d) of Code Section 53-12-243. Such notice shall:

1982 (1) Describe the manner in which such trustee intends to exercise such power;

1983 (2) Specify the date such trustee proposes to distribute to the second trust; and
1984 (3) Be delivered at least ~~60~~ 30 days before the proposed distribution to the second trust.
1985 (d) The exercise of the power to invade the principal of the original trust under
1986 subsection (b) of this Code section shall be by an instrument in writing, signed and
1987 acknowledged by the trustee, and filed with the records of the original trust.
1988 (e) The exercise of the power to invade the principal of the original trust under
1989 subsection (b) of this Code section shall not extend the permissible period of the rule
1990 against perpetuities that applies to such original trust.
1991 (f) The exercise of the power to invade the principal of the original trust under
1992 subsection (b) of this Code section by a trustee who is also a beneficiary shall be subject
1993 to the limitations of Code Section 53-12-270.
1994 (g) This Code section shall not be construed to abridge the right of any trustee who has a
1995 power of invasion to distribute property in further trust that arises under any other law or
1996 under common law, and nothing in this Code section shall be construed to imply that the
1997 common law does not permit the exercise of a power to invade the principal of a trust in
1998 the manner authorized under subsection (b) of this Code section.
1999 ~~(g)~~(h) A second trust may confer a power of appointment upon a beneficiary of the
2000 original trust to whom or for the benefit of whom the trustee has the power to distribute the
2001 principal of such original trust. For purposes of this subsection, the permissible appointees
2002 of the power of appointment conferred upon a beneficiary may include persons who are not
2003 beneficiaries of such original trust or second trust.
2004 ~~(h)~~(i) If any contribution to the original trust qualified for the annual exclusion under
2005 Section 2503(b) of the federal Internal Revenue Code, as it existed on February 1, 2018,
2006 the marital deduction under Section 2056(a) or 2523(a) of the federal Internal Revenue
2007 Code, as it existed on February 1, 2018, or the charitable deduction under Section 170(a),
2008 642(c), 2055(a), or 2522(a) of the federal Internal Revenue Code, as it existed on
2009 February 1, 2018, is a direct skip qualifying for treatment under Section 2642(c) of the
2010 federal Internal Revenue Code, as it existed on February 1, 2018, or qualified for any other
2011 specific tax benefit that would be lost by the existence of the authorized trustee's authority
2012 under subsection (b) of this Code section for income, gift, estate, or generation-skipping
2013 transfer tax purposes under the federal Internal Revenue Code, then the authorized trustee
2014 shall not have the power to distribute the principal of a trust pursuant to subsection (b) of
2015 this Code section in a manner that would prevent the contribution to the original trust from
2016 qualifying for such exclusion, deduction, or other tax benefit or would reduce such
2017 exclusion, deduction, or other tax benefit that was originally claimed with respect to such
2018 contribution.

2019 ~~(i)~~(j) The exercise of the power to invade the principal of the original trust under
 2020 subsection (b) of this Code section shall be subject to the following limitations:

2021 (1) The second trust need not qualify as a grantor trust for federal income tax purposes,
 2022 even if the original trust does qualify as a grantor trust, except that if such original trust
 2023 qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the
 2024 federal Internal Revenue Code, as it existed on February 1, 2018, such second trust may
 2025 not include or omit a term that, if included in or omitted from the original trust
 2026 instrument, would have prevented such original trust from qualifying under such section;

2027 (2) Unless the settlor objects in a writing delivered to the trustee before the date the
 2028 trustee proposes to distribute from the original trust to the second trust, such ~~The second~~
 2029 trust may qualify as a grantor trust for federal income tax purposes, even if ~~the~~ such
 2030 original trust does not so qualify, except that if such original trust does not so qualify and
 2031 such second trust will so qualify, in whole or in part, with respect to the settlor, such
 2032 second trust shall grant such settlor or another person a power that would cause such
 2033 second trust to cease to be a grantor trust for federal income tax purposes ~~unless such~~
 2034 ~~settlor objects in a writing delivered to the trustee before the date the trustee proposes to~~
 2035 ~~distribute from such original trust to such second trust; and~~

2036 (3) When both the original trust and the second trust qualify as grantor trusts for federal
 2037 income tax purposes and such original trust grants the settlor or another person the power
 2038 to cause such original trust to cease to be a grantor trust, such second trust shall grant an
 2039 equivalent power to the settlor or another person unless such settlor objects in a writing
 2040 delivered to the trustee before the date the trustee proposes to distribute from such
 2041 original trust to such second trust.

2042 ~~(j)~~(k) During any period when the original trust owns stock in a Subchapter 'S' corporation
 2043 as defined in Section 1361(a)(1) of the federal Internal Revenue Code, as it existed on
 2044 February 1, 2018, an authorized trustee shall not exercise a power authorized by
 2045 subsection (b) of this Code section to distribute part or all of the stock of the Subchapter
 2046 'S' corporation to a second trust that is not a permitted shareholder under Section 1361(c)(2)
 2047 of the federal Internal Revenue Code, as it existed on February 1, 2018.

2048 ~~(k)~~(l) A trustee or other person that reasonably relies on the validity of a distribution of
 2049 property of the original trust to the second trust under subsection (b) of this Code section
 2050 or any other law or common law shall not be liable for any action or failure to act as a
 2051 result of such reliance.

2052 ~~(l)~~(m) This Code section shall not create or imply a duty for a trustee or trust director to
 2053 exercise a power conferred by this Code section.

2054 ~~(m)~~(n) If exercise of the power to invade the principal of the original trust would be
 2055 effective under subsection (b) of this Code section except that the second trust in part does

2056 not comply with this Code section, such exercise of the power shall be effective, a
 2057 provision in such second trust that is not permitted under this Code section shall be void
 2058 to the extent necessary to comply with this Code section, and a provision required by this
 2059 Code section to be in such second trust that is not contained in such second trust shall be
 2060 deemed to be included in such second trust to the extent necessary to comply with this
 2061 Code section.

2062 ~~(n)~~(o) The settlor of the original trust shall be deemed to be the settlor of the second trust
 2063 with respect to the portion of the principal of the original trust subject to the exercise of the
 2064 power to invade the principal of such original trust under subsection (b) of this Code
 2065 section.

2066 ~~(o)~~(p) A debt, liability, or other obligation enforceable against property of the original trust
 2067 shall be enforceable to the same extent against the property when held by the second trust
 2068 after exercise of the power to invade the principal of such original trust under
 2069 subsection (b) of this Code section.

2070 (q) This Code section shall apply to any trust the meaning and effect of whose trust
 2071 provisions are determined by the law of this state.

2072 ~~(p)~~(r) This Code section shall not apply to a ~~trust held solely for charitable purposes~~
 2073 trusts."

2074 **SECTION 1-79.**

2075 Said title is further amended by revising Code Section 53-12-81, relating to limitations on
 2076 creditors' rights to discretionary distributions, as follows:

2077 "53-12-81.

2078 A transferee or creditor of a beneficiary shall not compel the trustee or a trust director to
 2079 pay any amount that is payable only in the ~~trustee's~~ discretion of the trustee or trust director
 2080 regardless of whether the discretion is expressed in the form of a standard of distribution,
 2081 including, but not limited to, health, education, maintenance, and support, and whether
 2082 such trustee or trust director is also a beneficiary. This Code section shall not apply to the
 2083 extent of the proportion of trust property attributable to the beneficiary's contribution."

2084 **SECTION 1-80.**

2085 Said title is further amended by revising Code Section 53-12-82, relating to rules for trusts
 2086 and consideration of assets of an inter vivos marital trust following death, as follows:

2087 "53-12-82.

2088 (a)(1) As used in this subsection, the term 'creditor' means:

2089 (A) With respect to subparagraphs (A) and (B) of paragraph (2) of this subsection,
 2090 those creditors of a settlor whose claims against the property of the trust are governed

2091 by this article, including those creditors identified in subsection (d) of Code
 2092 Section 53-12-80; and

2093 (B) With respect to subparagraph (C) of paragraph (2) of this subsection, those
 2094 claimants whose claims against the property of the settlor's estate are governed by
 2095 Article 4 of Chapter 7 of this title, including those claimants identified in Code Section
 2096 53-7-40.

2097 (2) Regardless of whether ~~Whether or not~~ the trust instrument contains a spendthrift
 2098 provision, the following rules shall apply:

2099 ~~(1)~~(A) During the lifetime of the settlor, the property of a revocable trust shall be
 2100 subject to claims of the settlor's creditors;

2101 ~~(2)~~(B) With respect to an irrevocable trust:

2102 ~~(A)~~(i) Creditors or assignees of the settlor may reach the maximum amount that can
 2103 be distributed to or for the settlor's benefit during the settlor's life or that could have
 2104 been distributed to or for the settlor's benefit immediately prior to the settlor's death,
 2105 provided that, if a trust has more than one settlor, the amount the creditors or
 2106 assignees of a particular settlor may reach shall not exceed the settlor's interest in the
 2107 portion of the trust attributable to that settlor's contribution; and

2108 ~~(B)~~(ii) The portion of a trust that can be distributed to or for the settlor's benefit
 2109 pursuant to the power of a trustee, whether arising under the trust ~~agreement~~
 2110 instrument or any other law, to make a distribution to or for the benefit of a settlor for
 2111 the purpose of reimbursing the settlor in an amount equal to any income taxes payable
 2112 on any portion of the trust principal and income that is treated as the settlor's
 2113 individual income under applicable law shall not be considered an amount that can
 2114 be distributed to or for the settlor's benefit during the settlor's life or that could have
 2115 been distributed to or for the settlor's benefit immediately prior to the settlor's death;
 2116 and

2117 ~~(3)~~(C) After the death of a settlor, and subject to the settlor's right to direct the source
 2118 from which liabilities shall be paid, ~~the~~:

2119 (i) The property of a trust that was revocable at the settlor's death or had become
 2120 irrevocable as a result of the settlor's incapacity shall be subject to claims of the
 2121 ~~settlor's~~ creditors of the settlor's estate to the extent the settlor's probate estate is
 2122 inadequate; and

2123 (ii) Payments that would not be subject to the claims of the ~~settlor's~~ creditors of the
 2124 settlor's estate if made by way of beneficiary designation to persons other than the
 2125 settlor's estate shall not be made subject to such claims by virtue of this Code section
 2126 unless otherwise provided in the trust instrument.

2127 (b)(1) As used in this subsection, the term:

- 2128 (A) 'Inter vivos marital trust' means:
- 2129 (i) A trust described in Section 2523(e) of the Internal Revenue Code of 1986, as it
- 2130 existed on February 1, 2018;
- 2131 (ii) A trust for which the election described in Section 2523(f) of the Internal
- 2132 Revenue Code of 1986, as it existed on February 1, 2018, has been made; or
- 2133 (iii) Another trust to the extent such trust's assets are attributable to a trust described
- 2134 in division (i) or (ii) of this subparagraph.
- 2135 (B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an
- 2136 inter vivos marital trust, regardless of whether such spouse is married to the settlor at
- 2137 the time of such spouse's death.
- 2138 (2) Subject to Article 4 of Chapter 2 of Title 18, after the death of the settlor's spouse,
- 2139 the assets of an inter vivos marital trust shall be deemed to have been contributed by the
- 2140 settlor's spouse and not by the settlor."

2141 **SECTION 1-81.**

2142 Said title is further amended by revising Code Section 53-12-170, relating to definition and

2143 charitable purposes, as follows:

2144 "53-12-170.

- 2145 (a) A charitable trust is a trust in which the settlor provides that the trust property shall be
- 2146 used exclusively for charitable purposes.
- 2147 (b) Charitable purposes shall include:
- 2148 (1) The relief of poverty;
- 2149 (2) The advancement of education;
- 2150 (3) The advancement of ethics and religion;
- 2151 (4) The advancement of health;
- 2152 (5) The advancement of science and the arts and humanities;
- 2153 (6) The protection and preservation of the environment;
- 2154 (7) The improvement, maintenance, or repair of cemeteries, other places of disposition
- 2155 of human remains, and memorials;
- 2156 (8) The prevention of cruelty to animals;
- 2157 (9) Governmental purposes; and
- 2158 (10) Other similar subjects having for their object the relief of human suffering or the
- 2159 promotion of human civilization.
- 2160 ~~(c) If the settlor provides for both charitable and noncharitable purposes, the provisions~~
- 2161 ~~relating to the charitable purposes shall be governed by this article."~~

SECTION 1-82.

2162
 2163 Said title is further amended by revising Code Section 53-12-210, relating to compensation
 2164 of trustee, as follows:

2165 "53-12-210.

2166 (a) Trustees shall be compensated in accordance with either the trust instrument or any
 2167 separate written agreement between the trustee and the settlor. After the settlor's death or
 2168 incapacity or while the trust is irrevocable, the trust instrument or the agreement relating
 2169 to such trustee's compensation may be modified as follows:

2170 (1) The trustee and all ~~All~~ qualified beneficiaries may by unanimous consent modify the
 2171 trust instrument or agreement relating to the trustee's compensation without receiving the
 2172 approval of any court; ~~and or~~

2173 (2) By petition pursuant to Code Section 53-12-61.

2174 (b) If there is no provision for trustee compensation in the trust instrument and there is no
 2175 separate written agreement between the trustee and the settlor relating to such trustee's
 2176 compensation, a separate written agreement relating to such trustee's compensation may
 2177 be entered into between such trustee and the qualified beneficiaries as follows:

2178 (1) The trustee and all ~~All~~ qualified beneficiaries may by unanimous consent enter into
 2179 an agreement relating to such trustee's compensation without receiving the approval of
 2180 any court; or

2181 (2) Any qualified beneficiary may petition the court to approve an agreement relating to
 2182 such trustee's compensation. Such petition shall be served upon all qualified
 2183 beneficiaries.

2184 (c) In cases other than those described in subsections (a) and (b) of this Code section, the
 2185 trustee shall be entitled to compensation as follows:

2186 (1) With respect to a corporate trustee, its published fee schedule, provided that such fees
 2187 are reasonable under the circumstances; and

2188 (2) With respect to an individual trustee:

2189 (A) One percent of cash and the fair market value of any other principal asset received
 2190 upon the initial funding of the trust and at such time as additional principal assets are
 2191 received; and

2192 (B) An annual fee calculated in accordance with the following schedule based upon the
 2193 cash and the market value of the other principal assets valued as of the last day of the
 2194 trust accounting year prorated based on the length of service by such trustee during that
 2195 year:

2196	If the cash and market value of the	
2197	other principal assets are:	Annual fee:
2198	\$500,000.00 or less	1.75 percent of the cash and market
2199		value of the other principal assets.
2200	More than \$500,000.00 but less than	\$8,750.00 plus 1.25 percent of the
2201	\$1 million	excess over \$500,000.00.
2202	More than \$1 million but less than	\$15,000.00 plus 1.00 percent of the
2203	\$2 million	excess over \$1 million.
2204	More than \$2 million but less than	\$25,000.00 plus 0.85 percent of the
2205	\$5 million	excess over \$2 million.
2206	More than \$5 million	\$50,500.00 plus 0.50 percent of the
2207		excess over \$5 million."

