

SIDE-BY-SIDE

Article 3-Wills and Administration.Parts 6-7

| | |
|--|---|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>Article 3.Part 6. Personal Representative- Appointment and Termination</p> | <p>Article 3.Part 6.</p> |
| <p>SECTION 62-3-601. Qualification.</p> <p>Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.</p> <p>REPORTER’S COMMENTS This and related sections of this part describe details and conditions of appointment which apply to all personal representatives without regard to whether the appointment proceeding involved is formal or informal, or whether the personal representative is subject to administration under Part 5. Section 62-1-305 authorizes issuance of copies of letters and prescribes their content. The section should be read with Section 62-3-504 which directs endorsement on letters and any court certification of any restrictions of powers of an administrator under Part 5. No formal oath is required of a personal representative.</p> <p>SECTION 62-3-602. Acceptance of appointment; consent to jurisdiction.</p> <p>By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.</p> <p>REPORTER’S COMMENTS Except for personal representatives appointed pursuant to Section 62-3-502, appointees are not deemed to be officers of the appointing court or to be parties in one continuous judicial proceeding that extends until final settlement. See Section 62-3-107. In order to prevent a personal representative who might make himself unavailable to service within the State from affecting the power of the appointing court to enter valid orders affecting him, each appointee is required to consent in advance to the personal jurisdiction of the court in</p> | <p>SECTION 62-3-601.</p> <p>Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.</p> <p>REPORTER’S COMMENTS This and related sections of this part describe details and conditions of appointment which apply to all personal representatives without regard to whether the appointment proceeding involved is formal or informal, or whether the personal representative is subject to administration under Part 5. Section 62-1-305 authorizes issuance of copies of letters and prescribes their content. The section should be read with Section 62-3-504 which directs endorsement on letters and any court certification of any restrictions of powers of an administrator under Part 5. No formal oath is required of a personal representative.</p> <p>SECTION 62-3-602.</p> <p>By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.</p> <p>REPORTER’S COMMENTS Except for personal representatives appointed pursuant to Section 62-3-502, appointees are not deemed to be officers of the appointing court or to be parties in one continuous judicial proceeding that extends until final settlement. See Section 62-3-107. In order to prevent a personal representative who might make himself unavailable to service within the State from affecting the power of the appointing court to enter valid orders affecting him, each appointee is required to consent in advance to the personal jurisdiction of the court in</p> |

ARTICLE 3: Existing Code language

any proceeding relating to the estate that may be instituted against him. The section requires that he be given notice of any such proceeding, which, when considered in the light of the responsibility he has undertaken, should make the procedure sufficient to meet the requirements of due process.

SECTION 62-3-603. Bond not required without court order; exceptions; waiver of bond requirement.

(A) Except as may be required pursuant to Section 62-3-605 or upon the appointment of a special administrator, a personal representative is not required to file a bond if:

- (1) all heirs and devisees agree to waive the bond requirement;
- (2) the personal representative is the sole heir or devisee;
- (3) the personal representative is a state agency, bank, or trust company, unless the will expressly requires a bond; or
- (4) the personal representative is named in the will, unless the will expressly requires a bond.

If, pursuant to Section 62-3-203(a), the court appoints as personal representative a nominee of a personal representative named in a will, the court may in its discretion decide not to require bond.

(B) Where a bond is required of the personal representative or administrator of an estate by law or by the will, it may be waived under the following conditions:

- (1) the personal representative or administrator by affidavit at the time of applying for appointment as such certifies to the court that the gross value of the estate will be less than twenty thousand dollars, that the assets of the probate estate are sufficient to pay all claims against the estate, and that the personal representative or administrator agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of his duties as personal representative or administrator; and
- (2) all known beneficiaries and other persons having an interest in the estate execute a written statement on a form prescribed by the court that they agree to the bond being waived. This form must be filed with the court simultaneously with the affidavit required by item (1) above. A creditor for purposes of this item (2) is not considered a person having an interest in the estate. The provisions of this subsection (B) are supplemental and in addition to any other provisions of law permitting the waiving or reducing of a bond. Any bond required by Section 62-3-605 may not be waived under the provisions of this section.

Bill # S. 1243

any proceeding relating to the estate that may be instituted against him. The section requires that he be given notice of any such proceeding, which, when considered in the light of the responsibility he has undertaken, should make the procedure sufficient to meet the requirements of due process.

SECTION 62-3-603.

(A) Except as may be required pursuant to Section 62-3-605 or upon the appointment of a special administrator, a personal representative is not required to file a bond if:

- (1) all heirs and devisees agree to waive the bond requirement;
- (2) the personal representative is the sole heir or devisee;
- (3) the personal representative is a state agency, bank, or trust company, unless the will expressly requires a bond; or
- (4) the personal representative is named in the will, unless the will expressly requires a bond.

If, pursuant to Section 62-3-203(a), the court appoints as personal representative a nominee of a personal representative named in a will, the court may in its discretion decide not to require bond.

(B) Where a bond is required of the personal representative or administrator of an estate by law or by the will, it may be waived under the following conditions:

- (1) the personal representative or administrator by affidavit at the time of applying for appointment as such certifies to the court that the gross value of the estate will be less than twenty thousand dollars, that the assets of the probate estate are sufficient to pay all claims against the estate, and that the personal representative or administrator agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of his duties as personal representative or administrator; and
- (2) all known beneficiaries and other persons having an interest in the estate execute a written statement on a form prescribed by the court that they agree to the bond being waived. This form must be filed with the court simultaneously with the affidavit required by item (1) above. A creditor for purposes of this item (2) is not considered a person having an interest in the estate.

The provisions of this subsection (B) are supplemental and in addition to any other provisions of law permitting the waiving or reducing of a bond. Any bond required by Section 62-3-605

ARTICLE 3: Existing Code language

REPORTER’S COMMENTS

A bond is required of any personal representative who is not named in a will, including an administrator in intestacy and a special administrator, whether in probate or in intestacy, whether resident or nonresident, but excluding corporate fiduciaries not required to be bonded. A bond is not required of any personal representative who is named in a will, unless appointed as a special administrator, or unless the personal representative is a nonresident individual not excused by the will from being bonded, or unless the will or some interested person, under Section 3-605, requires a bond. Thus, corporate fiduciaries of any type, as well as resident individual fiduciaries and also expressly excused, nonresident individual fiduciaries, but only if named in a will, are not required to be bonded, unless the will or some interested person, under Section 62-3-605, requires a bond.

SECTION 62-3-604. Bond amount; security; procedure; reduction.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62-6-101) in a manner that prevents their unauthorized disposition. Upon application by the personal representative or another interested person or upon the court’s own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties.

REPORTER’S COMMENTS

This section permits estimates of value needed to fix the amount of required bond to be filed when it becomes necessary. A consequence of this procedure is that estimates of value of estates are not required to appear in the petition and applications which will attend every

Bill # S. 1243

may not be waived under the provisions of this section.

REPORTER’S COMMENTS

A bond is required of any personal representative who is not named in a will, including an administrator in intestacy and a special administrator, whether in probate or in intestacy, whether resident or nonresident, but excluding corporate fiduciaries not required to be bonded. However, bond is not required for a personal representative who is the sole heir or devisee. Moreover, all heirs and devisees can agree to waive any bond requirement. A bond is not required of any personal representative who is named in a will, unless appointed as a special administrator or unless the will or some interested person under Section 62-3-605, requires a bond.

SECTION 62-3-604.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62-6-101) in a manner that prevents their unauthorized disposition. Upon application by the personal representative or another interested person or upon the court’s own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, ~~or~~ permit the substitution of another bond with the same or different sureties or dispense with the bond.

REPORTER’S COMMENTS

This section permits estimates of value needed to fix the amount of any required bond. A consequence of this procedure is that estimates of value of estates are not required to appear in the petition and applications which will attend every administered estate. Hence, a measure of

ARTICLE 3: Existing Code language

administered estate. Hence, a measure of privacy that is not possible under most existing procedures may be achieved.
Release of sureties was formerly interpreted to mean that the probate court might release a surety if he petitioned for relief and established that he reasonably believes himself to be in danger of suffering a loss on account of his suretyship. See Bellinger v. United States Fidelity Co., 115 S.C. 469, 106 S.E. 470 (1921); and McKay v. Donald, 8 Rich. 311 (42 S.C.L. 331) (1855). Section 62-3-604 is more flexible and should not be construed so narrowly as to permit release of sureties only on the limited basis available at prior law.

SECTION 62-3-605. Demand for bond by interested person.

