O.C.G.A. § 53-12-1

GEORGIA CODE
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*** Current through the 2007 Regular Session ***

TITLE 53. WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES
CHAPTER 12. TRUSTS
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 53-12-1 (2007)

§ 53-12-1. Short title

This chapter shall be known and may be cited as the "Georgia Trust Act."

HISTORY: Code 1981, § 53-12-1, enacted by Ga. L. 1991, p. 810, § 1. § 53-12-2. Definitions

As used in this chapter, the term:

(1) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest. A beneficiary must be definitely ascertainable at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities.

(2) "Express trust" means a trust in which the settlor's intention to create the trust is expressly stated, and which meets the requirements of Code Section
53-12-20.

(3) "Implied trust" means a trust in which the settlor's intention to create the trust is implied from the circumstances, and which meets the requirements of Code Sections 53-12-90 through 53-12-93.

§ 53-12-3. Application of chapter

Except to the extent it would impair vested rights and except as otherwise provided by law, this chapter shall apply to any trust

regardless of the date it was created.

HISTORY: Code 1981, § 53-12-3, enacted by Ga. L. 1991, p. 810, § 1. § 53-12-4. Jurisdiction

Trusts of every kind, not generally cognizable at law, are peculiarly subjects of equity jurisdiction. Any person having a claim against any trust for services rendered to the trust or for articles, property, or money furnished for the use of the trust or having any claim for the payment of which a court exercising equitable powers of relief would render the trust liable may collect and enforce the payment of the claim in a court of law. Jurisdiction over actions and proceedings against creditors or debtors of trusts, and other actions and proceedings to which the trustee or the trust is a party which do not involve the internal affairs of the trust, lies in the court in which jurisdiction would lie if all parties to the suit were natural persons.

HISTORY: Code 1981, § 53-12-4, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-5. When trust and chapter conflict

The effect of provisions of this chapter may be varied by the trust instrument except:

(1) As otherwise provided in this chapter; and

(2) As to any of the requirements contained in this article and Article 2 of this chapter.

HISTORY: Code 1981, § 53-12-5, enacted by Ga. L. 1991, p. 810, § 1.
Title Note
Chapter Note§
53-12-6. Want of trustee

A trust shall never fail for the want of a trustee.

HISTORY: Code 1981, § 53-12-6, enacted by Ga. L. 1991, p. 810, § 1.
§ 53-12-7. Survival of common law and equity

Except to the extent that the principles of common law and equity

governing trusts are modified by this chapter or another statute, those principles remain the law of this state.

HISTORY: Code 1981, § 53-12-7, enacted by Ga. L. 1991, p. 810, § 1.
Title Note
§ 53-12-20. Express trusts

(a) An express trust shall be created or declared in writing.

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

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

(2) Trust property;

(3) A beneficiary;

(4) A trustee; and

(5) Active duties imposed on the trustee, which duties may be specified in the writing or implied by law.

HISTORY: Code 1981, § 53-12-20, enacted by Ga. L. 1991, p. 810, § 1.
§ 53-12-21. Formal and precatory words

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

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

HISTORY: Code 1981, § 53-12-21, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-22. Capacity to create an express trust

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

HISTORY: Code 1981, § 53-12-22, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-22.1. Creation of trust with initial corpus as life insurance; created by oral agreement evidenced by contemporaneously executed document; termination

(a) This Code section shall apply only with respect to a trust that has or will have as its initial corpus a policy or policies of life insurance insuring the life of the settlor.

(b) A trust subject to this Code section may be created by oral agreement of the settlor and the trustee if such oral agreement is evidenced by one or more contemporaneously executed documents dated and signed by the settlor which evidence:

(1) The identity of the settlor;

(2) The identity of the trustee;

(3) The identity or identities of the beneficiaries and the beneficial shares of the beneficiaries where more than one;

(4) The general nature of the policy or policies of insurance which do or will constitute the initial corpus of the trust; and

(5) Whether the trust is revocable or irrevocable.

(c) A trust created pursuant to this Code section shall terminate six months after its creation unless sooner terminated by the settlor.

HISTORY: Code 1981, § 53-12-22.1, enacted by Ga. L. 2003, p. 794, § 1.

§ 53-12-23. Purpose

A trust may be created for any lawful purpose.

HISTORY: Code 1981, § 53-12-23, enacted by Ga. L. 1991, p. 810, § 1.

Title Note
Chapter Note
Article Note

§ 53-12-24. Capacity of trustee

(a) The trustee must have legal capacity under Georgia law to acquire, hold, and transfer title to property. If the trustee is a corporation, it must have the power to act as a trustee in Georgia.

(b) The fact that the person named as trustee is also a beneficiary does not of itself incapacitate the person from acting as trustee.

(c) The settlor of a trust may be the trustee of the trust.

HISTORY: Code 1981, § 53-12-24, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-25. Additions to trust property

Property may be added to an existing trust from any source in any manner if the addition is permitted by the trust instrument and the property is acceptable to the trustee.

HISTORY: Code 1981, § 53-12-25, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-26. Duration of trusts

Except as otherwise provided by law, a trust shall be executory and the legal estate shall remain in the trustee only so long as the trustee has any powers or duties in regard to the trust property and the trust serves a material purpose of the settlor.

HISTORY: Code 1981, § 53-12-26, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-27. Parol evidence

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

HISTORY: Code 1981, § 53-12-27, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-28. Spendthrift provisions

(a) A spendthrift provision is a provision in a trust that the interest of the beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A spendthrift provision prohibiting voluntary transfers is valid and enforceable.

(c) Except as otherwise provided in this subsection, a spendthrift provision prohibiting involuntary transfers is valid and enforceable. Except with regard to a community trust established pursuant to Chapter 10 of Title 30, a spendthrift provision prohibiting involuntary transfers is not valid if the beneficiary is the settlor. A spendthrift provision prohibiting involuntary transfers is not valid as to the following claims against a distribution to a beneficiary, other than a beneficiary who has a medically determined physical or mental disability that substantially impairs the beneficiary's ability to provide for the beneficiary's care or custody and constitutes a substantial handicap or in the case of a life beneficiary of a community trust, to the extent the distribution would be subject to garnishment under the laws of this state if the distribution were disposable earnings:

(1) Tort judgments;

(2) Taxes;

(3) Governmental claims;

(4) Alimony;

(5) Child support; or

(6) Judgment for necessaries not voluntarily provided by the claimant.

(d) Notwithstanding any other provision in this Code section to the contrary, a spendthrift provision in a bona fide pension or retirement trust is valid and enforceable with reference to the entire interest of the beneficiary in the income or in the principal or in both, even if the beneficiary is also the settlor of the trust, except where a claim is made pursuant to a qualified domestic relations order as defined in 26 U.S.C. Section 414(p), or any subsequent statute of similar import.

HISTORY: Code 1981, § 53-12-28, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1996, p. 804, § 4.

§ 53-12-50. Definitions

As used in this article, the term:

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

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

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

HISTORY: Code 1981, § 53-12-50, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-51. Creation of beneficial interests in property by deed; conditions; recordation; time of termination or renewal

The owners of property located in this state or persons desiring to acquire beneficial ownership of such property may create by deed an estate therein and in the improvements made thereon and in the property to be acquired, for the benefit of themselves and such other persons, whether sui juris or not, who may contribute to the improvement or development or acquisition of the property and their assigns or transferees, provided that the deed creating the estate shall provide for the improvement or development of the property covered thereby or for the acquisition of the property and the trustee or trustees therein named and their successors shall have some active duty to perform in and about the trust property or the management or control of the same. The deed creating the estate shall be recorded as provided in Code Section 53-12-52. When such an estate is created, the legal title to the property and all the property added thereto or substituted therefor

shall vest and remain in the trustee or trustees named and his or their successors, in accordance with the terms of the deed, with all the powers conferred thereby upon the trustee, and shall not during the continuance of the estate pass to or vest in the beneficiaries. At the end of 25 years from the date of the deed creating the estate, the title to such of the property as may then belong to the estate shall vest in the beneficiaries; and, if the deed creating the estate so provides, a renewal of the estate may be made at the end of the 25 years, upon the terms and conditions and in the manner therein set forth, for a like period; provided, however, that in the alternative to the period of 25 years and the renewal thereof, if the deed so provides, the estate may be created for any period of time specified therein which does not extend beyond any number of lives in being and 21 years thereafter.

HISTORY: Code 1981, § 53-12-51, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-52. Filing of deed in superior court; clerk's fees; filing of copies with Secretary of State; certificate; use of certified copy as evidence; additional copies and fees therefor; filing and fees for amendments

(a) The deed creating a trust estate as provided in Code Section 53-12-51 shall, within 30 days of the execution thereof, be filed by the trustee in the office of the clerk of the superior court of the county in which the principal office of the trust is located. The trustee shall concurrently deposit with and pay to the clerk the fee prescribed in Code Section 15-6-77. Upon the deed being filed with the clerk and the fees being paid, the clerk shall forthwith deliver to the trustee or his attorney two certified copies of the deed, the filing of the clerk thereon, and a receipt for the costs which have been paid to the clerk.

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

STATE OF GEORGIA
OFFICE OF THE SECRETARY OF STATE

This is to certify that a copy of the attached certified copy of a deed,

declaration, or agreement of trust dated , by and between as grantor(s) and as trustee(s), which states that the trustee(s) may use the name of , has been duly filed in the office

of the Secretary of State and the fees paid therefor, as provided by law.

WITNESS my hand and official seal this day of , .

Secretary of State

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

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

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

HISTORY: Code 1981, § 53-12-52, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1999, p. 81, § 53.

§ 53-12-53. Operation of trust under business or trade name

If the deed creating a trust estate under Code Section 53-12-51 so provides, the trustee or trustees may conduct and transact the affairs of the trust estate under a business or trade name, which name shall be set forth in the deed. The name may include the word "trust" but may

not include the words "trust company."

HISTORY: Code 1981, § 53-12-53, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-54. Issuance of certificates of beneficial interest; status of certificates; enforcement of claims against estate; service of process; venue; liability of trustees and beneficiaries

When an estate is created pursuant to Code Section 53-12-51 and from time to time thereafter, the trustee or trustees shall issue such certificates of beneficial interest as may be provided for by the deed to the persons who are beneficially interested in the estate or who become so interested therein in accordance with the provisions of the deed. The certificates shall pass and be transferred as personalty and in the same manner as shares of stock in corporations and shall be subject to levy and sale under attachment or execution or any other process in like manner as shares of stock. The trustee or person in charge of the estate representing the trustee shall be subject to the same demand as that provided by Code Sections 11-8-112 and 9-13-58 for the levying officer to make upon the officers of a corporation. Persons having claims against the estate may enforce the same by action against the trustee or trustees thereof in like manner as actions against corporations, and service thereof may be perfected by serving the trustee or trustees, if residents of this state, and if not, then by publication. The venue of such actions shall be the same as that of similar actions against private corporations, but neither the trustees nor the beneficiaries of the estate shall be personally or individually liable therefor except in cases where officers and stockholders of private corporations would be liable under the law.