SECTION 1-83.

2208
 2209 Said title is further amended by revising Code Section 53-12-241, relating to duty of prudent
 2210 administration, as follows:

2211 "53-12-241.

2212 (a) In administering a trust, the trustee shall exercise the judgment and care of a prudent
 2213 person acting in a like capacity and familiar with such matters, considering the purposes,
 2214 provisions, distribution requirements, and other circumstances of the trust.

2215 (b) A trustee who invests and manages trust assets owes a duty to the beneficiaries of the
 2216 trust to comply with the prudent investor rule set forth in Article 16 of this chapter."

SECTION 1-84.

2217
 2218 Said title is further amended by revising Code Section 53-12-243, relating to duty to provide
 2219 reports and accounts, as follows:

2220 "53-12-243.

2221 (a) On reasonable request by any qualified beneficiary, the trustee shall provide the
 2222 qualified beneficiary with a report of information, to the extent relevant to that beneficiary's
 2223 interest, about the assets, liabilities, receipts, and disbursements of the trust, the acts of the
 2224 trustee, and the particulars relating to the administration of such trust, including the trust
 2225 provisions that describe or affect such beneficiary's interest.

2226 (b)(1) A trustee shall account at least annually, at the termination of the trust, and upon
 2227 a change of trustees to each qualified beneficiary of an irrevocable trust to whom income
 2228 is required or authorized in the trustee's discretion to be distributed currently, and to any
 2229 person who may revoke the trust. At the termination of the trust, the trustee shall also

2230 account to each remainder beneficiary. Upon a change of trustees, the trustee shall also
 2231 account to the successor trustee. ~~In full satisfaction of this obligation, the trustee may~~
 2232 ~~deliver the accounting to the guardian or conservator of any qualified beneficiary who is~~
 2233 ~~not sui juris.~~

2234 (2) An accounting furnished to a ~~qualified~~ beneficiary pursuant to paragraph (1) of this
 2235 subsection shall contain a statement of receipts and disbursements of principal and
 2236 income that have occurred during the last complete fiscal year of the trust or since the last
 2237 accounting to that beneficiary and a statement of the assets and liabilities of the trust as
 2238 of the end of the accounting period.

2239 (c) A trustee shall not be required to report information or account to a ~~qualified~~
 2240 beneficiary who has waived in writing the right to a report or accounting and has not
 2241 withdrawn that waiver.

2242 (d) Subsections (a) and (b) of this Code section and the common law duty of the trustee
 2243 to keep the beneficiaries of the trust reasonably informed of the trust and its administration
 2244 shall not apply to the extent that the ~~terms provisions~~ of the trust provide otherwise or the
 2245 settlor of the trust directs otherwise in a writing delivered to the trustee.

2246 (e) Nothing in this Code section shall affect the power of a court to require or excuse an
 2247 accounting."

2248 **SECTION 1-85.**

2249 Said title is further amended by revising Code Section 53-12-261, relating to powers of
 2250 trustee and limitation based on fiduciary duties, as follows:

2251 "53-12-261.

2252 (a) A trustee of an express trust, without court authorization, shall be authorized to
 2253 exercise:

2254 (1) Powers conferred by the trust instrument; and

2255 (2) Except as limited by the trust instrument:

2256 (A) All powers over the trust property that an unmarried competent owner has over
 2257 individually owned property;

2258 (B) Any other powers appropriate to achieve the proper investment, management, and
 2259 distribution of the trust property; and

2260 (C) Any other powers conferred by this chapter.

2261 (b) Without limiting the authority conferred by subsection (a) of this Code section, a
 2262 trustee of an express trust, without court authorization, shall be authorized:

2263 (1) To sell, exchange, grant options upon, partition, or otherwise dispose of any property
 2264 or interest therein which the fiduciary may hold from time to time, at public or private
 2265 sale or otherwise, with or without warranties or representations, upon such terms and

2266 conditions, including credit, and for such consideration as the fiduciary deems advisable
2267 and to transfer and convey the property or interest therein which is at the disposal of the
2268 fiduciary, in fee simple absolute or otherwise, free of all trust. The party dealing with the
2269 fiduciary shall not be under a duty to follow the proceeds or other consideration received;

2270 (2) To invest and reinvest in any property which the fiduciary deems advisable,
2271 including, but not limited to, common or preferred stocks, bonds, debentures, notes,
2272 mortgages, or other securities, in or outside the United States; insurance contracts on the
2273 life of any beneficiary or of any person in whom a beneficiary has an insurable interest
2274 or in annuity contracts for any beneficiary; any real or personal property; investment
2275 trusts, including the securities of or other interests in any open-end or closed-end
2276 management investment company or investment trust registered under the federal
2277 Investment Company Act of 1940, 15 U.S.C. Section 80a-1, et seq.; and participations
2278 in common trust funds;

2279 (3) To the extent and upon such terms and conditions and for such periods of time as the
2280 fiduciary shall deem necessary or advisable, to continue or participate in the operation of
2281 any business or other enterprise, whatever its form or organization, including, but not
2282 limited to, the power:

2283 (A) To effect incorporation, dissolution, or other change in the form of the organization
2284 of the business or enterprise;

2285 (B) To dispose of any interest therein or acquire the interest of others therein;

2286 (C) To contribute or invest additional capital thereto or to lend money thereto in any
2287 such case upon such terms and conditions as the fiduciary shall approve from time to
2288 time; and

2289 (D) To determine whether the liabilities incurred in the conduct of the business are to
2290 be chargeable solely to the part of the property held by the fiduciary set aside for use
2291 in the business or to the property held by the fiduciary as a whole.

2292 In all cases in which the fiduciary is required to file accounts in any court or in any other
2293 public office, it shall not be necessary to itemize receipts, disbursements, and
2294 distributions of property; but it shall be sufficient for the fiduciary to show in the account
2295 a single figure or consolidation of figures, and the fiduciary shall be permitted to account
2296 for money and property received from the business and any payments made to the
2297 business in lump sum without itemization;

2298 (4) To form a corporation or other entity and to transfer, assign, and convey to the
2299 corporation or entity all or any part of the property held by the fiduciary in exchange for
2300 the stock, securities, or obligations of or other interests in any such corporation or entity
2301 and to continue to hold the stock, securities, obligations, and interests;

- 2302 (5) To continue any farming operation and to do any and all things deemed advisable by
 2303 the fiduciary in the management and maintenance of the farm and the production and
 2304 marketing of crops and dairy, poultry, livestock, orchard, and forest products, including,
 2305 but not limited to, the power:
- 2306 (A) To operate the farm with hired labor, tenants, or sharecroppers;
 - 2307 (B) To lease or rent the farm for cash or for a share of the crops;
 - 2308 (C) To purchase or otherwise acquire farm machinery, equipment, and livestock;
 - 2309 (D) To construct, repair, and improve farm buildings of all kinds needed, in the
 2310 fiduciary's judgment, for the operation of the farm;
 - 2311 (E) To make or obtain loans or advances at the prevailing rate or rates of interest for
 2312 farm purposes, such as for production, harvesting, or marketing; or for the construction,
 2313 repair, or improvement of farm buildings; or for the purchase of farm machinery,
 2314 equipment, or livestock;
 - 2315 (F) To employ approved soil conservation practices, in order to conserve, improve, and
 2316 maintain the fertility and productivity of the soil;
 - 2317 (G) To protect, manage, and improve the timber and forest on the farm and to sell the
 2318 timber and forest products when it is to the best interest of the persons to whom the
 2319 fiduciary owes a duty of care;
 - 2320 (H) To ditch, dam, and drain damp or wet fields and areas of the farm when and where
 2321 needed;
 - 2322 (I) To engage in the production of livestock, poultry, or dairy products and to construct
 2323 such fences and buildings and to plant pastures and crops as may be necessary to carry
 2324 on such operations;
 - 2325 (J) To market the products of the farm; and
 - 2326 (K) In general, to employ good husbandry in the farming operation;
- 2327 (6) To manage real property:
- 2328 (A) To improve, manage, protect, and subdivide any real property;
 - 2329 (B) To dedicate, or withdraw from dedication, parks, streets, highways, or alleys;
 - 2330 (C) To terminate any subdivision or part thereof;
 - 2331 (D) To borrow money for the purposes authorized by this paragraph for the periods of
 2332 time and upon the terms and conditions as to rates, maturities, and renewals as the
 2333 fiduciary shall deem advisable and to mortgage or otherwise encumber the property or
 2334 part thereof, whether in possession or reversion;
 - 2335 (E) To lease the property or part thereof, the lease to commence at the present or in the
 2336 future, upon the terms and conditions, including options to renew or purchase, and for
 2337 the period or periods of time as the fiduciary deems advisable even though the period
 2338 or periods may extend beyond the duration of the estate or trust;

- 2339 (F) To make gravel, sand, oil, gas, and other mineral leases, contracts, licenses,
2340 conveyances, or grants of every nature and kind which are lawful in the jurisdiction in
2341 which the property lies;
- 2342 (G) To manage and improve timber and forests on the property, to sell the timber and
2343 forest products, and to make grants, leases, and contracts with respect thereto;
- 2344 (H) To modify, renew, or extend leases;
- 2345 (I) To employ agents to rent and collect rents;
- 2346 (J) To create easements and to release, convey, or assign any right, title, or interest
2347 with respect to any easement on the property or part thereof;
- 2348 (K) To erect, repair, or renovate any building or other improvement on the property
2349 and to remove or demolish any building or other improvement in whole or in part; and
- 2350 (L) To deal with the property and every part thereof in all other ways and for such
2351 other purposes or considerations as it would be lawful for any person owning the same
2352 to deal with such property either in the same or in different ways from those specified
2353 elsewhere in this paragraph;
- 2354 (7) To lease personal property held by the fiduciary or part thereof, the lease to
2355 commence at the present or in the future, upon the terms and conditions, including
2356 options to renew or purchase, and for the period or periods of time as the fiduciary deems
2357 advisable even though the period or periods may extend beyond the duration of the estate
2358 or trust;
- 2359 (8)(A) To pay debts, taxes, assessments, compensation of the fiduciary, and other
2360 expenses incurred in the collection, care, administration, and protection of the property
2361 held by the fiduciary; and
- 2362 (B) To pay from the estate or trust all charges that the fiduciary deems necessary or
2363 appropriate to comply with laws regulating environmental conditions and to remedy or
2364 ameliorate any such conditions which the fiduciary determines adversely affect the
2365 property held by the fiduciary or otherwise are liabilities of the estate or trust and to
2366 apportion all such charges among the several bequests and trusts and the interests of the
2367 beneficiaries in such manner as the fiduciary deems fair, prudent, and equitable under
2368 the circumstances;
- 2369 (9) To receive additional property from any source and to administer the additional
2370 property as a portion of the appropriate estate or trust under the management of the
2371 fiduciary, provided that the fiduciary shall not be required to receive the property without
2372 the fiduciary's consent;
- 2373 (10) In dealing with one or more fiduciaries of the estate or any trust created by the
2374 decedent or the settlor or any spouse or child of the decedent or settlor and irrespective

2375 of whether the fiduciary is a personal representative or trustee of such other estate or
2376 trust:

2377 (A) To sell real or personal property of the estate or trust to such fiduciary or to
2378 exchange such property with such fiduciary upon such terms and conditions as to sale
2379 price, terms of payment, and security as shall seem advisable to the fiduciary; and the
2380 fiduciary shall be under no duty to follow the proceeds of any such sale; and

2381 (B) To borrow money from the estate or trust for such periods of time and upon such
2382 terms and conditions as to rates, maturities, renewals, and securities as the fiduciary
2383 shall deem advisable for the purpose of paying debts of the decedent or settlor, taxes,
2384 the costs of the administration of the estate or trust, and like charges against the estate
2385 or trust or any part thereof or of discharging any other liabilities of the estate or trust
2386 and to mortgage, pledge, or otherwise encumber such portion of the estate or trust as
2387 may be required to secure the loan and to renew existing loans;

2388 (11) To borrow money for such periods of time and upon such terms and conditions as
2389 to rates, maturities, renewals, and security as the fiduciary shall deem advisable for the
2390 purpose of paying debts, taxes, or other charges against the estate or trust or any part
2391 thereof and to mortgage, pledge, or otherwise encumber such portion of the property held
2392 by the fiduciary as may be required to secure the loan and to renew existing loans either
2393 as maker or endorser;

2394 (12) To make loans out of the property held by the fiduciary, including loans to a
2395 beneficiary on terms and conditions the fiduciary considers to be fair and reasonable
2396 under the circumstances, and the fiduciary has a lien on future distributions for repayment
2397 of those loans;

2398 (13) To vote shares of stock or other ownership interests held by the fiduciary, in person
2399 or by proxy, with or without power of substitution;

2400 (14) To hold a security in the name of a nominee or in other form without disclosure of
2401 the fiduciary relationship, so that title to the security may pass by delivery; but the
2402 fiduciary shall be liable for any act of the nominee in connection with the security so
2403 held;

2404 (15) To exercise all options, rights, and privileges to convert stocks, bonds, debentures,
2405 notes, mortgages, or other property into other stocks, bonds, debentures, notes,
2406 mortgages, or other property; to subscribe for other or additional stocks, bonds,
2407 debentures, notes, mortgages, or other property; and to hold the stocks, bonds,
2408 debentures, notes, mortgages, or other property so acquired as investments of the estate
2409 or trust so long as the fiduciary shall deem advisable;

2410 (16) To unite with other owners of property similar to any which may be held at any time
2411 by the fiduciary, in carrying out any plan for the consolidation or merger, dissolution or

2412 liquidation, foreclosure, lease, or sale of the property or the incorporation or
2413 reincorporation, reorganization, or readjustment of the capital or financial structure of any
2414 corporation, company, or association the securities of which may form any portion of an
2415 estate or trust; to become and serve as a member of a shareholders' or bondholders'
2416 protective committee; to deposit securities in accordance with any plan agreed upon; to
2417 pay any assessments, expenses, or sums of money that may be required for the protection
2418 or furtherance of the interest of the beneficiaries to whom the fiduciary owes a duty of
2419 care with reference to any such plan; and to receive as investments of the estate or trust
2420 any securities issued as a result of the execution of such plan;

2421 (17) To adjust the interest rate from time to time on any obligation, whether secured or
2422 unsecured, constituting a part of the estate or trust;

2423 (18) To continue any obligation, whether secured or unsecured, upon and after maturity,
2424 with or without renewal or extension, upon such terms as the fiduciary shall deem
2425 advisable, without regard to the value of the security, if any, at the time of the
2426 continuance;

2427 (19) To foreclose, as an incident to the collection of any bond, note, or other obligation,
2428 any deed to secure debt or any mortgage, deed of trust, or other lien securing the bond,
2429 note, or other obligation and to bid in the property at the foreclosure sale or to acquire the
2430 property by deed from the mortgagor or obligor without foreclosure; and to retain the
2431 property so bid in or taken over without foreclosure;