Any person apparently having an interest in the estate worth in excess of one thousand dollars, or any creditor having a claim in excess of one thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required in an amount determined by the court as sufficient to protect the interest of the person or creditor demanding bond, but the requirement ceases if the person or creditor demanding bond ceases to have an interest in the estate worth in excess of one thousand dollars or a claim in excess of one thousand dollars. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate or to pay the person or creditor demanding bond. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

REPORTER’S COMMENTS

The demand for bond described in this section may be made in a petition or application for appointment of a personal representative, or may be made after a personal representative has been appointed. The mechanism for compelling bond is designed to function without unnecessary judicial involvement. If demand for bond is made in a formal proceeding, the judge

Bill # S. 1243

privacy that is not possible under most existing procedures may be achieved.
Release of sureties was formerly interpreted to mean that the probate court might release a surety if he petitioned for relief and established that he reasonably believes himself to be in danger of suffering a loss on account of his suretyship. See Bellinger v. United States Fidelity Co., 115 S.C. 469, 106 S.E. 470 (1921); and McKay v. Donald, 8 Rich. 311 (42 S.C.L. 331) (1855). Section 62-3-604 is more flexible and should not be construed so narrowly as to permit release of sureties only on the limited basis available at prior law.

The 2010 amendment deleted ‘On petition of’ at the beginning of the last sentence and added ‘Upon application by’ to allow the personal representative or another interested person to make application to the probate court regarding bond matters as outlined in this section. Unlike a petition, an application does not require a summons or petition. See §62-1-201(1). The 2010 amendment also added ‘upon the court’s own motion’ in the last sentence.

SECTION 62-3-605.

Any person apparently having an interest in the estate worth in excess of ~~one~~ five thousand dollars, or any creditor having a claim in excess of ~~one~~ five thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required in an amount determined by the court as sufficient to protect the interest of the person or creditor demanding bond, but the requirement ceases if the person or creditor demanding bond ceases to have an interest in the estate worth in excess of ~~one~~ five thousand dollars or a claim in excess of ~~one~~ five thousand dollars. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate or to pay the person or creditor demanding bond. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative unless good cause is shown for the delay.

REPORTER’S COMMENTS

The demand for bond described in this section may be made in a petition or application for appointment of a personal representative, or may be made after a personal representative has been appointed. The mechanism for compelling bond is designed to function without unnecessary judicial involvement. If demand for bond is made in a formal proceeding, the judge

ARTICLE 3: Existing Code language

can determine the amount of bond to be required with due consideration for all circumstances. If demand is not made in formal proceedings, methods for computing the amount of bond are provided by statute so that demand can be complied with without resort to judicial proceedings. The information which a personal representative is required by Section 62-3-705 to give each beneficiary includes a statement concerning whether bond has been required. Section 62-3-605 is consistent with the general policy of this Code to minimize the formalities of estate administration unless interested parties ask for specific protection.

SECTION 62-3-606. Terms and conditions of bonds.

- (a) The following requirements and provisions apply to any bond required by this part:
 - (1) Bonds shall name the judge of the court as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
 - (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
 - (3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.
 - (4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
 - (5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
- (b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

REPORTER’S COMMENTS

This section provides for the terms and conditions of bonds to be furnished by personal

Bill # S. 1243

can determine the amount of bond to be required with due consideration for all circumstances. If demand is not made in formal proceedings, methods for computing the amount of bond are provided by statute so that demand can be complied with without resort to judicial proceedings. The information which a personal representative is required by Section 62-3-705 to give each beneficiary includes a statement concerning whether bond has been required. Section 62-3-605 is consistent with the general policy of this Code to minimize the formalities of estate administration unless interested parties ask for specific protection.

SECTION 62-3-606.

- (a) The following requirements and provisions apply to any bond required by this part:
 - (1) Bonds shall name the judge of the court as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
 - (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
 - (3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.
 - (4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
 - (5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
- (b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

REPORTER’S COMMENTS

This section provides for the terms and conditions of bonds to be furnished by personal

| | |
|--|---|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>representatives. It provides that the judge of the court is the obligee of the bond and that the sureties are jointly and severally liable if they consent to the jurisdiction of the court by executing the bond.</p> | <p>representatives. It provides that the judge of the court is the obligee of the bond and that the sureties are jointly and severally liable if they consent to the jurisdiction of the court by executing the bond.</p> |
| <p>SECTION 62-3-607. Order restraining personal representative.</p> | <p>SECTION 62-3-607.</p> |
| <p>(a) Upon application of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.</p> | <p>(a) Upon application of any <u>interested</u> person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.</p> |
| <p>(b) The matter shall be set for hearing within ten days or at such other times as the parties may agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.</p> | <p>(b) The matter shall be set for hearing within ten days or at such other times as the parties may agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition <u>application</u>.</p> |
| <p>REPORTER'S COMMENTS</p> | <p>REPORTER'S COMMENTS</p> |
| <p>This section provides that a person who appears to have an interest in an estate may petition the court for an order to restrain a personal representative from performing acts of administration if it appears to the court that the personal representative may take some action which would jeopardize the interest of the applicant or some other interested person. The matter must be set for hearing on the restraining order within ten days or at such other time as the parties may agree. There is also a provision for notice which must be given to the personal representative, his attorney, and to any other parties named defendant in the petition.</p> | <p>This section provides that a person who appears to have an interest in an estate may petition the court for an order to restrain a personal representative from performing acts of administration if it appears to the court that the personal representative may take some action which would jeopardize the interest of the applicant or some other interested person. The matter must be set for hearing on the restraining order within ten days or at such other time as the parties may agree. There is also a provision for notice which must be given to the personal representative, his attorney, and to any other parties named defendant in the petition.</p> <p>The 2010 amendment deleted 'On petition' at the beginning of this section and replaced it with 'Upon application' so that any person who appears to have an interest in the estate can make application to the probate court to restrain a personal representative. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201(1).</p> |
| <p>SECTION 62-3-608. Termination of appointment; general.</p> | <p>SECTION 62-3-608.</p> |
| <p>Termination of appointment of a personal representative occurs as indicated in Sections 62-3-609 to 62-3-612, inclusive. Termination ends the right and power pertaining to the office</p> | <p>Termination of appointment of a personal representative occurs as indicated in Sections 62-3-609 to 62-3-612, inclusive. Termination ends the right and power pertaining to the office</p> |

ARTICLE 3: Existing Code language

of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

REPORTER’S COMMENTS

“Termination,” as defined by this Section and Sections 62-3-609 through 62-3-612 provide definiteness respecting when the rights and powers of a personal representative (who may or may not be discharged of duty and liability by court order) terminate. An order of the court entered under Sections 62-3-1001 or 62-3-1002 both terminates the appointment of, and discharges, a personal representative.

It is to be noted that this section does not relate to jurisdiction over the estate in proceedings which may have been commenced against the personal representative prior to termination. In such cases, a substitution of successor or special representative should occur if the plaintiff desires to maintain his action against the estate.

SECTION 62-3-609. Termination of appointment; death or disability.

The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

REPORTER’S COMMENTS

This section deals with the termination of a representative by death or disability. The personal representative of the disabled or deceased representative will sometimes succeed to the duties

Bill # S. 1243

of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

REPORTER’S COMMENTS

‘Termination,’ as defined by this Section and Sections 62-3-609 through 62-3-612 provide definiteness respecting when the rights and powers of a personal representative (who may or may not be discharged of duty and liability by court order) terminate. An order of the court entered under Sections 62-3-1001 may terminate the appointment of and discharge a personal representative.

It is to be noted that this section does not relate to jurisdiction over the estate in proceedings which may have been commenced against the personal representative prior to termination. In such cases, a substitution of successor or special representative should occur if the plaintiff desires to maintain his action against the estate.

SECTION 62-3-609.

The death of a personal representative or the appointment of a conservator ~~for the estate or~~ guardian for the person of a personal representative; terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

REPORTER’S COMMENTS

This section deals with the termination of a representative by death or disability. The personal representative of the disabled or deceased representative will sometimes succeed to the duties

ARTICLE 3: Existing Code language

and powers of the office.

SECTION 62-3-610. Termination of appointment; voluntary.

- (a) Unless otherwise provided, an order closing an estate as provided in Section 62-3-1001 terminates an appointment of a personal representative.
- (b) A personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

REPORTER'S COMMENTS

Under subparagraph (a) a formal closing immediately terminates the authority of a personal representative. Subparagraph (b) allows resignation of a personal representative. The more informal process for resignation coupled with the comparative ease of securing appointment of a successor, see Sections 62-3-613 through 62-3-618, infra, facilitates the substitution of personal representatives.

SECTION 62-3-611. Termination of appointment by removal; cause; procedure.

- (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.
- (b) Cause for removal exists when removal would be in the best interests of the estate, or if it is

Bill # S. 1243

and powers of the office.

SECTION 62-3-610.

- (a) Unless otherwise provided, an order closing an estate as provided in Section 62-3-1001 terminates an appointment of a personal representative and relieves the personal representative's attorney of record of any further duties to the court.
- (b) A personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. When the resignation is effective, the personal representative's attorney of record shall be relieved of any further duties to the court.

