

**SIDE-BY-SIDE**

**Article 3-Wills and Administration.Parts 10-13**

<b>ARTICLE 3: Existing Code language</b>	<b>Bill # S. 1243</b>
Article 3.Part 10. Closing Estates	Article 3.Part 10.
<p><b>SECTION 62-3-1001.</b> Required filings with court; petition for order compelling personal representative to perform duties; court orders.</p> <p>(a) Within one year after the date of the first publication of notice to creditors (or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later), a personal representative must file with the court:</p> <p>(1) a full account in writing of his administration;</p> <p>(2) a proposal for distribution of assets not yet distributed;</p> <p>(3) an application for settlement of the estate to consider the final account or approve an accounting distribution and adjudicate the final settlement and distribution of the estate; and</p> <p>(4) proof that a notice of right to demand hearing and copies of the account, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.</p> <p>(b) If the personal representative does not timely perform his duties under subsection (a), any interested person may petition for an order compelling the personal representative to perform his duties under subsection (a). The court may issue an order requiring the personal representative to perform his duties under subsection (a).</p> <p>(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter an order or orders approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if any interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62-1-401 and hearing.</p> <p>(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete</p>	<p><b>SECTION 62-3-1001.</b></p> <p>(a) <del>Within one year after the date of the first publication of notice to creditors, (or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later),</del> <u>the later of: (i) The expiration of the applicable time limitation for any creditor to commence a proceeding contesting a disallowance of a claim pursuant to Section 62-3-806(a); the time when all legal proceedings commenced for allowance of a claim have ended in accordance with Sections 62-3-804 and 62-3-806; and (iii) if a state or federal estate tax return was filed, within ninety days after the receipt or a state or federal estate tax closing letter, whichever is later,</u> a personal representative <del>must</del> <u>shall</u> file with the court:</p> <p>(1) a full <del>account</del> <u>accounting</u> in writing of his administration, <u>unless the accounting is waived pursuant to subsection (e);</u></p> <p>(2) a proposal for distribution of assets not yet distributed, <u>unless the proposal for distribution of assets is waived pursuant to subsection (e);</u></p> <p>(3) an application for settlement of the estate to consider the final <del>account</del> <u>accounting</u> or approve an accounting <u>and</u> distribution and adjudicate the final settlement and distribution of the estate; and</p> <p>(4) proof that a notice of right to demand hearing and copies of the <del>account</del> <u>accounting</u>, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, <u>unless the notice of right to demand hearing is waived pursuant to subsection (e).</u></p> <p>(b) If the personal representative does not timely perform his duties <del>under</del> <u>pursuant to</u> subsection (a), <u>and all interested persons have not waived the requirement pursuant to subsection (e), any an</u> interested person may petition for an order compelling the personal representative to perform his duties <del>under</del> <u>pursuant to</u> subsection (a). <del>The court may issue an order requiring the personal representative to perform his duties under</del> <u>After notice and hearing in accordance with Section 62-1-401, the court may issue an order requiring the personal representative to perform</u></p>

**ARTICLE 3: Existing Code language**

settlement of the estate under this section, and after notice of hearing to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**REPORTER’S COMMENTS**

Section 62-3-1001 describes procedures for obtaining orders of complete settlement of an estate. The fully adjudicated closing under Section 62-3-1001(a) requires notice to all interested parties including unpaid creditors. After notice and hearing, the court may determine issues of testacy and heirship if not previously determined. The court upon application may order or approve an accounting, may interpret the terms of the will, direct or approve distribution of estate assets, discharge the personal representative, and close the estate. Such a discharge of the personal

**Bill # S. 1243**

his duties pursuant to subsection (a).  
(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to ~~such~~ the notice under pursuant to subsection (a), or at any time after the filing of the application of settlement if notice of right to demand hearing has been waived pursuant to subsection (e), the court may enter an order or orders approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if ~~any~~ an interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to ~~such~~ the notice under pursuant to subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62-1-401 and hearing.  
(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under pursuant to this section, and after notice of hearing to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of ~~any~~ a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.  
(e) Notwithstanding the provisions of this section, a personal representative shall not be required to file an accounting in writing of his administration, a proposal for distribution of assets not yet distributed, or a notice of right to demand hearing if and to the extent these filings are waived by all interested persons.

**REPORTER’S COMMENTS**

Section 62-3-1001 describes procedures for obtaining orders of complete settlement of an estate. The closing process under Section 62-3-1001(a) requires notice to all interested parties including unpaid creditors. The court upon application may order or approve an accounting, may interpret the terms of the will, direct or approve distribution of estate assets, discharge the personal representative, and close the estate. Such a discharge of the personal representative terminates his authority. The personal representative or any other interested person may petition

**ARTICLE 3: Existing Code language**

representative terminates his authority and discharges him from further liability to any person. The personal representative or any other interested person may petition for an order of complete settlement under this section after the claim period has expired, but a devisee may not seek such an order until a year has elapsed from the issuance of the appointment of the representative. Section 62-3-1001(b) provides that on proper petition for an order of complete settlement, the court is authorized to “determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs.” Resort to this section by the personal representative would result from discovery of additional persons interested in matters concerning testacy who were omitted from earlier testacy proceedings. The hearing may be held without notice to parties involved in the previous testacy proceedings, and evidence at the earlier proceeding may be used by the court, absent objection by the previously omitted person. The representative may determine that the interests of parties to the previous proceedings may be affected by the outcome of this Section 62-3-1001(b) hearing and could afford them the opportunity to appear at the hearing, but such notice would not be required.

**SECTION 62-3-1002.** Payment of taxes; certificate from Department of Revenue.

No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of such court finds, that all taxes imposed by the provisions of Chapter 6 of Title 12 upon such fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the South Carolina Department of Revenue and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of such certificate.

**REPORTER’S COMMENTS**

Section 62-3-1002 prescribes a procedure for discharge of the personal representative less formal than the procedure under Section 62-3-1001, but such procedure applies only in the event the will was informally probated and is binding only upon the devisees. The order of settlement is not an adjudication of the testacy status of the decedent. Intestate heirs are not notified of the Section 62-3-1002 petition and are not bound by the resulting order. As in Section 62-3-1001, the petition for settlement may be filed by the personal representative or any other interested person after the claim period has expired, but a devisee may not seek such an order until a year has elapsed after the issuance of letters. Since the proceedings would

**Bill # S. 1243**

for an order of complete settlement under this section after the claim period has expired, but a devisee may not seek such an order until a year has elapsed from the issuance of the appointment of the representative.

