

SIDE-BY-SIDE

Article 3-Wills and Administration.Parts 8-9

ARTICLE 3: Existing Code language	Bill # S. 1243
Article 3.Part 8. Creditors Claims	Article 3.Part 8.
<p>SECTION 62-3-801. Notice to creditors.</p> <p>(a) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within eight months after the date of the first publication of the notice or be forever barred.</p> <p>(b) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within eight months from the published notice as provided in (a) above, or within sixty days from the mailing or other delivery of such notice, whichever is later, or be forever barred. Written notice is the notice described in (a) above or a similar notice.</p> <p>(c) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.</p> <p>REPORTER’S COMMENTS This section provides for the publication of notice to creditors by the personal representative. The notice is published once a week for three successive weeks in a paper of general circulation in the county. There is no requirement that demands be duly attested. Section 62-3-1203 relieves the personal representative of the obligation to advertise pursuant to this statute in certain small estates.</p> <p>SECTION 62-3-802. Statutes of limitations.</p> <p>(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate.</p>	<p>SECTION 62-3-801.</p> <p>(a) Unless notice has already been given under this section, a personal representative upon his appointment shall <u>must</u> publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within eight months after the date of the first publication of the notice or be forever barred.</p> <p>(b) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within eight months from <u>one year of the published notice as provided in (a) above, decedent’s death,</u> or within sixty days from the mailing or other delivery of such notice, whichever is later <u>earlier</u>, or be forever barred. Written notice is the notice described in (a) above or a similar notice.</p> <p>(c) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.</p> <p><u>(d) Notwithstanding subsections (a) and (b), notice to creditors under this section is not required if no personal representative is appointed to administer the decedent’s estate during the one-year period following the death of the decedent.</u></p> <p>REPORTER’S COMMENTS This section provides for the publication of notice and for the delivery of notice to creditors at the discretion of the personal representative. The notice is published once a week for three successive weeks in a paper of general circulation in the county. There is no requirement that demands be duly attested.</p> <p>SECTION 62-3-802.</p> <p>(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate.</p>

ARTICLE 3: Existing Code language

If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent’s death shall be allowed or paid.

(b) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the eight months following the decedent’s death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(c) For purposes of any statute of limitations, the proper presentation of a claim under Section 62-3-804 is equivalent to commencement of a proceeding on the claim.

REPORTER’S COMMENTS

This section provides for waiver of and the suspension of the running of any statute of limitations, measured from some event other than death and advertisement for claims, during the four months following the decedent’s death, resuming thereafter.

SECTION 62-3-803. Limitations on presentation of claims.

(a) All claims against a decedent’s estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

- (1) one year after the decedent’s death; or
- (2) within the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication; provided, claims barred by the nonclaim statute at the decedent’s domicile before the giving of notice to creditors barred in this State are also barred in this State.

(b) All claims against a decedent’s estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) a claim based on a contract with the personal representative within eight months after performance by the personal representative is due;
- (2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1).

Bill # S. 1243

If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent’s death shall be allowed or paid.

(b) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the eight months following the decedent’s death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(c) For purposes of any statute of limitations, the proper presentation of a claim under Section 62-3-804 is equivalent to commencement of a proceeding on the claim.

REPORTER’S COMMENTS

This section provides for waiver of and the suspension of the running of any statute of limitations, measured from some event other than death and notice to creditors, during the eight months following the decedent’s death, resuming thereafter.

SECTION 62-3-803.

(a) All claims against a decedent’s estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by ~~other another~~ statute of limitations; or nonclaim statute; are barred against the estate, the personal representative, ~~and the decedent’s heirs and devisees, and nonprobate transferees~~ of the decedent; unless presented within the earlier of the following ~~dates~~:

- (1) one year after the decedent’s death; or
- (2) ~~within~~ the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication; ~~provided, claims~~.

(b) A claim described in subsection (a) which is barred by the nonclaim statute ~~at~~ of the decedent’s domicile before the giving of notice to creditors ~~barred~~ in this State ~~are also~~ is barred in this State.

~~(b)(c)~~ All claims against a decedent’s estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) a claim based on a contract with the personal representative within eight months after

ARTICLE 3: Existing Code language

(c) Nothing in this section affects or prevents:
(1) any proceeding to enforce any mortgage, pledge, lien, or other security interest upon property of the estate; or
(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or
(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

REPORTER’S COMMENTS

Under this section, claims encompass those that are due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis. The claims are then divided into those which arose before the death of the decedent and those which arise at or after the death of the decedent.

Claims sounding in tort arising before death, unless barred by other statutes of limitation, are barred unless presented within one year after the date of the first publication of notice to creditors if notice is given, while claims founded on contract or other legal basis (except in tort), can be presented within four months after the date of the first publication of notice to creditors if notice is given. If notice to creditors has not been published, the period of limitation is three years. Also, if a claim is barred by the nonclaim statute of the decedent’s domicile before the first publication for claims in this State, it is also barred in this State.

Claims arising at or after death must be presented as follows: (1) if against the personal representative, within four months after his performance is due; (2) otherwise, within four months after the claim arises.

The limitations of Section 62-3-803 do not apply to proceedings to enforce mortgages, pledges, or other liens upon property of the estate, or proceedings to establish liability of the decedent or the personal representative for which there is liability insurance.

SECTION 62-3-804. Manner of presentation of claims.

Bill # S. 1243

performance by the personal representative is due; or
(2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1).

~~(e)(d)~~ Nothing in this section ~~affects or prevents~~ shall be construed as placing a limitation on the time for:

(1) ~~any~~ commencing a proceeding to enforce ~~any~~ a mortgage, pledge, lien, or other security interest upon property of the estate; ~~or~~

(2) to the limits of the insurance protection only, any commencing a proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(3) ~~collection of~~ collecting compensation for services rendered ~~and to the estate or~~ reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

REPORTER’S COMMENTS

Under this section, claims encompass those that are due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis. The claims are then divided into those which arose before the death of the decedent and those which arise at or after the death of the decedent.

Claims arising before death, unless barred by other statutes of limitation, are barred unless presented as follows: (1) for those creditors not barred by publication within the earlier of one year following date of death or sixty days from any actual notice; and (2) for those creditors barred by publication within the earlier of one year from date of death or eight months from any publication. Also, if a claim is barred by the nonclaim statute of the decedent’s domicile before the first publication for claims in this State, it is also barred in this State.

Claims arising at or after death must be presented as follows: (1) if against the personal representative, within eight months after his performance is due; (2) otherwise, within eight months after the claim arises.

The limitations of Section 62-3-803 do not apply to proceedings to enforce mortgages, pledges, or other liens upon property of the estate, or proceedings to establish liability of the decedent or the personal representative for which there is liability insurance.

SECTION 62-3-804.

ARTICLE 3: Existing Code language

Claims against a decedent’s estate may be presented as follows:

(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the clerk of the probate court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim, and the claimant must file a written statement of the claim as in (1) above, with the clerk of the probate court. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than thirty days after the personal representative has mailed a notice of disallowance with warning of the impending bar; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty-day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of such thirty-day period, may order an extension of the thirty-day period, but in no event may the extension run beyond the applicable statute of limitations.