REPORTER'S COMMENTS

Under subparagraph (a) a formal closing immediately terminates the authority of a personal representative. Subparagraph (b) allows resignation of a personal representative. The more informal process for resignation coupled with the comparative ease of securing appointment of a successor, see Sections 62-3-613 through 62-3-618, infra, facilitates the substitution of personal representatives.

SECTION 62-3-611.

- (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.
- (b) Cause for removal exists when removal would be in the best interests of the estate, or if it is

ARTICLE 3: Existing Code language

shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent’s will directs otherwise, a personal representative appointed at the decedent’s domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

REPORTER’S COMMENTS

This section deals with the termination of a personal representative by removal for cause. Any interested person may petition the court for the removal of a representative although notice and hearing are required.

SECTION 62-3-612. Termination of appointment; change of testacy status.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 62-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

Bill # S. 1243

is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent’s will directs otherwise, a personal representative appointed at the decedent’s domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

(c) The termination of appointment under this section shall relieve the personal representative’s attorney of record of any further duties to the court.

REPORTER’S COMMENTS

This section deals with the termination of a personal representative by removal for cause. Any interested person may petition the court for the removal of a representative although notice and hearing are required.

The 2010 amendment added ‘service of the summons and petition upon the personal representative and’ in the fourth sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding to remove a personal representative. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

SECTION 62-3-612.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 62-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

ARTICLE 3: Existing Code language

REPORTER’S COMMENTS

This section and Section 62-3-401 describe the relationship between formal or informal proceedings. The basic assumption of both sections is that an appointment, with attendant powers of management, is separable from the basis of appointment; i.e., intestate or testate?; what will is the last will? Hence, a previously appointed personal representative continues in spite of formal or informal probate that may give another a prior right to serve as personal representative. But, if the testacy status is changed in formal proceedings, the petitioner also may request appointment of the person who would be entitled to serve if his assumption concerning the decedent’s will prevails. Provision is made for a situation where all interested persons are content to allow a previously appointed personal representative to continue to serve even though another has a prior right because of a change relating to the decedent’s will. It is not necessary for the continuing representative to seek a reappointment under the new assumption for Section 62-3-703 is broad enough to require him to administer the estate as intestate, or under the later probated will, if either status is established after he was appointed. Under Section 62-3-403, notice of a formal testacy proceeding is required to be given to any previously appointed personal representative. Hence, the testacy status cannot be changed without notice to a previously appointed personal representative.

SECTION 62-3-613. Successor personal representative.

Parts 3 and 4 of this article [Sections 62-3-301 et seq. and Sections 62-3-401 et seq.] govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

REPORTER’S COMMENTS

This section provides that all powers and authority of the initial representative pass to the

Bill # S. 1243

REPORTER’S COMMENTS

This section and Section 62-3-401 describe the relationship between formal or informal proceedings. The basic assumption of both sections is that an appointment, with attendant powers of management, is separable from the basis of appointment; i.e., intestate or testate?; what will is the last will? Hence, a previously appointed personal representative continues in spite of formal or informal probate that may give another a prior right to serve as personal representative. But, if the testacy status is changed in formal proceedings, the petitioner also may request appointment of the person who would be entitled to serve if his assumption concerning the decedent’s will prevails. Provision is made for a situation where all interested persons are content to allow a previously appointed personal representative to continue to serve even though another has a prior right because of a change relating to the decedent’s will. It is not necessary for the continuing representative to seek a reappointment under the new assumption for Section 62-3-703 is broad enough to require him to administer the estate as intestate, or under the later probated will, if either status is established after he was appointed. Under Section 62-3-403, notice of a formal testacy proceeding is required to be given to any previously appointed personal representative. Hence, the testacy status cannot be changed without notice to a previously appointed personal representative.

SECTION 62-3-613.

Parts 3 and 4 of this article [Sections 62-3-301 et seq. and Sections 62-3-401 et seq.] govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

REPORTER’S COMMENTS

This section provides that all powers and authority of the initial representative pass to the

| | |
|--|---|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>successor personal representative.</p> <p>SECTION 62-3-614. Special administrator; appointment.</p> <p>A special administrator may be appointed:</p> <p>(1) informally by the court on the application of an interested person when necessary:</p> <p>(a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609; or</p> <p>(b) for a creditor of the decedent’s estate to institute any proceeding under Section 62-3-803(c);</p> <p>(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.</p> <p>REPORTER’S COMMENTS</p> <p>Appointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest. If a need arises because of temporary absence or anticipated incapacity for delegation of the authority of a personal representative, the problem may be handled without judicial intervention by use of the delegation powers granted to personal representatives by Section 62-3-715(19).</p> <p>SECTION 62-3-615. Special administrator; who may be appointed.</p> <p>(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.</p> <p>(b) In other cases, any proper person may be appointed special administrator.</p> <p>REPORTER’S COMMENTS</p> <p>In some areas of the country, particularly where wills cannot be probated without full notice and hearing, appointment of special administrators pending probate is sought almost routinely. The</p> | <p>successor personal representative unless the court provides otherwise.</p> <p>SECTION 62-3-614.</p> <p>A special administrator may be appointed:</p> <p>(1) informally by the court on the application of an interested person when necessary:</p> <p>(a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609; or</p> <p>(b) for a creditor of the decedent’s estate to institute any proceeding under Section 62-3-803(c); <u>or</u></p> <p>(c) <u>to take appropriate actions involving estate assets.</u></p> <p>(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.</p> <p>REPORTER’S COMMENTS</p> <p>Appointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest. If a need arises because of temporary absence or anticipated incapacity for delegation of the authority of a personal representative, the problem may be handled without judicial intervention by use of the delegation powers granted to personal representatives by Section 62-3-715(19).</p> <p>SECTION 62-3-615.</p> <p>(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.</p> <p>(b) In other cases, any proper person may be appointed special administrator.</p> <p>REPORTER’S COMMENTS</p> <p>In some areas of the country, particularly where wills cannot be probated without full notice and hearing, appointment of special administrators pending probate is sought almost routinely. The</p> |

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|---|---|
| <p>objective of this section is to reduce the likelihood that contestants will be encouraged to file contests as early as possible simply to gain some advantage via having a person who is sympathetic to their cause appointed special administrator. Most will contests are not successful. Hence, it seems reasonable to prefer the named executor as special administrator where he is otherwise qualified.</p> <p>SECTION 62-3-616. Special administrator; appointed informally; powers and duties.</p> <p>A special administrator appointed by the court in informal proceedings pursuant to Section 62-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under this Code necessary to perform his duties.</p> <p>REPORTER’S COMMENTS Duties of the special administrator are provided throughout this particular section, although the power to distribute assets is specifically omitted.</p> <p>SECTION 62-3-617. Special administrator; formal proceedings; powers and duties.</p> <p>A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.</p> <p>REPORTER’S COMMENTS In formal proceedings in which a special administrator is appointed, the powers of a special administrator are the same as those of a personal representative except in the instance where the powers are limited by the court.</p> <p>SECTION 62-3-618. Termination of appointment; special administrator.</p> <p>The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections</p> | <p>objective of this section is to reduce the likelihood that contestants will be encouraged to file contests as early as possible simply to gain some advantage via having a person who is sympathetic to their cause appointed special administrator. Hence, it seems reasonable to prefer the named executor as special administrator where he is otherwise qualified.</p> <p>SECTION 62-3-616.</p> <p>A special administrator appointed by the court in informal proceedings pursuant to Section 62-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under this Code necessary to perform his duties.</p> <p>REPORTER’S COMMENTS Duties of the special administrator are provided throughout this particular section, although the power to distribute assets is specifically omitted.</p> <p>SECTION 62-3-617.</p> <p>A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.</p> <p>REPORTER’S COMMENTS In formal proceedings in which a special administrator is appointed, the powers of a special administrator are the same as those of a personal representative except in the instance where the powers are limited by the court.</p> <p>SECTION 62-3-618.</p> <p>The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections</p> |