The 2010 amendment revised subsections (3) and (4) to conform to current practice allowing the personal representative to pursue informal proceedings to close the estate by filing an application rather than a petition. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in S.C. Code §62-1-201 (1). The 2010 amendment also revised subsection (4)(c) to delete ‘on appropriate conditions, determining testacy, determining the persons entitled to distribution of the estate, and, as circumstances require,’ and adding ‘in accordance with Section 62-1-401 in the last sentence to clarify procedure. The 2010 amendment added ‘of hearing’ in subsection (d) to clarify the notice of hearing requirements referred to in §62-1-401.

The 2012 amendment clarifies that all interested persons may waive the filings otherwise required by Section 62-3-1001(a)(1), (2), or (4).

**SECTION 62-3-1002.**

No final ~~account~~ accounting of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of such court finds, that all taxes imposed by the provisions of Chapter 6 of Title 12 upon such fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the South Carolina Department of Revenue and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of such certificate.

**REPORTER’S COMMENTS**

Section 62-3-1002 precludes the court’s approval of a final accounting by a fiduciary without a finding that the taxes imposed by Chapter 6, Title 12, have been paid.

**ARTICLE 3: Existing Code language**

be binding only upon devisees under the informally probated will, the procedure cannot be used if it appears that part of the estate is intestate. Were that the case, a proceeding under Section 62-3-1001 would be appropriate with notice to all interested persons including all potential heirs. Notice to creditors is not given under Section 62-3-1002 so a resulting settlement order would not be binding upon creditors.

**SECTION 62-3-1003.** Payment of taxes; filing federal estate tax return.

No final account of a personal representative in any probate proceeding who is required to file a federal estate tax return may be allowed and approved by the court before whom the proceeding is pending unless the court finds that the tax imposed on the property by Chapter 16 of Title 12, including applicable interest, has been paid in full or that no such tax is due.

**REPORTER’S COMMENTS**

Section 62-3-1003(a) requires the personal representative to circulate to interested distributees and creditors and to file a formal accounting on the later of (1) seven months after first publication of the notice to creditors and (2) thirty days after receipt of a South Carolina estate tax closing letter. Section 62-3-1003(b) provides a procedure for obtaining an order approving the accounting and the proposed distribution.

**SECTION 62-3-1004.** Liability of distributees to claimants.

After assets of an estate have been distributed and subject to Section 62-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**REPORTER’S COMMENTS**

**Bill # S. 1243**

**SECTION 62-3-1003.**

No final ~~account~~ accounting of a personal representative in any probate proceeding who is required to file a federal estate tax return may be allowed and approved by the court before whom the proceeding is pending unless the court finds that ~~the~~ any tax imposed on the property by Chapter 16 ~~of~~ of Title 12, including applicable interest, has been paid in full or that no such tax is due.

**REPORTER’S COMMENTS**

*Section 62-3-1002 precludes the court’s approval of a final accounting by a fiduciary without a finding that the taxes imposed by Chapter 16, Title 12, have been paid.*

**SECTION 62-3-1004.**

After assets of an estate have been distributed and subject to Section 62-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**REPORTER’S COMMENTS**

**ARTICLE 3: Existing Code language**

Section 62-3-1004 allows a creditor of an estate to pursue assets distributed against one or more distributees. A distributee’s liability to a claimant is for amounts received as distributions in excess of exempt property but no more than the value of the property received, valued as of the time of the distribution.

A distributee has a right of contribution against other distributees if he gives timely notice to the distributees so that they can participate in the proceedings under which the claimant is asserting his claim.

**SECTION 62-3-1005. Rights of successors and creditors.**

Unless previously barred by adjudication and except as provided in the accounting, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the account, proposal for distribution of the estate, petition for settlement of the estate, and proofs required by Section 62-3-1001. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent’s estate.

**SECTION 62-3-1006. Limitations on actions and proceedings against distributees.**

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent’s death, and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent’s death or one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

**Bill # S. 1243**

Section 62-3-1004 allows a creditor of an estate to pursue assets distributed against one or more distributees. A distributee’s liability to a claimant is for amounts received as distributions in excess of exempt property but no more than the value of the property received, valued as of the time of the distribution.

A distributee has a right of contribution against other distributees if he gives timely notice to the distributees so that they can participate in the proceedings under which the claimant is asserting his claim.

**SECTION 62-3-1005.**

Unless previously barred by adjudication and except as provided in ~~the~~ any accounting, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the ~~account, proposal for distribution of the estate, petition~~ application for settlement of the estate, ~~and proofs~~ required by Section 62-3-1001. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent’s estate.

**REPORTER’S COMMENTS**

The 2012 amendment conforms this section to changes to 3-1001, allowing waiver of accounting and proposal for distribution.

**SECTION 62-3-1006.**

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent’s death, and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent’s death or one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

**ARTICLE 3: Existing Code language**

**REPORTER’S COMMENTS**

Section 62-3-1006 creates a statute of limitations for claims against distributees by creditors or other persons claiming to be entitled to distribution from the estate. The time limitation provided is three years after the decedent’s death or one year after the time of the distribution thereof.

As in Section 62-3-1005, this section does not create a time bar for any action to recover property received as a result of fraud.

**SECTION 62-3-1007.** Certificate discharging liens securing fiduciary performance.

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**REPORTER’S COMMENTS**

Under Section 62-3-1007, after termination of the personal representative’s appointment, and upon the filing of an application showing that no action is pending concerning the estate, the personal representative or his sureties may obtain from the court a certificate to the effect that the personal representative appears to have fully administered the estate. A certificate issued by the court affects a release of any security given in connection with the personal representative’s bond, but does not prevent an action against the personal representative or his surety.

**SECTION 62-3-1008.** Subsequent administration.

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

**Bill # S. 1243**

**REPORTER’S COMMENTS**

Section 62-3-1006 creates a statute of limitations for claims against distributees by creditors or other persons claiming to be entitled to distribution from the estate. The time limitation provided for heirs and devisees or claimants other than creditors is three years after the decedent’s death or, for creditors, one year after the time of the distribution thereof.

As in Section 62-3-1005, this section does not create a time bar for any action to recover property received as a result of fraud.

**SECTION 62-3-1007.**

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**REPORTER’S COMMENTS**

Under Section 62-3-1007, after termination of the personal representative’s appointment, and upon the filing of an application showing that no action is pending concerning the estate, the personal representative or his sureties may obtain from the court a certificate to the effect that the personal representative appears to have fully administered the estate. A certificate issued by the court affects a release of any security given in connection with the personal representative’s bond, but does not prevent an action against the personal representative or his surety.