HISTORY: Code 1981, § 53-12-54, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1999, p. 81, § 53.

§ 53-12-55. Powers of trustees generally; resignation; removal; appointment of successor

The trustee or trustees of a trust created under Code Section 53-12-51 shall have sole and exclusive management and control of the property, in accordance with the terms of the deed creating the estate. The exercise by the trustee or trustees of any power granted or conferred by the deed, including the power to lease, encumber, and sell, when exercised in accordance with the terms thereof, shall be as valid and effective to all intents and purposes as if the trustee or trustees were the

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

HISTORY: Code 1981, § 53-12-55, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-56. Authorized investments; repurchase or redemption of outstanding certificates

In addition to investments in any property, as such word is defined in Code Section 53-12-50, the trustee or trustees of a trust created under Code Section 53-12-51 may invest any funds of the trust estate in investments authorized to be made by trustees under the laws of this state; provided, however, that the deed creating the estate may further limit or expand the powers and authority of the trustee or trustees with respect to investments, including the power to invest in property located outside this state. The trustee or trustees are authorized and empowered, in accordance with the terms of the deed creating the estate, from corpus or from income or from both, to repurchase or redeem any issued and outstanding certificates of beneficial interest.

HISTORY: Code 1981, § 53-12-56, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-57. Initial and annual returns

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

HISTORY: Code 1981, § 53-12-57, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-58. Manner of vesting of title on termination of estate

Upon the termination of the estate created under Code Section 53-12-51, the legal title to all the property belonging to the estate which is then undisposed of shall pass to and vest in the persons who are, at that time, the beneficiaries of the estate, in shares corresponding with their respective interest as beneficiaries.

HISTORY: Code 1981, § 53-12-58, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-59. Merger of trust into domestic corporation; status of domestic corporation

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

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

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

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

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

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

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

(c) Upon compliance with the requirements of this Code section and the filing of articles of merger providing for a merger of the trust into a domestic corporation in the manner provided in Code Sections 14-2-

1105 and 14-2-1105.1, the Secretary of State shall treat the merger as if it were a merger of corporations under Code Sections 14-2-1105 and 14-2-1105.1.

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

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

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

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

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

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

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

HISTORY: Code 1981, § 53-12-59, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-70. Short title

This article shall be known and may be cited as the "Testamentary Additions to Trusts Act."

HISTORY: Code 1981, § 53-12-70, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-71. Making of testamentary additions to trusts generally

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

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

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

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

(c) A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse.

HISTORY: Code 1981, § 53-12-71, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-72. Limitation of duties and responsibilities of trustees

The trustee or trustees of a trust established by the testator or others as provided in Code Section 53-12-71 shall not be required to inquire into or audit the actions of the executor or executors of the testator's estate or to make any claim against the executor or executors unless specifically directed to do so by the trustor or trustors in the trust instrument. In the event that the trustee or trustees are authorized or directed by the trustor or trustors in the trust instrument to pay or advance any part or all of the trust property to the executor or executors of the testator's estate for the payment of debts, taxes, and expenses of administration of the testator's estate, the trustee or trustees shall not be liable for the application of the trust property so paid or advanced and shall not be liable for any act done or omitted to be done by the executor or executors with regard to the trust property.

HISTORY: Code 1981, § 53-12-72, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-73. Effect of article on prior and subsequent wills

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

HISTORY: Code 1981, § 53-12-73, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-90. Implied trusts

An implied trust is either a resulting trust or a constructive trust.

HISTORY: Code 1981, § 53-12-90, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-91. Resulting trusts

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

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

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

(3) A purchase money resulting trust as defined in subsection (a) of Code Section 53-12-92 is established.

HISTORY: Code 1981, § 53-12-91, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-92. Purchase money resulting trusts

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

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

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

HISTORY: Code 1981, § 53-12-92, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-93. Constructive trusts

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

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

HISTORY: Code 1981, § 53-12-93, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-94. Parol evidence and implied trusts

In all cases in which a trust is sought to be implied, the court may hear parol evidence of the nature of the transaction, the circumstances,

and the conduct of the parties, either to imply or rebut the trust.

HISTORY: Code 1981, § 53-12-94, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-110. Subjects of charity

The following subjects, as well as other subjects having for their purpose the relief of human suffering or the promotion of human civilization, are proper subjects of charity:

(1) The relief of poverty;

(2) The advancement of education;

(3) The advancement of ethics and religion;

(4) The advancement of health;

(5) The improvement or repair of cemeteries or tombstones;

(6) The prevention of cruelty to animals; and

(7) Governmental purposes.

HISTORY: Code 1981, § 53-12-110, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-111. Definition of charitable trust

A charitable trust is one in which the settlor provides that the trust property shall be used for charitable purposes. If the settlor provides for both charitable and noncharitable purposes, the provisions relating to the charitable purposes shall be governed by this article.

HISTORY: Code 1981, § 53-12-111, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-112. Power to select charitable purposes or charitable beneficiaries

The settlor of a charitable trust may retain the power to select the charitable purposes or charitable beneficiaries, or may direct the trustee or any other person to select the charitable purposes or charitable

beneficiaries or to engage in the charitable purposes, without rendering the trust void for indefiniteness.

HISTORY: Code 1981, § 53-12-112, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-113. Cy pres doctrine

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

HISTORY: Code 1981, § 53-12-113, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-114. Duration of charitable trusts

A charitable trust is valid even though by the terms of the trust it is to continue for an indefinite or unlimited period.

HISTORY: Code 1981, § 53-12-114, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-115. Attorney General or district attorney as representative of charitable beneficiaries; power to bring or defend actions; consent of state to action; venue; service of process; filing; effect of judgment

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

Attorney General or the district attorney of the circuit in which the major portion of the trust res lies is a party and is served as provided in this Code section.

HISTORY: Code 1981, § 53-12-115, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-116. Supervision of charitable trusts

(a) As used in this Code section, the term "charitable trust" means a charitable trust which conforms to the definition of a private foundation set forth in Section 509 of the Internal Revenue Code.

(b) As used in this Code section, the term "trustee" means the trustee of a charitable trust.

(c) The state revenue commissioner shall be authorized to supervise the administration of charitable trusts in the manner set forth in this Code section.

(d) Every trustee of a charitable trust shall file with the state revenue commissioner a copy of the annual return filed by the trustee with the Internal Revenue Service, as required by Section 6033 of the Internal Revenue Code, or a copy of the annual report filed by the trustee with the Internal Revenue Service, as required by Section 6056 of the Internal Revenue Code.

(e) At any time the state revenue commissioner deems an audit of the financial records and accounts of a charitable trust to be necessary, the commissioner shall notify the trustee in writing, and the audit shall immediately be undertaken by a certified public accountant to be selected jointly by the commissioner and the trustee. In the event agreement cannot be reached upon selection of a certified public accountant within ten days of receipt by the trustee of the notice provided for in this subsection, either party may request the selection of a certified public accountant for such purposes by the State Board of Accountancy. Expenses and fees incurred in the preparation of an audit shall be deemed valid expenses chargeable against the affected trust.

(f) The state revenue commissioner may investigate transactions and relationships of the trustees of charitable trusts subject to this Code section for the purpose of determining whether the property held for

charitable purposes is properly administered. The commissioner may require any agent, trustee, fiduciary, beneficiary, institution, association, corporation, or other person to appear at a named time and place in the county designated by him, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liability, receipts, or disbursements in the possession or control of the person ordered to appear.

(g) When the state revenue commissioner requires the attendance of any person, as provided in subsection (f) of this Code section, the commissioner shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be served in person or by registered or certified mail or statutory overnight delivery upon the person at least 14 days before the date fixed for attendance. The order shall have the same force and effect as a subpoena and, upon application of the commissioner, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court may, in case of contumacy or refusal to obey the order issued by the commissioner, issue an order requiring the person to appear before the commissioner or to produce documentary evidence, if so ordered, or to give evidence touching the matter in question; and any failure to obey the order of the court may be punished by that court as a contempt upon itself. The investigation or hearing provided for in subsection (f) of this Code section may be made by or before a person designated by the commissioner to conduct the investigation or hearing in his behalf. Witnesses ordered to appear shall be paid the same fees and mileage as are paid witnesses in the superior courts of this state. The commissioner or his designated representative acting in his behalf is empowered to administer the necessary oath or affirmation to witnesses.

(h) The state revenue commissioner may institute appropriate proceedings to secure compliance with this Code section, to correct improper administration of a charitable trust, and to invoke the jurisdiction of the court.

(i) The powers and duties of the state revenue commissioner provided in this Code section are in addition to his existing powers and duties. Nothing in this Code section shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any charitable trust subject to this Code section unless the state revenue commissioner is a party to the proceedings.

(j) This Code section shall not apply to any charitable trust which holds property for religious purposes or any agent, officer, director, trustee, or employee of any religious corporation sole or other religious corporation.

HISTORY: Code 1981, § 53-12-116, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2000, p. 1589, § 3.

§ 53-12-120. Automatic amendment of articles of incorporation of corporate private foundation

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-12-121, the articles of incorporation of any corporation which is a private foundation, as defined in Section 509 of the Internal Revenue Code, shall be amended automatically as of the later of the date of incorporation or January 1, 1972, to provide that the corporation shall:

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

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

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

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

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

HISTORY: Code 1981, § 53-12-120, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-121. Amendment of articles of incorporation to exclude application of Code Section 53-12-120

Any corporation which is a private foundation, as defined in Section 509 of the Internal Revenue Code, may amend its articles of incorporation expressly to exclude the application of Code Section 53-12-120 or any portion thereof in the manner provided by Article 10 of Chapter 2 of Title 14 or Article 8 of Chapter 3 of Title 14, whichever is applicable.

HISTORY: Code 1981, § 53-12-121, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-122. Effect of Code Sections 53-12-120 and 53-12-121 as to forfeiture or reversion of trust property or failure of trust

Nothing contained in Code Sections 53-12-120 and 53-12-121 shall cause or be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Code sections or to make the purposes of the trust impossible of accomplishment.

HISTORY: Code 1981, § 53-12-122, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-123. Effect of Code Sections 53-12-120 and 53-12-121 on powers of Attorney General and courts

Nothing in Code Sections 53-12-120 and 53-12-121 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any corporation.

§ 53-12-124. Automatic amendment of governing instrument of private foundation trust, charitable trust, or split-interest trust

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-12-126, the governing instrument of any trust which is a private foundation, as defined in Section 509 of the Internal Revenue Code, a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code, or a split-interest trust, as defined in Section 4947(a)(2) of the Internal Revenue Code, shall be amended automatically as of the later of the inception of the trust or January 1, 1972, to include provisions which prohibit the trustees of the trust from:

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

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

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

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

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

HISTORY: Code 1981, § 53-12-124, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-125. Automatic amendment of governing instrument of private foundation trust or charitable trust as to distribution of funds

Notwithstanding any provision therein to the contrary and except as provided in Code Section 53-12-126, the governing instrument of any trust which is a private foundation, as defined in Section 509 of the Internal Revenue Code, or which is a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code, shall be amended automatically as of the later of the inception of the trust or January 1, 1972, to include a provision which requires the trustees to distribute, for the purposes specified in the governing instrument, for each taxable year, amounts at least sufficient to avoid any liability for the tax imposed by Section 4942 of the Internal Revenue Code.

