**A** **BILL**

TO DIRECT THE SOUTH CAROLINA CODE COMMISSIONER TO INCLUDE BEGINNING WITH THE 2011 CUMULATIVE SUPPLEMENT TO THE CODE OF LAWS OF SOUTH CAROLINA, 1976, CERTAIN REPORTER’S COMMENTS IN REGARD TO VARIOUS PROVISIONS OF THE SOUTH CAROLINA PROBATE CODE IN TITLE 62, AMENDED BY ACT 244 OF 2010.

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

SECTION 1. The General Assembly finds that by Act 244 of 2010, the General Assembly enacted various statutory changes to the South Carolina Probate Code as contained in Title 62. The South Carolina Probate Code as originally enacted in 1986 contained Reporter’s Comments after most sections further explaining the intent and effect of those sections which has been of great assistance to the South Carolina Bar and general public. Due to time constraints, it was not possible to complete Reporter’s Comments to the code sections amended by Act 244 of 2010, but through the efforts of the South Carolina Bar these comments have been completed and offered to the General Assembly by the South Carolina Bar for such use as the General Assembly considers appropriate. In accepting these Reporter’s Comments for use and publication in the manner provided by this act, the General Assembly expresses its thanks to the South Carolina Bar and its member attorneys for their diligence and professionalism in developing and preparing these comments.

SECTION 2. The South Carolina Code Commissioner is directed to include beginning with the 2011 Cumulative Supplement to the Code of Laws of South Carolina, 1976, the following South Carolina Reporter’s Comments to the provisions of Title 62 (the South Carolina Probate Code), amended by Act 244 of 2010. The formatting and location of these comments shall be as the Code Commissioner determines. Those comments are as follows:

“South Carolina Comments

Section 62‑1‑201. General Definitions.

The 2010 amendment revised certain definitions in Section 62‑1‑201, i.e., “application” in item (1), “formal proceedings” in item (15), “informal proceedings” in item (19), “petition” in item (31), and “testacy proceeding” in item (43), as well as other relevant sections throughout the Probate Code, to clarify that the law requires a summons in formal proceedings and the rules of civil procedure adopted for the circuit court and other rules of procedure in this title apply to and govern formal proceedings in probate court. See S.C. Code §§14‑23‑280, 62‑1‑304, and Rules 1 and 81, SCRCP; also see, Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).

Prior to the 2010 amendments, certain confusion existed regarding the requirement of a summons in a formal proceeding and how the South Carolina Rules of Civil Procedure apply to formal proceedings in the probate court. The 2010 amendments in this section and throughout other portions of the Probate Code are intended to minimize such confusion and to expressly clarify that a “formal proceeding” is commenced by a summons and petition and governed by the rules of civil procedure adopted for the circuit court and other rules of procedure in this title, and that 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. The vast majority of proceedings in probate court are “informal proceedings” commenced by application. Unlike a petition, an application does not require a summons. Refer to 2010 amendments to certain definitions in this section. Where applicable and appropriate, the 2010 amendments expand the matters in which an application may be utilized.

South Carolina Comments

Section 62‑1‑304. Practice in Court.

The 2010 amendment revised and essentially rewrote Section 62‑1‑304 in order to clarify that “formal proceedings” are governed by and subject to the rules of civil procedure adopted for the circuit court [SCRCP] and other rules of procedure in this title and that the SCRCP also govern formal proceedings and commencement of same. 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; see also, Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).

South Carolina Comments

Section 62‑1‑401. Notice; method and time of giving.

The 2010 amendment added subsection (d) to clarify and avoid confusion that previously existed regarding the notice provisions in this section. The effect of the 2010 amendment was intended to make it clear that the notice provisions in this section are not intended to and do not constitute a summons, which is required for a petition in formal proceedings. 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

South Carolina Comments

Section 62‑1‑403. Pleadings; when parties bound by others; notice.

The 2010 amendment revised subsections (1) and (3) to clarify procedure for a formal proceeding, which requires a summons and petition to commence a formal proceeding. 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. The 2010 amendment also revised subsection (2)(ii) to delete “parent” and replace it with “person,” so that it is consistent with the remainder of that subsection and also delete “child” and replace it with “issue” to be broader and more inclusive.

South Carolina Comments

Section 62‑2‑205. Proceedings for elective share; time limit.

The 2010 amendment revised subsection (a) by deleting “mailing or delivering” and replacing it with “serving upon” and also adding “summons and” to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for elective share. 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.