**SECTION 62-3-1008.**

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

<p><b>ARTICLE 3: Existing Code language</b></p>	<p><b>Bill # S. 1243</b></p>
<p>REPORTER’S COMMENTS  Section 62-3-1008 provides a procedure for reopening an estate following discharge of the personal representative. Such a supplemental or subsequent administration of a decedent’s estate would be required if other property of the estate is discovered after the personal representative’s discharge. Upon petition of an interested party and upon notice as required by the court, the court may reappoint the former personal representative or a different person to administer the subsequently discovered assets.  In administering the subsequently discovered assets, the procedure of this Code would apply as appropriate, except that previously barred claims could not be asserted in the subsequent administration.</p>	<p>REPORTER’S COMMENTS  Section 62-3-1008 provides a procedure for reopening an estate following discharge of the personal representative. Such a supplemental or subsequent administration of a decedent’s estate would be required if other property of the estate is discovered after the personal representative’s discharge. Upon petition of an interested party and upon notice as required by the court, the court may reappoint the former personal representative or a different person to administer the subsequently discovered assets.  In administering the subsequently discovered assets, the procedure of this Code would apply as appropriate, except that previously barred claims could not be asserted in the subsequent administration.  The 2010 amendment deleted ‘petition’ and replaced it with ‘application’ to allow any interested person to make application for a subsequent administration. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201.</p>
<p>Article 3.Part 11. Compromise of Controversies</p>	<p>Article 3.Part 11.</p>
<p><b>SECTION 62-3-1101.</b> Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.   A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433.   REPORTER’S COMMENTS  Section 62-3-1101 provides that compromises of controversies regarding estates can be made binding on interested parties by court confirmation.  Such controversies would include disagreements regarding the admission to probate of and instrument as the will of the decedent, the construction, validity, and effect of a probated will, the rights of successors to decedent’s estate, and the personal representative’s administration of the estate.</p>	<p><b>SECTION 62-3-1101.</b>   A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433.   REPORTER’S COMMENTS  Section 62-3-1101 provides that compromises of controversies regarding estates can be made binding on interested parties by court confirmation.  Such controversies would include disagreements regarding the admission to probate of and instrument as the will of the decedent, the construction, validity, and effect of a probated will, the rights of successors to decedent’s estate, and the personal representative’s administration of the estate.</p>

**ARTICLE 3: Existing Code language**

Approval of the compromise agreement is by order of the probate court following a formal proceeding. The order confirming the agreement is binding upon parties to the proceeding, and is binding upon unborn or unascertained persons and upon persons who could not be located. After court confirmation, the agreement is binding even though the agreement affects a trust contained in an instrument separate from decedent’s will, and even though it affects an unalienable right.  
The agreement as confirmed by the court is not binding on creditors of the estate or trust estate, or on taxing authorities, unless they are parties to the agreement.

**SECTION 62-3-1102.** Procedure for securing court approval of compromise.

The procedure for securing court approval of a compromise is as follows:  
(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.  
(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.  
(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

**REPORTER’S COMMENTS**

**Bill # S. 1243**

Approval of the compromise agreement is by order of the probate court following a formal proceeding. The order confirming the agreement is binding upon parties to the proceeding, and is binding upon unborn or unascertained persons and upon persons who could not be located. After court confirmation, the agreement is binding even though the agreement affects a trust contained in an instrument separate from decedent’s will, and even though it affects an unalienable right.  
The agreement as confirmed by the court is not binding on creditors of the estate or trust estate, or on taxing authorities, unless they are parties to the agreement.

The 2010 amendment deleted ‘in a formal proceeding in’ and replaced the foregoing with ‘by’ and deleted ‘for that purpose’ and replaced it with ‘after hearing.’ The intention of the amendment was to require court approval in an informal proceeding after hearing. See § 62-3-1102 regarding application procedure for approval of compromise and certain agreements.

**SECTION 62-3-1102.**

The procedure for securing court approval of a compromise is as follows:  
(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.  
(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.  
(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.



<b>ARTICLE 3: Existing Code language</b>	<b>Bill # S. 1243</b>
<p>Section 62-3-1102 provides the procedure by which agreements for compromise of estate controversies are confirmed by the probate court.</p> <p>Subsection (1) requires the agreement be in written form setting forth all of the terms of the compromise. The agreement must be signed by all persons having a beneficial interest in or claim against the estate, whose interest or claim is affected by the agreement. If an interested party is a minor, the agreement may be executed on his behalf by his parent.</p> <p>Execution of the agreement is not required by unknown parties or by parties whose whereabouts are unknown or cannot reasonably be ascertained. The agreement should clearly specify the effect of the compromise on the minors, on unknown parties, and on unlocated parties.</p> <p>Subsection (2) would imply that the agreement is not to be signed by the personal representative or trustees of the affected testamentary trust prior to submission of the agreement to the probate court, but the agreement should specify the proposed effect on the personal representative and affected trusts.</p> <p>Subsection (2) requires submission of the agreement to the probate court for approval. The application for approval may be made by an interested party or by the personal representative. The application would request approval of the agreement and would request an order directing or permitting the personal representative and the trustee of an affected testamentary trust to execute the agreement.</p> <p>Pursuant to subsection (3), a hearing after notice to all interested parties is conducted by the probate judge. In addition to parties to the agreement, the personal representative and trustees of affected trusts must be notified of the hearing.</p> <p>The advocates of the agreement must prove to the court that a controversy existed in good faith among the interested parties. This requirement is to avoid sham arrangements designed to prejudice unknown parties or parties whose addresses are unknown but would be bound by an order confirming the agreement.</p> <p>The advocates of the agreement must prove that the effect of the agreement on persons, including minors and incompetents represented by fiduciaries or other representatives, is fair, equitable, and reasonable.</p> <p>Upon such proof to the court, the court will by order approve the agreement and will direct the personal representative and all fiduciaries subject to the court's jurisdiction to execute the agreement.</p> <p>The agreement as confirmed by the court will govern further disposition of the decedent's estate in accordance with the terms of the agreement. Subsection (3) further provides that minor children who are represented only by their parents may be bound only if their parents executed the agreement with other competent persons. In the event this requirement cannot be met,</p>	<p>REPORTER'S COMMENTS</p> <p>Section 62-3-1102 provides the procedure by which agreements for compromise of estate controversies are confirmed by the probate court.</p> <p>Subsection (1) requires the agreement be in written form setting forth all of the terms of the compromise. The agreement must be signed by all persons having a beneficial interest in or claim against the estate, whose interest or claim is affected by the agreement. If an interested party is a minor, the agreement may be executed on his behalf by his parent.</p> <p>Execution of the agreement is not required by unknown parties or by parties whose whereabouts are unknown or cannot reasonably be ascertained. The agreement should clearly specify the effect of the compromise on the minors, on unknown parties, and on unlocated parties.</p> <p>Subsection (2) would imply that the agreement is not to be signed by the personal representative or trustees of the affected testamentary trust prior to submission of the agreement to the probate court, but the agreement should specify the proposed effect on the personal representative and affected trusts.</p> <p>Subsection (2) requires submission of the agreement to the probate court for approval. The application for approval may be made by an interested party or by the personal representative. The application would request approval of the agreement and would request an order directing or permitting the personal representative and the trustee of an affected testamentary trust to execute the agreement.</p> <p>Pursuant to subsection (3), a hearing after notice to all interested parties is conducted by the probate judge. In addition to parties to the agreement, the personal representative and trustees of affected trusts must be notified of the hearing.</p> <p>The advocates of the agreement must prove to the court that a controversy existed in good faith among the interested parties. This requirement is to avoid sham arrangements designed to prejudice unknown parties or parties whose addresses are unknown but would be bound by an order confirming the agreement.</p> <p>The advocates of the agreement must prove that the effect of the agreement on persons, including minors and incompetents represented by fiduciaries or other representatives, is fair, equitable, and reasonable.</p> <p>Upon such proof to the court, the court will by order approve the agreement and will direct the personal representative and all fiduciaries subject to the court's jurisdiction to execute the agreement.</p> <p>The agreement as confirmed by the court will govern further disposition of the decedent's estate in accordance with the terms of the agreement. Subsection (3) further provides that minor children who are represented only by their parents may be bound only if their parents executed</p>