Bill # S. 1243

Claims against a decedent’s estate ~~may~~ must be presented as follows:

(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the ~~clerk of the~~ probate court in which the decedent’s estate is under administration. The claim is ~~deemed~~ presented ~~on~~ upon the first to occur of receipt filing of the ~~written~~ statement of claim ~~by the personal representative or the filing of the claim~~ with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe ~~correctly~~ fully the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) ~~The Subject to item (5), once a claim is presented in accordance with item (1), a claimant may at any time thereafter commence a legal proceeding against the personal representative by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim, and the claimant must file a written statement of the claim as in (1) above, with the clerk of the probate court. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death seeking payment of the claim by the decedent’s estate, and serving the same upon the personal representative. If the legal proceeding is not commenced in the probate court, the claimant must provide written notice to the probate court in which the decedent’s estate is under administration that a legal proceeding has commenced for allowance of the claim, setting forth the court in which the legal proceeding is pending. Thereafter, the probate court shall not permit the closing of the decedent’s estate until the legal proceeding has ended.~~

(3) ~~If a claim is presented under subsection (1), no proceeding thereon may be commenced more than thirty days after the personal representative has mailed a notice of disallowance with warning of the impending bar; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty-day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of such thirty-day period, may order an extension of the thirty-day period, but in no event may the extension run beyond the applicable statute of limitations. In lieu of the procedure provided in items (1) and (2), and subject to item (6), a claimant may commence a legal proceeding against the personal representative, by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be~~

ARTICLE 3: Existing Code language

Bill # S. 1243

subjected to jurisdiction, seeking payment of his claim by the estate, and serving the same upon the personal representative. The commencement of the legal proceeding under this item must occur within the time limit for presenting the claim as set forth in Section 62-3-803. If the legal proceeding is not commenced in the probate court, the claimant must file a written statement of the claim with the probate court in which the decedent’s estate is under administration providing substantially the same information as the statement in item (1), along with a statement that a legal proceeding to enforce the claim has commenced, and identifying the court where the proceeding is pending. Thereafter, the probate court shall not permit the closing of the decedent’s estate until the legal proceeding has ended.

(4) Notwithstanding any other provision of this section, no presentation of a claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent’s death.

(5) Notwithstanding any other provision of this section, no proceeding for enforcement or allowance of a claim or collection of a debt may be commenced more than thirty days after the personal representative has mailed a notice of disallowance or partial disallowance of the claim in accordance with the provisions of Section 62-3-806. However, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of the thirty-day period, may order an extension of the thirty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

(6) Notwithstanding any other provision of this section, no claim against a decedent’s estate may be presented or legal action commenced against a decedent’s estate prior to the appointment of a personal representative to administer the decedent’s estate.

(7) Any legal proceedings against or involving the decedent and pending on the date of his death must be suspended until a personal representative is appointed to administer the decedent’s estate.

REPORTER’S COMMENTS

This section establishes the mechanism for presenting claims. The claim may be delivered to the personal representative and must be filed with the court. Certain information must be included for claims not yet due, contingent, unliquidated, and secured claims. In lieu of presenting a claim, a proceeding may be commenced against a personal representative in any appropriate court, but the commencement must occur within the time for presenting claims. No claim is required in matters which were pending at the time of decedent’s death.

REPORTER’S COMMENTS

This section establishes the mechanism for presenting claims. The claim may be delivered to the personal representative and must be filed with the court. Certain information must be included for claims not yet due, contingent, unliquidated, and secured claims. In lieu of presenting a claim, a proceeding may be commenced against a personal representative in any appropriate court, but the commencement must occur within the time for presenting claims. No claim is required in matters which were pending at the time of decedent’s death.

ARTICLE 3: Existing Code language

Actions on claims must be commenced within the thirty days after the personal representative has mailed a notice of disallowance, but the personal representative or the court may consent prior to the expiration of the thirty-day period to extensions which do not run beyond the applicable statute of limitations.

SECTION 62-3-805. Classification of claims.

- (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
 - (1) costs and expenses of administration, including attorney’s fees, and reasonable funeral expenses;
 - (2)(i) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;
 - (ii) medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;
 - (3) debts and taxes with preference under federal law;
 - (4) debts and taxes with preference under other laws of this State, in the order of their priority;
 - (5) all other claims.
- (b) Except as is provided under subsection (a)(4) above, no preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

REPORTER’S COMMENTS

This section sets up the classification of claims where the assets of the estate are insufficient to pay all claims in full. Claims due and payable are not entitled to a preference over claims not due.

Bill # S. 1243

Actions on claims must be commenced within the thirty days after the personal representative has mailed a notice of disallowance, but the personal representative or the court may consent prior to the expiration of the thirty-day period to extensions which do not run beyond the applicable statute of limitations.

SECTION 62-3-805. CLASSIFICATION OF CLAIMS.

- (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
 - (1) costs and expenses of administration, including reasonable attorney’s fees, ~~and;~~
 - (2) reasonable funeral expenses;
 - (3) debts and taxes with preference under federal law;
 - ~~(2)(i)(4)~~ reasonable and necessary medical ~~and~~ expenses, hospital expenses, and personal care expenses of the last illness of the decedent, including compensation of persons attending the decedent prior to death;
 - ~~(ii) medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;~~
 - ~~(3) debts and taxes with preference under federal law;~~
 - ~~(4)(5)~~ debts and taxes with preference under other laws of this State, in the order of their priority, including medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;
 - ~~(5)(6)~~ all other claims.
- (b) Except as is provided under subsection (a)~~(4)~~(5) above, no preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.
- (c) Any person advancing or lending money to a decedent’s estate for the payment of a specific claim shall, to the extent of the loan, have the same priority for payment as the claimant paid with the proceeds of the loan.

REPORTER’S COMMENTS

This section sets up the classification of claims where the assets of the estate are insufficient to pay all claims in full. Claims due and payable are not entitled to a preference over claims not due.

ARTICLE 3: Existing Code language

SECTION 62-3-806. Allowance of claims.

- (a) As to claims presented in the manner described in Section 62-3-804 within the time limit prescribed in Section 62-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than thirty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. It is the responsibility of the personal representative to notify the claimant if a claim is disallowed.
- (b) Upon service of the summons and petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time and not barred by subsection (a) of this section. Notice of hearing in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.
- (c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent’s estate is an allowance of the claim.
- (d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate (as determined according to Section 34-31-20(A)) for the period commencing thirty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Bill # S. 1243

SECTION 62-3-806.

- (a) As to claims presented in the manner described in Section 62-3-804(1) within the time limit prescribed in Section 62-3-803, within sixty days after the presentment of the claim, or within fourteen months after the death of the decedent, whichever is later, the personal representative ~~may mail~~ must serve upon the claimant a notice ~~to any claimant~~ stating that the claim has been allowed or disallowed in whole or in part. Service of such notice shall be by United States mail, personal service, or otherwise as permitted by rule and a copy of the notice shall be filed with the probate court along with proof of delivery setting forth the date of mailing or other service on the claimant. A notice of disallowance or partial disallowance of a claim must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance. ~~If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred.~~ Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service against the personal representative not later than thirty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. ~~It is the responsibility of the personal representative to notify the claimant if a claim is disallowed~~ disallowance by the personal representative. For good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed claim.
- (b) ~~Upon service of the summons and petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time and not barred by subsection (a) of this section. Notice of hearing in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced. The personal representative of a decedent’s estate may commence a proceeding to obtain probate court approval of the allowance, in whole or part, of any claim or claims presented in the manner described in Section 62-3-804(1), within the time limit prescribed in Section 62-3-803, and not~~

ARTICLE 3: Existing Code language

Bill # S. 1243

barred by subsection (a). The proceeding may be commenced by the filing of a summons and petition with the probate court, and service of the same upon the claimant or claimants whose claims are in issue; and such other interested parties as the probate court may direct by order entered at the time the proceeding is commenced. Notice of hearing on the petition shall be given to interested parties in accordance with Section 62-1-401.

(c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent’s estate is an allowance of the claim. Upon obtaining such a judgment a claimant must file a certified copy of its judgment with the probate court in which the decedent’s estate is being administered.

(d) Unless otherwise provided in any judgment in another court entered against the personal representative and except from claims under 3-803-(d), allowed claims bear interest at the legal rate (as determined according to Section 34-31-20(A)) for the period commencing ~~thirty days~~ upon the later of fourteen months after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision date of the decedent’s death or the last date upon which the claim could have been properly presented under Section 62-3-803; unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with the terms of the contract

(e) Allowance of a claim is evidence the personal representative accepts the claim as a valid debt of the decedent’s estate. Allowance of a claim may not be construed to imply the estate will have sufficient assets with which to pay the claim.

