~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 20, 2010

**H. 3803**

Introduced by Reps. Bannister, Harrison and Weeks

S. Printed 1/20/10--H.

Read the first time March 26, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3803) to amend Sections 62‑1‑201, 62‑1‑304, 62‑1‑401, 62‑1‑403, 62‑2‑205, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTIONS 62‑1‑201, 62‑1‑304, 62‑1‑401, 62‑1‑403, 62‑2‑205, 62‑2‑402, 62‑3‑203, 62‑3‑401, 62‑3‑403, 62‑3‑409, 62‑3‑414, 62‑3‑502, 62‑3‑503, 62‑3‑604, 62‑3‑607, 62‑3‑611, 62‑3‑806, 62‑3‑911, 62‑3‑1001, 62‑3‑1008, 62‑3‑1101, 62‑3‑1102, 62‑3‑1309, 62‑5‑101, 62‑5‑303, 62‑5‑305, 62‑5‑307, 62‑5‑309, 62‑5‑310, 62‑5‑401, 62‑5‑402, 62‑5‑405, 62‑5‑407, 62‑5‑411, 62‑5‑412, 62‑5‑416, 62‑5‑419, 62‑5‑428, 62‑5‑430, 62‑5‑501, 62‑5‑504, AS AMENDED, 62‑5‑604, AND 62‑5‑608, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE VARIOUS ACTIONS AND PROCEEDINGS CONCERNING THE AFFAIRS OF DECEDENTS, PROTECTED PERSONS, MINORS, AND INCAPACITATED PERSONS FALLING UNDER THE SUBJECT MATTER JURISDICTION OF THE PROBATE COURT, SO AS TO DIFFERENTIATE BETWEEN A FORMAL PROCEEDING AND AN APPLICATION TO THE COURT AND THE PROCEDURAL RULES GOVERNING EACH, TO REQUIRE THE FILING AND SERVICE OF A SUMMONS AND PETITION TO COMMENCE A FORMAL PROCEEDING, AND TO DISTINGUISH THAT REQUIREMENT OF SUMMONS AND PETITION FROM THE NOTICE REQUIREMENTS FOR A HEARING ON A PETITION; AND TO AMEND SECTIONS 62-1-403, 62‑3‑703, 62‑7‑105, 62‑7‑201, 62‑7‑303, 62‑7‑305, 62‑7‑414, 62‑7‑505, 62‑7‑604, 62‑7‑709, 62‑7‑814, 62‑7‑902, 62‑7‑903, 62‑7‑904, 62‑7‑933, AND 62‑7‑1013, ALL RELATING TO THE SOUTH CAROLINA TRUST CODE, SO AS TO SUBSTITUTE “PERSON” FOR “PARENT” AND “ISSUE” FOR “CHILD”, DELETE THE REQUIREMENT OF A TAXPAYER IDENTIFICATION NUMBER ON A CERTIFICATE OF TRUST, ALLOW CERTAIN REIMBURSEMENTS TO A PROSPECTIVE TRUSTEE, AND MAKE TECHNICAL CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑1‑201(1), (15), (19), (31), and (43) of the 1976 Code is amended to read:

“(1) ‘Application’ means a written request to the probate court for an order ~~or statement of informal probate or appointment under Part 3 of Article III~~. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.

(15) ‘Formal proceedings’ means ~~those conducted before a judge with notice to~~ actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

(19) ‘Informal proceedings’ means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.

(31) ‘Petition’ means a ~~written request to the court for an order after notice~~ complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

(43) ‘Testacy proceeding’ means a formal proceeding to establish a will or determine intestacy.”

SECTION 2. Section 62‑1‑304 of the 1976 Code is amended to read:

“Section 62‑1‑304. ~~Unless specifically provided to the contrary in this Code or unless inconsistent with its provisions, the rules of civil procedure adopted for the probate court, and, in their absence, those adopted for the circuit court, govern formal proceedings under this Code.~~ The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a ‘civil action’ as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.”

SECTION 3. Section 62‑1‑401 of the 1976 Code is amended by adding at the end:

“(d) Notwithstanding a provision to the contrary, the notice provisions in this section do not, and are not intended to, constitute a summons that is required for a petition.”

SECTION 4. Section 62‑1‑403 of the 1976 Code is amended to read:

“Section 62‑1‑403. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and~~,~~ in judicially supervised settlements~~,~~ the following apply:

(1) Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give reasonable information to owners by name or class by reference to the instrument creating the interests or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent’s estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a ~~parent~~ person may represent his minor or unborn ~~child~~ issue.