South Carolina Comments

Section 62‑2‑402. Source, determination, and documentation.

The 2010 amendment revised subsection (a) by deleting “petition” and replacing it with “make application,” so that the personal representative or any interested person as referred to in this section can make application to the probate court. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in section 62‑1‑201 (1).

South Carolina Comments

Section 62‑3‑203. Priority among persons seeking appointment as personal representative.

The 2010 amendment revised subsection (d) to eliminate certain language as to “priority resulting from renunciation or waiver,” and adding “or informal” proceedings. The prior version of subsection (d) provided for only a formal proceeding. The 2010 amendment allows one who does not have priority to pursue either a formal proceeding (requiring summons and petition) or an informal proceeding (does not require summons and petition) for appointment. See 2010 amendments to certain definitions in §62‑1‑201 (1).

South Carolina Comments

Section 62‑3‑401. Formal testacy proceedings; nature; when commenced.

The 2010 amendment deleted “may” and replaced it with “must” and added “and serving a summons” to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. 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.

South Carolina Comments

Section 62‑3‑403. Formal testacy proceeding; notice of hearing on petition.

The 2010 amendment revised subsection (a) to add “or at any time after that,” to delete Notice at the beginning of the third sentence and replacing it with “The following persons” and also including the requirement for a summons and petition. The 2010 amendment also revised subsection (b) to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. 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.

South Carolina Comments

Section 62‑3‑409. Formal testacy proceedings; order; foreign will.

The 2010 amendment revised this section to delete “After the time required for any notice has expired, upon” at the beginning and replace it with “Upon” proof of “service of the summons and petition” and also included the notice requirement for any hearing. The foregoing amendment was intended to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. 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.

South Carolina Comments

Section 62‑3‑414. Formal proceedings concerning appointment of personal representative.

The 2010 amendment revised subsection (b) to delete “notice” and replace it with “service of the summons and petition” to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding concerning appointment of a personal representative as referred to in this section. 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.

South Carolina Comments

Section 62‑3‑502. Administration under Part 5 [Sections 62‑3‑501 et seq.]; petition; order.

The 2010 amendment revised this section to add “service of the summons and petition and upon” in the fourth sentence to clarify that a summons and petition and notice of any hearing are required for a formal proceeding for administration under Part 5. 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.

South Carolina Comments

Section 62‑3‑503. Administration under Part 5 [Sections 62‑3‑501 et seq.]; effect on other proceedings.

The 2010 amendment deleted “he has received” and added “service of the summons and petition upon the personal representative and” to the first sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding under Part 5. 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.

South Carolina Comments

Section 62‑3‑604. Bond amount; security; procedure; reduction.

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

South Carolina Comments

Section 62‑3‑607. Order restraining personal representative.

The 2010 amendment deleted “On petition” at the beginning of this section and replaced it with “Upon application” so that any person who appears to have an interest in the estate can make application to the probate court to restrain a personal representative. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62‑1‑201 (1).

South Carolina Comments

Section 62‑3‑611. Termination of appointment by removal; cause; procedure.

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

South Carolina Comments

Section 62‑3‑806. Allowance of claims.

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, SCRCP. The 2010 amendment also added “of hearing” after “Notice” in the last sentence to clarify the notice of hearing requirements referred to in section 62‑1‑401.

South Carolina Comments

Section 62‑3‑911. Partition for purpose of distribution.

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.

South Carolina Comments

Section 62‑3‑1001. Required filings with court; petition for order compelling personal representative to perform duties; court orders.

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

South Carolina Comments

Section 62‑3‑1008. Subsequent administration.

The 2010 amendment deleted “petition” and replaced it with “application” to allow any interested person to make application for a subsequent administration. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62‑1‑201.

South Carolina Comments

Section 62‑3‑1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.

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

South Carolina Comments

Section 62‑3‑1102. Procedure for securing court approval of compromise.

The 2010 amendment revised subsection (3) to delete “After” at the beginning and replaces it with “Upon application to the court and after” to allow application to the probate court to secure court approval of a compromise. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62‑1‑201.

South Carolina Comments

Section 62‑3‑1309. Time for return; sale of real estate after hearing and notice.

The 2010 amendment revised this section to delete “for return” in the first sentence and replace it with “to answer or otherwise respond by motion to the summons and petition, delete “make a return” and replace it with “answer or otherwise respond by motion,” add “subsequent pleadings,” and delete “return” and replace it with “motions” in the second sentence The foregoing 2010 amendment is intended to clarify that an answer or other response to a summons and petition must be served in an action to sell real estate, which is a formal proceeding as referred to in §62‑1‑201 (15).