2432 (20) To carry such insurance coverage as the fiduciary shall deem advisable;

2433 (21) To collect, receive, and issue receipts for rents, issues, profits, and income of the
2434 estate or trust;

2435 (22)(A) To compromise, adjust, mediate, arbitrate, or otherwise deal with and settle
2436 claims involving the fiduciary or the property held by the fiduciary;

2437 (B) To compromise, adjust, mediate, arbitrate, bring or defend actions on, abandon, or
2438 otherwise deal with and settle claims in favor of or against the estate or trust as the
2439 fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the
2440 fiduciary and the beneficiaries to whom the fiduciary owes a duty of care and the
2441 person against or for whom the claim is asserted, in the absence of fraud by such
2442 persons and, in the absence of fraud, bad faith, or gross negligence of the fiduciary,
2443 shall be conclusive between the fiduciary and the beneficiaries to whom the fiduciary
2444 owes a duty of care; and

2445 (C) To compromise all debts, the collection of which are doubtful, belonging to the
2446 estate or trust when such settlements will advance the interests of those represented;

2447 (23) To employ and compensate, out of income or principal or both and in such
2448 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful

2449 to advise or assist in the administration of the estate or trust, including, but not limited to,
 2450 agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental
 2451 agents, realtors, appraisers, and tax specialists; and to do so without liability for any
 2452 neglect, omission, misconduct, or default of ~~the~~ any such agent or representative;
 2453 ~~provided such person was~~ selected and retained with due care on the part of the fiduciary;
 2454 provided, however, that, if an attorney in fact is appointed by a power of attorney to
 2455 which Chapter 6B of Title 10 is applicable under Code Section 10-6B-81, the exercise
 2456 of the fiduciary powers of the trustee by the attorney in fact shall be subject to Code
 2457 Section 10-6B-40;

2458 (24) To acquire, receive, hold, and retain undivided the principal of several trusts created
 2459 by a single trust instrument until division shall become necessary in order to make
 2460 distributions; to hold, manage, invest, reinvest, and account for the several shares or parts
 2461 of shares by appropriate entries in the fiduciary's books of account and to allocate to each
 2462 share or part of share its proportionate part of all receipts and expenses; provided,
 2463 however, that this paragraph shall not defer the vesting in possession of any share or part
 2464 of share of the trust;

2465 (25) To set up proper and reasonable reserves for taxes, assessments, insurance
 2466 premiums, depreciation, obsolescence, amortization, depletion of mineral or timber
 2467 properties, repairs, improvements, and general maintenance of buildings or other property
 2468 out of rents, profits, or other income received;

2469 (26) To value property held by the fiduciary and to distribute such property in cash or
 2470 in kind, or partly in cash and partly in kind, in divided or undivided interests, as the
 2471 fiduciary finds to be most practical and in the best interest of the distributees, the
 2472 fiduciary being able to distribute types of assets differently among the distributees;

2473 (27) To transfer money or other property distributable to a beneficiary who is under
 2474 age 21, an adult for whom a guardian or conservator has been appointed, or an adult who
 2475 the fiduciary reasonably believes is incapacitated by distributing such money or property
 2476 directly to the beneficiary or applying it for the beneficiary's benefit, or by:

2477 (A) Distributing it to the beneficiary's conservator or, if the beneficiary does not have
 2478 a conservator, the beneficiary's guardian;

2479 (B) Distributing it to the beneficiary's custodian under 'The Georgia Transfers to
 2480 Minors Act' or similar state law and, for that purpose, creating a custodianship and
 2481 designating a custodian;

2482 (C) Distributing it to the beneficiary's custodial trustee under the Uniform Custodial
 2483 Trust Act as enacted in another state and, for that purpose, creating a custodial trust; or

2484 (D) Distributing it to any other person, whether or not appointed guardian or
 2485 conservator by any court, who shall, in fact, have the care and custody of the person of
 2486 the beneficiary.

2487 The fiduciary shall not be under any duty to see to the application of the distributions so
 2488 made if the fiduciary exercised due care in the selection of the person, including the
 2489 beneficiary, to whom the payments were made; and the receipt of the person shall be full
 2490 acquittance to the fiduciary;

2491 (28) To determine:

2492 (A) What is principal and what is income of any estate or trust and to allocate or
 2493 apportion receipts and expenses, as between principal and income, in the exercise of the
 2494 fiduciary's discretion and, by way of illustration and not limitation of the fiduciary's
 2495 discretion, to charge premiums on securities purchased at a premium against principal
 2496 or income or partly against each;

2497 (B) Whether to apply stock dividends and other noncash dividends to income or
 2498 principal or to apportion them as the fiduciary shall deem advisable; and

2499 (C) What expenses, costs, and taxes, other than estate, inheritance, and succession
 2500 taxes and other governmental charges, shall be charged against principal or income or
 2501 apportioned between principal and income and in what proportions; and

2502 (29) To make, modify, and execute contracts and other instruments, under seal or
 2503 otherwise, as the fiduciary deems advisable; ~~and~~

2504 ~~(30) To serve without making and filing inventory and appraisement, without filing any~~
 2505 ~~annual or other returns or reports to any court, and without giving bond; but a personal~~
 2506 ~~representative shall furnish to the income beneficiaries, at least annually, a statement of~~
 2507 ~~receipts and disbursements.~~

2508 (c) The exercise of a power shall be subject to the fiduciary duties prescribed by this
 2509 chapter title.

2510 (d) If a testator incorporates by reference into a will or a probate court grants to a personal
 2511 representative any or all of the powers contained in this Code section, then as:

2512 (1) As used in this Code section, the term:

2513 ~~(1)~~(A) 'Beneficiary' includes a distributee of the estate;

2514 ~~(2)~~(B) 'Trust' includes the estate held by the personal representative; and

2515 ~~(3)~~(C) 'Trustee' or 'fiduciary' includes the personal representative; and

2516 (2) A conferral upon a personal representative of the powers provided by paragraph (1)
 2517 of subsection (b) of this Code section shall not authorize such personal representative to
 2518 bind the estate by any warranty in any conveyance or contract in violation of
 2519 subsection (a) of Code Section 53-8-14."

SECTION 1-86.

2520

2521 Said title is further amended by revising Code Section 53-12-263, relating to incorporation
2522 of powers by reference, as follows:

2523 "53-12-263.

2524 (a) By an expressed intention of the testator or settlor contained in a will or in a trust
2525 instrument in writing whereby an express trust is created, any or all of the powers or any
2526 portion thereof enumerated in this part, as they exist at the time of the signing of the will
2527 by the testator or at the time of the signing by the first settlor who signs the trust
2528 instrument, may be, by appropriate reference made thereto, incorporated in the will or other
2529 written instrument with the same effect as though such language were set forth verbatim
2530 in the trust instrument.

2531 (b) At any time after the execution of a revocable trust, the settlor or anyone who is
2532 authorized by the trust instrument to modify the trust may incorporate any or all of the
2533 powers or any portion thereof enumerated in this part, as they exist at the time of the
2534 incorporation.

2535 (c) Incorporation of one or more of the powers contained in this part, by reference to the
2536 appropriate portion of Code Section 53-12-261, shall be in addition to and not in limitation
2537 of the common-law or statutory powers of the fiduciary.

2538 (d)(1) A provision in any will or trust instrument which incorporates powers by citation
2539 to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); former Code
2540 Section 53-12-232 or 53-15-3; or Code Section ~~15-12-261~~ 53-12-261, which were in
2541 effect at the time the trust was created and which was valid under the law in existence at
2542 the time the will was signed by the testator or at the time of the signing by the first settlor
2543 who signed the trust instrument shall be effective notwithstanding the subsequent repeal
2544 or amendment of such statute.

2545 (2) A provision in any will or trust instrument which was signed by the testator or by the
2546 first settlor to sign after June 30, 1991, but before July 1, 1992, and which incorporates
2547 powers by citation to former Code Section 53-15-3 in effect on the date of such signing
2548 shall be deemed to mean and refer to the corresponding powers contained in former Code
2549 Section 53-12-232.

2550 (e) If any or all of the powers contained in this part are incorporated by reference into a
2551 will by a testator, ~~then as used in this part the term~~ or granted to a personal representative
2552 by a probate court, then:

2553 (1) As used in this part, the term:

2554 (A) 'Beneficiary' includes a distributee of the estate.

2555 ~~(2)~~(B) 'Trust' includes the estate held by the personal representative; and

2556 ~~(3)~~(C) 'Trustee' or 'fiduciary' includes the personal representative; and

2557 (2) A conferral upon a personal representative of the powers provided by paragraph (1)
 2558 of subsection (b) of Code Section 53-12-261 or by the corresponding provision of any
 2559 statute incorporated pursuant to subsection (d) of this Code section shall not authorize
 2560 such personal representative to bind the estate by any warranty in any conveyance or
 2561 contract in violation of subsection (a) of Code Section 53-8-14."

2562 **SECTION 1-87.**

2563 Said title is further amended by revising Code Section 53-12-340, relating to investment
 2564 standard, as follows:

2565 "53-12-340.

2566 (a) A trustee shall invest and manage trust assets as a prudent investor would by ~~In~~
 2567 investing and managing trust property, a trustee shall exercise the judgment and care under
 2568 the circumstances then prevailing of a prudent person acting in a like capacity and familiar
 2569 with such matters, considering the purposes, provisions, and distribution requirements, and
 2570 other circumstances of the trust. In satisfying this standard, the trustee shall exercise
 2571 reasonable care, skill, and caution.

2572 (b) A trustee's investment and management decisions respecting individual assets shall be
 2573 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part
 2574 of an overall investment strategy having risk and return objectives reasonably suited to the
 2575 trust.

2576 ~~(b)~~(c) Among the factors that a trustee shall consider in investing and managing trust
 2577 assets are such of the following as are relevant to the trust or its beneficiaries:

- 2578 (1) General economic conditions;
- 2579 (2) The possible effect of inflation or deflation;
- 2580 (3) Anticipated tax consequences;
- 2581 (4) The attributes of the portfolio;
- 2582 (5) The expected return from income and appreciation;
- 2583 (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 2584 (7) An asset's special relationship or special value, if any, to the purposes of the trust or
- 2585 to one or more of the beneficiaries or to the settlor;
- 2586 (8) The anticipated duration of the trust; and
- 2587 (9) Any special circumstances.

2588 (d) In investing and managing trust assets, the trustee may consider the personal values of
 2589 the beneficiaries, including but not limited to a desire to engage in investing strategies that
 2590 align with social, political, religious, philosophical, environmental, governance, or other
 2591 values or beliefs of the beneficiaries.

2592 ~~(e)~~(e) Any determination of liability for investment performance shall consider not only
 2593 the performance of a particular investment but also the performance of the portfolio as a
 2594 whole and as a part of an overall investment strategy having risk and return objectives
 2595 reasonably suited to the trust.

2596 ~~(d)~~(f) A trustee shall make a reasonable effort to verify facts relevant to the investment and
 2597 management of trust assets.

2598 (g) A trustee may invest in any kind of property or type of investment consistent with the
 2599 standards of this article.

2600 (h) A trustee who has special investment skills or expertise shall have a duty to use those
 2601 special skills or expertise. A trustee who is named trustee in reliance upon such trustee's
 2602 representation that such trustee has special investment skills or expertise shall be held liable
 2603 for failure to make use of such degree of skill or expertise.

2604 ~~(e) A trustee may invest in any kind of property or type of investment consistent with the~~
 2605 ~~standards of this article.~~

2606 ~~(f)~~(i) In investing and managing trust assets, a trustee may only incur costs that are
 2607 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills
 2608 of the trustee.

2609 (j) A trustee that is a bank or trust company shall not be precluded from acquiring and
 2610 retaining the securities of or other interests in an investment company or investment trust
 2611 because the bank or trust company or an affiliate provides services to the investment
 2612 company or investment trust as investment adviser, custodian, transfer agent, registrar,
 2613 sponsor, distributor, manager, or otherwise and receives compensation for such services,
 2614 if the costs are otherwise appropriate and reasonable in relation to the assets."

2615 **SECTION 1-88.**

2616 Said title is further amended by revising Code Section 53-12-500, relating to definitions, as
 2617 follows:

2618 "53-12-500.

2619 As used in this article, the term:

2620 (1) 'Directed trustee' means a trustee that is subject to a trust director's power of
 2621 direction.

2622 (2) 'Power of appointment' means a power that enables a person, acting in a nonfiduciary
 2623 capacity, to ~~designate~~;

2624 (A) Designate a recipient of either an ownership interest in or another power of
 2625 appointment over trust property;

2626 (B) Rescind or terminate either an ownership interest in or another power of
 2627 appointment over trust property; and

2628 (C) Determine when a beneficiary shall have the rights granted under Code Sections
 2629 53-12-242 and 53-12-243 or similar rights granted under the governing instrument.

2630 (3) 'Power of direction' means a power over a trust granted to a person by the trust
 2631 instrument to the extent the power is exercisable ~~while the person is not serving in a~~
 2632 capacity other than as a trustee. Such term includes a power over the administration of
 2633 the trust or the investment, management, or distribution of the trust property; a power to
 2634 consent to a trustee's actions, whether through exercise of an affirmative power to consent
 2635 or through nonexercise of a veto power over a trustee's actions, ~~when~~ where a trustee may
 2636 not act without such consent; ~~a power to represent a beneficiary, other than a power under~~
 2637 ~~Code Section 53-12-8; and, except as otherwise provided in the trust instrument, any and~~
 2638 all further powers appropriate to the exercise or nonexercise of such powers held by the
 2639 trust director pursuant to subsection (a) of Code Section 53-12-502. Such term shall
 2640 exclude the powers described in subsection (b) of Code Section 53-12-501.

2641 (4) 'Trust director' means a person that is granted a power of direction by a trust to the
 2642 extent the power is exercisable ~~while the person is not serving in a capacity other than~~
 2643 as a trustee, regardless of ~~how~~ whether the trust instrument refers to such person as a trust
 2644 director and regardless of whether the person is a beneficiary or settlor of the trust."

2645 **SECTION 1-89.**

2646 Said title is further amended by revising Code Section 53-12-501, relating to application of
 2647 article and construction of trust instrument, as follows:

2648 "53-12-501.

2649 (a) This article shall apply when the trust instrument evidences the settlor's intent to
 2650 provide for the office and function of a trust director, regardless of the terms used to
 2651 describe such office and functions.

2652 (b) This article shall not apply to:

2653 (1) A power of appointment;

2654 (2) A power to appoint or remove a trustee or trust director;

2655 (3) A power of a settlor to revoke the trust or amend the trust instrument;

2656 (4) A power of a beneficiary over a trust to the extent the exercise or nonexercise of the
 2657 power affects the beneficial interest of the beneficiary or a person represented by the
 2658 beneficiary under Code Section 53-12-8 with respect to the exercise or nonexercise of the
 2659 power; or

2660 (5) A power over a trust if both:

2661 (A) ~~The terms of the trust provide~~ instrument provides such power is held in a
 2662 nonfiduciary capacity; and

2663 (B) Such power must be held in a nonfiduciary capacity to achieve the settlor's tax
 2664 objectives.