HISTORY: Code 1981, § 53-12-125, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-126. Amendment of governing instrument of private foundation trust, charitable trust, or split-interest trust to exclude application of Code Sections 53-12-124 and 53-12-125

The trustees of any trust which is a private foundation, as defined in Section 509 of the Internal Revenue Code, a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code, or a split-interest trust, as defined in Section 4947(a)(2) of the Internal Revenue Code, may, without judicial proceedings, amend the governing instrument of the trust expressly to exclude the application of Code Sections 53-12-124, 53-12-125, or both, by executing a written amendment to the trust and filing a duplicate original of the amendment with the Attorney General of this state, whereupon the Code section or Code sections, as the case may be, shall not apply to the trust.

HISTORY: Code 1981, § 53-12-126, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-127. Effect of Code Section 53-12-124, 53-12-125, or 53-12-126 as to forfeiture or reversion of trust property or failure of trust

Nothing contained in Code Section 53-12-124, 53-12-125, or 53-12-126 shall cause or be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Code sections or to make the purposes of the trust impossible of accomplishment.

HISTORY: Code 1981, § 53-12-127, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-128. Effect of Code Sections 53-12-124 through 53-12-126 on powers of Attorney General and courts

Nothing in Code Sections 53-12-124 through 53-12-126 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any trust.

HISTORY: Code 1981, § 53-12-128, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-129. Election by trustees of private foundation or charitable trust to distribute such trust principal as will enable trust to avoid tax liability; filing of written election with Attorney General; form of distribution; revocation of election

(a) With respect to any trust which is a private foundation, as defined in Section 509 of the Internal Revenue Code, or a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code, the governing instrument of which permits distributions to the extent of the net income of the trust each year but does not permit distributions from trust principal, the trustees of the trust may elect, without judicial proceedings and notwithstanding any provision to the contrary contained in the governing instrument of the trust, to distribute in any year, for the purposes specified in the governing instrument, that amount from the principal of the trust which, when added to the income of the trust available for distribution during such year, will enable the trust to avoid any liability for the tax imposed by Section 4942 of the Internal Revenue Code, by filing a written election, which may be a continuing one, with the Attorney General of this state to have this Code section and Code Sections 53-12-130 and 53-12-131 apply to the trust. A distribution from trust principal pursuant to the election shall only be in the form of cash or securities which are either listed or admitted to unlisted trading privileges upon any stock exchange or are quoted regularly in any newspaper or newspapers having a general circulation in this state.

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

HISTORY: Code 1981, § 53-12-129, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-130. Election by corporate private foundation to distribute such property as will enable corporation to avoid tax liability

With respect to property held by a corporation which is a private foundation, as defined in Section 509 of the Internal Revenue Code, and which is subject to conditions which permit distributions to the extent of the net income of the property each year but do not permit distributions of the property or any part thereof itself, the directors of the corporation may elect to distribute so much of the property as may be necessary to enable the corporation to avoid liability for any tax imposed by Section 4942 of the Internal Revenue Code in the same manner as if the corporation were a trust described in Code Section 53-12-129 and the property were the only property held in the trust and as if the directors were the trustees of the trust.

HISTORY: Code 1981, § 53-12-130, enacted by Ga. L. 1991, p. 810, §

1.

§ 53-12-131. Commission of trustees upon distribution of property in kind from trust

In any case where the trustees of a trust have elected to come under Code Section 53-12-129 or 53-12-130 and have distributed property in kind from the trust in satisfaction of the distribution requirements of Section 4942 of the Internal Revenue Code, the trustees shall be allowed such commission as would be allowed if the property had been sold for a price equal to its fair market value at the date of distribution and the proceeds had been distributed instead.

HISTORY: Code 1981, § 53-12-131, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-132. Effect of Code Section 53-12-129, 53-12-130, or 53-12-131 as to forfeiture or reversion of trust property or failure of trust

Nothing contained in Code Section 53-12-129, 53-12-130, or 53-12-131 shall cause or be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Code sections or to make the purposes of the trust impossible of accomplishment.

HISTORY: Code 1981, § 53-12-132, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-133. Effect of Code Section 53-12-129, 53-12-130, or 53-12-131 on powers of Attorney General and courts

Nothing in Code Section 53-12-129, 53-12-130, or 53-12-131 shall impair the rights and powers of the courts or the Attorney General of this state with respect to any trust or corporation.

HISTORY: Code 1981, § 53-12-133, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-150. Power to modify or revoke

A settlor shall have no power to modify or revoke a trust in the absence of an express reservation of such power. A power to revoke will be deemed to include a power to modify and an unrestricted power to

modify will be deemed to include a power to revoke. Any revocation or modification of an express trust must be in writing.

HISTORY: Code 1981, § 53-12-150, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-151. Trustee's consent necessary to enlarge duties

In exercising a power to modify the terms of a trust, the settlor may not enlarge the duties of the trustee without the trustee's express consent.

HISTORY: Code 1981, § 53-12-151, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-152. Consolidation, division, and termination due to manifest necessity

(a) If upon petition of the trustee, personal representative of the decedent's estate, or any beneficiary, the court having jurisdiction over a trust, regardless of any spendthrift or similar protective provisions, finds that:

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

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

(3) Owing to circumstances not known to the grantor, donor, or settlor and not anticipated by the grantor, donor, or settlor, the continuance of the trust would defeat or substantially impair the accomplishment of the purpose of the trust,

the court, after due notice to all persons then having an interest in the trust, may order distribution of the trust property. The order shall specify the appropriate share of each beneficiary who is to share in the proceeds of the trust, taking into account the interest of any income beneficiaries and remainder beneficiaries, so as to conform as nearly as possible to the intention of the grantor, donor, settlor, or testator. The order may direct that the interest of a minor beneficiary, or any portion thereof, be converted into qualifying property and distributed to a custodian pursuant to Article 5 of Chapter 5 of Title 44, "The Georgia Transfers to

Minors Act." In addition, the court may make such other orders as it deems proper or necessary to protect the interests of the beneficiaries and of the trustee.

(b) Upon petition by a trustee, beneficiary, or any party in interest for good cause shown, the court, after conducting a hearing with notice to all parties in interest, in such manner as the court may direct, may divide a trust into two or more single trusts or consolidate two or more trusts into a single trust, upon such terms and conditions as it deems appropriate. The court shall not approve any such consolidation or division unless such consolidation or division:

(1) Is not inconsistent with the intent of the grantor, donor, settlor, or testator with regard to any trust to be consolidated or divided;

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

(3) Would be in the best interest of all beneficiaries, and not materially impair their respective interests.

(c) Subsection (b) of this Code section shall apply to any trust created by the same or different instruments or by the same or different persons.

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

HISTORY: Code 1981, § 53-12-152, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-153. Judicial modification

The court may direct or permit a trustee to modify the terms of a trust if it is established by clear and convincing evidence that, owing to circumstances not known to or anticipated by the settlor, compliance would defeat or substantially impair the accomplishment of the purposes of the trust.

HISTORY: Code 1981, § 53-12-153, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-170. Appointment

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

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

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

(d) The petition provided for in subsection (c) of this Code section shall be served upon all income beneficiaries and upon all beneficiaries holding vested remainder interests; provided, however, that the court in its discretion may order service of the petition upon a majority of the income beneficiaries and a majority of the beneficiaries holding vested remainder interests, if it appears to the court that it will be to the advantage of the trust not to require full service upon all beneficiaries; and provided, further, that the court shall have discretion to order any other or additional service that the circumstances require.

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

HISTORY: Code 1981, § 53-12-170, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-171. Acceptance

The acceptance of a trust is necessary to constitute a person as trustee. Acceptance may be effected by acts as well as words. After acceptance, the trustee may not disclaim the trusteeship.

HISTORY: Code 1981, § 53-12-171, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-172. Actions by cotrustees

Unless the trust instrument provides otherwise, the authority of cotrustees to act on behalf of the trust shall be as follows:

(1) A power vested in two or more trustees may only be exercised by their unanimous action;

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

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

HISTORY: Code 1981, § 53-12-172, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-173. Compensation for services

(a) Trustees shall be compensated in accordance with either the trust instrument or any separate written agreement. The agreement shall be between the trustee and the settlor, or after the settlor's death or incapacity or while the trust is irrevocable, and subsequent to any original fee agreement entered into by the settlor and the trustee, the trustee and a majority in number of both of the sui juris income and vested remainder beneficiaries, executed in writing at such time or times as changes, if any, occur.

(b) If the trustee's compensation is not specified in the trust instrument or any separate written agreement, the trustee, for services rendered, shall be entitled to the same compensation as conservators receive for similar services as set forth in Code Section 29-5-50. The trustee's compensation may be paid from time to time as the fees are earned, except that the fees for delivery of property in kind, when specifically approved by the judge of the probate court, may be paid in advance of actual distribution when the judge of the probate court shall determine that this is equitable and that the condition of the estate permits it.

(c) Unless the trust instrument or the agreement provides otherwise:

(1) Compensation among cotrustees shall be apportioned as they shall agree or according to the services rendered by each;

(2) Compensation among successive trustees shall be apportioned according to the proportion of time each rendered services during the year, and shall not include any amount for transferring the trust property or responsibility for it from one trustee to a successor.

HISTORY: Code 1981, § 53-12-173, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2006, p. 805, § 23/SB 534.

§ 53-12-173.1. Compensation from business enterprise

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

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

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

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

(b) Any trustee receiving compensation from a corporation or other business enterprise for services to it as described in subsection (a) of this Code section shall not receive extra compensation in respect to such services as provided in Code Sections 29-3-52 and 29-5-52; provided, however, that nothing in this Code section shall prohibit the receipt by the trustee of extra compensation for services rendered in respect to other assets or matters involving the trust estate.

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

(d) The purpose of this Code section is to enable additional compensation to be paid to trustees for business management and advisory services to corporations and business enterprises pursuant to contract, without the necessity of petitioning for extra compensation pursuant to Code Sections 29-3-52 and 29-5-52.

HISTORY: Code 1981, § 53-12-173.1, enacted by Ga. L. 1996, p. 504, §

11; Ga. L. 2004, p. 161, § 14.

§ 53-12-174. Trustee's bond

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

(1) The trust instrument requires a bond; or

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

(b) Even though the trust instrument requires a bond, the court may excuse the requirement, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties.

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

(d) If a bond is required, it must be payable to the court for the benefit of interested persons as their interests may appear and conditioned on faithful performance of the trustee's duties, and if imposed by a court, must be in an amount and with sureties and liabilities required by the court.