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|--|--|
| <p>62-3-608 through 62-3-611.</p> <p>REPORTER’S COMMENTS Appointment of a special administrator would terminate according to the provisions of the order of appointment.</p> <p>SECTION 62-3-619. “Executor de son tort” defined.</p> <p>Any person who shall obtain, receive, and have any goods or debts of any decedent or a release or other discharge of any debt or duty that belonged to the decedent upon any fraud or without such valuable consideration as shall amount to the value of the same goods or debts or near thereabouts (except it be in or toward satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the decedent at the time of his decease) shall be charged and chargeable as executor of his own wrong, so far as such goods and debts coming to his hands or whereof he is released or discharged by such administrator will satisfy, deducting, nevertheless, to and for himself allowance of all just, due, and principal debts upon good consideration without fraud owing to him by the decedent at the time of his decease and all other payments made by him which lawful personal representatives may and ought to have and pay by the laws and statutes of this State.</p> <p>REPORTER’S COMMENTS This section defines as an executor de son tort any person who by fraud or without valuable consideration obtains assets of a decedent without appointment as his personal representative, charging him with liability therefor.</p> <p>SECTION 62-3-620. Executor de son tort shall account for deceased’s property; decree for damages.</p> <p>The judge of probate of the county in which a deceased person may have died may, either of his</p> | <p>62-3-608 through 62-3-611.</p> <p>REPORTER’S COMMENTS Appointment of a special administrator would terminate according to the provisions of the order of appointment.</p> <p>SECTION 62-3-619.</p> <p>Any person who shall obtain, receive, and have any goods or debts of any decedent or a release or other discharge of any debt or duty that belonged to the decedent upon any fraud or without such valuable consideration as shall amount to the value of the same goods or debts or near thereabouts (except it be in or toward satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the decedent at the time of his decease) shall be charged and chargeable as executor of his own wrong, so far as such goods and debts coming to his hands or whereof he is released or discharged by such administrator will satisfy, deducting, nevertheless, to and for himself allowance of all just, due, and principal debts upon good consideration without fraud owing to him by the decedent at the time of his decease and all other payments made by him which lawful personal representatives may and ought to have and pay by the laws and statutes of this State. <u>Any person who obtains, receives, or possesses property of whatever kind, belonging to the decedent, by means of fraud or without paying valuable consideration equivalent to the value of the property, shall be charged and chargeable as executor of his own wrong (executor de son tort) with respect to the goods and debts. The value of the property is charged to the executor de son tort. Likewise, the value of the property shall be deducted from any distribution or payment of any claim or commission to which the executor de son tort is entitled from the estate.</u></p> <p>REPORTER’S COMMENTS This section defines as an executor de son tort any person who by fraud or without valuable consideration obtains assets of a decedent without appointment as his personal representative, charging him with liability therefor.</p> <p>SECTION 62-3-620.</p> <p>The judge of probate of the county in which a deceased person may have died may, either of his</p> |

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|---|--|
| <p>own accord or at the instance of any creditor or other person interested in the estate of the deceased, cite before him such person as, neither being appointed personal representative nor having obtained administration of the effects of such deceased person, shall nevertheless possess himself of the goods, chattels, rights, and credits of such person deceased and, upon such person being cited as aforesaid, the judge of probate shall require of him a discovery and account of all and singular the goods, chattels, rights, and credits of the deceased and shall proceed to decree against him for the value of the estate and effects of the deceased which he may have wasted or which may have been lost by his illegal interference, charging him as executors of their own wrong are made liable at common law as far as assets shall have come into his hands.</p> <p>REPORTER’S COMMENTS This section provides that the probate judge may cite before him the executor de son tort and require him to account for the deceased’s property. It also enables the probate judge to enter a decree against the executor de son tort for any property of the deceased that he has wasted or has lost by his illegal interference.</p> <p>SECTION 62-3-621. Liability.</p> <p>Every personal representative of any person who, as executor in his own wrong, shall waste or convert any goods, chattels, estate, or assets of any person deceased to his own use shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living.</p> <p>REPORTER’S COMMENTS This section provides that a personal representative of an executor de son tort may be liable for the waste or conversion committed by the executor de son tort.</p> | <p>own accord or at the instance of any creditor or other person interested in the estate of the deceased, cite before him such person as, neither being appointed personal representative nor having obtained administration of the effects of such deceased person, shall nevertheless possess himself of the goods, chattels, rights, and credits of such person deceased and, upon such person being cited as aforesaid, the judge of probate shall require of him a discovery and account of all and singular the goods, chattels, rights, and credits of the deceased and shall proceed to decree against him for the value of the estate and effects of the deceased which he may have wasted or which may have been lost by his illegal interference, charging him as executors of their own wrong are made liable at common law as far as assets shall have come into his hands. <u>Acting sua sponte or upon the petition of any interested person, the probate judge of the county in which a deceased person was domiciled at the time of his death may order the executor de son tort to account for the property in his possession. Upon a finding that the property has been converted, wasted or otherwise damaged through improper interference, the court may assess damages including attorney’s fees and costs in the amount determined by the court not to exceed the value of the property charged to the executor de son tort.</u></p> <p>REPORTER’S COMMENTS This section provides that the probate judge may cite before him the executor de son tort and require him to account for the deceased’s property. It also enables the probate judge to enter a decree against the executor de son tort for any property of the deceased that he has wasted or has lost by his illegal interference.</p> <p>SECTION 62-3-621.</p> <p>Every personal representative of any person who, as executor in his own wrong, shall waste or convert any goods, chattels, estate, or assets of any person deceased to his own use shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living. <u>The rights of the probate court and interested parties set forth in Section 62-3-620 shall survive the death of the executor de son tort.</u></p> <p>REPORTER’S COMMENTS This section provides that the estate of an executor de son tort may be liable for the waste or conversion committed by the executor de son tort.</p> |
| Article 3.Part 7. Duties and Powers of Personal Representatives | Article 3.Part 7. |

ARTICLE 3: Existing Code language

SECTION 62-3-701. Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

REPORTER’S COMMENTS

The authority of a personal representative relates back to death upon appointment and stems from his appointment. The personal representative may ratify acts done by others prior to appointment.

SECTION 62-3-702. Priority among different letters.

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

REPORTER’S COMMENTS

This section provides that a person to whom letters are issued has exclusive authority until the appointment is terminated or modified. It also allows the personal representative to recover any property in the hands of a second erroneously appointed representative.

SECTION 62-3-703. General duties; relation and liability to persons interested in estate; standing to sue.

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the

Bill # S. 1243

SECTION 62-3-701.

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named ~~executor~~ personal representative in a will may protect property of the decedent’s estate and carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

REPORTER’S COMMENTS

The authority of a personal representative relates back to death upon appointment and stems from his appointment. The personal representative may ratify acts done by others prior to appointment.

SECTION 62-3-702.

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

REPORTER’S COMMENTS

This section provides that a person to whom letters are issued has exclusive authority until the appointment is terminated or modified. It also allows the personal representative to recover any property in the hands of a second erroneously appointed representative.

SECTION 62-3-703.

(a) A personal representative is a fiduciary who shall observe the standards of care ~~applicable to trustees~~ applicable as described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the

ARTICLE 3: Existing Code language

estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a proceeding for administration under Part 5. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this Code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

REPORTER’S COMMENTS

This section is especially important because it states the basic theory underlying the duties and powers of the personal representative. The personal representative is classified as a fiduciary and must adhere to the “prudent man” rule provided for trustees by Section 62-7-302. In general the personal representative is required to settle and distribute the estate as fast and efficiently as possible for the best interest of the estate. The section holds the power of distribution as the most significant power the personal representative performs. Finally, the section grants a personal representative the same standing to sue and be sued in the courts of this State and any other jurisdiction as the decedent had immediately prior to his death, except as to proceedings which do not survive the decedent’s death.

SECTION 62-3-704. Personal representative to proceed with court sanction.

Bill # S. 1243

estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. Upon expiration of the relevant claim period, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative ~~is not aware~~ has not received actual notice of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a proceeding for administration under Part 5. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this Code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

REPORTER’S COMMENTS

This section is especially important because it states the basic theory underlying the duties and powers of the personal representative. The personal representative is classified as a fiduciary and must adhere to the ‘prudent person’ rule provided for trustees by Section 62-7-804. In general the personal representative is required to settle and distribute the estate as fast and efficiently as possible for the best interest of the estate. The section holds the power of distribution as the most significant power the personal representative performs. Finally, the section grants a personal representative the same standing to sue and be sued in the courts of this State and any other jurisdiction as the decedent had immediately prior to his death, except as to proceedings which do not survive the decedent’s death.

The 2010 amendment, in subsection (a), changed the reference from Section 62-7-933 to Section 62-7-804, which was made necessary by the adoption of the South Carolina Trust Code.

SECTION 62-3-704.

ARTICLE 3: Existing Code language

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent’s estate under the supervision of the court, as follows:

(a) Immediately after his appointment he shall publish the notice to creditors required by Section 62-3-801.

(b) Within ninety days after his appointment he shall file with the court the inventory and appraisal required by Section 62-3-706.

(c) Upon the expiration of the relevant period, as set forth in Section 62-3-807, the personal representative shall proceed to pay the claims allowed against the estate, as provided in Section 62-3-807.

(d) Upon the expiration of the relevant period, as set forth in Section 62-3-1001, the personal representative shall file the account, proposal for distribution, petition for settlement of the estate, proofs required by Section 62-3-1001, and proof of publication of notice to creditors.