South Carolina Comments

Section 62‑5‑101. Definitions and use of terms.

The 2010 amendment revised subsection (5) to add “formal” before proceeding to clarify that a guardianship proceeding is a formal proceeding as referred to in §62‑1‑201 (15).

South Carolina Comments

Section 62‑5‑303. Procedure for court appointment of a guardian of an incapacitated person.

The 2010 amendment revised subsection (a) to delete “any” and replace it with “a” and revise subsection (b) to add “and service” and “the summons and the” in the first sentence to clarify that a summons and petition are required in a formal proceeding, including a guardianship proceeding. 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.

South Carolina Comments

Section 62‑5‑305. Acceptance of appointment; consent to jurisdiction.

The 2010 amendment revised this section by adding “first class” to clarify that the mailing requirement for notice to any guardian as referred to in this section must be by “first class” mail.

South Carolina Comments

Section 62‑5‑307. Removal or resignation of guardian; termination of incapacity.

The 2010 amendment revised subsection (a) to delete “On” and replace it with “After service of the summons and” at the beginning of the first sentence. The intention of the amendment to subsection (a) was to clarify that a summons and petition are required in a formal proceeding, including a guardianship proceeding. 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.

The 2010 amendment also revised subsection (b) to delete “or any person interested in his welfare,” delete “petition” and replace it with “make a request,” add “from the court, and delete “or resignation.” The intention of the amendment to subsection (b) was to allow only the ward to make a request for an order from the court to request that he is no longer incapacitated and to remove the guardian, which request may be made by informal letter to the court or judge.

The 2010 amendment also revised subsection (c) to add “or request” after petition. The 2010 amendment to subsection (c) was to make a corresponding reference to a “request” as referred to in subsection (b).

South Carolina Comments

Section 62‑5‑309. Notices in guardianship proceedings.

The 2010 amendment revised subsection (A) to add “that is properly commenced by filing and service of the summons and petition”, delete “notice of hearing,” adding “the following persons,” deleting “given to each of the following”, and adding “properly served.” The intention of the amendment to subsection (A) was to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for guardianship, and also that certain persons must be properly served with the summons and petition. 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. The 2010 amendment also revised subsection (B) to delete “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” and add “of hearing” to clarify that the notice, which is a notice of hearing, must be given as referred to in §62‑1‑401.

South Carolina Comments

Section 62‑5‑310. Temporary guardians.

The 2010 amendment revised subsection (A)(3) and (B)(2) to add “petition or” before notice and add “petition and” in subsection (D). The intention of the 2010 amendment was to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for temporary guardianship. 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. The 2010 amendment also revised subsection (C) by deleting “If” at the beginning and replacing it with “The court may itself exercise the power of temporary guardian, with or without petition or notice, if,” deleting “then the court may itself exercise the power of a temporary guardian, with or without notice” from subsection (C)(4), and renumbering (C). The intention of the latter amendment was to allow the court, with or without petition or notice, to appoint and exercise the power of a temporary guardian, if the court makes certain emergency preliminary findings.

South Carolina Comments

Section 62‑5‑401. Protective proceedings.

The 2010 amendment revised the first sentence in this section to delete “Upon” and replace it with “After service of the summons and,” delete “after” and “and,” add “of” to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for appointment of a conservator or other protective order. 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.

South Carolina Comments

Section 62‑5‑402. Protective proceedings; jurisdiction of affairs of protected persons.

The 2010 amendment revised the first sentence to delete “notice” and replace it with “the summons and petition,” add “summons and,” delete “is” and replace it with “are” to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for appointment of a conservator or other protective order. 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.

South Carolina Comments

Section 62‑5‑405. Notice.

The 2010 amendment extensively revised the first sentence of subsection (a) to delete “On a” and replace it with “After filing of the summons and the,” delete “notice of the proceedings at least twenty days before the date of hearing” and replace it with “the summons and petition,” revise the second sentence of subsection (a) to add “following persons also must be properly served: the,” and delete the remainder of the second sentence after “parents,” and add “and other persons as the court may direct.” The 2010 amendment also revised subsection (b) to add “hearing on,” “the person to be protected, to,” delete “Except as otherwise provided in (a), notice shall” and replace it with “Notice must.” The intention of the foregoing amendments was to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for appointment of a conservator or other protective order. 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. The 2010 amendment also added a new last sentence regarding waiver by the person to be protected. The latter amendment and new sentence were added to clarify and provide that waiver of notice of hearing by the protected person is not effective unless he attends the hearing or waiver of notice is given by his attorney.