(e) Any other law to the contrary notwithstanding, a national banking association or a bank or trust company organized under the laws of this state that seeks to qualify as a trustee under any trust created under or governed by the laws of this state shall not be required to give bond for the faithful performance of its duties unless its combined capital, surplus, and undivided profits are less than $400,000.00 as reflected in its last statement filed with the comptroller of the currency of the United States or the commissioner of banking and finance or unless the instrument under which it seeks to qualify expressly provides that it shall give bond.

(f) Any other law to the contrary notwithstanding, in every case in which the trustee of any trust is required by any law of this state or by the judge of any court of competent jurisdiction to give bond for the faithful performance of the trustee's duties in such fiduciary capacity, the trustee may give bond in an amount equal to the value of the trust estate if the

bond is secured by a licensed commercial surety authorized to transact business in this state.

(g) Any other law to the contrary notwithstanding, in every case in which the trustee of any trust is required by any statute of this state or by the judge of any court of competent jurisdiction to give bond for the faithful performance of the trustee's duties in such fiduciary capacity and the amount of the bond is dependent upon the value of the trust estate, the value of the trust estate for purposes of the bond shall be determined without regard to the value of any real property or improvements thereon held by the trustee in the trustee's fiduciary capacity. Upon the conversion by any such fiduciary of the real property into personalty, the fiduciary shall give a new bond based upon the value of the estate, including the value of the personalty into which the real property is converted.

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

HISTORY: Code 1981, § 53-12-174, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1996, p. 504, § 12.

§ 53-12-175. Resignation of trustee

(a) A trustee may resign:

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

(2) Upon application to the court wherein is located either the major portion of the trust property or the residence of the trustee or the residence of one or more income beneficiaries of the trust, showing that the resignation has been requested in writing by all sui juris beneficiaries who are then entitled to receive income from the trust, and by a majority of the sui juris beneficiaries who hold vested remainder interests; or

(3) Upon application to the court wherein is located either the major portion of the trust property or the residence of the trustee or the residence of one or more income beneficiaries of the trust, showing to the satisfaction of the court that:

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

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

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

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

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

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

(b) The application to the court provided for in paragraph (3) of subsection (a) of this Code section shall be served upon all income beneficiaries and upon all beneficiaries holding vested remainder interests; provided, however, that the court in its discretion may order service of the petition upon a majority of the income beneficiaries and a majority of the beneficiaries holding vested remainder interests, if it appears to the court that it will be to the advantage of the trust not to require full service upon all beneficiaries; and provided, further, that the court shall have discretion to order any other or additional service that the circumstances require.

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

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

HISTORY: Code 1981, § 53-12-175, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-176. Removal of trustee

(a) A trustee may be removed:

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

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

(b) In the discretion of the court, in order to protect the trust property or the interests of any beneficiary, on its own motion or on motion of a cotrustee or other interested person, the court may compel the trustee whose removal is being sought to surrender trust property to a cotrustee or to a receiver or temporary trustee pending a decision on a petition for removal of a trustee or pending appellate review of such decision. To the extent the court deems necessary, the powers of the trustee also may be suspended.

HISTORY: Code 1981, § 53-12-176, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-190. Trustee duties

(a) The duties contained in this chapter are applicable except as otherwise provided in the trust instrument, and are in addition to and not in limitation of the common law duties of the trustee, except to the extent inconsistent therewith.

(b) The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration:

(1) On reasonable request by any beneficiary the trustee shall provide the beneficiary with a report of information, to the extent relevant to the beneficiary's interest, about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust, including the terms of the trust that describe or affect the beneficiary's interest;

(2) The trustee shall account at least annually, at the termination of the trust, and upon a change of trustees, to each beneficiary of an irrevocable trust to whom income is required or authorized in the trustee's discretion to be distributed currently, and to any person who may revoke the trust; at the termination of the trust, the trustee shall also account to each remainder beneficiary. In full satisfaction of this obligation, the trustee may deliver the accounting to the legal or natural guardian of any beneficiary who is under a legal disability;

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

(4) The trustee is not required to report information or account to a beneficiary who has waived in writing the right to a report or accounting and has not withdrawn that waiver;

(5) Nothing in this Code section shall affect the power of a court to require an accounting.

(c) The trustee shall distribute all net income derived from the trust at least annually.

HISTORY: Code 1981, § 53-12-190, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-191. Violations of duties -- Breach of trust

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

HISTORY: Code 1981, § 53-12-191, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-192. Breach of trust -- Actions and remedies

(a) Notwithstanding the remedy set forth in subsection (c) of Code Section 53-12-222 for an abuse of discretion as provided in Code Sections 53-12-220 and 53-12-221, if a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary shall have a cause of action:

(1) To recover damages;

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

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

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

(5) To appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(6) To remove the trustee;

(7) To reduce or deny compensation of the trustee.

(b) When trust assets are misapplied and can be traced in the hands of persons affected with notice of the misapplication, the trust shall attach to the assets. A creditor of an estate may follow assets in the hands of legatees or distributees even if they were received without notice.

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

HISTORY: Code 1981, § 53-12-192, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2005, p. 583, § 2/HB 406.

§ 53-12-193. Measure of liability of trustee to beneficiary

(a) Notwithstanding the remedy set forth in subsection (c) of Code Section 53-12-222 for an abuse of discretion as provided in Code Sections 53-12-220 and 53-12-221, a trustee who commits a breach of trust is personally chargeable with any damages resulting from the breach of trust including but not limited to:

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

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

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

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

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

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

(2) The amount of interest actually received.

HISTORY: Code 1981, § 53-12-193, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2005, p. 583, § 3/HB 406.

§ 53-12-194. Relief of trustee from liability for breach of trust

(a) No provision in a trust instrument is effective to relieve the trustee of liability for breach of trust committed in bad faith or intentionally or with reckless indifference to the interest of the beneficiary or for liability for any profit which the trustee has derived from a breach of trust.

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

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

HISTORY: Code 1981, § 53-12-194, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-195. Liability of successor trustee for breach of trust by predecessor

(a) A successor trustee is liable to the beneficiary for breach of trust

involving acts or omissions of a predecessor trustee only:

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

(2) If the successor trustee neglects to take reasonable steps to compel the predecessor to deliver the trust property to the successor trustee; or

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

(b) A trustee succeeding a trustee who was also the grantor is not liable to the beneficiary for any action taken or omitted to be taken by the prior trustee; nor does such successor trustee have a duty to institute any action against such prior trustee or to file any claim against such prior trustee's estate for any of the prior trustee's acts or omissions as trustee. This subsection applies only with respect to a trust or any portion of a trust that was revocable by the grantor during the time that the grantor served as trustee and committed the act or omission.
HISTORY: Code 1981, § 53-12-195, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-196. Liability for acts of cotrustees

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

(1) If the trustee participates in a breach of trust committed by the cotrustee;

(2) If the trustee improperly delegates the administration of the trust to the cotrustee;

(3) If the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(4) If the trustee negligently enables the cotrustee to commit a breach of trust;

(5) If the trustee neglects to take reasonable steps to compel the

cotrustees to redress a breach of trust in a case where the trustee knows or reasonably should have known of the breach of trust.

(b) If two or more cotrustees are jointly liable to the beneficiary, each cotrustee is entitled to contribution from the other, as determined by the degree of their fault.

HISTORY: Code 1981, § 53-12-196, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-197. Remedies among cotrustees

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

(1) Compel the cotrustee to perform duties required under the trust;

(2) Enjoin the cotrustee from committing a breach of trust; or

(3) Compel the cotrustee to redress a breach of trust committed by the cotrustee.

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

HISTORY: Code 1981, § 53-12-197, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-198. Limitations of actions

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

(b) A successor trustee's claim against a predecessor trustee is barred unless a proceeding to assert the claim is commenced within six years

after the successor trustee takes office.

(c) A trustee's claim against a cotrustee is barred unless a proceeding to assert the claim is commenced within six years after the date the cause of action against the cotrustee arises.

(d) With respect to a claim which accrued prior to July 1, 1991, the claim is barred unless a proceeding to assert the claim is commenced either prior to the date the claim would have been barred had this Code section not been enacted or within six years from July 1, 1991, whichever is sooner.

HISTORY: Code 1981, § 53-12-198, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-199. Personal liability of trustee

(a) No trustee shall be personally liable on any warranty made in any conveyance of property lawfully sold, unless the trustee expresses an intention to be personally bound by such covenant.

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

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

HISTORY: Code 1981, § 53-12-199, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-210. Definitions

As used in this article, the term:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes at the time the property is acquired by the trustee.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

HISTORY: Code 1981, § 53-12-210, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-211. Duty of trustee as to receipts and expenditure

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

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

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

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

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

(b) In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the governing instrument or this chapter, including Code Section 53-12-220, relating to a trustee's power to adjust, and Code Section 53-12-221, relating to the power to convert to unitrust, a trustee shall administer a trust impartially based on what is fair and reasonable to all of the beneficiaries, except to the extent that the governing instrument clearly manifests an intention that the trustee shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

HISTORY: Code 1981, § 53-12-211, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2005, p. 583, § 4/HB 406.

§ 53-12-212. Income; principal

(a) Income is the return in money or property derived from the use of principal, including but not limited to return received as:

(1) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(2) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in Code Section 53-12-215 on bond premium and bond discount;

(3) Income earned during administration of a decedent's estate;

(4) Corporate distributions as provided in Code Section 53-12-214;

(5) Accrued increment on bonds or other obligations issued at discount as provided in Code Section 53-12-215;

(6) Receipts from business and farming operations as provided in Code Section 53-12-216; or

(7) Receipts from property subject to depletion and timber as provided in Code Sections 53-12-217 and 53-12-218.

(b) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes, but is not limited to:

(1) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(2) Proceeds of property taken on eminent domain proceedings;

(3) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(4) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Code Section 53-12-214;

(5) Receipts from the disposition of corporate securities as provided in Code Section 53-12-215;

(6) Receipts from property subject to depletion and timber as provided in Code Sections 53-12-217 and 53-12-218;

(7) Any profit resulting from any change in the form of principal;

(8) Any allowances for depreciation established under Code Section 53-12-216 and paragraph (2) of subsection (a) of Code Section 53-12-219.

HISTORY: Code 1981, § 53-12-212, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-213. When right to income arises; apportionment of income

(a) An income beneficiary is entitled to income from the date specified in the trust or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(b) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:

(1) Receipts due but not paid at the date of death of the testator are principal;

(2) Receipts in the form of periodic payments, other than corporate distributions to stockholders, including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance of the receipt is income.

(c) In all other cases, any receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in

part before the date when the asset became subject to the trust.

(d) On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to:

(1) Income undistributed on the date of termination;

(2) Income due but not paid to the trustee on the date of termination; and

(3) Income in the form of periodic payments, other than corporate distribution to stockholders, including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(e) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

HISTORY: Code 1981, § 53-12-213, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-214. Corporate distributions

(a) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(b) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(1) A call of shares;

(2) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation;

(3) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation; or

(4) Any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(c) In the case of a regulated investment company or a trust qualifying and electing to be taxed under federal law as a real estate investment trust:

(1) Distributions made from ordinary income are income; and

(2) All other distributions, including distributions from capital gains, depreciation, or depletion, whether made in the form of cash, an option to take new stock or cash, or an option to purchase additional shares, are principal.