(e) The time periods stated herein for completing the above requirements are not intended to supplant any other time periods stated elsewhere in this Code. The court may on its own motion, or on the motion of the personal representative or of any interested person, extend the time for completing any of the requirements of administration contained in Article 3 [Section 62-3-1001, et seq.] including any of the above requirements, and especially including the requirement to account, under Section 62-3-1001, in cases of estates which remain significantly unadministered as of the expiration of the relevant time period, either as to the marshalling of assets or as to the allowance of claims.

(f) If a personal representative or trustee neglects or refuses to comply with any provision of Section 62-3-706 he is liable to a penalty of one thousand dollars for each separate failure or neglect and the official bond of the personal representative or trustee is liable therefor. This penalty must be recovered by the South Carolina Department of Revenue for the use of the State and an action for the recovery thereof may be brought by the Department of Revenue in any court of competent jurisdiction and, upon collection, must be paid into the state treasury. But the department, upon good cause shown, may, in its discretion, excuse the penalty or any part thereof. The probate court, after a hearing and any notice the court may require, may remove the personal representative and appoint another personal representative.

REPORTER’S COMMENTS

Bill # S. 1243

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent’s estate under the supervision of the court, as follows:

(a) Immediately after his appointment he shall publish the notice to creditors required by Section 62-3-801.

(b) Within ninety days after his appointment he shall file with the court the inventory and appraisal required by Section 62-3-706.

(c) Upon the expiration of the relevant period, as set forth in Section 62-3-807, the personal representative shall proceed to allow or disallow claims and pay the claims allowed against the estate, as provided in Section 62-3-807.

(d) Upon the expiration of the relevant period, as set forth in Section 62-3-1001, the personal representative shall file the ~~account~~ accounting, proposal for distribution, petition for settlement of the estate, proofs required by Section 62-3-1001, and proof of publication of notice to creditors.

(e) Within the time set forth in Section 62-3-806(a), serve upon all claimants a notice stating that their claim has been allowed or disallowed pursuant to that section.

(f) The time periods stated herein for completing the above requirements are not intended to supplant any other time periods stated elsewhere in this Code. The court may on its own motion, or on the motion of the personal representative or of any interested person, extend the time for completing any of the requirements of administration contained in Article 3 [Section 62-3-1001, et seq.] including any of the above requirements, and especially including the requirement to account, under Section 62-3-1001, in cases of estates which remain significantly unadministered as of the expiration of the relevant time period, either as to the marshalling of assets or as to the allowance of claims.

~~(f)(g) If a personal representative or trustee neglects or refuses to comply with any provision of Section 62-3-706 he is liable to a penalty of one thousand dollars for each separate failure or neglect and the official bond of the personal representative or trustee is liable therefor. This penalty must be recovered by the South Carolina Department of Revenue for the use of the State and an action for the recovery thereof may be brought by the Department of Revenue in any court of competent jurisdiction and, upon collection, must be paid into the state treasury. But the department, upon good cause shown, may, in its discretion, excuse the penalty or any part thereof~~ he is subject to the contempt power of the court. The probate court, after a hearing and any notice the court may require, may issue its order imposing the sentence, fine, or penalty as it sees fit and remove the personal representative and appoint another personal representative.

REPORTER’S COMMENTS

ARTICLE 3: Existing Code language

This section requires the personal representative to proceed expeditiously with the settlement and distribution of the estate. It further provides that the settlement and distribution are under the court’s supervision. Where informal procedures are in effect, the section does not impose any burdens on the personal representative other than those of Part 5 and of any other pertinent provision of Article 3, requiring or permitting such direct court supervision.

SECTION 62-3-705. Duty of personal representative; information to heirs and devisees.

Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative’s failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

REPORTER’S COMMENTS

This section requires the personal representative to inform of his appointment those persons who appear to have an interest in the estate as it is being administered. Such notice must be given within thirty days of his appointment. The notice may be sent through ordinary mail. The notice must include the personal representative’s name and address, indicate that the information is being sent to all those who might have an interest in the estate and whether a bond was required and where the papers relating to the estate are filed. The notice should not be confused with the notice requirements relating to litigation.

SECTION 62-3-706. Duty of personal representative; inventory and appraisalment.

Bill # S. 1243

This section requires the personal representative to proceed expeditiously with the settlement and distribution of the estate. It further provides that the settlement and distribution are under the court’s supervision. Where informal procedures are in effect, the section does not impose any burdens on the personal representative other than those of Part 5 and of any other pertinent provision of Article 3, requiring or permitting such direct court supervision.

SECTION 62-3-705.

Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative’s failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

REPORTER’S COMMENTS

This section requires the personal representative to inform of his appointment those persons who appear to have an interest in the estate as it is being administered. Such notice must be given within thirty days of his appointment. The notice may be sent through ordinary mail. The notice must include the personal representative’s name and address, indicate that the information is being sent to all those who might have an interest in the estate and whether a bond was required and where the papers relating to the estate are filed. The notice should not be confused with the notice requirements relating to litigation.

SECTION 62-3-706.

ARTICLE 3: Existing Code language

Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall:

- (1) prepare an inventory of property owned by the decedent at the time of his death, together with such other information as may be required by the South Carolina Department of Revenue, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent’s death, and the type and amount of any encumbrance that may exist with reference to any item;
- (2) file the original of the inventory with the court;
- (3) mail a copy to interested persons who request it.

The court, upon application of the personal representative, may extend the time for filing or making the inventory and appraisalment.

REPORTER’S COMMENTS

This section requires the personal representative within sixty days after his appointment to file an inventory listing the fair market value of each asset as of decedent’s date of death. He must also list the type and amount of any encumbrances. He is also required to mail copies to interested persons who request it.

The court may upon application extend the time for filing.

Bill # S. 1243

(A) Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall:

- (1) prepare an inventory and appraisalment of probate property owned by the decedent at the time of his death, ~~together with such other information as may be required by the South Carolina Department of Revenue,~~ listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent’s death, and the type and amount of any encumbrance that may exist with reference to any item;
- (2) file the original of the inventory and appraisalment with the court; and
- (3) mail a copy of the filed inventory and appraisalment to interested persons who ~~request~~ request ~~it~~ have filed a demand for notice of the filing of the inventory pursuant to Section 62-3-204.

(B) Within ninety days of a demand by an interested person for an inventory of nonprobate property, the personal representative shall:

- (1) prepare a list of the property owned by the decedent at the time of his death that is not probate property, so far as is known to the personal representative which may, at the discretion of the personal representative, include the value and nature of the decedent’s interest in the property on the date of the decedent’s death;
- (2) mail a copy of the list to each interested person who has requested the list; and
- (3) file proof of the mailing with the probate court.

(C) The court, upon application of the personal representative, may extend the time for filing or making ~~the~~ either the inventory and appraisalment or list of nonprobate property provided for in this section.

REPORTER’S COMMENTS

This section requires the personal representative within ninety days after his appointment to file an inventory and appraisalment listing the fair market value of each probate asset as of the decedent’s date of death. He must list the type and amount of any encumbrances. He is also required to mail copies to interested persons who request it.

The 2012 amendment requires the personal representative to provide a list of nonprobate property to any interested person who claims it. The list of nonprobate property does not have to include information about the value and nature of the property, although the personal representative at his discretion may include information about the value and nature of the property.

The court may upon application extend the time for filing.

ARTICLE 3: Existing Code language

SECTION 62-3-707. Employment of appraisers.

The personal representative may obtain a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent’s death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory with the item or items he appraised. Each appraiser shall execute the inventory, stating thereon the item or items he appraised. On motion of any interested person, the court may require that one or more qualified appraisers be appointed to ascertain the fair market value of all or any part of the estate or may approve one or more qualified appraisers.

REPORTER’S COMMENTS

This section allows the personal representative to employ expert appraisers and also authorizes the court to require the appointment of expert appraisers upon notice by any interested person.

SECTION 62-3-708. Duty of personal representative; supplementary inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent’s death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information.

SECTION 62-3-709. Duty of personal representative; possession of estate.

Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled

Bill # S. 1243

SECTION 62-3-707.

The personal representative may obtain a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent’s death of any asset ~~the value of which may be subject to reasonable doubt.~~ Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory and appraisal or by supplemental inventory and appraisal with the item or items he appraised. ~~Each appraiser shall execute the inventory, stating thereon the item or items he appraised.~~ On motion application of any interested person, the court may require that one or more qualified appraisers be appointed to ascertain the fair market value of all or any part of the estate or may approve one or more qualified appraisers.

REPORTER’S COMMENTS

This section allows the personal representative to employ expert appraisers and also authorizes the court to require the appointment of expert appraisers upon application by any interested person.

SECTION 62-3-708.