<b>ARTICLE 3: Existing Code language</b>	<b>Bill # S. 1243</b>
execution of the agreement on behalf of the minor could be made binding if by a court appointed guardian.	the agreement with other competent persons. In the event this requirement cannot be met, execution of the agreement on behalf of the minor could be made binding if by a court appointed guardian. The 2010 amendment revised subsection (3) to delete ‘After’ at the beginning and replaces it with ‘Upon application to the court and after’ to allow application to the probate court to secure court approval of a compromise. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201.
Article 3.Part 12. Small Estates Administration	Article 3.Part 12.
<p><b>SECTION 62-3-1201.</b> Collection of personal property by affidavit.</p> <p>(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. Before this affidavit may be presented to collect the decedent’s personal property, it must:</p> <ol style="list-style-type: none"> <li>(1) state that the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), wherever located, less liens and encumbrances, does not exceed ten thousand dollars;</li> <li>(2) state that thirty days have elapsed since the death of the decedent;</li> <li>(3) state that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;</li> <li>(4) state that the claiming successor is entitled to payment or delivery of the property;</li> <li>(5) be approved and countersigned by the probate judge of the county of the decedent’s residence at the time of his death and only upon the judge’s satisfaction that the successor is entitled to payment or delivery of the property; and</li> <li>(6) be filed in the probate court.</li> </ol> <p>(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).</p>	<p><b>SECTION 62-3-1201.</b></p> <p>(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. Before this affidavit may be presented to collect the decedent’s personal property, it must:</p> <ol style="list-style-type: none"> <li>(1) state that the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), wherever located, less liens and encumbrances, does not exceed <del>ten</del> <u>twenty-five</u> thousand dollars;</li> <li>(2) state that thirty days have elapsed since the death of the decedent;</li> <li>(3) state that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;</li> <li>(4) state that the claiming successor, <u>which for the purposes of this section includes a person who remitted payment for reasonable funeral expenses</u>, is entitled to payment or delivery of the property;</li> <li>(5) be approved and countersigned by the probate judge of the county of the decedent’s <del>residence</del> <u>domicile</u> at the time of his death, <u>or if the decedent was not domiciled in this State, in the county in which the property of the decedent is located</u>, and only upon the judge’s satisfaction that the successor is entitled to payment or delivery of the property; and</li> <li>(6) be filed in the probate court <u>for the county of the decedent’s domicile at the time of his death, or, if the decedent was not domiciled in this State, in the county in which property of the decedent is located</u>.</li> </ol> <p>(b) A transfer agent of any security shall change the registered ownership on the books of a</p>

**ARTICLE 3: Existing Code language**

**REPORTER’S COMMENTS**

Section 62-3-1201 provides for a simplified handling of small estates of ten thousand dollars or less through the use of an affidavit. The small estate affidavit may be used starting thirty days after the death of the decedent if the entire estate of the decedent, wherever located, after deduction of liens and encumbrances, does not exceed ten thousand dollars. The affiant must state that the value of the estate does not exceed ten thousand dollars, that thirty days have elapsed since the decedent’s death, that no person has applied for appointment as, or has been appointed as, personal representative in any jurisdiction, and that affiant as successor to decedent is entitled to payment or delivery of the property.

Upon presentment of such an affidavit, holders of property of decedent, or persons obligated to decedent, must transfer the property, or discharge their debt, to the successor. Stock transfer agents in subparagraph (6) are directed to transfer stock based on such affidavits.

The small estate affidavit cannot be used to transfer title to real estate and it cannot be used by creditors of the estate to reach assets of the estate.

**SECTION 62-3-1202. Effect of affidavit.**

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

**Bill # S. 1243**

corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

**REPORTER’S COMMENTS**

Section 62-3-1201 provides for a simplified handling of small estates of twenty-five thousand dollars or less through the use of an affidavit. The small estate affidavit may be used starting thirty days after the death of the decedent if the entire estate of the decedent, wherever located, after deduction of liens and encumbrances, does not exceed twenty-five thousand dollars. The affiant must state that the value of the estate does not exceed twenty-five thousand dollars, that thirty days have elapsed since the decedent’s death, that no person has applied for appointment as, or has been appointed as, personal representative in any jurisdiction, and that the affiant as successor to the decedent is entitled to payment or delivery of the property.

Upon presentment of such an affidavit, holders of property of the decedent, or persons obligated to the decedent, must transfer the property, or discharge their debt, to the successor. Stock transfer agents in subparagraph (6) are directed to transfer stock based on such affidavits.

The small estate affidavit cannot be used to transfer title to real estate and it cannot be used by creditors of the estate to reach assets of the estate.

The 2012 amendment increases the size of the estate in which a small estate affidavit can be utilized to twenty-five thousand dollars, establishes that a person who advances reasonable funeral expenses is a successor for purposes of this section regardless of his status as an heir or devisee, and clarifies which probate court must approve and record the affidavit.

**SECTION 62-3-1202.**

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. ~~If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.~~ Any person who receives or is presented with a valid affidavit executed pursuant to Section 62-3-1201 and who has not received actual written notice of its revocation or termination must not fail to deliver the property identified in the affidavit, provided it contains the following provision. ‘No person who may act in reliance on this

**ARTICLE 3: Existing Code language**

REPORTER’S COMMENTS

Section 62-3-1202 discharges and releases any person who transfers personal property of a decedent or who pays his debt to the decedent pursuant to the small estate affidavit pursuant to Section 62-3-1201 to the same extent he would have been released from liability had he dealt with a court-appointed personal representative of the decedent. The person so released is not required to inquire into the accuracy of the affidavit nor to insure the proper application of the personal property by the successor.