(d) Except as provided in subsections (a), (b), and (c) of this Code section, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (b) and (c) of this Code section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(e) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this article concerning the source or character of dividends or distributions of corporate assets.

HISTORY: Code 1981, § 53-12-214, enacted by Ga. L. 1991, p. 810, § 1. § 53-12-215. Bond premium and discount

(a) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (b) of this Code section for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(b) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first

principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

HISTORY: Code 1981, § 53-12-215, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-216. Business and farming operations

If a trustee uses any part of the principal in the operation of a business, including an agricultural or farming operation, the net profits and losses of the business shall be computed in accordance with recognized methods of accounting for a comparable business. Net profits from a business are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

HISTORY: Code 1981, § 53-12-216, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-217. Property subject to depletion

(a) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, regardless of whether any natural resource was being taken from the land at the time the trust was established, the receipts from taking the natural resources from the land shall be allocated to principal. If any part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, but excluding interests in minerals or other natural resources as described above, and in timber or in land from which merchantable timber may be removed, the trustee shall determine the value and the useful life of the property as of the beginning of each annual accounting period. Receipts shall be allocated to principal to amortize that value; the balance of the receipts shall be allocated to income.

(b) A trustee that, on July 1, 1991, held an item of depletable property of a type specified in this Code section may allocate receipts from the property in the manner used before July 1, 1991, but as to all depletable property acquired after July 1, 1991, by an existing or new trust, the method of allocation provided in this article shall be used.

HISTORY: Code 1981, § 53-12-217, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-218. Timber

If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with subsection (a) of Code Section 53-12-211.

HISTORY: Code 1981, § 53-12-218, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2005, p. 583, § 5/HB 406.

§ 53-12-219. Charges against income and principal

(a) The following charges shall be made against income:

(1) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee, interest paid by the trustee, and ordinary repairs;

(2) A reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence; the trustee may exercise discretion in determining whether to take an allowance for depreciation of any property held by the trustee on July 1, 1991, for which the trustee is not then making an allowance for depreciation;

(3) One-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(4) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(5) One-half of the trustee's regular periodic compensation, whether based on a percentage of principal or income, and all expenses incurred for current management of principal and application of income;

(6) Any tax payable by the trustee levied upon receipts defined as income under this chapter or the trust.

(b) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(c) All other charges shall be made against principal.

(d) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under Code Section 53-12-213.

(e) Expenses incurred in connection with the settlement of a decedent's estate, including interest and penalties concerning taxes, fees of attorneys and personal representatives, and court costs, may be charged against the principal or income at the discretion of the personal representative.

HISTORY: Code 1981, § 53-12-219, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-220. Discretionary power of a trustee to adjust the trust receipts between principal and income

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

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

(2) The trustee determines, after applying the rules in subsection (a) of Code Section 53-12-211, that the trustee is unable to comply with subsection (b) of Code Section 53-12-211.

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

(1) The size of the trust;

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

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

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

(5) The expected tax consequences of an adjustment;

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

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

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

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

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

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

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

(1) The adjustment would diminish the income interest in a trust which requires all of the income to be paid at least annually to a spouse and for which a federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a federal gift tax exclusion;

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

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

(5) If:

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

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

(6) If:

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

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

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

(8) If the trust has been converted under Code Section 53-12-221.

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

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

(A) The entire power conferred by subsection (a) of this Code section;

(B) The power to adjust from income to principal; or

(C) The power to adjust from principal to income.

(2) A release under paragraph (1) of this subsection is permissible if either of the following apply:

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

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

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

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

HISTORY: Code 1981, § 53-12-220, enacted by Ga. L. 2005, p. 583, § 6/HB 406.

§ 53-12-221. Requirements and prohibitions in adjustments

(a) Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust under Code Section 53-12-220 and convert a trust into a unitrust as described in this Code section if all of the following apply:

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

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

(A) Are currently eligible to receive income from the trust; and

(B) Would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior

to the giving of notice;

(3) There is at least one sui juris beneficiary under subparagraph (A) of paragraph (2) of this subsection and at least one sui juris beneficiary under subparagraph (B) of paragraph (2) of this subsection; and

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2) of this subsection.

(b)(1) The trustee may petition the superior court to approve the conversion to a unitrust.

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the superior court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) In deciding whether to exercise the power to convert to a unitrust as provided by subsection (a) of this Code section, a trustee may consider, among other things, all of the following:

(1) The size of the trust;

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

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

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

(5) The expected tax consequences of the conversion;

(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, and tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

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

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

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

(d) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

(A) Appreciation of capital;

(B) Earnings and distributions from capital; or

(C) Both appreciation of capital and earnings and distributions from capital;

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this Code section;

(3) The term "income" in the governing instrument shall mean an annual unitrust distribution equal to 4 percent of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence;

(4) The trustee can determine the fair market value of the property in the trust by appraisal or other reasonable method or estimate; and

(5) The fair market value of the trust property shall not include the value of any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more of the current beneficiaries of the trust have or had the right to occupy or have had the right to possess or control, other than in his or her capacity as trustee of the trust, and instead the right of occupancy or the right to

possession or control shall be deemed to be the unitrust amount with respect to such residential property.

(e) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust;

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) The frequency of unitrust distributions during the year;

(4) The effect of other payments from or contributions to the trust on the trust's valuation;

(5) Whether to value the trust's assets annually or more frequently;

(6) What valuation dates to use;

(7) How frequently to value nonliquid assets and whether to estimate their value; and

(8) Any other matters necessary for the proper functioning of the unitrust.

(f)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

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

(1) Select a payout percentage different than 4 percent;

(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such

distribution is necessary to preserve a tax benefit;

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

(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under Code Section 53-12-220 shall be revived.

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

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

(1) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert;

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

(3) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside;

(4) If:

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

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

(5) If:

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

(B) The assets would not be subject to federal estate, gift, or

generation-skipping transfer tax with respect to the individual if the trustee did not possess the power to convert.

(j)(1) If paragraph (4) or (5) of subsection (i) of this Code section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument; and

(2) If paragraph (4) or (5) of subsection (i) of this Code section applies to all the trustees, the trustees may petition the superior court to direct a conversion.

(k)(1) A trustee may release the power conferred by subsection (a) of this Code section to convert to a unitrust if either of the following apply:

(A) The trustee is uncertain about whether possessing or exercising the power to convert will cause a result described in paragraph (4) or (5) of subsection (i) of this Code section; or

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

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

HISTORY: Code 1981, § 53-12-221, enacted by Ga. L. 2005, p. 583, § 6/HB 406.

§ 53-12-222. Abuse of trustee's discretion; remedies

(a) A court shall not change a trustee's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the trustee's discretion.

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

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

(2) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if

any, to be given to the relevant factors in deciding whether and to what extent to exercise the power conferred by this chapter.

(c) Notwithstanding the actions and remedies and measure of liability for breach of trust as set forth in Code Sections 53-12-192 and 53-12-193, if a court determines that a trustee has abused its discretion regarding a discretionary power conferred by this chapter, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the trustee had not abused its discretion, according to the following rules:

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

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

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

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

(d) No provision of this Code section or this chapter is intended to create or imply a duty to make an adjustment under Code Section 53-12-220 or a conversion under Code Section 53-12-221, and a trustee is not liable for not considering whether to make an adjustment or a conversion for choosing not to make an adjustment or a conversion.

HISTORY: Code 1981, § 53-12-222, enacted by Ga. L. 2005, p. 583, § 6/HB 406.

§ 53-12-230. "Fiduciary" defined

As used in this article, the term "fiduciary" means the one or more executors of the estate of a decedent or the one or more trustees of a testamentary or inter vivos trust estate, whichever in a particular case is appropriate.

HISTORY: Code 1981, § 53-12-230, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-231. Incorporation by reference of powers in will or trust agreement

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

(b) Incorporation of one or more of the powers contained in this article, by reference to the appropriate portion of Code Section 53-12-232, shall be in addition to and not in limitation of the common-law or statutory powers of the fiduciary.

(c) (1) A provision in any will or trust instrument which incorporates powers by citation to Georgia Laws 1973, page 846; Code 1933, Section 108-1204 (Harrison); or Code Section 53-15-3 and which was valid under the law in existence at the time the will was signed by the testator or at the time of the signing by the first settlor who signs the trust instrument shall be effective notwithstanding the subsequent repeal of such statute.

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

HISTORY: Code 1981, § 53-12-231, enacted by Ga. L. 1991, p. 810, §

1; Ga. L. 1992, p. 1053, § 1.

§ 53-12-232. Powers that may be incorporated by reference

The following powers may be incorporated by reference, as provided by this article:

(1) To retain for such time as the fiduciary shall deem advisable any property, real or personal, which the fiduciary may receive even though the retention of the property by reason of its character, amount, proportion to the total estate, or otherwise would not be appropriate for the fiduciary apart from this paragraph;

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

(3) To invest and reinvest, as the fiduciary shall deem advisable, in common or preferred stocks, bonds, debentures, notes, mortgages, or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest or in annuity contracts for any beneficiary; in any real or personal property; in investment trusts, including the securities of or other interests in any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended; in participations in common trust funds; and, generally, in such property as the fiduciary shall deem advisable even though the investment is not of the character approved by applicable law but for this paragraph;

(4) To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one type or of one company than would be considered appropriate for the fiduciary apart from this paragraph;

(5) To the extent and upon such terms and conditions and for such

periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including, but not limited to, the power:

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

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

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

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

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

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

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

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

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

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

and livestock;

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

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

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

(G) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is to the best interest of the estate;

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

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

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

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

(8) To manage real property:

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

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

(C) To terminate any subdivision or part thereof;

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

(E) To lease the property or part thereof, the lease to commence at

the present or in the future, upon the terms and conditions, including options to renew or purchase, and for the period or periods of time as the fiduciary deems advisable even though the period or periods may extend beyond the duration of the trust or of the administration of the estate involved;

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

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

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

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

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

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

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

(9) To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate;

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

(11) In dealing with one or more fiduciaries:

(A) To sell real or personal property to or to exchange such property with the trustee of any trust which the decedent or the settlor or his spouse or any child of his shall have created for such estates and upon

such terms and conditions as to sale price, terms of payment, and security as shall seem advisable to the fiduciary; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and

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

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

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

(14) To vote shares of stock owned by the estate or any trust at stockholders' meetings, in person or by special, limited, or general proxy, with or without power of substitution;

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

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

(17) To unite with other owners of property similar to any which may

be held at any time in the decedent's estate or in any trusts, in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property or the incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company, or association, the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or the beneficiaries of any trust with reference to any such plan; and to receive as investments of an estate or any trust any securities issued as a result of the execution of such plan;

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

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

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

(21) To carry such insurance coverage, including public liability, for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable;

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

(23) To compromise, adjust, arbitrate, bring or defend actions on, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable; the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by such persons, and, in the absence of fraud, bad faith, or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the estate or trust;

(24) To employ and compensate, out of income or principal or both and in such proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or the administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of the agent or representative, provided he was selected and retained with due care on the part of the fiduciary;

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

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

(27) To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees, and the fiduciary may distribute types of assets differently among the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there are more than one distributee thereof, which determination shall be binding upon the distributees unless clearly capricious, erroneous, and inequitable;

(28) To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

(A) Directly to the minor or incompetent;

(B) Directly in payment for the support; maintenance; education; and medical, surgical, hospital, or other institutional care of the minor or incompetent;

(C) To the legal or natural guardian of the minor or incompetent; or

(D) To any other person, whether or not appointed guardian of the person by any court, who shall, in fact, have the care and custody of the person of the minor or incompetent.