(iii) A minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) ~~Notice~~ Service of summons, petition, and notice is required as follows:

(i) ~~Notice as prescribed by Section 62‑1‑401 shall~~ Service of summons, petition, and notice must be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. ~~Notice~~ Service of summons and petition upon, as well as notice, may be given both to a person and to another who may bind him.

(ii) ~~Notice~~ Service upon and notice is given to unborn or unascertained persons who are not represented under (2)(i) or (2)(ii) above by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.”

SECTION 5. Section 62‑2‑205(a) of the 1976 Code is amended to read:

“(a) The surviving spouse may elect to take his elective share in the probate estate by filing in the court and ~~mailing or delivering to~~ serving upon the personal representative, if any, a summons and petition for the elective share within eight months after the date of death or within six months after the probate of the decedent’s will, whichever limitation last expires.”

SECTION 6. Section 62‑2‑402(a) if the 1976 Code is amended to read:

“(a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians or conservators of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians or conservators of the minor children are unable or fail to do so within a reasonable time or if there are no guardians or conservators of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may ~~petition~~ make application to the court for appropriate relief.”

SECTION 7. Section 62‑3‑203(d) of the 1976 Code is amended to read:

“(d) Appointment of one who does not have priority~~, including priority resulting from renunciation or waiver,~~ may be made ~~only~~ in formal or informal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.”

SECTION 8. The first undesignated paragraph in Section 62‑3‑401 of the 1976 Code is amended to read:

“A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding ~~may~~ must be commenced by an interested person filing and serving a summons a petition as described in Section 62‑3‑402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62‑3‑402(b) for an order that the decedent died intestate.”

SECTION 9. Section 62‑3‑403 of the 1976 Code is amended to read:

“Section 62‑3‑403. (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62‑1‑401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62‑3‑204. ~~Notice~~ The following persons must be ~~given to the following persons~~ properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent, (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the summons, petition, and notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) by engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.”

SECTION 10. Section 62‑3‑409 of the 1976 Code is amended to read:

“Section 62‑3‑409. ~~After the time required for any notice has expired, upon~~ Upon proof of ~~notice~~ service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62‑3‑108, it shall determine the decedent’s domicile at death, his heirs, (regardless of whether the decedent died intestate and determined as if the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 62‑3‑612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.”

SECTION 11. Section 62‑3‑414(b) of the 1976 Code is amended to read:

“(b) After ~~notice~~ service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62‑3‑203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62‑3‑611.”

SECTION 12. Section 62‑3‑502 of the 1976 Code is amended to read:

“Section 62‑3‑502. A petition for administration under Part 5 [Sections 62‑3‑501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under Part 5 [Sections 62‑3‑501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62‑3‑501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62‑3‑501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62‑3‑501 et seq.], even though the request for administration under Part 5 [Sections 62‑3‑501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62‑3‑501 et seq.] of a decedent’s estate: (1) if the decedent’s will directs administration under Part 5 [Sections 62‑3‑501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62‑3‑501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62‑3‑501 et seq.]; (2) if the decedent’s will directs no administration under Part 5 [Sections 62‑3‑501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62‑3‑501 et seq.] is necessary under the circumstances.”

SECTION 13. Section 62‑3‑503(c) of the 1976 is amended to read:

“(c) After ~~he has received~~ service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62‑3‑501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.”

SECTION 14. Section 62‑3‑604 of the 1976 Code is amended to read:

“Section 62‑3‑604. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62‑6‑101) in a manner that prevents their unauthorized disposition. ~~On petition of~~ Upon application by the personal representative or another interested person or upon the court’s own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties.”

SECTION 15. Section 62‑3‑607(a) of the 1976 Code is amended to read:

“(a) ~~On petition~~ Upon application of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.”

SECTION 16. Section 62‑3‑611(a) of the 1976 Code is amended to read:

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

SECTION 17. Section 62‑3‑806(b) of the 1976 Code is amended to read:

“(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.”

SECTION 18. Section 62‑3‑911 of the 1976 Code is amended to read:

“Section 62‑3‑911. 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.”