2665 (c) Except as otherwise provided in the trust instrument, for purposes of this Code section
 2666 a power ~~that is both a power of appointment and a power of direction shall be deemed~~
 2667 granted to a person to designate a recipient of an ownership interest in or power over trust
 2668 property that is exercisable in a capacity other than as a trustee is a power of appointment
 2669 and not a power of direction."

2670 SECTION 1-90.

2671 Said title is further amended by revising Code Section 53-12-502, relating to authority,
 2672 procedures, and powers of trust directors, as follows:

2673 "53-12-502.

2674 (a) Except as otherwise provided in ~~Subject to~~ this Code section, a trust instrument may
 2675 grant powers of direction to a trust director.

2676 (b) Except as otherwise provided in the trust instrument, when a trust instrument grants
 2677 powers of direction to a trust director, the trust director shall have any further powers
 2678 appropriate to the exercise or nonexercise of the powers of direction. A trust director shall
 2679 be subject to the same rules as a trustee in a like position and under similar circumstances
 2680 in the exercise or nonexercise of a power of direction regarding:

2681 (1) ~~A payback provision in the trust necessary to comply with the reimbursement~~
 2682 ~~requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.~~
 2683 ~~Section 1396p(d)(4)(A), as it existed on February 1, 2018, and regulations issued~~
 2684 ~~thereunder; and~~

2685 (2) ~~A charitable interest in the trust.~~

2686 (c) A trust director shall have the same power to employ and compensate persons, subject
 2687 to the same limitations, that a trustee has under paragraph (23) of subsection (b) of Code
 2688 Section 53-12-261.

2689 ~~(c)(d)~~ (d) The powers of direction of a trust director who is also a beneficiary shall be subject
 2690 to the limitations of Code Section 53-12-270.

2691 ~~(d)(e)~~ (e) In the case of a power to modify the trust:

2692 (1) The duties or liabilities of a trustee may not be enlarged without the trustee's express
 2693 consent; and

2694 (2) A trustee shall not be liable for failing to act in accordance with a modification or
 2695 termination of a trust of which the trustee had no notice."

SECTION 1-91.

2696

2697 Said title is further amended by revising Code Section 53-12-503, relating to role of directors
2698 and petitioning court for instructions, as follows:

2699 "53-12-503.

2700 (a) Except as otherwise provided in this ~~Code section~~ article, with respect to a power of
2701 direction:

2702 ~~(1) A~~ a trust director shall have the same fiduciary duty and liability in the exercise or
2703 nonexercise of the power of direction as a trustee in a like position and under similar
2704 circumstances; ~~and~~

2705 ~~(2) The trust instrument may vary the trust director's duty or liability to the same extent~~
2706 ~~the trust instrument could vary the duty or liability of a trustee in a like position and~~
2707 ~~under similar circumstances.~~

2708 (b) Where a trust director individually holds a power of direction, the trust director shall
2709 not have the liability of a cotrustee, whether under Code Section 53-12-305 or otherwise,
2710 with respect to a trustee or other trust director. Where a trust director holds a power of
2711 direction jointly with a trustee or other trust director, the trust director shall have the
2712 liability of a cotrustee, whether under Code Section 53-12-305 or otherwise, with respect
2713 to a trustee or other trust director regarding the actions of that trustee or other trust director
2714 that are within the scope of the jointly held power.

2715 (c) Except as otherwise provided in the trust instrument, a trust director shall not have the
2716 duties imposed by Code Section 53-12-242 and subsection (b) of Code Section 53-12-243.

2717 (d) Without limiting the scope of subsection (a) of this Code section:

2718 (1) The trust instrument may vary a trust director's duty or liability to the same extent the
2719 trust instrument could vary the duty or liability of a trustee in a like position and under
2720 similar circumstances;

2721 (2) An action against a trust director for breach of trust must be commenced within the
2722 same limitation period as under Code Section 53-12-307 for an action for breach of trust
2723 against a trustee in a like position and under similar circumstances; and

2724 (3) A report or accounting shall have the same effect on the limitation period for an
2725 action against a trust director for breach of trust that the report or accounting would have
2726 under Code Section 53-12-307 in an action for breach of trust against a trustee in a like
2727 position and under similar circumstances.

2728 ~~(b)~~(e) A trust instrument may make the existence of a trust director's power of direction
2729 contingent upon the occurrence of certain events, including, ~~but not limited to,~~ a request
2730 to the trust director from a beneficiary or other similar party. A trust instrument may also
2731 provide that a trust director's power of direction terminates or is rescinded upon the
2732 occurrence of certain events, including but not limited to the passage of a specified period

2733 of time after a request. For purposes of Code Section 53-12-501, when a power of
 2734 direction is contingent upon a request to a trust director from a person identified in the trust
 2735 instrument, such person shall be deemed to hold a power of appointment.

2736 (e)(f) A trust instrument may empower a trust director to delegate a power of direction to
 2737 a trustee and provide that, upon written acceptance of such delegation by the trustee, the
 2738 trustee shall assume the fiduciary duties and liabilities conferred by the power of direction
 2739 until such time as the trust director or trustee terminates the delegation by written notice.

2740 Except as otherwise provided in the trust instrument, during the time a power of direction
 2741 is delegated in accordance with this subsection, the trust director making such delegation
 2742 shall not be subject to a fiduciary obligation to monitor the trustee's exercise or nonexercise
 2743 of the delegated power.

2744 (d)(g) Subject to subsection (g) (j) of this Code section, a trust director shall:

2745 (1) Keep trustees and other trust directors reasonably informed of the exercise or
 2746 nonexercise of the trust director's power of direction to the extent such exercise or
 2747 nonexercise is relevant to the party's powers and duties regarding the trust; and

2748 (2) Respond to reasonable requests from trustees and other trust directors for information
 2749 to the extent such information is relevant to the party's powers and duties regarding the
 2750 trust.

2751 (e)(h) A trust director acting in reliance on information provided by a trustee or another
 2752 trust director shall not be liable for a breach of trust to the extent the breach resulted from
 2753 such reliance, unless ~~by so acting the trust director engages in willful misconduct~~ acts in
 2754 bad faith.

2755 (f)(i) Except as otherwise provided in the trust instrument, if a trust director is licensed,
 2756 certified, or otherwise authorized or permitted by law other than this article to provide
 2757 health care in the ordinary course of the trust director's business or practice of a profession,
 2758 to the extent the trust director acts in such capacity, the trust director shall have no duty or
 2759 liability under this article.

2760 (g)(j)(1) Except as otherwise provided in the trust instrument, a trust director shall not
 2761 have a duty to:

2762 (A) Monitor a trustee or another trust director regarding matters outside the scope of
 2763 the trust director's powers of direction; or

2764 (B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director
 2765 concerning an instance in which the director might have acted differently ~~than~~ from a
 2766 trustee or another trust director.

2767 (2) By taking one of the actions described in paragraph (1) of this subsection, a trust
 2768 director ~~shall~~ does not assume any of the duties excluded by this subsection.

2769 ~~(h)~~(k) A trust instrument may impose a duty or liability on a trust director in addition to
2770 the duties and liabilities under this Code section.

2771 ~~(i)~~(l) A trust director that has reasonable doubt about a duty imposed by this Code section
2772 may petition the court for instructions.

2773 (m) A trust director shall be subject to the same rules as a trustee in a like position and
2774 under similar circumstances in the exercise or nonexercise of a power of direction
2775 regarding:

2776 (1) A payback provision in the trust necessary to comply with the reimbursement
2777 requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C.
2778 Section 1396p(d)(4)(A), as amended, and regulations issued thereunder; and

2779 (2) A charitable interest in the trust."

2780 **SECTION 1-92.**

2781 Said title is further amended by revising Code Section 53-12-504, relating to directed
2782 trustees, role, trustee's duty as to directed trustee, and petitioning court for instructions, as
2783 follows:

2784 "53-12-504.

2785 (a) Unless compliance by the directed trustee would clearly constitute ~~willful misconduct~~
2786 an act committed in bad faith on the part of the directed trustee, a directed trustee shall take
2787 reasonable action to comply with a trust director's exercise or nonexercise of a power of
2788 direction and shall not be liable for such action. A directed trustee must not comply with
2789 a trust director's exercise or nonexercise of a power of direction to the extent that
2790 compliance by the directed trustee would clearly constitute an act committed in bad faith.

2791 (b) For purposes of subsection (a) Subject to subsection (e) of this Code section, a
2792 direction from a trust director shall be within the scope of the trust director's powers of
2793 direction if the directed trustee shall: believes in good faith that the direction is within the
2794 trust director's powers of direction.

2795 ~~(1) Account at least annually to a trust director as if the trust director were a qualified~~
2796 ~~beneficiary of an irrevocable trust to whom income is required or authorized in the~~
2797 ~~trustee's discretion to be distributed; and~~

2798 ~~(2) Respond to reasonable requests from a trust director for information to the extent~~
2799 ~~such information is relevant to the party's interest in or trust director's powers and duties~~
2800 ~~regarding the trust.~~

2801 (c) Subject to subsection (f) of this Code section, a directed trustee shall:

2802 (1) Except as provided otherwise in the trust instrument, provide information to a trust
2803 director as if the trust director were a beneficiary of an irrevocable trust to whom income
2804 is required or authorized in the trustee's discretion to be distributed; and

2805 (2) Respond to reasonable requests from a trust director for information to the extent
 2806 such information is relevant to the trust director's powers and duties regarding the trust.
 2807 (d) A directed trustee acting in reliance on information provided by a trust director shall
 2808 not be liable for a breach of trust to the extent the breach resulted from such reliance,
 2809 unless by so acting the directed trustee ~~engages in willful misconduct~~ acts in bad faith.
 2810 ~~(d)~~(e) A trustee shall not be liable for a failure to sufficiently report or provide information
 2811 to a beneficiary or other party when such failure is related to the failure of a trust director
 2812 to provide information to the trustee.

2813 ~~(e)~~(f)(1) Except as otherwise provided in the trust instrument, a trustee shall not have a
 2814 duty to:

2815 (A) Monitor, investigate, review, or evaluate a trust director, including a trust director's
 2816 actions or inactions;

2817 (B) Provide any accountings, reports, or other information to a trust director beyond
 2818 that required by subsection ~~(b)~~ (c) of this Code ~~Section~~ section;

2819 (C) Advise a trust director regarding the scope, nature, execution, standard of care,
 2820 potential liability, or other aspects of their status as trust director;

2821 (D) If compliance with a direction from the trust director would constitute an act
 2822 committed in bad faith, take ~~Take~~ any action in response to ~~willful misconduct by the~~
 2823 trust director such direction other than the refusal to comply with such direction;

2824 (E) Attempt to compel a trust director to act or not act;

2825 (F) Petition the court regarding a trust director's action, inaction, capacity, or any
 2826 similar matter; or

2827 (G) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning
 2828 an instance in which the trustee might have acted differently ~~than~~ from the trust
 2829 director.

2830 (2) By taking one of the actions described in paragraph (1) of this ~~Code section~~
 2831 subsection, a directed trustee does not assume any of the duties excluded by this
 2832 subsection.

2833 ~~(f)~~(g) An exercise of a power of direction under which a trust director may release a trustee
 2834 from liability for breach of trust shall not be effective if the release was induced by ~~willful~~
 2835 misconduct in bad faith or by the provision of false or incomplete information by the
 2836 trustee.

2837 ~~(g)~~(h) A trust instrument may impose a duty or liability on a directed trustee in addition
 2838 to the duties and liabilities under this Code section.

2839 (i) A directed trustee that has reasonable doubt about a duty imposed by this Code section
 2840 may petition the court for instructions."

2841 **SECTION 1-93.**

2842 Said title is further amended by revising Code Section 53-12-506, relating to statutory
2843 provisions applicable to trust directors, defenses available to trust directors, and jurisdiction,
2844 as follows:

2845 "53-12-506.

2846 (a) An individual shall be eligible to serve as a trust director regardless of citizenship and
2847 residency. If the trust director is a corporation, partnership, or other entity, it shall be
2848 required to have the power to act as a trustee in Georgia.

2849 ~~(a)(b) The Except as otherwise provided in the trust instrument, the rules applicable to a~~
2850 ~~trustee shall apply to a trust director regarding:~~

2851 (1) ~~Jurisdiction Appointment and vacancies under Code Section 53-12-201~~ 53-12-6;

2852 (2) ~~Appointment and acceptance, compensation, and resignation and removal of trustees~~
2853 ~~under Article 11 of this chapter Acceptance under Code Section 53-12-202;~~

2854 (3) ~~Accounting under Article 12 of this chapter; and Giving of a bond under Code~~
2855 ~~Section 53-12-203;~~

2856 (4) ~~Nonresidents and foreign entities acting as trustees under Article 15 of this chapter.~~
2857 ~~Co-trustees under Code Section 53-12-204;~~

2858 (5) ~~Compensation and reimbursement of expenses under Code Sections 53-12-210~~
2859 ~~through 53-12-214;~~

2860 (6) ~~Resignation under Code Section 53-12-220;~~

2861 (7) ~~Removal under Code Section 53-12-221; and~~

2862 (8) ~~Service under Code Section 53-12-320.~~

2863 ~~(b)(c)~~ (c) In an action against a trust director for breach of trust, the trust director may assert
2864 the same defenses a trustee in a like position and under similar circumstances could assert
2865 in an action for breach of trust against the trustee.

2866 ~~(e)(d)~~ (d) By accepting appointment as a trust director of a trust subject to this article, a trust
2867 director submits to personal jurisdiction of the courts of this state regarding any matter
2868 related to a power or duty of a trust director. This subsection shall not preclude use of
2869 another method to obtain jurisdiction over a trust director.

2870 (e) As used in this Code, where the context requires or permits, the term 'trustee' includes
2871 a trust director."

2872 **SECTION 1-94.**

2873 Said title is further amended by revising Code Section 53-13-2, relating to definitions, as
2874 follows:

2875 "53-13-2.