REPORTER’S COMMENTS

This section provides the procedure by which the personal representative acts on claims and claimants react to disallowed claims. Within thirty days after the mailing of notice of disallowance, if the notice warns of the impending bar, a claimant must commence a proceeding against the personal representative. This relates to claims allowed in whole or in part. Failure of a personal representative to mail notice of his action within thirty days after the claim-filing period has expired constitutes a notice of disallowance with warning of the impending bar. A claimant has thirty days to react to a disallowed claim. A judgment in a proceeding in another court to enforce a claim constitutes an allowance of a claim.

Unless otherwise provided, or unless interest is based upon contract, allowed claims bear interest at the legal rate commencing thirty days after the time for original presentation of the claims has expired.

The personal representative or the claimant may begin an action in the court for allowance of the

REPORTER’S COMMENTS

This section provides the procedure by which the personal representative acts on claims and claimants react to disallowed claims. Within thirty days after the mailing of notice of disallowance, if the notice warns of the impending bar, a claimant must commence a proceeding against the personal representative. This relates to claims allowed in whole or in part. A claimant has thirty days to react to a disallowed claim. A judgment in a proceeding in another court to enforce a claim constitutes an allowance of a claim.

Unless otherwise provided, or unless interest is based upon contract, allowed claims bear interest at the legal rate commencing thirty days after the time for original presentation of the claims has expired.

The personal representative or the claimant may begin an action in the court for allowance of the claim. This gives the courts jurisdiction over any claim or claims presented to the personal representative or filed with the court.

ARTICLE 3: Existing Code language

claim. This gives the courts jurisdiction over any claim or claims presented to the personal representative or filed with the court.

SECTION 62-3-807. Payment of claims.

(a) Upon the expiration of the applicable time limitation provided in Section 62-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, for exempt property under Section 62-2-401, for claims already presented which have not yet been

Bill # S. 1243

The 2010 amendment added ‘service of’ and ‘summons and’ in the first sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for allowance of claims. 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, SCRPC. The 2010 amendment also added ‘of hearing’ after ‘Notice’ in the last sentence to clarify the notice of hearing requirements referred to in §62-1-401.

The 2012 amendment defines allowance and imposes an affirmative duty on the personal representative to either allow or disallow a claim within time frames imposed by the code.

Under the 2012 amendment, unless the court approves an extension of time, the personal representative must either allow or disallow all properly presented claims and serve notice of the allowance or disallowance of the claim on the claimant within the later of sixty days from the presentment of the claim and fourteen months from the date of the decedent’s death.

Service of the notice of allowance or disallowance can be made by mail or some other form of delivery. If a notice of disallowance is sent by mail, the thirty day period for filing a petition for allowance of claim, starts to run on the date of mailing.

A claim can be allowed, disallowed, or allowed in part and disallowed in part. The code does not establish a penalty for failure of the personal representative to comply with the requirement to notify the claimant, but instead relies on the authority of the probate court to remove a personal representative for failure to perform his duties under the code.

The 2012 amendment imposes on a person obtaining a judgment against an estate in a court other than the probate court an obligation to provide the probate court with a certified copy of the judgment.

The 2012 amendment modifies the interest rules in regard to the properly presented claims against the decedent’s estate. Interest on a claim begins to run upon the later of fourteen months after the decedent’s death or the last day upon which the claim could be properly presented, unless the claim is based on a contract providing for interest.

The 2012 amendment requires that interested persons be notified of hearings on petitions for allowance of claim.

SECTION 62-3-807.

~~(a) Upon the expiration of the applicable time limitation provided in Section 62-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, for exempt property under Section 62-2-401, for claims already presented which have not yet been~~

<p>ARTICLE 3: Existing Code language</p>	<p>Bill # S. 1243</p>
<p>allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is under Part 5, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.</p> <p>(b) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:</p> <p>(1) the payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or</p> <p>(2) the payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.</p>	<p>allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is under Part 5, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment. Prior to the closing of the estate and no later than fourteen months after the decedent's death, the personal representative must proceed to pay the claims allowed against the estate in the order of priority prescribed; and after making provision for the homestead, for exempt property under Section 62-2-401, for claims already presented which have not been allowed or whose disallowance is the subject of a legal proceeding, or the time to file such a proceeding has not expired, and for unbarred claims which may yet be presented, including costs and expenses of administration. Upon application of the personal representative and for good cause shown, the probate court may extend the time for payment of creditor claims.</p> <p><u>(b) Upon the expiration of the applicable time limitation provided in Section 62-3-803 for the presentation of claims, any claimant whose claim has been allowed, or partially allowed, under Section 62-3-806 may petition the probate court, or file an appropriate motion if the administration is under Part 5, for an order directing the personal representative to pay the claim, to the extent allowed, and to the extent assets of the estate are available for payment without impairing the ability of the personal representative to fulfill the other obligations of the decedent's estate.</u></p> <p><u>(c) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:</u></p> <p><u>(1) the payment was made before the expiration of the time limit stated in subsection (a) set forth in Section 62-3-803 for the presentation of a claim, and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or</u></p> <p><u>(2) the payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.</u></p>
<p>REPORTER'S COMMENTS This provides a remedy for a claimant whose claim has been allowed but has not been paid. Under Section 62-3-807(b), a personal representative is liable for claims paid out of order.</p> <p>SECTION 62-3-808. Individual liability of personal representative.</p>	<p>REPORTER'S COMMENTS This provides a remedy for a claimant whose claim has been allowed but has not been paid. Under Section 62-3-807(c), a personal representative is liable for claims paid out of order.</p> <p>SECTION 62-3-808.</p>

ARTICLE 3: Existing Code language

- (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity or identify the estate in the contract.
- (b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
- (c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.
- (d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

REPORTER’S COMMENTS

This section clarifies that the personal representative is not individually liable for contracts properly entered into in his fiduciary capacity on obligations arising from ownership or control of the estate. He is liable for torts committed in the course of his administration only if he is personally at fault. It also provides for a variety of appropriate proceedings to determine the issues of liability between the estate and the personal representative.

SECTION 62-3-809. Secured claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise, payment is upon the basis of one of the following:

- (1) if the creditor exhausts his security before receiving payment, upon the amount of the claim allowed less the fair market value of the security as agreed by the parties, or as determined by the court; or
- (2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to

Bill # S. 1243

- (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity or identify the estate in the contract.
- (b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
- (c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.
- (d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

REPORTER’S COMMENTS

This section clarifies that the personal representative is not individually liable for contracts properly entered into in his fiduciary capacity on obligations arising from ownership or control of the estate. He is liable for torts committed in the course of his administration only if he is personally at fault. It also provides for a variety of appropriate proceedings to determine the issues of liability between the estate and the personal representative.

SECTION 62-3-809.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise, payment is upon the basis of one of the following:

- (1) if the creditor exhausts his security before receiving payment, upon the amount of the claim allowed less the fair market value of the security as agreed by the parties, or as determined by the court; or
- (2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to

<p>ARTICLE 3: Existing Code language</p>	<p>Bill # S. 1243</p>
<p>the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.</p>	<p>the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.</p>
<p>REPORTER’S COMMENTS</p>	<p>REPORTER’S COMMENTS</p>
<p>This provides for payment of allowed secured claims in full if the security is surrendered by the creditor.</p>	<p>This provides for payment of allowed secured claims in full if the security is surrendered by the creditor.</p>
<p>Where the creditor exhausts his security before receiving payment, he receives the claim allowed less the fair market value of security as agreed or determined by the court.</p>	<p>Where the creditor exhausts his security before receiving payment, he receives the claim allowed less the fair market value of security as agreed or determined by the court.</p>
<p>If the security has not been exhausted, the creditor is paid the amount of the claim less the value of the security if covered.</p>	<p>If the security has not been exhausted, the creditor is paid the amount of the claim less the value of the security if covered.</p>
<p>SECTION 62-3-810. Claims not due and contingent or unliquidated claims.</p>	<p>SECTION 62-3-810.</p>
<p>(a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.</p>	<p>(a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.</p>
<p>(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:</p>	<p>(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:</p>
<p>(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;</p>	<p>(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;</p>
<p>(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage or other security interest, obtaining a bond or security from a distributee, or otherwise.</p>	<p>(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage or other security interest, obtaining a bond or security from a distributee, or otherwise.</p>
<p>REPORTER’S COMMENTS</p>	<p>REPORTER’S COMMENTS</p>
<p>This provides various arrangements by which the personal representative can secure future payment of claims which are not due, contingent, or unliquidated.</p>	<p>This provides various arrangements by which the personal representative can secure future payment of claims which are not due, contingent, or unliquidated.</p>
<p>SECTION 62-3-811. Counterclaims.</p>	<p>SECTION 62-3-811.</p>
<p>In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims allowed and, if such counterclaims exceed</p>	<p>In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims allowed and, if such counterclaims exceed</p>