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

(29) To determine:

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

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

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

(30) To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this Code section;

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

(32) To make distribution, whether of income or principal, from the estate or trust to or for a person under the age of 21 years by transferring the amount or property interest involved to a custodianship for the benefit of such person created under and governed by Article 5 of Chapter 5 of Title 44, known as "The Georgia Transfers to Minors Act."

HISTORY: Code 1981, § 53-12-232, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1992, p. 1438, § 3.

§ 53-12-233. Effect of article on other laws pertaining to fiduciary

The enumeration in this article of any power or authority of a fiduciary shall not create a presumption or raise an inference that the power or authority is not otherwise held by or granted by law to the fiduciary.

HISTORY: Code 1981, § 53-12-233, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-234. Powers of trustee under trust which omits powers in Code Section 53-12-232

The beneficiaries of a trust executed after July 1, 1991, which omits any of the powers in Code Section 53-12-232 may, unless the trust expressly prohibits it, by unanimous consent authorize but not require the court to grant to the trustee those powers. With respect to any beneficiary who is not sui juris, such consent may be given by the duly appointed guardian of the property, if any, or if none, by the duly appointed guardian of the person, if any, or if none, by either parent in the case of a minor or a majority in interest of the beneficiaries in the case of an incapacitated adult; provided, however, that such consent on behalf of a person not sui juris shall not be effective when the only person consenting is the person who will serve or who is serving as trustee. The grant of any such powers may only be ordered after due notice of any such proceeding has been given to all persons then having an interest in the trust, and in the absence of any objection having been filed.

HISTORY: Code 1981, § 53-12-234, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-250. Disposition of income; encroachment on corpus

Trustees are authorized, out of the income of the estate, to pay all debts incurred for its protection and preservation and to appropriate a sufficiency of the balance for the support and maintenance of the beneficiaries of the trust. They may not encroach upon the corpus of the estate, except by order of the superior court.

HISTORY: Code 1981, § 53-12-250, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-251. Contracts for labor or service for benefit of estate

Trustees may make contracts for labor or service for the benefit of the estates of their beneficiaries, upon such terms as they deem best. All such contracts, made in good faith, shall be a charge upon and bind the estates whenever the same are approved by the judge of the probate court of the county.

HISTORY: Code 1981, § 53-12-251, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-252. Lease of real property beyond termination of trust -- Definitions

As used in Code Sections 53-12-253 through 53-12-257, the term:

(1) "Trust" includes the estate held by an executor, administrator, guardian, or trustee.

(2) "Trustee" includes an executor, administrator, guardian, or trustee.

HISTORY: Code 1981, § 53-12-252, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-253. Lease of real property beyond termination of trust -- Application to superior court

When the assets of a trust include an interest in real property, the trustee may apply to the superior court for an order authorizing him to lease the real property or a part thereof for a term of years which may or will continue beyond the termination of the trust; and the superior court in the execution of the protective powers of equity over trust estates and the estates of wards of equity shall have power and jurisdiction to pass an order authorizing the execution of such a lease.

HISTORY: Code 1981, § 53-12-253, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-254. Lease of real property beyond termination of trust -- Notice of application; appointment of guardians ad litem

Notice of all applications made pursuant to Code Section 53-12-253 shall be given to all of the living beneficiaries of the trust in such manner as may be ordered by the court. If minors are interested and they have no guardians, guardians ad litem shall be appointed and notified before

the case proceeds.

HISTORY: Code 1981, § 53-12-254, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-255. Lease of real property beyond termination of trust -- Hearing on application; terms of order; effect of authorization in trust instrument of lease for lesser term only

It shall be the duty of the superior court to hear evidence that may be tendered by the trustee. If the court is satisfied from the proceedings that the lease to be authorized is expedient, the court shall pass an order authorizing the trustee to execute the lease, subject however to such terms as the court shall deem proper and necessary to protect the value of the trust estate.

HISTORY: Code 1981, § 53-12-255, enacted by Ga. L. 1991, p. 810, § 1.

53-12-256. Lease of real property beyond termination of trust -- Binding effect of lease

A lease, the execution of which has been approved by an order of the superior court on an application made pursuant to Code Section 53-12-253, shall be binding upon all beneficiaries of the trust in life and all beneficiaries of the trust who may thereafter be born for the full term of the lease despite the fact that the term of the lease continues beyond the termination of the trust.

HISTORY: Code 1981, § 53-12-256, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-257. Power of trustee to sell or convey corpus; authorization by superior court for sale or conveyance of corpus

A trustee, unless expressly authorized by the instrument creating the trust, shall have no authority to sell or convey the corpus of the trust estate. Such sales shall be by virtue of an order of the superior court, upon a regular application to the court. The application shall be made on full notice to all parties in interest.

HISTORY: Code 1981, § 53-12-257, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-258. Extent of power of sale, encumbrance, or disposition in trust instrument which limits estate

Where a trust deed or other instrument limits an estate in fee, for life, or with remainders over and in the same conveyance a power to sell, encumber, or otherwise dispose of the property is reserved or created, the power shall be construed to extend to a sale, encumbrance, or disposition of the fee unless the power is expressly or by necessary implication limited to a smaller estate.

HISTORY: Code 1981, § 53-12-258, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-259. Rules and restrictions governing sales by trustees

Sales by trustees, unless otherwise provided in the order of the court authorizing a sale, shall be made under the same rules and restrictions as are provided for sales by guardians.

HISTORY: Code 1981, § 53-12-259, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 1996, p. 504, § 13.

§ 53-12-260. Report of sale and reinvestment of proceeds by trustee -- Requirement by judge who approves sale; contents; order

(a) In all cases where a judge by order or by decree based on the verdict of a jury allows any trust property to be sold, it shall be the duty of the court or judge signing the order to require the trustee, within 60 days from the date of the order, to file and have recorded in the office of the clerk of the superior court of the county having jurisdiction of the trust property a written report, on oath, of his actions under the order, furnishing the following information:

(1) The name of the purchaser of the property;

(2) The price at which the property was sold;

(3) A description of the property in which the proceeds have been reinvested, the price paid therefor, and the name of the person from whom the same was bought; and

(4) If the proceeds have not been reinvested, the reason therefor.

(b) If the proceeds have been reinvested, the judge shall pass such order, as to him shall seem best, confirming the same or ordering a new investment. If the proceeds have not been reinvested, the judge shall

issue such order as shall be necessary and shall require the trustee to report within 60 days from the order, as required in subsection (a) of this Code section.

HISTORY: Code 1981, § 53-12-260, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-261. Report of sale and reinvestment of proceeds by trustee -- Issuance of rule upon failure to report sale or reinvest proceeds; hearing; sanction for refusal to comply

If any trustee making a sale as provided in Code Section 53-12-260 fails, neglects, or refuses to make the report and reinvestment provided for in such Code section, the judge shall cause a rule to be issued against the trustee making the sale, returnable at a time stated therein. Upon the hearing thereof, the court shall compel the trustee to reinvest the funds, under the direction of the court, upon pain of being attached for contempt and committed until the same is done.

HISTORY: Code 1981, § 53-12-261, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-262. Report of sale and reinvestment of proceeds by trustee -- Designation of persons who must see to reinvestment of proceeds and making of report

Purchasers shall not be required to see to a reinvestment of any proceeds of sales made pursuant to Code Section 53-12-260. However, guardians ad litem and all other parties to the proceedings in which leave to sell has been granted who are sui juris shall be bound to see that the reinvestment and report are made. Upon the failure of the trustee to reinvest and report, the persons shall be bound to have the failure to obey the order of the court called to the attention of the court for its action.

HISTORY: Code 1981, § 53-12-262, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-263. Compromise of doubtful debts by fiduciaries; order of probate court; oath

All persons acting in a fiduciary capacity are authorized to compromise

all debts, the collection of which are doubtful, belonging to their estates when such settlements will advance the interests of those represented, provided the judge of the probate court shall first make an order directing the compromise. All persons acting under this Code section, on making their returns, shall make oath that the settlements made were in good faith and to the best interests of the parties thus represented.

HISTORY: Code 1981, § 53-12-263, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-264. Creation of liens upon trust estate

Trustees are not authorized to create any liens upon the trust estate except such as are given by law.

HISTORY: Code 1981, § 53-12-264, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-265. Restrictions on powers of trustee -- Provisions of this Code section

(a) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary and other beneficiaries of the trust, unless the terms of a trust refer specifically to this Code section and provide expressly to the contrary, a trustee shall not exercise any of the following powers conferred upon such trustee in his or her capacity as trustee (provided that these restrictions shall not apply to a trustee who is the settlor of a trust that is revocable or amendable by such settlor at the time the power is exercised or to a decedent's or settlor's spouse who is the trustee of a testamentary or an inter vivos trust designed to qualify for the federal estate or gift tax marital deduction under the Internal Revenue Code or any subsequent statute of similar import):

(1) The power to make discretionary distributions of either principal or income to or for the benefit of such trustee, except to provide for such trustee's health, education, maintenance, or support as described under Sections 2041 and 2514 of the Internal Revenue Code or any subsequent statute of similar import;

(2) The power to make discretionary allocations of receipts or expenses as between principal and income, unless such trustee acts in a fiduciary capacity whereby such trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of such trustee's fiduciary duties;

(3) The power to make discretionary distributions of either principal or income to satisfy any legal support obligation of such trustee; or

(4) Any other power, including the right to remove or to replace any trustee, so as to cause any of the powers enumerated in paragraphs (1), (2), and (3) of this subsection to be exercised on behalf of, or for the benefit of, such trustee.

Any of the foregoing proscribed powers that is conferred upon two or more trustees may be exercised by the trustee or trustees other than the restricted trustee, as defined in subsection (d) of this Code section. If there is no trustee who is not a restricted trustee, any party in interest, as defined in subsection (c) of this Code section, may apply to a court of competent jurisdiction to appoint a cotrustee who is an independent trustee, as defined in subsection (d) of this Code section, with respect to the restricted trustee, for the purpose of exercising such power, and such power may be exercised by the independent trustee appointed by the court.