This section also provides that the successor may compel performance through a proceeding against the holder of personal property or a person obligated to the decedent.

This section creates a liability in the recipient of property through the use of an affidavit to any personal representative of the estate and to any person having a superior right, including creditors of the decedent or of the estate, or other successors of the decedent.

**SECTION 62-3-1203.** Small estates; summary administrative procedure.

(a) If it appears from the inventory and appraisal that the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), less liens and encumbrances, does not exceed ten thousand dollars and exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, after giving notice to creditors required by Section 62-3-801, but without giving additional notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

(b) If it appears from an appointment proceeding that (1) the appointed personal representative is either the sole devisee under the probated will of a testate decedent or the sole heir of an intestate decedent, or (2) the appointed personal representatives are the sole devisees under the probated will of a testate decedent or the sole heirs of an intestate decedent, the personal representative, after giving notice to creditors as required by Section 62-3-801, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

**Bill # S. 1243**

affidavit shall incur any liability to the estate of the decedent. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

REPORTER’S COMMENTS

Section 62-3-1202 discharges and releases any person who transfers personal property of a decedent or who pays his debt to the decedent pursuant to the small estate affidavit pursuant to Section 62-3-1201 to the same extent he would have been released from liability had he dealt with a court-appointed personal representative of the decedent. The person so released is not required to inquire into the accuracy of the affidavit nor to insure the proper application of the personal property by the successor.

This section creates a liability in the recipient of property through the use of an affidavit to any personal representative of the estate and to any person having a superior right, including creditors of the decedent or of the estate, or other successors of the decedent.

The 2012 amendment requires the person receiving or presented with the affidavit to deliver the property identified in the affidavit if the affidavit contains the quoted language, unless that person has received actual written notice of the affidavit’s revocation or termination.

**SECTION 62-3-1203.**

(a) If it appears from the inventory and appraisal that the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), less liens and encumbrances, does not exceed ~~ten~~ twenty-five thousand dollars and exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, after giving publishing notice to creditors ~~required by~~ pursuant to Section 62-3-801, but without giving additional notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

(b) If it appears from an appointment proceeding that (1) the appointed personal representative, individually or in the capacity of a fiduciary, is either the sole devisee under the probated will of a testate decedent or the sole heir of an intestate decedent, or (2) the appointed personal representatives, individually or in their capacity as a fiduciary, are the sole devisees under the probated will of a testate decedent or the sole heirs of an intestate decedent, the personal representative, after giving publishing notice to creditors as ~~required by~~ under Section

**ARTICLE 3: Existing Code language**

**REPORTER’S COMMENTS**

Sections 62-3-1203 and 62-3-1204 provide for an expedited administration by a personal representative. Under Section 62-3-1203, if the personal representative determines after inventory and appraisal that the estate assets, after deduction of liens and encumbrances, do not exceed the total of ten thousand dollars, plus exempt property, plus costs and expenses of administration, reasonable funeral expenses, and medical and hospital expenses of the decedent’s last illness, then the personal representative may immediately pay the administration, funeral, medical, and hospital expenses and distribute the balance to distributees. Prior notice to creditors of this election is not required. Following the disbursement of the assets, the personal representative would file the closing statement required by Section 62-3-1204.

**SECTION 62-3-1204.** Small estates; closing by sworn statement of personal representative.

(a) Unless prohibited by order of the court and except for estates being administered under Part 5 (Sections 62-3-501 et seq.), a personal representative may close an estate administered under the summary procedures of Section 62-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- (1) either
  - (i) to the best knowledge of the personal representative, the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), less liens and encumbrances, did not exceed ten thousand dollars and exempt property, costs, and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent; or
  - (ii) the estate qualifies for summary administration according to the provisions of subsection (b) of Section 62-3-1203;
- (2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto;
- (3) the personal representative has sent a copy of the closing statement to all distributees of the

**Bill # S. 1243**

62-3-801, but without giving additional notice to creditors may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

**REPORTER’S COMMENTS**

Sections 62-3-1203 and 62-3-1204 provide for an expedited administration by a personal representative. Under Section 62-3-1203, if the personal representative determines after inventory and appraisal that: (1) the estate assets, after deduction of liens and encumbrances, do not exceed the total of twenty-five thousand dollars, plus exempt property, plus costs and expenses of administration, reasonable funeral expenses, and medical and hospital expenses of the decedent’s last illness, or (2) that the sole personal representative is also the sole heir or devisee of the decedent or that corepresentatives are all of the only heirs or devisees of the decedent, then the personal representative may immediately pay the administration, funeral, medical, and hospital expenses and distribute the balance to distributees. Other than the publication of notice under Section 62-3-801, additional notice to creditors of this election is not required. Following the disbursement of the assets, the personal representative would file the closing statement required by Section 62-3-1204.

**SECTION 62-3-1204.**

(a) Unless prohibited by order of the court and except for estates being administered under Part 5 (Sections 62-3-501 et seq.), a after filing an inventory with the court, and paying any court fees due, the personal representative may close an estate administered under the summary procedures of Section 62-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- (1) either
  - (i) to the best knowledge of the personal representative, the value of the entire probate estate (the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy), less liens and encumbrances, did not exceed ~~ten~~ twenty-five thousand dollars and exempt property, costs, and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent; or
  - (ii) the estate qualifies for summary administration according to the provisions of subsection (b) of Section 62-3-1203;
- (2) the personal representative has fully administered the estate by disbursing and