ARTICLE 3: Existing Code language	Bill # S. 1243
<p>the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.</p>	<p>the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.</p>
<p>REPORTER'S COMMENTS This provides for the reduction of a claim against the estate by any counterclaim, liquidated or unliquidated.</p>	<p>REPORTER'S COMMENTS This provides for the reduction of a claim against the estate by any counterclaim, liquidated or unliquidated.</p>
<p>SECTION 62-3-812. Execution and levies prohibited.</p>	<p>SECTION 62-3-812.</p>
<p>No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens, or other security interests upon real or personal property in an appropriate proceeding.</p>	<p>No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens, or other security interests upon real or personal property in an appropriate proceeding.</p>
<p>REPORTER'S COMMENTS This prohibits executions and levies against property of the estate under judgments against the decedent or the personal representative, but excepts enforcement of mortgages, pledges, and liens in appropriate proceedings.</p>	<p>REPORTER'S COMMENTS This prohibits executions and levies against property of the estate under judgments against the decedent or the personal representative, but excepts enforcement of mortgages, pledges, and liens in appropriate proceedings.</p>
<p>SECTION 62-3-813. Compromise of claims.</p>	<p>SECTION 62-3-813.</p>
<p>When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.</p>	<p>When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.</p>
<p>REPORTER'S COMMENTS This section gives the personal representative the authority to compromise claims in the best interests of the estate. The consent of the probate judge is not necessary.</p>	<p>REPORTER'S COMMENTS This section gives the personal representative the authority to compromise claims in the best interests of the estate. The consent of the probate judge is not necessary.</p>
<p>SECTION 62-3-814. Encumbered assets.</p>	<p>SECTION 62-3-814.</p>
<p>If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any</p>	<p>If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any</p>

ARTICLE 3: Existing Code language

obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

REPORTER’S COMMENTS

This gives the personal representative essential authority to deal with encumbered assets.

SECTION 62-3-815. Administration in more than one state; duty of personal representative.

(a) All assets of estates being administered in this State are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent’s domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent’s last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

REPORTER’S COMMENTS

This section deals with various matters related to the payment of claims where there is administration in more than one state. As to the order of priorities of payment of claims, local creditors are not preferred over creditors in the decedent’s domicile.

Bill # S. 1243

obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

REPORTER’S COMMENTS

This gives the personal representative essential authority to deal with encumbered assets.

SECTION 62-3-815.

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(b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent’s domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent’s last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

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This section deals with various matters related to the payment of claims where there is administration in more than one state. As to the order of priorities of payment of claims, local creditors are not preferred over creditors in the decedent’s domicile.

<p>ARTICLE 3: Existing Code language</p>	<p>Bill # S. 1243</p>
<p>SECTION 62-3-816. Final distribution to domiciliary representative.</p> <p>The estate of a nonresident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent’s domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent’s will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent’s domicile; (2) the personal representative of this State, after reasonable inquiry is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under Section 62-3-1001 or incident to the closing of an administration under Part 5 [Sections 62-3-501 et seq.]. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article [Sections 62-3-101 et seq.].</p> <p>REPORTER’S COMMENTS The estate of a nonresident decedent being administered in this State is, upon conclusion of the local administration, paid over to the domiciliary personal representative.</p>	<p>SECTION 62-3-816.</p> <p>The estate of a nonresident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent’s domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless; (1) by virtue of the decedent’s will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent’s domicile; (2) the personal representative of this State, after reasonable inquiry is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under Section 62-3-1001 or incident to the closing of an administration under Part 5 [Sections 62-3-501 et seq.]. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article [Sections 62-3-101 et seq.].</p> <p>REPORTER’S COMMENTS The estate of a nonresident decedent being administered in this State is, upon conclusion of the local administration, paid over to the domiciliary personal representative.</p>
<p>Article 3.Part 9. Special Provisions re Distributions</p>	<p>Article 3.Part 9.</p>
<p>SECTION 62-3-901. Successors’ rights if no administration.</p> <p>In the absence of administration, the devisees are entitled to the estate in accordance with the terms of a probated will and the heirs in accordance with the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent’s ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.</p> <p>REPORTER’S COMMENTS This section governs the rights of heirs and devisees when the administrator of an estate is not able to proceed for one reason or another or in the absence of administration. This section provides that in the absence of administration the rights of the heirs or devisees will be established by the laws of intestate succession or by the terms of a probated will. Without an</p>	<p>SECTION 62-3-901.</p> <p>In the absence of administration, the devisees are entitled to the estate in accordance with the terms of a probated will and the heirs in accordance with the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent’s ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and subject to the rights of others resulting from abatement, retainer, advancement, and ademption, <u>and elective share.</u></p> <p>REPORTER’S COMMENTS This section governs the rights of heirs and devisees when the administrator of an estate is not able to proceed for one reason or another or in the absence of administration. This section provides that in the absence of administration the rights of the heirs or devisees will be established by the laws of intestate succession or by the terms of a probated will. Without an</p>

ARTICLE 3: Existing Code language

administration, heirs and devisees take the property subject to charges, such as charges incident to administration and creditors’ claims. In addition, successors in title are “subject to the rights of others” which may result from “abatment, retainer, advancement, and ademption.” These charges can only be eliminated by an administration which requires the publishing of a creditor’s notice or by the running of the statute of limitations on actions.

SECTION 62-3-902. Distribution; order in which assets appropriated; abatment.

- (a) Except as provided in subsection (b), shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatment, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatment within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
- (b) If the will expresses an order of abatment, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatment stated in subsection (a), as, for instance, in case the will was executed before the effective date of this Code, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
- (c) If the subject of a preferred devise is sold or used incident to administration, abatment shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

REPORTER’S COMMENTS

The purpose of Section 62-3-902 is to provide a defined order in which assets of an estate are used or applied for the payment of debts, in the absence of intent by the testator that an alternate order of abatment be used. The design of this section is to insure that the testator’s intent, whether expressed or implied by the terms of the will, would be given first priority in the order of abatment. The section is to be used only to resolve doubts as to the testator’s intent, rather than defeating his purpose.

Under this section, there is no distinction made with regard to the character of the assets. A

Bill # S. 1243

administration, heirs and devisees take the property subject to charges, such as charges incident to administration and creditors’ claims. In addition, successors in title are ‘subject to the rights of others’ which may result from ‘abatment, retainer, advancement, ademption and elective share.’

SECTION 62-3-902.

- (a) Except as provided in subsection (b), and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatment, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatment within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
- (b) If the will expresses an order of abatment, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatment stated in subsection (a), as, for instance, in case the will was executed before the effective date of this Code, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
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The purpose of Section 62-3-902 is to provide a defined order in which assets of an estate are used or applied for the payment of debts, in the absence of intent by the testator that an alternate order of abatment be used. The design of this section is to insure that the testator’s intent, whether expressed or implied by the terms of the will, would be given first priority in the order of abatment. The section is to be used only to resolve doubts as to the testator’s intent, rather than defeating his purpose.