2876 As used in this chapter, the term:

- 2877 (1) 'Account' means an arrangement under a terms-of-service agreement in which a
 2878 custodian provides goods or services to the user.
- 2879 (2)(A) 'Agent' means an attorney in fact granted authority under a durable or
 2880 nondurable power of attorney, including a person granted authority to act in the place
 2881 of an individual under Chapter 6B of Title 10 and a person serving under a financial
 2882 power of attorney created pursuant to Article 7 of Chapter 6 of Title 10 as it existed on
 2883 June 30, 2017.
- 2884 (B) Such term shall not include a ~~health~~:
- 2885 (i) ~~Health~~ care agent, as defined in paragraph (6) of Code Section 31-32-2, ~~nor a~~
 2886 ~~person~~;
- 2887 (ii) ~~Person~~ serving under a conditional power of attorney, as defined in subsection (a)
 2888 of Code Section 10-6-6, unless the conditional power of attorney has become
 2889 effective at a specified time or on the occurrence of a specified event or contingency;
 2890 ~~or~~
- 2891 (iii) Person to whom power and authority regarding the care and custody of a child,
 2892 including temporary written permission to seek emergency medical treatment or other
 2893 services for a child, has been delegated under Article 4 of Chapter 9 of Title 19.
- 2894 (3) 'Catalogue of electronic communications' means information that identifies each
 2895 person with which a user has had an electronic communication, the time and date of the
 2896 communication, and the electronic address of the person.
- 2897 (4)(A) 'Conservator' means a person appointed:
- 2898 (i) Pursuant to Code Section 7-1-640 or 7-1-643;
- 2899 (ii) By a court to manage the estate of a living individual; or
- 2900 (iii) By a court pursuant to Article 2 of Chapter 9 of this title to manage the estate of
 2901 an individual who is missing or believed to be dead.
- 2902 (B) Such term shall include a guardian of the property appointed prior to July 1, 2005,
 2903 but shall not include a conservator appointed pursuant to paragraph (1) of Code
 2904 Section 9-16-14 unless the order appointing such conservator expressly so states and
 2905 the proceeding pursuant to Chapter 16 of Title 9 in which such conservator is appointed
 2906 concerns specific property consisting of or including digital assets.
- 2907 (5) 'Content of an electronic communication' means information concerning the
 2908 substance or meaning of the communication which:
- 2909 (A) Has been sent or received by a user;
- 2910 (B) Is in electronic storage by a custodian providing an electronic communication
 2911 service to the public or is carried or maintained by a custodian providing a remote
 2912 computing service to the public; and
- 2913 (C) Is not readily accessible to the public.

- 2914 (6) 'Court' means the probate court.
- 2915 (7) 'Custodian' means a person that engages in the transmission of, maintains, processes,
2916 receives, or stores a digital asset or electronic communication of another person.
- 2917 (8) 'Designated recipient' means a person chosen by a user using an online tool to
2918 administer digital assets of the user.
- 2919 (9) 'Digital asset' means an electronic record in which an individual has a right or
2920 interest. Such term shall not include an underlying asset or liability unless the asset or
2921 liability is itself an electronic record.
- 2922 (10) 'Electronic' means relating to technology having electrical, digital, magnetic,
2923 wireless, optical, electromagnetic, or similar capabilities.
- 2924 (11) 'Electronic communication' has the meaning set forth in 18 U.S.C. Section 2510(12),
2925 effective January 1, 2018.
- 2926 (12) 'Electronic communication service' means a custodian that provides to a user the
2927 ability to send or receive an electronic communication.
- 2928 (13) 'Fiduciary' means an original, additional, or successor personal representative,
2929 conservator, agent, or trustee.
- 2930 (14) 'Information' includes data, text, images, videos, sounds, codes, computer programs,
2931 software, and data bases.
- 2932 (15) 'Online tool' means an electronic service provided by a custodian that allows the
2933 user, in an agreement distinct from the terms-of-service agreement between the custodian
2934 and user, to provide directions for disclosure or nondisclosure of digital assets to a third
2935 person.
- 2936 (16) 'Person' means an individual, estate, business or nonprofit entity, corporation,
2937 business trust, trust, partnership, limited liability company, association, unincorporated
2938 organization, joint venture, commercial entity, joint-stock company, public corporation,
2939 government or governmental subdivision, agency, instrumentality, or other legal or
2940 commercial entity.
- 2941 (17) 'Personal representative' means an original, additional, or successor executor,
2942 administrator, county administrator, or administrator with the will annexed, or ~~special~~
2943 ~~administrator~~ a person legally authorized to perform substantially the same functions.
- 2944 (18) 'Power of attorney' means a writing or other record that grants a person authority to
2945 act in the place of an individual, including a conditional power of attorney, as defined in
2946 subsection (a) of Code Section 10-6-6, a power of attorney created pursuant to Chapter
2947 6B of Title 10, and a financial power of attorney created pursuant to Article 7 of Chapter
2948 6 of Title 10 as it existed on June 30, 2017.
- 2949 (19) 'Principal' means an individual who grants authority to a person to act in the place
2950 of such individual in a power of attorney.

2951 (20) 'Protected person' means an individual for whom a conservator has been appointed,
 2952 including a minor, as defined in Code Section 29-1-1, and a ward, as defined in Code
 2953 Section 29-1-1. Such term shall include an individual for whom a petition for the
 2954 appointment of a conservator is pending, including both a proposed ward, as defined in
 2955 Code Section 29-1-1, and a respondent, as defined in Code Section 29-11-2.

2956 (21) 'Record' means information that is inscribed on a tangible medium or that is stored
 2957 in an electronic or other medium and is retrievable in perceivable form.

2958 (22) 'Remote computing service' means a custodian that provides to a user
 2959 computer-processing services or the storage of digital assets by means of an electronic
 2960 communications system, as defined in 18 U.S.C. Section 2510(14), in effect on January
 2961 1, 2018.

2962 (23) 'Terms-of-service agreement' means an agreement that controls the relationship
 2963 between a user and a custodian.

2964 (24) 'Trustee' means a person with legal title to property under a trust instrument, as
 2965 defined in Code Section 53-12-2, that creates a beneficial interest in another. Such term
 2966 shall include a an original, additional, or successor trustee.

2967 (25) 'User' means a person whose digital asset or electronic communication is carried,
 2968 maintained, processed, received, or stored by a custodian or to which a custodian
 2969 provides services.

2970 (26) 'Will' means the legal declaration of an individual's testamentary intention regarding
 2971 such individual's property or other matters. Such term shall include all codicils to such
 2972 legal declaration, a testamentary instrument that only appoints an executor, and an
 2973 instrument that revokes or revises a testamentary instrument."

2974 **SECTION 1-95.**

2975 Said title is further amended in Article 1 of Chapter 13, relating to general provisions, by
 2976 adding a new Code section to read as follows:

2977 "53-13-4.

2978 In any proceeding brought pursuant to this chapter, service of notice shall be made in the
 2979 manner provided by Chapter 11 of this title."

2980 **PART II**

2981 **SECTION 2-1.**

2982 Article 1 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
 2983 general provisions regarding certiorari and appeals to appellate courts generally, is amended
 2984 by revising Code Section 5-6-16, relating to time for appeal by representative where party

2985 dies after trial, effect of entry of appeal and of failure to enter appeal, and when appeal heard,
2986 as follows:

2987 "5-6-16.

2988 (a)(1) When either the plaintiff or the defendant dies after a case has been tried and
2989 before the expiration of the time within which the party, if living, might have entered an
2990 appeal, and no appeal has been entered, the legal personal representative of the estate of
2991 the deceased party may enter an appeal within 30 days from the time ~~he~~ such personal
2992 representative qualifies.

2993 (2) If an appeal is not entered within the time prescribed in this Code section, judgment
2994 may be entered and execution issued as though the deceased party were alive, without
2995 making the personal representative a party.

2996 (3) For purposes of this subsection, the term 'personal representative' includes temporary
2997 administrators, subject to the provisions of Code Sections 53-6-31 and 53-7-4.

2998 (b)(1) When an appeal is entered as provided in paragraph (1) of subsection (a) of this
2999 Code section, it shall not be necessary to revive the action, but it shall be revived by the
3000 appealing party giving notice to the adverse party within 30 days from the time of
3001 entering the appeal.

3002 (2) When a defendant appeals as provided in paragraph (1) of subsection (a) of this Code
3003 section, the case shall stand for trial on the appeal docket at the first term of the court
3004 after the expiration of six months from the qualification of the ~~executor or administrator~~
3005 personal representative.

3006 (c) Nothing in paragraph (2) of subsection (a) or paragraph (2) of subsection (b) of this
3007 Code section shall impair the operation or limit the applicability of Article 4 of Chapter 7
3008 of Title 53. ~~In case of the death or removal from office of any executor or administrator~~
3009 ~~pending such proceedings as are prescribed in subsections (a) and (b) of this Code section,~~
3010 ~~an administrator de bonis non may be made a party in like manner."~~

3011

SECTION 2-2.

3012 Part 12 of Article 1 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated,
3013 relating to deposits of deceased depositors, is amended by revising Code Section 7-1-239,
3014 relating to definitions, payment of large deposits of deceased intestate depositors, affidavit
3015 for disbursement, and form for affidavit, as follows:

3016 "7-1-239.

3017 (a) As used in this Code section, the term:

3018 (1) 'Affidavit of the provider' means the form provided for in subsection (e) of this Code
3019 section.

3020 (2) 'Financial institution' means any federally chartered financial institution or state
 3021 chartered financial institution, including, but not limited to, those chartered by states
 3022 other than the State of Georgia whose deposits are federally insured.

3023 (b) Except as provided in subsection (c) of this Code section and in Article 8 of this
 3024 chapter, whenever any person dies intestate having a deposit of not more than \$15,000.00
 3025 in a financial institution, such financial institution, upon receipt of an affidavit, shall be
 3026 authorized to pay the proceeds of such deposit directly to the following individuals:

- 3027 (1) To the surviving spouse;
 3028 (2) If no surviving spouse, to the children pro rata;
 3029 (3) If no children or surviving spouse, to the father and mother pro rata; or
 3030 (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

3031 Such affidavit shall state that such individuals qualify as the proper relation to the decedent
 3032 as specified in this subsection, there is no known will of the decedent, and that there are no
 3033 other known corresponding claimant or claimants to such deposit.

3034 (c) Except as provided in Article 8 of this chapter and in paragraph (2) of subsection (d)
 3035 of this Code section, if no application for the deposit is made by any person named in
 3036 subsection (b) of this Code section within 45 days from the death of the intestate depositor,
 3037 the financial institution shall be authorized to apply not more than \$15,000.00 of the
 3038 deposit of such deceased depositor in payment of the funeral expenses and expenses of the
 3039 last illness of such deceased depositor upon the receipt of itemized statements of such
 3040 expenses and the affidavit of the providers of such services that the itemized statements are
 3041 true and correct and have not been paid. Except as otherwise provided in paragraph (2) of
 3042 subsection (d) of this Code section, the ~~The~~ financial institution applying such deposit as
 3043 authorized in this subsection shall pay such expenses in the order received after the death
 3044 of the depositor.

3045 (d)(1) Except as otherwise provided in paragraph (2) of this subsection, payments made
 3046 in compliance with ~~Payments pursuant to~~ this Code section shall operate as a complete
 3047 acquittal and discharge to the financial institution of liability from any suit, claim, or
 3048 demand of whatever nature by any heir, distributee, or creditor of the decedent, or any
 3049 other person. Except as otherwise provided in paragraph (2) of this subsection, the ~~The~~
 3050 financial institution may rely on a properly executed affidavit in disbursing the funds in
 3051 accordance with this Code section.

3052 (2) The protection provided by paragraph (1) of this subsection does not extend to
 3053 payments made after a financial institution has received:

- 3054 (A) Written notification sent by any party able to request present payment or the legal
 3055 representative of any such party to the registered agent of the financial institution by
 3056 registered or certified mail, return receipt requested, or statutory overnight delivery.

3057 expressly stating that payments in accordance with the provisions of this Code section
 3058 should not be permitted; or

3059 (B) Service of notice upon the registered agent of the financial institution of a
 3060 proceeding in the probate court in the estate of the deceased depositor in accordance
 3061 with Chapter 11 of Title 53;

3062 provided, however, that, if any payment is made pursuant to subsection (c) of this Code
 3063 section by an employee of the financial institution who is without actual knowledge of
 3064 such written notification or service of notice within three business days following the
 3065 receipt of such written notification or service of notice by the registered agent of the
 3066 financial institution, the protection provided by paragraph (1) of this subsection shall
 3067 extend to any such payment.

3068 (3) A financial institution that is asked to apply funds from the deposit of a deceased
 3069 depositor as requested in an affidavit of the provider may, without risk of incurring any
 3070 penalty or liability to any person:

3071 (A) Rely on the written notification or service of notice provided by paragraph (2) of
 3072 this subsection in refusing to disburse the funds as requested in the affidavit of the
 3073 provider;

3074 (B) Delay disbursement of the funds as requested in the affidavit of the provider for up
 3075 to 180 days following the receipt by the financial institution of such affidavit of the
 3076 provider; and

3077 (C) Decline to disburse funds from the deposit of the deceased depositor except as
 3078 authorized or directed in an order entered by the probate court having jurisdiction over
 3079 the estate of the deceased depositor.

3080 (4) Notwithstanding subsection (c) of this Code section or any other provision of this
 3081 subsection, payments made pursuant to an order entered by the probate court having
 3082 jurisdiction over the estate of a deceased depositor shall operate as a complete acquittal
 3083 and discharge to the financial institution of liability from any suit, claim, or demand of
 3084 whatever nature by any heir, distributee, or creditor of the decedent, or any other person.

3085 (5) Nothing in this subsection shall relieve the liability of or limit the availability of any
 3086 remedies against any provider of services giving an affidavit in the form provided for in
 3087 subsection (e) of this Code section for any violation of Code Section 16-10-71, Code
 3088 Section 53-6-2, or other applicable law.

3089 (e) A document substantially in the following form shall be used as the affidavit of the
 3090 providers of services of funeral expenses and expenses of last illnesses of deceased
 3091 depositors:

3092 'State of Georgia County of _____

3093 STATUTORY AFFIDAVIT FORM

3094 _____ from _____ attests that

3095 (Claimant) (Facility)

3096 _____ died on the _____ day of _____, 20____.

3097 (Deceased)

3098 On information and belief, the Deceased has funds on deposit with _____.

3099 (Financial Institution)

3100 Under O.C.G.A. § 7-1-239, such Financial Institution is authorized to pay the proceeds
3101 of the Deceased's deposits, but in no event more than \$15,000.00, directly to the
3102 following persons identified, collectively, as potential recipient(s):

- 3103 1. To the surviving spouse;
- 3104 2. If no surviving spouse, to the children pro rata;
- 3105 3. If no children or surviving spouse, to the father and mother pro rata; or
- 3106 4. If none of the above, then to the brothers and sisters of the decedent pro rata.

3107 Except as provided for by Article 8 in Title 7 of the O.C.G.A., if no request for the
3108 Deceased's deposit is made by a potential recipient(s) within 45 days from the
3109 Deceased's death, the Financial Institution is authorized to release up to \$15,000.00 for
3110 funeral expenses and expenses of the last illness of the Deceased upon the receipt of
3111 itemized statements of such expenses and this executed attestation.

3112 The Claimant attests that there is no known will of the Deceased and there is no known
3113 potential recipient of the Deceased's deposits. The Claimant also attests that funeral
3114 expenses or expenses of the last illness in the amount of \$ _____ were incurred
3115 related to the Deceased and that true and correct copies of the itemized receipts fully
3116 supporting such amount are attached to this affidavit. Finally, the Claimant further
3117 attests that such expenses have not been paid as of the date of execution of this
3118 affidavit.