SECTION 19. Section 62‑3‑1001(a), (c), and (d) of the 1976 Code is amended to read:

“(a) Within one year after the date of the first publication of notice to creditors (or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later), a personal representative must file with the court:

(1) a full account in writing of his administration;

(2) a proposal for distribution of assets not yet distributed;

(3) ~~a petition~~ an application for settlement of the estate~~, which may request the court to determine testacy if not previously determined,~~ to consider the final account or approve an accounting ~~and~~ distribution~~, to construe any will or determine heirs,~~ and adjudicate the final settlement and distribution of the estate; and

(4) proof that a notice of right to demand hearing and copies of the account, the proposal for distribution, and the ~~petition~~ application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter an order or orders~~, on appropriate conditions, determining testacy, determining the persons entitled to distribution of the estate, and, as circumstances require,~~ approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if any interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62‑1‑401 and hearing.

(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice of hearing to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.”

SECTION 20. Section 62‑3‑1008 of the 1976 Code is amended to read:

“Section 62‑3‑1008. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon ~~petition~~ application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.”

SECTION 21. Section 62‑3‑1101 of the 1976 Code is amended to read:

“Section 62‑3‑1101. A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved ~~in a formal proceeding in~~ by the court ~~for that purpose~~ after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62‑5‑433.”

SECTION 22. Section 62‑3‑1102(3) of the 1976 Code is amended to read:

“(3) ~~After~~ Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.”

SECTION 23. Section 62‑3‑1309 of the 1976 Code is amended to read:

“Section 62‑3‑1309. The time ~~for return~~ to answer or otherwise respond by motion to the summons and petition is at least thirty days from the date of service. Should the personal representative (if not the petitioner) or any of the heirs or devisees, or other parties, if any, desire to ~~make a return~~ answer or otherwise respond by motion it must be in writing and the court shall in regular order, as in the case of other litigated cases, proceed to determine the issues made by petition, subsequent pleadings, and ~~return~~ motions and if the court decides that the real estate should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the court shall pay over to the personal representative the net proceeds of such sale. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this Part may be construed to abridge homestead exemptions.”

SECTION 24. Section 62‑5‑101(5) of the 1976 Code is amended to read:

“(5) A ‘guardianship proceeding’ is a formal proceeding under the provisions of Part 3 of Article 5 (Section 62‑5‑301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person.”

SECTION 25. Section 62‑5‑303 of the 1976 Code is amended to read:

“Section 62‑5‑303. (a) The incapacitated person or ~~any~~ a person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing and service of ~~a~~ the summons and the petition~~,~~ the court shall send a visitor to the place where the allegedly incapacitated person resides to observe conditions and report in writing to the court. The court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceedings and that attorney shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by two examiners, one of whom shall be a physician appointed by the court who shall submit their reports in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence including testimony by a physician of his own choosing, to cross‑examine witnesses, including the court‑appointed examiners. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.”

SECTION 26. Section 62‑5‑305 of the 1976 Code is amended to read:

“Section 62‑5‑305. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary first class mail at his address as listed in the court records and to his address as then known to the petitioner.”

SECTION 27. Section 62‑5‑307 of the 1976 Code is amended to read:

“Section 62‑5‑307. (a) ~~On~~ After service of the summons and petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating or readjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward ~~or any person interested in his welfare~~ may ~~petition~~ make a request for an order from the court that he is no longer incapacitated, and for removal ~~or resignation~~ of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before acting upon any such petition or request, the court shall send a visitor to the residence of the present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the court. After reviewing the report of the visitor, the court may order termination of the ward’s incapacity or a hearing following the procedures set forth in Section 62‑5‑303.”

SECTION 28. Section 62‑5‑309 of the 1976 Code is amended to read:

“Section 62‑5‑309. (A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, ~~notice of hearing~~ the following persons must be ~~given to each of the following~~ properly served:

(1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62‑5‑501 or who has his care and custody;

(3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

(B) Notice ~~must be served personally on the alleged incapacitated person and his spouse and parents if they are found within the State. Notice to the spouse and parents, if they cannot be found within the State, and to all other persons except the alleged incapacitated person,~~ of hearing must be given as provided in Section 62‑1‑401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is given by his attorneys or, in proceedings for removal, confirmed in an interview with the visitor, which may be done at any time. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.”

SECTION 29. Section 62‑5‑310(A)‑(D) of the 1976 Code is amended to read:

“(A) If the court makes emergency preliminary findings that:

(1) a physician has certified to the court, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the court, with or without petition or notice, may appoint a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62‑5‑311.