<p><b>ARTICLE 3: Existing Code language</b></p>	<p><b>Bill # S. 1243</b></p>
<p>estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.</p> <p>(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.</p> <p>REPORTER'S COMMENTS Section 62-3-1204 provides the procedure for closing the estate following the disbursement and distribution of assets pursuant to Section 62-3-1203. The procedure would not be used if prohibited by the probate court or if the estate was in administration under Part 5. The personal representative would file with the probate court his verified statement stating that: (1) to the best of his knowledge the estate assets do not exceed the limitations described in Section 62-3-1203; (2) he has disbursed and distributed the assets to the proper persons, he has sent a copy of the closing statement to the distributees, unpaid creditors, and claimants whose claims are not barred, and he has sent to all distributees a written account of his administration of the estate. If no action regarding the estate is pending one year after the personal representative files the closing statement, the court will terminate the appointment of the personal representative.</p>	<p>distributing it to the persons entitled thereto;</p> <p>(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom <del>he</del> <u>the personal representative</u> is aware <u>and</u> whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.</p> <p>(b) If no <u>unresolved claims</u>, actions or proceedings involving the personal representative are pending in <del>the any</del> <u>the</u> court one year after the <del>closing statement is filed</del> <u>date of the decedent's death</u>, the appointment of the personal representative terminates.</p> <p>REPORTER'S COMMENTS Section 62-3-1204 provides the procedure for closing the estate following the disbursement and distribution of assets pursuant to Section 62-3-1203. The procedure would not be used if prohibited by the probate court or if the estate was in administration under Part 5. The personal representative would file with the probate court his verified statement stating that: (1) to the best of his knowledge the estate assets do not exceed the limitations in or would qualify as a summary administrator according to the requirements described in Section 62-3-1203; (2) he has disbursed and distributed the assets to the proper persons, he has sent a copy of the closing statement to the distributees, unpaid creditors, and claimants whose claims are not barred, and he has sent to all distributees a written account of his administration of the estate. If no action regarding the estate is pending one year after the date of the decedent's death, the court will terminate the appointment of the personal representative who filed the closing statement.</p>
<p>Article 3.Part 13. Sale of Real Estate by Court to Pay Debts</p>	<p>Article 3.Part 13.</p>
<p><b>SECTION 62-3-1301.</b> Only procedure for sale of lands by court.</p> <p>The provisions of this Part are hereby declared to be the only procedure for the sale of lands by the court, except where the will of the decedent authorizes to the contrary.</p> <p><b>SECTION 62-3-1302.</b> Sale of real estate.</p> <p>The court may, as herein provided, authorize the sale of the real estate of such deceased person.</p>	<p><b>SECTION 62-3-1301.</b></p> <p>The provisions of this Part are hereby declared to be the only procedure for the sale of lands by the court, except where the will of the decedent authorizes to the contrary.</p> <p><b>SECTION 62-3-1302.</b></p> <p>The court may, as herein provided, authorize the sale of the real <u>estate property</u> of <del>such deceased person</del> <u>a decedent</u>.</p>

<b>ARTICLE 3: Existing Code language</b>	<b>Bill # S. 1243</b>
<p>REPORTER'S COMMENTS Section 62-3-1302 establishes the circumstances under which the probate court has the power to sell the land of the deceased. Those circumstances are that the personal estate in the hands of the personal representative or assets set aside under the will of the deceased to pay the debts of the estate are insufficient to pay the outstanding debts of the deceased.</p> <p><b>SECTION 62-3-1303.</b> Issuance of summons upon application for sale.</p> <p>At any time after the qualification of the personal representative, on application to the court by an interested person requesting the sale of real estate of the deceased, a summons shall be issued to the personal representative (if not the petitioner), the heirs or devisees of the estate, and any other person as required by the court in its discretion.</p> <p>REPORTER'S COMMENTS Section 62-3-1303 specifies the process by which an action for the sale of real estate in aid of assets is commenced. The action is commenced by a petition filed after qualification of the personal representative. The petition may be filed by the personal representative or by a creditor of the deceased. The petition must specify the indebtedness of the deceased in general and if filed by a creditor should specify the indebtedness to the creditor in particular. The petition must also specify the personal assets of the estate and should allege the deficiency of the assets to satisfy the estate indebtedness. Upon filing of the petition, Section 62-3-1303 provides that the probate judge will issue a summons directed to the heirs-at-law or devisees of the estate specifying the time of a hearing to show cause why the real estate should not be sold pursuant to the petition.</p> <p><b>SECTION 62-3-1304.</b> Form of summons.</p> <p>The form of such summons must be in like form as summonses for civil actions in the circuit courts.</p> <p><b>SECTION 62-3-1305.</b> Service of summons and petition.</p>	<p>REPORTER'S COMMENTS Section 62-3-1302 establishes the circumstances under which the probate court has the power to sell the land of the decedent.</p> <p><b>SECTION 62-3-1303.</b></p> <p>At any time after the qualification of the personal representative, on <del>application</del> <u>petition</u> to the court by an interested person requesting the sale of real <del>estate</del> <u>property</u> of the <del>deceased decedent</del>, a summons shall be issued to the personal representative (if not the petitioner), the heirs <del>or devisees of the estate</del> <u>at law of the decedent (if the decedent died intestate or the time to challenge a will admitted to probate has not expired), the devisees under the decedent's will (if any), any person who has properly presented a claim against the estate which remains unresolved, any interested person effected by the proceeding,</u> and any other person as required by the court in its discretion.</p> <p>REPORTER'S COMMENTS Section 62-3-1303 specifies the process by which an action for the sale of real estate in aid of assets is commenced. The action is commenced by a petition filed after qualification of the personal representative. The petition may be filed by an interested person. Upon filing of the petition, Section 62-3-1303 provides that the probate judge will issue a summons directed to the specified interested persons.</p> <p><b>SECTION 62-3-1304.</b></p> <p>The form of such summons must be in like form as summonses for civil actions in the circuit courts.</p> <p><b>SECTION 62-3-1305.</b></p>

**ARTICLE 3: Existing Code language**

To such summons a copy of the petition must be attached and copies of the summons and petition served on the personal representative (if not the petitioner), the heirs or devisees, and any other person as required by the court in its discretion, in like manner as summonses and complaints are served in civil actions in the circuit courts. If there are minors the court shall appoint guardians ad litem who must be served with copies of the summons and petition and the appointment and acceptance of such guardian endorsed on the petition. Nothing herein contained precludes any of the parties from accepting service of the summons and petition or from consenting to the sale as prayed for in the petition.

**REPORTER’S COMMENTS**

This section provides for the manner of service of the summons and petition and incorporates by reference the methods of service of summons and complaints in civil actions in the circuit courts. This section further provides for appointment of guardian ad litem to represent minors and specifies that the guardian ad litem will be served with copies of the summons and petition. A copy of the order appointing the guardian ad litem and a statement of the guardian to serve must be endorsed on the petition. This section further provides that any of the parties may accept service of the summons and petition and may also consent to the sale prayed for in the petition.

**SECTION 62-3-1306.** Execution of process by sheriff; fees.

The sheriffs of the several counties in this State are required to serve all processes which may be issued, if so ordered by the court under the provisions of this Part, for which they shall receive the same fees as are allowed them by law for similar services, which must be paid from the proceeds of sale or by the petitioner.