3119 Pursuant to O.C.G.A. § 7-1-239, the Claimant submits this form in order to receive
3120 payment in the amount of \$ _____ (shall not exceed \$15,000.00) for outstanding
3121 funeral expenses or expenses of the last illness of the Deceased.

3122 _____
3123 Signature of Claimant

3124 Sworn and subscribed
 3125 before me this _____ day
 3126 of _____, 20__.

3127 _____

3128 Notary public (SEAL)

3129 My commission expires: _____."

3130 **SECTION 2-3.**

3131 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in
 3132 Article 2 of Chapter 3, relating to specific periods of limitation, by adding a new Code
 3133 section to read as follows:

3134 "9-3-36.

3135 (a) In no event may claims against a decedent's estate that arose before the death of the
 3136 decedent be brought more than six years after the date of the decedent's death.

3137 (b) Subsection (a) of this Code section is intended to create a six-year statute of ultimate
 3138 repose and abrogation.

3139 (c) Nothing in this Code section shall be construed as placing a limitation on the time for
 3140 commencing a proceeding to enforce any mortgage, pledge, or other lien upon property
 3141 owned by a decedent immediately prior to the decedent's death."

3142 **SECTION 2-4.**

3143 Said title is further amended by revising Code Section 9-4-4, relating to declaratory
 3144 judgments involving fiduciaries, as follows:

3145 "9-4-4.

3146 (a) Without limiting the generality of Code Sections 9-4-2, 9-4-3, 9-4-5 through 9-4-7, and
 3147 9-4-9, any person interested as or through an executor, administrator, personal
 3148 representative, trustee, guardian, conservator, or other fiduciary, creditor, devisee,
 3149 distributee, legatee, heir, ~~ward~~, next of kin, or beneficiary in the administration of a trust
 3150 or of the estate of a decedent, a minor, a ward, an incapacitated person, a protected person,
 3151 a person who is otherwise legally incompetent because of mental illness or intellectual
 3152 disability, or an insolvent may have a declaration of rights or legal relations in respect
 3153 thereto and a declaratory judgment:

3154 (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, beneficiaries,
 3155 or others;

3156 (2) To direct the executor, administrator, ~~or~~ trustee, or other fiduciary to do or abstain
 3157 from doing any particular act in his or her fiduciary capacity; ~~or~~

3158 (3) To determine title to property in which the trust or estate has or is purported to have
 3159 an ownership or other interest; or
 3160 (4) To determine any question arising in the administration of the estate or trust,
 3161 including questions of construction of wills, trust instruments, and other writings.
 3162 (b) The enumeration in subsection (a) of this Code section does not limit or restrict the
 3163 exercise of general powers conferred in Code Section 9-4-2 in any proceeding covered
 3164 thereby where declaratory relief is sought in which a judgment or decree will terminate the
 3165 controversy or remove the uncertainty."

3166 SECTION 2-5.

3167 Said title is further amended by revising Code Section 9-4-5, relating to filing and service,
 3168 time of trial, and drawing of jury, as follows:

3169 "9-4-5.

3170 A proceeding instituted under this chapter shall be filed and served as are other cases in the
 3171 superior courts of this state or in the Georgia State-wide Business Court ~~and; provided,~~
 3172 however, that a proceeding instituted in the probate court pursuant to paragraph (1) of
 3173 subsection (a) of Code Section 15-9-127 shall be filed and served in the manner provided
 3174 for proceedings in the probate courts of this state in Chapter 11 of Title 53. A proceeding
 3175 instituted under this chapter may be tried at any time designated by the court not earlier
 3176 than 20 days after the service thereof, unless the parties consent in writing to an earlier
 3177 trial. If there is an issue of fact ~~which that~~ requires a submission to a jury, the jury may be
 3178 drawn, summoned, and sworn either in regular term or specially for the pending case."

3179 SECTION 2-6.

3180 Said title is further amended by adding a new Code section to read as follows:

3181 "9-4-11.

3182 A declaratory judgment proceeding brought in the probate court as provided in paragraph
 3183 (1) of subsection (a) of Code Section 15-9-127 may be combined with or made a part of
 3184 any proceeding properly before the probate court to the greatest extent that does not
 3185 infringe the exclusive jurisdiction of the superior courts pursuant to Article VI, Section IV,
 3186 Paragraph I of the Constitution of this state."

3187 SECTION 2-7.

3188 Said title is further amended by revising Code Section 9-11-17, relating to real party in
 3189 interest and capacity, as follows:

3190 "9-11-17.

3191 (a) **Real party in interest.** Every action shall be prosecuted in the name of the real party
 3192 in interest. A personal representative, a temporary ~~An executor,~~ an administrator, a
 3193 guardian, a conservator, a bailee, a trustee of an express trust, a party with whom or in
 3194 whose name a contract has been made for the benefit of another, or a party authorized by
 3195 statute may bring an action in his or her own name without joining with him or her the
 3196 party for whose benefit the action is brought; and, when a statute so provides, an action for
 3197 the use or benefit of another shall be brought in the name of the state. No action shall be
 3198 dismissed on the ground that it is not prosecuted in the name of the real party in interest
 3199 until a reasonable time has been allowed after objection for ratification of commencement
 3200 of the action by, or joinder or substitution of, the real party in interest; and such ratification,
 3201 joinder, or substitution shall have the same effect as if the action had been commenced in
 3202 the name of the real party in interest.

3203 (b) **Capacity to bring or defend an action.** The capacity of an individual, including one
 3204 acting in a representative capacity, to bring or defend an action shall be determined by the
 3205 law of this state. The capacity of a corporation to bring or defend an action shall be
 3206 determined by the law under which it was organized, unless a statute of this state provides
 3207 to the contrary.

3208 (c) **Infants or incompetent persons.** Whenever an infant or incompetent person has a
 3209 representative, such as a general guardian, committee, conservator, or other like fiduciary,
 3210 the representative may bring or defend an action on behalf of the infant or incompetent
 3211 person. If an infant or incompetent person does not have a duly appointed representative,
 3212 he or she may bring an action by his or her next friend or by a guardian ad litem. The court
 3213 shall appoint a guardian ad litem for an infant or incompetent person not otherwise
 3214 represented in an action or shall make such other order as it deems proper for the protection
 3215 of the infant or incompetent person. No next friend shall be permitted to receive the
 3216 proceeds of any personal action, in the name and on behalf of an infant, or incompetent
 3217 person, until such next friend shall have entered into a sufficient bond to the Governor, for
 3218 the use of the infant and the infant's representatives, conditioned well and fully to account
 3219 for and concerning such trust, which bond may be sued on by order of the court in the name
 3220 of the Governor and for the use of the infant. Such bond shall be approved by the court in
 3221 which the action is commenced and such approval shall be filed in such clerk's office."

3222 **SECTION 2-8.**

3223 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 3224 amended by revising Code Section 10-6-4, relating to fiduciaries may convey by attorneys
 3225 in fact, as follows:

H. B. 865 (SUB)

3226 "10-6-4.

3227 (a) Personal representatives ~~Executors, administrators,~~ guardians, conservators, and
3228 trustees are authorized to sell and convey property by attorneys in fact in all cases where
3229 they may lawfully sell and convey in person.

3230 (b) When a personal representative, guardian, conservator, or trustee exercising the
3231 authority conferred by subsection (a) of this Code section appoints an attorney in fact by
3232 a power of attorney to which Chapter 6B of this title is applicable under Code Section
3233 10-6B-81, the exercise of fiduciary powers by such attorney in fact under such power of
3234 attorney shall be subject to Code Section 10-6B-40."

3235 **SECTION 2-9.**

3236 Said title is further amended by revising Code Section 10-6-86, relating to liability of person
3237 signing instrument as agent or fiduciary, as follows:

3238 "10-6-86.

3239 An instrument signed by one as agent, trustee, conservator, guardian, administrator,
3240 executor, or the like, without more, shall be the individual undertaking of the maker, except
3241 as otherwise provided ~~with regard to negotiable instruments~~ by Code Section Sections
3242 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
3243 words being generally words of description."

3244 **SECTION 2-10.**

3245 Said title is further amended by revising Code Section 10-6B-3, relating to applicability, as
3246 follows:

3247 "10-6B-3.

3248 This chapter shall apply to all powers of attorney except:

3249 (1) A power to the extent it is coupled with an interest in the subject of the power,
3250 including a power given to or for the benefit of a creditor in connection with a credit
3251 transaction;

3252 (2) A power to make health care decisions;

3253 (3) Any delegation of voting, management, or similar rights related to the governance
3254 or administration of an entity or business, including, but not limited to, delegation of
3255 voting or management rights;

3256 (4) A power created on a form prescribed by a government or governmental subdivision,
3257 agency, or instrumentality for a governmental purpose;

3258 (5) A power created by a person other than an individual;

3259 ~~(5)(6) A power that grants Powers of attorney that only grant~~ authority with respect to
3260 a single transaction or series of related transactions involving real estate;

3261 (7) A power given to a transfer agent to facilitate a specific transfer or disposition of one
 3262 or more identified stocks, bonds, or other financial instruments;
 3263 (8) A power authorizing a financial institution or broker-dealer, or an employee of the
 3264 financial institution or broker-dealer, to act as agent for the account owner in executing
 3265 trades or transfers of cash, securities, commodities, or other financial assets in the regular
 3266 course of business;
 3267 ~~(6)~~(9) Powers of attorney provided for under Titles 19 and 33; and
 3268 ~~(7)~~(10) As set forth in Code Section 10-6B-81."

3269 SECTION 2-11.

3270 Said title is further amended by revising subparagraph (a)(1)(A) of, and adding a new
 3271 subsection to, Code Section 10-6B-40, relating to agent authority that requires specific grant
 3272 and granting of general authority, as follows:

3273 "(A) Create, fund, amend, revoke, or terminate an inter vivos trust, other than a trust
 3274 created pursuant to 42 U.S.C. Section 1396p(d)(4)(B) as provided under subsection (d)
 3275 of Code Section 53-12-20;"

3276 "(i) An agent under a power of attorney that does not expressly grant the agent the
 3277 authority to do an act described in paragraph (1) of subsection (a) of this Code section or
 3278 Code Sections 10-6B-43 through 10-6B-55 may petition the court for authority to do such
 3279 act that is reasonable under the circumstances."

3280 SECTION 2-12.

3281 Said title is further amended by revising subparagraph (a)(1)(D) of Code Section 10-6B-52,
 3282 relating to personal and family maintenance, as follows:

3283 "(D) The principal's minor ~~dependents~~ descendants who are not also the principal's
 3284 children, if the principal had established a pattern of such payments or indicated a clear
 3285 intent to make such payments;"

3286 SECTION 2-13.

3287 Said title is further amended by revising Code Section 10-12-3, relating to applicability to
 3288 electronic records and signatures relating to a transaction, as follows:

3289 "10-12-3.

3290 (a) Except as otherwise provided in subsection (b) of this Code section, this chapter shall
 3291 apply to electronic records and electronic signatures relating to a transaction.

3292 (b) This chapter shall not apply to a transaction to the extent it is governed by:

3293 (1) A law governing the creation and execution of wills, codicils, ~~or~~ testamentary trusts,
 3294 or express trusts governed by Chapter 12 of Title 53;

- 3295 (2) Title 11 other than Code Section 11-1-306, Article 2, and Article 2A; or
 3296 (3) The Uniform Computer Information Transactions Act.
- 3297 (c) This chapter shall apply to an electronic record or electronic signature otherwise
 3298 excluded from the application of this chapter under subsection (b) of this Code section to
 3299 the extent it is governed by a law other than those specified in subsection (b) of this Code
 3300 section.
- 3301 (d) A transaction subject to this chapter shall also be subject to other applicable substantive
 3302 law.
- 3303 (e) A governmental agency which is a party to a transaction subject to this chapter shall
 3304 also be further subject to the records retention requirements for state and local government
 3305 records established by state law."

3306 **SECTION 2-14.**

3307 Article 2 of Chapter 5 of Title 13 of the Official Code of Georgia Annotated, relating to
 3308 statute of frauds, is amended by revising Code Section 13-5-30, relating to agreements
 3309 required to be in writing, as follows:

3310 "13-5-30.

3311 (a) To make the following obligations binding on the promisor, the promise must be in
 3312 writing and signed by the party to be charged therewith or some person lawfully authorized
 3313 by him or her:

- 3314 (1) A promise by ~~an executor, administrator~~ a conservator, guardian, personal
 3315 representative, or trustee to answer damages out of his or her own estate;
- 3316 (2) A promise to answer for the debt, default, or miscarriage of another;
- 3317 (3) Any agreement made upon consideration of marriage;
- 3318 (4) Any contract for sale of lands, or any interest in, or concerning lands;
- 3319 (5) Any agreement that is not to be performed within one year from the making thereof;
- 3320 (6) Any promise to revive a debt barred by a statute of limitation; and
- 3321 (7) Any commitment to lend money.

3322 (b) Any agreement to modify, alter, cancel, repeal, revoke, release, or rescind a promise,
 3323 agreement, contract, or commitment provided for in subsection (a) of this Code section
 3324 must be in writing and signed by all parties to such agreement; provided, however, that if
 3325 the party against whom enforcement of such agreement under this subsection is sought
 3326 admits in a pleading, in testimony, or otherwise in court; that the agreement was made, then
 3327 such agreement is enforceable if valid in all other respects."

SECTION 2-15.

3328
 3329 Chapter 9 of Title 15 of the Official Code of Georgia Annotated, relating to probate courts,
 3330 is amended by revising Code Section 15-9-4, relating to additional judicial eligibility
 3331 requirements in certain counties, as follows:

3332 "15-9-4.

3333 (a) No individual elected judge of the probate court in any county provided for in this
 3334 Code section shall engage in the private practice of law.

3335 (b) Except as otherwise provided by subsection (c) of this Code section, in any county of
 3336 this state having a population of more than 90,000 persons according to the United States
 3337 decennial census of 2010 or any future such census and in which the probate court of such
 3338 county meets the definition of a probate court as provided by Article 6 of this chapter, no
 3339 ~~person~~ individual shall be judge of the probate court unless at the time of election, in
 3340 addition to the qualifications required by law, he or she has attained the age of 30 years,
 3341 ~~and has been admitted to practice law for seven years preceding election,~~ is a member in
 3342 good standing with the State Bar of Georgia, and has been duly reinstated to the practice
 3343 of law in the event of his or her disbarment therefrom.

3344 (c) A judge of the probate court holding such office on or after June 30, 2000, shall
 3345 continue to hold such office and shall be allowed to seek reelection for such office.
 3346 Notwithstanding the requirement that in certain counties the judge of the probate court be
 3347 admitted to practice law for seven years preceding election, no decision, judgment, ruling
 3348 or other official action of any judge of the probate court shall be overturned, denied, or
 3349 overruled based solely on this requirement for qualification, election, and holding the office
 3350 of judge of the probate court."

SECTION 2-16.

3351
 3352 Said chapter is further amended by revising Code Section 15-9-17, relating to serving a
 3353 minor or incapacitated adult, as follows:

3354 "15-9-17.