(B) If the court makes emergency preliminary findings that:

(1) the appointed guardian or temporary guardian is not effectively performing his duties; and

(2) the welfare of the allegedly incapacitated person requires immediate action, then the court may appoint, with or without petition or notice, a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62‑5‑311.

(C)(1) ~~If~~ The court may itself exercise the power of temporary guardian, with or without petition or notice, if the court makes emergency preliminary findings that~~:~~

~~(1)~~ either no person appears to have authority to act on behalf of the incapacitated person~~;~~ or

~~(2)~~ more than one person is authorized to make health care decisions for the incapacitated person, and these authorized persons disagree on whether certain care must be provided~~;~~ and:

~~(3)~~(a) the person has been adjudicated as being incapacitated, or a physician has certified to the court, orally or in writing, that the person is incapacitated; and

~~(4)~~(b) an emergency exists~~;~~.

~~then the court may itself exercise the power of a temporary guardian, with or without notice.~~

(2) For health care purposes, ‘emergency’ means that a delay caused by ~~(1)~~(i) further attempts to locate a person authorized to make health care decisions or ~~(2)~~(ii) proceedings for appointment of a guardian would present a serious threat to the life, health, or bodily integrity of the incapacitated person.

(D) If a temporary guardian is appointed without petition or notice under this section, a hearing to review the appointment must be held after petition and notice and within thirty days after the appointment of the temporary guardian.”

SECTION 30. Section 62‑5‑401 of the 1976 Code is amended to read:

“Section 62‑5‑401. ~~Upon~~ After service of the summons and petition and ~~after~~ notice ~~and~~ of hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.”

SECTION 31. Section 62‑5‑402 of the 1976 Code is amended to read:

“Section 62‑5‑402. After the service of ~~notice~~ the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition ~~is~~ are filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and

(3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62‑5‑433.”

SECTION 32. Section 62‑5‑405 of the 1976 Code is amended to read:

“Section 62‑5‑405. (a) ~~On a~~ After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with ~~notice of the proceeding at least twenty days before the date of hearing~~ the summons and petition. The following persons also must be properly served: the spouse and the adult children of the person to be protected, or if none, his parents or nearest adult relatives if there are no parents, ~~must be given notice of the proceeding at least twenty days before the hearing if they can be found within the State, or, if they cannot be found within the State, they must be given notice in accordance with Section 62‑1‑401. Waiver by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney~~ and other persons as the court may direct.

(b) Notice of hearing on a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to the person to be protected, to any person who has filed a request for notice under Section 62‑5‑406 ~~and~~, to interested persons, and to other persons as the court may direct. ~~Except as otherwise provided in (a), notice shall~~ Notice must be given in accordance with Section 62‑1‑401. Waiver of notice of hearing by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney.”

SECTION 33. Section 62‑5‑407(a) and (b) of the 1976 Code is amended to read:

“(a) Upon ~~receipt~~ the filing of a summons and petition for appointment of a conservator or other protective order because of minority, and after service of the summons and the petition, the court ~~shall~~ may set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. If the minor already has an attorney, that attorney shall act as his guardian ad litem.

(b) Upon ~~receipt~~ the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained.”

SECTION 34. Section 62‑5‑411 of the 1976 Code is amended to read:

“Section 62‑5‑411. The court ~~shall~~, unless for good cause stated, shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and will approve all sureties. If bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62‑6‑101, in a manner that prevents their unauthorized disposition. ~~On petition~~ Upon application of the conservator or another interested person, or upon the court’s own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties. A denial of an application by the court is not an adjudication and does not preclude a formal proceeding.”

SECTION 35. Section 62‑5‑412(a)(3) of the 1976 Code is amended to read:

“(3) ~~On~~ After service of a summons and petition ~~of~~ by a successor conservator or any interested person, or upon the court’s own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;”

SECTION 36. Section 62‑5‑416 of the 1976 Code is amended to read:

“Section 62‑5‑416. (a) ~~Any~~ Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may ~~file a petition in the appointing court for~~ request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the court may direct.

(b) ~~A conservator may petition~~ Upon application to the appointing court ~~for~~, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.

(c) ~~Upon~~ After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order.”