(b) This Code section applies to:

(1) Any trust created under a governing instrument (will or trust) executed after June 30, 2002;

(2) Any trust created under a governing instrument (will or trust) executed before July 1, 2002, unless:

(A) At any time while the terms of the trust are revocable or amendable, the trust is revoked or amended to refer specifically to this Code section and expressly provide otherwise; or

(B) After the trust becomes irrevocable and unamendable, all parties in interest, as defined in subsection (c) of this Code section, elect affirmatively, by written declaration executed in the manner prescribed for the recordation of deeds in this state and delivered to the trustee, not to be subject to the application of this Code section. Such election must be made on or before the later of July 1, 2005, or the date that is three years after the date on which the trust becomes irrevocable and unamendable. Prior to the effectiveness of any timely election by the parties in interest of a trust not to be subject to the provisions of this Code section, the provisions of this Code section, to the extent otherwise applicable, shall apply to such trust.

However, the provisions of this Code section neither create a new cause of action nor impair any existing cause of action which, in either case,

relates to any power proscribed by this Code section that was exercised before July 1, 2002.

(c) For the purposes of subsection (a) or (b) of this Code section:

(1) If the trust is revocable or amendable, the parties in interest are the person or persons holding the power of revocation or amendment; or

(2) If the trust is not revocable or amendable, the parties in interest are all of the following:

(A) Each trustee then serving;

(B) Each income beneficiary, as defined in subsection (d) of this Code section, then in existence or, if any such income beneficiary has not attained majority or is otherwise incapacitated, the person or persons, if any, empowered under applicable law to act on behalf of such income beneficiary; and

(C) Each remainder beneficiary, as defined in subsection (d) of this Code section, then in existence or, if any such remainder beneficiary has not attained majority or is otherwise incapacitated, the person or persons, if any, empowered under applicable law to act on behalf of such remainder beneficiary.

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

(1) "Income beneficiary" means any person to whom distribution of income is to any extent required or permitted at the time the provision using such term is applied.

(2) "Independent trustee" means, with respect to any restricted trustee, any person who would not be a related or subordinate party as to such restricted trustee, within the meaning of Section 672 of the Internal Revenue Code or any subsequent statute of similar import, determined as if such restricted trustee were the grantor of a trust.

(3) "Remainder beneficiary" means any person to whom any portion of a trust would be distributable if the trust were to terminate at the time the provision using such term is applied.

(4) "Restricted trustee" means any trustee whose exercise of any power is proscribed by this Code section.

HISTORY: Code 1981, § 53-12-265, enacted by Ga. L. 2002, p. 788, §

1.

§ 53-12-280. Authorized investments of trust funds; interest; other investments

Any trustee holding trust funds may invest the same in bonds or other securities issued by this state, making a true return of the price paid and time of purchase. The investments shall be free from taxation as long as they are held for the trust estate. Trustees are also authorized to invest trust funds in direct and general obligations of the United States government, obligations unconditionally guaranteed by the United States government, or obligations of agencies of the United States government issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, and Central Bank for Cooperatives. No person, firm, corporation, or association shall be liable to account for a greater rate of interest than the amount actually received on the investment. Any other investments of trust funds shall be made under an order of the superior court or shall be at the risk of the trustee. Deposits of funds at interest in any chartered state or national bank or trust company located in this state and insured by the Federal Deposit Insurance Corporation shall be deemed investments; and the deposits are authorized as legal investments, to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, without any order or authority from any court.

HISTORY: Code 1981, § 53-12-280, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-281. Investment in bonds or other state issued securities at less than 7 percent interest; return to probate court

Trustees may invest trust funds in bonds and other securities issued by this state bearing a lower rate of interest than 7 percent per annum and shall, in the settlement of their accounts on the funds so invested, be chargeable with no greater interest than that received from the state; provided, however, that the trustee shall, within 30 days after the investment, make a return to the judge of the probate court of the amount and character of the bonds purchased and the price paid.

HISTORY: Code 1981, § 53-12-281, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-282. Investment in validated county or municipal bonds; investment in bonds issued under Subpart 1 of Part 3 of Article 9 of Chapter 2 of Title 20

(a) Trustees are authorized to invest trust funds in any bonds issued by any county or municipality of this state which have been validated as required by law for the validation of county and municipal bonds, upon the same terms and conditions as they are authorized to invest trust funds in state bonds and securities.

(b) Trustees are authorized to invest trust funds in any bonds issued by any county board of education under Subpart 1 of Part 3 of Article 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter 82 of Title 36, upon the same terms and conditions as they are authorized to invest trust funds in state, county, and municipal bonds and securities.

HISTORY: Code 1981, § 53-12-282, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-283. Investment in real property; approval by superior court

Trustees are authorized to invest any funds held by them as such trustees in real property, provided that an order to that effect shall first be obtained from the judge of the superior court.

HISTORY: Code 1981, § 53-12-283, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-284. Investment in real property loans

In addition to all other investments which executors, administrators, guardians, trustees, custodians, and other like fiduciaries holding trust funds are authorized by statute to make, they may also invest trust funds held by them in real property loans:

(1) Which are not in default;

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

(3) Which are insured pursuant to the National Housing Act; and

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

HISTORY: Code 1981, § 53-12-284, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-285. Investment in loans guaranteed by the Small Business Administration

Loans guaranteed by the Small Business Administration, but only the guaranteed portion of any loan transferable to secondary investors by the Small Business Administration under a secondary participation agreement, shall be lawful investments for savings bank deposits, for all fiduciary and trust funds, and for the funds of insurance companies and savings and loan associations.

HISTORY: Code 1981, § 53-12-285, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-286. Investment in bonds and obligations issued under Federal Farm Loan Act or Farm Credit Act

Farm loan bonds issued by federal land banks or joint-stock land banks under an act of Congress approved July 17, 1916, known as the Federal Farm Loan Act, and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971 (Public Law 92-181) shall be lawful investments for savings bank deposits, for all fiduciary and trust funds, and for the funds of insurance companies and savings and loan associations. The farm loan bonds shall be accepted as security for all public deposits on the same terms as any bonds for which the faith of the United States is pledged.

HISTORY: Code 1981, § 53-12-286, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-287. Standard for investment by trustee; right of income beneficiary to direct conversion of unproductive property

(a) As used in this Code section, the terms "property" and "investment" shall be deemed to include life insurance, endowment, and annuity contracts issued by any insurer authorized to do business in this state.

(b) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a trustee shall exercise the judgment and care, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a trustee may consider the general economic conditions, the anticipated tax consequences of the investments, the anticipated duration of the account, and the needs of its beneficiaries.

(c) Within the limitations of the standard provided in subsection (b) of this Code section and considering individual investments as part of an overall investment strategy, a trustee in authorized to acquire and retain every kind of property including real, personal, or mixed and every kind of investments, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, and stocks, preferred or common, including the securities of or other interests in any open-end or closed-end management investments company or investment trust registered under the Investment Company Act of 1940, as now or hereafter amended. The propriety of an investment decision is to be determined by what the trustee knew or should have known at the time of the decision about the inherent nature and expected performance of the investment (including probable yield), the attributes of the portfolio, the general economy, and the needs and objectives of the beneficiaries of the account as they existed at the time of the decision. Any determination of liability for investment performance shall consider not only the performance of a particular investment but also the performance of the individual's portfolio as a whole. Within the limitations of such standard, a trustee may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

(d) Anything in this Code section or any other law of this state to the contrary notwithstanding, the income beneficiary of a trust designed to qualify for the federal estate or gift tax marital deduction under the Internal Revenue Code or any subsequent statute of similar import shall have the right to direct the trustee of the trust to convert any unproductive or nonincome-producing property which is at any time acquired, invested in, or retained by the trustee into productive or income-producing property.

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

HISTORY: Code 1981, § 53-12-287, enacted by Ga. L. 1996, p. 504, § 14.

§ 53-12-288. Retention of property received by trustee upon creation of trust

(a) Unless otherwise provided in the fiduciary instrument, trustees are authorized to retain the property received by them on the creation of the trust, including, in the case of a corporate fiduciary, stock or other securities of its own issue, even though the property may not otherwise be a legal investment and trustees shall not be liable for such retention, except for gross neglect. In the case of corporate securities, trustees may likewise retain the securities into which the securities originally received may be converted or which may be derived therefrom as a result of merger, consolidation, stock dividends, splits, liquidations, and similar procedures; and they may exercise by purchase or otherwise any rights, warrants, or conversion features attaching to any such securities. This Code section applies to all such property held by the fiduciary on March 28, 1961, under trusts previously created, except that it shall not relieve the fiduciary from liability for loss which had already accrued on or before March 28, 1961, for losses that had occurred.

(b) In the case of a corporate fiduciary, the authorities described in subsection (a) of this Code section shall apply to the exchange or conversion of stock or securities of the corporate fiduciary's own issue, whether or not any new stock or securities received in exchange therefor are substantially equivalent to those originally held; and such authorities shall also apply to the continued retention of all new stock and securities resulting from merger, consolidation, stock dividends, splits, liquidations, and similar procedures and received by virtue of such conversion or exchange of stock or securities of the corporate fiduciary's own issue, whether or not the new stock or securities are substantially equivalent to those originally received by the fiduciary. The foregoing authorities shall have reference, inter alia, to the exchange of such stock or securities for

stock or securities of any holding company which owns stock or other interests in one or more other corporations including the corporate fiduciary, whether the holding company is newly formed or already existing and whether or not any of the corporations own assets identical or similar to the assets of or carry on a business identical or similar to the corporation whose stock or securities were previously received by the fiduciary and the continued retention of stock or securities, or both, of the holding company; and such authorities shall apply regardless of whether any of the corporations have officers, directors, employees, agents, or trustees in common with the corporation whose stock or securities were previously received by the fiduciary.

HISTORY: Code 1981, § 53-12-288, enacted by Ga. L. 1996, p. 504, § 14.

§ 53-12-289. Authority of trustee to hold federal obligations

(a) Whenever by law or by an instrument or court order establishing a fiduciary relationship a trustee is authorized, permitted, required, or directed to invest funds in direct and general obligations of the United States government, obligations unconditionally guaranteed by the United States government, or obligations of the agencies of the United States government enumerated in Code Section 53-8-3, the trustee may invest in and hold such obligations either directly or in the form of securities or other interests in any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, so long as:

(1) The portfolio of such investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations;

(2) Such investment company or investment trust takes delivery of such collateral, either directly or through an authorized custodian; and

(3) Such investment company or investment trust is operated so as to provide a constant net asset value or price per share.

(b) Nothing contained in this Code section shall be construed as relieving any trustee from any duty or liability a trustee has under the prudent investor standard set forth in Code Section 53-12-280.

(c) The authority granted in this Code section shall be applicable notwithstanding that a corporate fiduciary or an affiliate of the corporate fiduciary provides services to the investment company or investment trust as investment adviser, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise and receives compensation for such services.

HISTORY: Code 1981, § 53-12-289, enacted by Ga. L. 1996, p. 504, § 14.

§ 53-12-290. Delegation of investment and management functions; duty of reasonable care; liability to beneficiaries of trust or trust for decisions or actions of agent; defense of lack of personal jurisdiction waived by agent

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

(1) Selecting an agent;

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

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

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

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

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

HISTORY: Code 1981, § 53-12-290, enacted by Ga. L. 2002, p. 1316, § 7.