Under this section, there is no distinction made with regard to the character of the assets. A

ARTICLE 3: Existing Code language	Bill # S. 1243
<p>devise encompasses any testamentary passage of property, whether real estate or personalty. Within classifications, abatement will be prorata.</p> <p>SECTION 62-3-903. Right of retainer.</p> <p>The amount of a liquidated indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.</p> <p>REPORTER'S COMMENTS This section provides that if the amount of liquidated indebtedness of a successor to the estate is due, then the personal representative is to offset any devise to that successor by the amount of the liquidated indebtedness. In the event the indebtedness is liquidated but not yet due, the representative can use the present value of the indebtedness to offset that amount against the devise to the successor.</p> <p>SECTION 62-3-905. Penalty clause for contest.</p> <p>A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.</p> <p>SECTION 62-3-906. Distribution in kind; valuation; method.</p> <p>(a) Unless a contrary intention is indicated by the will, such as the grant to the personal representative of a power of sale, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:</p> <p>(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 62-2-401 shall receive the items selected.</p> <p>(2) Any devise payable in money may be satisfied by value in kind provided:</p> <p>(i) the person entitled to the payment has not demanded payment in cash;</p> <p>(ii) the property distributed in kind is valued at fair market value as of the date of its distribution;</p> <p>(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.</p>	<p>devise encompasses any testamentary passage of property, whether real estate or personalty. Within classifications, abatement will be prorata.</p> <p>SECTION 62-3-903.</p> <p>The amount of a liquidated indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.</p> <p>REPORTER'S COMMENTS This section provides that if the amount of liquidated indebtedness of a successor to the estate is due, then the personal representative is to offset any devise to that successor by the amount of the liquidated indebtedness. In the event the indebtedness is liquidated but not yet due, the representative can use the present value of the indebtedness to offset that amount against the devise to the successor.</p> <p>SECTION 62-3-905.</p> <p>A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.</p> <p>SECTION 62-3-906.</p> <p>(a) Unless a contrary intention is indicated by the will, such as the grant to the personal representative of a power of sale, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:</p> <p>(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 62-2-401 shall receive the items selected.</p> <p>(2) Any devise payable in money may be satisfied by value in kind provided:</p> <p>(i) the person entitled to the payment has not demanded payment in cash;</p> <p>(ii) the property distributed in kind is valued at fair market value as of the date of its distribution; <u>and</u></p> <p>(iii) no residuary devisee has requested that the asset in question remain a part of the</p>

ARTICLE 3: Existing Code language

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The personal property of the residuary estate must be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. Subject to the provisions of Section 62-3-711(b), in other cases, personal property of the residuary estate may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

(c) When a personal representative or a trustee is empowered under the will or trust of a decedent to satisfy a pecuniary bequest, devise, or transfer in trust, in kind with assets at their value for federal estate tax purposes, the fiduciary, in order to implement the bequest, devise, or transfer in trust, shall, unless the governing instrument provides otherwise, distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property thus available for distribution in satisfaction of the pecuniary bequest, devise, or transfer.

(d) Personal representatives and trustees are authorized to enter into agreements with beneficiaries and with governmental authorities, agreeing to make distribution in accordance with the terms of Section 62-3-906 for any purpose which they consider to be in the best interests of the estate, including the purpose of protecting and preserving the federal estate tax marital deduction as applicable to the estate, and the guardian or conservator of a surviving beneficiary or the personal representative of a deceased beneficiary is empowered to enter into such agreements for and on behalf of the beneficiary or the deceased beneficiary.

(e) The provisions of Section 62-3-906 are not intended to change the present laws applicable to

Bill # S. 1243

residue of the estate.

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The personal property of the residuary estate must be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. Subject to the provisions of Section 62-3-711(b), in other cases, personal property of the residuary estate may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution, notifying such persons of the pending termination of the right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

(c) When a personal representative or a trustee is empowered under the will or trust of a decedent to satisfy a pecuniary ~~bequest~~, ~~devise~~, or transfer in trust, in kind with assets at their value for federal estate tax purposes, the fiduciary, in order to implement the ~~bequest~~, ~~devise~~, or transfer in trust, shall, unless the governing instrument provides otherwise, distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property thus available for distribution in satisfaction of the pecuniary ~~bequest~~, ~~devise~~, or transfer.

(d) Personal representatives and trustees are authorized to enter into agreements with beneficiaries and with governmental authorities, agreeing to make distribution in accordance with the terms of Section 62-3-906 for any purpose which they consider to be in the best interests of the estate, including the purpose of protecting and preserving the federal estate tax marital deduction as applicable to the estate, and the guardian or conservator of a surviving beneficiary or the personal representative of a deceased beneficiary is empowered to enter into

ARTICLE 3: Existing Code language

fiduciaries, but are statements of the fiduciary principles applicable to these fiduciaries and are declaratory of these laws.

REPORTER’S COMMENTS

Section 62-3-906(a) establishes a preference for distributions “in kind.”
Section 62-3-906(a) sets out the rights of the three classes of successors specific devisees (62-3-906(a)(1)), general pecuniary devisees (62-3-906(a)(2)), and residuary devisees (62-3-906(a)(3)).
As to specific devisees, Section 62-3-906(a)(1) provides that the specific devisee is entitled to the thing devised to him.
Section 62-3-906(a)(2) authorizes the personal representative to make “in kind” distributions to satisfy devises payable in money (general pecuniary devises) provided (1) the devisee has not demanded payment in cash, (2) the property is fairly valued as of the date of distribution under Section 62-3-906(a)(3) and, (3) a residuary devisee has not requested that the asset remain part of the residue estate.
Residuary devisees are to receive “in kind” distribution provided (1) there is no objection to the proposed distribution and (2) it is practicable to distribute undivided interests.
Section 62-3-906(b) provides that the personal representative may submit a proposal for distribution to all parties in interest. This section effectively eliminates the interested party’s right to object to the distribution if he fails to object to the plan in writing within thirty days from receipt of the proposal.

SECTION 62-3-907. Distribution in kind; evidence.

- (A) If distribution in kind is made, whether real or personal property, the personal representative must execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee’s title to the property.
- (B) If the decedent dies intestate or devises real property to a distributee, the personal representative’s execution of a deed of distribution of real property constitutes a release of the personal representative’s power over the title to the real property, equivalent to that of an

Bill # S. 1243

such agreements for and on behalf of the beneficiary or the deceased beneficiary.
(e) The provisions of Section 62-3-906 are not intended to change the present laws applicable to fiduciaries, but are statements of the fiduciary principles applicable to these fiduciaries and are declaratory of these laws.

REPORTER’S COMMENTS

Section 62-3-906(a) establishes a preference for distributions ‘in kind.’
Section 62-3-906(a) sets out the rights of the three classes of successors specific devisees (62-3-906(a)(1)), general pecuniary devisees (62-3-906(a)(2)), and residuary devisees (62-3-906(a)(3)).
As to specific devisees, Section 62-3-906(a)(1) provides that the specific devisee is entitled to the thing devised to him.
Section 62-3-906(a)(2) authorizes the personal representative to make ‘in kind’ distributions to satisfy devises payable in money (general pecuniary devises) provided (1) the devisee has not demanded payment in cash, (2) the property is fairly valued as of the date of distribution under Section 62-3-906(a)(3) and, (3) a residuary devisee has not requested that the asset remain part of the residue estate.
Residuary devisees are to receive ‘in kind’ distribution provided (1) there is no objection to the proposed distribution and (2) it is practicable to distribute undivided interests.
Section 62-3-906(b) provides that the personal representative may submit a proposal for distribution to all parties in interest. This section effectively eliminates the interested party’s right to object to the distribution if he fails to object to the plan in writing within thirty days from receipt of the proposal.
The 2012 amendment added to 62-3-906(b) the requirement of notice of deadline to object to proposed distribution.

SECTION 62-3-907.