**REPORTER’S COMMENTS**

Section 62-3-1306 provides for service of the summons and petition within the State of South Carolina by the sheriffs of the various counties in which interested parties are located. This

**Bill # S. 1243**

To such summons a copy of the petition must be attached and copies of the summons and petition served on the personal representative (if not the petitioner), the heirs ~~or devisees, and any other~~ at law of the decedent (if the decedent died intestate or the time to challenge a will admitted to probate has not expired), the devisees under the decedent’s will (if any), any person who has properly presented a claim against the estate which remains unresolved, any interested person effected by the proceeding, and any other interested person as required by the court in its discretion, in like manner as summonses and complaints are served in civil actions in the circuit courts. If there are minors the court shall appoint guardians ad litem who must be served with copies of the summons and petition and the appointment, and who must acknowledge acceptance of such guardian endorsed on the their appointment as guardians ad litem to the probate court prior to being served with the summons and petition. Nothing herein ~~contained~~ precludes ~~any of the parties~~ interested in the proceeding from accepting service of the summons and petition ~~or from~~ and consenting to the sale as prayed for in the petition.

**REPORTER’S COMMENTS**

This section provides for the manner of service of the summons and petition and incorporates by reference the methods of service of summons and complaints in civil actions in the circuit courts. This section further provides for appointment of guardian ad litem to represent minors and specifies that the guardian ad litem will be served with copies of the summons and petition. A copy of the order appointing the guardian ad litem and a statement of the guardian to serve must be endorsed on the petition. This section further provides that any of the parties may accept service of the summons and petition and may also consent to the sale prayed for in the petition.

**SECTION 62-3-1306.**

The sheriffs of the several counties in this State are required to serve all processes which may be issued, if so ordered by the court under the provisions of this Part, for which they shall receive the same fees as are allowed them by law for similar services, which must be paid from the proceeds of sale or by the petitioner.

**REPORTER’S COMMENTS**

Section 62-3-1306 provides for service of the summons and petition within the State of South Carolina by the sheriffs of the various counties in which interested parties are located. This



<p><b>ARTICLE 3: Existing Code language</b></p>	<p><b>Bill # S. 1243</b></p>
<p>section specifies that the sheriffs' fees for service shall be as in other circumstances and are to be paid by the petitioner or from the proceeds of the sale.</p>	<p>section specifies that the sheriffs' fees for service shall be as in other circumstances and are to be paid by the petitioner or from the proceeds of the sale.</p>
<p><b>SECTION 62-3-1307.</b> Publication as to nonresidents and parties with unknown residences.</p>	<p><b>SECTION 62-3-1307.</b></p>
<p>If there is any party who resides beyond the limits of this State or whose residence is unknown and who does not consent in writing to the sale, the court may authorize publication of the summons as provided by this Code and if such party does not appear and show sufficient cause within the time named in the summons the court shall enter of record his consent as confessed and proceed with the sale.</p>	<p>If there is any party who resides beyond the limits of this State or whose residence is unknown and who does not consent in writing to the sale, the court may authorize publication of the summons as provided by this Code and if such party does not appear and show sufficient cause within the time named in the summons the court shall enter of record his consent as confessed and proceed with the sale.</p>
<p>REPORTER'S COMMENTS This section provides for service of the summons and petition by publication on interested parties who are not residents of South Carolina or whose addresses are unknown. If the party consented to the sale, service would not be required. If the party after such service did not appear or answer, the probate judge will enter of record his consent by default.</p>	<p>REPORTER'S COMMENTS This section provides for service of the summons and petition by publication on interested parties who are not residents of South Carolina or whose addresses are unknown. If the party consented to the sale, service would not be required. If the party after such service did not appear or answer, the probate judge will enter of record his consent by default.</p>
<p><b>SECTION 62-3-1308.</b> Filing notice of pendency of action.</p>	<p><b>SECTION 62-3-1308.</b></p>
<p>Upon the filing of the petition, the petitioner shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15-11-10 to 15-11-50 and upon the filing of such notice it has the same force and effect as notice of pendency of action filed in an action in the circuit court.</p>	<p>Upon the filing of the petition, the petitioner shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15-11-10 to 15-11-50 and upon the filing of such notice it has the same force and effect as notice of pendency of action filed in an action in the circuit court.</p>
<p>REPORTER'S COMMENTS This section prescribes the filing of a notice of pendency of action, or lis pendens, by the probate judge in the office of the clerk of court for the county in which the land is located, at the time the petition is filed, pursuant to Sections 15-11-10 to 15-11-50. Such filing will eliminate from consideration by the court any party who acquires subsequent to the filing of the notice a lien upon or an interest for value in the land.</p>	<p>REPORTER'S COMMENTS This section prescribes the filing of a notice of pendency of action, or lis pendens, by the probate judge in the office of the clerk of court for the county in which the land is located, at the time the petition is filed, pursuant to Sections 15-11-10 to 15-11-50. Such filing will eliminate from consideration by the court any party who acquires subsequent to the filing of the notice a lien upon or an interest for value in the land.</p>
<p><b>SECTION 62-3-1309.</b> Time for answer or other response; sale of real estate after hearing and notice.</p>	<p><b>SECTION 62-3-1309.</b></p>
<p>The time to answer or otherwise respond by motion to the summons and petition is at least thirty</p>	<p>The time to answer <del>or otherwise respond by motion to the</del> a summons and petition is at least</p>

**ARTICLE 3: Existing Code language**

days from the date of service. Should the personal representative (if not the petitioner) or any of the heirs or devisees, or other parties, if any, desire to answer or otherwise respond by motion it must be in writing and the court shall in regular order, as in the case of other litigated cases, proceed to determine the issues made by petition, subsequent pleadings, and motions and if the court decides that the real estate should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the court shall pay over to the personal representative the net proceeds of such sale. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this part may be construed to abridge homestead exemptions.

**REPORTER’S COMMENTS**

Section 62-3-1309 allows interested parties twenty days in which to file written return to the petition. Following this period, the probate judge would schedule a hearing of the case. If the probate judge determines that the land should be sold in accordance with the petition, he would either order a private sale or schedule a public auction of the land for the normal day of court sales, being the first Monday of each month, or the first day following that Monday that is not a legal holiday if the Monday is a legal holiday. The notice of the sale must be published once a week for three weeks during the three weeks preceding the sale in a newspaper published in the county of the probate court. Following the sale, the net proceeds of the sale will be paid over to the personal representative for distribution in accordance with law as if it were personal property originally belonging to the estate. Section 62-3-1309 further provides that the proceedings are not to abridge the rights of

**Bill # S. 1243**

~~thirty days from the date of service. Should the personal representative (if not the petitioner) or any of the heirs or devisees, or other parties, if any, desire to answer or otherwise respond by motion it must be in writing and the court shall in regular order, as in the case of other litigated cases, proceed to determine the issues made by petition, subsequent pleadings, and motions and if the court decides that the real estate~~ for sale of real property of a decedent is the same as the time to answer in any civil litigation case. Interested persons who wish to file an answer or return to the petition must do so in writing in the same manner as an answer to a complaint in other civil litigation cases. In addition the court may hear motions and accept such subsequent pleadings as would be heard or accepted in other civil litigation cases. After the filing and service of the summons and petition and the time for filing responsive pleadings has elapsed, the court will convene a hearing on the merits of the petition. If based on the evidence presented at the hearing the court finds the real property should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the court shall pay proceeds of the sale will be paid over to the personal representative the net proceeds of such sale. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this part may be construed to abridge homestead exemptions. Notice of hearings in regard to the petition will be provided to interested persons in accordance with Section 62-1-401.