§ 53-12-300. Registration of securities in name of nominee by bank or trust company fiduciary; record of fiduciary capacity; liability of fiduciary

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

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

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

HISTORY: Code 1981, § 53-12-300, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-301. Registration of securities in name of nominee or joint corporate fiduciary when jointly held

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

HISTORY: Code 1981, § 53-12-301, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-302. Deposit of securities in clearing corporation; records; transfer of title; rules and regulations; certification of securities on deposit

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

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

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

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

for a fiduciary owns capital stock of the clearing corporation.

HISTORY: Code 1981, § 53-12-302, enacted by Ga. L. 1991, p. 810, § 1.

§§ 53-12-320 through 53-12-330

Reserved. Repealed by Ga. L. 1998, p. 1323, § 1, effective July 1, 1998.

[Repealed]

§ 53-12-350. Right of foreign trustee to bring action in courts of this state -- Generally

Any trustee who resides outside this state and who has been regularly appointed as trustee in the state in which he resides may institute an action in any court in this state to enforce any right or to recover any property belonging to his beneficiary or accruing to the trustee as such.

HISTORY: Code 1981, § 53-12-350, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-351. Right of foreign trustee to bring action in courts of this state -- Filing of certified copies of letters of appointment pending action of foreign trustee

Pending the action brought by a foreign trustee pursuant to Code Section 53-12-350, properly authenticated certified copies of the letters of appointment as trustee shall be filed with the clerk of the court, if the case is pending in a court of record, to become a part of the record or filed with the papers of the action in a summary proceeding.

HISTORY: Code 1981, § 53-12-351, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-352. Personal liability of foreign trustee on warranty made on property

No foreign trustee shall be personally liable by any warranty made in any conveyance of property lawfully sold unless the trustee distinctly expresses an intention in the conveyance to be personally bound by such covenant.

HISTORY: Code 1981, § 53-12-352, enacted by Ga. L. 1991, p. 810, §

1.
§ 53-12-353. Sale of property by foreign trustee; filing and recordation of exemplification of letters of appointment; bond

Any trustee who resides in any other state is authorized to sell and convey any trust property which is in this state under the rules prescribed for the sale and conveyance of real property by executors, administrators, guardians, or trustees of this state, provided that the foreign trustee shall file and have recorded in the office of the judge of the probate court or other proper office, at the time of making his application for sale, properly authenticated certified copies of his letters of appointment as trustee and shall also file with the judge of the probate court or other proper authority bond with good and sufficient security, in double the value of the property to be sold, for the faithful execution of the trusteeship, as required by law.

HISTORY: Code 1981, § 53-12-353, enacted by Ga. L. 1991, p. 810, § 1.
§ 53-12-354. Application by resident creditor, heir, or legatee to compel foreign trustee to protect interests

If any resident of this state is interested as creditor, heir, or legatee in the estate of which a foreign trustee is the representative, he may apply to the proper court to compel the foreign trustee to protect his interests, according to equity and good conscience, before the trustee removes the assets of the estate beyond the limits of this state.

HISTORY: Code 1981, § 53-12-354, enacted by Ga. L. 1991, p. 810, § 1.
§ 53-12-370. Consent of foreign trustee of real property in state to service upon Secretary of State; exception where agent for service designated

Any foreign trustee of real property in this state who holds, administers, or in any manner exercises dominion over real property shall be deemed to have consented to service of any summons, notice, or process in connection with any action or proceeding in the courts of this state growing out of or based upon any act or failure to act on the part of the trustee upon the Secretary of State unless the trustee shall designate as the agent or agents for such service some person or persons who may be found and served with notice, summons, or process in this state by a designation or designations to be filed, from time to

time, in the office of the Secretary of State, giving the names of the agent or agents and the place or places in this state where the agent or agents may be found and served.

HISTORY: Code 1981, § 53-12-370, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-371. Procedure for service upon Secretary of State; notice to trustee

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

HISTORY: Code 1981, § 53-12-371, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2000, p. 1589, § 3.

§ 53-12-372. Venue of actions against foreign trustees; service of process when designated agent is nonresident of county where action is brought

(a) All actions brought against a nonresident trustee of real property in this state shall be brought in the county where the real property or some portion of the same is located.

(b) In the event that the nonresident trustee has designated a person or persons to accept service and an action is brought in a county other than the one in which the person or persons designated by the trustee to accept service reside, service of the summons and process under this part may be perfected upon the trustee by a second original served upon the person or persons in any other county of this state.

HISTORY: Code 1981, § 53-12-372, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-373. Powers and liabilities of foreign trustees of real property in state

All foreign trustees of real property in this state shall be subject to removal, to giving bond, and to direction by the superior court of any county in which the real property is located to the same extent as a resident trustee; and all of the applicable provisions of this article shall apply to nonresident trustees to the same extent as resident trustees.

HISTORY: Code 1981, § 53-12-373, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-374. Removal and replacement of trustee for noncompliance with part

It shall be unlawful for any nonresident trustee who has failed to comply with this part to exercise any control or dominion over any real property in this state or to handle or disburse any funds conditioned to the care, upkeep, or improvement of the real property. The trusteeship of any trustee who fails to comply with this part shall be deemed vacant and a new trustee shall be appointed as provided in Article 8 of this chapter.

HISTORY: Code 1981, § 53-12-374, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-375. Effect of part on authority of foreign trustee to act in state

This part shall not be construed to authorize any nonresident to act as trustee in this state if he could not lawfully so act prior to February 24, 1953.

HISTORY: Code 1981, § 53-12-375, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-376. Cumulative effect of part

This part is cumulative of any other law of this state on the same general subject.

HISTORY: Code 1981, § 53-12-376, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-390. "Foreign corporation" defined

As used in this part, the term "foreign corporation" means:

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

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

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

HISTORY: Code 1981, § 53-12-390, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2002, p. 854, § 1.

§ 53-12-391. Authority of foreign corporation to act as fiduciary; applicability of bond requirements

(a) Any foreign corporation, as defined in Code Section 53-12-390, may act in this state as trustee, executor, administrator, guardian, or any other like or similar fiduciary capacity, whether the appointment is by law, will, deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise without the necessity of complying with any law of this state relating to the qualification of foreign corporations to do business in this state or the licensing of foreign corporations to do business in this state, except as provided in this part, and notwithstanding any prohibition, limitation, or restriction contained in any other law of this state, provided only that:

(1) The foreign corporation is authorized to act in the fiduciary capacity or capacities in the state in which it is incorporated or, if the foreign corporation is a national banking association, in the state in which it has its principal place of business; and

(2) Any bank or other corporation organized under the laws of this state or a national banking association having its principal place of business in this state is permitted by law to act in such fiduciary

capacities in the state in which the foreign corporation seeking to act in this state is organized or in which it has its principal place of business, if it is a national banking association:

(A) Without further showing or qualification other than that it is authorized to act in such fiduciary capacities in this state and upon compliance with the laws of the other state, if any, concerning service of process on nonresident fiduciaries; and

(B) With no greater requirements made by the law of such state as a condition for permission for a corporation of this state so to act in the other state in such capacities than are required by this part as a condition for the foreign corporations to exercise such powers in this state.

(b) The foreign corporations seeking to exercise fiduciary powers in this state, upon qualifying in this state to act in any of such fiduciary capacities, shall not be required by law to give bond, if bond is relieved by the instrument, law, or court order in which such corporation has been designated to act in such fiduciary capacity and if no bond would under such circumstances be required of a corporation of this state, provided that a corporation of this state or a national banking association having its principal place of business in this state shall not be required by the laws of the state where the corporation seeking to act in this state has been organized or in which its principal place of business is located, if it is a national banking association, to give bond in such other state, when relieved of the requirement by the instrument, law, or court order under which such corporation of this state has been designated to act as a condition for being permitted to act in such fiduciary capacity, in such other state, except where a bond might under similar circumstances be required of a corporation of the other state.

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

HISTORY: Code 1981, § 53-12-391, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-392. Nature of fiduciary activity as a transaction of business within state; establishment of place of business

A foreign corporation, insofar as it acts in a fiduciary capacity in this

state pursuant to this part, shall not be deemed to be transacting business in this state; but no such foreign corporation shall establish or maintain in this state a place of business, branch office, or agency for the conduct in this state of business as a fiduciary.

HISTORY: Code 1981, § 53-12-392, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-393. Filing of verified statement as prerequisite to fiduciary activity; contents; appointment of Secretary of State for service of process; certificates showing authority to act

Prior to the time when any foreign corporation acts pursuant to the authority of this part in any fiduciary capacity or capacities in this state, the foreign corporation shall file with the Secretary of State a verified statement which shall state:

(1) The correct corporate name of the foreign corporation;

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

(3) The address of its principal business office;

(4) In what fiduciary capacity or capacities it desires to act in this state; and

(5) That it is authorized to act in a similar fiduciary capacity or capacities in the state in which it is incorporated or, if it is a national banking association, in which it has its principal place of business.

The statement shall irrevocably appoint the Secretary of State of this state as its true and lawful attorney to receive service of all legal process in any action or proceeding against it relating to or growing out of any trust, estate, or matter in respect of which the foreign corporation may act in this state in any such fiduciary capacity. The statement shall be verified by an officer of the foreign corporation, and there shall be filed with it such certificates of public officials and copies of documents certified by public officials as may be necessary to show that the foreign corporation is authorized to act in a fiduciary capacity or capacities similar to those in which it desires to act in this state, in the state in which it is incorporated or, if it is a national banking association, in which it has its principal place of business.

HISTORY: Code 1981, § 53-12-393, enacted by Ga. L. 1991, p. 810, § 1.

§ 53-12-394. Service of process on Secretary of State; forwarding to foreign corporation; record of service

(a) Every foreign corporation acting in a fiduciary capacity in this state pursuant to the terms of this part shall be deemed to have appointed the Secretary of State to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of any trust, estate, or matter in respect of which the foreign corporation has acted in this state in any fiduciary capacity. Service of process shall be made by delivering two copies for each defendant of the summons or other process, with two copies of the petition or complaint, when service of such copies is required by law, accompanied by a fee of $10.00, to the Secretary of State or to any person in his office authorized by him to receive the service. The Secretary of State shall immediately forward the process, together with the copy of the petition or complaint, if any, to the foreign corporation, by registered or certified mail or statutory overnight delivery, addressed to it at the address on file with the Secretary of State or, if it is not on file, then at its last known address. The Secretary of State shall not accept any petition or other pleading for service under this Code section unless two copies thereof or one copy with 50 cent(s) per page for photostating the other copy is filed in his office.

(b) The Secretary of State shall keep a permanent record in his office showing, for all process served, the style of the action or proceeding, the court in which it was brought, the name and title of the officer serving the process, the day and hour of service, the day of mailing by registered or certified mail or statutory overnight delivery to the foreign corporation, and the address to which mailed.

HISTORY: Code 1981, § 53-12-394, enacted by Ga. L. 1991, p. 810, § 1; Ga. L. 2000, p. 1589, § 3.