If any property not included in the original inventory and appraisal comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall ~~make~~ submit a supplementary, amended or corrected inventory or appraisal showing the market value as of the date of the decedent’s death of the new item or the revised market value or descriptions, ~~and~~ the appraisers or other data relied upon, if any, and ~~file it with the court,~~ restating the unchanged information from the original inventory and appraisal and furnish copies ~~thereof or information thereof~~ to persons who receive the original inventory, and to interested persons interested in who have requested or demanded the new information.

SECTION 62-3-709.

Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled

ARTICLE 3: Existing Code language

thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

REPORTER’S COMMENTS

Section 62-3-101 provides that title to real and personal property devolves on death or thereafter to heirs or devisees “subject ... to administration.” Section 62-3-711 vests in the personal representative a power over title to real and personal property during administration. This section deals with the personal representative’s duty and right to possess assets, real and personal. It proceeds from the assumption that it is desirable wherever possible to avoid disruption of the possession of the decedent’s assets by his heirs or devisees. But if the personal representative considers it advisable he may take possession and his judgment is made conclusive. It is likely that the personal representative’s judgment could be questioned in a later action but this possibility should not interfere with the personal representative’s administrative authority as it relates to possession of the estate.

SECTION 62-3-710. Power to avoid transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

REPORTER’S COMMENTS

This section authorizes the personal representative to recover any property transferred by the decedent in a transaction which would be void or voidable against creditors.

SECTION 62-3-711. Powers of personal representatives; in general.

Bill # S. 1243

thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

REPORTER’S COMMENTS

Section 62-3-101 provides that title to real and personal property devolves on death or thereafter to heirs or devisees ‘subject ... to administration.’ Section 62-3-711 vests in the personal representative a power over title to real and personal property during administration. This section deals with the personal representative’s duty and right to possess assets, real and personal. It proceeds from the assumption that it is desirable wherever possible to avoid disruption of the possession of the decedent’s assets by his heirs or devisees. But if the personal representative considers it advisable he may take possession and his judgment is made conclusive. It is likely that the personal representative’s judgment could be questioned in a later action but this possibility should not interfere with the personal representative’s administrative authority as it relates to possession of the estate.

SECTION 62-3-710.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

REPORTER’S COMMENTS

This section authorizes the personal representative to recover any property transferred by the decedent in a transaction which would be void or voidable against creditors.

SECTION 62-3-711.

ARTICLE 3: Existing Code language

(a) Until termination of his appointment or unless otherwise provided in Section 62-3-910, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Except as otherwise provided in subsection (b), this power may be exercised without notice, hearing, or order of court.
(b) Except where the will of the decedent authorizes to the contrary, a personal representative may not sell real property of the estate except as authorized pursuant to the procedure described in Section 62-3-1301 et seq. and shall refrain from selling tangible or intangible personal property of the estate (other than securities regularly traded on national or regional exchanges and produce, grain, fiber, tobacco, or other merchandise of the estate for which market values are readily ascertainable) having an aggregate value of five thousand dollars or more without prior order of the court.
(c) If the will of a decedent devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), then subject to Section 62-3-713, the personal representative, acting in trust for the benefit of the creditors and others interested in the estate, may execute a deed in favor of a purchaser for value, who takes title to the real property in accordance with the provisions of Section 62-3-910(b).

REPORTER’S COMMENTS

This section grants a personal representative the same power over title to property that an absolute owner would have, in trust, however, for the benefit of creditors and others interested in the estate. This power over title is limited in two respects. First, except where the will provides to the contrary, an order from the probate court must be obtained before personal property having an aggregate value in excess of five thousand dollars may be sold. Secondly, and again except where the will provides to the contrary, the representative cannot exercise the power to sell real property unless he follows the mechanism of Section 62-3-1301 et seq. This allows sale of a decedent’s real property in aid of deficient personal assets, under the direct supervision of the probate court.
Under this section, Section 62-3-101, and Section 62-3-709, title to personal property (as well as real property) devolves at or soon after death to heirs and devisees, and not to the personal representative. Further, the representative can exercise power over the title to real property (as well as personal property) subject to limitations.

Bill # S. 1243

(a) Until termination of his appointment or unless otherwise provided in Section 62-3-910, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Except as otherwise provided in subsection (b), this power may be exercised without notice, hearing, or order of court.
(b) Except where the will of the decedent authorizes to the contrary, a personal representative may not sell real property of the estate except as authorized pursuant to the ~~procedure~~ procedures described in Sections 62-3-911 or Section Sections 62-3-1301 et seq. and shall refrain from selling tangible or intangible personal property of the estate (other than securities regularly traded on national or regional exchanges and produce, grain, fiber, tobacco, or other merchandise of the estate for which market values are readily ascertainable) having an aggregate value of ~~five~~ ten thousand dollars or more without prior order of the court which may be issued upon application of the personal representative and after notice or consent as the court deems appropriate.
(c) If the will of a decedent devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), then subject to Section 62-3-713, the personal representative, acting in trust for the benefit of the creditors and ~~others~~ other interested persons in the estate, may execute a deed in favor of a purchaser for value, who takes title to the real property in accordance with the provisions of Section 62-3-910(b).

REPORTER’S COMMENTS

This section grants a personal representative the same power over title to property that an absolute owner would have, in trust, however, for the benefit of creditors and others interested in the estate. This power over title is limited in two respects. First, except where the will provides to the contrary, an order from the probate court must be obtained before personal property having an aggregate value in excess of ten thousand dollars may be sold. Secondly, and again except where the will provides to the contrary, the representative cannot exercise the power to sell real property unless he follows the mechanism of Section 62-3-911 or Section 62-3-1301 et seq.
Under this section, Section 62-3-101, and Section 62-3-709, title to personal property (as well as real property) devolves at or soon after death to heirs and devisees, and not to the personal representative. Further, the representative can exercise power over the title to real property (as well as personal property) subject to limitations.

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|--|---|
| <p>SECTION 62-3-712. Improper exercise of power; breach of fiduciary duty.</p> <p>If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 62-3-713 and 62-3-714.</p> <p>REPORTER’S COMMENTS This section provides that the personal representative is liable for his acts and omissions and for any breach of duty to the same extent as the trustee of an express trust. The rights of purchasers and others dealing with the personal representative are governed by the next two sections. Additionally, this section should be read in conjunction with Sections 62-3-607 and 62-3-611, the first of which deals with an interested party obtaining an order restraining the personal representative from performing a specified act or exercising a specified power and the second of which deals with the right of an interested party to petition for the removal of the personal representative.</p> <p>SECTION 62-3-713. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.</p> <p>Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure unless:</p> <ol style="list-style-type: none"> (1) the will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after notice to interested persons. <p>REPORTER’S COMMENTS This section provides that certain actions of a personal representative are voidable. Exceptions to the general rule are provided in the event the will or a contract entered into by the decedent expressly authorizes the transaction or if the transaction is approved by the probate court after notice to interested parties. Presumptively, a broad authorization in the will of a decedent for his personal representative to deal with himself in both a fiduciary and an individual capacity would</p> | <p>SECTION 62-3-712.</p> <p>If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 62-3-713 and 62-3-714.</p> <p>REPORTER’S COMMENTS This section provides that the personal representative is liable for his acts and omissions and for any breach of duty to the same extent as the trustee of an express trust. The rights of purchasers and others dealing with the personal representative are governed by the next two sections. Additionally, this section should be read in conjunction with Sections 62-3-607 and 62-3-611, the first of which deals with an interested party obtaining an order restraining the personal representative from performing a specified act or exercising a specified power and the second of which deals with the right of an interested party to petition for the removal of the personal representative.</p> <p>SECTION 62-3-713.</p> <p>Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure unless:</p> <ol style="list-style-type: none"> (1) the will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after notice to interested persons. <p>REPORTER’S COMMENTS This section provides that certain actions of a personal representative are voidable. Exceptions to the general rule are provided in the event the will or a contract entered into by the decedent expressly authorizes the transaction or if the transaction is approved by the probate court after notice to interested parties. Presumptively, a broad authorization in the will of a decedent for his personal representative to deal with himself in both a fiduciary and an individual capacity would</p> |