**REPORTER’S COMMENTS**

Section 62-3-1309 incorporates the rules of civil litigation to determine the time limits to file an answer or return to the petition. Following this period, the probate judge would schedule a hearing of the case. If the probate judge determines that the land should be sold in accordance with the petition, he would either order a private sale or schedule a public auction of the land. The notice of the sale must be published once a week for three weeks during the three weeks preceding the sale in a newspaper published in the county of the probate court. Following the sale, the net proceeds of the sale will be paid over to the personal representative for distribution in accordance with law as if it were personal property originally belonging to the estate. Section 62-3-1309 further provides that the proceedings are not to abridge the rights of homestead exemption in the land.

<p><b>ARTICLE 3: Existing Code language</b></p>	<p><b>Bill # S. 1243</b></p>
<p>homestead exemption in the land.</p> <p><b>SECTION 62-3-1310.</b> Bond for handling of proceeds by personal representative.</p> <p>The regular bond of the personal representative must protect the creditors, heirs, devisees, or other interested persons, if any, in the handling of the proceeds of sale by the personal representative, but in case no such bond has been given, the court shall require the giving of a bond by such personal representative as provided in Sections 62-3-603, 62-3-604, and 62-3-605.</p> <p>REPORTER'S COMMENTS Section 62-3-1310 provides that the regular bond of the personal representative protects claimants to the proceeds of the sale. If no bond has been filed previously, the personal representative will be required to file one pursuant to Sections 62-3-603 and 62-3-605. If a bond has previously been filed, the personal representative may be required to increase the amount of the bond.</p> <p><b>SECTION 62-3-1311.</b> Filing of papers; requirement of returns.</p>	<p>The 2010 amendment revised this section to delete 'for return' in the first sentence and replace it with 'to answer or otherwise respond by motion to the summons and petition, delete 'make a return' and replace it with 'answer or otherwise respond by motion,' add 'subsequent pleadings,' and delete 'return' and replace it with 'motions' in the second sentence The foregoing 2010 amendment is intended to clarify that an answer or other response to a summons and petition must be served in an action to sell real estate, which is a formal proceeding as referred to in §62-1-201(17).</p> <p>The amendments to this section in 2012 were largely clarifying revisions, and did not change substantive law. All answers to the petition must be in writing and served on the petitioner and other parties in the same manner as an answer to a complaint in circuit court, and within the same time limits as would apply in circuit court. Further, the same rules apply as to motions in the case of a petition for sale of real property of a decedent as apply in circuit court to answers. Consequently, as in circuit court, answers may not be due while certain motions are pending, and the same rules for amending petitions and answers would apply.</p> <p>The 2012 amendments added the requirement that all interested persons be served with notice of hearings regarding a petition to sell real property of a decedent in accordance with Section 62-1-401.</p> <p><b>SECTION 62-3-1310.</b></p> <p>The regular bond of the personal representative must protect the creditors, heirs, devisees, or other interested persons, if any, in the handling of the proceeds of sale by the personal representative, but in case no such bond has been given, the court <del>shall</del> <u>may</u> require the giving of a bond by such personal representative as provided in Sections 62-3-603, 62-3-604, and 62-3-605.</p> <p>REPORTER'S COMMENTS Section 62-3-1310 provides that the regular bond of the personal representative protects claimants to the proceeds of the sale. If no bond has been filed previously, the personal representative may be required to file one pursuant to Sections 62-3-603 and 62-3-605. If a bond has previously been filed, the personal representative may be required to increase the amount of the bond.</p> <p>The 2012 amendment gives the court discretion to require bond.</p> <p><b>SECTION 62-3-1311.</b></p>

**ARTICLE 3: Existing Code language**

The court shall file and keep the original petition with due proof of service thereon and all original papers connected with the sale and shall require from such personal representative his final account showing the distribution of the funds received by him.

**REPORTER’S COMMENTS**

Section 62-3-1311 requires the filing and preserving in the probate court of all original documents relating to the action for the sale of the land including the petition, proofs of service, and order. This section further requires the personal representative file a final accounting to document the distribution of the proceeds of sale of the land.

**SECTION 62-3-1312. Entry of releases of liens on property sold.**

In case any lands of the deceased subject to the lien of any judgment, mortgage, or other lien is sold under the provisions of this Part the court may enter a release of the lands so sold upon the records in the office of the clerk of court or register of deeds of the county from the lien of such judgment, mortgage, or other lien and in case such mortgage, judgment, or other lien debt has been paid in full out of the proceeds of the sale of such lands the court may have cancellation of the same entered on the record thereof. The foregoing does not relieve any judgment, mortgage, or other lien creditor of the duty, as provided otherwise by law, of releasing or canceling such liens. Each release satisfaction or cancellation provided for herein must refer by proper notation to the file number of such estate in the court. The provisions of this section do not apply when the order of sale directs the sale of any lands which must be sold subject to any existing mortgage, judgment, or other lien, but only when such lands are sold freed and discharged from all such liens.

**REPORTER’S COMMENTS**

This section provides that the probate judge must file in the offices of the clerk of court and of the register of mesne conveyances releases of the land sold from the lien of any mortgage, judgment, or other lien on said land. If the lien claim is paid in full from the proceeds of sale, the probate judge will file a cancellation of the lien. Such filing of releases by the probate judge will not be required if such releases are filed by the lien claimants within thirty days of the sale. Such releases by the probate judge must make reference to the probate court file number for the estate. This section specifies that releases must also be filed by the lien claimants even if a

**Bill # S. 1243**

The court shall file and keep the original petition with due proof of service thereon and all original papers connected with the sale and shall require from such personal representative his final account showing the distribution of the funds received by him.

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<b>ARTICLE 3: Existing Code language</b>	<b>Bill # S. 1243</b>
<p>release has been filed by the probate judge.  This section further provides that the probate judge may sell the land subject to any existing lien on the land, and, in which case, no release from the lien would be required.</p>	<p>has been filed by the probate judge.  This section further provides that the probate judge may sell the land subject to any existing lien on the land, and, in which case, no release from the lien would be required.</p>