- (A) If distribution in kind is made, ~~whether real or personal property,~~ the personal representative must execute ~~an instrument or a deed of distribution~~ with respect to real property and such other necessary or appropriate instrument of conveyance with respect to personal property, assigning, transferring, or releasing the assets to the distributee as evidence of the distributee’s title to the property.
- (B) If the decedent dies intestate or devises real property to a distributee, the personal

ARTICLE 3: Existing Code language

absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee and his purchasers or encumbrancers the protection provided in Sections 62-3-908 and 62-3-910.
(C) If the decedent devises real property to a personal representative, either in a specific or residuary devise, the personal representative’s execution of a deed of distribution of the real property constitutes a transfer of the title to the real property from the personal representative to the distributee, as well as a release of the personal representative’s power over the title to the real property, equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee, and his purchasers or encumbrancers, the protection provided in Sections 62-3-908 and 62-3-910.
(D) The personal representative’s execution of an instrument or deed of distribution of personal property constitutes a transfer of the title to the personal property from the personal representative to the distributee, as well as a release of the personal representative’s power over the title to the personal property, equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a).

REPORTER’S COMMENTS

This section provides that evidence of distribution “in kind” will be in the form of an instrument of deed of distribution which the personal representative will give to the distributees. This instrument serves as a transfer of the interest an estate had in an asset or assets. Sections 62-3-907 should be read in conjunction with Sections 62-3-908 through 62-3-910 to determine right of distributees and purchasers therefrom. In addition the personal representative may use this instrument as a release under Section 62-3-709 where the representative determines that certain assets of the decedent’s estate should be left in the possession of the party who would ultimately receive these assets by way of distribution “in kind.”

SECTION 62-3-908. Distribution; right or title of distributee.

Bill # S. 1243

representative’s execution of a deed of distribution of real property constitutes a release of the personal representative’s power over the title to the real property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee and his purchasers or encumbrancers the protection provided in Sections 62-3-908 and 62-3-910.

(C) If the decedent devises real property to a personal representative, either in a specific or residuary devise, the personal representative’s execution of a deed of distribution of the real property constitutes a transfer of the title to the real property from the personal representative to the distributee, as well as a release of the personal representative’s power over the title to the real property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee, and his purchasers or encumbrancers, the protection provided in Sections 62-3-908 and 62-3-910.

(D) The personal representative’s execution of an instrument or deed of distribution of personal property constitutes a transfer of the title to the personal property from the personal representative to the distributee, as well as a release of the personal representative’s power over the title to the personal property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a).

REPORTER’S COMMENTS

This section provides that evidence of distribution ‘in kind’ will be in the form of an instrument or deed of distribution which the personal representative will give to the distributees. This instrument serves as a transfer of the interest an estate had in an asset or assets. Sections 62-3-907 should be read in conjunction with Sections 62-3-908 through 62-3-910 to determine rights of distributees and purchasers therefrom. In addition the personal representative may use this instrument as a release under Section 62-3-709 where the representative determines that certain assets of the decedent’s estate should be left in the possession of the party who would ultimately receive these assets by way of distribution ‘in kind.’

The 2012 amendments revised subsection (a) to provide that, while a deed of distribution is required for real property, with respect to personal property the personal representative may execute an appropriate instrument evidencing the conveyance of title.

SECTION 62-3-908.

ARTICLE 3: Existing Code language

Proof that a distributee has received an instrument or deed of distribution of assets in kind whether real or personal property, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper. An improper distribution includes, but is not limited to, those instances where the instrument or deed of distribution is found to be inconsistent with the provisions of the will or statutes governing intestacy.

REPORTER’S COMMENTS

Section 62-3-908 contemplates that all actions for overpayment to a devisee be funneled through the personal representative.

SECTION 62-3-909. Improper distribution; liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

REPORTER’S COMMENTS

This section provides that an innocent distributee does not have the protection of a bona fide purchaser. The purpose of Section 62-3-909 is to shift questions concerning propriety of distribution from fiduciary to distributees. It should be remembered that a distribution under Section 62-3-703 may be “authorized at the time” but may still be improper under this section. The provisions of Sections 62-3-909 and 62-3-910 establish the proposition that liability follows the property and in the case of an informally probated will the fiduciary may be absolved from liability.

SECTION 62-3-910. Purchasers from distributees or personal representatives protected.

(A) If property distributed in kind (whether real or personal property) or a mortgage or other

Bill # S. 1243

Proof that a distributee has received an instrument or deed of distribution of assets in kind whether real or personal property, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper. An improper distribution includes, but is not limited to, those instances where the instrument or deed of distribution is found to be inconsistent with the provisions of the will or statutes governing intestacy.

REPORTER’S COMMENTS

Section 62-3-908 contemplates that all actions for overpayment to a devisee be funneled through the personal representative.

SECTION 62-3-909.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

REPORTER’S COMMENTS

This section provides that an innocent distributee does not have the protection of a bona fide purchaser. The purpose of Section 62-3-909 is to shift questions concerning propriety of distribution from fiduciary to distributees. It should be remembered that a distribution under Section 62-3-703 may be ‘authorized at the time’ but may still be improper under this section. The provisions of Sections 62-3-909 and 62-3-910 establish the proposition that liability follows the property.

SECTION 62-3-910.

(A) If property distributed in kind (whether real or personal property) or a mortgage or other

ARTICLE 3: Existing Code language

security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested persons, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the appropriate documentary or revenue stamps are affixed is prima facie evidence that the transfer was made for value.

(B) If a will 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), a purchaser for value who receives a deed from the personal representative takes title to the real property free of rights of any heirs or devisees or other interested person in the estate and incurs no personal liability to the estate or to any heir or devisee or other interested person in the estate. The purchaser is protected whether or not the sale was proper and regardless of whether the heirs or devisees to whom title devolved pursuant to Section 62-3-101 executed or consented to the deed, because the personal representative exercises the power of sale in trust, for the benefit of creditors, and others interested in the estate, who have recourse against the personal representative under Section 62-3-712 if the sale constitutes a breach of the personal representative’s fiduciary duty. This section protects a purchaser of real property from a personal representative who has title to the real property or who has sold real property to the purchaser pursuant to an authorization in the will. To be protected under this provision, a purchaser need not inquire whether a personal representative acted properly in making the sale, even if the personal representative and the purchaser are the same person, or whether the authority of the personal representative had terminated before the sale. Any recorded instrument described in this section on which the appropriate documentary or revenue stamps are affixed is prima facie evidence that the sale was made for value.

Bill # S. 1243

security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested persons, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any ~~recorded~~ instrument described in this section on which the appropriate documentary or revenue stamps are affixed deed recording fee prescribed by Chapter 24, Title 12, has been paid, and which has been recorded is prima facie evidence that the transfer sale was made for value.

(B) If a will 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), a purchaser for value who receives a deed from the personal representative takes title to the real property free of rights of any heirs or devisees or other interested person in the estate and incurs no personal liability to the estate or to any heir or devisee or other interested person in the estate. The purchaser is protected whether or not the sale was proper and regardless of whether the heirs or devisees to whom title devolved pursuant to Section 62-3-101 executed or consented to the deed, ~~because the personal representative exercises the power of sale in trust, for the benefit of ; however,~~ creditors, and others interested in the estate, ~~who have a right of~~ recourse against the personal representative under Section 62-3-712 if the sale constitutes a breach of the personal representative’s fiduciary duty. This section protects a purchaser of real property from a personal representative who has title to the real property or who has sold real property to the purchaser pursuant to an authorization in the will. To be protected under this provision, a purchaser need not inquire whether a personal representative acted properly in making the sale, even if the personal representative and the purchaser are the same person, or whether the authority of the personal representative had terminated before the sale. Any ~~recorded~~ instrument described in this section on which the appropriate documentary or revenue stamps are affixed deed recording fee prescribed by Chapter 24, Title 12 has been paid, and which has been recorded is prima facie evidence that the sale was made for value.

ARTICLE 3: Existing Code language

REPORTER’S COMMENTS

Section 62-3-910 provides that an instrument of distribution (as defined in Section 62-3-907) is an essential element in the chain of title to ensure that purchasers or lenders from or to a distributee would have good title. This section seems generally consistent with Section 12-15-1020 that the sale of property subject to a lien for estate taxes is divested of the lien.

SECTION 62-3-911. Partition for purpose of distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in kind if it can be fairly and equitably partitioned in kind. If not subject to fair and equitable partition in kind, the court shall direct the personal representative to sell the property and distribute the proceeds.