| | |
|---|---|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>not fall under the first exception which is limited to “the transaction” and must, therefore, be held to require authorization for a specific transaction. The general principles of law pertaining to a bona fide purchaser for value will protect the title to property in the hands of such a purchaser who obtained it without notice of the conflict of interest or act of self-dealing.</p> | <p>not fall under the first exception which is limited to ‘the transaction’ and must, therefore, be held to require authorization for a specific transaction. The general principles of law pertaining to a bona fide purchaser for value will protect the title to property in the hands of such a purchaser who obtained it without notice of the conflict of interest or act of self-dealing.</p> |
| <p>SECTION 62-3-714. Persons dealing with personal representative; protection.</p> | <p>SECTION 62-3-714.</p> |
| <p>A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of personal representatives under Part 5 [Sections 62-3-501 et seq.] which are endorsed on letters as provided in Section 62-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</p> | <p>A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of personal representatives under Part 5 [Sections 62-3-501 et seq.] which are endorsed on letters as provided in Section 62-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.</p> |
| <p>REPORTER’S COMMENTS This section is designed to provide protection to persons who deal with a personal representative. Persons dealing with representatives generally are not charged with the duty to inquire into any restrictions pertaining to the exercise of powers by such personal representative. Any person dealing with a representative under Part 5 will be charged with knowledge of the restrictions upon exercise of power set forth in the letters. For example, a bona fide purchaser for value dealing with a representative will be completely protected with respect to claims by interested parties. However, the personal representative will be liable to persons interested in the estate if his dealings with such bona fide purchaser were inconsistent with directions set forth in the will or other restrictions imposed by order of the probate court. However, if such a purchaser had actual knowledge of any such restrictions, then this section will not provide protection to such purchaser; instead, he is subject to having title to the property acquired from the personal representative declared void upon the petition of some</p> | <p>REPORTER’S COMMENTS This section is designed to provide protection to persons who deal with a personal representative. Persons dealing with representatives generally are not charged with the duty to inquire into any restrictions pertaining to the exercise of powers by such personal representative. Any person dealing with a representative under Part 5 will be charged with knowledge of the restrictions upon exercise of power set forth in the letters. For example, a bona fide purchaser for value dealing with a representative will be completely protected with respect to claims by interested parties. However, the personal representative will be liable to persons interested in the estate if his dealings with such bona fide purchaser were inconsistent with directions set forth in the will or other restrictions imposed by order of the probate court. However, if such a purchaser had actual knowledge of any such restrictions, then this section will not provide protection to such purchaser; instead, he is subject to having title to the property acquired from the personal representative declared void upon the petition of some</p> |

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|---|---|
| <p>interested party.</p> <p>SECTION 62-3-715. Transactions authorized for personal representatives; exceptions.</p> <p>Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the restrictions imposed in Section 62-3-711(b) and to the priorities stated in Section 62-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:</p> <p>(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;</p> <p>(2) receive assets from fiduciaries or other sources;</p> <p>(3) perform, compromise, or refuse performance of the decedent’s contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:</p> <p>(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser’s note for the sum remaining due secured by a mortgage or deed of trust on the land; or</p> <p>(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.</p> <p>Execution and delivery of a deed pursuant to this subsection affects title to the subject real property to the same extent as execution and delivery of a deed by the personal representative in other cases authorized by this Code.</p> <p>(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;</p> <p>(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including monies received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;</p> <p>(6) subject to the restrictions imposed in Section 62-3-711(b), acquire or dispose of an asset,</p> | <p>interested party.</p> <p>SECTION 62-3-715.</p> <p>Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the restrictions imposed in Section 62-3-711(b) and to the priorities stated in Section 62-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:</p> <p>(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;</p> <p>(2) receive assets from fiduciaries or other sources;</p> <p>(3) perform, compromise, or refuse performance of the decedent’s contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:</p> <p>(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser’s note for the sum remaining due secured by a mortgage or deed of trust on the land; or</p> <p>(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.</p> <p>Execution and delivery of a deed pursuant to this subsection affects title to the subject real property to the same extent as execution and delivery of a deed by the personal representative in other cases authorized by this Code;</p> <p>(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;</p> <p>(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including monies received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;</p> <p>(6) subject to the restrictions imposed in Section 62-3-711(b), acquire or dispose of an asset,</p> |

ARTICLE 3: Existing Code language

including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new party walls or buildings;

(8) satisfy and settle claims and distribute the estate as provided in this Code;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, but not for a term extending beyond the period of administration and, with respect to a lease with option to purchase, subject to the restrictions imposed in Section 62-3-711(b);

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) vote stocks or other securities in person or by general or limited proxy;

(12) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(13) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(14) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(15) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien, or other security interest upon property of another persons, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(16) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(17) sell, or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(18) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(19) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any

Bill # S. 1243

including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new party walls or buildings;

(8) satisfy and settle claims and distribute the estate as provided in this Code;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, but not for a term extending beyond the period of administration and, with respect to a lease with option to purchase, subject to the restrictions imposed in Section 62-3-711(b);

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) vote stocks or other securities in person or by general or limited proxy;

(12) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(13) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(14) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(15) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien, or other security interest upon property of another persons, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(16) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(17) sell, or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(18) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(19) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|--|---|
| <p>act of administration, whether or not discretionary;</p> <p>(20) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;</p> <p>(21) subject to the restrictions imposed in Section 62-3-711(b), sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;</p> <p>(22) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;</p> <p>(23) make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of the estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and value and appraise any asset and distribute such asset in kind at its appraised value.</p> <p>(24) with the approval of the probate court or the circuit court, compromise and settle claims and actions for wrongful death, pain and suffering or both, and all claims and actions based on causes of actions surviving, to personal representatives, arising, asserted, or brought under or by virtue of any statute or act of this State, any state of the United States, the United States, or any foreign country.</p> <p>(25) donate a qualified conservation easement or fee simple gift of land for conservation on any real property of the decedent in order to obtain the benefit of the estate tax exclusion allowed under Internal Revenue Code Section 2031(c) as defined in Section 12-6-40(A), and the state income tax credit allowed under Section 12-6-3515, if the personal representative has the written consent of all of the heirs, beneficiaries, and devisees whose interests are affected by the donation. Upon petition of the personal representative, the probate court may consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, or devisees whose interests are affected by the donation after determining that the donation of the qualified real property interest shall not adversely affect them or would most likely be agreed to by them if they were before the court and capable of consenting. A guardian ad litem must be appointed to represent the interest of any unborn, unascertained, or incapacitated persons. Similarly, and for the same</p> | <p>more agents to perform any act of administration, whether or not discretionary;</p> <p>(20) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;</p> <p>(21) subject to the restrictions imposed in Section 62-3-711(b), sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;</p> <p>(22) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;</p> <p>(23) make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of the estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and value and appraise any asset and distribute such asset in kind at its appraised value.;</p> <p>(24) with the approval of the probate court or the circuit court, compromise and settle claims and actions for wrongful death, pain and suffering or both, and all claims and actions based on causes of actions surviving, to personal representatives, arising, asserted, or brought under or by virtue of any statute or act of this State, any state of the United States, the United States, or any foreign country.;</p> <p>(25) donate a qualified conservation easement or fee simple gift of land for conservation on any real property of the decedent in order to obtain the benefit of the estate tax exclusion allowed under Internal Revenue Code Section 2031(c) as defined in Section 12-6-40(A), and the state income tax credit allowed under Section 12-6-3515, if the personal representative has the written consent of all of the heirs, beneficiaries, and devisees whose interests are affected by the donation. Upon petition of the personal representative, the probate court may consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, or devisees whose interests are affected by the donation after determining that the donation of the qualified real property interest shall not adversely affect them or would most likely be agreed to by them if they were before the court and capable of consenting. A guardian ad litem must be appointed to represent the interest of any unborn, unascertained, or incapacitated persons. Similarly, and for the same</p> |

| | |
|---|--|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>purposes and under the same conditions, mutatis mutandis, a trustee may make such a donation for the settlor.</p> | <p>purposes and under the same conditions, mutatis mutandis, a trustee may make such a donation for the settlor;</p> |
| <p>REPORTER’S COMMENTS The purpose of this section is to grant personal representatives a broad array of powers reasonably necessary for the proper administration of an estate. The purpose of this section is to set forth in some detail the powers which a personal representative may exercise with respect to the estate and without the necessity of obtaining an order from the probate court in order to do so. Note the introductory provision that the representative may exercise his powers, including the power of sale, only within the restrictions of Section 62-3-711(b) (see the comments to that section, supra.).</p> | <p>REPORTER’S COMMENTS The purpose of this section is to grant personal representatives a broad array of powers reasonably necessary for the proper administration of an estate. The purpose of this section is to set forth in some detail the powers which a personal representative may exercise with respect to the estate and without the necessity of obtaining an order from the probate court in order to do so. Note the introductory provision that the representative may exercise his powers, including the power of sale, only within the restrictions of Section 62-3-711(b) (see the comments to that section, supra.).</p> |
| <p>SECTION 62-3-716. Powers and duties of successor personal representative.</p> | <p>SECTION 62-3-716.</p> |
| <p>A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.</p> | <p>A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.</p> |
| <p>REPORTER’S COMMENTS This section provides that a successor personal representative has the same powers and duties imposed upon the original personal representative except any such powers or duties which are expressly made personal to the original personal representative named in the will.</p> | <p>REPORTER’S COMMENTS This section provides that a successor personal representative has the same powers and duties imposed upon the original personal representative except any such powers or duties which are expressly made personal to the original personal representative named in the will.</p> |
| <p>SECTION 62-3-717. Corepresentatives; when joint action required.</p> | <p>SECTION 62-3-717.</p> |
| <p>If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if</p> | <p>If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or When a corepresentative has been delegated to act for the others, <u>written notice of the delegation signed by the others and setting forth the duties delegated must be filed with the court.</u> Persons dealing</p> |

ARTICLE 3: Existing Code language

advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the persons with whom they dealt had been the sole personal representative.