3355 (a) Notwithstanding the provisions of Code Section 15-9-122 or any other provision of law
 3356 to the contrary, in any action before the probate court in which the service of notice on a
 3357 minor or an incapacitated adult is required by law or ordered by the probate court, such
 3358 service of notice may be made by:

3359 (1) Mailing by the probate court of a copy of the document to be served to the minor or
 3360 incapacitated adult by certified mail or statutory overnight delivery, return receipt
 3361 requested; and

3362 (2) Serving the ~~legal guardian or guardian ad litem~~ of such minor or incapacitated adult
 3363 if such ~~legal guardian or guardian ad litem~~:

- 3364 (A) Acknowledges receipt of such service; and
 3365 (B) Certifies that he or she has delivered a copy of the document so served to the minor
 3366 or incapacitated adult.
- 3367 (b) The acknowledgment of service and certification of ~~the legal such~~ guardian or guardian
 3368 ~~ad item~~ and the certificate of the service by mailing to the on such minor or incapacitated
 3369 adult shall be filed with the probate court as proof of such service of notice.
- 3370 (c) As used in this Code section, the term 'guardian' shall have the same meaning provided
 3371 in Code Section 53-1-2."

3372 SECTION 2-17.

3373 Said chapter is further amended by revising Code Section 15-9-47, relating to default
 3374 judgments, as follows:

3375 "15-9-47.

3376 (a) If Notwithstanding any provisions of Chapter 11 of Title 9, if in any case pending
 3377 before the probate court an answer, caveat, or other responsive pleading has not been filed
 3378 within the time required by law or by lawful order of the court, the case shall automatically
 3379 become in default unless the time for filing the answer, caveat, or other responsive pleading
 3380 has been extended as provided by law. The petitioner at any time thereafter shall be
 3381 entitled to verdict and judgment by default, in open court or in chambers, as if every item
 3382 and paragraph of the petition or other pleadings filed in the matter were supported by
 3383 proper evidence. At any time before final judgment, the court, in its discretion, upon
 3384 payment of costs, may allow the default to open for providential cause preventing the filing
 3385 of required pleadings or for excusable neglect or where the judge, from all the facts, shall
 3386 determine that a proper case has been made for the default to open, on terms to be fixed by
 3387 the court. In order for the default to be thus opened, the showing shall be made under oath,
 3388 shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready
 3389 to proceed with the hearing in the matter.

3390 (b) The provisions of this Code section shall govern in proceedings pertaining to defaults
 3391 in the probate court, and the provisions of Code Section 9-11-55 shall not be applicable to
 3392 such proceedings."

3393 SECTION 2-18.

3394 Said chapter is further amended by revising Code Section 15-9-60, relating to fees, as
 3395 follows:

3396 "15-9-60.

3397 (a) The judges or clerks of the probate courts of this state shall be entitled to charge and
 3398 collect the sums enumerated in this Code section.

3399 (b) All sums that the probate courts may be required to collect pursuant to Code Sections
 3400 15-23-7, 15-9-60.1, and 36-15-9 and all other sums as may be required by law shall be in
 3401 addition to the sums provided in this Code section. The sums provided for in this Code
 3402 section are exclusive of costs for service of process, fees for publication of citation or
 3403 notice, or any additional sums as may be provided by law.

3404 (c) The fees provided for in this Code section shall be paid into the county treasury less
 3405 and except only such sums as are otherwise directed to be paid by law, which sums shall
 3406 be remitted as provided by law by either the probate court or the county.

3407 (d) Subject to the provisions of Code Section 15-9-61, and except for the filing of a
 3408 proceeding in which the filing party also files with the court a sworn affidavit that the party
 3409 is unable because of indigence to pay the cost of court, all sums specified in this Code
 3410 section shall be paid to the court at the time of filing or as thereafter incurred for services
 3411 rendered. In accordance with Code Section 15-9-61, the judges of the probate courts are
 3412 entitled to an advance cost of \$30.00 for deposit to be made before filing any proceeding.

3413 (e) Cost in decedent's estates:

3414 (1) Except as otherwise provided, the cost in an initial proceeding regarding the estate
 3415 of a decedent or of a missing individual believed to be dead shall be \$130.00 for all
 3416 services rendered by the judge or clerk of the probate court through the entry of the final
 3417 order on such initial proceedings, exclusive of recording charges;

3418 (2) As used in this subsection, the term 'initial proceeding' shall mean the first
 3419 proceeding filed in the probate court in connection with or regarding the estate of a
 3420 decedent or of a missing individual believed to be dead, including, but not necessarily
 3421 limited to, the following proceedings: petition for temporary letters of administration;
 3422 petition for letters of administration; petition to probate will in common form; petition
 3423 to probate will in solemn form; petition to probate will in solemn form and for letters of
 3424 administration with will annexed; petition for order declaring no administration
 3425 necessary; petition for year's support; petition for presumption of death of missing
 3426 individual believed to be dead; any proceeding for ancillary administration by a foreign
 3427 personal representative; or any other proceeding by which the jurisdiction of the probate
 3428 court is first invoked with regard to the estate of a decedent or of a missing individual
 3429 believed to be dead;

3430 (3) As used in this subsection, the term 'initial proceeding' shall not include a petition to
 3431 establish custodial account for missing heir, a petition to enter a safe-deposit box, or any
 3432 other petition or proceeding for which a specific cost is otherwise set forth in this Code
 3433 section;

3434 (4) Except as otherwise provided, the cost shall be \$75.00 for all services rendered by
 3435 the judge or clerk of the probate court through the entry of the final order, exclusive of

3436 recording charges, in any of the proceedings listed in paragraph (2) of this subsection
3437 filed subsequent to the filing of an initial proceeding regarding the estate of the same
3438 decedent or missing individual believed to be dead;

3439 (5) Except as otherwise provided, the cost shall be \$50.00 for all services rendered by
3440 the judge or clerk of the probate court through the entry of the final order, exclusive of
3441 recording charges, for the filing of the following proceedings or pleadings regarding the
3442 estate of a decedent or of a missing individual believed to be dead: petition for letters of
3443 administration with will annexed (will previously probated); petition of personal
3444 representative for leave to sell property; petition for leave to sell perishable property;
3445 petition for leave to sell or encumber property previously set aside as year's support;
3446 petition by administrator for waiver of bond, grant of certain powers, or both; petition for
3447 discharge; petition by personal representative for approval of a division in kind; petition
3448 to determine heirs; petition by personal representative for direction under will; petition
3449 by personal representative to compromise a disputed claim or debt; petition by or against
3450 personal representative for an accounting or final settlement; petition to resign as personal
3451 representative and for the appointment of a successor; petition to remove a personal
3452 representative and for the appointment of a successor; citation against a personal
3453 representative for failure to make returns or for alleged mismanagement of estate; a
3454 caveat, objection, or other responsive pleading by which the proceeding becomes
3455 contested filed by any person to whom notice or citation has been issued; petition or
3456 motion to intervene as an interested party; and any other petition application, motion, or
3457 other pleading for which no specific cost is set forth in this Code section filed regarding
3458 the estate of a decedent or of a missing individual believed to be dead;

3459 (6) Except as otherwise provided, the cost shall be \$25.00 for all services rendered by
3460 the judge or clerk of the probate court through the entry of the final order, exclusive of
3461 recording charges, for the filing of the following proceedings, pleadings, or documents
3462 regarding the estate of a decedent or of a missing individual believed to be dead: petition
3463 to change accounting period; petition to enter a safe-deposit box; petition or motion for
3464 attorneys' fees; petition or motion of personal representative for extra compensation; or
3465 inventory, appraisal, or annual, intermediate, or final returns of personal
3466 representatives; and

3467 (7) Except as otherwise provided, the cost shall be \$10.00 for all services rendered by
3468 the judge or clerk of the probate court, exclusive of recording charges, for the filing of
3469 the following proceedings, pleadings, or documents regarding the estate of a decedent or
3470 of a missing person believed to be dead: notice of claim or claim of a creditor, if such
3471 notice or claim is filed with and accepted by the court; declination to serve of nominated
3472 personal representative; or renunciation of right of succession.

3473 (f) Costs in minor guardianship and conservatorship matters:

3474 (1) Except as otherwise provided, the cost in a proceeding regarding the person,
 3475 property, or person and property of a minor shall be \$75.00 for all services rendered by
 3476 the judge or clerk of the probate court through the entry of the final order on such
 3477 proceeding, exclusive of recording charges, including, but not necessarily limited to, the
 3478 following proceedings: petition for temporary letters of guardianship of ~~the person of a~~
 3479 minor; petition for letters of guardianship of ~~person, property, conservatorship, or person~~
 3480 guardianship and property conservatorship of a minor by person other than natural
 3481 guardian; petition for letters of ~~guardianship of property conservatorship~~ of a minor, by
 3482 natural guardian, with bond — personal property over \$5,000.00; petition for order that
 3483 natural guardian not be required to become legally qualified ~~guardian of the property~~
 3484 conservator; application of ~~guardian, conservator, or guardian and conservator~~ for letters
 3485 of dismissal; or any other proceeding by which the jurisdiction of the probate court is
 3486 first invoked with regard to the person, property, or person and property of a minor; and

3487 (2) Except as otherwise provided, the costs for all services rendered by the judge or clerk
 3488 of the probate court shall be as set forth below for the following proceedings, pleadings,
 3489 or documents regarding the person, property, or person and property of a minor, exclusive
 3490 of recording charges:

3491	(A) Petition of guardian <u>conservator</u> for leave to sell	\$ 70.00
3492	(B) Petition to compromise doubtful claim of minor	70
3493	(C) Petition for leave to encroach on corpus	30
3494	(D) Petition to change accounting period	25
3495	(E) Inventory or annual, intermediate, or final return (each)	30
3496	(F) Petition or motion for attorneys' fees	70
3497	(G) Petition to terminate temporary guardianship of minor	30
3498	(H) Any other petition, application, motion, or other pleading for which	
3499	no specific cost is set forth in this Code section filed regarding an	
3500	existing <u>guardianship or conservatorship</u> of a minor	30

3501 (g) Costs in adult guardianship and conservatorship matters:

3502 (1) Except as otherwise provided, the cost in a proceeding regarding the person,
 3503 property, or person and property of an adult alleged to be incapacitated shall be \$150.00
 3504 for all services rendered by the judge or clerk of the probate court through the entry of
 3505 the final order on such proceeding, exclusive of recording charges, including, but not
 3506 necessarily limited to, the following proceedings: petition for the appointment of an
 3507 emergency guardian, conservator, or guardian and conservator for an alleged gravely
 3508 incapacitated adult; petition for the appointment of an emergency and permanent

3509 guardian, conservator, or guardian and conservator for an alleged gravely incapacitated
 3510 adult; petition for the appointment of a guardian, conservator, or guardian and
 3511 conservator for an alleged incapacitated adult; or any other proceeding by which the
 3512 jurisdiction of the probate court is first invoked with regard to an adult alleged to be
 3513 incapacitated; and

3514 (2) Except as otherwise provided, the cost for all services rendered by the judge or clerk
 3515 of the probate court shall be as set forth below for the following proceedings, pleadings,
 3516 or documents regarding the person, property, or person and property of an incapacitated
 3517 adult, exclusive of recording charges:

3518	(A) Petition of <u>guardian conservator</u> for leave to sell	\$ 70.00
3519	(B) Petition to compromise doubtful claim	70
3520	(C) Petition for leave to encroach on corpus	30
3521	(D) Petition to change accounting period	25
3522	(E) Inventory or annual, intermediate, or final return (each)	30
3523	(F) Petition or motion for attorneys' fees	70
3524	(G) Petition to terminate or modify guardianship <u>or conservatorship</u> of	
3525	incapacitated adult	70
3526	(H) Application of <u>guardian or conservator</u> for letters of dismissal .	75
3527	(I) Any other petition, application, motion, or other pleading for which	
3528	no specific cost is set forth in this Code section filed regarding an	
3529	existing guardianship <u>or conservatorship</u> of an adult	70

3530 (h) Costs in matters involving sterilization, involuntary treatment, habilitation, or
 3531 temporary placement:

3532 (1) Except as otherwise provided, the cost in a proceeding filed under Chapter 20 of
 3533 Title 31, Chapter 36A of Title 31, or Chapter 3, 4, or 7 of Title 37 shall be \$130.00 for
 3534 all services rendered by the judge or clerk of the probate court through the entry of the
 3535 final order on such proceeding, exclusive of recording charges;

3536 (2) There shall be no cost assessed for the receipt and consideration of affidavits in
 3537 support of an order to apprehend under Part 1 of Article 3 of Chapter 3 of Title 37 or
 3538 Part 1 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend;
 3539 and

3540 (3) There shall be no cost assessed for the receipt and consideration of a petition in
 3541 support of an order to apprehend under Part 3 of Article 3 of Chapter 3 of Title 37 or
 3542 Part 3 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend
 3543 a patient alleged to be in noncompliance with an involuntary outpatient treatment order.

3544 (i) Costs for hearings in contested matters:

3545 (1) For conducting trials of contested matters or for formal hearing on the denial of an
 3546 application for a weapons carry license before the probate court, the cost shall be \$30.00
 3547 per one-half day or portion thereof;

3548 (2) There shall be no additional cost for the initial hearing in adult guardianship or
 3549 conservatorship matters or in matters involving sterilization, involuntary treatment,
 3550 habilitation, or involuntary placement; and

3551 (3) There shall be no cost for any hearing in an uncontested matter.

3552 (j) Custodial accounts. For each account accepted by the judge of the probate court as
 3553 custodian for a minor, incapacitated adult, or missing or unknown heir or beneficiary, there
 3554 shall be a one-time fee of 8 percent of the fund deducted from the fund when first accepted.