SECTION 37. Section 62‑5‑419 of the 1976 Code is amended to read:

“Section 62‑5‑419. Every conservator ~~must~~ shall account to the court for his administration of the trust annually and upon his resignation or removal, and at other times as the court may direct. On termination of the protected person’s minority or disability a conservator shall account to the court. ~~Subject to appeal within the same time permitted~~ Upon the filing and service of summons and petition for approval of accounting, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters shown in connection ~~therewith~~ with it and an order, made upon notice and hearing, allowing a final account adjudicates as to all unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship concerning the matters shown. In connection with ~~any~~ an account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in ~~any~~ a manner the court may specify.”

SECTION 38. Section 62‑5‑428 of the 1976 Code is amended to read:

“Section 62‑5‑428. (a)(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

~~(1)~~(i) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;

~~(2)~~(ii) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.

(2) A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. Every claim which is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance in the court or commences a proceeding against the conservator not later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition, by service of the summons and the petition, the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is initiated against a protected person, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference ~~is to~~ must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.”

SECTION 39. Section 62‑5‑430 of the 1976 Code is amended to read:

“Section 62‑5‑430. (A) The protected person, ~~his personal representative,~~ the conservator, or any other interested person ~~may petition~~, by service of a summons and petition, may request that the court ~~to~~ terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing, that the ~~minority or~~ disability of the protected person has ceased, may terminate the conservatorship.

(B) The protected person, his personal representative, or the conservator may make application for the termination of the conservatorship when the protected person has attained his majority or if the protected person is deceased. Notice must be given to those persons as the court may direct.”

SECTION 40. Section 62‑5‑501(B) of the 1976 Code is amended to read:

“(B) An instrument to which this section is applicable also may provide for successor attorneys in fact and provide conditions for their succession, which may include an authorization for the court to appoint a successor, and the succession may occur whether or not the principal then is physically disabled or mentally incompetent. The appointment of an attorney in fact under this section does not prevent a person or his representative from ~~applying to~~ petitioning the court ~~and having~~ to have a guardian or conservator appointed. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.”

SECTION 41. Section 62‑5‑504(H) of the 1976 Code is amended to read:

“(H) A health care provider or nursing care provider having knowledge of the principal’s health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may ~~petition~~ apply to the probate court for an order determining the authority of the agent to give the directive.”

SECTION 42. Section 62‑5‑604 of the 1976 Code is amended to read:

“Section 62‑5‑604. A summons and petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a summons and petition within thirty days after the mailing of notice by the Veterans’ Administration to the last known address of such person indicating the necessity of such filing, a summons and petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.”

SECTION 43. Section 62‑5‑608 of the 1976 Code is amended to read:

“Section 62‑5‑608. Upon the filing and service of ~~a~~ summons and petition for the appointment of a guardian, under the provisions of this part the court shall cause such notice to be given as is provided by law.”

SECTION 44. Section 62‑3‑703(a) of the 1976 Code is amended to read:

“(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section ~~62‑7‑933~~62‑7‑804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this Code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.”

SECTION 45. Section 62‑7‑105(b) of the 1976 Code is amended to read:

“(b) The terms of a trust prevail over any provision of this article except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;

(4) the power of the court to modify or terminate a trust under Sections 62‑7‑410 through 62‑7‑416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Part 5;

(6) the limitations on the ability of a settlor’s agent under a power of attorney to revoke, amend, or make distributions from a revocable trust pursuant to Section 62‑7‑602(e);

~~(6)~~(7) the power of the court under Section 62‑7‑708(b) to adjust a trustee’s compensation specified in the terms of the trust which is unreasonably low or high;

~~(7)~~(8) the effect of an exculpatory term under Section 62‑7‑1008;

~~(8)~~(9) the rights under Sections 62‑7‑1010 through 62‑7‑1013 of a person other than a trustee or beneficiary;

~~(9)~~(10) periods of limitation for commencing a judicial proceeding; and

~~(10)~~(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

~~(11)~~(12) the subject‑matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 62‑7‑201 and 62‑7‑204.”

SECTION 46. Section 62‑7‑201(a) of the 1976 Code is amended to read:

“(a) Subject to the provisions of Section 62‑1‑302(c) and (d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings ~~which~~ that may be maintained ~~under~~ pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) ascertain beneficiaries, determine ~~any~~ a question arising in the administration or distribution of ~~any~~ a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(2) review and settle interim or final accounts;

(3) review the propriety of employment of ~~any~~ a person by a trustee including ~~any~~ an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of ~~any~~ a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. ~~Any~~ A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee’s services or if the trust directs otherwise; and

(4) appoint or remove a trustee.”