South Carolina Comments

Section 62‑5‑407. Procedure concerning hearing and order on original petition.

The 2010 amendment revised subsections (a) and (b) to delete certain language and replace it with language to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding seeking appointment of a conservator or other protective order. 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.

South Carolina Comments

Section 62‑5‑411. Bond.

The 2010 amendment revised this section to move the term “shall” in the first sentence, which made no substantive change. The 2010 amendment also revised the next to last sentence to delete “On petition” and replace it with “Upon application.” The 2010 amendment also added a new sentence at the end allowing the conservator or another interested person to make application for an informal proceeding regarding bond and also to allow the court on its own motion to pursue matters regarding the bond as set forth in this section. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62‑1‑201

South Carolina Comments

Section 62‑5‑412. Terms and requirements of bonds.

The 2010 amendment revised subsection (a)(3) to delete “On” at the beginning and replace it with “After service of a summons and” to clarify that a summons and petition are required to commence a formal proceeding , including a formal proceeding regarding bond matters as set forth in this section. 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. The 2010 amendment also revised subsection (a)(3) to add “or upon the court’s own motion” so the court could pursue such a proceeding by way of motion.

South Carolina Comments

Section 62‑5‑416. Petitions for orders subsequent to appointment.

The 2010 amendment revised subsection (a) to delete “Any” and replace it with “Upon filing a petition and summons with the appointing court” and also delete “file a petition in the appointment court in order to clarify that a summons and petition are required to commence a formal proceeding, including formal proceeding by an interested person for certain requests subsequent to appointment as set forth in this section. 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. The 2010 amendment also revised subsection (b) by deleting “A conservator may petition” and replacing it with “Upon application to,” deleting “for” and adding “a conservator may request,” and adding a new sentence at the end of subsection (b). The latter amendment was intended to allow the conservator to request instructions concerning his fiduciary responsibility by making application and clarifies the effect of a denial by the court. The 2010 amendment also revised subsection (c) to provide for notice and hearing as the court may direct.

South Carolina Comments

Section 62‑5‑419. Accounts.

The 2010 amendment revised this section by changing “must” to “shall” in the first sentence, deleting “Subject to appeal within the same time permitted” and replacing it with “Upon the filing and service of summons and petition for approval of accounting,” as well as certain grammatical changes thereafter to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for court approval of an intermediate and final account. 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.

South Carolina Comments

Section 62‑5‑428. Claims against protected person; enforcement.

The 2010 amendment revised this section to renumber and also clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding seeking allowance of a claim before it is barred by the applicable statute of limitations. 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.

South Carolina Comments

Section 62‑5‑430. Termination of proceeding.

The 2010 amendment essentially rewrote this section to divide it into two subsections. Subsection (A) clarifies that a summons and petition are required to commence a formal proceeding, including a formal proceeding to terminate the conservatorship when the disability of the protected person has ceased and procedure for same. 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. Subsection (B) allows the protected person, his personal representative, or the conservator to terminate the conservatorship by way of an application, instead of a petition, when the protected person has attained his majority or if the protected person is deceased. Unlike a petition, an application does not require a summons and petition. See §62‑1‑201 (1)

South Carolina Comments

Section 62‑5‑501. When power of attorney not affected by disability.

The 2010 amendment revised subsection (B) to require “petitioning” rather than “applying” to the court as the method for a person or his representative to have a guardian or conservator appointed. A petition requires a summons. See §62‑1‑201 (15) and (31)

South Carolina Comments

Section 62‑5‑504. Health care power of attorney; definitions; form.

The 2010 amendment revised this subsection (H) to allow the health care provider, nursing care provider, agent, or other interested person to “apply,” rather than “petition,” the probate court for an order. An “application” is defined in §62‑1‑201(1) and does not require a summons or petition.

South Carolina Comments

Section 62‑5‑604. Persons who may file petition for appointment.

The 2010 amendment revised this section to clarify that a summons and petition are required to commence a formal proceeding, including a proceeding for appointment of a guardian under the Uniform Veteran’s Guardianship Act as contained in Part 6. 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.

South Carolina Comments

Section 62‑5‑608. Notice of petition.