REPORTER’S COMMENTS

This section provides that all corepresentatives are required to unanimously consent to any matter pertaining to the administration and distribution of the estate except when any corepresentative receives and receipts for property due the estate, when an emergency arises and action is necessary in order to preserve the estate or when the corepresentatives have delegated the right to act to one or more of their number.

This section absolves any person dealing with one corepresentative for any excesses committed by such corepresentative in the exercise of his duty to the extent that such person dealing with the corepresentative is unaware that the existence of other corepresentatives or has been advised by such corepresentative that he has the authority to so act. The thrust of this section is to protect such a person dealing with a corepresentative and to eliminate the need for such person to inquire into the validity of the actions taken by such corepresentative. However, the rules pertaining to administration under Part 5 would have the effect of at least requiring a person dealing with a personal representative to determine whether or not the letters granted by the probate court restrict the actions of the representative. That being the case, it would seem that a person exercising due diligence in determining whether or not there is an administration under Part 5 would necessarily come across the fact that more than one representative has been appointed by the probate court to represent the estate. That leads to the inescapable fact that a person dealing with the representative of an estate who exercises due diligence would necessarily come across the existence of additional corepresentatives and would, therefore, not be able to rely upon the protections purportedly granted to him as stated above, unless such corepresentative represents in some fashion that he has the authority to act for all other corepresentatives. See the third sentence of Section 62-3-714 in connection with the purchaser’s implicit duty to inquire into the authority of a representative to act on behalf of the estate.

SECTION 62-3-718. Powers of surviving personal representative.

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated and, if one of two or more nominated as coexecutors is not appointed,

Bill # S. 1243

with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the persons with whom they dealt had been the sole personal representative.

REPORTER’S COMMENTS

This section provides that all corepresentatives are required to unanimously consent to any matter pertaining to the administration and distribution of the estate except when any corepresentative receives and receipts for property due the estate, when an emergency arises and action is necessary in order to preserve the estate or when the corepresentatives have delegated the right to act to one or more of their number.

This section absolves any person dealing with one corepresentative for any excesses committed by such corepresentative in the exercise of his duty to the extent that such person dealing with the corepresentative is unaware that the existence of other corepresentatives or has been advised by such corepresentative that he has the authority to so act. The thrust of this section is to protect such a person dealing with a corepresentative and to eliminate the need for such person to inquire into the validity of the actions taken by such corepresentative. However, the rules pertaining to administration under Part 5 would have the effect of at least requiring a person dealing with a personal representative to determine whether or not the letters granted by the probate court restrict the actions of the representative. That being the case, it would seem that a person exercising due diligence in determining whether or not there is an administration under Part 5 would necessarily come across the fact that more than one representative has been appointed by the probate court to represent the estate. That leads to the inescapable fact that a person dealing with the representative of an estate who exercises due diligence would necessarily come across the existence of additional corepresentatives and would, therefore, not be able to rely upon the protections purportedly granted to him as stated above, unless such corepresentative represents in some fashion that he has the authority to act for all other corepresentatives. See the third sentence of Section 62-3-714 in connection with the purchaser’s implicit duty to inquire into the authority of a representative to act on behalf of the estate.

SECTION 62-3-718.

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated and, if one of two or more nominated as coexecutors is not appointed,

ARTICLE 3: Existing Code language

those appointed may exercise all the powers incident to the office.

REPORTER’S COMMENTS

This section merely provides that remaining corepresentatives will have full authority to act if one or more of their number loses the capacity to so act by reason of death or other termination of appointment as a personal representative.

SECTION 62-3-719. Compensation of personal representative.

(a) Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

(b) Additionally, a personal representative may receive not more than five percent of the income earned by the probate estate in which he acts as fiduciary. No such additional commission is payable by an estate if the probate judge determines that a personal representative has acted unreasonably in the accomplishment of the assigned duties, or that unreasonable delay has been encountered.

(c) The provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984.

(d) A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(e) If more than one personal representative is serving an estate, the court in its discretion shall apportion the compensation among the personal representatives, but the total compensation for all personal representatives of an estate must not exceed the maximum compensation allowable under subsections (a) and (b) for an estate with a sole personal representative.

(f) For purposes of this section, “probate estate” means the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy. This subsection is intended to be declaratory of the law and governs the compensation of personal representatives currently serving and personal representatives serving at a later time.

Bill # S. 1243

those appointed may exercise all the powers incident to the office.

REPORTER’S COMMENTS

This section merely provides that remaining corepresentatives will have full authority to act if one or more of their number loses the capacity to so act by reason of death or other termination of appointment as a personal representative.

SECTION 62-3-719.

(a) Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

(b) Additionally, a personal representative may receive not more than five percent of the income earned by the probate estate in which he acts as fiduciary. No such additional commission is payable by an estate if the probate judge determines that a personal representative has acted unreasonably in the accomplishment of the assigned duties, or that unreasonable delay has been encountered.

(c) The provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984.

(d) A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(e) If more than one personal representative is serving an estate, the court in its discretion shall apportion the compensation among the personal representatives, but the total compensation for all personal representatives of an estate must not exceed the maximum compensation allowable under subsections (a) and (b) for an estate with a sole personal representative.

(f) For purposes of this section, ‘probate estate’ means the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy. This subsection is intended to be declaratory of the law and governs the compensation of personal representatives currently serving and personal representatives serving at a later time.

| ARTICLE 3: Existing Code language | Bill # S. 1243 |
|---|--|
| <p>REPORTER'S COMMENTS Unless provided otherwise by contract, by the will or by the personal representative's renunciation, his compensation is limited to sums equal to five percent of personal property and five percent of sold real property, in the normal course, plus five percent of income on invested monies, unless the probate court disapproves.</p> <p>SECTION 62-3-720. Expenses in estate litigation.</p> <p>If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.</p> <p>REPORTER'S COMMENTS If any personal representative in good faith prosecutes or defends an action, he is entitled to reimbursement from the estate for reasonable expenses as well as reasonable attorney fees.</p> <p>SECTION 62-3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.</p> <p>(a) After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is under Part 5 [Sections 62-3-501 et seq.], the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.</p> <p>(b) Upon the settlement of their accounts by personal representatives the court shall allow each appraiser appointed by the court a reasonable daily fee for each day spent on appraising the property of the estate and also mileage at the same rate that members of state boards, commissions, and committees receive for each mile actually traveled in going to and from the</p> | <p>REPORTER'S COMMENTS Unless provided otherwise by contract, by the will or by the personal representative's renunciation, his compensation is limited to sums equal to five percent of personal property and five percent of sold real property, in the normal course, plus five percent of income on invested monies, unless the probate court disapproves. The probate court may set fees for less than the stated limits. The probate court may set fees higher than the stated limits if the court determines the personal representative provided extraordinary service.</p> <p>SECTION 62-3-720.</p> <p>If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.</p> <p>REPORTER'S COMMENTS If any personal representative in good faith prosecutes or defends an action, he is entitled to reimbursement from the estate for reasonable expenses as well as reasonable attorney fees.</p> <p>SECTION 62-3-721.</p> <p>(a) After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is under Part 5 [Sections 62-3-501 et seq.], the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.</p> <p>(b) Upon the settlement of their accounts by personal representatives the court shall allow each appraiser appointed by the court a reasonable daily fee for each day spent on appraising the property of the estate and also mileage at the same rate that members of state boards, commissions, and committees receive for each mile actually traveled in going to and from the</p> |

| | |
|--|--|
| <p>ARTICLE 3: Existing Code language</p> | <p>Bill # S. 1243</p> |
| <p>place where the property ordered to be appraised is situated. In determining the reasonableness of the fee to each appraiser the court shall consider the value of the estate, the actual time consumed by the appraisers in the performance of their duties, and other such circumstances and conditions surrounding the appraisal as the court deems appropriate.</p> | <p>place where the property ordered to be appraised is situated. In determining the reasonableness of the fee to each appraiser the court shall consider the value of the estate, the actual time consumed by the appraisers in the performance of their duties, and other such circumstances and conditions surrounding the appraisal as the court deems appropriate.</p> |
| <p>REPORTER'S COMMENTS This section allows a personal representative to seek prior approval of the probate court before an advisor is hired.</p> | <p>REPORTER'S COMMENTS This section allows a personal representative to seek prior approval of the probate court before an agent or advisor is hired.</p> |