SECTION 47. Section 62‑7‑303(a)(6) of the 1976 Code is amended to read:

“(6) a ~~parent~~ person may represent and bind the ~~parent’s~~ person’s minor or unborn ~~child~~ issue if a conservator or guardian for the ~~child~~ issue has not been appointed.”

SECTION 48. Section 62‑7‑305 of the 1976 Code is amended to read:

“Section 62‑7‑305. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or ~~ascertained~~ unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.”

SECTION 49. Section 62‑7‑414(a) and (c) of the 1976 Code is amended to read:

“(a) After notice to the qualified beneficiaries, and without court approval, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court or, if the court does not specify the manner of distribution, or if no court approval is required, in a manner consistent with the purposes of the trust.”

SECTION 50. Section 62‑7‑505(a)(3) and (b) of the 1976 Code is amended to read:

“(3) After the death of a settlor, and subject to the settlor’s right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property of a trust that was revocable at the settlor’s death is subject to claims of the settlor’s creditors, costs of administration of the settlor’s estate, the expenses of the settlor’s funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by S.C. Code Section 62‑3‑801 et seq. ~~and except to the extent state or federal law exempts any property of the trust from such claims, costs, expenses, or allowances.~~

(b) For purposes of this section, a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary‑trustee’s power to make distributions to the beneficiary‑trustee is limited by an ascertainable standard related to the beneficiary‑trustee’s health, education, maintenance, ~~and~~ or support.”

SECTION 51. Section 62‑7‑604 of the 1976 Code is amended to read:

“Section 62‑7‑604. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor’s death within the earlier of:

(1) one year after the settlor’s death; or

(2) ~~60~~ one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust’s existence, of the trustee’s name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor’s death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within ~~60~~ one hundred twenty days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.”

SECTION 52. Section 62‑7‑709 of the 1976 Code is amended by adding at the end:

“(c) A prospective trustee is entitled to be reimbursed from trust property for expenses reasonably incurred by the prospective trustee pursuant to Section 62‑7‑701(c) to protect or investigate the trust assets before deciding whether or not to accept the trusteeship.”

SECTION 53. Section 62‑7‑814(b) of the 1976 Code is amended to read:

“(b) A power whose exercise is limited or prohibited by subsection ~~(d)~~ (c) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.”

SECTION 54. Section 62‑7‑902(9) of the 1976 Code is amended to read:

“(9) ‘Person’ means ~~an~~ any individual, ~~a~~ corporation, ~~a~~ business trust, ~~an~~ estate, ~~a~~ trust, ~~a~~ partnership, ~~a~~ limited liability company, ~~an~~ association, ~~a~~ joint venture, ~~a~~ or government ~~or a~~, governmental subdivision, ~~an~~ agency, or ~~an~~ instrumentality; ~~a~~ or public corporation, or other legal or commercial entity.”

SECTION 55. Section 62‑7‑903(A) of the 1976 Code is amended to read:

“(A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Sections 62‑7‑905 ~~and~~ through 62‑7‑909, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this part;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this part;

(3) shall administer a trust or estate in accordance with this part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this part do not provide a rule for allocating the receipt or disbursement to or between principal and income.”

SECTION 56. Section 62‑7‑904(B)(7) of the 1976 Code is amended to read:

“(7) terms of the trust and whether and to what extent they give the trustee the power to~~, or prohibit him from,~~ invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;”

SECTION 57. Section 62‑7‑933(C)(3) of the 1976 Code is amended to read:

“(3) ~~A~~ Among other circumstances provided in item (1) of this subsection which a trustee shall consider in investing and managing trust assets ~~those circumstances~~ are such of the following as are relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio, including financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset’s special relationship or special value to the purposes of the trust or to one or more of the beneficiaries.”

SECTION 58. Section 62‑7‑1013(a)(6) ‑ (8) and (j) of the 1976 Code are amended to read:

“(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(7) ~~the trust’s taxpayer identification number; and~~

~~(8)~~ the manner of taking title to trust property.

(j) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located.

~~(j)~~ (k) The Certificate of Trust may be either in the form set forth below or in any other form that satisfies the above requirements.

Settlor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Trust: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Trust: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current Trustee(s): \_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Trust: \_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

~~Trust Tax Identification Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~”

SECTION 59. This act takes effect upon approval by the Governor.

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