The 2010 amendment revised this section to clarify that a summons and petition are required in a formal proceeding, including a proceeding for appointment of a guardian under the Uniform Veteran’s Guardianship Act as contained in Part 6. 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.

South Carolina Comments

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

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

South Carolina Comments

Section 62‑7‑105. Default and mandatory rules.

The 2010 amendment, in subsection (b), added a new subsection (b)(6) to provide that the limitations imposed by Section 62‑7‑602(e) on an agent’s ability to alter a settlor’s existing estate plan will prevail over the trust terms. This was added to 62‑7‑105(b) to synthesize it with 602(e) because while 602(e) authorizes a settlor’s agent to revoke, amend or make distributions from a revocable trust, as a matter of policy it specifically prohibits the agent from altering the designation of beneficiaries. The remaining subsections were renumbered accordingly.

South Carolina Comments

Section 62‑7‑201. Role of court in administration of trust.

The 2010 amendment, in subsection (a), changed the reference from Section 62‑1‑302(c) to Section 62‑1‑302(d), which was made necessary by the adoption of the South Carolina Trust Code.

South Carolina Comments

Section 62‑7‑303. Representation by fiduciaries and parents.

The 2010 amendment, in subsection (a)(6), deleted the term ‘parent’ and replaced it with the term ‘person’ so that it is consistent with the remainder of the Section and with Section 62‑1‑403, and deleted the term ‘child’ and replaced it with the term ‘issue’ to be more broad and inclusive, as intended by the Section.

South Carolina Comments

Section 62‑7‑305. Appointment of representative.

The 2010 amendment changed the term ‘ascertained’ to the term ‘unascertained’.

South Carolina Comments

Section 62‑7‑414. Modification or termination of uneconomic trust.

The 2010 amendment, in subsection (a) and (c), clarifies and confirms that court approval is not required under the circumstances described in subsection (a).

South Carolina Comments

Section 62‑7‑505. Creditors’ claims against settlor.

The 2010 amendment, in subsection (a), changed the phrasing of the subsection to clarify the exemption language. In subsection (b), ascertainable standard is re‑worded to read ‘health, education maintenance or support’ rather than ‘and support’.

Further, the references to “subsection (b)(1)” in the South Carolina Comment should be changed to “subsection (b)” except where it is used in regard to UTC subsection (b)(1). The change affects the first and fourth references to (b)(1) in the second paragraph of the South Carolina Comment.

South Carolina Comments

Section 62‑7‑604. Limitation on action contesting validity of revocable trust; distribution of trust property.

The 2010 amendment changed the time period for contesting the validity of a trust instrument from 60 days to 120 days in subsection (a)(2) and (b)(2).

The change of the time period is intended to be prospective, rather than retroactive. Any period of limitation which had commenced to run before the effective date would continue to apply.

South Carolina Comments

Section 62‑7‑709. Reimbursement of expenses.

The 2010 amendment added a new subsection (c) to clarify that a prospective trustee may be paid from trust assets for investigation into serving as a trustee.

South Carolina Comments

Section 62‑7‑814. Discretionary powers; tax savings.

The 2010 amendment, in subsection (b), corrected a typographical error by changing the reference from subsection (d) to subsection (c).

South Carolina Comments

Section 62‑7‑902. Definitions.

The 2010 amendment, in subsection (9), changed the phrasing of the definition but made no substantive changes.

South Carolina Comments

Section 62‑7‑903. Allocation of receipts and disbursements.

The 2010 amendment, in subsection (A), corrected a typographical error by changing the term ‘and’ to the term ‘through’.

South Carolina Comments

Section 62‑7‑904. Adjustments between principal and income.

The 2010 amendment, in subsection (B)(7), corrected a typographical error by deleting the phrase “, or prohibit him from,”.

South Carolina Comments

Section 62‑7‑933. Uniform Prudent Investor Act.

The 2010 amendment, in subsection (C)(3), changed the phrasing of the subsection to clarify that the reasonable care, skill and caution standard is superimposed on the trustee’s considerations.

South Carolina Comments

Section 62‑7‑1013. Certification of trust.

The 2010 amendment deleted the reference in former subsection (a)(7) to a taxpayer identification number. Also, the 2010 amendment added a new subsection (j) to require that in transactions involving real property the Certification of Trust must be in recordable form and renumbered the remaining subsections accordingly. Further, the 2010 amendment changed the phrasing of new subsection (k) to require that the Certification of Trust be in a form substantially the same as the model form.”

SECTION 3. This act takes effect upon approval by the Governor.

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