Bill # S. 1243

REPORTER’S COMMENTS

Section 62-3-910 provides that an instrument of distribution (as defined in Section 62-3-907) is an essential element in the chain of title to ensure that purchasers or lenders from or to a distributee would have good title.

SECTION 62-3-911.

For purposes of this section, ‘interested heirs or devisees’ means those heirs or devisees who are entitled to an interest in the real or personal property that is subject to partition pursuant to this section. When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the interested heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in kind ~~if it can be fairly and equitably partitioned in kind.~~ ~~If not subject to fair and equitable partition in kind, the court shall direct the personal representative to sell the property and distribute the proceeds~~ the manner provided in this section.

(1) The court shall partition the property in kind if it can be fairly and equitably partitioned in kind.

(2) If the property cannot be fairly and equitably partitioned in kind, the court shall direct the personal representative to sell the property and distribute the proceeds subject to the following provisions of this item.

(a) The court shall provide for the nonpetitioning interested heirs or devisees who wish to purchase the property to notify the court of that interest no later than ten days prior to the date set for a hearing on the partition. The nonpetitioning interested heirs or devisees shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

(b) In the circumstances described in subitem (a) of this section, and in the event the interested heirs or devisees cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost

ARTICLE 3: Existing Code language	Bill # S. 1243
<p>REPORTER’S COMMENTS This section makes provision for the probate court to partition personal property.</p> <p>SECTION 62-3-912. Private agreements among successors to decedent binding on personal representative.</p> <p>Subject to the rights of creditors and taxing authorities, competent successors may agree among</p>	<p><u>of court to those seeking to purchase the interests of the heirs or devisees in the property described in the petition for partition.</u></p> <p><u>(c) In the event that the interested heirs or devisees object to the value of the property interests as determined by the appointed appraisers, those heirs or devisees shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value of the interest or interests. An evidentiary hearing limited to the proposed valuation of the property interests of the interested heirs or devisees shall be conducted, and an order as to the valuation of the interests of the interested heirs and devisees shall be issued.</u></p> <p><u>(d) After the valuation of the interests in the property is completed as provided in subitems (b) or (c) of this item, the interested heirs or devisees seeking to purchase the interests of the other interested heirs or devisees shall have forty-five days to pay into the court the price set as the value of those interests to be purchased, in such shares and proportions as the court shall determine. Upon the payment and approval of it by the court, the court shall direct the personal representative to execute and deliver the proper instruments transferring title to the purchasers.</u></p> <p><u>(e) In the event that the interested heirs or devisees seeking to purchase the partitioned property fail to pay the purchase price as provided in subitem (d) of this item, the court shall proceed according to the traditional practices of circuit courts in partition sales.</u></p> <p>REPORTER’S COMMENTS This section makes provision for the probate court to partition personal property. The 2010 amendment added ‘service of summons and petition and after’ in the second sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for purpose of distribution and to make partition. 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. Under the 2012 amendment Section 62-3-911 has been rewritten to provide a method of partition in probate court comparable to the procedure in circuit court pursuant to section 15-61-25.</p> <p>SECTION 62-3-912.</p> <p>Subject to the rights of creditors and taxing authorities, competent successors may agree among</p>

ARTICLE 3: Existing Code language

themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

REPORTER'S COMMENTS

Section 62-3-912 sanctions settlement agreements among successors allowing them to vary the distributions of an estate, whether testate or intestate, without the necessity of seeking court approval.

SECTION 62-3-913. Distributions to trustee.

- (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 62-7-813.
- (b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.
- (c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

REPORTER'S COMMENTS

This section gives the right to the personal representative to require a trustee to register where the state law allows for registration. In addition this section permits the representative to require that a trustee post a bond unless the trust document provides otherwise.

This section grants powers to the representative to withhold distributions to a trust where the representative feels that the beneficiaries may not be informed of the existence of the trust or when the representative has doubts as to the capability and competency of the trustee or of the

Bill # S. 1243

themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

REPORTER'S COMMENTS

Section 62-3-912 sanctions settlement agreements among successors allowing them to vary the distributions of an estate, whether testate or intestate, without the necessity of seeking court approval.

SECTION 62-3-913.

- (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 62-7-813.
- (b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.
- (c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

REPORTER'S COMMENTS

This section gives the right to the personal representative to require a trustee to register where the state law allows for registration. In addition this section permits the representative to require that a trustee post a bond unless the trust document provides otherwise.

This section grants powers to the representative to withhold distributions to a trust where the representative feels that the beneficiaries may not be informed of the existence of the trust or when the representative has doubts as to the capability and competency of the trustee or of the

ARTICLE 3: Existing Code language

trustee’s intention to hold the funds without profit to himself.
Under this section, testamentary trustees would enjoy the status of a devisee, distributee, and successor.

SECTION 62-3-914. Disposition of unclaimed assets.

- (a) If after the expiration of eight months from the appointment of the personal representative of a decedent it appears to the satisfaction of the court by whom the appointment was granted that the personal representative of the estate is unable to ascertain the whereabouts of a person entitled to be heir or devisee of the estate or whether a person who, if living, would be entitled as heir or devisee of this estate is dead or alive, the court may issue a notice addressed to all persons interested in the estate as heirs or devisees calling on the person whose whereabouts or the fact of whose death is unknown, his personal representatives, or heirs or devisees, to appear before the court on a certain day and hour as specified in this notice and to show cause why the personal representative should not be ordered to distribute the estate as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent, and notifying all persons entitled to the estate as heir or devisee, or otherwise, to appear on a designated day and time before the court to intervene for their interest in the estate. The day fixed in the notice, on which cause must be shown, must not be less than one month after the date of the first publication of the notice.
- (b) The notice must be published once a week for three successive weeks in a newspaper published in the county in which the court is held. The court has the right, in its discretion, to order the notice to be published once a week for three successive weeks in one other newspaper published in another place most likely to give notice to interested persons.
- (c) The publication of the notice as prescribed in subsection (b) must be proved by filing with the court copies of the newspapers containing the publication of the notice and the affidavit of the publishers or printers of the respective newspapers.
- (d) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if no person appears as required, the court must decree distribution of the estate to be made as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent. Distribution by the personal representative is a full and complete discharge to the personal representative.
- (e) At the time fixed in the notice for cause to be shown, due proof of publication having been

Bill # S. 1243

trustee’s intention to hold the funds without profit to himself.
Under this section, testamentary trustees would enjoy the status of a devisee, distributee, and successor.

SECTION 62-3-914.

- (a) If after the expiration of eight months from the appointment of the personal representative of a decedent it appears to the satisfaction of the court by whom the appointment was granted that the personal representative of the estate is unable to ascertain the whereabouts of a person entitled to be heir or devisee of the estate or whether a person who, if living, would be entitled as heir or devisee of this estate is dead or alive, the court may issue a notice addressed to all persons interested in the estate as heirs or devisees calling on the person whose whereabouts or the fact of whose death is unknown, his personal representatives, or heirs or devisees, to appear before the court on a certain day and hour as specified in this notice and to show cause why the personal representative should not be ordered to distribute the estate as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent, and notifying all persons entitled to the estate as heir or devisee, or otherwise, to appear on a designated day and time before the court to intervene for their interest in the estate. The day fixed in the notice, on which cause must be shown, must not be less than one month after the date of the first publication of the notice.
- (b) The notice must be published once a week for three successive weeks in a newspaper published in the county in which the court is held. The court has the right, in its discretion, to order the notice to be published once a week for three successive weeks in one other newspaper published in another place most likely to give notice to interested persons.
- (c) The publication of the notice as prescribed in subsection (b) must be proved by filing with the court copies of the newspapers containing the publication of the notice ~~and~~ or the affidavit of the publishers or printers of the respective newspapers.
- (d) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if no person appears as required, the court must decree distribution of the estate to be made as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent. Distribution by the personal representative is a full and complete discharge to the personal representative.
- (e) At the time fixed in the notice for cause to be shown, due proof of publication having