3555 (k) Miscellaneous costs. Except as otherwise provided, the judge or clerk of the probate
 3556 court shall be entitled to the following costs for the proceedings, pleading, documents, or
 3557 services itemized:

3558	(1) Application for writ of habeas corpus	\$ 75.00
3559	(2) Petition to establish lost papers, exclusive of recording charges	50
3560	(3) Petition for or declaration of exemptions	25
3561	(4) Petition to change birth certificate	75
3562	(5) For all services rendered by the judge or clerk of the probate court 3563 through the entry of the final order, exclusive of recording charges, for any 3564 application or petition by which the jurisdiction of the probate court is first 3565 invoked for which no cost is set forth in this Code section or other applicable 3566 law	70
3567	(6) Issuance of any order, including a rule nisi, in any matter for which the 3568 costs set forth in this Code section do not include all services to be rendered 3569 by the judge or clerk of the probate court, exclusive of recording charges	30
3570	(7) Motions, amendments, or other pleadings filed in any matter for which 3571 the cost set forth in this Code section does not include all services to be 3572 rendered by the judge or clerk of the probate court, exclusive of recording 3573 charges, and no other cost is set forth in this Code section	15
3574	(8) For processing appeals to superior court, exclusive of recording 3575 charges	30
3576	(9) For issuance of writ of fieri facias (fi.fa.)	10

3577	(10) <u>For all services rendered by the judge or clerk of the probate court in</u>	
3578	<u>the exercise of concurrent jurisdiction pursuant to Code Section 15-9-127 for</u>	
3579	<u>which no cost is set forth in this Code section. The sums charged shall be</u>	
3580	<u>the same as those charged for such services in the superior court pursuant to</u>	
3581	<u>Code Section 15-6-77 or other applicable law</u> Reserved.	
3582	(11) For issuance of permit to discharge fireworks	30
3583	(12) Application for weapons carry license (exclusive of fees charged by	
3584	other agencies for the examination of criminal records and mental	
3585	health records)	30
3586	(13) For issuance of a replacement weapons carry license	6
3587	(13.1) For issuance of personal identification cards to judges or Justices.	
3588	The fee shall be determined by The Council of Probate Court Judges of	
3589	Georgia pursuant to Code Section 15-25-3.	
3590	(14) Application for marriage license if the applicants have completed	
3591	premarital education pursuant to Code Section 19-3-30.1	No fee
3592	(14.1) Application for a marriage license if the applicants have not	
3593	completed premarital education pursuant to Code Section 19-3-30.1	40
3594	(15) For the safekeeping of a will	15
3595	(16) For issuance of a veteran's license	No fee
3596	(17) <u>Reserved. For issuance of a peddler's license</u>	15
3597	(18) For issuance of a certificate of residency	10
3598	(19) Registration of junk dealer	10
3599	(20) Certification of publication of application for insurance company	
3600	charter	10
3601	(21) Recording of marks and brands, each	15
3602	(22) Exemplification	15
3603	(23) Certification under seal of copies (plus copy cost)	10
3604	(24) Certified copies of letters of personal representative, temporary	
3605	administrator, <u>conservator</u> , or guardian, each, including copy cost	10
3606	(25) For issuance of a subpoena, each	10
3607	(26) For filing and recording of oath or bond of any official, officer, or	
3608	employee of any municipality or authority within the county, each	10
3609	(27) For filing and recording of oath or bond of county official or officer	No fee

3610 (28) For examination of records or files by employee of the probate court to
 3611 provide abstract of information contained therein or to provide copies
 3612 therefrom, per estate or name 10
 3613 (29) Recording, per page 2
 3614 (30) Copies, per page 1.00"

3615 **SECTION 2-19.**

3616 Said chapter is further amended by revising Code Section 15-9-86, relating to verified
 3617 petitions and notice and service thereof, as follows:

3618 "15-9-86.

3619 Every application made to the judge of the probate court for the granting of any order shall
 3620 be by verified petition in writing, stating the ground of such application and the order
 3621 sought. Unless otherwise provided by law, if service of notice of the application such
 3622 petition, other than by citation published citation in the official newspaper of the county
 3623 in which the petition is made, is necessary under the law or in the judgment of the judge
 3624 of the probate court on the motion of any party in interest or on the court's own motion, the
 3625 judge shall cause a copy of the application petition, together with a citation to show cause,
 3626 if any, why the petition should not be granted and notice of the date, time, of and place for
 3627 filing any objections or for holding a final hearing, to be served by the sheriff or some
 3628 lawful officer upon each party who resides in this state and to be ~~mailed~~ served by the
 3629 probate court mailing by registered or certified mail or statutory overnight delivery, return
 3630 receipt requested, to each party who resides outside this state at a known address, at least
 3631 ~~ten days, plus three days if mailed, before the hearing~~ 30 days before any objection is
 3632 required to be filed by such party or before a final hearing is held. An entry of such service
 3633 of notice shall be made on the original. In extraordinary cases, where it is necessary to act
 3634 before such service of notice can be given, the judge of the probate court shall so direct the
 3635 proceedings as to make no final order until service of notice has been given."

3636 **SECTION 2-20.**

3637 Said chapter is further amended by revising Code Section 15-9-122, relating to applicability
 3638 of laws and rules, as follows:

3639 "15-9-122.

3640 Unless provided to the contrary by Code Section 9-11-81 or by Titles 29 and 53, the
 3641 general laws and rules of practice, pleading, procedure, and evidence ~~which that~~ are
 3642 applicable to the superior courts of this state shall be applicable to and govern in civil cases
 3643 in the probate courts."

SECTION 2-21.

3644
 3645 Said chapter is further amended by revising Code Section 15-9-123, relating to appeal, as
 3646 follows:

3647 "15-9-123.

3648 (a) Either party to a civil case in the probate court shall have the right of appeal to the
 3649 Supreme Court or the Court of Appeals from any decision made by the probate court,
 3650 except an order appointing a temporary administrator, as provided by Chapter 6 of Title 5.

3651 (b) The general laws and rules of appellate practice and procedure ~~which~~ that are
 3652 applicable to cases appealed from the superior courts of this state shall be applicable to and
 3653 govern appeals of civil cases from the probate courts."

SECTION 2-22.

3654
 3655 Said chapter is further amended by revising Code Section 15-9-126, relating to fees, as
 3656 follows:

3657 "15-9-126.

3658 For services rendered in jury trials, in the probate court's exercise of concurrent jurisdiction
 3659 pursuant to Code Section 15-9-127, and in appeals to the Supreme Court or Court of
 3660 Appeals, if a fee is not prescribed by Code Section 15-9-60, the judge or clerk of the
 3661 probate court shall be entitled to charge and collect the same fee sums as ~~that~~ those of the
 3662 clerk of the superior court provided in Code Section 15-6-77 or other applicable law for
 3663 similar services in superior court."

SECTION 2-23.

3664
 3665 Said chapter is further amended by revising Code Section 15-9-127, relating to concurrent
 3666 jurisdiction with superior courts, as follows:

3667 "15-9-127.

3668 (a) Probate courts subject to this article shall have concurrent jurisdiction with superior
 3669 courts with regard to the proceedings for:

3670 (1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5,
 3671 ~~and 9-4-6, 9-4-8, 9-4-9, and 9-4-11;~~

3672 (2) Tax motivated estate planning dispositions of wards' property pursuant to Code
 3673 Sections 29-3-36 and 29-5-36;

3674 (3) Approval of settlement agreements pursuant to former Code Section 53-3-22 as such
 3675 existed on December 31, 1997, if applicable, ~~or;~~ Code Section 53-5-25 or 53-5-27 for
 3676 which the settlement agreement would affect an interest in real or personal property to
 3677 be taken by a trust designated in the will; or Code Section 53-12-9;

- 3678 (4) Adjudication of actions concerning trusts, trustees, and trust directors authorized by
 3679 the provisions of Chapter 12 of Title 53 Appointment of new trustee to replace trustee
 3680 pursuant to Code Section 53-12-201;
 3681 (5) ~~Acceptance of the resignation of a trustee upon written request of the beneficiaries~~
 3682 ~~pursuant to Code Section 53-12-220;~~
 3683 (6) ~~Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code~~
 3684 ~~Section 53-12-220;~~
 3685 (7) ~~Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing~~
 3686 ~~as provided in Code Section 53-2-27;~~
 3687 (8) ~~Conversion to a unitrust and related matters pursuant to Code Section 53-12-362; and~~
 3688 (9)(5) Adjudication of petitions under Code Section 10-6B-16 to construe a power of
 3689 attorney, review an agent's conduct, and grant appropriate relief;
 3690 (6) Adjudication of petitions under subsection (i) of Code Section 10-6B-40 to grant an
 3691 agent authority under a power of attorney; and
 3692 (7) Adjudication of petitions for direction or construction of a will or trust instrument
 3693 pursuant to Code Section 23-2-92, 53-4-55, 53-4-56, 53-7-75, or 53-12-27, or other
 3694 applicable law.
 3695 (b) In civil cases, probate courts subject to this article may:
 3696 (1) Apply equitable principles;
 3697 (2) Hear evidence on and decide any contested question; and
 3698 (3) Issue such orders as are appropriate under the circumstances.
 3699 (c) Probate courts subject to this article shall have and may exercise the jurisdiction and
 3700 authority conferred by subsections (a) and (b) of this Code section to the greatest extent
 3701 that does not infringe the exclusive jurisdiction of the superior courts pursuant to
 3702 Article VI, Section IV, Paragraph I of the Constitution of this state."

3703

SECTION 2-24.

3704 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 3705 amended by revising Code Section 19-3-65, relating to powers of superior court judge in
 3706 appointing and removing trustees and protecting trust estate, as follows:

3707 "19-3-65.

3708 Subject to Code Sections 15-9-127, 23-1-4, and 53-12-6, the ~~The~~ judge of the superior
 3709 court of the county of a spouse's domicile may at any time, upon petition, exercise
 3710 equitable powers in appointing, removing, or substituting trustees or in granting any order
 3711 for the protection of the trust estate, exercising a wise discretion as to the terms on which
 3712 the appointment shall be made or on which the order shall be granted."

3713 **SECTION 2-25.**

3714 Said title is further amended by revising Code Section 19-3-66, relating to enforcement of
3715 marriage contracts, postnuptial settlements, and antenuptial agreements, as follows:

3716 "19-3-66.

3717 (a) Marriage contracts and postnuptial settlements shall be enforced at the instance of all
3718 persons in whose favor there are limitations of the estate.

3719 (b) Antenuptial agreements may be enforced by a court of equity at the instance of:

3720 (1) The parties to the marriage; or

3721 (2) The offspring of the marriage and their heirs at any time after the death of a spouse,
3722 subject to Code Sections 15-9-30, 23-1-4, and 53-7-40; provided, however, that when
3723 enforced at the instance of such offspring and their heirs, the court may enforce in favor
3724 of other persons."

3725 **SECTION 2-26.**

3726 Said title is further amended by revising Code Section 19-6-7, relating to interest in deceased
3727 party's estate after grant of permanent alimony, as follows:

3728 "19-6-7.

3729 After permanent alimony is granted, upon the death of the party liable for the alimony the
3730 other party shall not be entitled to any further interest in the estate of the deceased party by
3731 virtue of the marriage contract between the parties; ~~however, such permanent provision~~
3732 ~~shall be continued to the other party or a portion of the deceased party's estate equivalent~~
3733 ~~to the permanent provision shall be set apart to the other party."~~

3734 **SECTION 2-27.**

3735 Article 3 of Chapter 2 of Title 23 of the Official Code of Georgia Annotated, relating to
3736 fraud, is amended by revising Code Section 23-2-58, relating to confidential relations
3737 defined, as follows:

3738 "23-2-58.

3739 Any relationship shall be deemed confidential, whether arising from nature, created by law,
3740 or resulting from contracts, where one party is so situated as to exercise a controlling
3741 influence over the will, conduct, and interest of another or where, from a similar
3742 relationship of mutual confidence, the law requires the utmost good faith, such as the
3743 relationship between partners; principal and agent; ~~etc~~; guardian or conservator and minor
3744 or ward; personal representative or temporary administrator and heir, legatee, devisee, or
3745 beneficiary; trustee and beneficiary; and similar fiduciary relationships."

SECTION 2-28.

3746

3747 Chapter 27 of Title 50 of the Official Code of Georgia Annotated, relating to lottery for
3748 education, is amended by revising Code Section 50-27-21, relating to preservation of lottery
3749 proceeds by retailers, accounting procedures, and preference accorded proceeds of insolvent
3750 retailers, as follows:

3751 "50-27-21.

3752 (a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund
3753 until paid to the corporation either directly or through the corporation's authorized
3754 collection representative. A lottery retailer and officers of a lottery retailer's business shall
3755 have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall
3756 be personally liable for all proceeds. Proceeds shall include unsold instant tickets received
3757 by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable
3758 sales commissions and credit for lottery prizes sold to or paid to winners by lottery
3759 retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or
3760 its authorized collection representative upon demand.

3761 (b) The corporation shall require retailers to place all lottery proceeds due the corporation
3762 in accounts in institutions insured by the Federal Deposit Insurance Corporation not later
3763 than the close of the next banking day after the date of their collection by the retailer until
3764 the date they are paid over to the corporation. At the time of such deposit, lottery proceeds
3765 shall be deemed to be the property of the corporation. The corporation may require a
3766 retailer to establish a single separate electronic funds transfer account where available for
3767 the purpose of receiving moneys from ticket or share sales, making payments to the
3768 corporation, and receiving payments for the corporation. Unless otherwise authorized in
3769 writing by the corporation, each lottery retailer shall establish a separate bank account for
3770 lottery proceeds which shall be kept separate and apart from all other funds and assets and
3771 shall not be commingled with any other funds or assets.

3772 (c) Whenever any person who receives proceeds from the sale of lottery tickets or shares
3773 in the capacity of a lottery retailer becomes insolvent ~~or dies insolvent~~, the proceeds due
3774 the corporation from such person ~~or his estate~~ shall have preference over all debts or
3775 demands.

3776 (d) Whenever any person who receives proceeds from the sale of lottery tickets or shares
3777 in the capacity of a lottery retailer dies insolvent, the proceeds due the corporation from
3778 such person's estate shall have preference over all debts or demands except the provision
3779 of year's support for such person's family."

3780 **SECTION 2-29.**

3781 Said chapter is further amended by revising subsection (c) of Code Section 50-27-102,
3782 relating to role of corporation, implementation and certification, separation of funds and
3783 accounting, and disputes, as follows:

3784 "(c) The corporation shall require location owners and location operators to place all bona
3785 fide coin operated amusement machine proceeds due the corporation in a segregated
3786 account in institutions insured by the Federal Deposit Insurance Corporation not later than
3787 the close of the next banking day after the date of their collection by the retailer until the
3788 date they are paid over to the corporation. At the time of such deposit, bona fide coin
3789 operated amusement machine proceeds shall be deemed to be the property of the
3790 corporation. The corporation may require a location owner or location operator to establish
3791 a single separate electronic funds transfer account where available for the purpose of
3792 receiving proceeds from Class B machines, making payments to the corporation, and
3793 receiving payments for the corporation. Unless otherwise authorized in writing by the
3794 corporation, each bona fide coin operated amusement machine location owner or location
3795 operator shall establish a separate bank account for bona fide coin operated amusement
3796 machine proceeds which shall be kept separate and apart from all other funds and assets
3797 and shall not be commingled with any other funds or assets. Whenever any person who
3798 receives proceeds from bona fide coin operated amusement machines becomes insolvent
3799 or, the proceeds due the corporation from such person shall have preference over all debts
3800 or demands. Whenever any person who receives proceeds from bona fide coin operated
3801 amusement machines dies insolvent, the proceeds due the corporation from such ~~person or~~
3802 ~~his or her~~ person's estate shall have preference over all debts or demands except the
3803 provision of year's support for such person's family. If any financial obligation to the
3804 corporation has not been timely received, the officers, directors, members, partners, or
3805 shareholders of the location owner or location operator shall be personally liable for the
3806 moneys owed to the corporation."

3807 **PART III**

3808 **SECTION 3-1.**

3809 This Act shall become effective on January 1, 2021.

3810 **SECTION 3-2.**

3811 All laws and parts of laws in conflict with this Act are repealed.