ARTICLE 3: Existing Code language

made and filed as required by subsection (c), if the person whose whereabouts or the fact of whose death was unknown appears, all further proceedings must be discharged.
(f) If the identity of the person appearing is disputed by the personal representative, an heir or devisee of the decedent or the legal representatives of an heir or devisee, the court must proceed to hear and determine the controversy. If the controversy is determined against the person appearing, distribution of the estate must be made as prescribed in subsection (d); but if the controversy is determined in favor of the party appearing, he is considered to be the person whose whereabouts or the fact of whose death was unknown. The determination in either case is subject to appeal as provided in Section 62-1-308.
(g) At the expiration of the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if a person appears claiming to be heir, devisee, or personal representative of the person whose whereabouts or the fact of whose death is unknown or to be otherwise entitled to his estate and claiming a distributive share in the decedent’s estate, the court shall proceed to hear and determine whether the person whose whereabouts or the fact of whose death is unknown died before or after the decedent, and if the determination is that the person whose whereabouts or the fact of whose death is unknown died before the decedent, distribution of the decedent’s estate must be made accordingly; but if the court determines that the person whose whereabouts or the fact of whose death is unknown died after the death of the decedent, the distributive share of the person must be paid and delivered by the personal representative to the person legally entitled to receive it, the determination in either case, is subject to appeal as provided in Section 62-1-308.
(h) Instead of the procedure required in this section, an unclaimed devise of one hundred dollars or less may be paid or transferred by the personal representative to the South Carolina State Treasurer.

REPORTER’S COMMENTS

Section 62-3-914 provides that the distributive share to a missing heir, devisee, or claimant must be paid to the conservator of the missing person or, if there is no conservator, to the State Treasurer, to become part of the escheat fund. This section sets aside the assets belonging to a missing person. Within eight years of payment to the State Treasurer, the missing distributee can petition the court for his share. See Section 62-3-908 providing that the personal representative is a necessary party to an action by the missing distributee to recover his share.

Bill # S. 1243

been made and filed as required by subsection (c), if the person whose whereabouts or the fact of whose death was unknown appears, all further proceedings must be discharged.
(f) If the identity of the person appearing is disputed by the personal representative, an heir or devisee of the decedent or the legal representatives of an heir or devisee, the court must proceed to hear and determine the controversy. If the controversy is determined against the person appearing, distribution of the estate must be made as prescribed in subsection (d); but if the controversy is determined in favor of the party appearing, he is considered to be the person whose whereabouts or the fact of whose death was unknown. The determination in either case is subject to appeal as provided in Section 62-1-308.
(g) At the expiration of the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if a person appears claiming to be heir, devisee, or personal representative of the person whose whereabouts or the fact of whose death is unknown or to be otherwise entitled to his estate and claiming a distributive share in the decedent’s estate, the court shall proceed to hear and determine whether the person whose whereabouts or the fact of whose death is unknown died before or after the decedent, and if the determination is that the person whose whereabouts or the fact of whose death is unknown died before the decedent, distribution of the decedent’s estate must be made accordingly; but if the court determines that the person whose whereabouts or the fact of whose death is unknown died after the death of the decedent, the distributive share of the person must be paid and delivered by the personal representative to the person legally entitled to receive it, the determination in either case, is subject to appeal as provided in Section 62-1-308.
(h) Instead of the procedure required in this section, an unclaimed devise or intestate share of one hundred five thousand dollars or less may be paid or transferred by the personal representative to the South Carolina State Treasurer.

REPORTER’S COMMENTS

Section 62-3-914 provides that the distributive share to a missing heir, devisee, or claimant must be paid to the conservator of the missing person or, if there is no conservator, to the State Treasurer, to become part of the escheat fund. This section sets aside the assets belonging to a missing person.
The 2012 amendment revised subsection (c) to permit proof of publication by either filing with the court copies of the newspaper itself or an affidavit of the publisher or printer of the newspaper. The de minimus amount in subsection (h) now includes an intestate share and has been increased to \$5000.

ARTICLE 3: Existing Code language

SECTION 62-3-915. Distribution to person under disability.

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

REPORTER’S COMMENTS

Section 62-3-915 provides that the personal representative will be absolved if he distributes to a conservator of a disabled or incompetent distributee.

SECTION 62-3-916. Apportionment of estate taxes.

(a) For purposes of this section:

- (1) “Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.
- (2) “Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.
- (3) “Persons interested in the estate” means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent’s estate. It includes a personal representative, conservator, and trustee.
- (4) “State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (5) “Tax” means the federal estate tax and the basic and any additional estate tax imposed by the State of South Carolina and interest and penalties imposed in addition to the tax.
- (6) “Fiduciary” means personal representative or trustee.

(b) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent’s will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls.

(c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment

Bill # S. 1243

SECTION 62-3-915.

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

REPORTER’S COMMENTS

Section 62-3-915 provides that the personal representative will be absolved if he distributes to a conservator of a disabled or incompetent distributee.

SECTION 62-3-916.

(a) For purposes of this section:

- (1) ‘Estate’ means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.
- (2) ‘Person’ means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.
- (3) ‘Persons interested in the estate’ means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent’s estate. It includes a personal representative, conservator, and trustee.
- (4) ‘State’ means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (5) ‘Tax’ means the federal estate tax and the basic and any additional estate tax imposed by the State of South Carolina and interest and penalties imposed in addition to the tax.
- (6) ‘Fiduciary’ means personal representative or trustee.

~~(b)(1) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent’s will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls. To the extent that a provision of a decedent’s will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.~~

(2) Any portion of an estate tax not apportioned pursuant to item (1) must be apportioned

ARTICLE 3: Existing Code language

thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code, the determination of the court in respect thereto shall be prima facie correct.

(5) The expenses reasonably incurred by the fiduciary and by any other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in subsection (b), it may direct apportionment thereof equitably.

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a

Bill # S. 1243

in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this item:

(A) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) Any tax not apportioned in items (1) or (2) shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If pursuant to items (1) and (2) the decedent’s will or revocable trust directs a method of apportionment of tax different from the method described in this Code, the method described in the will or revocable trust controls.

(c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code, the determination of the court in respect thereto shall be prima facie correct.

(5) The expenses reasonably incurred by the fiduciary and by any other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in subsection (b), it may direct apportionment thereof equitably.

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the

ARTICLE 3: Existing Code language

foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interest includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or

Bill # S. 1243

tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interest includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any

ARTICLE 3: Existing Code language

execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent’s estate in the other state is prima facie correct.

REPORTER’S COMMENTS

Section 62-3-916(b) establishes a true apportionment of estate taxes among all takers, whether they be probate or nonprobate, unless a will states otherwise.
Section 62-3-916(g) imposes an affirmative duty on the personal representative to attempt to recover from any distributee any portion of the estate tax liability. The representative must act within three months after final determination of estate taxes or the representative might be guilty of negligence.

Bill # S. 1243

property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months’ period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent’s estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent’s estate in the other state is prima facie correct.

REPORTER’S COMMENTS

Section 62-3-916(b) establishes a true apportionment of estate taxes among all takers, whether they be probate or nonprobate, unless a will or revocable trust states otherwise.
The 2012 amendment incorporates into the South Carolina Probate Code the Uniform Estate Tax Apportionment Act as revised in 2003 (UETAA or new UETAA). The new UETAA replaces the Uniform Probate Code’s former estate tax apportionment provision (Section 3-916), which incorporated into the Uniform Probate Code the former UETAA. The new UPC apportionment statute is actually 15 sections (although a couple are blank, marked ‘reserved’) and with comments extending for more than 20 pages.
Before the 2012 amendment, this statute did not specifically allow a variance from the statutory apportionment by revocable trust, only by will. The 2012 amendment requires a specific and unambiguous direction for the payment and allows it in a will or in a revocable

ARTICLE 3: Existing Code language	Bill # S. 1243
	trust. Per the UPC comments, a general direction to pay debts from the residue does not meet this standard.